

SIG Lesson Learned #12 – A Good Time to Re-Assess Executive Branch Agencies’ Codes of Conduct

All state officials and employees are bound by the State Ethics Act; however, this law fails to provide clear guidance in many instances. Further, although the express language of the Ethics Act makes it applicable to all state employees, the preamble is clear that the Act’s focus is on the responsibility of elected officials. Beyond the Ethics Act, many agency employees are bound by agency policy; however, these policies are inconsistent, incomplete, or non-existent across different agencies. In 2014, only 35 state agencies had a code of conduct, and those codes were not consistent. As a result, Governor Nikki Haley, pursuant to Executive Order 2014-23, established a State Employee Code of Conduct Task Force (http://oig.sc.gov/Documents/EO2014_23.pdf).

This task force examined over 60 Codes of Conduct from a wide spectrum of entities, as well as received feedback from 1500 state employees and public interest groups’ members. The task force recommended a model Code of Conduct for state employees (http://oig.sc.gov/Documents/TF_Report.pdf). The recommended model Code of Conduct is written in “plain language” to facilitate understanding and application. The Governor approved this model Code of Conduct, which was instituted by Cabinet agencies under the Governor’s direct authority, effective July 1, 2015. For all other state agencies not under the Governor’s direct authority, which is just over half of the state’s 66,000 employees, this model Code of Conduct is an available template for each agency to consider implementing or use to revisit an agency’s existing Code of Conduct for potential improvement. This template does not limit agencies modifying the template in order to meet its unique agency mission, as long as the modification(s) is more restrictive than the State Ethics Act.

A Code of Conduct is not just words on paper – a Code of Conduct sets an agency’s ethical tone and clarifies limits on human workplace behavior. The good news is employees will do what is asked of them, as long as the expectations are clear. However, absent clarity, human nature has a capacity to rationalize behavior to fit unique situations. Based on the State Inspector General’s experience, no person wakes up one morning and decides to commit fraud, corruption, or substantial ethical misconduct. It is the incremental process of an absence of clear boundaries followed by questionable conduct without consequences, which then incrementally leads to an unethical or criminal place a perpetrator would likely never have initially thought was possible. The recommended model Code of Conduct brings to bear three heightened ethical standards which have the capability to dramatically impact employees from sliding down the slippery slope of rationalizing unethical behavior and avoiding even being tempted to prefer their own interests, or the interests of another, over the interests of the public they serve. These three are: avoid even the appearance of a conflict of interest; a “no gift” policy; and a requirement to affirmatively report ethics violations.

Appearances of violating the public’s trust in government can do as much damage as actual violations. This increased ethical standard will require employees to affirmatively shift their behavior to think beyond the scope of their own perceptions and motives, and be accountable to consider how their actions may be perceived by the public. This heightened standard will increase state employees’ sensitivity leading to a reduction in the number of “false positives” where an employee’s behavior is inaccurately interpreted of falling short of the public’s high expectations for state employees. It will also serve as a deterrent for those with concealed self-interest motives who could no longer rely on “plausible deniability” inasmuch as their behavior will be assessed by the public’s perspective and not on their self-reported motives. Raising ethical standards to avoid the appearance of conflict of interest or violating the public’s trust, closes a substantial state employee behavior gap eroding the public’s trust in state government, as well as increases the risk of discovery for actual wrongdoers.

Restricting the current statutorily liberal gift law to a “no gift” policy, with nominal exceptions, sets a clear ethical tone at the top. Further, based on the State Inspector General’s personal experience and ample empirical social science studies, entertainment, gifts, and the like can serve as the entree to develop less than “arm’s length” relationships with public officials, which then can allow, whether intentional or not, influence and bias to seep into decision making of public servants.

Requiring every employee to have an affirmative duty to report an ethical violation creates a healthy organizational tension to promote a high integrity workplace. Until we all feel like one team with 66,000 sets of eyes keeping each other accountable, it can be easy to slide down the slippery slope of incremental encroachment on integrity standards. When employees have this affirmative duty where administrative liability will attach for inaction, it will have a chilling effect on employees with unethical intentions because an increased risk of being discovered is the best deterrent to unethical behavior.

Right now, government at all levels are facing increasing public skepticism and eroding trust of the people we serve. Given clear leadership and expectations, the human condition responds. Leaders failing to clarify high expectations creates the conditions for human nature to stray from a high integrity environment. With high standards, there will be no ambiguity for violators to conceal their actions. Most importantly, citizens may start giving state government the benefit of the doubt when they don’t fully understand something, rather than the current tendency to assume the worst and act on a likely misperception with another trust withdrawal. The State Inspector General applauds the formalization of raising ethical standards in the model Code of Conduct implemented in Cabinet agencies, as well as strongly encourages all other state agencies within the Executive Branch to re-examine your current Code of Conduct for opportunities to improve or adopt this template code (editable WORD version located at link - https://oig.sc.gov/sites/default/files/Documents/Linked%20Files/CoC_Template.docx)