

# New Tax Collector Workshop

## The Ethical Administration of Governmental Financial Resources

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# **The Ethical Administration of Governmental Financial Resources**

This presentation is intended for informational purposes only, and is not a substitute for seeking professional advice or for reviewing the applicable laws and rules. This presentation represents some positions of the Department on the limited issues discussed herein, based on the law in effect at the time of the presentation and Department interpretation thereof, as well as the opinions and conclusions of its presenter.

For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.) for independent verification.

# Outline

- What is Ethics?
- Government Finance Officers' Association (“GFOA”) Code of Professional Ethics
- Why do Ethics Matter?
  - Trust
    - Respect, Trust, and Confidence of the Public
    - Conflict of Interest
    - Management of Information
    - Respect, Trust, and Confidence of Other Public Officials and Employees
  - Public Scrutiny
    - Supervision
    - Criminal Penalties

# What is Ethics?

- Ethics is knowing what you ought to do.
- Ethics is derived from the Greek word *ethos*, meaning custom, habit, character, or disposition.
- Doing the right thing depending on well-established standards of behavior.
  - **The Golden Rule:** Treat others the way you would like to be treated.
  - **Would you do it if your mother was watching?**
- *“Relativity applies to physics, not ethics.” – Albert Einstein*

# GFOA Code of Professional Ethics

- Available at [http://nhgfoa.vt-s.net/pages/nhgfoa\\_about/Policy-CodeofEthics-Reviewed01-09-14.pdf](http://nhgfoa.vt-s.net/pages/nhgfoa_about/Policy-CodeofEthics-Reviewed01-09-14.pdf).
- The code sets forth well-established standards of professional conduct for tax collectors – i.e., standards of integrity, responsibility, accountability, and disinterested conduct.
- **Purpose:**
  - To enhance the performance of tax collectors by providing a useful benchmark against which tax collectors can measure their professional integrity; and
  - To encourage a higher standard of professional conduct for tax collectors by supplementing existing laws.
- Statutory requirements are important, but they may set relatively low standards for acceptable behavior.
- Tax collectors who meets minimum statutory requirements may be safe from civil action or criminal prosecution, but may still be viewed as unethical.

# Why Do Ethics Matter?

## TRUST

**THE MOST  
EXPENSIVE  
THING IN THIS  
WORLD IS  
TRUST. IT CAN  
TAKE YEARS TO  
EARN AND ONLY  
A MATTER OF  
SECONDS TO  
LOSE.**

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*|| It takes 20 years  
to build a reputation  
and five minutes to  
ruin it. If you think  
about that, you'll  
do things differently.*

Warren Buffett

# Respect, Trust, and Confidence *of the Public*

- Personal Standards – Government finance officers shall:
  1. Demonstrate and be dedicated to the highest ideals of honor and integrity in all public and personal relationships *to merit the respect, trust, and confidence ... of the public.*
  2. Devote their time, skills, and energies to their office both independently and in cooperation with other professionals.
  3. Abide by approved professional practices and recommended standards.
- There is a need to promote and earn the public's trust.
- Ethical decision-making invites the public's confidence in, and respect for, government.

# Respect, Trust, and Confidence *of the Public (Cont.)*

- Responsibility as Public Officials – Government finance officers shall:
  1. Recognize and be accountable for their responsibilities as officials in the public sector.
  2. Be sensitive and responsive to the rights of the public and its changing needs.
  3. Strive to provide the highest quality of performance and counsel.
  4. Exercise prudence and integrity in the management of funds in their custody and in all financial transactions.
  5. Uphold both the letter and the spirit of the constitution, legislation, and regulations governing their actions and report violations of the law to the appropriate authorities.
- *“The only correct actions are those that demand no explanation and no apology.” – Red Auerbach*



# Respect, Trust, and Confidence *of the Public* (Cont.)

- It only takes one charge of impropriety ...
  - To taint your career; and
  - To damage the reputation of the municipality you represent (or, more likely, used to represent).
- Even if you are cleared of wrongdoing, public mistrust of both you and the municipality can linger indefinitely.

# Respect, Trust, and Confidence *of the Public* (Cont.)

- The public is significantly concerned with the management of governmental financial resources and may challenge your professional integrity.
- Demonstrate and be dedicated to the highest ideals of honor and integrity.
- Even the appearance of unethical behavior can damage your reputation.

# Respect, Trust, and Confidence *of the Public* (Cont.)

- *In re City of Berlin* (March 17, 2021)
- Board of Tax Appeals held that the *appearance* of impropriety called for remedies
- Strict ethical standards on the part of public officials and the avoidance of the appearance of impropriety in their conduct.
- You owe a fiduciary duty to the taxpayers

# Conflict of Interest

- Conflict of Interest – Government finance officers shall:
  1. Actively avoid the appearance of or the fact of conflicting interests.
  2. Discharge their duties without favor and shall refrain from engaging in any outside matters of financial or personal interest incompatible with the impartial and objective performance of their duties.
  3. Not, directly or indirectly, seek or accept personal gain which would influence, or appear to influence, the conduct of their official duties.
  4. Not use public property or resources for personal or political gain.

# Conflict of Interest (Cont.)

- **General Rule:** a conflict of interest will be found when an official has a personal or financial interest in the outcome.
- The NH Supreme Court has explained:  
“The reasons for this rule are obvious. A man cannot serve two masters at the same time, and the public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is, or may be, in conflict with the public interest.” Atherton v. Concord, 109 N.H. 164 (1968).

# Conflict of Interest (Cont.)

- Conflict of interest laws/policies provides clarity – i.e., behavior necessary to instill trust and faith in government.
- Massachusetts Conflict of Interest Law, G.L. c. 268A  
“To prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public’s trust and confidence in that service.”
- However, not all conflicts of interest are prohibited by law.
- GFOA Code of Professional Ethics supplements existing laws/ordinances.
- **Actively avoid the appearance of or the fact of conflicting interests.**

# Conflict of Interest (Cont.)

- Be aware of conflicting interests.
- Even the appearance of conflicting interests undermines the respect, trust, and confidence of the public.
- Remember that you are in a position of public trust.
  - Responsible for ensuring that public resources are used in the best interests of the public, including effectively and efficiently.
  - Required to put the public's interests before your own.
- A charge of conflict of interest goes to the heart of the people's trust in government.
- In fact and appearance, your actions and interests must be above reproach.

# Management of Information

- Professional Integrity/Information – Government finance officers shall:
  1. Demonstrate professional integrity in the issuance and management of information.
  2. Not knowingly sign, subscribe to, or permit the issuance of any statement or report which contains any misstatement or which omits any material fact.
  3. Prepare and present statements and financial information pursuant to applicable law and generally accepted practices and guidelines.
  4. Respect and protect privileged information to which they have access by virtue of their office.
  5. Be sensitive and responsive to inquiries from the public and the media, within the framework of state or local government policy.



# Management of Information (Cont.)

- **RSA § 41:35, I Duties of Collector.** – “Every collector of taxes shall keep in suitable books a fair and correct account in detail of the taxes due, collected, and abated, and of all property sold for nonpayment of taxes, which books shall be public records ....”

# Right-to-Know Law

- RSA § 91-A:1 expresses the legislative policy of the Right-to-Know Law:  
“Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.”

# Right-to-Know Law (Cont.)

- The Right to Know law has a firm basis in the New Hampshire Constitution. In 1976, Part I, Article 8 of the New Hampshire Constitution was amended to provide as follows:
  - “Government...should be open, accessible, accountable and responsive. To that end, the public’s right of access to governmental proceedings and records shall not be unreasonable restricted.”

# Right-to-Know Law (Cont.)

- Meetings
  - The law covers all “meetings” of public bodies. A “meeting” occurs whenever a quorum or majority of a board, committee, or subcommittee convenes and discusses or acts upon a matter or which a board, committee or subcommittee has supervision, control, jurisdiction or advisory power. The law’s definition of meeting includes telephone or electronic communication.

# Right-to-Know Law (Cont.)

- What is required to hold a lawful public meeting?
  - Notice of the time and place of the meeting must be posted at least 24 hours in advance, excluding Sundays and legal holidays, in at least 2 public places, one of which may be the public body's website.
  - The public is entitled to attend and may record or video tape the proceedings.
  - All votes must be taken in open session
  - Minutes must be taken and made available to the public within 5 business days.

# Right-to-Know Law (Cont.)

- The Right-to-Know Law guarantees “[e]very citizen ... the right to inspect ... and copy” all public records, with certain limited exceptions.
- **What have the NH courts said?**
  - Do not unreasonably restrict the public’s right of access to governmental proceedings and records.
  - Resolve any questions with a view to best effectuate the statutory objective of facilitating open access to the actions and decisions of public bodies.
  - Broadly construe provisions favoring disclosure and interpret the exemptions restrictively.

# Right-to-Know Law (Cont.)

- Governmental records must be made available to the public upon request unless they are exempt from disclosure under RSA § 91-A:5 or another statute.
- Records must be made available during business hours on the premises.
- If not immediately available, must respond within 5 business days from the request in 1 of 3 ways:
  - Make the records available;
  - Deny the request in writing with reasons; or
  - Acknowledge receipt of the request in writing and estimate the time reasonably necessary to respond.

# Right-to-Know Law (Cont.)

- 5-day Response and Exemptions (HB 396)
  - If records are not made available in the 5-day period the Town must provide a written statement of the time reasonably necessary to determine whether the request shall be granted or denied and the **reason** for the delay.
  - If any request is denied or redacted in part, provide a written response identifying the specific exemption or reason for the denial and a brief explanation.



# Right-to-Know Law (Cont.)

- **RSA § 91-A:5 Exemptions.** – “The following governmental records are exempted from the provisions of this chapter:  
IV. Records pertaining to ... confidential, commercial, or financial information ... and other files whose disclosure would constitute invasion of privacy. ...”
- RSA 76:16, III(h) provides that municipalities shall treat a taxpayer’s social security or federal tax identification information as confidential and exempt from a public information request under RSA 91-A.
- RSA 91-A:3, II(c) provides that public bodies may meet in nonpublic session to consider “any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant,” to avoid adversely affecting the reputation of any person.

# Right-to-Know Law (Cont.)

## **RSA 91-A:5 Exemptions (cont.)**

- **RSA 91-A:5 exemptions generally do not create a privilege mandating secrecy for exempt records; rather, it creates a license to not produce exempt records.**
- **RSA 91-A does not create an affirmative privilege of confidentiality if a municipality chooses to disclose information.**

# Right-to-Know Law (Cont.)

- What is confidential information?
- Party resisting disclosure must provide that disclosure is likely:
  - (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.
- Even if information is “confidential” under this standard, it is still subject to a public interest balancing test.
- “Internal Personnel Practices”

# Right-to-Know Law (Cont.)

- Destroying Public Information
  - A person is guilty of a misdemeanor who knowingly destroys any information with the purpose to prevent such information from being inspected or disclosed in response to a request under this chapter. If a request for inspection is denied on the grounds that the information is exempt under RSA 91-A, the requested material shall be preserved for 90-days or while any lawsuit pursuant to RSA 91-A:9 is pending.

# Respect, Trust, and Confidence *of Other Public Officials and Employees*

- Personal Standards – Government finance officers shall:
  1. Demonstrate and be dedicated to the highest ideals of honor and integrity in all public and personal relationships to merit the respect, trust, and confidence of governing officials, other public officials, employees ....
  2. Devote their time, skills, and energies to their office both independently and in cooperation with other professionals.

# Relationships

- Professional Integrity/Relationships – Government finance officers shall:
  1. Act with honor, integrity, and virtue in all professional relationships.
  2. Exhibit loyalty and trust in the affairs and interests of the government they serve, within the confines of this Code of Ethics.
  3. Not knowingly be a party to or condone any illegal or improper activity.
  4. Respect the rights, responsibilities, and integrity of their colleagues and other public officials with whom they work and associate.
  5. Manage all matters of personnel within the scope of their authority so that fairness and impartiality govern their decisions.
  6. Promote equal employment opportunities, and in doing so, oppose any discrimination, harassment, or other unfair practices.

# Why Do Ethics Matter?

## PUBLIC SCRUTINY

*“If you’re guided by a spirit of transparency, it forces you to operate with a spirit of ethics. Success comes from simplifying complex issues, address problems head on, be truthful and transparent. If you open yourself up to scrutiny, it forces you to a higher standard. I believe you should deliver on your promise. Promise responsibly.” – Rodney Davis*



“If necessary, I can be ethical.  
Fortunately, it hasn’t come to that.”



# Supervision

- **RSA § 41:31-c, I Duties (of Town Auditors).**
  - “All municipalities shall annually, or more often as necessary, conduct an audit of the accounts of any officer or agent handling funds of the municipality.”
- **RSA § 41:31-d, I Reports.** – “A complete report of any audit or procedure conducted under RSA 41:31-c shall, upon completion, be made available to the public ....”

# Supervision (Cont.)

- **RSA § 41:35, I Duties of Collector. –**
  - “Every collector of taxes shall keep in suitable books a fair and correct account in detail of the taxes due, collected, and abated, and of all property sold for nonpayment of taxes, which books shall be public records.”
  - “Failure to remit collections on a timely basis as required by this paragraph shall be cause for immediate removal from office under RSA 41:40.”
  - “He or she shall submit the tax books and lists to the treasurer and selectmen for inspection and computation when requested so to do and if they discover any errors therein they shall immediately notify the town auditors thereof; and the auditors shall promptly examine the collector’s records and make a written report to the selectmen and the department of revenue administration of their findings, conclusions, and recommendations.”
  - “The collector shall make a written report to the town at the end of each fiscal year ....”
  - “Upon written request therefor the collector shall provide the selectmen with an itemized list of the uncollected taxes at the end of the fiscal year.”

# Supervision (Cont.)

- **RSA § 41:36 Succession in Office.** – “Whenever the term of office of a collector of taxes shall end, ... [t]he selectmen shall cause an audit of his accounts to be made promptly .... All books, records and papers of the outgoing collector shall be delivered to the selectmen by every person having possession thereof ....”
- **RSA § 41:39 Supervision by Commissioner of Revenue Administration.** – “The commissioner of revenue administration shall have and exercise general supervision over all tax collectors in the performance of their duties to the end that the laws relating to the collection of taxes may be properly administered.”

## Supervision (Cont.)

- **RSA § 41:40 Removal of Tax Collector.** – “The governing body may institute proceedings to remove the tax collector from office whenever, upon examination by the department of revenue administration, a certified public accountant, or a public accountant licensed by the state under RSA 309-B, the accounts are found to contain an irregularity or material error, or show evidence that the timely deposit of funds has not been made in accordance with RSA 41:35.”

# Do the Right Thing

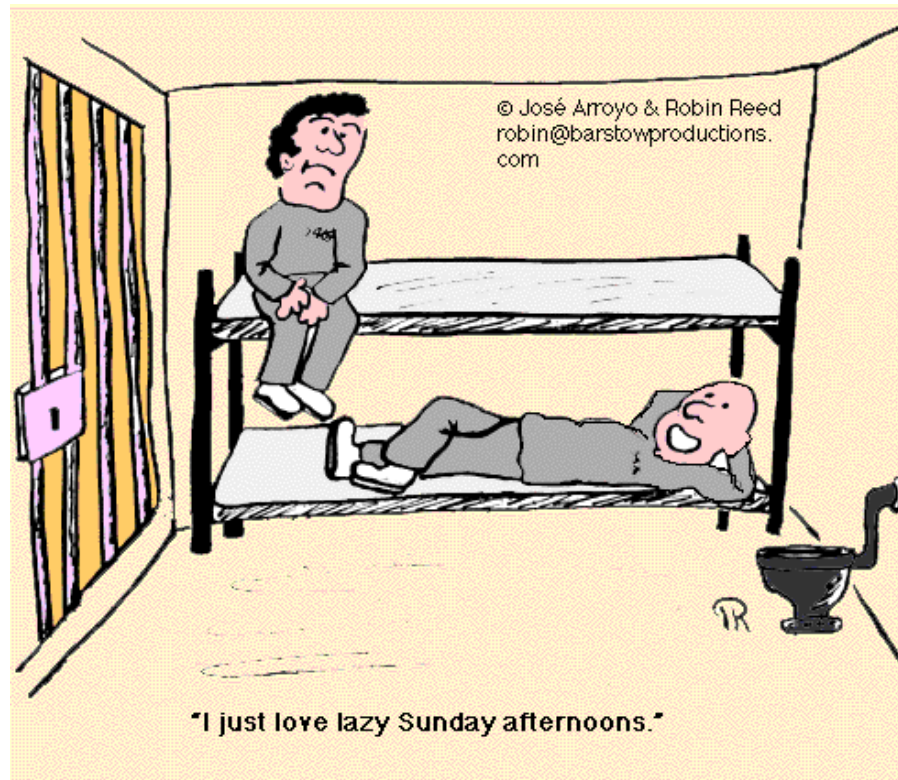
- *“Character is doing the right thing when nobody’s looking. There are too many people who think that the only thing that’s right is to get by, and the only thing that’s wrong is to get caught.” – J.C. Watts*

# Do the Right Thing (Cont.)

- Don't underestimate the probability of unethical behavior coming out.
- Don't overestimate your ability to manage unethical behavior.
- *“If it stands the test of public scrutiny, do it ... if it doesn't stand the test of public scrutiny then don't do it.” – Ratan Tata*
- *“It takes less time to do a thing right, then it does to explain why you did it wrong.” – Henry Wadsworth Longfellow*
- *“Character is much easier kept than recovered.” – Thomas Paine*

# Criminal Penalties

- What are the criminal implications of unethical behavior?



# Corrupt Practices

- Class B Felonies
  - **RSA § 640:2 Bribery in Official and Political Matters.**
  - **RSA § 640:3 Improper Influence.**
- A person convicted of a class B felony may be sentenced to imprisonment for a maximum of 7 years.



# Corrupt Practices (Cont.)

- Misdemeanors
  - **RSA § 640:4 Compensation for Past Action.**
  - **RSA § 640:5 Gifts to Public Servants.**
  - **RSA § 640:6 Compensation for Services.**
  - **RSA § 640:7 Purchase of Public Office.**
- A person convicted of a misdemeanor may be sentenced to imprisonment for a maximum of 1 year.

# Falsification in Official Matters

**RSA § 641:7 Tampering With Public Records or Information.** – “A person is guilty of a misdemeanor if he:

I. Knowingly makes a false entry in or false alteration of any thing belonging to, received, or kept by the government for information or record, or required by law to be kept for information of the government; or

# Falsification in Official Matters (Cont.)

## **RSA § 641:7 Tampering With Public Records or Information (Cont.). –**

II. Presents or uses any thing knowing it to be false, and with a purpose that it be taken as a genuine part of information or records referred to in paragraph I; or

III. Purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such thing.”

# Abuse of Office

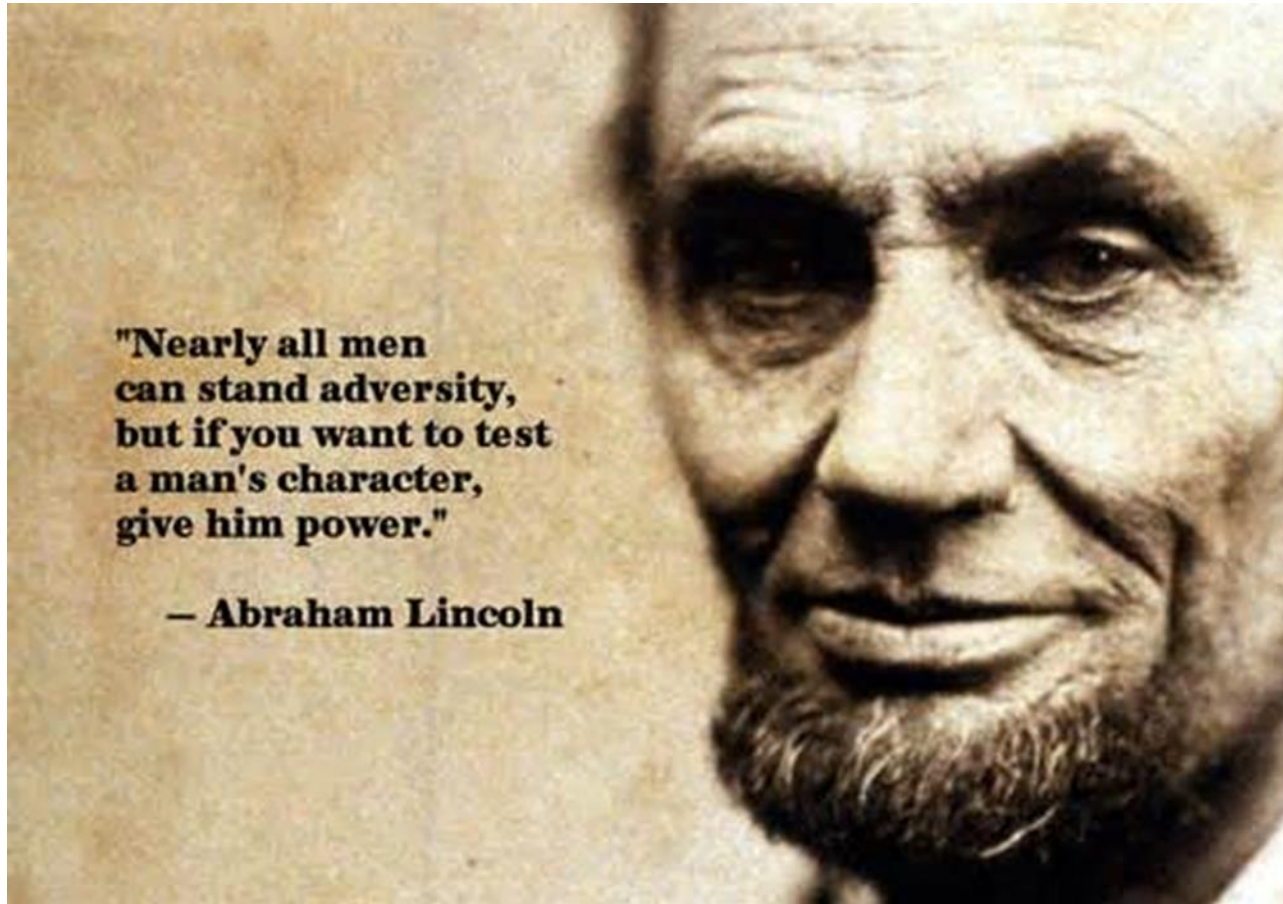
**RSA § 643:1 Official Oppression.** – “A public servant ... is guilty of a misdemeanor if, with a purpose to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office; or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.”

**RSA § 643:2 Misuse of Information.**

# Ethics Complaints

Allegations of criminal misconduct by a municipal public official are reported to the Public Integrity and Economic Crime Unit of the Office of the Attorney General.

# Do the Right Thing



**"Nearly all men  
can stand adversity,  
but if you want to test  
a man's character,  
give him power."**

**— Abraham Lincoln**