



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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Creating a Values-Based Conflicts of Interest Compliance System

I. Purpose

- Criminal and anti-corruption laws stop, catch, and punish crooks
- Ethics laws guide honest officials. Ethics laws promote both the reality and the *perception* of integrity in government by *preventing* unethical conduct *before* it occurs. Ethics laws focus on prevention, not punishment. They protect officials from pressure to act unethically.
- Overlap of anti-corruption, ethics, transparency, human rights, personnel laws

II. History of Ethics Laws

- United States: Civil War Contracting Laws (1862-1864)
- New York City: 1830 Common Council Ordinance
- Germany: Preussisches Allgemeines Landrecht (1794)
- France: Grande Ordinance of Louis IX (1254)
- China: K'ung Tzu principles (3rd century BCE)
- Buddhism: injunctions on bribery (5th century BCE)
- Judaism: e.g., 1 Samuel (7th century BCE)
- Hinduism: dharma in Vedanta and Upanishads (11th century BCE)
- Code of Hammurabi (18th century BCE)

III. The Yin and Yang of Values-Based and Compliance-Based Systems

- Values-Based Ethics Laws
 - Promote positive values of public service
E.g.: “Place the public’s interest before your own.”
 - Insufficiently specific to allow punishment beyond disciplinary action
- Compliance-Based Conflicts of Interest Laws
 - Promote compliance with specific requirements
E.g.: “Never accept a gift from anyone with whom you are dealing in your government job.”
 - Negative - focus on what not to do instead of on what to do
- Create both ethics code and conflicts of interest code
 - Draw ethics values from culture and from foundational documents (e.g., in Muslim theocracies subject to the Shariah, from the concept of *fasad* in the Qur’an)

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- From those values, create a values-based Code of Ethics
- From that Code of Ethics, draw specific, compliance-based conflicts of interest rules. Violation of these may subject the public official to dismissal, civil fines, and, in appropriate cases, criminal prosecution.
- Create the administrative structure.
- Involve the interested parties, as appropriate (e.g., in U.S., consult citizens, civil society, unions, and associations of public officials).

IV. Structure of Effective Conflicts of Interest System: The Three Pillars

1st Pillar: Conflicts of Interest Code

- Clear, comprehensive, simple, understandable
- Possible provisions: misuse of office for private gain; misuse of government resources; receipt of gifts and tips; seeking and holding second, non-government jobs; confidential information; appearances before the government on behalf of private persons; causing other officials to violate the Code; financial and business relationships with superiors or subordinates; restrictions after leaving government service (appearing before one's former government agency, working on a matter one worked on for the government, using or disclosing confidential government information)
- Restrictions on non-government persons and firms (causing an official to violate the Code; appearing before a government agency where an owner, officer, or employee of the firm works)

2nd Pillar: Disclosure

- Transactional Disclosure and Recusal
E.g., disclosure that one's brother is seeking a contract with one's agency
- Applicant Disclosure by those doing business with the government
E.g., that an owner, officer, or employee of a firm also works for the government agency with which the firm is seeking a contract
- Annual Disclosure
 - Helps avoid ethics violations by focusing official's attention at least once a year on ethics law and by alerting public and supervisors to potential conflicts of interest
 - Should be public and tied to conflicts of interest code

3rd Pillar: Administration

- Ethics board independent of political pressures (volunteer board members of high integrity, with fixed terms, no government positions or contracts, and removable only for cause; protected budget; staff accountable solely to board members; only board and courts may interpret and enforce ethics law)
- Ethics training and education
- Legal advice – oral and written, quick and confidential
- Regulation of disclosure
- Enforcement of ethics law
 - No enforcement makes ethics board a toothless tiger
 - Full enforcement power with complete control of investigations and prosecution; ability to commence investigations on own