

# BACK TO FOUNDATIONS: PEOPLE AND PLACE

## Ethics Panel Discussion

Michigan Municipal Executives Winter Institute  
February 2, 2017

Dr. Stephen Kleinschmit, Assistant Professor, WMU  
Crystal Morgan, Attorney, Law Office of Crystal Morgan  
Maurice Evans, Senior Advisor, ICMA

# Recent Developments in Ethics Research for Municipal Managers

**Stephen Kleinschmit, PhD**

**WMU School of Public Affairs and Administration**

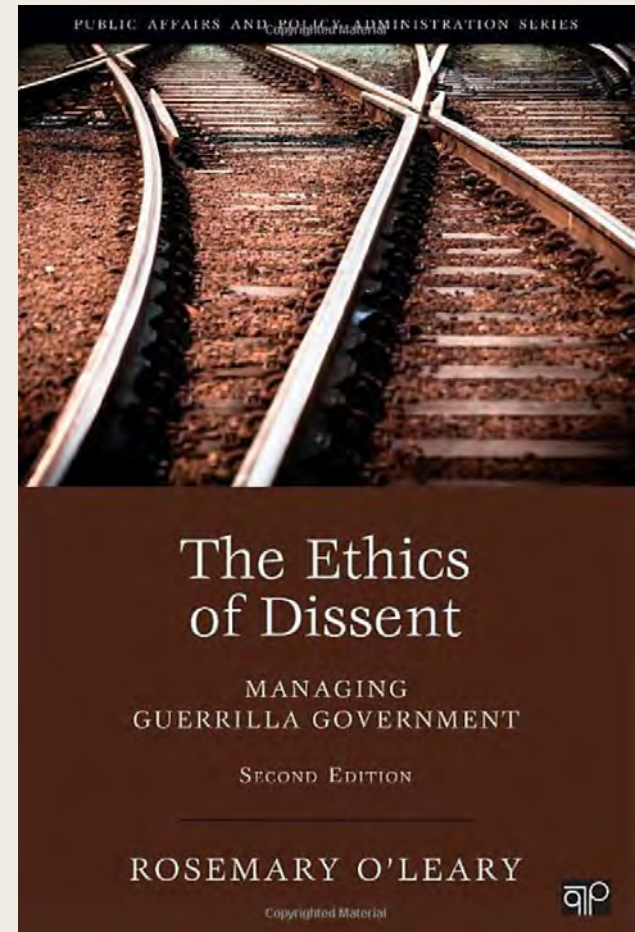


**Michigan Municipal Executives  
Winter Institute  
February 2, 2017**

**WESTERN MICHIGAN UNIVERSITY**

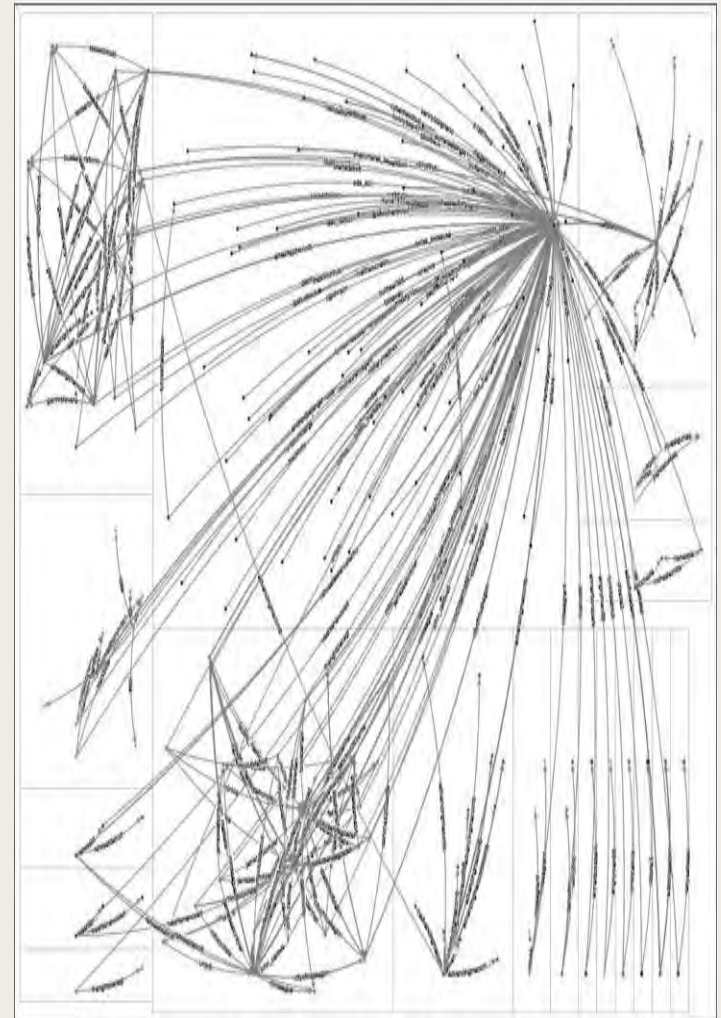
## Guerilla Government

- Rosemary O'Leary (University of Kansas)
- Public servants seek to stymie implementation of unwise policies, orders that undermine agency
- Done in ways that align professional ethics
- Obligation to nation & Constitution over political institutions
- Greater understanding of organization and its motivations



## Network Governance

- Municipal governments engage in complex governance networks
- Managers cede government centrality & authority for organizational inclusivity
- Goal displacement; promote efficiency of process over citizen accountability
- Codified organizational ethics and norms not shared by all participants



## Contracting & Privatization

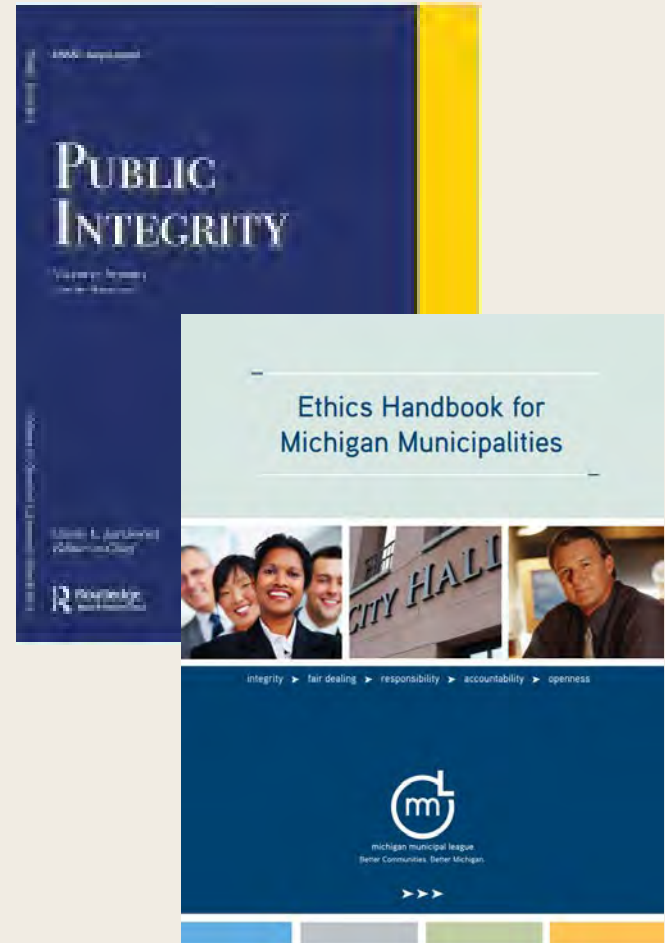
- Substantial growth in nonprofits as service provision entities, continued growth in privatization in municipal domain.
- Performance measurement systems are not put into place to adequately oversee outsourced functions.
- Contractor ethics often do not align with those of agency.
- Greater need for external audits and oversight.
- Incorporate access and inclusivity conditions in RFPs and contracts.

## Guidance for Local Government Managers

- Need for “living” codes of ethics within organizations
- Promote ethical culture through administrative leadership
- Recognize professional fields have their own distinct professional ethos
- Recognize worker public service motivation to reduce turnover
- Provide official channels for dissent and open dialogue
- Performance evaluation systems are misused for personal & political reasons, rather than job performance.

## Resources

- MML Ethics Handbook for Michigan Municipalities
- ICMA Ethics Training and Technical Assistance for Local Governments
- Public Integrity journal
- ASPA Section on Ethics and Integrity of Governance
- Me! [stephen.kleinschmit@wmich.edu](mailto:stephen.kleinschmit@wmich.edu)



# Fundamental Standards of Conduct for an Ethics Ordinance

1. Conflicts of Interest
2. Disclosure
3. Impartiality
4. Improper Use of Position
5. Incompatible Employment/Public Offices
6. Nepotism
7. Personal Interests
8. Political Activity
9. Public Information
10. Public Property and Personnel

Source: *Ethics Handbook for Michigan Municipalities*, Michigan Municipal League (2008)



# Ethics Ordinance Considerations

- Matters of local concern
- Charter (authorization or mandate)
- Scope of ordinance
- Defined terms (and exclusions)
- Implementation
- Receipt and investigation of complaints
- Sanctions
- Unionized employees
- Periodic review
- Collateral effects
- Ethics education in orientation programs

# IMPLEMENTATION

- Complaint
  - Board of Ethics
  - Chief of Police
  - City Attorney
  - City Manager
  - Commission/Council
  - Court
- Notice
- Investigation
- Fact-finding
- Hearing
- Decision
- Sanction

# SANCTIONS

- None—no penalty
- Public reprimand
- Public censure
- Forfeiture/removal
- Disciplinary action
- Termination of contract
- Municipal civil infraction
- Misdemeanor/felony

# Statutes

- Standards of Conduct and Ethics Act, 196 PA 1973 (MCL 15.341*et seq.*)
- Conflicts of Public Servants with Public Entities, 317 PA 1968 (MCL 15.321 *et seq.*)
- Whistleblower's Protection Act, 469 PA 1980 (MCL 15.361*et seq.*)
- Incompatible Public Offices Act, 566 PA 1978 (MCL 15.181*et seq.*)
- Willful Failure to Uphold or Enforce the Law (MCL 752.11)
- False Statement or Transfer of Public Finances (MCL 750.489)
- Political Activities by Public Employees, 160 PA 1976 (MCL 15.401 *et seq.*)
- Michigan Campaign Finance Act, 388 PA 1976 (MCL 169.201*et seq.*)
- Safekeeping of Public Moneys (MCL 750.490)
- Purchase of Goods on Public Credit (MCL 750.490a)
- Willful Neglect of Duty (MCL 750.478)
- Michigan Zoning Enabling Act, MCL 125.3601
- Michigan Planning Enabling Act, MCL 125.3815
- Federal Grant Programs (e.g., CDBG), 24 CFR 570.611

# Case Law

- ***People v Barry***, 53 Mich App 670 (1974): a drain commissioner was found not guilty of a criminal offense, but his actions were “clearly unethical and made a punishable offense under the Code of Ethics for State Employees”
- MCL 15.181 defines “incompatible offices” as public offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held: (i) the subordination of 1 public office to another; (ii) the supervision of 1 public office by another; or (iii) a breach of duty of public office.
  - ***Detroit Area Agency on Aging v Office of Services to the Aging***, 210 Mich App 708 (1995): a public official shall vacate one office to resolve an incompatible offices dilemma; an action taken in violation of the Incompatible Offices Act is voidable in the discretion of the trial court
  - ***Oakland County Prosecutor v Jean Scott***, 237 Mich App 419 (1999): township trustee and deputy court clerk were incompatible; trustee’s abstentions from voting on the court budget constituted a breach of duty (“It is well settled that abstaining from any official action in an attempt to avoid an incompatibility does not remedy a breach of duty and that vacating one of the offices is the only solution to the problem.”)

# Michigan Attorney General Opinions

- **1989 OAG 6563**: Local officials may serve on the board of directors of a private corporation engaged in economic development in the county and participate in governmental decisions and contract with a public entity if certain conditions are met (MCL 15.342a, MCL 15.323)
- **1981 OAG 6005**: A city councilperson employed by a corporation seeking quasi-judicial action from the city council has a conflict of interest and cannot participate in or vote on the action
- **1981 OAG 5853**: Where the city council appoints the zoning board of appeals, it is improper for a city councilperson to address the board on a pending petition
- **Various opinions**: incompatible offices

LAW OFFICE OF  
**CRYSTALMORGAN**

Crystal Morgan  
(616) 607-2800  
[crystal@crystalmorganlaw.com](mailto:crystal@crystalmorganlaw.com)  
[www.crystalmorganlaw.com](http://www.crystalmorganlaw.com)

# ETHICS AT WORK

MAURICE EVANS, SENIOR ADVISOR, ICMA

Definition of "ethics" according to  
Merriam Webster:

---

*the discipline dealing with what is  
good and bad and with moral duty  
and obligation*



# AS A MEMBER OF THE MICHIGAN MUNICIPAL EXECUTIVES AND THE ICMA, WHERE DO WE GET OUR CODE OF ETHICS?

## FROM THE ICMA WEBSITE, THE FOLLOWING IS NOTED:

- Adopted in 1924, the ICMA Code of Ethics defined the principles that today serve as the foundation for the local government management profession and set the standard for excellence.
- Leadership in a management structure committed to equity, transparency, integrity, stewardship of public resources, political neutrality, and respect for the rights and responsibility of elected officials and residents strengthens democratic local governance.
- ICMA members pledge to uphold these principles in their conduct and decisions in order to merit the trust of the public, elected officials, and staff they serve. As a condition of membership, ICMA members agree to submit to a peer-to-peer review under established enforcement procedures should there be an allegation of unethical conduct.
- Members who are working for a local government in any capacity are required to follow all 12 Tenets of the Code. Members who are students, elected officials, fully retired, working for a state or federal agency, or in the private sector are required to follow Tenets 1 and 3.

# THE MISSION OF ICMA IS TO CREATE EXCELLENCE IN LOCAL GOVERNANCE BY DEVELOPING AND FOSTERING PROFESSIONAL LOCAL GOVERNMENT MANAGEMENT WORLDWIDE.

To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

- TENET 1** *Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.*
- TENET 2** Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant
- TENET 3** *Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.*
- TENET 4** Recognize that the chief function of local government at all times is to serve the best interests of all people.

## CONTINUED...

- TENET 5** Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.
  - TENET 6** Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
  - TENET 7** Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.
  - TENET 8** Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
-

## CONTINUED...

**TENET 9** Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

**TENET 10** Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

**TENET 11** Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

**TENET 12** Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit

# QUESTIONS?

1. How would you address a strong suggestion made by two incumbent council members and two newly elected council members (that will be shortly taking office) to terminate the employment of specific personnel? (See Tenet 1 and Tenet 10)
2. How would you respond to having your salary reduced by 25% as a result of adhering to city charter provisions? (See Tenet 1 and Tenet 10)
3. What would you do if approached by a CEO of a local non-profit who indicated the 25% reduction in salary could possibly end up in cash in an envelope placed in your mailbox at your residence? (See Tenet 12)
4. How do you handle offers to play golf during working hours? (See Tenet 12)
5. Have you ever been offered free tickets to the "big house" or the world series? What do you do? (See Tenet 12)
6. How do you respond to e-mails and texting? (See Tenet 1)