

William F. Baird
Mayor

Michael Johnson
Vice Mayor

Terry Basista
City Attorney

Don R. Moses
City Judge

Linda Meadors
City Recorder

City of Jellico

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Jellico, Tennessee 37762
Phone: (423) 784-6351
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Elsie Crawford
Alderwoman

Michael Smith
Alderman

Alvin Evans
Alderman

Darrell Byrge
Alderman

John Davenport
Alderman

May 25, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Tennessee Ethics Commission
312 Eighth Avenue, North
8th Floor Snodgrass Tower
Nashville, TN 37243

RE: Ordinance No. 40-2007

To Whom It May Concern:

Enclosed please find a copy of Ordinance No. 4-2007 which represents the Code of Ethics adopted by the City of Jellico, Tennessee on May 26, 2007 in accordance with Tennessee Statutes.

Yours truly,



Linda Douglas
City Recorder

Enclosure

CC: Terry Basista, City Attorney

RECEIVED
2007 MAY 30 AM 9:30
TENNESSEE
ETHICS COMMISSION

ORDINANCE NO. 40-2007

AN ORDINANCE OF THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF JELICO, TENNESSEE ADOPTING A CODE OF ETHICS AS RECOMMENDED AND FORMULATED BY THE MUNICIPAL TECHNICAL ADVISORY SERVICE (MTAS) IN ACCORDANCE WITH TENNESSEE STATUTES, AND REPEALING THOSE PORTIONS OF ORDINANCES OF THE CITY OF JELICO IN CONFLICT HEREWITH;

WHEREAS, the City of Jellico is authorized by the legislature to adopt a Code of Ethics for personnel of the municipality and whereas it is deemed by the Board of Mayor and Aldermen of the City of Jellico to be in the best interest of the municipality to adopt a Code of Ethics as recommended:

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF JELICO, TENNESSEE THAT:

That certain Code of Ethics set forth in the attached seven (7) pages MTAS release under date of July 25, 2006 which is incorporated herein by reference as fully as if set forth herein again verbatim and which includes the Code of Ethics and a detailed explanation of the provisions thereof is herewith adopted by this Ordinance as the Code of Ethics governing all personnel as set forth therein of the City of Jellico, and any and all portions of any prior ordinances of the City of Jellico in conflict herewith repealed.

If any part of this ordinance shall be determined by a Court of competent jurisdiction to be invalid, illegal, or inoperative for any reason, such part shall be deemed severable here from and the remaining parts shall be deemed effective and fully operative.

All prior enactments of the City of Jellico not in conflict with the provisions of this ordinance shall be deemed to remain in full force and effect and validity.

This Ordinance shall take effect immediately upon final reading and passage, the public welfare requiring it to be so done by this Ordinance.

APPROVED ON FIRST READING THIS 17TH DAY OF MAY, 2007

PUBLIC HEARING: May 26, 2007

APPROVED AND PASSED ON FINAL READING THIS 26 DAY OF MAY 2007

ATTEST:


WILLIAM F. BAIRD, MAYOR

Attest:


Linda Meadors, City Recorder



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MUNICIPALITIES REQUIRED TO ADOPT CODES OF ETHICS

Dennis Huffer, Legal Consultant

CODE OF ETHICS¹

SECTION 1. Applicability. This chapter is the code of ethics for personnel of the municipality. It applies to all full-time and part-time elected or appointed officials and employees, whether compensated or not, including those of any separate board, commission, committee, authority, corporation, or other instrumentality appointed or created by the municipality. The words "municipal" and "municipality" include these separate entities.

SECTION 2. Definition of "personal interest." (1) For purposes of Sections 3 and 4, "personal interest" means:

(a) Any financial, ownership, or employment interest in the subject of a vote

by a municipal board not otherwise regulated by state statutes on conflicts of interests; or

(b) Any financial, ownership, or employment interest in a matter to be regulated or supervised; or

(c) Any such financial, ownership, or employment interest of the official's or employee's spouse, parent(s), stepparent(s), grandparent(s), sibling(s), child(ren), or stepchild(ren).

(2) The words "employment interest" include a situation in which an official or employee or a designated family member is negotiating possible employment with a person or organization that is the subject of the vote or that is to be regulated or supervised.

¹State statutes dictate many of the ethics provisions that apply to municipal officials and employees. For provisions relative to the following, see the *Tennessee Code Annotated* (T.C.A.) sections indicated:

Campaign finance—T.C.A. Title 2, Chapter 10.

Conflict of interests—T.C.A. §§ 6-54-107, 108; 12-4-101, 102.

Conflict of interests disclosure statements—T.C.A. § 8-50-501 and the following sections.

Consulting fee prohibition for elected municipal officials—T.C.A. §§ 2-10-122, 124.

Crimes involving public officials (bribery, soliciting unlawful compensation, buying and selling in regard to office)—T.C.A. § 39-16-101 and the following sections.

Crimes of official misconduct, official oppression, misuse of official information—T.C.A. § 39-16-401 and the following sections.

Ouster law—T.C.A. § 8-47-101 and the following sections.

A brief synopsis of each of these laws appears in the appendix of the municipal code.



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(3) In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter.

SECTION 3. Disclosure of personal interest by official with vote. An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's vote on the measure. In addition, the official may recuse himself² from voting on the measure.

SECTION 4. Disclosure of personal interest in nonvoting matters. An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on a form provided by and filed with the recorder. In addition, the official or employee may, to the extent allowed by law, charter, ordinance, or policy, recuse himself from the exercise of discretion in the matter.

SECTION 5. Acceptance of gratuities, etc. An official or employee may not accept, directly or indirectly, any money, gift, gratuity, or other consideration or favor of any kind from anyone other than the municipality:

(1) For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or

(2) That might reasonably be interpreted as an attempt to influence his action, or reward him for past action, in executing municipal business.

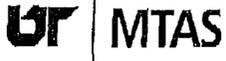
SECTION 6. Use of information.

(1) An official or employee may not disclose any information obtained in his official capacity or position of employment that is made confidential under state or federal law except as authorized by law.

(2) An official or employee may not use or disclose information obtained in his official capacity or position of employment with the intent to result in financial gain for himself or any other person or entity.

SECTION 7. Use of municipal time, facilities, etc. (1) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself.

²Masculine pronouns include the feminine. Only masculine pronouns have been used for convenience and readability.



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(2) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.

SECTION 8. Use of position or authority. (1) An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.

(2) An official or employee may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.

SECTION 9. Outside employment. An official or employee may not accept or continue any outside employment if the work unreasonably inhibits the performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy.

SECTION 10. Ethics complaints. (1) The city attorney is designated as the ethics officer of the municipality. Upon the written request of an official or employee potentially affected by a provision of this chapter, the city attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.

(2)(a) Except as otherwise provided in this subsection, the city attorney shall investigate any credible complaint against an appointed official or employee charging any violation of this chapter, or may undertake an investigation on his own initiative when he acquires information indicating a possible violation and make recommendations for action to end or seek retribution for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.

(b) The city attorney may request that the governing body hire another attorney, individual, or entity to act as ethics officer when he has or will have a conflict of interests in a particular matter.

(c) When a complaint of a violation of any provision of this chapter is lodged against a member of the municipality's governing body, the governing body shall either determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has sufficient merit to warrant further investigation. If the governing body determines that a complaint warrants further investigation, it shall authorize an investigation by the city attorney or another individual or entity chosen by the governing body.

(3) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics.

(4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation or a civil service policy, rule, or regulation, the



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violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this code of ethics.

SECTION 11. Violations. An elected official or appointed member of a separate municipal board, commission, committee, authority, corporation, or other instrumentality who violates any provision of this chapter is subject to punishment as provided by the municipality's charter or other applicable law and in addition is subject to censure by the governing body. An appointed official or an employee who violates any provision of this chapter is subject to disciplinary action.

MTAS OFFICES

Table with 2 columns: City and Phone Number. Includes Knoxville, Johnson City, Jackson, Nashville, and Martin.

The Municipal Technical Advisory Service (MTAS) is a statewide agency of The University of Tennessee Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League to provide technical assistance services to officials of Tennessee's incorporated municipalities.

MTAS Hot Topics are information briefs that provide a timely review of current issues of interest to Tennessee municipal officials. Hot Topics are free to Tennessee local, state, and federal government officials and are available to others for \$2 each.

www.mtas.tennessee.edu

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MTAS0930 • E14-1050-000-002-07



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CODE OF ETHICS

Section-by-Section Summary and Explanation

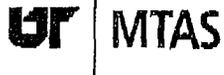
SECTION 1. This section provides that the code of ethics adopted by the municipal governing body applies to all full-time and part-time elected and appointed officials, whether compensated or not. It also applies to members and employees of separate boards, authorities, and commissions created by the municipality. This includes school boards, planning commissions, boards of zoning appeals, beer boards, airport authorities, and housing authorities, among others. These applications of the code of ethics are mandated by the Ethics Act passed by the General Assembly.

SECTION 2. The Ethics Act passed by the General Assembly requires that "personal interests" that affect or appear to affect the actions of municipal officials and employees must be disclosed, but the state statute does not define "personal interests." This section defines those interests. This is a broad definition and is much more encompassing than the state's conflict of interests laws. It includes ANY financial, ownership, or employment interest of an official or employee in a business or entity the municipality does business with, regulates, or supervises. It also includes these interests of the listed family members of the official or employee. It includes situations in which the official, employee, or family member is negotiating employment with an affected entity. There is some overlap with indirect

interests under state law, but most of the situations to which this provision in the code of ethics applies will not be covered by the conflicts of interests laws. An example would be a family member of a member of the governing body who is an employee of a business seeking to do business with the municipality. This would not be a direct or indirect conflict of interests under the state law, but it would be a personal interest that would have to be disclosed under this definition. This section provides that when there is an overlap with the conflicts of interest laws, those laws take precedence.

SECTION 3. This section requires an official with the responsibility to vote to disclose any of his/her personal interests that might affect his/her discretion before the vote so they appear in the minutes. The state statute does not require that an official with a personal interest recuse himself/herself from voting. The implication of the statute is to the contrary and that after disclosure the official may vote. Nevertheless, this section allows, but does not require, the official to recuse himself/herself.

SECTION 4. This section applies to employees and officials who must exercise discretion in matters that do not require a vote. The official or employee should, when possible, disclose the personal interest before the exercise of the discretion. Again,



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recusal is not required, but this section allows this when it is permitted by law, charter, ordinance, or policy of the municipality.

SECTION 5. This section prohibits an official or employee from taking any money, gift, favor, or other gratuity from anyone other than the municipality for the performance of an official's or employee's regular duties or that gives the appearance of attempting to influence the actions of the official or employee in carrying out municipal business. This is a somewhat modified version of a provision that most municipalities already had on the books.

An alternative to this gift prohibition that is allowed by the state ethics statute would be to allow gifts and gratuities up to a certain amount but to require reporting of those items. MTAS decided on prohibition because it is simpler to implement and because most cities already had similar provisions.

SECTION 6. This section prohibits officials and employees from disclosing confidential information and from disclosing any other information with the intent to result in financial gain. Again, these are common provisions in ethics ordinances that some cities had already adopted.

SECTION 7. This section prohibits officials and employees from using or authorizing the use of municipal time and facilities for their own financial gain. It also

prohibits this for other entities or individuals unless this is authorized by contract or lease determined by the governing body to be in the best interests of the municipality. This is a provision similar to ones that have been adopted by many municipalities.

SECTION 8. This section prohibits officials and employees from using their position to make private purchases in the name of the municipality and from using their position to gain privileges or exemptions that are not authorized by charter, general law, ordinance, or policy. These provisions are similar to provisions adopted by many municipalities.

SECTION 9. This section prohibits outside employment by officials or employees if the outside work interferes with municipal duties or is in conflict with any provision of the charter, any ordinance, or any policy of the municipality. Many municipalities have adopted similar provisions.

SECTION 10. This section provides methods for bringing and investigating complaints of violations of the code of ethics. The city attorney is designated as the ethics officer and may issue opinions when requested in writing on whether certain conduct would comply with the code of ethics and other applicable law. The city attorney is designated to receive and investigate complaints about officials and employees who are not members of the governing body. The attorney may request



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that the governing body designate another person or entity to act as ethics officer when he/she has a conflict of interests.

The governing body must determine the merit of complaints against its members. If the governing body determines that a complaint warrants further investigation, it must authorize the investigation by the city attorney or another person or entity chosen by the governing body.

An alternative to appointing the city attorney as ethics officer would be to appoint another individual, such as another attorney or a retired judge. If a municipality chose to do this, it would probably want to provide for the appointment of the ethics officer after each municipal election. The position could be compensated or uncompensated, although it is unlikely many individuals would be willing to serve if the position is not compensated. Another acceptable alternative would be to establish a board of ethics to perform these functions. For municipalities that choose this alternative, MTAS suggests a three-member board to be appointed by the governing body. Terms should probably be three years.

Because many municipalities already have personnel policies that deal with some of the same behaviors regulated by the code of ethics, this section also provides that when a violation of the code of ethics also constitutes a violation of a personnel or civil service policy, rule, or regulation, the violation would be handled as a violation

of the personnel provisions rather than as a violation of the code of ethics.

This section also provides for a "reasonable person" interpretation and enforcement of the code of ethics.

MTAS chose the above provisions for designating the ethics officer and for handling ethics complaints for the model code of ethics because they seemed simpler, less costly, and most appropriate for most Tennessee municipalities.

SECTION 11. This section provides for punishment for violations. Elected officials and appointed members of boards and commissions are punishable as already provided by law and, in addition, are subject to censure by the governing body. Appointed officials and employees are subject to disciplinary action.

Municipalities that adopt the MTAS Model Code of Ethics must send a notice that it has been adopted, including the date of adoption, to the Tennessee Ethics Commission. Municipalities that do not adopt the MTAS model must send a copy of the ordinance they do adopt to the Ethics commission. Send the notice to

Tennessee Ethics Commission
312 8th Avenue, North
8th Floor Snodgrass Tower
Nashville, Tennessee 37243
E-mail: ethics.counsel@state.tn.us