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ORDINANCE NO. 1349

AN ORDINANCE TO ADOPT A CODE OF ETHICS FOR THE CITY OF TULLAHOMA, TENNESSEE AND TO REPEAL RESOLUTION NO 1287 PREVIOUSLY ADOPTING A CODE OF ETHICS FOR THE CITY OF TULLAHOMA, TENNESSEE

WHEREAS, a public hearing was held on the 12th day of January 2007 commencing at 11:30 a.m. and notice thereof was published in the *Tullahoma News* on the 7th day of January 2007 at which hearing the members of the public were allowed to be present and to speak on the proposed ordinance and;

WHEREAS, there was no opposition to the proposed ordinance enacting a code of ethics for the City of Tullahoma, and;

WHEREAS, the Tennessee General Assembly has heretofore enacted the Comprehensive Governmental Ethics Reform Act of 2006 that mandated all local governments adopt a code of ethics by ordinance on or before July 1, 2007 and;

WHEREAS, said Comprehensive Governmental Ethics Reform Act for 2006 charged the University of Tennessee Municipal Technical Advisory Service (MTAS) with drafting a model code of ethics for consideration by municipalities in Tennessee and;

WHEREAS, the Board of Mayor and Aldermen desire to adopt the said model code of ethics as drafted by the University of Tennessee Municipal Technical Advisory Service (MTAS) with certain modifications thereto and by the adoption of the Ordinance herein, repeal Resolution No. 1287 as adopted as adopted January 9, 2006 and;

WHEREAS, a code of ethics is intended to provide ethical guidelines for City Board Members, employees and appointed Board, Authority and Commission members that are responsive to the public needs and to preclude even the appearance of impropriety in the

performance of their duties; and

WHEREAS, Board members, appointed Board and Commission members, department heads and supervisors must take a leadership role in the promotion and execution of the code of ethics as provided for herein; and

WHEREAS, all City officials and employees have a responsibility to place cooperation, trust and respect at the head of all they do.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF TULLAHOMA, TENNESSEE as follows:

SECTION 1. That a Code of Ethics be adopted as setforth in Exhibit A and that Resolution No. 1287 as adopted on January 9, 2006 be and the same is hereby repealed and superseded by the said Code of Ethics as attached hereto as Exhibit A.

SECTION 2. That all Ordinances in conflict herewith and all provisions in the Code of Ordinances of the City of Tullahoma, in conflict herewith are hereby repealed in their entirety to the extent of any conflicts.

SECTION 3. That if any section, subsection, paragraph, sentence, item or clause of this Ordinance shall for any reason be declared unconstitutional or invalid, such declaration shall not affect any other portion of this Ordinance, it being the intent that the sections, subsections, paragraphs, sentences, items or clauses of this Ordinance shall be treated as severable.

SECTION 4. That this Ordinance shall take effect and be in full force and effect from and after its passage and from and after its caption being published one time in a newspaper of general circulation in Coffee County, Tennessee, the public welfare requiring it.

Enacted this 22nd day of January, 2007.

CITY OF TULLAHOMA, TENNESSEE

BY: *Leroy B. Bishop*
MAYOR

ATTEST:

Rozanna Womack
CITY RECORDER

PASSED ON FIRST READING: January 8, 2007, as amended

PASSED ON SECOND READING: January 22, 2007, as amended

I, the undersigned City Recorder of the City of Tullahoma, Tennessee do hereby certify that this is a true and correct copy of the original of this instrument.

Rozanna Womack
City Recorder

01-25-07
Date

EXHIBIT "A"
CODE OF ETHICS

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.
- (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 himself 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 the ethics officer and filed with

the ethics officer and city 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. Nothing in this section is meant to prohibit customary hospitality practices.

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.

(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 law or agreement 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 shall render an oral or written advisory ethics opinion based upon this chapter and other applicable law.

2)(a) 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.

(b) The city attorney shall 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) 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.

(d) The results of said investigation by the city attorney or ethics officer shall be submitted to the internal affairs committee who shall render a report to the Board of Mayor and Aldermen.

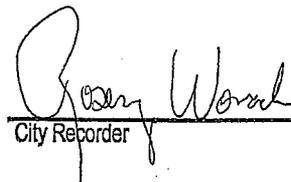
(3) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics.

(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 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. Any advisory board, authority or commission may seek the counsel of the advisory board, authority or commission's legal counsel on questions regarding the interpretation of these ethics guidelines or other conflict of interest matters. The interpretation may include a recommendation on whether or not the advisory board, authority or commission member should excuse himself/herself from voting. The advisory board, authority or commission

member may request that counsel respond in writing.

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.

I, the undersigned City Recorder of the City of Tullahoma, Tennessee do hereby certify that this is a true and correct copy of the original of this instrument.


City Recorder

01-25-07
Date

City of Tullahoma

Memo

To: Honorable Members of the Board of Mayor and Aldermen
From: Alderman Janice Bowling, Policy Committee Chairman
CC: Mr. Randall Morrison, City Attorney
Date: January 5, 2007
Re: Adoption of Code of Ethics – Compliance with New State Law

The Policy Committee (Aldermen Bowling, James; Alderman Trimble absent) and staff met on January 4, 2007 to compare the City's existing Code of Ethics with the new State Ethics requirements as further set forth in the State-endorsed Model developed by the University of Tennessee Municipal Technical Advisory Service (Attachment A). Last year the City was pro-active in that a Code of Ethics was adopted prior to the issue becoming one of State-wide significance, however, in doing so there was no way for the City to anticipate the requirements of the resulting State legislation. Therefore, the Policy Committee worked to reconcile the two pieces of legislation. As a result of that work, the Policy Committee has provided for your reference a comparison between the recommendation of the Policy Committee and our current Code of Ethics that was adopted by Resolution in January 2006 (Attachment B).

Based on the review, and the requirement that all cities adopt a Code of Ethics *by ordinance* that is compliance with the provisions of State law by July 1, 2007, the Policy Committee recommends that the Board consider the attached Ordinance for First Reading.

Further, as this Ordinance will govern other city agencies, the Policy Committee has scheduled a public hearing for January 12, 2007 to review the state requirements and proposed ordinance with interested persons and agency representatives. The input received will be forwarded to the Board of Mayor and Aldermen for consideration prior to the second and final reading.

RECOMMENDATION

The Policy Committee recommends adoption of the proposed Ordinance.

NOTE: The attached Ordinance reflects the amendment made at the January 8, 2007 meeting of the Board of Mayor & Aldermen.



MTAS
**Municipal Technical
Advisory Service**

*In cooperation with the
Tennessee Municipal League*

ATTACHMENT A

#130

**HOT
topic**

July 25, 2006

MUNICIPALITIES REQUIRED TO ADOPT CODES OF ETHICS

Dennis Huffer, Legal Consultant

Public Chapter No. 1 of the Extraordinary Session of the 2006 General Assembly requires municipalities to adopt a code of ethics by ordinance. This must be done by July 1, 2007, or members of the municipal governing body will be subject to ouster. The ordinance restrictions must apply to boards, commissions, authorities, corporations, and other entities created or appointed by the municipality.

The act charges MTAS with developing model ethical standards for municipalities. Municipalities are not required to adopt the MTAS model, but if they do not, they must send a copy of the ordinance they adopt to the newly created Tennessee Ethics Commission. Municipalities that adopt the MTAS model must simply notify the commission in writing that the MTAS model was adopted, along with the date of adoption. The proposed MTAS model ordinance provisions accompany this bulletin.

The act also affects entities created by interlocal agreement under the state's general Interlocal Cooperation Act (T.C.A. § 12-9-101 and the following sections) or otherwise. These entities must also adopt an ethics code. Rather

than requiring the ethics provisions to be enacted by the governing boards of these entities, however, the act requires the agreement itself to be amended to include the ethics standards. Therefore, municipalities participating in interlocal agreements should take steps to ensure the agreement is amended to include ethical standards. The accompanying model code of ethics provisions can also be used for this purpose.

The act requires local ethics standards to include two restrictions: (1) rules setting limits on and/or providing for reasonable and systematic disclosure of gifts or other things of value received by officials or employees that affect or appear to affect their discretion, and (2) rules requiring reasonable and systematic disclosure by officials and employees of personal interests that affect or appear to affect their discretion. In the MTAS model, we have combined these two restrictions with other ethics provisions that municipalities have commonly adopted. These model provisions are meant to replace the existing provisions in the municipality's code of ordinances or simply to be added as a new chapter if the code has no similar provisions.

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Dennis Huffer, Legal Consultant

In the first footnote in the proposed model, we note several state statutes that establish ethical provisions for municipal officials and employees. The purpose of including these references along with the ethical restrictions in the proposed ordinance provisions is so municipal officials and employees can consult one source to determine most of the ethical restrictions that apply to them.

As noted above, many municipalities already have ordinances that prohibit the city's officials and employees from accepting any gift or thing of value that could be interpreted as an attempt to influence the officer's or employee's actions with respect to city business. Many have ordinances prohibiting officials and employees from using their positions for personal gain. Many municipalities have also adopted ethics regulations by personnel policy or as part of an employee handbook. Some have ordinances requiring disclosure of personal interests that could affect their decisions.

The question will probably arise whether municipalities can simply send the Ethics Commission a copy of their existing

ordinances that prohibit gifts, using a position for personal gain, etc., and thus satisfy this new law. In most cases this will not be adequate. Although most cities already have ordinances that are more restrictive on receiving gifts and other things of value than those required by the act, most do not meet the disclosure requirements of personal interests. This is perhaps because there is a state law requiring these disclosures for elected officials (T.C.A. § 8-50-501 and the following sections), and municipal officials have seen no need to expand on this law.

The ethics act uses the future imperative "shall adopt" in requiring local governments to enact these ethics provisions. It has no provision recognizing that existing ordinances or policies might be adequate. And, as noted above, most existing ordinances do not require disclosure of personal interests in addition to that already required under state law. For these reasons—and possible ouster for failing to do so—most municipalities would be better advised to adopt either the MTAS model or their own ordinance by June 30, 2007.

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MUNICIPALITIES REQUIRED TO ADOPT CODES OF ETHICS

Dennis Huffer, Legal Consultant

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.

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 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

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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Dennis Huffer, Legal Consultant

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

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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

Knoxville (Headquarters) . . . (865) 974-0411	Jackson (731) 423-3710
Johnson City (423) 854-9882	Nashville (615) 532-6827
(423) 282-0416	Martin (731) 881-7057

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. Assistance is offered in areas such as accounting, administration, finance, public works, ordinance codification, and water and wastewater management.

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. Photocopying of this publication in small quantities for educational purposes is encouraged. For permission to copy and distribute large quantities, please contact the MTAS Knoxville office at (865) 974-0411.

www.mtas.tennessee.edu

The University of Tennessee is an EEO/AA/Title VI/Title IX/Section 504/ADA/ADEA institution.
MTAS0930 • E14-1050-000-002-07

City (or Town) of _____

Disclosure of Personal Interest

This form should be filled out and filed with the recorder or clerk by any municipal employee or official, except those who serve on boards or other bodies, who must exercise discretion relative to any matter and who has a personal interest in the matter. A personal interest is any financial, ownership, or financial interest in a matter to be regulated or supervised by the employee or official that could affect the employee's or official's discretion. This includes any financial, ownership, or employment interest of the employee's or official's spouse, parent(s), step parent(s), grandparent(s), sibling(s), child(ren), or step child(ren). "Employment interest" includes any situation in which the employee or official or one or more of his or her family members designated above is negotiating possible employment with a person or organization that is to be regulated or supervised by the employee or official in carrying out municipal business. Use item 1 of this form to report individual occurrences and item 2 to make a yearly report of situations that will occur more than once during a calendar year.

NAME OF EMPLOYEE OR OFFICIAL: _____

1. Individual occurrence

BRIEFLY DESCRIBE THE SITUATION IN WHICH YOU MUST EXERCISE DISCRETION AND IN WHICH YOU HAVE A PERSONAL INTEREST THAT COULD AFFECT THAT DISCRETION:

2. Continual occurrences

FOR INDIVIDUALS, BUSINESSES, OR ENTITIES THE MUNICIPALITY WILL ENTER INTO TRANSACTIONS WITH MORE THAN ONCE EACH CALENDAR YEAR AND IN WHICH YOU HAVE A PERSONAL INTEREST, YOU MAY MAKE ONE (1) DISCLOSURE FOR THE CALENDAR YEAR BY REPORTING HERE:

Name of Individual, Business, or Entity _____

Briefly describe the transactions that will take place between the municipality and the named entity during the calendar year in which you will exercise discretion and in which you have a personal interest that could affect that discretion:

Date: _____

Employee's or Official's Signature

P. Andrew Wright, Jr.
City Attorney

Catherine Wallace
Paralegal



Telephone: (615) 443-8610
Facsimile: (615) 444-8612

Email: awright@lebanontn.org
cwallace@lebanontn.org

CITY OF LEBANON
Office of City Attorney

August 16, 2006

Board of Professional Responsibility
1101 Kermit Drive, Suite 730
Nashville, TN 37217

RE: Ethics Opinion Request

Dear Board Members:

As the City Attorney for the City of Lebanon, I represent the corporate entity of the City itself as well as the Mayor and the City Council. I represent these three entities equally in all matters and render legal advice, draft requested legislation, and strive to protect and enforce the legal interests of all three entities.

Recently, the Tennessee General Assembly enacted the Comprehensive Governmental Ethics Reform Act of 2006 (Act) that mandated all local governments adopt a code of ethics by ordinance by July 1, 2007. Additionally, this Act charged the University of Tennessee Municipal Technical Advisory Service (MTAS) with drafting a model code of ethics for consideration by the municipalities. The Act allows municipalities to simply adopt the MTAS model or, if a municipality chooses to adopt a different code of ethics, the Act requires that the burgeoning Tennessee Ethics Commission preapprove any code of ethics up for consideration by a municipality that is different from the MTAS model. The Lebanon City Council has approved on first reading (there must be two readings) the MTAS model in its entirety.

I have enclosed a copy of the MTAS model and I would direct attention to Section 10: Ethics Complaints. In this section of the model, the city attorney is designated as the "ethics officer" and is charged with investigating credible ethics complaints against city officials (both elected and appointed) and employees. Additionally, part (2)(a) of this section requires the city attorney to "make recommendations to end or seek retribution for any activity that, in the attorney's judgment, constitutes a violation of (the) code of ethics." As I read Supreme Court Rule 8, Ch. 1.13 (Organizational Clients) and the subsequent comments to that chapter, and attempt to mesh what is required of me professionally as the city attorney with what would be required of me as the city's ethics officer, I see a great potential for conflict.

Board of Professional Responsibility

August 16, 2006

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For example, one of the comments to Ch. 1.13 states:

When one of the constituents of an organizational client communicates with the organization's lawyer in that constituent's organizational capacity, the communication is protected by RPC 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by RPC 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by RPC 1.6.

If "interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by RPC 1.6," how can the city attorney properly report to a city council/mayor the findings of an ethics investigation, and more to the point, how could the city attorney, under Section 10(2)(a) of our proposed code of ethics, properly "make recommendations for action to end or seek retribution for" an ethics violation if the city attorney can't communicate the findings?

Additionally, while Ch. 1.13 perceivably allows the city attorney to conduct such an investigation, the Tennessee Open Records Act would make any findings subject to public disclosure. Could a city attorney not only be forced to disclose findings of an ethics investigation, but also be forced to turn over evidence that could be detrimental and adverse to his/her client's interests upon a public information request, and not be in violation of the Rules of Professional Conduct's confidentiality and loyalty requirements?

Thank you for time and attention to this matter.

With best regards,



Andy Wright
Lebanon City Attorney

Enc: MTAS Model Code of Ethics



**BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

LANCE B. BRACY
CHIEF DISCIPLINARY COUNSEL

LAURA L. CHASTAIN
DEPUTY CHIEF DISCIPLINARY COUNSEL

BEVERLY P. SHARPE
CONSUMER COUNSEL/DIRECTOR

1101 KERMIT DRIVE, SUITE 730
NASHVILLE, TENNESSEE 37217
TELEPHONE: (615) 361-7500
(800) 486-5714
FAX: (615) 367-2480
E-MAIL: ethics@tbpr.org

WILLIAM W. HUNT, III
CHARLES A. HIGH
SANDY GARRETT
JESSE D. JOSEPH
JAMES A. VICK
THERESA M. COSTONIS
DISCIPLINARY COUNSEL

August 21, 2006

P. Andrew Wright, Jr., Esquire
City Attorney
200 Castle Heights Avenue North
Lebanon, TN 37087

Dear Mr. Wright:

Thanks for your inquiry concerning your compliance, as City Attorney, with the MTAS Model Code of Ethics adopted by the City of Lebanon.

There is no conflict or tension between Section 10 of the MTAS Model Code and RPC 1.13. The genesis of the tension which you contemplate appears to be your perception of representing, without exception, "the corporate entity of the City itself as well as the Mayor and the City Council --- to protect and enforce the legal interests of all three entities."

RPC 1.13(a) identifies "the organization acting through its duly authorized constituents" as your client. RPC 1.13(e) permits representation of "any of its directors, officers, employees, members --- or other constituents, subject to the provisions of Rules 1.7 and 2.2." (emphasis added)

Section 10(2)(b) and (c) of the MTAS Model Code of Ethics gives directions regarding conflicts of interests and the concerns raised in your inquiry, which are similar and analogous to, and not in conflict with the directions given in RPC 1.13.

Sincerely,

Lance B. Bracy
Chief Disciplinary Counsel

LBB:cj

CODE OF ETHICS COMPARISON

<p style="text-align: center;">TULLAHOMA POLICY COMMITTEE RECOMMENDATION (BASED ON MTAS MODEL)</p> <p>[Changes to the MTAS Model are shown by either strikethroughs or italics]</p>	<p style="text-align: center;">TULLAHOMA RESOLUTION 1287 Adopted January 9, 2006</p>
<p>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.</p>	<p>All City Board members, employees and Board and Mayor-appointed Board and Commission members have an obligation to conduct their official duties in a manner that serves the public interest, upholds the public trust and protects the City's resources. To this end, City Board members, employees and Board and Mayor-appointed Board and Commission members have a responsibility to:</p> <p>Perform their duties to the very best of their abilities, treating the public and each other in a courteous manner that is fair and equitable, without regard to race, color, sex, age, religion, national origin, disability, political affiliation, or any other factor unrelated to the impartial conduct of City business.</p> <p>Demonstrate integrity, honesty, and ethical behavior in the conduct of all City business.</p>
<p>SECTION 2. Definition of "personal interest." (1) For purposes of Sections 3 and 4, "personal interest" means:</p> <p>(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</p> <p>(b) Any financial, ownership, or employment interest in a matter to be regulated or supervised; or</p> <p>(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</p>	<p>Ensure that their personal interests do not come into conflict with their official duties, resulting in a real conflict of interest or the appearance of a conflict of interest. This shall apply to City Board members, employees and Board and Mayor-appointed Board and Commission members when dealing with vendors, customers, and other individuals doing business or seeking to do business with the City.</p>

<p>stepchild(ren).</p> <p>(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.</p> <p>(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.</p>	
<p>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 shall recuse himself from voting on the measure.</p>	<p>If the advisory board, authority, or commission member believes he/she has a conflict of interest then that member should inform the advisory board, authority or commission that they will abstain from that vote.</p>
<p>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 <i>the ethics officer and filed with the ethics officer and city</i> 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.</p>	<p>Members of advisory boards, authorities and commissions shall not discuss, advocate, or vote on any matter in which they have a conflict of interest or an interest which reasonably might appear to be in conflict with the concept of fairness in dealing with public business. A conflict of interest or a potential conflict of interest occurs if a member has a separate, private, or monetary interest, either direct or indirect, in any issue or transaction under consideration. Any member who violates this provision may be subject to removal from the board, authority or commission.</p>
<p>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:</p>	<p>Ensure that they do not accept any gift, favor or thing of value that may tend to influence the discharge of their duties, or grant any improper favor, service or thing of value in the discharge of their duties.</p>

<p>(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</p> <p>(2) That might reasonably be interpreted as an attempt to influence his action, or reward him for past action, in executing municipal business.</p>	
<p>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.</p> <p>(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.</p>	<p>Ensure that information concerning the property, government or affairs of the City is held confidential, disclosed only with proper legal authorization, and never to advance the financial or other special interest of themselves or others.</p>
<p>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. (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 law or agreement legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.</p>	<p>Ensure that all City resources, including City funds, equipment, vehicles and other property, are used in strict compliance with City policies and solely for the benefit of the City. To ensure that city employees do not receive unauthorized or conflicting directives, individual Board members and Board and Commission members without supervisory responsibilities shall not give direction to city employees and departments except as directed by the majority of Board of Mayor and Aldermen to the City Administrator.</p> <p>Avoid any behavior that could fall under the definitions of misconduct in Section 8.6 of the City's <i>Personnel Regulations</i>.</p>
<p>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.</p> <p>(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,</p>	

<p>general law, or ordinance or policy of the municipality.</p>	
<p>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.</p>	
<p>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 shall render an oral or written advisory ethics opinion based upon this chapter and other applicable law.</p> <p>(2) (e) (a) 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.</p> <p>(b) The city attorney may shall 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.</p> <p>(a) (c) 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</p>	<p>Any advisory board, authority or commission may seek the counsel of the advisory board, authority or commission's legal counsel on questions regarding the interpretation of these ethics guidelines or other conflict of interest matters. The interpretation may include a recommendation on whether or not the advisory board, authority or commission member should excuse himself/herself from voting. The advisory board, authority or commission member may request that counsel respond in writing.</p>

<p>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.</p> <p><i>(d) The results of said investigation by the city attorney or ethics officer shall be submitted to the internal affairs committee who shall render a report to the Board of Mayor and Aldermen.</i></p> <p>(3) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics.</p> <p>(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 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.</p>	
<p>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.</p>	

1-213. Establishment of policy committee and internal affairs committee. There is hereby established from members of the board of mayor and aldermen a policy committee and an internal affairs committee as follows:

(1) Policy committee. Each year, immediately following the organizational meeting, the mayor shall appoint, for a one year term, three aldermen, one designated by the mayor as chairman, to the policy committee of the board of mayor and aldermen. The purpose of this committee shall be to prepare policy statements for approval by the board, to insure that board members are supplied with a current copy of all approved board policies, and to perform whatever other duties as are directed by the board from time to time.

(2) Internal affairs committee. Each year, immediately following the organizational meeting, the mayor shall appoint, for a one year term, three aldermen, one designated by the mayor as chairman, to the internal affairs committee of the board of mayor and aldermen.

The purpose of the internal affairs committee is to prepare procedures relating to internal affairs for approval by the board, as directed by the board; to insure that board members are supplied with current copy of all board procedures; and to perform those other activities sanctioned by board policy.

Action proposed by the policy committee and internal affairs committee shall be referred to the full board for discussion and approval and rejection. All policies recommended by the policy committee or the internal affairs committee, and all procedures, if approved by the board, shall be approved by resolution.

No alderman may serve on both the policy committee and internal affairs committee. (1988 Code, § 1-213)