

Ethical Inquiries for State Associations

Washington City/County Management Association

*** This file was sent from ICMA by E-Mail on the Internet**

During FY 94, ICMA responded to 134 inquiries from members and nonmembers seeking ethics advice. All of ICMA's responses are reviewed by the Committee on Professional Conduct (CPC), the ICMA Board's ethics committee. The inquiries and responses that follow were approved by the CPC at the January, 1994 meeting, and instead of publishing some in PM magazine, all are being made available for use by state associations. You are invited to reprint them in newsletters, to use them to prompt discussion at meetings, to present them in your local government staff meetings -- just use them, and relate them to specific tenets of the ICMA Code of Ethics.

The Job Search

A member applied for and was interviewed for a position in a community 2000 miles away. There were four finalists and for various reasons the member is the only one remaining. He was offered the job and three days later he made a counteroffer. It is his understanding that the elected officials were to have met the day before to consider his counteroffer, but he hasn't yet heard from them. The member doesn't know if his counteroffer was accepted, although as the only remaining candidate, he expects it will be. However, in the last few days he has come to realize this isn't the job for him, and he wondered if it is too late to withdraw. The terms of the offer and counteroffer were reviewed in detail, and it was concluded that as far as the member knows, his counteroffer has not been accepted. The guideline to Tenet 3 that provides, ". . . but once a bona fide offer of a position has been accepted, that commitment should be honored," (emphasis added). At this point there has been no meeting of the minds, he is not bound, and he could immediately call the community and withdraw his candidacy.

A member, who signed a contract to serve as the manager in a nearby town, learned that the health insurance benefits had been changed from the benefits that were represented to her when the terms of the contract were negotiated and the new program includes a co-payment requirement. The member has young children and her husband has a chronic health problem. A conservative estimate is that the 1994 co-payment required of her will be \$1,500, a considerable sum for her large family. The terms of the employment agreement call for "benefits and insurances as offered to other employees in the organization". The elected official with whom the member discussed contract terms apparently was unaware that his colleagues had changed the health care plan in a closed session shortly before the member signed the employment agreement. The member was advised that she should make every effort to allow the elected officials to make good on their initial offer, and to try to get them to agree to pick up the costs of her co-payment requirement. Failing that, if she felt the family just could not afford the

co-payment, she could take the position that the appointing authority refused "to honor commitments concerning conditions of employment", an exception to the two-year appointment commitment rule of Tenet 4. The member had reasonably relied upon the representations of the elected official who had apparent authority to negotiate the employment agreement on behalf of the municipality. Nevertheless, it would be unfortunate if \$1,500 were a deal-breaker with a neighboring community after the member had announced her resignation in her own community.

A member said the manager of a nearby community is rumored to be retiring this spring. Although it is not yet official, the retiring manager, not an ICMA member, has called at least one potential candidate to ask if the person might be interested in the position. The member wondered if it would be appropriate for him to call the manager to express his interest in the position. The "seeking employment" guideline of Tenet 3 suggests that a direct and personal phone call to the incumbent manager, to confirm the rumor and to express interest in the job, would be appropriate. However, as the incumbent manager is not subject to the ICMA Code of Ethics and may be unaware of the member's restrictions in this situation, he should make it clear that the contact is personal and confidential.

Outside Employment

An experienced in-service member was approached by a consulting firm to do some consulting work on her own time, and the prospect interests her. The work will involve the sales and distribution of a program or product concerning resource management, which would be of great value to municipalities. Tenet 12 and the private employment provisions do not suggest that what she is contemplating is a direct conflict of interest. The member was advised to inform her elected officials of this outside employment, and to avoid selling the product to her local government colleagues. It is probably the expectation of the firm that the manager will be the entree to this local government market, her colleagues, but to do so would be an exploitation of her position as a public servant. A behind-the-scenes consulting role would avoid this problem.

The superintendent of schools in another county asked the manager to be a hearing officer in an employee disciplinary action. He would receive per diem pay and use his vacation time to do the work. He was recommended by the law firm that does labor work for the school district and the member's municipality. The member wondered if his participation would be an ethical problem. Tenet 12's guideline regarding private employment indicates it would be appropriate for him to serve as a hearing officer in a county other than his own, for money, if he informs his elected officials first. He presumes that one of his elected officials will make an issue of it. He was advised he could include the information in the memo or cover letter that accompanies the regular meeting materials that are distributed to the elected officials and to the press. If it is an immediate problem, it will be raised at the meeting; if it is an after-the-fact problem, his public disclosure should be an effective defense.

Conflicts of Interest

A member's husband is about to receive a real estate license and she wondered if this would create an ethical problem for her. The Personal Relationships guideline of Tenet 12 indicates the member should disclose the fact that her husband will be working for a real estate agency selling residential properties, although the agency handles both residential and commercial. She could indicate whether she foresees any real property acquisitions by the municipality in the near future, and if so, how she would handle the situation. The disclosure should be in writing and included in the meeting materials for the elected officials that are also made available to the press.

Political Activity

The good friend of a member is running for a partisan office and asked the member to help by creating and maintaining a database of information, on his own time, using his own PC and in his own home. The member's support would not be made public in any way, and the candidate's district does not include the manager's town. The member was advised he could support his friend in this manner so long as it was done in the privacy of his home, and with a clear understanding of this condition by the candidate.

An in-service member wondered if it would be permissible for him to run for the school board in his own county. He was directed to Tenet 7 and the "Other Elections" guideline which speaks directly to the question (" . . . [members] should not participate in election campaigns for representatives from their area to county, school, state, and federal offices."). He was advised not to run.

Endorsements

A member wondered if she could appear in a TV spot endorsing the university of which she is a graduate. She was advised the Endorsements guideline of Tenet 12 of the Code specifically includes "recognized educational institutions" among the exemptions from the general endorsement prohibition. A member was asked by the contracting firm that did good work on the wastewater system in the member's local government, to make a favorable comment about the firm for publication in a promotional brochure. The endorsements provision of Tenet 12 of the Code of Ethics prohibits endorsing such a commercial service, and the member was advised this would be an inappropriate endorsement. The vendor could list the local government as a client or user of the firm's products or services, and inquiries could be made directly to administration.

An engineering firm did some fine work for the city on its wastewater treatment plant and the firm wants to include an article about the project in its quarterly newsletter. The member wasn't sure whether he should allow or encourage it. He was advised the engineering firm could publish any information they wanted to about the project, but they should be requested not include any laudatory statements by the members. If asked to comment, the member should restrict his statements to factual observations rather than make personal comments, such as what he thinks about the firm's work, which could be considered an endorsement.

The friend of a member has produced maps of the area based on GIS and census data. The author compiled the information in book form and gave the member a draft copy, asking him to review it and to make some favorable comments which the author might use in marketing the book. The material is an aggregation of data already in the public realm, in a new and more usable form, and will be of general public use. After reviewing the Endorsements guideline of Tenet 12, it was concluded the endorsement would be appropriate. "Books or publications" may be endorsed, and although it is a commercial publication, it will be of general public benefit.

Dealing with the Press

A few years ago a member worked in a distant community as an assistant city manager. The newspaper in that town had already secured a number of documents and called the member whose name appears on a number of them, saying they're doing an investigative report on the manager. The member wondered if he should cooperate with the newspaper reporter. There was nothing in the Code of Ethics directly on point, but it did provide some general direction. The guideline to Tenet 2 suggests the member should tell his former boss about this contact from the press. Tenet 3 and a guideline suggest "professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity. . ." Tenet 9 addresses the propriety of keeping the community informed on municipal affairs, although in this case it's another community; and a guideline to Tenet 12 reminds members "not to disclose to others . . . confidential information acquired by them in the course of their official duties." In sum, the member was advised to tell the manager of the contact from the press, to clarify for himself the reasons why he should talk with the reporter at all, and exactly what he should say, but no more. If he decides to engage in an interview with the reporter, he should focus on factual matters that are already in the public documents, and negotiate with the reporter the terms of their conversation: whether it be on or off the record, for or not for attribution, he will make no personal conclusions or commentary, and will discuss only the information in the public documents already in their possession. The member was reminded he will be swimming with the sharks, with no land in sight. And finally, he was advised to consider whether to check first with his elected officials, rather than to surprise them with a news account.

Gifts

A member, who is new to his organization and to his position as the first professional manager in the local government, wondered what to do with a Christmas gift from a vendor, worth about \$15. He was advised it is of nominal value and he could choose to keep it, return it, or give it to the needy. He recognized that such gift-giving to local public officials has probably been happening for years, and that his elected officials have probably been receiving them without question. He saw this as an opportunity to set a new tone from the top. After exploring various alternatives, the member decided to, as graciously as possible, (1) give the food to charity with a note explaining where it came from, copied to the donor; (2) send a thank you note to the donor, explaining why he gave the gift away, copied to his elected.

A member wondered if it would be appropriate for him to accept a gift from his church, in thanks for a speech he gave there. The gift is a \$30 gift certificate for use at a local business. The member informed his elected officials (who saw no problem) and checked with the local ordinance that prohibits accepting gifts from businesses that do business with the city. The city does no business with the church. He was advised this gift is small in value, and he is free to choose whether to accept it. He said he considered giving the gift certificate to the needy but decided it would not be appropriate, so he kept and used it.

Community Service

A manager asked about the propriety of his serving on a local bank's Community Reinvestment Bank (CRA) advisory board. The village does no business with the bank, and there is no compensation for these quarterly meetings. The purpose of the CRA is to provide low interest loans for low- to-moderate income citizens, and banks are required to reach out to community leaders for advice. The member was advised that, although it is not inherently unethical to serve on a CRA advisory board, it would be better if he would volunteer to serve as a resource person for all of the banks, thus showing no preference. The member explained that the area banks formed a CRA alliance committee to deal with some commonly shared issues, and he could become involved with this group.

Last week's offer was an easy "No thanks": the member was asked to join the board of directors of a local bank, but he wasn't so sure about this week's offer. He was asked to serve on the advisory board of a bank. The member read the letter of invitation to the ethics advisor, who heard such things as, "to promote the success of the bank", and "to help the bank compete". The member was advised that this kind of advisory board is somewhere on the continuum between serving on the board of directors of a bank, which is a conflict of interest, and participating on a Community Reinvestment Act advisory board that is intended to serve a community interest. However, the description

of this advisory board's charge put it closer to the former category and not the latter, and the member was advised to decline this invitation as well.

A member wondered if he should accept an invitation to serve on the board of the local chamber of commerce. He was advised to consider whether the board would be involved in local fundraising (no), whether the chamber would be coming before the municipality to request something (no, nothing on the horizon), whether there is a formal or traditional city "slot" on the board (no), whether an elected official might serve as effectively as he (elected officials have served in the past but this time the chamber specifically wanted a city staff member who would have more information about city practices). The city owns the building the chamber is in, which might be a conflict at some point. The member was advised to weigh these factors in making his decision, vising his elected officials, which the Committee on Professional Conduct has found unacceptable.

Professional Courtesy

A controversy arose in a member's former community concerning an employee she had hired. A staff member of one of the elected officials called her to learn what had occurred, as the elected officials had begun to notice that a number of good employees were resigning. The member asked if she should and could provide insider information to the elected officials. She was advised there isn't an ethical tenet directly on point with these facts, out of it. Bad-mouthing another ICMA member, another professional is unprofessional.

A member was asked to write a letter of recommendation on behalf of a young woman with whom he had worked on a project. The young woman was applying for a job with the member's local government, and she would be an excellent professional addition to the staff. The member wondered if it would be unethical to write the candidate a letter of recommendation for a job with his own organization. He was advised there is nothing in the Code of Ethics to indicate it would be unethical. However, there are various ways to handle the request: just say no; write a "To Whomever" statement describing the project they worked on together and the quality of work the young woman did; write a standard letter of recommendation; or walk down the hall and ask the colleague to watch for this person's application. If she's good, it would be to the detriment of the organization to overlook a high quality candidate in the stack of good applications. The member preferred the personal approach rather something more formal.

A member is the manager of a suburb of a western city. His citizens must drive through another suburb to reach the main metro area, and go through a stop light and a cross-traffic left- hand turn there, which is a bottle-neck. The member receives numerous complaints and has talked with the manager of the neighboring suburb, asking that the timing of the delayed left- had turn signal be adjusted. his colleague, an ICMA member, has made some adjustments, but the complaints keep coming. The member wondered

if it would be acceptable for him to visit the corner in question to ascertain the facts, and he was advised it would be. He could also take his traffic engineer for the purpose of gathering accurate data and perhaps devising a solution not yet thought of. He asked if it would be acceptable to contact the state department of transportation to ask their assistance, and he was advised it would be. However, the theme that runs throughout the Code is that of professional c isn't caught off guard. A member was invited to serve on the board of directors of the local community non-profit hospital. Should he accept the invitation? The arguments in favor of his serving are: (1) it would be a good experience for him to become more knowledgeable about a health care organization at a time that the health care system is undergoing change; (2) this is a working board that makes a significant contribution to the community; (3) there is no compensation for the monthly board plus committee meetings; (4) it is good for the city to be perceived as a player; and (5) it was a compliment to be asked.