

Code of Ethics - Explanation of Sections

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Code of Ethics - Explanation of Sections

Reference Number: MTAS-924

SECTION 1. This section provides that the code of ethics adopted by the municipal governing body applies to all full-time and part-time elected and appointed officials, whether compensated or not. It also applies to members and employees of separate boards, authorities, and commissions created by the municipality except the school board, which adopts its own code. This includes planning commissions, boards of zoning appeals, beer boards, airport authorities and housing authorities, among others. These applications of the code of ethics are mandated by the Ethics Act passed by the General Assembly.

SECTION 2. The Ethics Act passed by the General Assembly requires that “personal interests” that affect or appear to affect the actions of municipal officials and employees must be disclosed, but the state statute does not define “personal interests.” This section defines those interests. This is a broad definition and is much more encompassing than the state’s conflict of interests laws. It includes ANY financial, ownership, or employment interest of an official or employee in a business or entity the municipality does business with, regulates or supervises. It also includes these interests of the listed family members of the official or employee. It includes situations in which the official, employee or family member is negotiating employment with an affected entity. There is some overlap with indirect interests under state law, but most of the situations to which this provision in the code of ethics applies will not be covered by the conflicts of interests laws. An example would be a family member of the governing body who is an employee of a business seeking to do business with the municipality. This would not be a direct or indirect conflict of interests under the state law, but it would be a personal interest that would have to be disclosed under this definition. This section provides that when there is an overlap with the conflicts of interests laws, those laws take precedence.

SECTION 3. This section requires an official with the responsibility to vote to disclose any of his or her personal interests that might affect his or her discretion before the vote so that they appear in the minutes. The state statute does not require an official with a personal interest to recuse himself from voting. The implication of the statute is to the contrary and that after disclosure the official may vote. Nevertheless, this section allows, but does not require, the official to recuse himself.

SECTION 4. This section applies to employees and officials who must exercise discretion in matters that do not require a vote. The official or employee should, when possible, disclose the personal interest before the exercise of the discretion. Again, recusal is not required, but this section allows it when it is permitted by law, charter, ordinance or policy of the municipality.

SECTION 5. This section prohibits an official or employee from taking any money, gift, favor, or other gratuity from anyone other than the municipality for the performance of the official’s or employee’s regular duties or that gives the appearance of attempting to influence the discretion of the official or employee in carrying out municipal business. This is a somewhat modified version of a provision that most municipalities already have on the books. An alternative to this gift prohibition that is allowed by the state ethics statute would be to allow gifts and gratuities up to a certain amount but to require reporting of those items. MTAS decided on prohibition because it is simpler to implement and because most cities already have similar provisions.

SECTION 6. This section prohibits officials and employees from disclosing confidential information and from disclosing any other information with the intent to result in financial gain. Again, these are common provisions in ethics ordinances that some cities have already adopted.

SECTION 7. This section prohibits officials and employees from using or authorizing the use of municipal time and facilities for their own financial gain. It also prohibits this for other entities or individuals unless it is authorized by contract or lease determined by the governing body to be in the best interests of the municipality. This is a provision similar to ones that have been adopted by many municipalities.

SECTION 8. This section prohibits officials and employees from using their position to make private purchases in the name of the municipality and from using their position to gain privileges or exemptions that are not authorized by charter, general law, ordinance, or policy. These provisions are similar to provisions adopted by many municipalities.

SECTION 9. This section prohibits outside employment by officials or employees if the outside work interferes with municipal duties or is in conflict with any provision of the charter, any ordinance, or any policy of the municipality. Many municipalities have adopted similar provisions.

SECTION 10. This section provides methods for bringing and investigating complaints of violations of the code of ethics. The city attorney is designated as the ethics officer and may issue written opinions when requested on whether certain conduct would comply with the code of ethics and other applicable law. The city attorney is designated to receive and investigate complaints about officials and employees who are not members of the governing body. The attorney may request that the governing body designate another person or entity to act as ethics officer when he or she has a conflict of interests. The governing body must determine the merit of complaints against its members. If the governing body determines that a complaint warrants further investigation, it must authorize the investigation by the city attorney or another person or entity chosen by the governing body. An alternative to appointing the city attorney as ethics officer would be to appoint another individual, such as another attorney or a retired judge. If a municipality chooses to do this, it probably would want to provide for the appointment of the ethics officer after each municipal election. The position could be compensated or uncompensated, although it is unlikely many individuals would be willing to serve if the position is not compensated. Another acceptable alternative would be to establish a board of ethics to perform these functions. For municipalities that choose this alternative, MTAS suggests a three-member board to be appointed by the governing body. Terms probably should be three years. Because many municipalities already have personnel policies that deal with some of the same behaviors regulated by the code of ethics, this section provides that when a violation of the code of ethics also constitutes a violation of a personnel or civil service policy, rule, or regulation, the violation would be handled as a violation of the personnel provisions rather than as a violation of the code of ethics. This section also provides for a "reasonable person" interpretation and enforcement of the code of ethics. MTAS chose the above provisions for designating the ethics officer and for handling ethics complaints for the model code of ethics because they seemed simpler, less costly, and most appropriate for most Tennessee municipalities.

SECTION 11. This section provides for punishment for violations. Elected officials and appointed members of boards and commissions are punishable as already provided by law and, in addition, are subject to censure by the governing body. Appointed officials and employees are subject to disciplinary action. Municipalities that adopt the MTAS Model Code of Ethics must send a notice that it has been adopted, including the date of adoption, to the Tennessee Ethics Commission. Municipalities that do not adopt the MTAS model must send a copy of the ordinance they do adopt to the Ethics Commission. Send the notice to:

Tennessee Ethics Commission
404 James Robertson Parkway
Suite 104
Nashville, TN 37243
ethics.counsel@tn.gov [1]

Links:

[1] <mailto:ethics.counsel@tn.gov>

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