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DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY

Model Code of Ethics for Local Governments

Frequently Asked Questions



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Must all provisions of the Model Code of Ethics for Local Governments (“Model Code”) be adopted by municipalities within New York State?

No. The Model Code is intended to be a guide for a municipality to develop a code of ethics to meet its own circumstances. However, pursuant to General Municipal Law Section 806(1)(a), counties, cities, towns, villages, school districts, and fire districts must adopt a code of ethics which, at a minimum, contains provisions with respect to: disclosure of interest in legislation before a local governing body; holding of investments in conflict with official duties; private employment in conflict with official duties; and future employment. The Model Code contains suggested provisions with respect to these subjects, as well as others.

Is a county’s code of ethics applicable to municipalities within its borders?

No. Cities, towns, villages, school districts, and fire districts are distinct municipalities separate from a county and must, pursuant to Section 806 of the General Municipal Law, adopt their own code of ethics. Any other “municipality” as defined by the General Municipal Law is authorized, but not required, to adopt a code of ethics.

The Model Code defines “relative” to include a specified list of persons having a family relationship with a municipal officer or employee. Can a municipality expand or reduce those persons included as a “relative” in its own code of ethics?

Yes. Although this Model Code includes a specified list of individuals defined as “relatives,” each municipality may amend the definition of “relative” as it sees fit. The definition of “relative” should, however, at a minimum, include parents, siblings, children, and members of the municipal officer’s or employee’s household.

The Model Code refers to matters requiring or not requiring the “exercise of discretion” (Section 5 [disclosure requirements], Section 6 [recusal and abstention], Section 10 [future employment], and Section 17 [gifts]). What is an example of a function that does not require the “exercise of discretion?”

An example of a function that does not require the exercise of discretion is the issuance of a hunting or fishing license. In contrast, a discretionary function requires the exercise of judgment. Examples of discretionary functions include: awarding professional service contracts, approving claims for payment, and many hiring and disciplinary decisions.

Must each municipality’s code of ethics provide standards regarding the disclosure of interest in legislation?

Yes. General Municipal Law Section 806 requires a code of ethics to provide, among other things, standards for officers and employees with respect to disclosure of interest in legislation before the local governing body. The Model Code expands on this requirement (Section 5).

What is recusal and abstention, and when must a municipal officer or employee recuse himself or herself and abstain from a matter when acting within his or her official capacity?

Recusal and abstention occur when a municipal officer or employee *does not participate in any decision or official action*. Participating in a decision or official action includes, but is not limited to, any form of pre-decisional communications (including e-mails), informal or formal discussions, and voting on the matter. The Model Code (Sections 6 and 7) generally requires recusal and abstention on any matter requiring the exercise of discretion when the municipal officer or employee knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.

Does the Model Code require a municipal officer or employee to divest himself or herself of any assets?

No. The Model Code (Section 8) only prohibits acquisition of certain assets *after* the individual becomes a municipal officer or employee. The

Model Code does not require divestiture of any investments acquired *prior* to becoming a municipal officer or employee in order not to unduly discourage individuals from serving in a municipal capacity. In some instances, however, a municipal officer or employee will be required to disclose an investment (Section 5), and recuse and abstain from any discussion or vote involving that investment which comes before him or her (Section 6). A municipality could include a stricter provision in its code of ethics that would require divestiture of assets or investments which were acquired before an individual began his or her municipal service.

Does the Model Code limit the investments that may be made by a municipal officer's or employee's spouse?

No. The Model Code prohibits only municipal officers and employees from acquiring certain investments (Section 8). However, if a municipal officer or employee has knowledge that his or her spouse or other relative has an interest in a matter coming before him or her which requires the exercise of discretion, the municipal officer or employee must disclose the interest (Section 5), and recuse and abstain (Section 6).

Does the Model Code prohibit municipal officers and employees from representing a non-profit or other community organization before the municipality?

It depends. Under Section 9(c), municipal officers and employees are prohibited from engaging in private employment that violates Section 805-a(1)(c) or (d) of the General Municipal Law.

General Municipal Law Section 805-a(1)(c) states:

No municipal officer or employee shall... receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee.

In addition, General Municipal Law Section 805-a(1)(d) states:

No municipal officer or employee shall...receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

Thus, for example, the Model Code would prohibit a town board member from representing clients before the town's planning board when he or she is paid to do so.

Can an officer of a non-profit who is also a town board member vote on the use of public lands for a fundraiser benefiting the non-profit?

No. The Model Code (Section 6) prohibits municipal officers and employees from participating in any decision or taking any official action with respect to any matter requiring the exercise of discretion, including discussing the matter and voting on it, when he or she knows or has reason to know that the action could confer a direct or indirect financial or material benefit on any private organization in which he or she is deemed to have an interest. The Model Code deems a municipal officer or employee to have an "interest" in any private organization when, among other circumstances, he or she is an officer of the organization (Section 2[c]). In this case, as an officer of the non-profit, the town board member would have an "interest" in the non-profit and would be required to disclose this interest (Section 5) and recuse and abstain (Section 6).

Does the Model Code allow a former municipal officer or employee to appear or render services in connection with a particular subdivision plan that he or she approved while serving as a municipal officer or employee?

No. The Model Code (Section 10[c]) imposes a lifetime bar on a municipal officer or employee representing or rendering services to a private person or organization in connection with any particular transaction in

which he or she personally and substantially participated while serving as a municipal officer or employee.

Does the Model Code permit a municipal officer or employee to informally explore post-municipal employment opportunities?

It depends. The Model Code (Section 10[a]) prohibits a municipal officer or employee from exploring post-municipal employment opportunities with any person or organization which has a matter requiring the exercise of discretion pending before him or her within the 30 days following final disposition of the matter. This provision applies to both verbal and written communications.

Does the Model Code prohibit a municipal officer or employee from representing himself or herself before the municipality?

No. The Model Code (Section 11[a]) does not prohibit a municipal officer or employee from representing himself or herself before the municipality. An example of representation before the municipality includes a municipal officer's or employee's application to the zoning board of appeals (ZBA) for a variance to add a room onto his or her personal residence. In this instance, however, if the municipal officer or employee was a member of the ZBA and the variance came before him or her, he or she would then be required to disclose his or her interest (Section 5) and recuse and abstain (Section 6).

Does the Model Code prohibit a municipal officer or employee from asserting a claim on behalf of his or her spouse against the municipality?

No. The Model Code (Section 11[b]) does not prohibit a municipal officer or employee from asserting a claim against the municipality on behalf of his or her spouse or minor children. For example, a municipal officer or employee could assert a claim with regard to his or her spouse's involvement in an accident with a municipal vehicle. Depending on the circumstances, he or she may then be required to disclose his or her interest (Section 5) and recuse and abstain (Section 6).

Does the Model Code prohibit a municipal officer or employee from using a municipal phone to call his or her child’s school when there is a health issue?

No. The Model Code (Section 12) recognizes the need for occasional and incidental use during the business day of municipal telephones and computers for necessary personal matters such as family care and changes in work schedule. Examples of such matters can include: changes in day care or school schedules, doctor appointments, and other similar personal matters. Municipal officers and employees should also consult their municipality’s policies and procedures which may contain more specific provisions with regard to the use of municipal resources.

Does the prohibition on use of municipal resources for private purposes mean that a school district may not allow a soccer club to use its fields?

Not necessarily. The Model Code (Section 12) recognizes that, in certain circumstances, use of school property by a private organization, such as a soccer club, may be permitted by law.

Does the Model Code address expenses incurred in connection with official travel?

Yes. The Model Code (Section 12[c]) states that, “no municipal officer or employee shall cause the municipality to spend more than is reasonably necessary for transportation, meals, or lodging in connection with official travel.” Consideration as to whether a travel expense is “reasonably necessary” should be determined on a case-by-case basis, and in view of any municipal travel policy.

For example, a municipal officer or employee authorized to attend a conference in Florida decides to drive to the conference. The cost of gas, meals, and lodging would likely far exceed the cost of a plane ticket. The cost of driving would ordinarily exceed the amount “reasonably necessary” to travel to the conference.

Does the Model Code prohibit a municipal officer or employee from doing business with his or her municipality?

Under certain circumstances, yes. The Model Code (Section 13[a]) incorporates the provisions of Section 801 of the General Municipal Law. Section 801 prohibits a municipal officer or employee from having interests in contracts with his or her municipality, but only under certain circumstances. In order for a municipal officer or employee to have a prohibited interest in a contract, four conditions must be met: (1) there must be a “contract;” (2) the individual must have an “interest” in the contract; (3) the individual, in his or her public capacity, must have certain powers or duties with respect to the contract; and (4) the situation must not fit within any of the statutory exceptions.

Does the Model Code require a municipal officer or employee to disclose interests in contracts?

In most circumstances, yes. The Model Code (Section 13[b]) incorporates the provisions of Section 803 of the General Municipal Law. With certain limited exceptions, if a municipal officer or employee, or his or her spouse, has, will have, or later acquires interest in a contract, purchase agreement, lease agreement, or other agreement with the municipality, Section 803 requires written disclosure of the nature and extent of the interest. The disclosure must be made publicly to the individual’s immediate supervisor, and to the governing body of the municipality, which must include the disclosure in the official record of its proceedings.

Does the Model Code prohibit a municipal officer or employee from hiring a relative?

Yes. As a rule, the Model Code (Section 14) prohibits a municipal officer or employee from participating in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any municipal position, or from supervising a relative. If the municipal officer or employee does not participate in the hiring decision and would not supervise the relative, then the Model Code would not prohibit the municipality from hiring the relative.

I am an elected highway superintendent. Can I ask my employees to attend a fundraising dinner for my reelection campaign?

No. The Model Code (Section 15) prohibits a municipal officer or employee from directly or indirectly compelling or inducing a subordinate to make, or promise to make, any political contribution, whether by gift of money, service or other thing of value. The Model Code would also prohibit a municipal officer or employee from having a third person ask subordinates to attend.

On the other hand, the Model Code does not prohibit voluntary attendance at a political fundraiser or voluntary political contributions to a candidate.

Does the Model Code prohibit municipal officers and employees from accepting certain gifts?

Yes. The Model Code (Section 17[a]) prohibits a municipal officer or employee from soliciting, accepting, or receiving gifts in violation of Section 805-a(1)(a) of the General Municipal Law. General Municipal Law Section 805-a(1)(a) states:

No municipal officer or employee shall...directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.

The Model Code provides guidance as to what a gift is, the fair market value of a gift, multiple gifts, and certain permissible gifts.

Does the Model Code require municipalities to establish a board of ethics?

No. The General Municipal Law (Section 808) authorizes, but does not require, municipalities to establish a board of ethics. The Model Code (Section 18) is intended to provide guidance to those municipalities that wish to adopt a board of ethics in conformance with the General Municipal Law. If a county has established a board of ethics, and a

municipality within the county has not, the county's board may act in relation to the officers and employees of the municipality.

If my municipality decides to establish a board of ethics, must the board hold regular, formal meetings?

While the Model Code's provisions do not specifically require the board to hold formal, regular meetings, the local enactment establishing the board may require periodic meetings. Also, the members of the municipality's board of ethics may adopt rules and regulations that establish procedures for the board of ethics, including but not limited to, the frequency and formality of its meetings.

My municipality runs a nursing home. Must the municipality's code of ethics be posted in the nursing home?

Yes. The Model Code (Section 19[a]) requires a municipal CEO to post a copy of the municipality's code of ethics in any building under the municipality's control.

Can the code of ethics be distributed to employees in electronic format? Can they acknowledge the same electronically?

Yes. The Model Code (Section 19[b] and [c]) does not specify how the code of ethics must be distributed or how receipt of the Code must be acknowledged.

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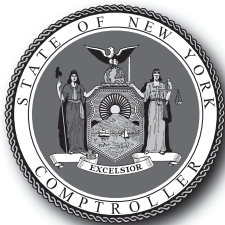
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