

City of Milford



CITY COUNCIL AGENDA

Monday, May 6, 2019

6:00 P.M.

Joseph Ronnie Rogers Council Chambers
Milford City Hall, 201 South Walnut Street, Milford, Delaware

WORKSHOP SESSION

Ethics/Code of Conduct Training

Presented by the State Public Integrity Commission

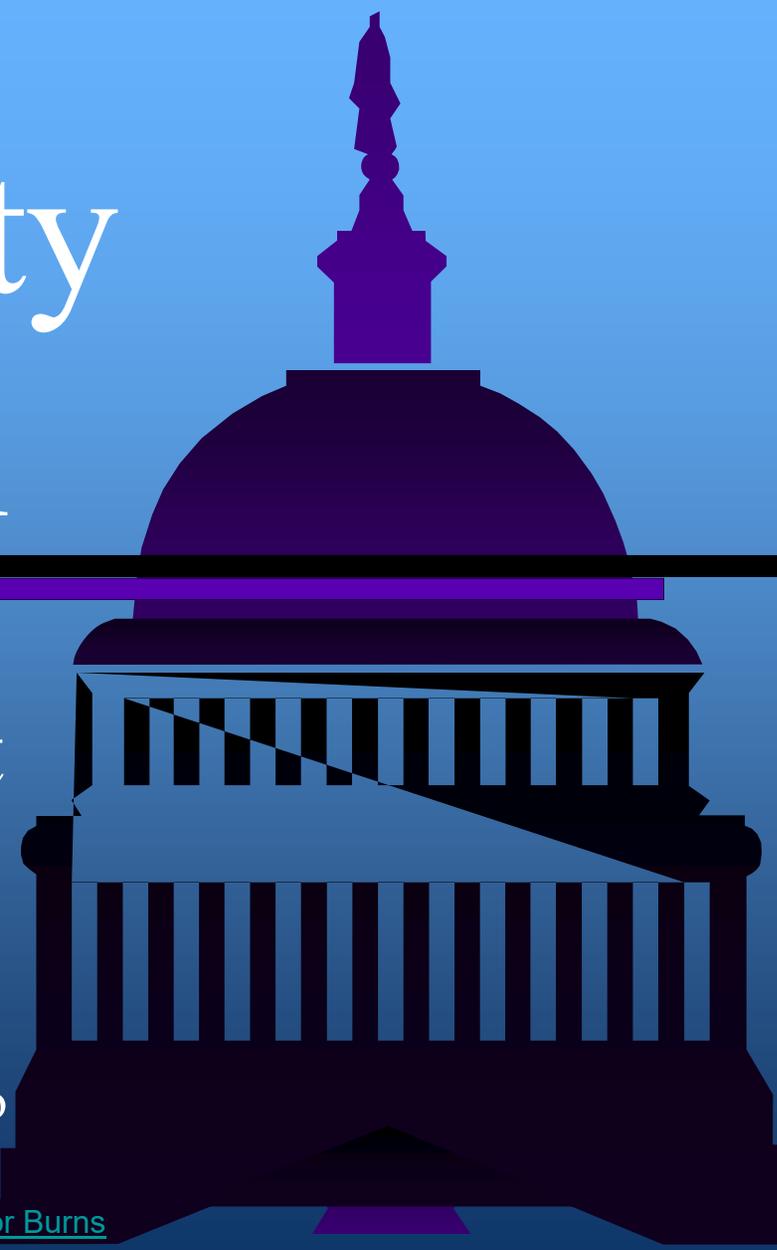
All items on the Council Meeting Agenda are subject to a potential vote.

**SUPPORTING DOCUMENTS MUST BE SUBMITTED TO THE CITY CLERK IN ELECTRONIC FORMAT
NO LATER THAN ONE WEEK PRIOR TO MEETING; NO PAPER DOCUMENTS WILL BE ACCEPTED OR DISTRIBUTED
AFTER PACKET HAS BEEN POSTED ON THE CITY OF MILFORD WEBSITE.**

© Public Comment, up to three minutes per person, will be accepted.

040219

Public Integrity Commission

A dark purple silhouette of a government building, likely the U.S. Capitol, is positioned on the right side of the slide. It features a prominent dome with a spire on top and a portico with columns below. The building is set against a blue background that transitions from a lighter shade at the top to a darker shade at the bottom.

Ethics in Government

“Divorced from ethics, leadership is reduced to management and politics to mere technique”.

[James MacGregor Burns](#)

Apr 30, 2019, 08:00am

Your Employees Are Judging You. Here's How Unethical Behavior Can Cost You Big Time.

Ivy Walker Contributor o Forbes Women

71% of employees said they would take a pay cut to work for a company whose values they share and 39% would quit if asked to do something unethical by their boss.

LinkedIn's 2018 Workplace Culture Trends.

Ex-Wilmington Council President Theo Gregory admits to abusing office, receives 'public reprimand'.

Jeanne Kuang and Christina Jedra, Delaware News Journal
Published 6:00 a.m. ET April 26, 2019
Updated 10:27 p.m. ET April 17, 2019

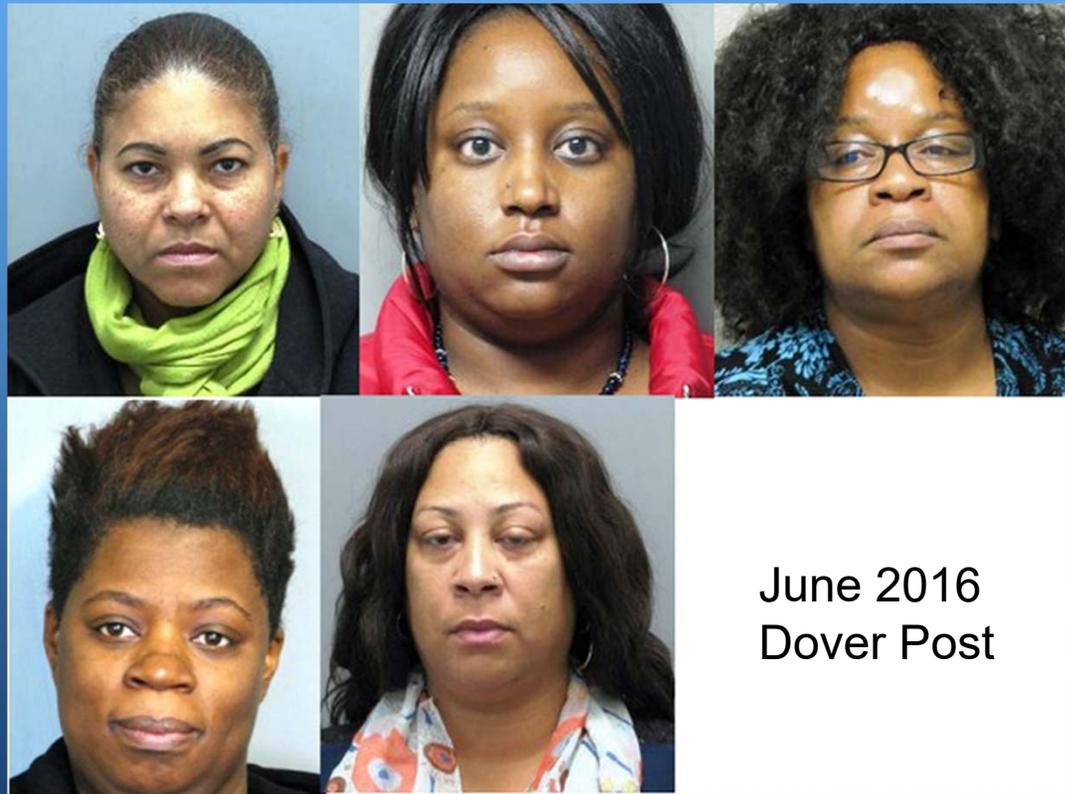
Former Wilmington City Council President Theo Gregory admitted to "abuse of office" after the city ethics commission investigated him for allocating \$40,000 in council funds to his own nonprofit - and personally pocketing about half of it-on his way out of office.

\$600,000 over the course of his government service



Seven steal from SNAP, says state

Seven state employees indicted in \$950,000 theft



June 2016
Dover Post



Public Integrity Commission

ADMINISTERING AND IMPLEMENTING DELAWARE'S CODE OF CONDUCT FOR THE EXECUTIVE BRANCH.

Welcome

Pursuant to 29 Del. C., Chapter 58, the State Public Integrity Commission administers and implements Delaware's ethics law (Code of Conduct) for the Executive Branch; its financial disclosure law for all three branches; and its lobbyists' registration and expense reporting laws.

[Read More →](#)

> Code of Conduct

Ethical standards for all State Executive Branch employees (rank and file) officers (Senior level & Elected officials) and honorary State officials (appointees to

Easy Reference

Code of Conduct Opinion Synopsis



- [1991-2016 Contracting With The State](#)
- [1991-2016 Jurisdiction & Procedure](#)
- [1991-2016 Local Codes of Conduct](#)
- [1991-2016 Outside Employment](#)
- [1991-2016 Things of Monetary Value](#)
- [1991-2016 Personal or Private Interest](#)
- [1991-2016 Post Employment](#)

Note: If looking for specific term in a category, hit CTRL F once you have opened the link

Statutory Purpose

- Insure public respect and confidence by setting standards of conduct for government personnel without unduly circumscribing their activities

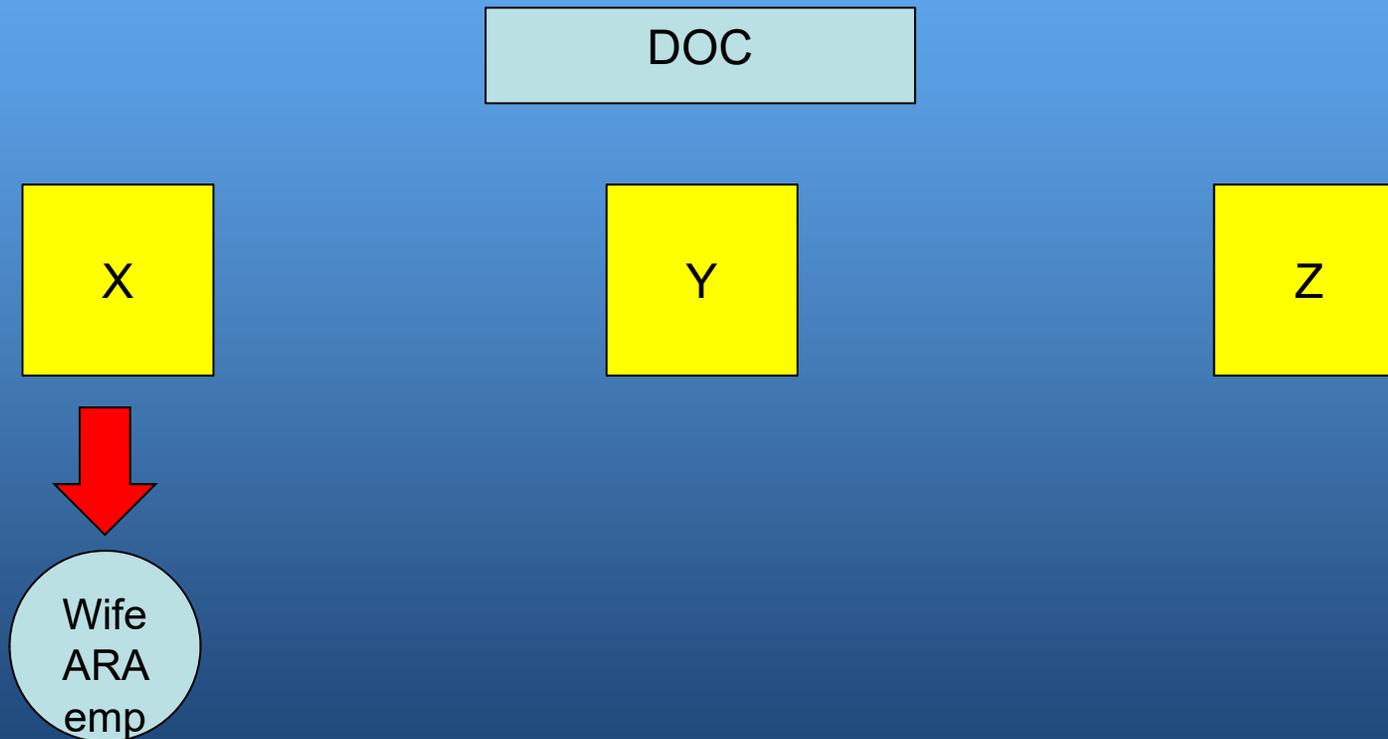
Conflict of Interest

Exercising Authority - 29 Del. C. § 5805 (a) and (b)

- No Personal or Private Interest That Tends to Impair Judgment in Performing Official Duties
- *Interests Which Will Impair Judgment*
 - **Financial benefit to self or a close relative**
 - **Benefit to a private enterprise if you or a close relative have a financial interest**
 - **Action: File Disclosure with Commission**

Personal Interest

Prison Health Systems v. ARA



Personal Interest cont.

Brice v. DOC

Christiano

Ma son

David
Outten's Sec

Sestito
Nephew
3

Coleman
Highest
score
7



Brice
5

Conflict of Interest

Representation - 29 Del. C. § 5805(b)

- Do not represent or assist a private enterprise before your city.

Conflict of Interest

Seeking State Contracts - 29 Del. C. § 5805 (c)

■ Public Notice & Bidding

- *Except: Employment Contracts*
- *Except: Contracts < \$2000 - Arms' Length Negotiations*
- *Except: School Transport Contracts -29 Del. C. §6916*

Prohibited for Transportation Supervisors

Conflict of Interest

Post-Employment - 29 Del. C. § 5805(d)

- Two-year Restriction

- Cannot represent/assist private enterprise on matters involving your former gov't employer if you:

 - Gave an opinion

 - Conducted an investigation

 - Were otherwise directly and materially responsible

- Prohibition on use of confidential information

Code of Conduct

Prohibited Conduct - 29 Del. C. § 5806 (a) and (b)

- No Appearance of Impropriety
 - Reasonable person, knowing all the facts, would think the employee could perform their duties fairly and with impartiality.
- No interest in a private enterprise or any obligation in substantial conflict with performing your public duties

Code of Conduct

Prohibited Conduct - 29 Del. C. § 5806(b)

- No other employment, gift, payment of expenses, compensation, or anything of monetary value if it may result in:
 - *Impaired independence of judgment; or*
 - *Preferential treatment to any person; or*
 - *Official decisions outside official channels; or*
 - *Any adverse effect on public confidence in government*

Code of Conduct

Prohibited Conduct - 29 Del. C. § 5806(e)

Public office shall not be used to secure unwarranted privileges, private advancement or gain.

Code of Conduct

Prohibited Conduct - 29 Del. C. § 5806 (f) and (g)

- You may not:
 - Engage in activities that might reasonably be expected to require or induce you to disclose confidential information;
 - Disclose confidential information beyond the scope of employment;
 - Use confidential information for personal gain or benefit.

Waivers and Advisory Opinions

Procedure - 29 Del. C. § 5807

- Written Request
- Confidential *unless*:
 - Applicant Requests in Writing
 - Required for Prosecution
 - Used to Report Substantial Evidence of a Criminal Violation
 - Waiver Granted

Complaints

Procedure - 29 Del. C. § 5810

- Sworn Complaint or Commission Acts
- Person Charged Has the Right to:
 - **Notice & Hearing**
 - **Legal Counsel**
 - **Call Witnesses, Offer Evidence, Cross- Examine**
 - **Examine Tangible Material Evidence**
 - **Exculpatory Evidence**
 - **Apply for Subpoenas**
 - **Confidential *unless*: Person Charged asks for Open Proceedings or a Violation is Found**
 - **Judicial Review by Superior Court**

Sanctions

- *Criminal Sanctions* - 29 Del. C. § 5805(f) Up to 1 Year or \$10,000 Fine
- *Administrative Sanctions* - 29 Del. C. § 5810(d)
 - **Written Reprimand**
 - **Other than Elected Officials: Remove, suspend, demote or other appropriate action**
 - **Honorary Officials: Recommend Removal**

The Rules of Conduct

(1) Do not review or dispose of City matters if you have a “personal or private interest” that tends to impair judgment in performing official duties. 29 Del. C. § 5805(a).

Ex. Board appointee’s “neutral” & “unbiased” remarks on an application were improper when the applicant before his Board had a business agreement with the official’s private employer.

--Beebe Medical Center v. Certificate of Need Appeals Board, Del. Super., C.A. No. 94-A-01-004, Terry, J. (June 30, 1995), *aff’d.*, Del. Supr., No. 304 (January 29, 1996).

Ex. Government employee’s “unsubstantial” & “indirect” participation in a contract that his wife’s employer was seeking, was “undoubtedly improper” although he was not on the contract committee & she was a “low-level employee” in the company.

--Prison Health Services, Inc. v. State, Del. Ch., C.A. No. 13,010, Hartnett III, V.C. (July 2, 1993).

Ex. Uncle wrote test for government job & sat on hiring panel. His nephew was selected. The Court said it was “the most blatant discrimination based on nepotism & favoritism.”

--Brice v. State, 704 A.2d 1176 (Del., 1998).

(2) Do not represent or assist a private enterprise before the City. 29 Del. C. § 5805(b).

Ex. State appointee wanted private contract with his agency. Court upheld agency’s decision to deny him the contract, as the award of State contracts “has been suspect,

often because of alleged favoritism, undue influence, conflict and the like.”

--W. Paynter Sharp & Son v. Heller, 280 A.2d 748 (Del. Ch., 1971).

(3) Do not contract with the City for more than \$2,000 unless there is public notice & bidding. If less than \$2,000, there must be “arms’ length negotiations.” 29 Del. C. § 5805(c).

(4) For 2 years after leaving City employment, you may not represent or assist a private enterprise on City matters where you: (a) gave an opinion; (b) conducted an investigation; or (c) were otherwise directly and materially responsible. 29 Del. C. § 5805(d).

Ex. Former State appointee represented client before his former Board. He was not “directly & materially responsible” for the matter before the Board, as it was not considered by him before he left the State.

--Beebe Medical Center, *supra*.

(5) Do not incur any obligation or interest that substantially conflicts with public duties. 29 Del. C. § 5806(b).

Ex. Where a State officer placed his personal interest first, “it necessarily follows that...he violated the duty that he owed to the public.”

--In re Ridgely, 106 A.2d 527 (Del. 1954).

(6) Do not accept other employment, compensation, gifts, or anything of monetary value if it may result in: (a) impaired judgment; (b) preferential treatment; (c) official decisions

outside official channels; or (d) any adverse effect on the public’s confidence in the City. 29 Del. C. § 5805(b).

Ex. This prohibition includes luncheons, gift certificates, flowers, holiday gift boxes, etc.

(7) To commence & continue City employment, or Board appointment, you must file a full disclosure with PIC if you have a financial interest in a private enterprise that does business with, or is regulated by the City. 29 Del. C. § 5806(d).

“Financial Interest” includes:

- ownership or investment interest;
- receiving \$5,000 or more as an employee, officer, director, trustee or independent contractor;
- creditor of private enterprise. 29 Del. C. § 5804(5).

“Private Enterprise” is any activity by any person, for profit or not for profit. 29 Del. C. § 5804(9).

(8) Do not acquire financial interests in a private enterprise that may be directly involved in your City decisions. 29 Del. C. § 5806(c).

(9) Do not use public office for unwarranted privileges, private advantage or gain. 29 Del. C. § 5806(e).

Ex. State official had a duty not to personally profit from the State’s services & property by using School materials & employees during State work hours at his home. His action was more than an ethics violation. It violated the

criminal law on “Misconduct in Office.”

--Howell v. State, 421 A.2d 892 (Del., 1980).

(10) Do not improperly disclose or use confidential information. 29 Del. C. § 5805(d); 5806(f) & (g).

Ex. “Indeed, common decency and the most modest norms of privacy command that the State not permit its files to be used in the manner here alleged”—that confidential information on State clients was made public.

--Pajewski v. Perry, 363 A.2d 429 (Del., 1976).

(11) Do not use sex as a condition for an individual’s favorable treatment by you or by the City. 29 Del. C. § 5806(h).

Ex. Requiring a bidder on a City contract to grant sexual favors in exchange for awarding the contract. This is not sexual harassment in the workplace. Please refer to your City personnel manual for the appropriate policy.

(12) Your conduct must not “raise suspicion” of violating the public trust. 29 Del. C. § 5806(a).

Ex. Close relatives had no financial interest in government decision, but it would “be prudent” for officials to recuse themselves.

--Harvey v. Zoning Board of Adjustment of Odessa, Del. Super., C.A. No. 00A-04-007 CG, Goldstein, J. (November 27, 2000), *aff’d.*, 781 A.2d 697 (Del., 2000).

--Actual misconduct is not required; only the appearance thereof. --Commission Op. No.92-11.

To Whom Does the Law Apply?

The Code of Conduct applies to all Executive Branch employees (rank & file), officers (Division Directors & above), and honorary officials (appointees to State and Boards and Commissions); & local government officers, employees, board and commission members, unless they adopt a Code at least as stringent as the State's. The Judicial & Legislative Branches have their own Code of Conduct or Conflict of Interests laws.

Why Ethics?

In our democratic form of government, the conduct of State officers & employees must hold the respect & confidence of the people. Thus, State officers & employees must avoid conduct that violates the public trust or creates a justifiable impression by the public that such trust is being violated.

How Can I Promote Ethics?

By following the Code of Conduct rules.

How Can I Comply with the Rules?

Know the Rules
Follow the Rules
Get Advice When Unsure

Where are the Rules?

Delaware Code, Title 29, Chapter 58. The law and opinions are on the Public Integrity Commission's (PIC's) web site at www.depik.delaware.gov under the heading, "Code of Conduct." Opinions are grouped by topic to narrow your search.

How Can I Understand the Rules?

Read the Statute ---- Read Commission Opinions --- Go to "Ethics in Government" classes offered by PIC through the City ---- Call the Public Integrity Commission with questions --- Seek an Advisory Opinion from the Commission

What is an Advisory Opinion?

An interpretation of the rules by the Public Integrity Commission based on the proposed conduct of a City employee, officer or board member. It gives guidance on whether the conduct will or will not violate the public trust.

Why Would I Seek an Opinion?

It will clarify if you should or should not engage in such conduct. It also can protect you against complaints. If you fully disclose your situation to the Commission and follow its advice, the law provides protection against disciplinary action.

How Can I Seek an Opinion?

Your request must be in writing; there is no formal format. Before you start to write, contact the Commission's office, at 302-739-2399, to obtain help in writing your request.

Should I E-Mail My Request?

By law, you are entitled to confidentiality concerning your requests. If you are confident in your system's security, the Commission accepts email submissions.

When Will I Know if the Conduct is Permitted?

If the situation has been clearly addressed by the Commission, the Commission's staff will provide you with that information. If there is no clear ruling, your written request will be sent to the Commissioners one week prior to the monthly meeting. On the meeting day, the Commission likes to have the requestor present so that if there are questions not answered by the written request, it can obtain the answers at the meeting and issue an oral opinion that same day with a written opinion to follow.

What If a Complaint is Filed Against Me?

You will be formally notified of the allegations against you, and of the rights you have, such as a right to legal counsel, right to a hearing, right to cross-examine, right to examine evidence, etc. If a violation is found, you have the right to appeal to the Superior Court.

What are the Penalties?

Criminal Violations: Up to a year in prison and/or a \$10,000 fine.

Administrative Discipline includes: Letter of Reprimand --- Suspension, demotion, removal or other appropriate disciplinary action.

How Can I Reach the Commission?

Public Integrity Commission
410 Federal St., Suite 3
Dover, DE 19901
Phone: 302- 739-2399
www.depik.delaware.gov

ETHICS BROCHURE BY:

State Public Integrity Commission



IN COOPERATION WITH

