

Listen to that inner voice to avoid Ethics violations

By now, almost all Kent County employees should have had an opportunity to view the Workplace Ethics training video initiated in October 2017 and thereafter forwarded to the various work sites. Employees were trained to recognize that ethical dilemmas can be difficult to figure out, but by asking the right questions you can make the right decision.

The training also served as a reminder that workplace ethics is an important issue for County employees, because violation of the State Code of Conduct and/or the Kent County Code ethics provision can result in disciplinary action and loss of confidence by the citizens we serve.

What are ethics? *Standards of behavior based upon common values with three common themes: Respect for Others; Fairness; & Honesty.*

The training video suggests you ask the following questions when faced with an ethical dilemma:

- 1) Is there an ethical violation?
 - a) What if it happened to me?
 - b) Does it hurt anyone?
 - c) How would I feel if everyone knew?
- 2) Should I do something?
 - a) Is it serious?
 - b) Am I responsible?
 - c) Do I have the resources?
- 3) What is the best solution?
 - a) Greatest good or least harm?
 - b) Will it work?
 - c) Is it enough?

Sometimes it can be difficult to recognize what action or inaction is or isn't a potential violation of the County Code or the State Code. Follows are a few examples of what could be a violation:

- 1) Recording time worked that you did not really work (it is also theft);
- 2) Repairing your personal vehicle on County property, while on County time, or using County tools to do;
- 3) Using a County vehicle for personal errands outside County policy provisions;
- 4) Storing your personal items in a County storage unit;
- 5) Taking/accepting a County purchased item(s), even if it is deemed surplus or trash by your supervisor; Receiving a County service without payment of fees (taxes);
- 6) Using a County vehicle to "move" your personal items from one home to another;
- 7) Offering friends, relatives or others the use of County equipment or services;
- 8) Helping a friend or relative with a permit or form or accepting/recording fee payments for relatives (ask a co-worker to handle your relatives);
- 9) Championing a friend or relative for a County position to the detriment of a more or

- equally qualified individual;
- 10) Accepting money or thing of value (a gift) from a citizen or someone with whom the County has business, or who would like to conduct business with the County. The value or influence of the gift can be a factor here, but the safest response is to refuse all gifts and/or “share” it with all employees. Cash should always be promptly returned and/or reported to the Personnel Office.

Perhaps the hardest concept to understand in the State Code of Conduct is the “appearance” standard. Even if the action is not unlawful, if it can be viewed by a member of the public as improper and/or a “favor”, then it may be a violation. Under the code, it does not matter if your action(s) was wrong. If it appears or can appear like something was done by you in exchange for the item or as a favor – then it may be a violation. Employees have a responsibility to speak up if an ethical violation occurs. First, try to work out the ethical problem yourself or with a co-worker, but if you can’t then contact your supervisor.

When confronted with an ethical issue – ask yourself: *How is this going to look?*

Help avoid a culture of dishonesty. And remember - ethics matter!

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The State Code of Conduct (which also applies to County employees) is available at <http://delcode.delaware.gov>

§5806 Code of conduct.

(a) Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.

(b) No state employee, state officer or honorary state official shall have any interest in any private enterprise nor shall such state employee, state officer or honorary state official incur any obligation of any nature which is in substantial conflict with the proper performance of such duties in the public interest. No state employee, state officer or honorary state official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

- (1) Impairment of independence of judgment in the exercise of official duties;
- (2) An undertaking to give preferential treatment to any person;
- (3) The making of a governmental decision outside official channels; or
- (4) Any adverse effect on the confidence of the public in the integrity of the government of the State.

Provided however, that a minimal gratuity provided on occasion to blind or disabled state employees or other blind or disabled persons supervised by the Division of Visually Impaired, shall not be considered to be a violation of this section.

(c) No state employee, state officer, or honorary state official shall acquire a financial interest in any private enterprise which such official has reason to believe may be directly involved in decisions to be made by such official in an official capacity on behalf of the State.

(d) Any state employee or state officer who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any state agency (and any honorary state official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the state agency on which the official serves as an appointee) shall file with the Commission a written statement fully disclosing the same. Such disclosure shall be confidential and the Commission shall not release such disclosed information, except as may be necessary for the enforcement of this chapter. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the State.

(e) No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain.

(f) No state employee, state officer or honorary state official shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such state employee, state officer or honorary state official to disclose confidential information acquired by such official by reason of such public position.

(g) No state employee, state officer or honorary state official shall, beyond the scope of such public position, disclose confidential information gained by reason of such public position nor shall such official otherwise use such information for personal gain or benefit.

(h) No state employee, state officer or honorary state official, in the course of public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a state agency.

(i) Notwithstanding the provisions of Chapters 58, 59, and 69 of this title and the State Merit Rules of Personnel Administration, state employees may contract to provide foster care or respite care for individuals with fees paid for by the State provided further that the employee does so at other than assigned work hours. Additionally, these individuals are not permitted to participate in the review or disposition of any matter related to foster and/or respite care in which they have or may have a personal or private interest and may not be monitored or reviewed by other state employees who are more junior or related to them.

§5805 Prohibitions relating to conflicts of interest.

(a) *Restrictions on exercise of official authority.* —

(1) No state employee, state officer or honorary state official may participate on behalf of the State in the review or disposition of any matter pending before the State in which the state employee, state officer or honorary state official has a personal or private interest, provided, that upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of the person's duties with respect to that matter.

(2) A person has an interest which tends to impair the person's independence of judgment in the performance of the person's duties with respect to any matter when:

a. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or

b. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.

(3) In any case where a person has a statutory responsibility with respect to action or nonaction on any matter where the person has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person may

exercise responsibility with respect to such matter, provided, that promptly after becoming aware of such conflict of interest, the person files a written statement with the Commission fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

(b) *Restrictions on representing another's interest before the State.* —

(1) No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment.

(2) No state officer may represent or otherwise assist any private enterprise with respect to any matter before the State.

(3) This subsection shall not preclude any state employee, state officer or honorary state official from appearing before the State or otherwise assisting any private enterprise with respect to any matter in the exercise of such person's official duties.

(c) *Restrictions on contracting with the State.* — No state employee, no state officer and no private enterprise in which a state employee or state officer has a legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities market) shall enter into any contract with the State (other than an employment contract) unless such contract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts not involving more than \$2,000 per year if the terms of such contract reflect arms' length negotiations. For the period of July 1, 1990, through June 30, 1991, nothing in this subsection shall prohibit a state employee, a state officer, or a private enterprise in which a state employee or a state officer has a legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities market) from contracting with a public school district and/or the State Board of Education for the transportation of school children without public notice and competitive bidding as is permitted under § 6923 of this title.

(d) *Post-employment restrictions.* — No person who has served as a state employee, state officer or honorary state official shall represent or otherwise assist any private enterprise on any matter involving the State, for a period of 2 years after termination of employment or appointed status with the State, if the person gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of official duties as a state employee, officer or official. Nor shall any former state employee, state officer or honorary state official disclose confidential information gained by reason of public position nor shall the person otherwise use such information for personal gain or benefit.

(e) *Unauthorized disclosure of confidential information.* — No person shall disclose any information required to be maintained confidential by the Commission under § 5806(d), § 5807(b) or (d), or § 5810(h) of this title.

(f) *Criminal sanctions.* —

(1) Any person who knowingly or wilfully violates any provision of this section shall be guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than 1 year and by a fine not to exceed \$10,000.

(2) A prosecution for a violation of this section shall be subject to the time limitations of § 205 of Title 11.

(3) The Superior Court shall have exclusive jurisdiction over prosecution for all criminal violations of this section.

(g) *Contracts voidable by court action.* — In addition to any other penalty provided by law, any contract entered into by any state agency in violation of this subchapter shall be voidable by the state agency; provided, that in determining whether any court action should be taken to void such a contract pursuant to this subsection, the state agency shall consider the interests of innocent 3rd parties who may be damaged thereby. Any court action to void any

transaction must be initiated within 30 days after the state agency involved has, or should have, knowledge of such violation.

(h) *Exceptions for transportation contracts with school districts. — Except for transportation supervisors for any school district within this State, nothing in this section shall prohibit an employee or the employee's spouse or children (natural or adopted) from contracting for the transportation of school children. Such transportation contracts may be entered into by an employee or the employee's spouse or children without public notice and competitive bidding as is provided in § 6916 of this title.*

The Kent County Code of Ethics is available online at <http://co.kent.de.us>

§ 41-5 Code of Ethics.

A. Public officials and employees shall endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of their trust and which will not reflect unfavorably upon the county and its government.

B. No public official or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any private enterprise or transaction or incur any obligation of any nature which is in substantial conflict with the proper performance of their duties in the public interest. No public official or employee shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any one of the following:

- (1) Impairment in the independence of judgment in the exercise of official duties.
- (2) An undertaking to give preferential treatment to any person.
- (3) Impeding government efficiency or economy.
- (4) The making of a governmental decision outside official channels.
- (5) Any adverse effect on the confidence of the public in the integrity of the government of the county.

C. No public official or employee shall engage in any transaction as a representative or agent of the county with any private enterprise in which they have any financial interest that might reasonably tend to conflict with the proper discharge of their official duties.

D. No public official or employee shall by their conduct give reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties or that they are improperly affected by the kinship, rank, position or influence of any person.

E. No public official or employee shall make personal investments in enterprises which they have reason to believe may be directly involved in decisions to be made by them or which will otherwise create substantial conflict between their duty in the public interest and their private investment.

F. No public official or employee shall use or attempt to use their official position to secure unwarranted privileges or exemption for themselves or others.

G. No public official or employee shall engage in any activity beyond the scope of their employment which might reasonably be expected to require or induce them to disclose confidential information acquired by them by reason of their position as such employee.

H. No public official or employee, beyond the scope of their employment, shall disclose confidential information gained by reason of their official position nor shall they otherwise use such information for personal gain or benefit.

I. No public official or employee other than a person who provides services to the county solely as an independent contractor, nor any private enterprise in which such a public official or employee has any financial interest, shall sell goods or services to the county.

J. Any public official or employee who violates the provisions of this section shall be subject to such sanction as shall be prescribed by the Levy Court.

§ 41-6 Conflicts of interest.

A. No public official or employee, whether paid or unpaid, may approve, disapprove, vote or otherwise act upon any matter in which they have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of their official duties in the public interest or would tend to impair their independence of judgment or action in the performance of their official duties. Personal interest, as distinguished from financial interest, includes an interest arising from blood or marriage relationships or close business or political association.

B. A public official or employee has an interest which tends to impair their independence of judgment or action in the performance of their official duties when:

(1) The enactment or defeat of any matter would result in a financial benefit or detriment to accrue to the public official or employee or other personal interest to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or

(2) The public official or employee or other personal interest has a financial interest in a private enterprise which enterprise or interest would be affected by the matter to a greater extent than like enterprises or other interests in the same enterprise.

C. A public official or employee who has a financial or other personal interest in any matter shall disclose on the records of the Levy Court or other appropriate authority the nature and extent of such interest. This provision shall not apply if the public official or employee disqualifies themselves from voting on such matter.

D. Any public official or employee who violates the provisions of this section shall be subject to such sanction as shall be prescribed by the Levy Court.

If you are unsure if a potential conflict of interest exists or a potential violation of the Code of Conduct or Code of Ethics has occurred or is occurring, please contact the Personnel Office at 744-2310 or your supervisor (unless your supervisor is involved in the conflict or conduct).

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