



Office of the County Attorney

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MEMORANDUM

To: Adam Coggin, Steering Committee Chairman
From: County Attorney's Office
Date: 5/1/13
Subject: Code of Ethics Policy Changes

We write in response to the request for information made at the April 7, 2013 Steering Committee meeting. This memo will address whether an amendment to the Rutherford County Code of Ethics policy may be needed to include proposed additional language. As we understand it, the proposed language seeks generally to prohibit public officials and employees from using certain information, gained through the person's position, for personal gain or benefit. The precise language suggested at the meeting was as follows:

Disclosure or use of certain information. No public officer or county employee shall disclose or use information not available to members of the general public and gained by reason of his or her official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity. No public official may mislead or purposely be dishonest in direction of duty or law.

It appears that existing state law contains a general prohibition against the type of conduct sought to be regulated. As such, as discussed below, it may be more beneficial to maintain the current Code of Ethics policy.

State law, to the extent it is more restrictive than the Code of Ethics, controls the conduct of county officials and employees. To that end, T.C.A. § 39-16-404, styled "Insider information; misuse," prohibits a public official from using information that is not available to the public for personal benefit or the benefit of another. In addition, T.C.A. § 39-16-402 prohibits a public official from, among other things, (1) receiving a benefit not authorized by law, (2) taking advantage of their position, and (3) using nonpublic information for personal benefit or the benefit of another. These statutes appear to cover generally the type of conduct sought to be

regulated by the language proposed. To be clear, County officials' and employee conduct is covered not only by the Code of Ethics policy, but also by the above state laws. Although the above cited statutes do not specifically contain the words "mislead" or "dishonest," they do appear to prohibit the misuse of nonpublic information. It is worth noting that the Code of Ethics specifically cites the above statutes (and others), which provide an additional framework on the ethical behavior of county officials and employees. As such, it may not be necessary to modify the current Code of Ethics policy to prohibit conduct that appears to already be regulated by existing state law.

In addition to the reality that state law appears to already prohibit the type of conduct at issue, the County must take an additional step if it wishes to modify the existing Code of Ethics Policy. The Comprehensive Governmental Ethics Reform Act of 2007 required all Tennessee counties to adopt a local county ethics policy by June 30, 2007. The Ethics Reform Act also directed the County Technical Assistance Service ("CTAS") to develop a model policy. If a county drafts its own policy, the policy must be filed with the State Ethics Commission. On the other hand, if a county adopts the CTAS model, the county can simply notify the State Ethics Commission that it has adopted the model. On April 12, 2007, Rutherford County adopted the CTAS model policy rather than drafting its own policy. If the County now wishes to amend the policy (and thereby create its own policy different from the CTAS model), the amendments must be filed with the State Ethics Commission. At present, the County can be certain that its Code of Ethics policy complies with state law since the County adopted the CTAS model policy. Any amendment that is different than the CTAS model could obviously call into question whether the policy complies with the legal requirements.

In sum, there is nothing that prevents the County from modifying the current Code of Ethics Policy, but it appears that there may be reasons for preserving the current policy. First, the proposed language appears to overlap already existing, and applicable, state law that prohibit county officials and employees from using nonpublic information for their benefit or the benefit of someone else. Because state law also governs the conduct of county officials and employees, it may not be necessary to attempt to prohibit this type of misconduct by way of the Code of Ethics. Second, if the County wishes to adopt the proposed language, it must submit the amendments to the State Ethics Commission. This may then raise the issue of whether the modified Code of Ethics is in compliance with state law.

We hope this is helpful and responsive. Please let us know if we can be of further assistance.

Enclosures: (1) T.C.A. § 39-16-402
(2) T.C.A. § 39-16-404

cc: Mayor Ernest Burgess