



Legal Maybe... But is it Ethical?

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WHAT ARE ETHICS?

Ethics is knowing the difference between what you have a right to do and what is right to do

Supreme Court Justice
Potter Stewart



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ETHICS

- A branch of philosophy involving systematizing, defending and recommending concepts of right and wrong



ETHICS

- Arises out of esoteric disciplines, such as religion and philosophy
 - Has been debated throughout history
 - Changes from society to society and over the course of time
 - An ambiguous notion



PUBLIC ETHICS

- Refers to public agencies fulfillment of core mission
- Ethical behavior flows from governmental direction
- Ethical behavior follows the popular will

**REGULATING
ETHICS IN
PUBLIC LIFE**



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PHILOSOPHICAL v. PUBLIC ETHICS

- Philosophical
 - Posit higher sets of principles than human laws
- Public
 - Secular democracies institute broad constitutional mandates and institute laws, rules and regulations
- Theology and Philosophy are more focused on the individual
- Public entities establish parameters of acceptable behavior to fulfill their stated mission

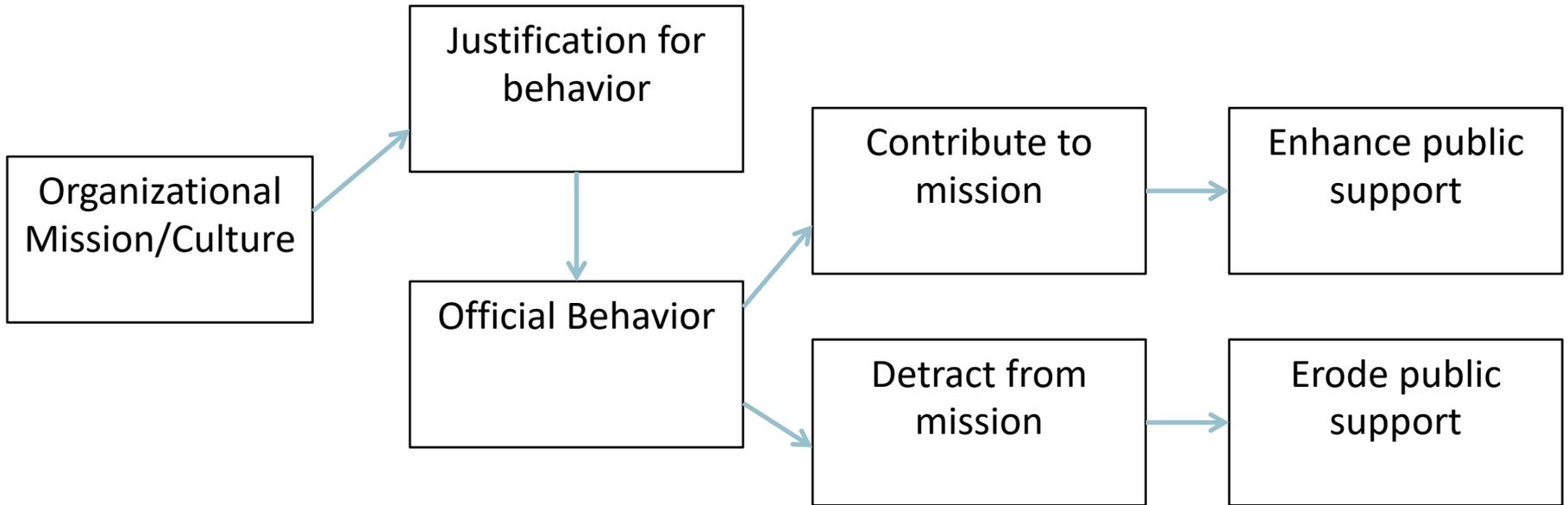


PHILOSOPHICAL v. PUBLIC ETHICS CONT'D

- Why do we need to establish parameters?
 - Each individual's definition will vary and a public entity is beholden to all – not just a segment

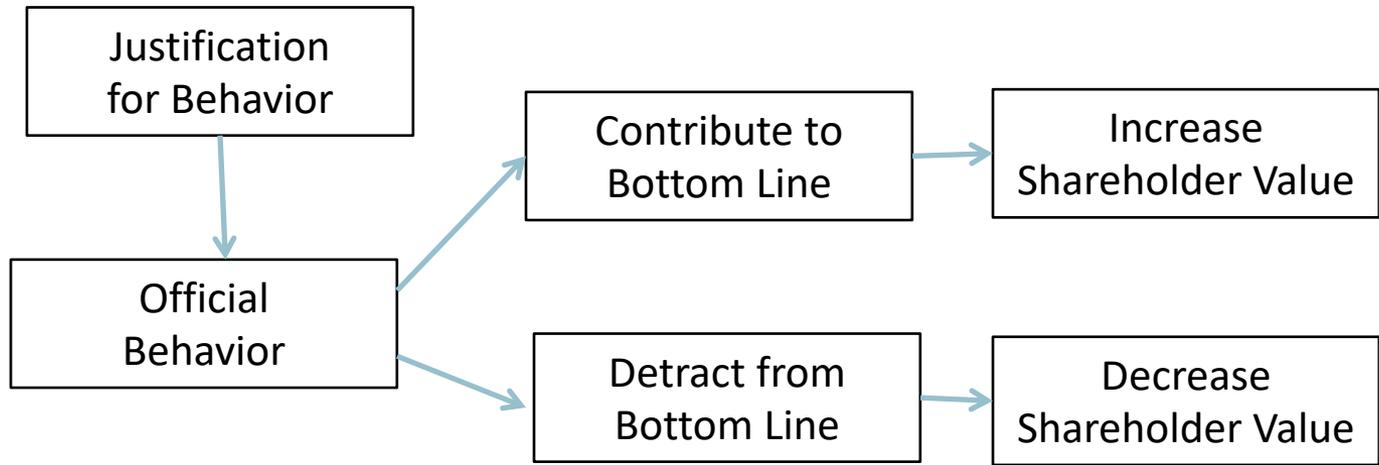


PUBLIC ETHICS



PRIVATE SECTOR

Organization
Mission/Goal

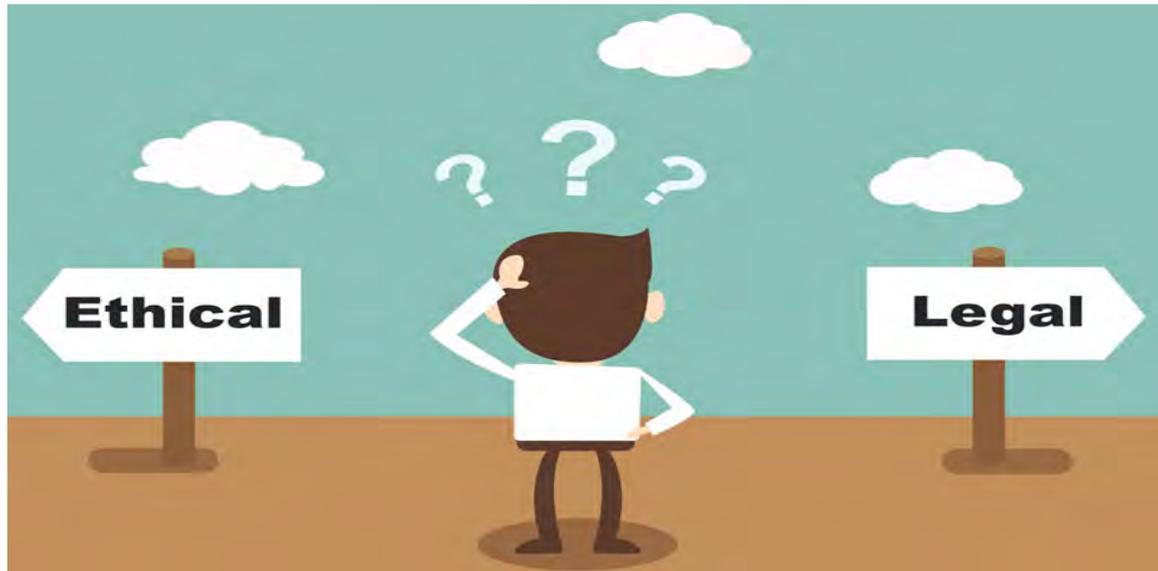


- Ponzi
- Enron
- Tyco



ETHICAL STANDARDS v. LEGAL CONDUCT

- Laws merely codify societal mores
- Because ethics vary, in a democracy, we follow the rule of law



WHAT IS A HOUSING AUTHORITY?

- A HUD affiliate?
- A federal agency?
- A state agency?
 - HUD believes a housing authority is a subsidiary of HUD



WHAT IS A HOUSING AUTHORITY

A housing authority is a state-created entity



UNITED STATES HOUSING ACT OF 1937

42 U.S.C. § 1437

- It is the policy of the United States:
 - To assist states and political subdivisions of states to remedy unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families. . .
 - Key words "assist" "states and political subdivisions"



STATE HOUSING LAWS

1. Establish methodology to organize housing authorities;
2. Set forth how Board of Commissioners are appointed;
3. Establish the powers of housing authorities.



STATE LAW GOVERNS

- State law establishes housing authority
- State law sets forth duties and responsibilities of the Board of Commissioners
- State law sets out ethical standards



North Carolina Housing Authorities Law

- Section 392.011

- A housing authority is created in each municipality in the State.
- A municipal housing authority may not transact business or exercise its powers until the governing body of the municipality declares by resolution that there is a need for the authority.
- The governing body shall adopt a resolution declaring that there is a need if:
 - Unsanitary or unsafe inhabited housing . . . or
 - A shortage of safe or sanitary housing . . .

- Section 392.006

- Housing Authority is a unit of government



HOW DOES HUD GET IN?

MONEY



ANNUAL CONTRIBUTIONS CONTACT (ACC)

- HUD requires an ACC to provide public housing operating subsidy
- The housing authority executes the ACC



ACC PROVISIONS - PUBLIC HOUSING

- Section 5: All projects covered by an ACC shall operate in compliance with all applicable statutes, executive orders and regulations issued by HUD



ACC PROVISIONS – SECTION 8

- Section 10: A housing authority must comply with the requirements of the U.S. Housing Act of 1937 and all HUD regulations and other requirements.



HUD PROCUREMENT REGULATIONS

- Procurement is codified at 2 CFR 200.317, et seq. (formerly codified at 24 CFR 85.36)
 - This is also known as the Common Rule
 - Promulgated by Congress



HUD PROCUREMENT REGULATIONS CONT'D

- HUD HANDBOOK 7460.8 Rev. 2:
 - Issued by HUD to explain 24 CFR 85.36, now 2 CFR 200.317, et seq.



PROCUREMENT STANDARDS

- Maintain a written code of standards of conduct governing the performance of employees engaged in the award and administration of contracts
 - 2 CFR 200.318(c)



PROCUREMENT STANDARDS

- Make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
 - 2 CFR 200.318(h)



PROCUREMENT STANDARDS CONT'D

- Maintain records sufficient to detail the significant history of a procurement.
- In writing, in one clearly marked file
- Contains all documents pertaining to the issues
- Records Retention: 3 years after final payment
- Audit clause to be included in all solicitations
 - 2 CFR 200.318



RELATIONSHIP OF LOCAL OR STATE LAWS WITH FEDERAL LAW:

- PHAs must comply with the stricter of federal rules and state/local rules
 - States
 - When procuring property and services under a grant, a state will follow the same policies and procedures it uses for procurements for its non-federal funds. The state will ensure that every purchase order or other contract includes any clauses required by federal statutes and executive orders and their implementing regulations.
 - Therefore, one procurement policy only!
 - 2 CFR 200.317



COMPETITION

- All procurement transactions will be conducted in a manner providing full and open competition

–2 CFR 200.319



COMPETITION CONT'D

- Situations considered to be restrictive of competition:
 - Placing unreasonable requirements on firms in order for them to qualify to do business
 - Requiring unnecessary experience
 - 2 CFR 200.319(a)



METHODS OF PROCUREMENT

- There are seven types of procurement
 - Micro Purchases
 - "Piggyback" Procurement
 - Quotations for small purchase
 - Procurement by sealed bids (IFB – typically advertised)
 - Procurement by competitive proposals (RFP – typically advertised)
 - Request for Qualifications (RFQ – typically advertised)
 - Procurement by noncompetitive proposals
 - 2 CFR 200.320



METHODS OF PROCUREMENT CONT'D

- All methods must have:
 - A complete, adequate, and realistic specification or purchase description available
 - Two or more responsible bidders are willing and able to compete effectively
 - 2 CFR 200.320



CANCELING A SOLICITATION

- Solicitations must not be used to "gauge the marketplace"
-- does not foster public confidence.
- Good reasons to cancel:
 - Lowest bid significantly exceeds the HA's budget.
 - Scope of work or specifications are found to be ambiguous or flawed by the submission of wildly different bids or offer prices.
- If canceled, be sure to fully document the justification for doing so to the file.



MISCELLANEOUS ADDITIONAL RELATED REQUIREMENTS

- Geographic Preferences
 - HA's must NOT require, consider or give preference to any firm simply because it is located in the local area (e.g. city; county; state; etc.) that the HA is based or located. Accordingly, it is NOT appropriate for a HA Commissioner to put pressure on HA staff to do more business with local firms.
- State Prevailing Wage Requirements
 - If there is ANY Federal (HUD) monies in a construction project, then Davis-Bacon wage rates apply, no matter if State prevailing wage rates are higher or lower.



PRINCIPLES

Berkshire Hathaway -

- ". . . I want employees to ask themselves whether they are willing to have any contemplated act appear the next day on the front page of their local paper – to be read by their spouses, children and friends – with the reporting done by an informed and critical reporter."



ETHICS & COMPLIANCE PROGRAM

- Code of Conduct
- An anonymous reporting mechanism
- A way to obtain advice on ethical matters
- Training for employees
- Mechanism for discipline
- Evaluation of ethical behavior in performance review



CODE OF CONDUCT

Alcoa – To maintain our high standards, we must each:

- Conduct business with integrity
 - This means doing the right thing, even when no one is looking
- Speak up and seek advice when we are not sure what to do
- Strive to be integrity leaders every day



WHAT SHOULD CODE COVER?

- Conflicts of interest
- Corporate opportunities
- Fair dealing with all
- Confidentiality
- Protection and proper use of company assets
- Compliance with laws, rules and regulations
- Public disclosure



ENFORCEMENT

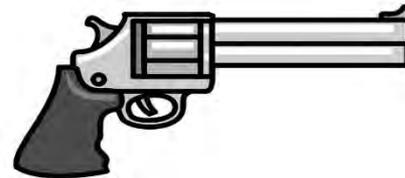
- Ethics officer or panel
- Appeals process



LEGAL YES, BUT ETHICAL

A.

- A resident comes in. She and her husband are divorced and there is a PFA order in effect. He is making monthly support payments.
 - The resident found her husband's unregistered firearm in the house. She asks the housing authority, as the property manager, what to do.



LEGAL YES, BUT ETHICAL CONT'D

B.

- At a resident information session, one of the residents is clearly intoxicated. He heads to his car at the end of the session. When asked, the resident states that he is fine.



PROCUREMENT

A.

- There is an emergency and the housing authority computer system has been hacked. Confidential material, including resident information and personnel records are exposed.
 - How do you procure a data security firm promptly?
 - What are the risks?



PROCUREMENT CONT'D

B.

- When looking to award project-based vouchers, a housing authority issues a Request for Proposals (RFP). How narrowly can the authority limit the scope?



FAVORS AND FAVORITISM CONT'D

- Commissioner owns real estate and the housing authority is acquiring property for revitalization in the area.



IS IT CONFIDENTIAL OR SUBJECT TO SUNSHINE?

- A reporter is doing a story on crime and Section 8. He sends a written request for the names of all landlords and addresses of all properties receiving assistance.



Q & A

