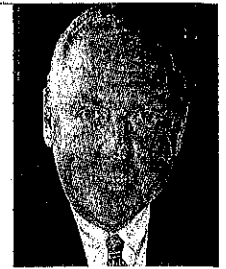


Michael A. Pane Award for Ethics in Municipal Government

Honor Does Not Come in a Brown Paper Bag



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Dennis M. Galvin, Esq. received the Michael A. Pane Award for Ethics in Municipal Government in 2010. We are publishing his essay on ethics as part of the award.

Based upon my experience, the overwhelming majority of New Jersey's appointed and elected officials are in office for one reason and one reason only: to serve the public. The best officials among us are never compensated adequately for the time they invest in our communities. Your reward is the appreciation of your neighbors and the satisfaction you gain from being part of this honorable profession we call public service.

American public servants have always cherished their honor. The signers of the Declaration of Independence swore, "We mutually pledge to each other our Lives, our Fortunes and our sacred Honor." This tradition of honor is still reflected today when you receive letters addressed to "The Honorable." But ask yourself this question: "Do you deserve that appellation? Do you act honorably in carrying out your tasks?"

I wonder sometimes how is it possible that so many public officials were caught and convicted by the Federal Government for violating the public's trust and dishonoring their reputation. One Assemblyman who took money in a brown paper bag, was quoted as saying he did not know what to do with the money, and he would have helped the development of his community anyway. He lost everything: his position, his liberty, and worst of all, his honor. He lost the respect of his friends and constituents.

What haunts me is: What caused him take this tragic step? His comments do not reflect a mean spirit or greed on his part. Did he think that others took money in brown paper bags, and that this was how public servants were expected to act?

One hundred and thirty convictions would seem to support this point of view. Is it possible that in some of our communities, this is just how the game is played?

If our youngest and brightest think that the game is played with money in brown bags, New Jersey is in big trouble. While we should hope that federal and state prosecutors continue to pursue those among us who are not honorable, the task of re-establishing the respect and honor of our offices is on us.

It has been suggested that you should watch out for the little things that eventually lead to the brown paper bag. Those little things are meant to test and tempt you. As long as you are in power, you are being observed—and someone is devising a method to get you to exercise your power in a way that benefits them. Some will use perfectly legitimate means; others will try to buy you, falsely praise you, or perhaps terrorize you. But if they try to buy you, be aware that N.J.S.A. 2C:27-10 makes it a crime of the third degree to take anything; and if convicted, you could go to jail for five years.

Even worse, if you take something with a value of more than \$200.00, you are facing the possibility of ten years in prison.



With that said, this statute has important exceptions: one, which is gifts from family members; and the other, which is subject to interpretation: "Trivial benefits, the receipt of which involves no risk that the public servant would perform official duties in a biased or partial manner."

The question of the meaning of this clause has been the subject of much interpretation. The one thing that seems clear is that this exemption has narrowed and continues to narrow. Giving a building inspector a bottle of scotch in 1985 was common place. I doubt that this practice is safe today.

It was equally common for your municipal attorney to buy the mayor or council person lunch. Now the better practice is for all parties to pay their own way. You do not have to pick up the tab for your attorney, but he should not pick up your tab. You are hiring him for a paid position, he is a contractor, and he is grateful. But this is precisely why you should not accept such a benefit.

We have no case law interpreting this statute. Until we get some case law, it would be wise to err on the side of caution rather than to hope that the Courts will interpret this exemption in a way that covers you for your actions.

Let me offer you some advice. If you are serving on a land use board and have to visit a property, and the homeowner offers you a cookie or a drink, politely decline. If you have to attend the local Boy Scout dinner, buy your ticket. When it's not possible and you are there just to speak then you should decline to eat. If you are truly pressured to try someone's cooking, that may not be a gift, and it seems that it should be considered trivial. That is, of course, unless the Boy Scouts are seeking approval of their new headquarters, and the meal was prepared by a four star chef with rare ingredients just for you.

If you are offered tickets to a sporting event, decline the offer and buy your own ticket; and at the game, buy your own hot dog and beverages. Do not accept gifts from local developers or major tax payers. If it is hard to reject these gifts, make a municipal policy prohibiting this practice. Employees in Town Hall should be given clear instructions

that holiday gift baskets are not to be accepted, and if received, should be turned over to local food banks or other such charities.

Let me give you a test. A bank, with which your municipality does business, gives you four tickets to see the Four Tops or the Beach Boys. The value of

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In September of 2010, the Governor's Task Force on Local Government Ethics suggested that all gifts given to the municipality should be disclosed when received, listing the value, purpose and the local government entity that used the gift. A different riff on this idea might be for public servants to report all gifts they personally receive within 30 days of receipt, disclosing from whom the gift was received and its value. Perhaps the law could be changed to create a rebuttable presumption that such a gift is a trivial benefit if disclosed.

those tickets is approximately \$75 dollars each. Everyone is going to be there: your local party chairman and your favorite elected officials. You want to be invited, as you think it is critical to your political advancement. Here is the problem: four (4) tickets at \$75 dollars will exceed the \$200 dollar threshold, and you could wind up spending 10 years in prison. Do you still attend? More importantly, are you tempted?

With all this said, what about a cup of coffee or bottle of water? What about a cupcake? Or how about a drink? In one North Jersey town, a zoning

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approval was reversed, because a developer bought some board members a celebratory drink after the approval was granted.

Let's face it, no one is perfect; we are all subject to temptation. Even the best of us can make a poor choice, or compromise our beliefs or our ethical standards, because we need to keep a job or to assure others of our loyalty. We have to balance these temptations against our obligation to be ethical and to really earn the title "the honorable."

It has been my experience that it is easier for me to give ethical advice to

local officials who are ethical and want me to keep them on the right path. Rarely has it been suggested that I find a way to legally get around a requirement. Even when that is possible, I always encourage that the "best practice" be followed. For instance, permitting the public to be heard when the statute does not require such an action, or treating a hostile applicant with respect. There is more to acting ethically than not taking a brown paper bag. Some elected officials were wise enough to steer clear of the brown paper bag, but they never

reported the attempt to buy them. Why? Was that right?

Our Criminal Code sets the minimum standard of acceptable conduct in our society. The Local Government Ethics codifies the commonly understood standards for ethical conduct as a public official. Primarily, it makes it clear that an official should not act when his ability to make an unbiased decision is compromised because his or her personal or pecuniary interests are at stake. The consequences of breaching the Local Government Ethics Law is light; i.e. normally there is no loss of office, and the financial penalty is not severe. But let's be realistic: all public servants suffer when any of us fails to comply with the Local Government Ethics Law.

Honor, like respect, is earned. In every action we take, we need to remain focused on the primary reason we sought office: to serve our country, our community, and our neighbors. If we all strive to conduct ourselves well, showing respect for our opponents, fairness in our actions, and selflessness in our service, we will earn the honor we deserve. ▲

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