

## Enforcing the Ethics Act

One of the difficulties with any required system of ethics is how to enforce it. To some extent, the very nature of ethics should be self enforcement. Those with ethics don't need to have a standard of conduct forced on them. The problem of enforcement only arises when somebody is accused of unethical conduct and either denies it or does not recognize the conduct to be below standard.

Ethics are mostly a matter of personal definition. I define what is ethical for me, and you define what is ethical for you. It is considered rude and meddling to tell others what their ethics should be. There is, however, a minimum standard of ethical conduct for municipal employees and officials. This is the Municipal Officers and Employees Ethics Act.<sup>1</sup> Since it is a standard set by state law it needs to be enforced.

The enforcement is two fold. The criminal portions of the Act are enforced like any other crime through the criminal justice system. Complaints go to the appropriate agency such as the county attorney or attorney general's office and are investigated to see if there has been a crime committed which can be prosecuted. Complaints could also be taken to the panel of judges, who meet at regular intervals to determine whether a grand jury should be impaneled.

The non criminal portions of the Act (the disclosure provisions) are investigated by the city or town. If a complaint is against an employee who is a merit employee, the complaint is processed in accordance with the provisions of the merit system. If the complaint is against a non merit employee or an officer of the city, the complaint is to be filed with the mayor or city manager. The mayor or city manager is to investigate the complaint and give the person an opportunity to be heard. The mayor or city manager must then make written findings and recommendations to the governing body. The governing body can then dismiss, suspend, or take other appropriate action against the individual.

A difficulty arises if the complaint is against the mayor or city manager. Who is to then investigate? Another difficulty is if there is a finding of an ethical violation, not a crime. Can you dismiss a member from the council? There is a section of state law that provides that if an elected official willfully omits to perform any duty or is guilty of misfeasance or malfeasance of office then he or she is guilty of a class A misdemeanor and is removed from office.<sup>2</sup> It appears that before an elected official can be removed from office, he or she would have to be actually convicted of a crime such as misfeasance or malfeasance of office. It would not be sufficient that a governing body found the person had violated the disclosure portions of the Act. However, a governing body can sanction a council member or mayor, short of dismissal from office, for a violation of the Ethics Act. The Act specifically authorizes appropriate action with respect to the person. This might include a public reprimand or withholding a portion of a salary as a civil penalty. It

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<sup>1</sup> Utah Code 10-3-1301 et seq.

<sup>2</sup> Utah Code 10-3-826.

should include rescinding or voiding any transaction which the city entered into in violation of the Ethics Act including not returning any consideration the city may have received in the unethical transaction.<sup>3</sup>

If you feel that an officer or employee has violated the Act you should seek to enforce it through appropriate means. It is not fair to make a public accusation of an ethical violation or conflict of interest for political purposes. If a crime has been committed, the appropriate investigation and screening by a prosecutor should be allowed to take place. If there is a problem with an undisclosed or inappropriate conflict of interest, the mayor or manager should be allowed to investigate, and the accused should be allowed to explain before there is a public sanction. The practice of using an accusation of a conflict of interest to influence someone's vote or prevent someone from voting is, in my opinion, rude and inappropriate.

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<sup>3</sup> Utah Code 10-3-1312.