

MLGW ETHICS POLICY

A RESOLUTION ENACTING AN ETHICS POLICY FOR THE OFFICERS, EMPLOYEES, AND BOARD OF COMMISSIONERS OF MEMPHIS LIGHT, GAS AND WATER DIVISION.

WHEREAS, The General Assembly has passed, and the Governor has signed into law, the Comprehensive Governmental Ethics Reform Act of 2006, codified at Tennessee Code Annotated §§ 8-17-101 et seq.; and,

WHEREAS, That law requires all municipalities in Tennessee to adopt an ethics Policy for all municipal elected Officials and Employees, as well as any boards, commissions, authorities, corporations, or other instrumentalities appointed or created by the municipality, by June 30, 2007; and,

WHEREAS, The Memphis Light, Gas and Water Division has had in place for a number of years a Personnel Policy Manual, which includes policies dealing with ethics applicable to all employees, officials and Board of Commissioners members of the Division; and

WHEREAS, The Memphis City Council has adopted a Code of Ethics on June 5, 2007 for application to all elected Officials and Employees of the City of Memphis, and to all boards, commissions, authorities, corporations, or other instrumentalities appointed or created by the municipality;

WHEREAS, The Memphis Light, Gas and Water Division desires to adopt an Ethics Policy in compliance with state law and, at a minimum, in accordance with the policy adopted by the Memphis City Council;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF MEMPHIS LIGHT, GAS AND WATER DIVISION, that the following Code of Ethics is adopted for application to all Officers, Employees and Members of the Board of Commissioners of Memphis Light, Gas and Water Division:

Section 1. Applicability. This Policy is the code of ethics for personnel of Memphis Light, Gas and Water Division. It applies to all full-time and part-time officers, employees and members of the Board of Commissioners, whether compensated or not, including those of any separate board, commission, committee, authority, corporation, or other instrumentality appointed or created by the Board of Commissioners. The words "municipal" and "municipality" include these separate entities.

Section 2. Definitions. For the purposes of interpreting this Policy, the following words, terms, and phrases shall have the meanings ascribed to them in this section:

- (a) "Agency" means any board, bureau, body, commission, committee, department or office of the City, including any joint board to which the City Council or the City Mayor has appointment powers.
- (b) "Board Member" means a member of the MLGW Board of Commissioners.
- (c) "Board of Ethics" means the joint Memphis-Shelby County Board of Ethics created by City Ordinance and responsible for the investigation of ethics complaints, issuance of recommendations to the appropriate Agency, issuance of Formal Ethics Opinions, and other functions as may be assigned to it by ordinance.
- (d) "Business" means any corporation, partnership, proprietorship, organization, self-employed individual, or any other entity operated for economic gain, whether professional, industrial or commercial, and entities which for purposes of federal income taxation are treated as nonprofit organizations.
- (e) "Chief Ethics Officer" means the person primarily responsible for the preliminary investigation of ethics complaints, maintenance of the records of the Board of Ethics, maintenance of the Board of Ethics website, management of any other staff of the Board of Ethics, and issuance of Advisory Ethics Opinions.
- (f) "City" means the City of Memphis, Tennessee and which includes all boards, committees, commissions, authorities, corporations or other instrumentalities appointed or created by the City or an official of the City, and specifically including the Memphis City School Board.
- (g) "Confidential Information" means information which has been obtained in the course of employment, by independent contract or otherwise acting as an Officer, Employee or Board Member of MLGW, and which information is not available to members of the public under state or other law or regulation, and which the Officer, Employee, Board Member, or independent contractor is not authorized to disclose.
- (h) "Employee" means any person employed or retained by MLGW, whether paid or unpaid and whether part-time or full-time. This definition includes retired Employees or former Employees during a period of time in which they are later employed or retained by MLGW.

- (i) "Gift" means the transfer or conveyance of anything of economic value, regardless of form, without adequate and lawful consideration.
- (j) "Gratuity". See Section 4.
- (k) "Honorarium" means the payment of money or anything of value for any service, including but not limited to an appearance, speech or article, or a series of appearances, speeches, or articles, if the subject matter of the service is related to the Officer, Employee, or Board Member's Official Duties or the payment is made because of the Officer, Employee, or Board Member's status with MLGW.
- (l) "Immediate family" means parents, spouse and children.
- (m) "MLGW" means the Memphis Light, Gas and Water Division.
- (n) "Officer" means any person appointed to any MLGW position, whether paid or unpaid and whether part-time or full-time. This definition includes retired Officers or former Officers during a period of time when they are later appointed, employed or retained by MLGW.
- (o) "Official Duties" means all those duties which, based upon charter, ordinance or other document creating the office, employment or position, an Officer, Employee or Board Member may be reasonable expected to perform.
- (p) "Personal interest" means any interest arising from relationships with immediate family, including marriage and any other similarly close personal relationship, or from Business partnership or corporate associations, whether or not any financial interest is involved; the ownership of any real estate having a value of one thousand dollars (\$1,000.00) or greater which MLGW has or is negotiating an acquisition, leasehold, or easement agreement, or; any such financial or ownership interest as described herein by the Officer, Employee, or Board Member's spouse or immediate family member.
- (q) "Prohibited Source" means any person, Business, entity, or other organization that is seeking official action, doing business with, or seeking to do business with, or conducting activities regulated by, or has interests that may be substantially affected by decisions or performance or non-performance of Officers, Employees or Board Members of MLGW.

Section 3. Disclosure of financial interests.

(a) This Section shall apply to the following, specifically identified Officers, Employees and Board Members:

- (1) President & CEO
- (2) Board Members
- (3) Members of the MLGW Executive Staff, including the Interim Chief Utility Officer, all Vice Presidents, Director of Analysis, Strategy & Performance, Director of Corporate Communications, General Auditor, and Controller.
- (4) Employees in the office of the MLGW President & CEO who report directly to the President & CEO.
- (5) Managers and Assistant Managers.
- (6) Employees in the Procurement & Contracts and Purchasing Departments.
- (7) Any Employee who
 - (A) Approves requests for proposals or other bid solicitations; or
 - (B) Selects, evaluates, or recommends for award or rejection any bid or request for proposal response:

for the purchase of personal property, goods, or services, including without limitation construction projects.

(b) Every Officer, Employee and Board Member named in Subsection (a) shall submit a financial disclosure statement on or before February 15 of each year to the Chief Ethics Officer.

(c) Unless an Officer, Employee or Board Member named in Subsection (a) has filed a financial disclosure statement with the Chief Ethics Officer in the preceding 12 months, he or she shall submit a financial disclosure statement to the Chief Ethics Officer not less than 30 days after entering office or otherwise becoming subject to the requirement to file a financial disclosure statement.

(d) Throughout the year, each such Officer, Employee and Board Member shall update, correct or otherwise modify the Officer, Employee or Board Member's financial statement not later than 14 days following the occurrence of

any event, action or changed circumstance that renders the statement inaccurate or incomplete.

(e) The form of the financial disclosure statement shall be devised by the Board of Ethics. The form of the statement, unless revised by the Board of Ethics, shall be the same as the Statement of Disclosure of Interests that candidates must file with the Tennessee Ethics Commission, as it may be amended from time to time. The disclosure form shall be signed under penalty of perjury.

(f) The Chief Ethics Officer shall promptly and prominently place all such financial disclosure statements on the Board of Ethics website for public access.

Section 4. Gratuities and other items of value.

(a) Gratuities from or to outside sources.

(1) Solicitation or acceptance of a Gratuity. An Officer, Employee, Board Member, or their immediate family, including spouses and other persons of similarly close personal relationship, shall not, directly or indirectly, solicit or accept a Gratuity:

(A) Given because of the Officer, Employee or Board Member's official position or

(B) From a Prohibited Source.

(2) Providing a Gratuity. Except as provided in this chapter, an Officer, Employee, Board Member, or their immediate family, including spouses and other persons of similarly close personal relationship, shall not directly or indirectly, provide a Gratuity, or cause a Gratuity to be provided:

(A) Because of the Officer, Employee, or Board Member's official position, or

(B) To a Prohibited Source.

(3) What is and is not a Gratuity.

(A) A Gratuity is any item having monetary value. Gratuity includes, but is not limited to, any gift, favor, discount, entertainment, hospitality, loan forbearance, interest in real estate, stock, bond, certificate of deposit, negotiable instrument, or cash of any amount.

(B) Gratuity does not include:

(i) Reasonable items of food and refreshments, such as meals, soft drinks, coffee, and the like that are provided or received in connection with an Officer, Employee, or Board Member's attendance at a meeting or other function relating to his or her Official Duties;

(ii) Greeting cards and items of small intrinsic value, such as plaques, certificates and trophies, which are solely for presentation;

(iii) Loans on terms generally available to the public;

(iv) Opportunities and benefits, including favorable rates and commercial discounts available to the public or to all MLGW Employees;

(v) Rewards and prizes given to competitors in contests or events, including random drawings open to the public unless the Officer, Employee, or Board Member's entry into the contest or event is required as part of his or her Official Duties;

(vi) Pension and other benefits resulting from continued participation in an Employee welfare and benefits plan maintained by a present or former employer;

(vii) Anything paid for by MLGW or secured by MLGW under MLGW contract; provided, however, no contract or lease with MLGW may require passes, tickets or any other Gratuity to be given to Officers, Employees or Board Members or permit reduced fees not available to the general public to be paid by Officers, Employees or Board Members. Parties contracting with MLGW shall not provide, and Officers, Employees and Board Members shall not accept, Gratuities or prerequisites in connection with the execution of or performance under a contract or lease;

(viii) Any gift accepted by MLGW under specific legal authority, including:

(a) Travel, subsistence, and related expenses in connection with an Officer, Employee, or Board Member's attendance at a meeting or similar function relating to his or her Official Duties which takes place away from his or her duty station;

(b) Other gifts provided in-kind which have been given or accepted by MLGW under any gift Policy;

(ix) Anything for which market value is paid by the Officer, Employee or Board Member.

(4) Exceptions to general prohibition on acceptance of Gratuity from Prohibited Source or given because of official position.

Notwithstanding any prohibition in this Section, an Officer, Employee or Board Member may accept:

(A) Gifts of \$50 or less per occasion, provided that the total value of such gifts received from one person or organization shall not exceed \$100 per calendar year; provided, however, that cash, cash equivalents, investment interests such as stocks, bonds, certificates of deposit, and negotiable instruments, and any interest in real property shall never be allowed unless permitted as a campaign contribution by Subsection (D) below.

(B) Gifts based solely upon family or personal friendship rather than upon an Officer, Employee, or Board Member's MLGW position.

(C) Reduced membership or other fees for participation in an organization's activities offered to all government Employees where the only restriction on membership relates to professional qualifications.

(D) Campaign contributions solicited and received in accordance with any applicable federal, state, and local laws.

(E) Any Honorarium ordinarily given by a charitable, scientific, religious, or educational institution.

(F) Other awards, Honoraria, and honorary degrees:

(i) Award, other than cash or investment interest, that is given for meritorious public service or achievement by a person or organization that does not have interests which may be substantially affected by the performance or nonperformance of the Officer, Employee, or Board Member's duties.

(ii) Gifts, Honoraria, or awards of cash or investment interest may be accepted upon determination that the award is made as part of an established program of recognition under which awards have been made on a regular basis.

(iii) Honoraria or honorary degrees from an institution of higher education may be accepted upon determination that the award would not raise a question about the officer, employee or Board Member's impartiality.

(iv) Meals and entertainment given pursuant to the presentation of an award or honorary degree as permitted above.

(G) Gifts of meals, lodgings, transportation, and other benefits based solely on outside Business or employment relationships:

(i) Resulting from the Business or employment activities of an Officer, Employee, or Board Member's spouse when it is clear that such benefits have not been offered or enhanced because of the Officer, Employee, or Board Member's official position;

(ii) Resulting from an Officer, Employee or Board Member's Business or employment activities when it is clear that such benefits have not been offered or enhanced because of his or her official status; or

(iii) Customarily provided by a prospective employer in connection with bona fide employment discussions.

(H) Widely attended gatherings and other events:

(i) An Officer, Employee or Board Member assigned to speak, participate, or present information on behalf of MLGW at a conference or other event may accept an offer of free attendance at the event and ordinary and reasonable travel and lodging expenses associated with the event when provided by a sponsor or organization putting on the event;

(ii) An Officer, Employee or Board Member may accept free attendance at a widely attended gathering when it has been determined that his or her attendance is in the interest of MLGW because it will further MLGW programs or operations;

(iii) Attendance by an Officer, Employee or Board Member cannot be underwritten by anyone other than MLGW, a sponsor, or organization putting on the event.

(5) Disposition of prohibited gifts:

(A) Officers, Employees or Board Members and their immediate family including spouses and other persons of similarly close personal relationship, who receive a prohibited gift must promptly return any prohibited gift received or promptly pay the donor fair market value, or if the prohibited gift is perishable, may donate to charity or share it with other Employees.

(B) Reciprocation by the Officer, Employee or Board Member shall not constitute reimbursement as required in this Section.

(C) After the gift has been disposed of, the Officer, Employee or Board Member shall communicate in writing with the donor informing the donor of the MLGW prohibition against gifts. Further, the Officer, Employee, or Board Member shall inform the Chief Ethics Officer in writing of the gift, including the identity of the donor and all relevant facts and circumstances; the Chief Ethics Officer shall

promptly and prominently place all such gift disclosures on the Board of Ethics internet website for public access.

- (D) It is recognized that, under certain circumstances, refusal to accept, or returning a prohibited gift, may be awkward or contrary to the interests of MLGW, as in the case of a national or international custom. In those instances, the Officer, Employee or Board Member must provide written disclosure of the circumstances surrounding receipt of the gift to the Board of Ethics within ten days. The Board of Ethics shall then determine the proper disposition of the gift.

(6) All persons awarded a contract with MLGW of greater than \$5,000, to whom MLGW remits more than \$10,000 per year, or who receive approval for use of land from MLGW, shall execute a statement declaring under penalty of perjury that they have not given, directly or indirectly, any prohibited Gratuity to any Officer, Employee, or Board Member or their immediate family, including spouses and other persons of similarly close personal relationship, and file the declaration with the Chief Ethics Officer.

Section 5. General standards of conduct for Officers, Employees and Board Members.

Officers, Employees, Board Members and their spouses and other persons of similarly close personal relationship, as regards the Officer, Employee, or Board Member's MLGW.

- (a) Shall not accept or solicit, for personal financial gain, any benefit that might reasonably tend to influence them to act improperly in the discharge of their Official Duties.
- (b) Shall not accept or solicit bribery.
- (c) Shall promptly report to their supervisor, the Vice President and General Counsel, the Chief Ethics Officer and, as appropriate, the district attorney general or other investigative authority any attempts made to bribe the Officer, Employee or Board Member.
- (d) Shall not accept or solicit any cash of any amount, other than in compliance with

MLGW Policy, election campaign laws and fully reported pursuant to same, irrespective of the intent of the payor, if such payment or solicitation is in any way directly or indirectly related to the Officer, Employee or Board Member's MLGW duties.

- (e) Shall not accept or solicit a Gratuity, except as provided herein.
- (f) Shall not accept or solicit any promise of any benefit, direct or indirect, to himself, family members, including his or her spouse or other persons with whom the Officer, Employee or Board Member has a similarly close personal relationship, or his employer which the Officer, Employee or Board Member believes or should reasonably believe was intended to influence action taken or not taken in the Officer, Employee or Board Member's official capacity.
- (g) Shall not receive or use for personal purposes or the advantage of any private person any property, services or funds of MLGW unless authorized by law or MLGW Policy.
- (h) Shall not use for personal gain, or for the gain of any spouse or other person of similarly close personal relationship or employer, information pertaining to MLGW which is not a matter of common knowledge, or use his or her position to secure information about any person or entity for any purpose other than the performance of official responsibility.
- (i) Shall not use their positions improperly to secure unwarranted privileges or exemptions for themselves, their spouses or other persons of similarly close personal relationship, or others, provided, however, that this provision does not preclude Officers, Employees, or Board Members from acting in a manner consistent with their

Official Duties or from zealously providing public services to anyone who is entitled to them.

- (j) Shall not participate in making or influencing any MLGW decision or action in which they know that they have any material financial interest distinguishable from that of the public generally or from that of other MLGW Officers, Employees or Board Members generally.
- (k) Shall not give reasonable basis by their conduct for the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their Official Duties, or that they are unduly affected by the kinship, rank, position or influence of any person.
- (l) Shall not use or disclose, other than in the performance of their Official Duties or as may be required by law, Confidential Information gained in the course of, or by reason of, their positions.
- (m) Shall not lend or borrow money to or from an Officer, Employee or Board Member or, Prohibited Source. Excepted are loans of \$2000 or less which may be made in emergencies. When these loans are made in emergencies, if not made voluntarily without charge, they shall be made only at the legal rate of interest on judgments. No official whose duty it is to pay an Employee may deduct the amount so lent from the pay of the Employee. All such accommodations or advances made, together with the interest thereon, shall be reported by the lender and borrower to the head of his or her department or, if involving the head of the department, to the President or, if involving a Board Member to the Chairman.
- (n) No Officer, Employee or Board Member who handles or controls any funds of

MLGW shall become surety, guarantor, or endorser of any bond, note, or other obligation for any Officer, Employee, or Board Member excluding a member of the Officer, Employee or Board Member's immediate family, an adult child or parent.

(o) Shall not, for a period of one year after separation from service or employment, appear before any Agency or receive compensation for any services rendered on behalf of any person, Business or association in relation to any case, proceeding, or application, with respect to which such former Officer, Employee, or Board Member:

- (1) was directly concerned or in which such Officer, Employee, or Board Member personally participated during the period of such Officer, Employee, or Board Member's employment; or
- (2) which was under such Officer, Employee, or Board Member's active consideration; or
- (3) with respect to which knowledge of information not available to the general public was made available to such Officer, Employee, or Board Member during the period of such Officer, Employee, or Board Member's service or employment.

Nothing in this Subsection precludes a former Officer, Employee, or Board Member from being engaged directly by MGLW to provide services to or on behalf of MLGW during this one-year period.

Section 6. Applicable State Laws.

(a) In addition to the ethical principles set out in this Code of Ethics, state laws provide a framework for the ethical behavior of municipal Officers, Employee, or Board Members in the performance of their duties. Officers, Employees and Board Members shall familiarize themselves with the state laws applicable to their office or position and the performance of their duties. To the extent that an issue is addressed by state law (law of general application, public law of local application, local option law, or private act), the provisions of state law, to the extent they are more restrictive, shall control. The following is a list of selected state laws concerning ethics in municipal government:

Bribery for votes – T.C.A. §§ 2-19-121, 2-19-126, and 2-19-127 prohibit bribery of voters in elections.

Campaign finance – T.C.A. §§ 2-10-1 et seq. (campaign financial disclosure) requires candidates for public office to disclose contributions and contributors to their campaigns. T.C.A. §§ 2-10-3 et seq. (campaign contribution limits) limits the total amount of campaign contributions a candidate may receive from an individual and sets limits on the amount a candidate may receive in cash.

Conflict of interest – T.C.A. § 12-4-101 is the general conflict of interest statute that applies to all municipalities. It prohibits anyone who votes for, lets out, or in any manner supervises any work or contract from having a direct financial interest in that contract, purchase or work, and it requires disclosure of indirect financial interest by public acknowledgement.

Conflict of interest – T.C.A. § 49-6-2003 applies to the department of education in all municipalities and prohibits direct and indirect conflicts of interest in the sale of supplies for use in public schools.

Conflict of interest – T.C.A. § 5-1-125 applies in all municipalities and prohibits municipal Officials and Employees from purchasing surplus county property except where it is sold by public bid.

Conflict of interest – T.C.A. § 5-5-102 and 12-4-101 govern disclosures and abstentions from voting due to conflicts of interest of members of municipal legislative bodies.

Conflict of interest disclosure statements – T.C.A. §§ 8-50-501 et seq. require candidates and appointees to local public offices to file a disclosure statement with the state ethics commission listing major sources of income, investments, lobbying activities, professional services provided, bankruptcies, certain loans, and other information, and to keep these statements up to date.

Honoraria – T.C.A. § 2-10-116 prohibits elected Official from accepting an Honorarium (including money or anything of value, but not including reimbursement for actual expenses) for an appearance, speech, or article in their official capacity.

Court sales – T.C.A. § 39-16-405 prohibits judges, clerks of court, court Officials, and Employees of court, from bidding on or purchasing any property sold through the court for which person discharges Official Duties.

Rules of the Tennessee Supreme Court – Rule 10 (Code of Judicial Conduct) establishes ethical rules for judges and other court personnel when exercising judicial functions.

Fee statutes – T.C.A. §§ 8-21-101, 8-21-102, and 8-21-103 set our circumstances where fees are authorized, prohibit Officials from requiring payment of fees in advance of performance of services except where specifically authorized, and set penalties for charging excessive or unauthorized fees.

Municipal Contracts – T.C.A. § 6-54-107 prohibits City official, whether elected or appointed, from performing or holding a controlling interest in an organization that performs municipal contracts.

Consulting fee prohibition for elected City Officials – T.C.A. §§ 2-10-122 and 2-10-124 prohibit Official from receiving compensation for advising or assisting a person or entity in influencing municipal legislative or administrative action.

Crimes involving public officials – T.C.A. §§ 39-16-101 et seq. prohibit bribery, soliciting unlawful compensation, and buying and selling in regard to offices.

Official misconduct – T.C.A. § 39-16-402 applies to public servants and candidates for office and prohibits unauthorized exercise of official power, acting in an official capacity exceeding the servant's power, refusal to perform a duty imposed by law, violating a law relating to the servant's office or employment, and receiving a benefit not provided by law.

Official oppression – T.C.A. § 39-16-403 prohibits abuse of power by a public servant.

Misuse of official information – T.C.A. § 39-16-404 prohibits a public servant from attaining a benefit or aiding another person in attaining a benefit from information which was obtained in an official capacity and is not available to the public.

Ouster law – T.C.A. § 8-47-101 sets out conduct that is punishable by ouster from office, including misconduct in office and neglect of duty.

- (b) The violation of any applicable law listed in Section (a) shall be a violation of this Code of Ethics.

Section 7. Outside employment.

- (a) An Officer or Employee, or Board Member may not accept or continue any outside employment if the work unreasonably inhibits the performance of any Official Duties of the Officer, Employee, or Board Member or conflicts with any provision of MLGW's Charter or applicable City Charter or ordinances.
- (b) This Section does not prohibit a part-time Officer, Employee or Board Member from holding other employment in a position that may have incidental or occasional contact with MLGW. Further,

such other employment may be his/her primary source of income, provided he/she discloses his/her interest and otherwise complies with this Code of Ethics and state law regarding conflicts of interest.

Section 8. Violations. The President or a Board Member or any appointed member of a separate board, commission, committee, authority, corporation, or other instrumentality created by MLGW who violates any provision of this ordinance is subject to punishment as provided by the Policy or other applicable law and, in addition, is subject to censure or removal by the City Council. Any officer or employee who violates any provision of this Ordinance is subject to disciplinary action up to, and including, termination of employment.

Section 9. Repealer clause. All policies which are inconsistent with the provisions of this Policy are hereby repealed to the extent of such inconsistency.

Section 10. Vice President & Secretary-Treasurer to file a copy of this Ethics Policy with the Tennessee Ethics Commission. Upon adoption by the Board, the Vice President & Secretary-Treasurer is hereby directed to file a duly signed and attested copy of this Policy with the Tennessee Ethics Commission, as required by state law.

Section 11. Effective date. This Policy shall become effective from and after its date of adoption.

PASSED AND APPROVED THIS 21st day of June, 2007 BY A ROLL CALL VOTE OF THE BOARD OF COMMISSIONERS OF MEMPHIS LIGHT, GAS AND WATER DIVISION OF THE CITY OF MEMPHIS, TENNESSEE.



ATTEST:


