

City of Lebanon

Code of Ethics



Public Chapter No. 1 of the Extraordinary Session of the 2006 Tennessee General Assembly



- Known as the Comprehensive Governmental Ethics Reform Act of 2006
- Requires Municipalities to Adopt a Code of Ethics by Ordinance by July 1, 2007
 - Charged MTAS with Creating a Model Code of Ethics for Consideration by Municipalities

What are "Ethics?"

According to Merriam-Webster:

Ethics are "a discipline dealing with good and evil and with moral duty; moral principles or practice."

In other words, the word "ethics" refers to good, moral conduct owed to others.

The MTAS Model Code of Ethics

The MTAS Model was Created with Two (2) Restriction Requirements in Mind:

1. Rules setting limits on and/or providing for reasonable and systematic disclosure of gifts or other things of value received by officials or employees that affect or appear to affect their discretion; and
2. Rules requiring reasonable and systematic disclosure by officials and employees of personal interests that affect or appear to affect their discretion.

TCA Ethics Provisions That Currently Apply to Municipal Officials and Employees

- Ouster Law – Tenn. Code Ann. § 8-47-101, et seq.:
 - Provides the grounds and method of the ousting of public officials that engage in misconduct while holding public office.

- Crimes Involving Public Officials – Tenn. Code Ann. § 39-16-101, et seq.:
 - Prohibits the bribing of and the acceptance of bribes by municipal officeholders.
 - Prohibits anyone convicted of bribery from holding public office.
 - Prohibits persons from buying a public office

- Conflicts of Interests – Tenn. Code Ann. §§ 6-54-107, 108; 12-4-101, 102:
 - Prohibits municipal officeholders from having either a direct or indirect contractual relationship with the city to do any kind of business.
 - Prohibits municipal officials from voting on matters in which there is a conflict of interest.

- Campaign Finance - Tenn. Code Ann. Title 2, Chapter 10:
 - Regulates the method & manner in which candidates for local political offices must collect and report campaign contributions.
 - Preempts the Lebanon City Charter where there is a conflict.
 - This is the Governmental Comprehensive Ethics Reform Act of 2006

The MTAS Model Code of Ethics

Section 1: Applicability

This Title is the Code of Ethics for personnel of the City of Lebanon. It applies to all full-time and part-time elected or appointed officials and employees, whether compensated or not, including those of any separate board, commission, committee, authority, corporation, or other instrumentality appointed or created by the municipality. The words "municipal" and "municipality" include these separate entities.

Section 1 Summary & Explanation

- The Code of Ethics adopted by Lebanon will apply to all full-time and part-time elected and appointed officials, whether compensated or not.
- It will also apply to members and employees of separate boards, authorities, and commissions created by the City, including the planning commission, the board of zoning appeals, the beer board, the airport commission, and the beautification committee among others.
- These applications of the code of ethics are mandated by the Tennessee Comprehensive Governmental Ethics Reform Act of 2006.

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Section 2: Definition of "Personal Interest"

(1) For purposes of Sections 103 and 104 of this Title, "personal interest" means:

(a) Any financial, ownership, or employment interest in the subject of a vote by a municipal board not otherwise regulated by state statutes on conflicts of interests; or

(b) Any financial, ownership, or employment interest in a matter to be regulated or supervised; or

(c) Any such financial, ownership, or employment interest of the official's or employee's spouse, parent(s), step parent(s), grandparent(s), sibling(s), child(ren), or step child(ren).

(2) The words "employment interest" include a situation in which an official or employee or a designated family member is negotiating possible employment with a person or organization that is the subject of the vote or that is to be regulated or supervised.

(3) In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter.

Section 2 Summary & Explanation

- The definitions of “personal interests” were created by MTAS because the State Act did not include such definitions.
- They are much broader than the State conflict of interest laws and include ANY financial, ownership, or employment interest of an official or employee in a business or entity Lebanon does business with, regulates or supervises, and includes these interests of the listed family members of officials or employees.
- It also includes situations in which the official, employee, or family member is negotiating employment with an affected entity.
- Although there is some overlap with indirect interests under state law, most of the situations to which this provision of the code of ethics will apply will not be covered by conflicts of interests state laws. For example, if a City Council member had a family member who was employed by an entity seeking to do business with Lebanon, this Code of Ethics would require disclosure of that fact even though it would not be either a direct or indirect conflict of interest under state law.

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Section 3: Disclosure of Personal Interest by Official with Vote

An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's vote on the measure. In addition, the official may recuse himself or herself from voting on the measure.

Section 3 Highlights

- Voting officials must disclose any personal interests affecting discretion on the record so that they appear in the minutes.
- Recusal of the official is discretionary as the official may choose to either vote or recuse himself/herself after disclosure of the personal interest.



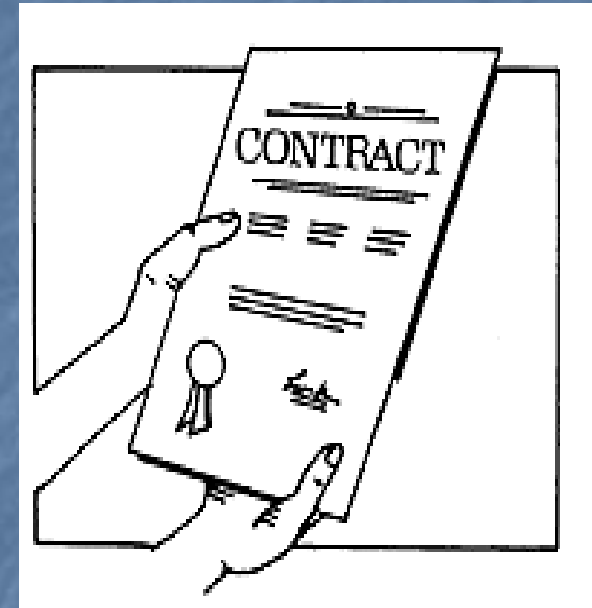
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Section 4: Disclosure of Personal Interest in Non-Voting Matters

An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on a form provided by and filed with the recorder. In addition, the official or employee may, to the extent allowed by law, charter, ordinance, or policy, recuse himself from the exercise of discretion in the matter.

Section 4 Highlights

- This section additionally requires disclosure of personal interests, but applies to those non-voting Lebanon employees and officials who exercise discretion on any other matter.
- The disclosure is to take place before the exercise of discretion, *whenever possible*.
- Again, recusal is allowed, not mandated, but only to the extent allowed by law, charter, ordinance, or policy.



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Section 5: Acceptance of Gratuities, Etc.

An official or employee may not accept, directly or indirectly, any money, gift, gratuity, or other consideration or favor of any kind from anyone other than the municipality:

(1) For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or

(2) That might reasonably be interpreted as an attempt to influence his action, or reward him for past action, in executing municipal business.

Section 5 Highlights

- Prohibits an official or an employee from accepting any money, gift, or favor for the performance of his/her regular duties from anyone other than the City of Lebanon.
- Prohibits an official or an employee from accepting any money, gift, or favor that would have the appearance of attempting to influence the actions of the official or employee in carrying out the business of the City of Lebanon.
- Although State ethics statutes allow gifts and gratuities up to a certain amount as long as they are reported, MTAS decided to go with an absolute prohibition for simplicity and because most cities already have such prohibitions.

Section 5: Gratuities Example

An inquiry was recently made regarding the engineering department receiving Christmas baskets from various entities that deal with the city engineers on a regular basis. An opinion was rendered that such gifts would not violate this code of ethics because they are intended for all of the department's employees (not one particular employee or official) and no one could reasonably interpret a basket of candy and cookies as an attempt to influence the decisions of the engineering department.



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Section 6: Use of Information

(1) An official or employee may not disclose any information obtained in his official capacity or position of employment that is made confidential under state or federal law except as authorized by law.

(2) An official or employee may not use or disclose information obtained in his official capacity or position of employment with the intent to result in financial gain for himself or any other person or entity.

Section 6 Highlights

- Prohibits an employee or official from disclosing to anyone any information deemed as confidential by state or federal law.
- Prohibits an employee or official from disclosing any information obtained as a result of his/her official capacity or position of employment to anyone with the intent for such disclosure to result in any kind of financial gain for him/herself or anyone/anything else.



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Section 7: Use of Municipal Time, Facilities, Etc.

(1) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself.

(2) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.

Section 7 Highlights

- Prohibits an official or employee from using or authorizing the use of city time, facilities, equipment, or supplies for his/her own financial gain.
- Additionally, an official or employee is prohibited from using or authorizing the use of city time, facilities, equipment, or supplies for anyone else's financial gain unless it is pursuant to a contract authorized by the City Council.
- Does not go so far as to prohibit an official or employee from using or authorizing the use of city time, facilities, equipment, or supplies to someone or some entity for non-financial purposes.
- For example, civic or other social groups wishing to use the City Hall's or Jimmy Floyd's meeting facilities could be authorized to do so without violating the code of ethics.

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Section 8: Use of Position or Authority

(1) An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.

(2) An official or employee may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.

Section 8 Highlights



- Prohibits a Lebanon official or employee from using his/her position to obtain a privilege or exemption not authorized by law.
- Additionally prohibits an official or employee from making a private purchase of any type in the name of the City.

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Section 9: Outside Employment

An official or employee may not accept or continue any outside employment if the work unreasonably inhibits the performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy.

Section 9 Highlights

A Lebanon official or employee may not have any outside employment that interferes with his/her city duties or is in conflict with any city charter provisions, ordinances, or policies.



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Section 10: Ethics Complaints

(1) The city attorney is designated as the ethics officer of the municipality. Upon the written request of an official or employee potentially affected by a provision of this chapter, the city attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.

(2) (a) Except as otherwise provided in this subsection, the city attorney shall investigate any credible complaint against an appointed official or employee charging any violation of this chapter, or may undertake an investigation on his own initiative when he acquires information indicating a possible violation, and make recommendations for action to end or seek retribution for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.

Section 10 continued

(b) The city attorney may request the governing body to hire another attorney, individual, or entity to act as ethics officer when he has or will have a conflict of interest in a particular matter.

(c) When a complaint of a violation of any provision of this chapter is lodged against a member of the municipality's governing body, the governing body shall either determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has sufficient merit to warrant further investigation. If the governing body determines that a complaint warrants further investigation, it shall authorize an investigation by the city attorney or another individual or entity chosen by the governing body.

(3) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics.

(4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation or a civil service policy, rule, or regulation, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this code of ethics.

Section 10 Highlights

- Designates the City Attorney as the official city ethics officer and provides methods for bringing and investigating complaints of violations of the code of ethics.
- Alternatives to having the city attorney act as the ethics officer include:
 - Another attorney
 - A retired judge
 - A board or panel (MTAS recommends 3 members)
 - Someone selected after each municipal election



Section 10 Highlights Continued

- The city attorney may render a verbal or written advisory upon the written request of any official or employee potentially affected by this code of ethics.
- The city attorney may upon his/her own initiative, and shall upon any credible complaint, investigate potential violations of this code of ethics and shall make recommendations for an end to, or seek retribution for, any activity that the city attorney believes is a violation of the code of ethics.
- If the city attorney deems he/she has a conflict of interest in investigating a particular complaint, he/she may request that the City Council hire another attorney or individual to act as the ethics officer.
- If a member of the City Council is the subject of an ethics complaint, the City Council itself shall determine if the complaint has merit, is meritless, or needs further investigation. If further investigation is needed, the City Council will authorize either the city attorney or someone else to conduct the investigation.
- Reasonableness is the key in interpreting and enforcing the code of ethics.
- If a violation of the code of ethics also constitutes a violation of a personnel policy, rule, or regulation, it's to be treated as the administrative infraction rather than an ethics violation.

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Section 11: Violations

An elected official or appointed member of a separate municipal board, commission, committee, authority, corporation, or other instrumentality who violates any provision of this chapter is subject to punishment as provided by the municipality's charter or other applicable law, and in addition is subject to censure by the governing body. An appointed official or an employee who violates any provision of this chapter is subject to disciplinary action.

Section 11 Highlights

- Elected officials and appointed members of boards and commissions are punishable as already provided by law and are also subject to public censure by the City Council.
 - The City Council is subject to the punitive provisions of The Lebanon City Charter, Art. III, § 14.
 - The Planning Commission members are subject to the punitive provisions of Tenn. Code Ann. § 13-3-101(f).
 - Most all other boards and commissions serve at the pleasure of the City Council (such as the board of zoning appeals, Tenn. Code Ann. § 13-7-205(b)) or the Mayor (such as the beautification committee, airport commission, etc.).
- Appointed officials and employees are subject to the progressive discipline provisions set forth in the Lebanon Personnel Rules and Regulations and/or the Lebanon City Charter.

