



Local Government
CENTER

UW
Extension

Ethics and Conflicts of Interest

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Objectives

- Code of Ethics for Local Officials
- Crimes:
 - Prohibited Interest in Public Contracts
- Compatibility of Offices
- Fairness

Public Official Ethics: Purpose & Policy

- Limit self-dealing
 - Not profiting from holding Public Office
- Limit undue influence & bias
 - Preserve the Integrity of Governmental Decision Making
- Preserve public confidence
 - Avoid the Appearance of Impropriety

Additional Considerations



Additional Considerations

- **Effective Leadership**
- **Law is the “minimum standard” of ethical conduct**
- **“It is impossible for us to break the law. We can only break ourselves against the law.”**
 - *C.B. deMille*

State Code of Ethics for Local Officials Wis. Stat. §19.59



Local Ethics Code Basics

- **Private Gain**
- **Influence and Reward**
- **Conflicting Interest**

Definitions

- To understand the *Code of Ethics for Local Officials* in §19.59
 - Understand the definitions of the terms used in that section.
- Definitions are found in §19.42

"Local Public Officials"

Wis. Stat. 19.42(7w) & (7x)

- Elected Officials
- County Administrator or Administrative Coordinator
- Positions appointed:
 - for a specified term,
 - at the pleasure of appointing authority
 - but *not* independent contractors, clerical or ministerial positions

Wis. Stat §19.59(1)(a): Private Gain

- **Prohibits using Public Office:**
 - To obtain financial gain, *or*
 - Anything of substantial value
 - For Private Benefit of:
 - The official,
 - Immediate family members, or
 - Organization associated with the official

"Immediate Family"

The Official's:

- Spouse, or
- Relative by marriage, or Lineal Descent
- Who, directly or indirectly:
 - Receives more than 50% of their support from the Official, or
 - Provides 50% of the Official's support [§19.41(7)]

Private Gain - Exceptions

- Items received on behalf of the local governmental unit and primarily for the benefit of the governmental unit
- Items unrelated to the individual's holding public office or position
- Legally reported Campaign Contributions

Abstaining from Official Action

- Removing yourself from the decision making process or the information exchange in your official capacity.
- Not just voting "Abstain"

Exercise



- You are an Alderperson. A contract is before the council to build a new storage shed at the public works garage and the lowest responsible bidder is *your* daughter.
 - May you participate in discussions or vote on the proposal?

- A. No, I don't think it looks right to vote for your own daughter
- B. Yes, I can vote because a parent must help their children.
- C. No, because I can't legally vote to benefit my daughter.
- D. Yes, now my daughter has a business, I no longer support my daughter.
- E. Pass, I need more information.

Exercise

- You are Village Trustee.
- Village of Gouda Springs is expanding its sanitary sewers to add 150 new residences to the 100 already served and special assess the owners.
- Your home will be one of the new residences served.
 - Based on 2009 Wis Eth Bd 17

Do you participate in determining how cost for the project will be met?

- A. Yes, because it is my duty to participate.
- B. No, because I will get a private benefit from sewer service.
- C. Yes, because it is not a private benefit; I am 1 of 150 benefited.
- D. Yes, but only if I am against it.
- E. Yes, because sewer is about health, not money.

GAB Opinion:

Local Official may participate even if has a substantial financial interest if:

1. The official's action affects a whole class of similarly-situated interests;
2. The official's interest is insignificant when compared to all affected interests in the class; and
3. The official's action's effect on the official's private interests is neither significantly greater nor less than upon other members of the class

Wis. Stat. §19.59(1)(b)

Influence and Reward

- No local public official
- May solicit or accept
- Anything of value
- If it could reasonably be expected to influence the official's judgment
- Or could reasonably be considered a reward for official action.

Definition (*again!*): "Anything of Value"

- Money
- Property
- Favor
- Service
- Payment
- Advance
- Forbearance
- Loan
- Promise of Future Employment

“Anything of Value” – Exceptions

- Compensation and expenses paid by governmental unit
- Hospitality extended by a person for purposes unrelated to government business (but *not* organizations)
- Legally reported Campaign Contributions

Keeping It Simple

- ***Cannot*** accept gifts because you are a public official
- ***May*** receive gifts unrelated to public office
- ***May*** receive gifts on behalf of the governmental unit

Does **not** prohibit outside employment by local official



GAB Recommended Guideline

- Would it be reasonable for someone to believe that the item or service is likely to influence my judgment or actions or that it is a reward for past action?
- If you answer "**yes,**" you **may not** accept the item or service.

Exercise

- Bob, a local builder, takes you to lunch to “get acquainted with the new Official”. He tries to pay for your lunch.
- Should you accept?



Exercise – Lunch with Bob

- A. Yes, if it is McDonalds, but no if anything better.
- B. Yes, because Bob's invitation says nothing about influencing me.
- C. A & B.
- D. No, because it is something of value and he asked because of my position.
- E. Yes, but get a Happy Meal to give a needy child the toy.

Meals and other Expenses

- If for government business, request meal and other expense be reimbursed pursuant to your local government's guidelines.

Exercise

- Can you accept a free “Bob the Builder” Pen?



Free Pen?

- A. Yes, because he gives those to everyone.
- B. No, because Bob is attempting to influence me.
- C. Yes, because it has nominal or no value.
- D. A & C.
- E. Are they as good as the ones he gave out last year?

Free Hat?



- A. Yes, that thing is so ugly, it is worthless.
- B. Yes, it has little or no value.
- C. No, because this is a bit more than a pen.
- D. Yes, if he gives them out as freely as the pens.
- E. Yes, as long as you don't wear it voting on his building permit.

Bob offers to sell you Bears v. Packers Tickets at face value.
Do you accept?

- A. Yes, as long as it is not free.
- B. Yes, if it is not in a box with free food and drink.
- C. Yes, if "face value" equals market value.
- D. B and C.
- E. No, I am a Viking fan.

Wis. Stat. 19.59(1)(c)(1)

Conflicting Interests

- No local public official
- May take any official action
- Substantially affecting a matter
- In which the official, the official's immediate family, or an organization with which the official is associated
- Has a substantial financial interest.

Wis. Stat. 19.59(1)(c)(2)

Conflicting Interests

- No local public official
- May use their public office
- To produce or assist in the production
- Of a substantial benefit
- For the official, the official's immediate family, or an organization with which the official is associated

More Definitions: “Organization”

Any:

- Corporation
- Partnership
- Proprietorship
- Firm
- Enterprise
- Franchise
- Association
- Trust, or
- Other legal entity
 - But not an individual or body politic
 - §19.42(11)

More Definitions: **“Associated”**

- When the official or a member of the official's immediate family is an officer, director or trustee, or owns at least 10% of an organization

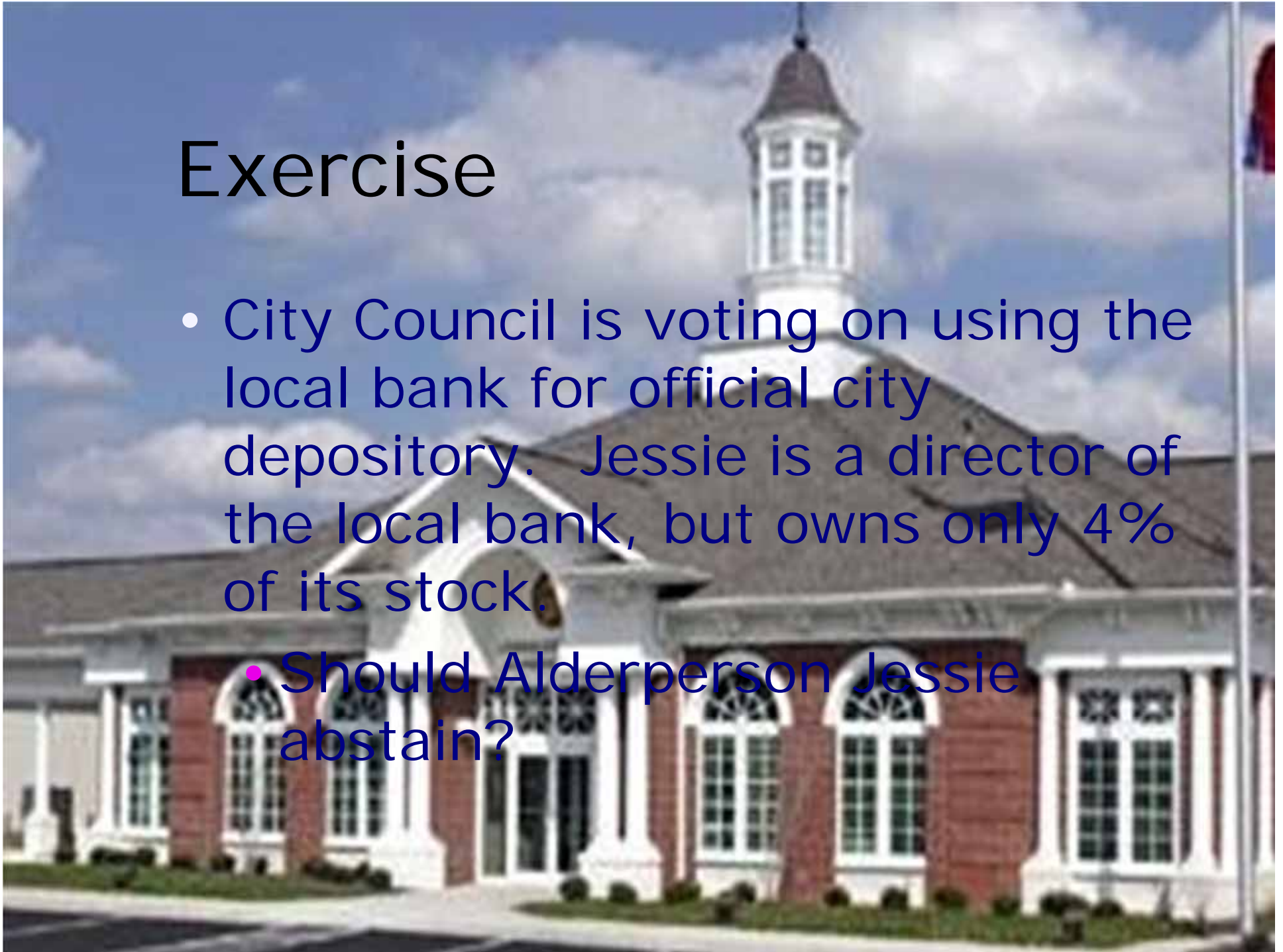
“Associated”

Membership/Employment

- *Membership or employment* with an organization **does not** constitute being “associated” with the organization

Exercise

- City Council is voting on using the local bank for official city depository. Jessie is a director of the local bank, but owns only 4% of its stock.
 - Should Alderperson Jessie abstain?



Exercise

- A. Yes, because Jesse is a Director of the Bank.
- B. No, Jesse owns only 4% stock in a very small town Bank.
- C. No, because it is important to support local business.
- D. No, because the 4% stock cancels the fact Jesse is a Director.
- E. Do they give free toasters?

19.56(1)(br) "Pay to Play" Restrictions

- May not use office to obtain political contribution, service or anything of value for a candidate, party, political committee, or persons that communicates for them.

A man with curly hair, wearing a tan trench coat over a white shirt and a dark tie, is shouting with his mouth wide open and his hand to his mouth. The background is blurred, suggesting an outdoor setting.

Ethics Code Possible Penalties

- \$1,000 forfeiture
- Forfeit wrongful gains
- \$5,000 fine and 1 year imprisonment
- Removal from Office

Criminal Statutes



Prohibited §946.10



Private Interest in Public Contracts *Wis. Stat. § 949.13*



Private Interest in Public Contracts: Generally

Official Action

- Prohibits officials from having a private financial interests in a public contract

Private Action

- Officials are prohibited from entering into contract for goods, services, or employment with their government unit



§949.13(1)(b) Prohibition Against *Official Action*

- Official may not participate in the making of a contract in his or her official capacity,
- If the official has a direct or indirect financial interest in the contract.

§949.13(1)(a)
Prohibition Against
Private Action

- A public official may not in his or her **private capacity**
 - negotiate, bid for, or enter into
- a contract in which the public official has a direct or indirect **financial interest**
 - If the official is "*authorized or required by law* to participate in his capacity as such officer or employee in the making of that contract."

Official Action: Abstaining

- Abstaining from voting on the contract will prevent official action violation



Private Action:

Abstaining

- A public official **cannot** avoid violating the Private Action violation by abstaining from voting.

Private Action:

Abstaining

- This provision is a prohibition on *private action*.
- All that is necessary for a violation to occur
 - the official be *authorized to vote on or exercise discretion with regard to a contract*
 - the official has a private financial interest
 - the official has negotiated, bid for, or entered into the contract.

Private Action: Policy for contract interest prohibition



- Difficulty serving 2 "masters"
- Avoid any Risk of *Private Interest* advancement rather than *Public Good*

Private interest in Public Contracts: Exceptions



Private interest in Public Contracts: Exceptions

- \$15,000 or less in any calendar year
- Ownership of only 2% or less of stock in a corporation involved in public contract
- Other exceptions with specific conditions for Bankers and Attorneys

Exceptions Caution

- Exception to the Criminal Prohibition on an Official from Entering a Private Interest Contract



- Exception to the \$5,000 Annual Limit, do not apply to the Code of Ethics for Official



Private Interest in Public Contracts Prohibited Penalties

- Class "I" Felony Crime
- Fine up to \$10,000,
- 3½ years in State Prison System,
- Or both Fine and Imprisonment

DO NOT PASS GO, DO NOT COLLECT \$

© 1936 PARKER BROTHERS

Exercise – Park Maintenance

- Alderperson Stan Shunpike proposed that care of Cheddar Falls Park be “privatized” with a contract for maintenance. City Council approved.



Exercise – Park Maintenance

- The first contractor walked away one year into the 3 year contract in Fall 2015. Contract is \$21,000 each year.
- Shunpike's term was up April 2016, so he proposed in January 2016 to take over the contract in May 2016
- The council approved.

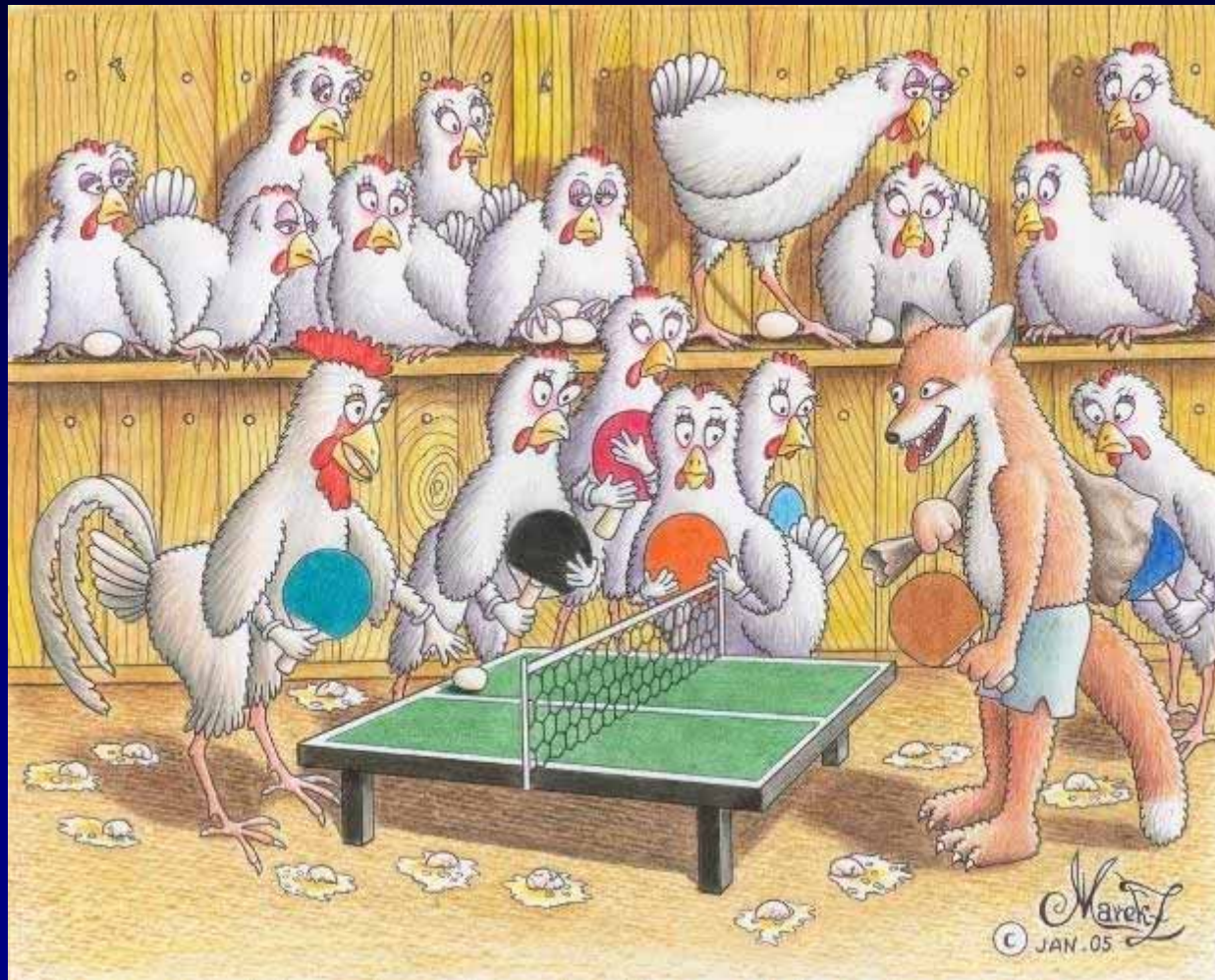
Do you see any violations with The Shunpike contract?

- A. No, because he is no longer alderperson when the contract starts.
- B. No, because it is a contract not a job.
- C. A & B.
- D. Yes, because the Shunpike was authorized to act when his contract was proposed while still on the council.
- E. No, because the council could vote on the contract after he left office.

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Incompatibility



Doctrine of Incompatibility

- When one office is superior in some respect to another, so that the duties exercised under each might conflict to the public detriment, or
- Where the nature and duties of two offices are such as to render it improper from considerations of public policy for one person to discharge the duties of both.

Example



- Alderperson and employee of City Assessor's Office are incompatible
- Result:
 - If take a second office incompatible with the first office, first office is vacated

Exceptions

- Boards and Commissions if no additional compensation
- County Board and Town or Village Board, or City Council
- Firefighter and EMS under certain conditions
 - (§66.0501)
- Exceptions for Town Officers
 - §60.37(4)

New Jobs

- Board and Counsel members may *not* take government unit jobs
 - Created during term of office, even if resign from body
 - May be appointed to an existing position
 - but must resign before applying for vacancy

Other Ethical Guidelines: "Fairness"



Wisconsin Courts:

An Official may be prohibited from acting:

- When Governmental Body Member has an interest not shared by others similarly situated
- When the effect of an action is significantly different for the Member than on others affected

Applying the Law

- Known as “**Quasi Judicial**” Decisions
- Applying the Law to a set of Facts
- Examples:
 - Alcohol Suspensions & Revocations
 - Administrative Appeals
 - Conditional Use Permits
 - Variances
 - Land Divisions

The Constitution requires **Due Process**

- A fair and impartial decision maker
- Not only that there be no bias, but *no high risk of bias*

Due Process – Exercise

- A Planning Body member wrote a letter supporting a conditional use permit before the hearing on the CUP.
 - Is the member disqualified?
 - A. Yes
 - B. No
 - Court found “an impermissible high risk of bias.”

Due Process – Exercise

- Another body member in same CUP application had had an unrelated business transaction with the applicant.
 - Is that member disqualified?
 - A. Yes
 - B. No
- Court did *not* disqualify member

Keen v Dane. Co. Bd., 269 Wis. 2d 488 (Ct. App. 2004)

Ethics Advice



Ask

Local Ethics Board or Attorney

§19.59(5)

- Confidential
 - Advice and identity of requester
- *Prima Facie* evidence of intent to comply with law
- *State v. Davis*:
 - Good faith reliance on attorney advice grounds to dismiss charge

LOCAL NEWS

Clerk Cleared of Ethics Charges

Center for the
Fine Arts, 27570
S. Drive in R-1E, on
March 20 at 2 and 4
tickets are \$38 for adults
for students for the
performance and \$30
and \$15 for stu-
dent matinee per-
formance. For reservations,
6463.

BRIDGE — The Palos
Verdes Unified
District and Friends of
Music host the 75th
Anniversary Elementary
Festival on March 23,
5 at the Norris
Center for the Performing
770 Crossfield Drive in
shows begin at 7:30
tickets, call the
office at 544-0403.

BRIDGE — The
Palos Verdes 29950 S.
Ave., Suite 113 in
titled "Third Time's
a Charm" an exhibit of 3-D
by artist Steve
through March 30.
ry hours, call
544-0403.

BRIDGE — "Natural
Beauty" exhibition contin-

Two years ago, U.S. Navy personnel and their families assigned to the Arangi Navy base, home of the U.S.S. Kittyhawk, were treated to a rare experience when Terry Fleming and his local Irish/American band, Insidire, traveled to the base to entertain them on St. Patrick's Day. Fleming and the other five members of Insidire were delighted and honored to be able to go to Japan and lift the spirits, if only for a few hours, of the Navy personnel and their families.

For the third year in a row, Fleming — a local insurance broker in Rolling Hills by day and an entertainer by night — and the band travel to entertain the Navy men, women and families at various bases throughout Japan.

Fleming, the leader of the band on accordion and harmonica, actually is the only member of the band from Ireland. Other members include lead singer Julie Delaney, a civil engineer in Newport Beach; Terry Doyle, guitarist, a news director with CBS news Denis Doyle, Celtic harpist, a professor at Glendale College; Kevin Wood, keyboards and bagpipes, music

teacher and assistant director of the Orange County Symphony; and Mike Tibbitts, bass, a computer engineer. The band has been playing the length and breadth of California for the past 25 years. They have played at pubs, wakes, weddings, birthdays and on occasions where there was little chance for throwing a party.

Fleming says it was by coincidence the band got the opportunity to travel to Japan. Another band was unable to travel at the last minute and so he and his band were offered the opportunity to go in their place.

With some trepidation they made their first trip and with the overwhelming response they received at Arangi, any fears they had were quickly allayed. On a damp St. Patrick's Day, hundreds of families, clad in many shades of green, whooped it up, sang their hearts out and danced up a storm. As the evening wore on, many in the audience were neobolded to try their hand or foot at the Irish jig, with much encouragement from the band.

Even though far from home, the Arangi base — situated a few hours

south of Tokyo — felt like home away from home, with its lush green rolling landscape and its multitude of cherry blossom trees. "Yeh," Fleming says, "our was struck by the commitment and dedication of our men and women in uniform as they played their part in protecting and serving in an ever-challenging and hostile world."

A couple of the families even took time out from their busy schedule to host Terry and the band members. They treated them to a guided tour of the base and accompanied them on a few exciting trips off the base, visiting beautiful ancient temples, monuments and several giant Buddha.

On a visit to downtown Tokyo, the band came across what they assumed was a very rare sight, a place called "Scruffy Murphy's" an Irish pub located in the heart of a bustling downtown. Upon checking the establishment out, they discovered a real authentic Irish Pub with excellent Guinness and good pub grub. It also happened to be open mic night, so the band members took over the stage

and entertained the local Irish-filled hosts. It turned out was just one of many nights in the city.

A special bond developed between the band members and the local Irish people. The exchange occurred when the same were on leave in the United States.

For more information
contact
Terry Fleming at
www.terryfleming.com

thebrid
THE BRIDGE on the grounds
of the University of California
at Berkeley is the only bridge in
the world that is still standing.
It was built in 1872 and is
still standing today. It is a
great example of the strength
of the American people.
Special event on the bridge
on Saturday, March 13, 2004.
Tickets are \$10.00. For more
information, call 510-841-1111.
Sponsor: The Bridge Foundation.
Admission: \$10.00. For more
information, call 510-841-1111.
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Effective Leadership

"Distrust is a very expensive thing."
Ralph Waldo Emerson



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Misconduct in Office Crime

- Prohibits public officials and employees from intentionally performing, or refusing to perform, certain acts



Misconduct in Office Crime

- §946.12(1) prohibits:
 - Intentionally failing or refusing to perform
 - A “known mandatory, nondiscretionary, ministerial duty of office or employment”
 - Within the time or manner required by law

Nondiscretionary Duties

- Statutes
- Rules of Governmental Body
- Duties that are:
 - Absolute, certain & imperative
 - Performance of a *Specific Task*
 - No regard to own judgment as to action

Exercise

- Doris Umbridge suffered a heart attack while applying for a cat license in the clerks office
- She survived, but complained "Misconduct in Office" to the DA
- She alleged the clerk had a duty to use the AED device on the wall in the clerks office

Is it Misconduct in Office?

- A. Yes, because the AED was clearly in the clerk's office
- B. No, because clerks are not trained in AED use
- C. No, there is no statute that makes AED use a specific duty of a clerk
- D. Yes, public officials must protect citizens

What about A Police Officer?

- A. Yes
- B. No

What about A Police Officer?

- A. Yes
- B. No
- *State v. Dekker*: First Aid to a prisoner was a discretionary duty

Misconduct in Office Crime

- §946.12(2) prohibits official or employee from:
 - Knowingly
 - Doing an act
 - Which is forbidden by law to do
 - In an official capacity

Misconduct in Office Crime

- 946.12(3) Public Official may not
 - by act of commission or omission
 - Exercise a discretionary power
 - in a manner inconsistent
 - with duties of office, or
 - with the rights of others
 - With intent to obtain a dishonest advantage for himself or another

Material Connection

- The forbidden Act must be related to the duties of the office
- Example: Prison Guard having consensual sexual relations with a prisoner was not conduct in his official capacity
 - *State v Schmott*, 115 Wis. 2d 657 (Ct. App. 1982)

Misconduct in Office – False Entry

- §946.12(4) prohibits intentionally falsifying a an entry
 - Such as account of record book, return, certificate, report or statement
- The entry must be “materially” false

Public Official Solicitation or Acceptance of Value

- §946.12(5) - Unlawful to Solicit or Accept Anything of Value
- Under Color of State Law
- Déjà vu to Code of Ethics?