



Wyoming  
Association of  
Municipalities  
Building Strong Communities



# Ethics and Integrity

2023 WAM WINTER CONFERENCE  
NEWLY ELECTED BOOT CAMP

*Presented by Mark Harris, Attorney*

# Course Objectives

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1

Know your legal and ethical responsibilities

2

Learn how to apply ethics to operations and achieve compliance

# Yes, Ethics ARE Important!

Ethics are the standards or code that governs our conduct

Our democracy depends on public trust,  
which is strengthened by:

**Commitment to  
highest ethical  
standards**

**Transparency**

**Compliance**

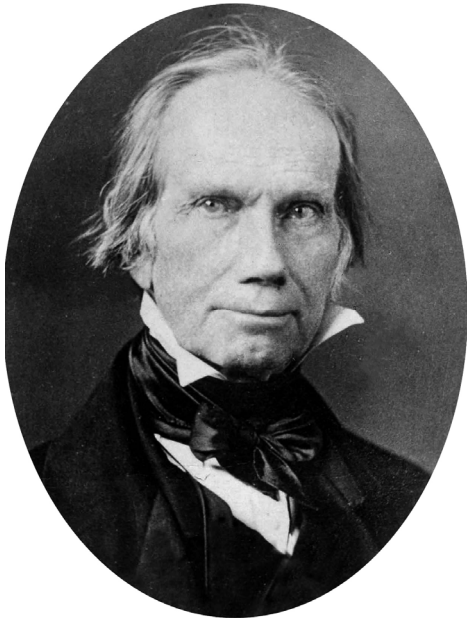
## Ethical dilemma – “A Troubling Reference”

One of your fellow elected officials just called you to inquire about a job applicant who once worked for your town. You can feel your blood pressure begin to rise and beads of sweat break out on your forehead. This job applicant had to be fired after numerous allegations of sexual harassment arose. He promptly hired a lawyer and sued the town. The victims of the alleged harassment did not want the case to go to trial to save embarrassment for their families. So, reluctantly, the city settled the case out of court for several thousand dollars, a carefully worded letter of reference, and an agreement not to talk about the agreement. Your colleague, who serves on the WAM Board of Directors with you, is now asking you some detailed questions. Many of these questions cannot be answered with the letter of reference.

Question: Do you answer the questions or not?

Ethics is the development of standards of human conduct. Every culture has developed an ethic of its own. The moral regulation of behavior has been necessary for as long as people live together in groups. High ethical standards are critical to a local government’s credibility with the public. Although it is impossible to legislate ethical conduct, there are many ways that an organization can encourage and nurture ethical values.

Respond to the ethical dilemma posed before moving onto next slide.



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“Government is a trust, and the officers of the government are trustees: and both the trust and trustees are created for the benefit of the people.”

*Henry Clay*

Henry Clay was a US Representative, Senator, and Secretary of State in early 1800's  
Known as the Great Compromiser (slavery)  
First politician to lay in state at Capitol Rotunda

# Conflict of Interest

A difference between what's good for you and what's good for the public



Sources of conflict of interest:

**Financial**

**Professional**

**Personal**

**Prejudicial**

A conflict of interest is a set of circumstances that creates a risk that your professional judgment or actions regarding the greater good will be unduly influenced by what you stand to gain from a decision.

The conflict in a conflict of interest exists whether or not a particular individual is actually influenced by the secondary interest. It exists if the circumstances are reasonably believed (on the basis of past experience and objective evidence) to create a risk that decisions may be unduly influenced by secondary interests.

You experience an obvious financial conflict of interest if you own a towing company and ask that the Police Department refer accident victims to your company first.

Professional - A manager provides paid consulting services on the weekend to another level of government.

Personal conflict of interest example - A male manager dates a female employee who reports to him.

Prejudicial – city attorney represents city as prosecutor with plaintiff he represented in another case as a defendant.

# Characteristics of an ethical municipality



Review slide

Read “The Extravagant Mayor” scenario

The City Clerk and Mayor are both attending the WAM Annual Conference, and relaxing at the end of the day in a hotel bar. The City Clerk, sitting at a table with some WAMCAT friends, is buying her own drinks. At the next table, the Mayor is buying a second round of drinks for his friends with the city credit card, and holding forth about his frustration with a sexual harassment lawsuit filed by a Police Department Dispatcher. In graphic terms, the Mayor complains that the Dispatcher has no reason to accuse the city of a hostile work environment. “All I did was tell her a few off color jokes, which she repeated to some of her friends,” grumbles the Mayor. “She’s not even that good looking, so I don’t know why she would be worried about sexual harassment.”

Questions: Should the City Clerk forget about this conversation and the “Drinks on the city,” understanding that her boss was just blowing off steam? Or should she take some other action, like talking with the city attorney, and update her resume?

# What happens when municipalities act unethically?

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An entire organization can be held criminally liable for any of its employees' illegal actions

Fraud, environmental waste discharge, and tax offenses are frequent municipal crimes

The DOJ recognizes the value of municipalities adopting and following a compliance program

Effective compliance program can reduce criminal fines by up to 95%

An entire organization, despite its best efforts to prevent wrongdoing in its ranks, can still be held criminally liable for any of its employees' illegal actions

Most commonly occurring offenses (in order of decreasing frequency) are fraud, environmental waste discharge, tax offenses, antitrust offenses, and FDA violations

The DOJ attempted to alleviate the harshest aspects of this institutional vulnerability by incorporating into U.S. Sentencing Guidelines the preventive and deterrent aspects of systematic compliance programs

If an organization can demonstrate that it had put in place an effective compliance program, fines can be reduced by up to 95% (contingent upon prompt reporting to the authorities and the non-involvement of high level personnel in the actual offense conduct)

## Effective Compliance Programs

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Compliance standards and procedures

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Oversight by high-level personnel

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Due care in delegating authority

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Effective communication to all employees

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Reasonable steps to achieve compliance

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Consistent enforcement, including discipline

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Must address violations/prevent recurrence

DOJ Sentencing Guidelines for organizations:

1. Compliance standards and procedures reasonably capable of reducing the prospect of criminal activity
2. Oversight by high-level personnel
3. Due care in delegating substantial discretionary authority
4. Effective communication to all levels of employees
5. Reasonable steps to achieve compliance, which include systems for monitoring, auditing, and reporting suspected wrongdoing without fear of reprisal
6. Consistent enforcement of compliance standards, including disciplinary mechanisms
7. Reasonable steps to respond to and prevent further similar offenses upon detection of a violation



## How do you establish standards?



**Legal standard** – identification of what is permitted (or not). Provides the minimum required and the outer boundary of what is prohibited.



**Ethical standard** – body of principles or values governing a particular culture or group. Many professional groups (and organizations) have formally adopted ethical guidelines.



**Moral standard** – founded on the fundamental principles of right conduct, rather than legalities or customs. This is the highest personal standard.

# Ethical and conflict of interest guidance is everywhere!



In Wyoming, ethics and conflict of interest provisions for government officials is subject to state statutory provisions. In addition, many municipal organizations have adopted specific ordinances or policies regulating the behavior of its local officials. Various professional organizations also have professional codes of conduct that members are obliged to adhere to.

We'll turn now to these various provisions. We'll try to provide lots of examples to help you understand the provisions.

# Applicable Wyoming State Statutes

## Title 6 – Crimes and Offenses

- Chapter 5, Article 1 – Offenses Against Public Administration - Offenses by Public Officials

## Title 9 – Administration of the Government

- Chapter 13, Article 1 – Government Ethics – Public Officials, Members and Employees Ethics

## Title 15 – Cities and Towns

- Chapter 1, Article 1 – General Provisions – Powers and Miscellaneous Matters

## Title 16 – City, County, State and Local Powers

- Chapter 6, Article 1 – Public Property - Public Works and Contracts

Statutory provisions are scattered throughout WSS and it is important to understand that not all provisions apply to all local elected and appointed officials.

Title 6 applies to local elected officials and employees of government, including local government.

Title 9 applies only to local elected officials – not appointed employees at the local level. It does apply to all state elected and appointed personnel.

Title 15 applies to elected officers and employees of any city or town

And Title 16 relates to contracts and acting as either an elected official or agent of the municipality in any contract.

So let's sort this out!

# Wyoming Ethics and Disclosure Act (9-13-101 et seq)



You cannot use your position or title for private benefit



You cannot use public funds, personnel, time, facilities or equipment for private benefit



You cannot disseminate official information that you obtain through your position

Applies to elected state or local officials and STATE employees only.

Because state statutes may not cover all of your employees in all ethnic areas, it's a good idea to adopt similar policy language to cover employees on many of these statutory provisions.

A good organization policy would say:

No public official or employee shall use, request, or permit the use of public funds, time, personnel, facilities, equipment or property...

You cannot use your position or title for private benefit.

#### Use of title and prestige of office (9-13-103)

No public official, public member or public employee shall use his office or position for his private benefit. Ex – pulled over by police and flashing your Mayor's credentials.

Private benefit means receipt of a gift which resulted from his holding that office. Basically, this means anything of value for the private benefit of the official unless the thing of value was conveyed for a reason unrelated to the recipient's holding public office. We'll talk about what constitutes a "gift" in a minute!

#### Misuse of office – WSS 9-13-105

Use of Public Property - Cannot use public funds, time, personnel, facilities or equipment for private benefit or that of another unless the use is authorized by law. Example – calling public works to fix the pothole in front of your house first or using the shop wash bay to wash your personal car.

Purpose: establishes a concrete policy on the use of public property. General public does not have the same opportunity.

#### Impartiality

No public official or employee shall grant, offer, or provide any privilege beyond that which is available to every other person or business.

#### Confidential Information

Confidential Information - Cannot disseminate official information which is obtained through or in connection with his position, unless the information is available to the general public or unless authorized by law.

#### Ethical Dilemma – "Lawsuit Mania"

A building owner has filed a lawsuit against the city related to a parking lot. One council member leases space in the building for his business, and is sympathetic to the building owner. As the Mayor, you have become concerned that whenever you give information to that council member about the lawsuit, it seems to go directly to the building owner who is suing the city. The other council members are upset about this situation and want you to do something about it. Your city has no code of ethics for elected officials, so there is no easy way to resolve this.

# What municipal positions are covered by the Act? (9-13-102)



APPLIES TO **ELECTED OFFICIALS**  
– **COUNCIL MEMBERS**



THE ACT DOES **NOT** APPLY TO  
MUNICIPAL EMPLOYEES

Remember – Title 9 applies only to elected local government officials. However, Title 15, on the next slide, also covers receipt of gifts by municipal employees.

Safest to have basically a “no gifts” policy – with very de minimus limits for small gifts or favors such as a free cup of coffee.

It is a thin line that divides the giving of a small gift or favor from bribery - the act of giving money or a favor to an individual in a position of trust to influence his or her judgment or conduct. Creates appearance of elitism and causes resentment which can undermine trust and confidence of public.

## Gifts or Favors

Anything of value – money, contract, promise for loan, advance, forgiveness of debt, etc. Work of art, automobile, property, honorarium, promise of employment.

Private benefit means receipt of a gift which resulted from holding of office. A “gift” is the act of giving money or a favor to an individual in a position of trust to influence his or her judgment or conduct - is prohibited.

Typically will include acceptance of “gifts” from:

- a person seeking to obtain a contract, grant, loan, employment, or any financial relationship from or within the city.
- a person or business having a financial relationship with the city.
- a person or business whose operations or activities are regulated or inspected by the city.
- a principal and/or attorney in proceedings in which the city is an adverse party.
- any person or business where the performance or nonperformance of any official duty may be affected or influenced.

### “Gift” excludes:

- Printed, informational, educational or promotional material.
- A gift that is not used and is returned to the donor or given to charity within 30 days
- Food and beverage
- Travel, registration, lodging, per diem (*The cost of attending conventions must be specifically included in the municipal budget.*)
- Small tokens or favors given to everyone attending a function or celebrating an occasion
- acceptance of award for meritorious achievement from a charitable, religious, professional, social, or civic organization
- acceptance of gift from family member or close personal friend, where circumstances make it clear that the motivation for the gift is the family relationship, or traditional practices among close friends such as exchange of birthday and Christmas gifts.
- acceptance of plaque or memento of nominal value offered as a token of esteem or appreciation
- Gift given for special occasions (retirement, marriage, etc.)
- Legal political contribution made to, and reported by, a duly registered campaign committee

# No Gifts or Favors (9-13-102)

- Wyoming Ethics and Disclosure Act prohibits **elected officials** from accepting “anything of value”. The law provides that this includes a gift which results from holding the office
- Statutes provide guidance on what is a gift or favor (anything of value to the extent to the extent equal value is not received, and there is a very short list of exclusions from the definition
- Note that Title 6 “gift” excludes property with a value less than \$20 or IRS limited food, drink or entertainment



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- a person or business having a financial relationship with the city.
- a person or business whose operations or activities are regulated or inspected by the city.
- a principal and/or attorney in proceedings in which the city is an adverse party.
- any person or business where the performance or nonperformance of any official duty may be affected or influenced.

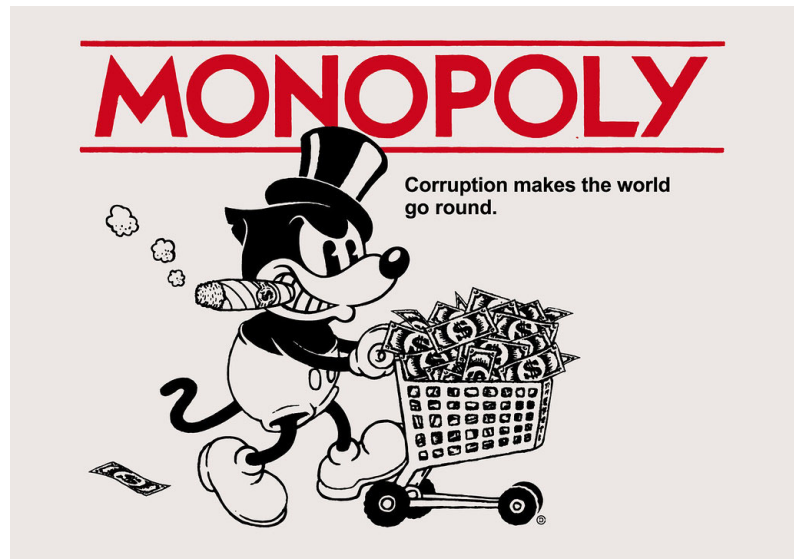
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## Gratuities (15-1-128)

Prohibition against gratuities applies to mayor, council members, *and employees*

- Cannot solicit or receive any benefit, profit or advantage
- No soliciting or accepting freebies
- Violations can lead to removal
- Municipal Government Officials have burdens in excess of Public Ethics & Disclosure Act



Applies to mayor, council members **and employees** of municipality

May not solicit or receive **any** pay, commission, money or thing of value, or derive any benefit, profit or advantage from any improvement, alteration or repair or any contract to which the municipality is a party, except lawful compensation as an officer or employee. May not solicit or accept any pass, free ticket, free service or other favor upon terms more favorable than the public's, from any public service corporation or public utility. (No lobbying or gifts given to municipal officials)

### Violations

Subject to removal from position

Municipal Government Officials have burdens in excess of Public Ethics Act – absolute prohibition of gift receipt

*Examples of some prohibited gifts or entertainment – tickets to a Rockies baseball game given by the Town's insurance carrier. Free city water for all volunteer firefighters. Use of city Xerox machine to print employee annual private Christmas letters.*



## Misuse of Office

Prohibition against using public funds, time, personnel, facilities or equipment for private benefit

- Cannot use public funds, etc. for a political campaign
- Cannot disseminate to another person official information obtained through his position that is not available to the general public

Applies to mayor, council members **and employees** of municipality

May not solicit or receive **any** pay, commission, money or thing of value, or derive any benefit, profit or advantage from any improvement, alteration or repair or any contract to which the municipality is a party, except lawful compensation as an officer or employee. May not solicit or accept any pass, free ticket, free service or other favor upon terms more favorable than the public's, from any public service corporation or public utility. (No lobbying or gifts given to municipal officials)

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## Official Decisions and Votes (9-13-106)

- ✓ Public has a right to know if a public official is furthering his or their own financial interests by voting a particular way
- ✓ A public official or employee shall not make or vote on any official decision if the official or employee has a substantial financial interest in the matter under consideration
- ✓ Must abstain from voting only in clear cases of personal or private interest - weight against importance of his or her right to represent his or her constituency

Purpose: Public has a right to know if a public official is furthering his or her own financial interests by voting a particular way.

### **Official Decisions and Votes**

A public official or employee shall not make or vote on any official decision if the official or employee has a substantial financial interest in the matter under consideration. Said public official shall abstain from voting on the decision.

Cannot make an official decision or vote if there is a personal or private interest in the matter

Must abstain from voting only in clear cases of personal or private interest - weight against importance of his or her right to represent his or her constituency

Shall not vote or give money or any direct financial benefit to himself except for tax reductions affecting the general public.

Direct and immediate interest as opposed to speculative or remote

Interest provides a greater benefit or lesser detriment than for large group similarly situated

Examples – rezone in the neighborhood vs. developing a subdivision yourself



## Unlawful Interest in public contracts or works (16-6-118)

- Unlawful for any person holding office, either by election or appointment, to become interested, either directly or indirectly, in any contract in which he may be called upon to act or vote. Also prohibits to represent individual in such a process or take a gift or bribe as influence.
- If official discloses interest to all contracting parties and absents himself during the considerations and vote, and does not attempt to influence the vote, does not violate law and contract can be let to official or his company
- Violations: Contracts become null and void, and offender may be removed from office
- Criminal punishment can include 10 years prison and major fines

Title 16 – City, County, State and Local Powers - Chapter 6 - Public Property, Article 1 – Public Works and Contracts

Unlawful for any person holding office, either by election or appointment, to become interested, either directly or indirectly, in any contract in which he may be called upon to act or vote.

Cannot offer to take or receive any money or thing of value, as a gift or bribe, or means of influencing his vote or action in his official capacity.

If official discloses interest and absents himself during the considerations and vote, and does not attempt to influence the vote, does not violate law and contract can be let to official or his company.

Title 6 receipt of bribe penalties are very steep – felony punishable by up to 10 years in prison and fine.

## No Money From Any Public Contracts (15-1-127)

Applies to mayors and council members and immediate family

Prohibits monetary or other economic benefit from any municipal contract

Violations mean contract will be deemed null and void, any money paid on the contract may be recovered

Statute identifies very specific steps to take to appropriately handle such conflicts of interest

Here's another area of Wyoming statutory authority relating to public contracts and conflict of interest – these provisions are found in WSS 15-1-127 (Cities and Towns)

Applies to mayors and council members and immediate family

Cannot receive any monetary or other economic benefit from any contract to which the municipality is a party

Contract is void if no compliance with this statute

Exception (not a conflict of interest if):

- No participation in consideration or discussion of contract
- No attempt to influence in any way
- Must reveal the nature and extent of any monetary or other economic benefit
- Shall not vote
- Shall absent himself during consideration, discussion and vote on the contract
- Shall not act, directly or indirectly, for the municipality in inspection, operation, administration of contract



## Financial Disclosure (6-5-118)

- Public officers or public servants who invest funds for unit of government, or who have authority to decide how public funds are invested must disclose benefit or interest in entity.
- Disclosures shall be made annually in a public meeting and shall be made part of the record of proceedings
- Failure to comply is misdemeanor
- This is a criminal statute regarding conflict of interest

Public officers or public servants who invest funds for unit of government, or who have authority to decide how public funds are invested must disclose benefit or interest in entity. Disclosures shall be made annually in a public meeting and shall be made part of the record of proceedings.

Proper disclosure of investment - must disclose each time Council deals with an issue that might affect your investment.

Should not participate in any discussions that might affect your investment, even if you refrain from voting.

### **Financial Interest**

All officials shall file an annual statement disclosing all financial interests, which would include such things as any income, compensation, business with which they are associated, indirect interest in real estate, or contracts.

Penalty – Misdemeanor, punishable by possible jail time and fine.



## Nepotism (9-13-104)

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- Cannot advocate or cause employment, appointment, promotion, transfer or advancement of family member
- Cannot supervise or manage a family member and cannot in his official capacity, participate in any matter relating to employment or discipline.
- Absolute prohibitions – extremely broad

### **Nepotism**

Remember that Title 9 does not apply to employees of the municipality – only the elected Mayor and Council). Cities and towns should consider adopting nepotism policies that cover management personnel as well as elected officials.

No public official shall advocate or cause the employment, promotion or advancement to a position of the municipality of a family member. Shall not supervise or manage a family member. (Family member – spouse, parent, sibling, child, grandparent or grandchild; or member of individual's household).

Cannot supervise or manage a family member (*Can a mayor delegate supervision of a relative?*)

Absolute prohibitions – extremely broad

Examples – Absent a charter ordinance establishing a city or town administrator who supervises employees, the Town clerk cannot be the Mayor's wife (or brother, or granddaughter). Unless you have a municipal policy regulating nepotism, it is legal (but perhaps not ethical), for the Chief of Police to promote his sister to the rank of Sergeant, a position directly supervised by the Chief.



## Penalties Vary by Statute

### Title 9

Misdemeanors

Can include up to one year in jail and \$1,000 fine(s) and removal from office

### Title 15

Any violation is sufficient cause for removal from office

### Title 6

Felony for some offenses

Up to 10 years in jail and \$5,000 fine(s)

Title 9 - Misdemeanors with fine not more than \$1,000  
Constitutes sufficient cause for removal from office

Title 15 – Subject to removal from position or other disciplinary action

Title 6 – Felony – up to 10 years in prison and/or fine up to \$5000

(What is the mechanism for an action to remove someone from office – who decides to initiate this?) Statute doesn't say

But the threat of legal action should not be your only guide in determining proper behavior

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# Responsible choices require careful consideration of those we serve



- Does the decision provide for the greatest good for the greatest number?
- Does the decision respect the rights of the individuals involved?
- Is the decision fair, equitable and impartial?

**Appearance Counts** - Fishbowl - Higher standards of conduct for public officials

**Nature of investments** - Beware of use of your good reputation or investments which require too much of your time

## **Conservative Advice on Investments**

Know the law governing conflicts of interest. When in doubt, check with the city attorney. Be careful about making real property investments in your community. Disclose information on your personal and family investments fully and in a timely way. Avoid investment partnerships with either employees or other members of the governing body. These partnerships inevitably lead to public criticism.

## **Families and friends**

Disclose spousal investment if potential conflict exists  
Remove yourself from zoning debates  
Avoid investments with employees because of supervisory function

## **Confidential Information**

Timing of investment decisions - unrealistic to suggest that elected officials cannot make investments in the community that they serve. However, elected officials must be scrupulous about the timing of their investment decisions. Must wait until key information is made public before they take any action.



## The “Appearance” Test

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- Front page test
- Discern
- Disclose
- Disengage

How comfortable would you be if a newspaper article described the situation and your role in it on the front page of the newspaper?

The public interest is best served by engaged representatives who are knowledgeable about their community. When their private lives intersect with their public duties, what steps should they take to ensure that they act in the best interests of the public they serve and in a manner that promotes confidence in their actions?

If you find yourself in a similar situation, first discern whether there is any connection between an official action you are about to take and your personal life. Seek counsel to have a clear understanding of your legal obligation. If your participation meets the legal test, consider next whether it will meet the appearance test.

Disclose any personal relationship in any instance where there could be the appearance of a conflict of interest. If the conflict is significant enough that a reasonable person would question whether you are acting in the public’s best interest, consider disengaging from the process early on. After all, disclosure doesn’t cure all conflicts of interest.

When faced with a conflict of interest, remember the 3-D strategy: discern, disclose, disengage.





*The toughest choices you will make as a government official are not between right and wrong, but between right and right.*

#### Popular Job Applicant scenario

You are the City Administrator. One of the city's most popular elected officials has decided she would like to apply for a job as your assistant. She has served on the council for over 20 years, and sees this assistant position as a great opportunity to boost her pension while remaining involved with the community in a meaningful way. She has already checked with her colleagues on the council to see if they have a problem with her application for this position, and they told her they were enthusiastic about it.

Question: Can you accept the council member's application for employment?



Questions about  
Ethics and  
Conflict of  
Interest?

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## Thank You!

*This presentation was prepared by Community Builders, Inc., a Wyoming-based consulting firm specializing in community and economic development, under contract and in cooperation with the Wyoming Association of Municipalities.*

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