

MICHIGAN ASSOCIATION OF COUNTY DRAIN COMMISSIONERS



Drain Commissioner's Guide to Ethics and Conflicts of Interest

Clark Hill, PLC
Douglas R. Kelly, Esq.
Joseph W. Colaianne, Esq.

February 15, 2018

DRAIN COMMISSIONER'S GUIDE TO ETHICS AND CONFLICTS OF INTEREST - *OVERVIEW*

- Why this presentation is important – the Facts, the Rules and the Risks
 - *The Facts, the Rules and the Risks*
 - *Conflicts of Interests: The Do's and Don'ts*
 - *Theory Meets Practice: Specific Situations*
 - *Conclusion: Ethics and Conflict of Interest Policy*



The Facts.

Why it matters.

“The office of county drain commissioner is especially susceptible to conflicts of interest and it is entirely rational for the Legislature to require the additional sanction that upon violation of the drain code the officer would be ineligible to hold the office of drain commissioner again.” *People v Barry*, 53 Mich.App. 670 (1974).

The Facts.

Fact 1: Drain commissioners, like all public officials, are required to faithfully discharge their statutory duties to the best of their ability. *Michigan Constitution, 1963, Art. 11, Sec 1.*

Fact 2: Public officers and employees owe a duty of loyalty to the public. “All public officers are agents, and their official powers are fiduciary. They are trusted with public functions of the good of the public; to protect, advance and promote its interests”. *Macomb County Prosecutor v Murphy, 464 Mich 149, 164; 627 NW2d 247 (2001), quoting, People ex rel Plugger v Twp Bd of Overysel, 11 Mich 222, 225 (1863).*

The Facts.

Fact 3: It is a drain commissioner's duty to represent the best interests of the drainage district, and to serve the district with the highest degree of loyalty.

Fact 4: Ethical administration of the office of County Drain Commissioner invites confidence from the people you serve, and respect for government. It is reflected in the decisions made and the actions taken. The fundamental concept being that you must not to exploit your public office in an unjust or inappropriate manner.

Fact 5: Drain Commissioners rely on the support of their deputies, employees, consultants and contractors to carry out their statutory duties.

The Facts.

Fact 6: A well-crafted ethics policy establishes behavioral standards of fair dealing, responsibility, accountability and disinterested conduct which are an essential part of your fiduciary duty owed to the public.

The Rules.

The Michigan Drain Code and Applicable Ethics
Related Michigan Statutes

The Rules, the Risks.

The Michigan Drain Code:

- MCL 280.601 Drain commissioner - interest in contract prohibited.
- MCL 280.381 Disqualification of Drain Commissioner, by reason if himself, wife or child owning lands subject to assessment within district

The Rules, the Risks.

Other Ethics Related Michigan Statutes:

- Conflicts of Interest as to Contracts Act, 1968 PA 317, MCL 15.321, et seq..
- Incompatibility Public Offices Act, 1978 PA 566, MCL 15.181
- Political Activities by Public Employees, 1976 PA 160, MCL 15.401, et. seq.

The Rules, the Risks.

Other Ethics Related Michigan Statutes, cont.:

- Failure to Uphold or enforce the law, MCL 752.11
- False Statement of Public Finances, MCL 750.489
- Public money, manner of keeping, embezzlement, etc., MCL 750.490

Application.

Conflicts of Interests: The Do's and Don'ts

The Do's.

- Consistently act in a manner that upholds and advances personal and professional honor, integrity and the public's trust in the elected Office of the office of the County Drain Commissioner.
- Hire contractors, consultants, and service providers based upon their demonstrable experience and qualifications without regard to considerations and influences unrelated to their ability to perform the services for which they are hired in a professional, cost effective and timely manner.

The Do's.

- Refuse to provide, promise to provide or offer any contract, work, payment, special attention, preferential treatment, priority or other thing or position of value in exchange for any gift, gratuity, favor, promise or other consideration.
- Refrain from engaging in conduct that could be reasonably perceived to call into question the honesty, integrity and professionalism of the office of the County Drain Commissioner.

The Do's.

- Comply with all applicable laws providing for transparency in governmental affairs including but not limited to Michigan's Open Meetings Act, MCL 15.261, et seq., and Freedom of Information Act, MCL 15.231, et seq.
- Apply only those considerations authorized by the Michigan Drain Code with uniformity and without bias in making assessment decisions.
- Faithfully and accurately account for all drainage district funds.
- Prevent activities that interfere with the operation of a drain or increase the cost of performing work on a drain.

The Don'ts.

- Use of Confidential Information. The Commissioner, Deputy or employee shall not divulge to an unauthorized person, confidential information acquired in the course of employment in advance of the time prescribed: (1) by law or ordinance; or (2) by the County Drain Commissioner for its authorized release to the public.
- Non-solicitation. The Commissioner, Deputy or employee shall not solicit or accept a gift or loan of money, goods, services, or other thing of value for the benefit of a person or organization, other than the state, which tends to influence the manner in which the public officer or employee or another public officer or employee performs official duties.

The Don'ts.

- Personal Opinion. A Deputy or employee shall not represent his or her personal opinion as that of Drain Commissioner unless otherwise authorized by the Commissioner.
- Public Resources. The Commissioner, Deputy and employees shall use personnel, resources, property, and funds under the care and control of the office of the County Drain Commissioner, judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures and not for personal gain or benefit.

The Don'ts.

- Personal Profit/Business Transaction. The Commissioner, Deputy or employee should not engage in a business transaction in which the Commissioner, Deputy or employee may profit from his or her official position or authority or benefit financially from confidential information which the Commissioner, Deputy or employee has obtained or may obtain by reason of that position or authority.

The Don'ts.

- Incompatibility and Conflicts of Interest. Except as otherwise provided in Const. 1963, or by statute, the Commissioner, Deputy or employee shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the Commissioner's, Deputy's or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties.

The Don'ts.

- Personal and financial interests. The Commissioner, Deputy or employee should not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision relating to a business entity in which the Commissioner, Deputy or employee has a financial or personal interest.
- Political Activity. The Commissioner, Deputy or employee should not coerce, attempt to coerce, or command another public employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for the benefit of a person seeking or holding elected office, or for the purpose of furthering or defeating a proposed law, ballot question, or other measure that may be submitted to a vote of the electors.

Application.

Theory Meets Practice

Theory Meets Practice.

Situation #1: Bella was recently elected Drain Commissioner in Transylvania County, Michigan. She is married and her husband Igor is a silent partner with Getr'DoneCO, an excavating company, that specializes in drain excavation and improvements. Bella and Igor live in Blissful Township, but also own farm in the neighboring township of Lucky Township. They have an older son, Pesky, who also lives in the county, but in the City of Cherry. Pesky's is employed by Transylvania County with the county treasurer's office where he collects delinquent taxes. Pesky is married to Sylvia who is civil engineer and principal with the consulting engineering firm of Perfect Engineering.

Theory Meets Practice.

Bella receives a petition from Lucky Township asking for the construction, cleaning out, deepening and widening of the Long and Winding Drain . The drain was originally established in early 1900s, when Cherry City was just a village. The drain begins in Cherry City where it crosses Blissful and Lucky Townships before it outlets to the Crooked River. The documents on file at the Transylvania County Drain Commissioner's office are sketchy at best, but the location of the drain is observable. Blissful and Lucky Townships are primarily residential and agricultural property, while Cherry City is a typical suburban City. Unfortunately, due to extreme weather patterns in recent years, erosion and sediment within the drain has resulted in flooding of lands within Lucky.

Theory Meets Practice.

Bella proceeds to act on the petition, convening a board of determination and holding the required the statutory required hearings including, the day of letting and review of apportionments. The estimated cost of the constructing the drain from Bella's consulting engineer, Perfect Engineering, was \$2,000,000. At the day of letting, the contractor with the lowest bid was Get'rDoneCo., whose bid for constructing the drain was -- \$2,000,000.

In apportioning the cost of the drain, Bella decides that Cherry City's at-large apportionment should be 50%, the County 25%, Blissful Township is 2% and Lucky Township 1%, and the remaining 22% of the cost of the project to the lands within the district.

Theory Meets Practice.

Situation #2: While working in the county treasurer's office, Pesky is approached by Charlie Tuna, also a county employee, who has applied for a permit from the drain commissioner to install a new bridge across the Long and Winding Drain located on his property. Charlie asks Pesky if there's anything he could do to speed up the process. He tells Pesky, that the drain office is behind in their reviews, and it will be at least 3-4 weeks before they will get to his permit. Charlie, then says to Pesky, he has 2 tickets to Paradise (a rock show) for him, if he speed things up. Pesky walks across the hall to see his mother, Bella. Bella is huge fan of Paradise. Pesky comes back and tells Charlie, if you can get a couple of more tickets, he thinks he can get the permit waived, and also include the bridge on his property with the Long and Winding Drain project. Pesky tells Charlie it's a "win-win" for everyone. Charlie agrees. Charlie gives 4 tickets to Pesky, the permit is waived, and the bridge is added to the drain project.

Theory Meets Practice.

Situation #3. Pesky, like his mother, believes politics is his destiny. He decides to run for a seat on the city council for the City of Cherry. During his election, Pesky reminds Charlie Tuna about his assistance with the drain permit, and wants Charlie to contribute to his election as well as his mother's election. Charlie is a lowly county employee, but nonetheless feels compelled to contribute \$100 to both Pesky and Bella's campaigns. Pesky wins his city council election, and continues to work for the County, but has moved over to become his mother's deputy.

Theory Meets Practice.

Situation #4. The Long and Winding Drain Project is in the design stage, and Sylvia is assisting with the project design which shows that additional easements will be necessary. The new easements are within a commercial area of the City on the property owned by Bushleague, LLC. Bushleague is not aware that drain office will need to obtain drain easements. Bella has obtained valuations on the easements, which her deputy (and son) Pesky is aware of. Having coffee with Charlie, Pesky tells Charlie regarding the valuations on the easements. Charlie informs the principal for Bushleague regarding the amount of the valuations.

Conclusion.

Ethics and Conflicts of Interest Policy