



Municipal Ethics 101

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Topics Covered Today

- Conflicts of Interest in Contracts
- Common Law Conflicts of Interest
- Misc. GML Article 18 Provisions
- Family
- Dual Office Holding
- Misc.



Introduction

- Ethics refers to objective principles that define behavior as appropriate under the law
- Ethics laws act as both a sword and a shield designed “to protect the public from municipal contracts influenced by avaricious officers, [and] to protect innocent public officers from unwarranted assaults on their integrity”



Ethics Sources

- General Municipal Law Article 18
 - Common Law
 - Local Ethics Code
 - Agency Opinions
 - Local Ethics Board
 - Other



Conflict of Interest - Contracts

- To determine if a prohibited conflict of interest exists with a contract look at:
 - (1) General Municipal Law Article 18
 - (2) Local Ethics Code
 - (3) Common Law

Always start with
Article 18!



Conflict of Interest - Contracts

How to analyze a conflict of interest in contracts question

1. Does the potential conflict lie with a contract with the town?
2. If so, do you have an “interest” in the contract
3. If so, do you have “control” over the contract?
4. If “yes” to #1-3, do any statutory exceptions apply?
5. What does your local ethics code say?
6. Is there an “appearance of impropriety”?



Conflict of Interest - Contracts GML 18

Contract

Q1: Does the potential conflict lie with a contract with the town?

- Contract means:
 - claim
 - account
 - demand
 - agreement
- Written or oral
- Express or implied



Conflict of Interest - Contracts GML 18

Is there a contract with the
municipality?

- A town board member hires a planning board member to help prepare their taxes; is this contract prohibited by GML Article 18?



Conflict of Interest - Contracts GML 18

Interest

Q2: Do you have an “interest” in the contract?

“Interest” means a direct or indirect financial or material benefit received as a result of the contract



Conflict of Interest - Contracts GML 18

Interest

Under GML 18, you have an interest in the contracts of:

- your **spouse, minor children and dependents**
 - Exception for contracts of municipal employment
- a **firm, partnership or association** where you work or are a member
 - Exceptions to this listed under GML § 802
- a company where you are an **officer, director, employee or stockholder**
 - Exceptions to this listed under GML § 802



Conflict of Interest - Contracts GML 18

Interest

- If you have an interest in a contract or proposed contract, you must disclose it:
 - In public
 - Submitted in writing
 - Given to immediate supervisor and governing board
 - Suggested even if a statutory exception applies



Conflict of Interest - Contracts GML 18

Interest

The town wants to build a new town hall.
Could the following contracts be covered by
GML Art 18?:

1. A construction company owned by supervisor?
2. A construction company owned by adult son of supervisor?



Conflict of Interest – Contracts GML 18

Control

Q3: Do you have “control” over the contract?

- Control means:
 - Individually or as a board member
 - **Negotiate, draft, authorize or approve** the contract
 - **Authorize payment** under a contract
 - **Audit bills or claims** under the contact
 - **Appoint someone** with any of these powers or duties



Conflict of Interest – Contracts GML 18 Control

- The town is building a new town hall. Does GML Article 18 apply to a contract between the town and the town clerk's spouse who owns a construction company?
- The town assessor is also a plumber; does GML Article 18 prohibit the town from contracting with the assessor for plumbing services?



Conflict of Interest – Contracts GML 18 Exceptions

Q4: Does a statutory exception apply?

- GML § 802 contains a list of exceptions:
 - Pre-existing contracts – but no renewals
 - Stockholders under 5 percent
 - Contracts under \$750 annually
 - Contract with a membership corp or voluntary non-profit corp or association



Conflict of Interest – Contracts GML 18 Exceptions

Officer employed by company but does not:

- Receive any payment from the contract
- Does not have any part in:
 - Procuring
 - Preparing
 - Performing contract



Conflict of Interest – Contracts GML 18 Exceptions

- Example: A town board member works at an auto parts store where the town highway department purchases items. His duties as an employee do not include the procurement, preparation or performance of any of the town orders. He is paid a salary and does not receive compensation related to sales to the town.



Conflicts of Interest - Contracts

Municipal contract + interest + control = GML
Article 18 conflict of interest

An Article 18 conflict of interest
means the municipality cannot enter
the contract

Recusal does not cure a GML conflict of
interest!



Conflicts of Interest - Contracts

- Competitive bidding **does not cure** or excuse a GML conflict of interest!
- Emergencies **do not cure** or excuse a GML conflict of interest!



Conflicts of Interest - Contracts

The supervisor owns a flood service company. During a major storm the town hall starts to flood which, if it continues, will cause substantial damage. The supervisor's business is the only one around that can address the issue immediately. Is this contract prohibited by GML Article 18?



Conflicts of Interest - Contracts

- Effect of Violations:
 - Willful Violation
 - » Contract null and void
 - » Payment prohibited
 - Willful & Knowing Violation
 - » Misdemeanor



Conflicts of Interest - Contracts

Hypothetical:

The town is celebrating its bicentennial and wants to commission an artist to create posters for the celebration. The total cost of the project would be \$700. The wife of a town board member is a well loved local artist who would do a great job. Can the town hire the wife of the town board member?



Conflicts of Interest - Contracts

Hypothetical :

The town is building a new town hall. The town board wants to contract with a construction company. The construction company has a separate contract with a steel supply company that is owned by the town supervisor. Is this prohibited by GML 18?



Conflicts of Interest

If there is no GML 18 conflict the analysis doesn't end

Questions to Ask

1. Is there a contract with the municipality?
2. If so, do you have an “interest” in the contract
3. If so, do you have any “control” over the contract
4. Do any statutory exceptions apply?
- 5. Does your local ethics code apply?**
- 6. Is there an “appearance of impropriety” (common law conflict)?**



Conflicts of Interest – Common Law

The Appearance of Impropriety

“Government officials must maintain public confidence in the integrity of government. They must avoid even the appearance of impropriety.”

“[T]he test to be applied is not whether there is a conflict, but whether there might be. It is the policy of the law to keep the official so far from temptation as to ensure his unselfish devotion to the public interest.”



Conflicts of Interest – Common Law

The Appearance of Impropriety

“Appearance of Impropriety” applies to more than just conflicts with contracts; it applies to all actions of public officials and employees

- For example: A variance application is not a contract under GML 18; however, a ZBA member is subject to common law ethics standards (i.e. the appearance of impropriety).



Conflicts of Interest

Common Law Conflict of Interest

GML 18
Conflict



Conflict of Interest Appearance of Impropriety

To evaluate a common law conflict
break down into 2 questions:

- Is the interest personal?
- Is the interest substantial?



Conflict of Interest

- Is the interest personal?
 - A personal interest is **NOT** an interest that you share with the public generally.
 - Example: A town board member residing within a sewer district can still vote on matters related to that district. That is not a personal interest; she shares it with all the other members of the district



Conflict of Interest – Substantial Interest

- Is the interest substantial?
 - Planning board chair owned a steel supply company that contracted with applicant appearing before planning board. Contract amounted to .15 percent of his company's gross sales for the past two years. The neighbors argued that the chair should have recused himself.



Conflict of Interest – Substantial Interest

- Substantial is not always a quantifiable term.
 - Example: The neighbor of a planning board member applies for a special use permit. Whether there is an appearance of impropriety depends on the circumstances.
- Another way to think of “substantial” – is the interest more than speculative and more than a de minimus interest?



Conflict of Interest - Substantial

De Paolo v Town of Ithaca, 258 AD2d 68 (1999)

Cornell University proposed project needed series of permits and applied to town board for rezoning. Court said no conflict with:

- town board member married to Cornell retiree receiving pension benefits from university
- town board member who was graduate student



Conflict of Interest - Substantial

Ahearn v Zoning Bd. of Appeals of Town of Shawangunk, Ulster County, 158 AD2d 801 (3d Dept 1990)

Petitioner claimed conflict of interest on ZBA when granting special use permit because the wife of a ZBA board member taught piano to applicant's daughter and was given Christmas gift for doing so. Also, the mother in law of the ZBA member had spoken out against the project.

Court said the assertion amounted to “mere speculation.”



Conflict of Interest - Substantial

- In general, courts will find a conflict there is a financial or material benefit involved for a public officer or for one of their family members (but see Town of Gardiner case)
- Where there is the appearance of a problem, but the court believes objectivity is possible the court will not insist on recusal



Conflicts of Interest – Appearance of Impropriety / Common Law

- The Attorney General advises officers to recuse themselves where there is an appearance of impropriety.
- Recuse in public and on the record
- Recusal prohibits you from discussions, deliberations and voting on the matter



Recusal

- Recusal v Abstention
 - Recusal more than abstaining
 - Disengage from the entire process
 - Disclose conflict
- Has functional equivalent of “nay” vote

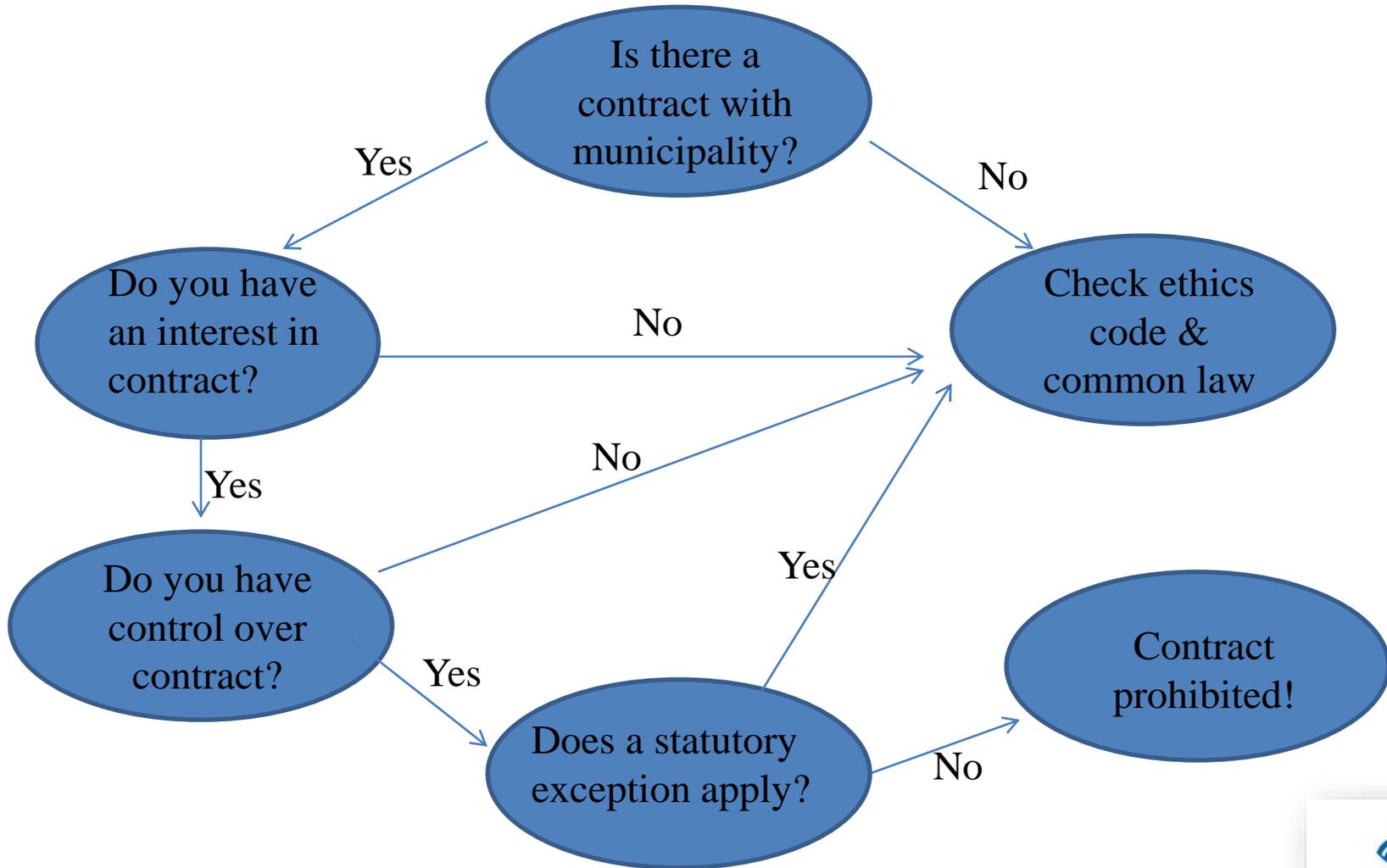


Conflict of Interest

- Consequences of acting despite appearance of impropriety?
 - Litigation
 - Action voided



Conflict of Interest



Conflict of Interest - Family

- No prohibition against members of the same family working for municipality
- General rule:
 - Officer should not participate in decisions concerning salary / terms and conditions of employment for other family members also employed by municipality



Conflict of Interest - Family

- Example: Wife on town board, husband is highway superintendent.
 - Should recuse herself from discussions and voting on the highway superintendent's salary
 - Can vote on and participate in discussions on general highway matters like equipment
 - Can vote to adopt highway budget as a whole.



Gifts

- GML § 805-a
 - Solicit gifts or accept gifts more than \$75 that could reasonably be inferred to influence performing official duties
 - Can reduce amount in local ethics code
- Penalty – sanctions (fine, suspension, removal)



Dual Office Holding

- No general prohibition against holding two offices, but cannot hold two incompatible positions
- Positions are incompatible when:
 - Subordinate
 - Conflict of duties
 - Otherwise prohibited by law



Dual Office Holding

- Subordinate position: Town board member working in highway department
- Conflict of Duties: Code enforcement officer sitting on ZBA
- Otherwise prohibited by law: Can't hold two elected town offices.



Dual Office Holding

- May overcome conflict by local law
 - Limited exception intended for smaller municipalities (1983 Opns Atty Gen [Inf] 1117)



Conflict of Interest - Family

I. Nepotism.

Every public officer, and every municipal employee **related closer in degree, by blood or by marriage, than first cousin** to any persons **seeking employment within any department, section or function of the Town** shall **disclose such relationship** as provided for pursuant to the further provisions of this section.



Conflict of Interest - Family

1. Linda is on the town board. Her husband Vince applies to fill a vacancy on the zoning board of appeals. What should Linda do?
2. Carrie is on the town board. Her long term boyfriend Kent applies to be on the zoning board of appeals. What should Carrie do?



Land Use Applications

- Not a contract under GML 18
- Still subject to the ethics code and appearance of impropriety
- Applicant must make certain disclosures under GML Article 18



Compensation on Matters Before an Agency

- Municipal officials may not receive compensation for matters before their board / agency



Compensation on Matters Before an Agency

Keller v Morgan, 149 AD2d 801 (3d Dept 1989)

- Chairperson of Planning Board held a 25% interest in a company that was doing work on the subdivision that was the subject of the Planning Board's review
- Neither applicant nor PB member disclosed this fact
- Town Board removed PB member from office
- PB member said it wasn't supported by substantial evidence



Compensation on Matters Before an Agency

Keller v Morgan, 149 AD2d 801 (3d Dept 1989)

- Court said PB chair, despite being seemingly unaware of the conflict and voting against the subdivision, should have known about the conflict



Ethics Code

- GML Article 18 not comprehensive
- Typical provisions in Local Ethics Code
 - Conflicts of interest prohibited
 - Recusal
 - Disclosure requirements
 - Gifts
 - Misuse of municipal resources
 - Prohibited appearance of impropriety



Misc.

- Potential criminal offenses
 - Official misconduct
 - Destruction of municipal property
- Employment policies



Questions?

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