

**Fahey Schultz
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EXPERT COUNSEL



REAL SOLUTIONS

Conflicts of Interest, Ethics & Difficult Board Members

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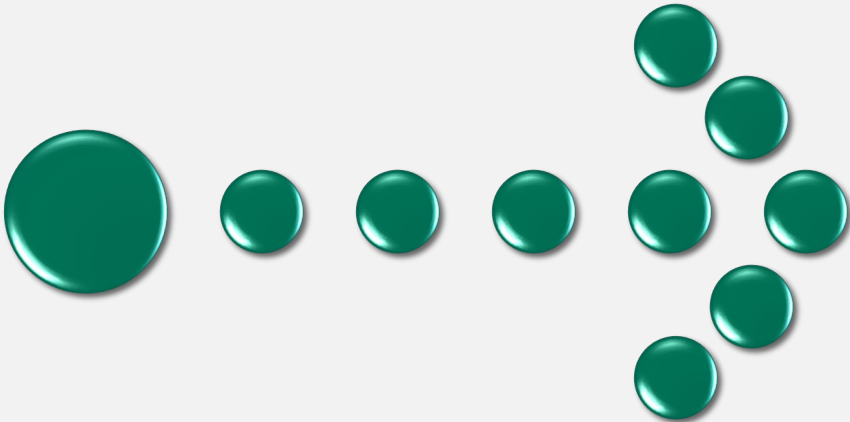
Agenda

1. Ethics
 - *What is it?*
 - *Who does it concern?*
2. Fiduciary Duties
3. General Conflicts of Interest
4. Statutory Conflicts
5. Sanctions
6. Working as a Team



Ethics

Derived from the
Greek word
ethos (character)
and from the
Latin word
mores (customs)



What is Ethics?

- Ethics
 - Determines what is good for the individual and for society
 - Establishes nature of duties that people owe themselves and one another





Municipal Ethics

- Governed by
 - Statutes and Case Law
 - Local Ethics Ordinances
 - Local Ethics Policies and Guidelines



Commonsense Approach



“avoid the appearance of impropriety”





Who is a Public Official?

- Anyone appointed or elected to govern a municipality
 - Board Members
 - Council Members
 - Commission Members
 - Boards of Appeals Members



Fiduciary Duties

- All public officials have fiduciary duties to the municipality they serve.
 - Duty of loyalty
 - Duty of care



Conflicts of Interest: Generally

Pecuniary

Personal

Family

Political



Conflicts of Interest

Remember: Even participating in a discussion concerning an issue for which a public official has a conflict of interest could influence the opinion of the other members.



Such participation may cast suspicion on the impartiality of the decision.



If a public official believes they can decide in the best interests of the municipality despite a conflicting interest, their fiduciary duties alone may not prohibit them from deliberating and voting on the matter, but other conflicts of interest authority may.





The Standards of Conduct Act

Statutory Conflicts

The Standards of Conduct for Public Officers and Employees Act, Act 196 of 1973, MCL 15.341 *et seq.* sets certain standards of conduct for public officers



Rule of Necessity

- When a quorum of a public body has conflicts of interest that prevent the public body from acting on a matter, the body can invoke the Rule of Necessity to allow those conflicted to vote and deliberate on the matter.
- When applying this legal doctrine, each conflicted member must publicly disclose any interest he or she may have in the matter and certify that they will vote in the best interests of the municipality.
- Once the public disclosure of conflicts occurs, conflicted members would be able to deliberate and vote on the matter at hand.






What to do if you think you have a conflict of interest?

- Public officials should ALWAYS disclose when they have a conflict interest in a particular issue.
- If you believe that your conflict of interest is such that you cannot act in the best interests of the Township, you should abstain from voting and deliberating on a matter.
- Such a move will bolster the public's confidence that their Township is operating in a transparent and ethical manner.



Sanctions

- The breach of a public official's fiduciary duties or statutory conflicts of interest can expose both the official and the municipality to significant legal liability.
- There are both fee-based, action-based, and criminal-based sanctions for violations of certain ethical standards.
- Several criminal statutes impose criminal fines and imprisonment for willful neglect of duty, regarding:
 - false financial statements or documents
 - embezzlement
 - false statements of public finances
 - illegal expenditures
 - using public funds for non-public purposes and abuses of public records custody



What could happen?



Other Ethical Considerations to Keep in Mind

Incompatible
Offices

Duress

The Planning
Enabling Act

The Zoning
Enabling Act

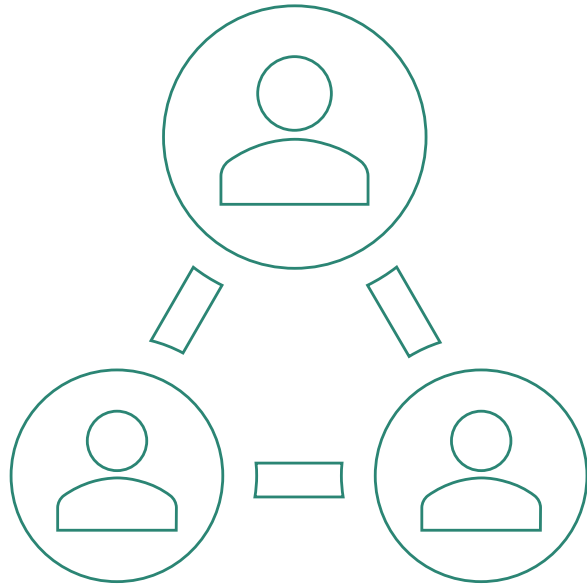
The Open
Meetings Act

The Freedom
of Information
Act

Contracts of
Public
Servants Act

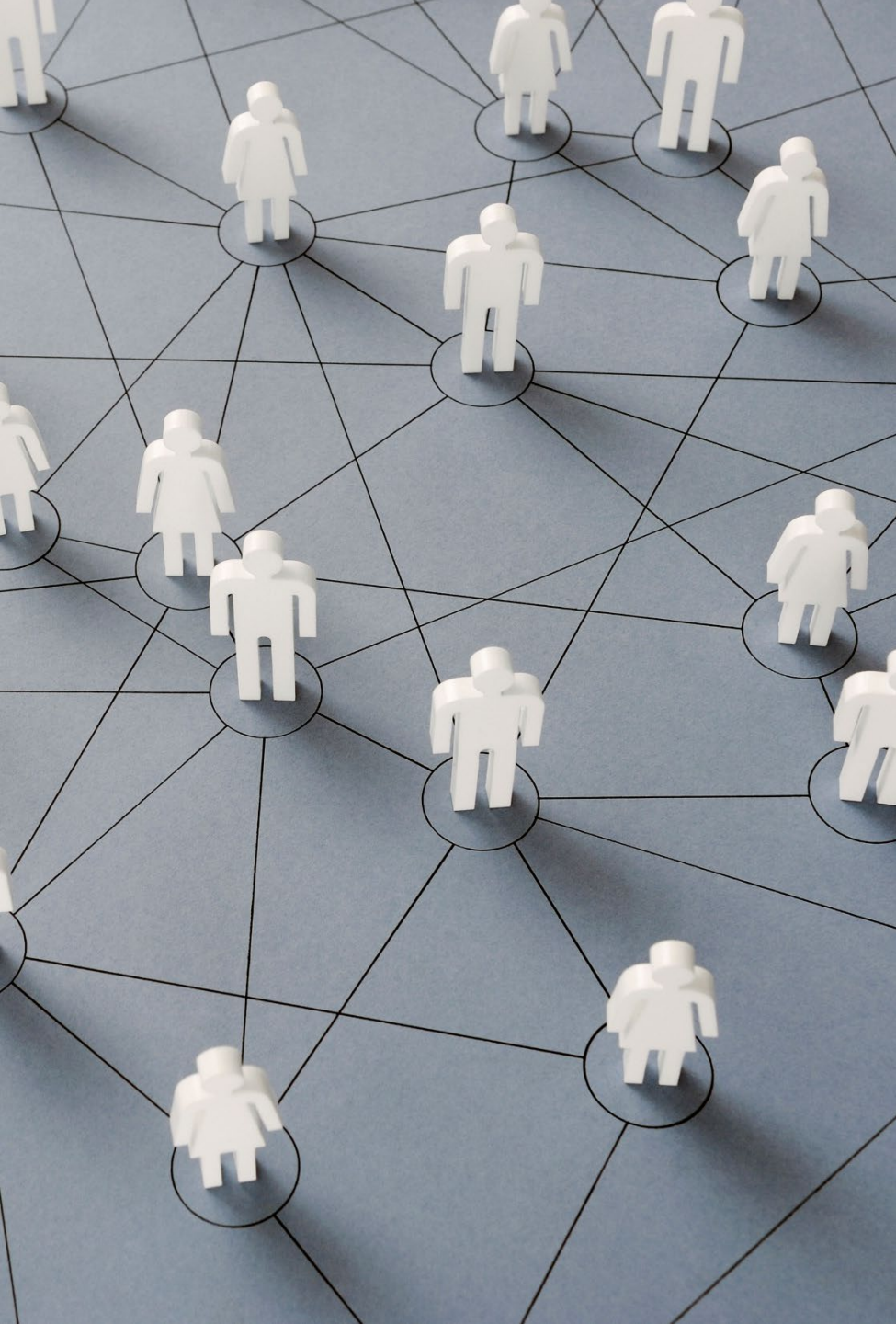


Team Leader Buy-in



- Team Leader Buy-in: As the head of a public body, it is important for the Supervisor, Mayor, President or an appointed chair to:
 - Establish the kind of team they want to be
 - Drive cooperation and facilitate meetings
 - Ensure public officials are heard and that business is taken care of
 - Make sure that commentary and debate stay on topic and within professional context
 - Set meeting expectations
 - Demonstrate consistency and fairness





Working as a Team

- Meet the public official where they are at.
- Allow everyone the chance to speak.
- Facilitate constructive conversation.
- Mediate conflict.





Questions

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