#3
C.P.

I will remind you all that you work for the people of Burnet County. You all volunteered to be servants of the people. Other than Mr. Wilson you were all elected to represent the people of Burnet County and you are all overpaid and under performing employees.

I see very little evidence that any of you actually represent the people of this county or the individual precincts. From meeting to meeting, month to month all I see is five men that show disrespect and contempt in how they interact with the public and do very little other than rubber stamp the approvals to spend more of the taxpayer's money. This court has continued to irresponsibly waste the taxpayer's money to the point that Burnet County is over thirty million dollars in debt. In fiscal year 2024 Burnet County spent $9.6 million dollars more than the county took in. I have not seen any attempt to pay off the massive debt or implement any program to reduce the debt burden on the taxpayer's of Burnet County. You all have responsibility for that.

Now it seems that under the direction of Mr. Wilson, the goal is to search for new ways to waste as much of the taxpayer's money as possible before his interim term has expired, and that date cannot come soon enough. This is what happens when a well trained bureaucrat is nominated to be the presiding officer of the Commissioner's Court.

All five of you have a fiduciary duty to the citizens of Burnet County. Because all of you have failed to act responsibly and in the best interests of the people of Burnet County, you are in breach of your fiduciary duties.

This is a warning, as servants of the people, the five of you had better start steering this Court toward fiscal responsibility, transparency, and proper behavior towards the people of Burnet County.

St. Mary's University School of Law

Editor

Katherine Zampas

Abstract

At various levels of government, the conduct of public officials is often regulated by ethical standards laid down by legislative enactments, such as federal or state statutes or municipal ordinances. These rules of government ethics are important landmarks in the field of law that defines the legal and ethical obligations of public officials. Such provisions can form the basis for the kinds of government ethics training that helps to minimize wrongful conduct by public servants and reduces the risk that the performance of official duties will be clouded by appearances of impropriety. Codified government ethics rules also frequently provide mechanisms for the investigation of charges of misconduct, and for the enforcement of ethical standards through criminal penalties and other sanctions. However, codified government ethics rules vary widely in quality and scope. Such provisions are often incomplete, poorly drafted, and weakened by legislative compromises made during the adoption process.

This article argues that, notwithstanding the proliferation and usefulness of government ethics codes, common law fiduciary-duty principles continue to play an important role in shaping the law of government ethics. Regardless of whether specific rules of government ethics have been adopted, ***public officials have a broad fiduciary duty to carry out their responsibilities in a manner that is faithful to the public trust that has been reposed in them***. The duties of public officials may extend beyond minimal compliance with codified ethics rules. Even if no ethics code has been adopted, or if no code provision is on point, ***public officials must act in a manner that comports with their common law fiduciary-duty obligations. Government ethics laws, criminal provisions, and other legislative enactments should be interpreted and applied in light of the demanding loyalty obligations that are imposed on public officials as fiduciaries***.

Public Officials as Fiduciaries
The values behind government ethics laws

Hana Callaghan

Government Ethics refer to the unique set of duties that public officials owe to the public that they serve. These duties arise upon entering the public work force either as an elected representative, an appointed official, or a member of government staff. (For simplicity's sake, please know that when we refer to public officials, we are referring to all public actors, be they elected, appointed or hired.) Public ethical obligations exist in addition to general ethical obligations and sometimes government ethics may conflict with personal ethical duties.

The relationship between public officials and the public has been described by scholars as fiduciary in nature. (See e.g. Rave, 2013; Leib, Ponet & Serota, 2013; Ponet & Lieb, 2011; Natelson, 2004) So what is a fiduciary? Dictionary.com defines the term fiduciary as relating to, "a person to whom property or power is entrusted for the benefit of another." There at least four factors that identify a relationship as a fiduciary one:

1. The beneficiary has delegated authority to the fiduciary to act on its behalf;
2. The fiduciary has discretionary powers over the beneficiary's assets or interests;
3. The fiduciary is in a position superior to that of the beneficiary due to specialized access, knowledge or ability; and
4. The beneficiary trusts that the fiduciary will act in the beneficiary's best interest. (Ponet & Leib, 2011.)

Examples of fiduciary relationships include those of the attorney/client, trustee/trust beneficiary, executor/heir, corporate director/shareholder, and principal/agent. You can see why the public official/citizen relationship is similar: The public delegates governing authority to public officials to exercise discretion over the public treasury and to create laws that will impact their lives. The public official, once elected, appointed, or hired, is in a superior position to that of the individual citizen due to specialized governmental knowledge and the ability to advise, deliberate, and participate in the representative process. And finally, the public trusts that the public official will act in the public's best interest.

The concept that government officials have special ethical obligations to the public is actually quite old. In Ancient Greece Plato called for death for public officials who took bribes. (Laws, 12.955d) In 1215 King John of England signed Magna Carta, which promised among other things, "To no one will we sell, to no one deny or delay right or justice." (Magna Carta, cl. 40) In 1254 King Louis the IX of France promulgated conflicts of interest rules for provincial governors in the Grande Ordonnance Pour la Réforme du Royaume. (Davies, Leventhal, & Mullaney, 2013)

In 1776, our Declaration of Independence acknowledged the concept of delegated authority,

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — **That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.**" (emphasis added. U.S., 1776)

According to U.S. constitutional historian Robert Natelson many delegates attending the constitutional convention of 1787 advocated for a fiduciary form of government, including James Madison and Alexander Hamilton. Madison argued, for example, that senators ought to be guardians of justice and the general good, while Hamilton envisioned that members of the House of Representatives would be guardians of the "poorer orders." Natelson notes that the concepts of fiduciary government were also held by the states charged with ratifying the new convention. Maryland representatives literally declared themselves to be the trustees of the public. (Natelson, 2013)

Turning to present day government, what ethical duties flow from the public fiduciary relationship? As noted by legal scholars David Ponet and Ethan Lieb, "Because fiduciaries are difficult to monitor and have wide access to power over beneficiary resources and assets, fiduciaries are under rigorous obligations that ensure compliance with their role responsibilities." (Ponet & Leib, 2011) So, what are those obligations in the government context?

- The duty of care;
- The duty of loyalty;
- The duty of impartiality;
- The duty of accountability (Ponet & Leib, 2011; Natelson, 2004); and
- The duty to preserve the public's trust in government (Wechsler, 2013).

What do each of these duties require?

The Duty of Care

The duty care requires that the public official competently and faithfully execute the duties of the office. Under duty of care fall such obligations as the duty to manage assets competently and be good stewards of the public treasury, to use due diligence in the selection and supervision of staff, to follow the rules and to uphold the constitution and laws of the jurisdiction. Examples of breach of this duty include failure to attend meetings, failure to investigate, failure to engage in the deliberative process, and failure to vote.

The Duty of Loyalty

Public fiduciaries have an absolute obligation to put the public's interest before their own direct or indirect personal interests. The public fiduciary breaches this obligation when he or she benefits at the public expense. Prohibited benefits can be financial (such as engaging in pay to play politics- or participating in decisions that favorably impact an official's business, property, or investments), career related (such as using public office and/or public resources to obtain future employment or political position), or personal such as benefits to family members or close associates. Note that when general ethical duties to family or friends conflict with duty to the public, the public duty must prevail.

Duty of Impartiality

Public officials have a duty to represent all of their constituents fairly. This means that the public fiduciary cannot favor those of his or her own party over other constituents, or let the fact that someone voted against him or her impact the ability to act fairly. They must overcome any inherent bias that they possess. As stated by Natelson, public fiduciaries should avoid targeting particular constituencies for favor or for punishment. The Equal Protection Clause of the US Constitution is in essence a codification of the duty of impartiality. (Natelson, 2004)

Duty of Accountability

Without a duty of accountability, the public's ability to monitor the behavior of public fiduciaries would be severely limited. From the duty of accountability flow the duty of transparency and the concepts of disclosure, open meetings, and accessibility of public records. In 2007 the California Supreme Court articulated the notion of public fiduciary accountability in International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court, 42 Cal. 4th 319, 328 (2007). The Court opined that, "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." (Id. at 328)

In California, the people's right to know what its government is doing has been enshrined as a fundamental right in the California Constitution. "The people have the right of access to information concerning the conduct of the people's business, and, therefore the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const. article 1, section 3 (b))

Duty to Maintain Public Trust in Government

Without public trust, government doesn't work. The public is willing to delegate authority and sacrifice some freedoms in exchange for an orderly and civilized society, but only if it believes that government is acting in the public's best interest. When the public loses trust in government, public cooperation suffers, compliance with laws fail, and investors and consumers lose confidence, To quote President Obama, "If the people cannot trust their government to do the job for which it exists

- to protect them and to promote their common welfare - all else is lost." (Obama, 2006)

Trust in government is so important, public fiduciaries are charged with protecting and maintaining the public trust. Toward this end, as stewards of the public trust, public fiduciaries have a duty to avoid even the appearance of impropriety. That is to say, even if a particular course of conduct does not meet all of the elements necessary to constitute a violation of law, it nevertheless may be unethical if it creates the perception of wrongdoing that will harm the public trust. (Wechsler, 2013) For example, even if a public official believes that he can be impartial in spite of what might appear to be a potential conflict of interest, the official should be mindful that the public is not privy to all the facts, can't know what is in the official's mind, and may perceive that the conduct is not in the public's best interest. The Institute for Local Government advises public officials to always ask themselves whether it would be a bad thing for a particular course of conduct to be reported on the front page of the local newspaper. (Institute for Local Government, 2013)

Notions of civility and respect towards colleagues and the public also help ensure the public's trust in the efficiency and effectiveness of government. When animus is displayed by council members towards each other, it causes the public to wonder if private feuds are taking precedence over the common welfare. When constituents are treated with lack of respect, it causes the public to doubt the fairness of the proceedings. As nicely summed up by the City of Portland, Oregon, "Public service requires a continual effort to overcome cynical attitudes and suspicions about the people in government." (City of Portland, 2009)

Ethics and Ethics Laws

Now that we understand the fiduciary duties owed by public officials, you may be asking, why is it necessary to learn the laws? The laws actually have evolved as a codification of the values necessary to fulfill public fiduciary duties. On this website is a chart in which we have identified some California ethics laws and have identified the values we believe underlie those laws. You may be able to identify more. The laws set very high standards for public conduct and are sometimes quite complex. Laws are necessary as they provide notice of what conduct is prohibited.

However, the laws can't cover every ethical dilemma and thus merely set the floor for ethical conduct, not the ceiling.

To give an example, we recently held a government roundtable asking whether an official's discussions of public business on private emails should be disclosed pursuant to a Public Records Act request. The law has yet to give us an answer on this issue. Legally it might be acceptable right now to keep correspondence on your private email account private. However, if you recognize that you have a fiduciary duty of accountability and transparency regarding public business, you may conclude that it is unethical to withhold those private emails about public business from someone making a public record request. To do otherwise may give rise to the public perception that you have something to hide. This is an area where your ethics rather than the ethics laws guide your actions. As we like to say around here, just because something is legal, does not necessarily make it ethical.