

ภาคผนวก

ภาคผนวก ก.

**สรุปเปรียบเทียบความเห็นของคณะกรรมการกฤษฎีกา
และคำพิพากษาศาลปกครองสูงสุดในแต่ละประเด็นปัญหา**

ประเด็นปัญหา	คณะกรรมการกฤษฎีกา	ศาลปกครองสูงสุด
<p>1. กรณียังมีได้เข้าเป็นผู้สัญญากับเทศบาล หรือในกิจการที่เทศบาลจะกระทำ</p> <p>1.1 กรณียื่นของเสนอราคาต่อเทศบาล</p> <p>1.2 กรณีการ โอนสิทธิเรียกร้องตามสัญญา</p>	<p>- เมื่อได้กระทำการยื่นของเสนอราคาต่อเทศบาลเป็นการกระทำเพื่อจะได้รับผลประโยชน์จากกิจการที่เทศบาลจะกระทำ จึงเป็นการเข้ามีส่วนได้เสียในกิจการที่เทศบาลจะกระทำ โดยสมบูรณ์ แม้ว่าจะมีได้รับการคัดเลือกในการเสนอราคาเพื่อเข้าเป็นผู้สัญญากับเทศบาลก็ตาม</p> <p>- การ โอนสิทธิเรียกร้องการรับเงินตามสัญญาของบุคคล ผู้เป็นผู้สัญญากับเทศบาลที่ตนดำรงตำแหน่งอยู่ ไม่ถือว่าบุคคลนั้นเป็นผู้มีส่วนได้เสียในสัญญา เนื่องจากเป็นการ โอนสิทธิเรียกร้องของเขานี้ไปยังบุคคลอื่น มิใช่เป็นการ โอนหน้าที่หรือความรับผิดชอบที่ต้องปฏิบัติตามสัญญา และไม่มีผลเป็นการทำสัญญาขึ้นใหม่และ ผู้สัญญาเดิมต่างฝ่ายต่างยังคงมีหน้าที่และความ รับผิดชอบที่จะต้องปฏิบัติตามสัญญาอยู่เช่นเดิม โดย ผู้รับ โอนสิทธิเรียกร้องไม่ได้มีส่วนเกี่ยวข้องกับ การปฏิบัติตามสัญญาแต่อย่างใด</p>	<p>- เพียงแต่สมาชิกสภาเทศบาลหรือผู้บริหารเทศบาลยื่นของ เสนอราคาต่อเทศบาลยังไม่ถือว่าเป็นการเข้าเป็นผู้มีส่วนได้ เสียในสัญญาหรือในกิจการที่เทศบาลนั้นจะกระทำแต่อย่างใด แต่หากการเสนอราคานั้น ได้รับการคัดเลือกให้เป็นผู้สัญญาและได้ทำสัญญาแล้ว จึงจะถือว่าเป็นการเข้า ไป ต่ออาประโยชน์หรือเข้าไปดำเนินกิจการของเทศบาลทันที</p> <p>- ไม่มีประเด็นโต้แย้งเป็นคดีขึ้นสู่ศาลปกครอง</p>

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<p>2. การเข้าเป็นผู้สัญญากับเทศบาล หรือในกิจการที่กระทำให้แก่เทศบาล หรือที่เทศบาลนั้นจะกระทำ</p> <p>2.1 ประเภทของสัญญาที่ต้องห้ามเข้ามีส่วนได้เสีย</p> <p>2.2 กรณีทำสัญญากับเทศบาลก่อนดำรงตำแหน่งแต่ส่งมอบงานขณะดำรงตำแหน่ง</p>	<p>- สัญญาทุกประเภท</p> <p>- สัญญาทุกประเภท</p> <p>- แม้ว่าจะการทำสัญญาสมาชิกสภาเทศบาลหรือผู้บริหารเทศบาลผู้นั้นจะยังมีได้ดำรงตำแหน่งดังกล่าวอยู่ก็ตาม แต่ถ้าหากสัญญานั้นยังมีนิติสัมพันธ์ระหว่างคู่สัญญาอยู่ และได้รับการเลือกตั้งให้เป็นสมาชิกสภาเทศบาล หรือนายกเทศมนตรี ก็ถือได้ว่าบุคคลดังกล่าวเป็นผู้มีส่วนได้เสียในสัญญา</p>	<p>- สัญญาทุกประเภท</p> <p>- สัญญาจ้างพนักงานจ้างตามภารกิจและพนักงานจ้างทั่วไปที่มีความสัมพันธ์ทางเครือญาติกับนายกเทศมนตรีไม่ถือว่าการกระทำกรรมมีส่วนได้เสียในสัญญา เนื่องจากได้ปฏิบัติตามขั้นตอนของระเบียบฯ และหลักเกณฑ์ที่กฎหมายกำหนด (คำพิพากษาศาลปกครองสูงสุดที่ อ. 742/2555)</p> <p>- ในขณะที่ทำสัญญายังมิได้ดำรงตำแหน่ง จึงไม่อาจใช้ตำแหน่งในการแสวงหาประโยชน์จากตำแหน่งได้ แม้ว่า จะได้ส่งมอบงานตามสัญญาในวันเลือกตั้งซึ่งถือว่าเป็นวันที่เริ่มต้นดำรงตำแหน่งสมาชิกสภาเทศบาลก็ตาม ก็ไม่อาจถือได้ว่าผู้ฟ้องคดีในฐานะสมาชิกสภาเทศบาลเข้ามีประโยชน์ได้เสียกับเทศบาล เพราะการส่งมอบงานเป็นการปฏิบัติตามสัญญาที่ทำการไว้ก่อนที่จะได้รับเลือกตั้ง (คำพิพากษาศาลปกครองสูงสุดที่ อ. 115/2549)</p>

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<p>2.3 กรณีทำสัญญาและส่งมอบงานก่อนดำรงตำแหน่ง แต่ยังคงอยู่ภายในระยะเวลาได้รับผิดความชำรุดบกพร่องตามสัญญา</p>	<p>- ไม่ถือว่าเป็นผู้มีส่วนได้เสียตามมาตรา 18 ทวิ และมาตรา 48 จตุทศ (3) แห่งพระราชบัญญัติเทศบาล พ.ศ. 2496 แต่อย่างใด</p> <p>- เพราะความรับผิดชอบเพื่อความชำรุดบกพร่องเป็นความรับผิดชอบที่กำหนดไว้ตามกฎหมายและตามสัญญา เป็นผลต่อเนื่องมาจากการเป็นผู้สัญญา หาใช่กรณีที่คู่สัญญากระทำการใดเพื่อกำหนดสิทธิหน้าที่และความรับผิดชอบขึ้นใหม่แต่อย่างใดไม่</p>	<p>- มีความเห็นแนวทางเดียวกับคณะกรรมการกฤษฎีกา</p>
<p>2.4 กรณีลาออกจากห้างหุ้นส่วนจำกัดแต่ยังไม่ได้จดทะเบียนเปลี่ยนแปลงหลักฐานทางทะเบียน</p>	<p>- ตราบใดที่ยังไม่มีการเปลี่ยนแปลงทางทะเบียน บุคคลผู้นั้นจึงยังคงต้องรับผิดชอบกับบุคคลภายนอกตามที่บัญญัติไว้ในประมวลกฎหมายแพ่งและพาณิชย์ มาตรา 72 ความมีส่วนได้เสียในสัญญาที่ทำกับเทศบาลจึงยังคงมีอยู่</p>	<p>- มีความเห็นแนวทางเดียวกับคณะกรรมการกฤษฎีกา</p>

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<p>3. ปัญหาการตีความคำว่า ผู้มีส่วนได้เสียทางอ้อมในสัญญา</p>	<p>พิจารณาว่าผู้ที่มีความสัมพันธ์กับผู้สัญญาในลักษณะที่จะส่งผลดีหรือผลเสียต่อกันในทางอ้อมหรือไม่ ซึ่งพิจารณาจาก</p> <ul style="list-style-type: none"> - ความสัมพันธ์ในเชิงบริหาร โดยเป็นผู้จัดการ หุ่นส่วนผู้จัดการ กรรมการผู้จัดการ ตัวแทน ผู้บริหาร หรือผู้มีอำนาจในการดำเนินงานในกิจการของบุคคลธรรมดา หรือของนิติบุคคลที่มีการกระทำกับเทศบาล - ความสัมพันธ์ในเชิงทุน โดยเป็นผู้มีส่วนในห้างหุ้นส่วน เป็นหุ้นส่วนในห้างหุ้นส่วนจำกัดฯ หรือผู้ถือหุ้นในบริษัทฯ ซึ่งสามารถครอบงำกิจการได้ - ความสัมพันธ์ในระหว่งบุคคลซึ่งกฎหมายบัญญัติให้มีหน้าที่อุปการะเลี้ยงดูต่อกัน เช่น ความสัมพันธ์ระหว่างบิดามารดากับบุตร ตามประมวลกฎหมายแพ่งและพาณิชย์ 	<p>การที่ผู้ที่มีความสัมพันธ์กับบุคคลที่เป็นคู่สัญญากับเทศบาล หรือมีความสัมพันธ์ทางเครือญาติกับผู้เป็นหุ้นส่วนในห้างหุ้นส่วน ห้างหุ้นส่วนจำกัด หรือบริษัทจำกัด มิได้ทำให้สมาชิกสภาเทศบาลหรือผู้บริหารเทศบาลผู้นั้นเป็นผู้มีส่วนได้เสียในสัญญาที่เทศบาลเป็นผู้สัญญาในทันที ศาลปกครองสูงสุดจะพิจารณาข้อเท็จจริงและพฤติการณ์ในแต่ละกรณีว่าสมาชิกสภาเทศบาลหรือผู้บริหารเทศบาลผู้นั้นมีเจตนาที่จะใช้โอกาสในฐานะที่ตนดำรงตำแหน่งสมาชิกสภาเทศบาลหรือผู้บริหารเทศบาลสร้างประโยชน์ให้แก่ตน โดยเบียดเบียนหรือคุกคามประโยชน์ส่วนรวมหรือประโยชน์ของรัฐหรือไม่ หากไม่ปรากฏพฤติการณ์ดังกล่าวแล้วก็ไม่ถือว่าเป็นคู่สัญญา ส่วนได้เสียในสัญญาที่เทศบาลเป็นผู้สัญญา</p>

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<p>4. กระบวนการ ขั้นตอน และวิธีการในการออกคำสั่งหรือคำวินิจฉัย</p> <p>4.1 กฎหมายมิได้บัญญัติกระบวนการและขั้นตอนในการออกคำสั่งหรือคำวินิจฉัย</p> <p>**ปัจจุบันมีระเบียบกระทรวงมหาดไทยว่าด้วยการสอบสวนผู้บริหารท้องถิ่น รองผู้บริหารท้องถิ่น ประธานสภาท้องถิ่น รองประธานสภาท้องถิ่น สมาชิกสภาท้องถิ่น เลขาธิการผู้บริหารท้องถิ่นและที่ปรึกษาผู้บริหารท้องถิ่น พ.ศ. 2554 ซึ่งมีกระบวนการ ขั้นตอน และวิธีการในการสอบสวนและวินิจฉัยซึ่งมีมาตรฐานความเป็นธรรมไม่ต่ำกว่าพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง พ.ศ. 2539 การสอบสวนจึงต้องปฏิบัติตามระเบียบฯดังกล่าว</p>	-	<p>- การสอบสวนนั้นควรต้องมีกระบวนการที่ประกันความเป็นธรรมที่ได้มาตรฐานไม่ต่ำกว่าพระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง พ.ศ. 2539 เพราะการสอบสวนเป็นกระบวนการพิจารณาทางปกครอง โดยเฉพาะในเรื่องการแจ้งเรื่องที่ถูกกล่าวหาให้ผู้ถูกสอบสวนทราบ และให้โอกาสผู้ถูกสอบสวนโต้แย้งและแสดงพยานหลักฐาน หากไม่ปฏิบัติจะเป็นเหตุให้ศาลปกครองเพิกถอนคำสั่งที่วินิจฉัยให้พ้นจากตำแหน่งได้ (คำพิพากษาศาลปกครองสูงสุดที่ อ.78/2553)</p>

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4.2 ปัญหาผู้ใช้อำนาจวินิจฉัยชี้ขาดให้พ้นจากตำแหน่ง	-	<p>- การที่ใช้คำว่า จังหวัดพะเยา ในคำสั่งแต่งตั้งคณะกรรมการสอบสวนข้อเท็จจริงและคำวินิจฉัย คำว่า จังหวัดพะเยา แม้จะมีฐานะเป็นนิติบุคคล ตามมาตรา 52 วรรคหนึ่ง แห่งพระราชบัญญัติระเบียบบริหารราชการแผ่นดิน พ.ศ. 2534 และมีผู้ว่าราชการจังหวัดเป็นหัวหน้าบังคับบัญชาบรรดาข้าราชการฝ่ายบริหารซึ่งปฏิบัติหน้าที่ในราชการส่วนภูมิภาคในเขตจังหวัดตามมาตรา 54 วรรคหนึ่ง การที่ผู้ว่าราชการจังหวัดใช้ข้อความว่า “จังหวัดพะเยา” ในคำสั่งแต่งตั้งคณะกรรมการสอบสวนข้อเท็จจริงและในคำวินิจฉัย แต่ผู้ว่าราชการจังหวัดเป็นผู้ลงนามในคำสั่งและคำวินิจฉัยดังกล่าว คำว่า “จังหวัดพะเยา” จึงหมายถึงผู้ถูกฟ้องคดี หาใช่จังหวัดพะเยาที่มีฐานะเป็นนิติบุคคลไม่ ดังนั้น จึงก็ไม่ทำให้คำสั่งดังกล่าวเป็นคำสั่งที่ไม่ชอบด้วยกฎหมาย (คำพิพากษาศาลปกครองสูงสุดที่ อ. 127/2552)</p>

ประเด็นปัญหา	คณะกรรมการกฤษฎีกา	ศาลปกครองสูงสุด
<p>5. สรุปแนวทางการวินิจฉัย</p>	<p>-ใช้หลักการไม่มีส่วนได้เสียหรือหลักความเป็นกลาง (Impartiality) ในการวินิจฉัยโดยตีความบทบัญญัติอย่างกว้าง โดยพิจารณาเพียงความสัมพันธ์ในเชิงบริหาร ความสัมพันธ์ในเชิงทุน และความสัมพันธ์ในระหว่างบุคคล จึงมีลักษณะของการห้ามผู้บริหารเทศบาลหรือสมาชิกสภาเทศบาลเข้าไปเกี่ยวข้องกับเรื่องเป็นคู่สัญญาในด้านใดด้านหนึ่งกับเทศบาลที่ตนดำรงตำแหน่งตามกฎหมายโดยสิ้นเชิง ซึ่งการใช้หลักความเป็นกลางในการพิจารณาดังกล่าวอาจมีผลทำให้เกิดปัญหาความไม่เป็นธรรมกับสมาชิกสภาเทศบาลหรือผู้บริหารเทศบาลที่ปฏิบัติหน้าที่ด้วยความซื่อสัตย์สุจริต และมีได้มุ่งหวังเข้ามาดำรงตำแหน่งในเทศบาลเพื่อแสวงหาประโยชน์ที่มีขอบได้ เช่น กรณีการซื้อขายน้ำมันเชื้อเพลิงของเทศบาลซึ่งมีข้อเท็จจริงว่าในบริเวณรัศมี 10 กิโลเมตร มีสถานีบริการน้ำมันเชื้อเพลิงเพียงแห่งเดียว และเทศบาลมีการซื้อขายน้ำมันเชื้อเพลิงกับสถานีบริการน้ำมันเชื้อเพลิงแห่งนี้มาตั้งแต่ก่อนที่ผู้เป็นหุ้นส่วนของสถานีบริการน้ำมันเชื้อเพลิงจะสมัครรับเลือกตั้งเป็นสมาชิกสภาเทศบาล เป็นต้น</p>	<p>-ใช้หลักการขัดกันแห่งผลประโยชน์ส่วนบุคคลและผลประโยชน์ส่วนรวม (Conflict of Interest) การใช้หลักการจัดกันแห่งผลประโยชน์โดยพิจารณาเจตนาของผู้กระทำ ประกอบด้วยจะมีผลทำให้สามารถจัดบุคคลผู้มุ่งหวังเข้ามาดำรงตำแหน่งสมาชิกสภาเทศบาลหรือผู้บริหารเทศบาลเพื่อแสวงหาประโยชน์ที่มีขอบได้ และสามารถให้ความเป็นธรรมกับสมาชิกสภาเทศบาลหรือผู้บริหารเทศบาลผู้ถูกสอบสวนได้ดีกว่าการพิจารณาโดยอาศัยเพียงความสัมพันธ์ตามหลักความเป็นกลาง เนื่องจากกรณีที่พิจารณาว่าสมาชิกสภาเทศบาลหรือผู้บริหารเทศบาลผู้ใดจะเป็นส่วนได้เสียทางอ้อมตามบทบัญญัติของมาตรา 18 ทวิหรือมาตรา 48 จตุทศ (3) แห่งพระราชบัญญัติเทศบาล พ.ศ. 2496 ข่อมต้องพิจารณาถึงเจตนาของผู้กระทำเป็นหลัก เพราะการกระทำใด ๆ ที่ขึ้นไปโดยปราศจากเจตนาแล้วย่อมจะกล่าวว่าเป็นการกระทำที่ฝ่าฝืนกฎหมายหาได้ไม่</p>

ภาคผนวก ข.

Municipal Conflict of Interest Act

Municipal Conflict of Interest Act

Definitions

1. In this Act,

“**child**” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family; (“enfant”)

“**controlling interest**” means the interest that a person has in a corporation when the person beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding; (“intérêts majoritaires”)

“**council**” means the council of a municipality; (“conseil”)

“**elector**” means,

- (a) in respect of a municipality, or a local board thereof, other than a school board, a person entitled to vote at a municipal election in the municipality, and
- (b) in respect of a school board, a person entitled to vote at the election of members of the school board; (“électeur”)

“**interest in common with electors generally**” means a pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with the electors within that part; (“intérêt commun à tous les électeurs”)

“**judge**” means a judge of the Superior Court of Justice; (“juge”)

“**local board**” means a school board, board of directors of a children’s aid society, committee of adjustment, conservation authority, court of revision, land division committee, municipal service board, public library board, board of management of an improvement area, board of health, police services board, planning board, district social services administration board, trustees of a police village, board of trustees of a police village, board or committee of management of a long-term care home, or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act in respect of any of the affairs or purposes, including school purposes, of one or more municipalities or parts thereof, but does not include a committee of

management of a community recreation centre appointed by a school board or a local roads board; (“conseil local”)

“**meeting**” includes any regular, special, committee or other meeting of a council or local board, as the case may be; (“réunion”)

“**member**” means a member of a council or of a local board; (“membre”)

“**municipality**” includes a board, commission or other local authority exercising any power in respect of municipal affairs or purposes, including school purposes, in territory without municipal organization, but does not include a committee of management of a community recreation centre appointed by a school board, a local roads board or a local services board; (“municipalité”)

“**parent**” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child; (“père ou mère”)

“**school board**” means a board as defined in subsection 1 (1) of the *Education Act*, and, where the context requires, includes an old board within the meaning of subsection 1 (1) of the *Education Act*; (“conseil scolaire”)

“**senior officer**” means the chair or any vice-chair of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other person who performs functions for the corporation similar to those normally performed by a person occupying any such office; (“dirigeant”)

“**spouse**” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage. (“conjoint”) R.S.O. 1990, c. M.50, s. 1; 1997, c. 25, Sched. E, s. 7; 1997, c. 31, s. 156 (1); 1999, c. 6, s. 41 (1); 2002, c. 17, Sched. F, Table; 2005, c. 5, s. 45 (1, 2); 2006, c. 19, Sched. C, s. 1 (1); 2006, c. 32, Sched. D, s. 10; 2007, c. 8, s. 219.

Indirect pecuniary interest

2. For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

- (a) the member or his or her nominee,
 - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,
 - (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or
 - (iii) is a member of a body, that has a pecuniary interest in the matter; or
- (b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter. R.S.O. 1990, c. M.50, s. 2.

Interest of certain persons deemed that of member

3. For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member. R.S.O. 1990, c. M.50, s. 3; 1999, c. 6, s. 41 (2); 2005, c. 5, s. 45 (3).

EXCEPTIONS

Where s. 5 does not apply

- 4.** Section 5 does not apply to a pecuniary interest in any matter that a member may have,
- (a) as a user of any public utility service supplied to the member by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of persons who are not members;
 - (b) by reason of the member being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;
 - (c) by reason of the member purchasing or owning a debenture of the municipality or local board;
 - (d) by reason of the member having made a deposit with the municipality or local board, the whole or part of which is or may be returnable to the member in like manner as such a deposit is or may be returnable to all other electors;

- (e) by reason of having an interest in any property affected by a work under the *Drainage Act* or by a work under a regulation made under Part XII of the *Municipal Act, 2001* or Part IX of the *City of Toronto Act, 2006*, as the case may be, relating to local improvements;
- (f) by reason of having an interest in farm lands that are exempted from taxation for certain expenditures under the *Assessment Act*;
- (g) by reason of the member being eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;
- (h) by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board;
- (i) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member or as a member of a volunteer fire brigade, as the case may be;
- (j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; or
- (k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member. R.S.O. 1990, c. M.50, s. 4; 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (1).

DUTY OF MEMBER

When present at meeting at which matter considered

5. (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. R.S.O. 1990, c. M.50, s. 5 (1).

Where member to leave closed meeting

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration. R.S.O. 1990, c. M.50, s. 5 (2).

When absent from meeting at which matter considered

(3) Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1). R.S.O. 1990, c. M.50, s. 5 (3).

RECORD OF DISCLOSURE

Disclosure to be recorded in minutes

6. (1) Every declaration of interest and the general nature thereof made under section 5 shall, where the meeting is open to the public, be recorded in the minutes of the meeting by the clerk of the municipality or secretary of the committee or local board, as the case may be. R.S.O. 1990, c. M.50, s. 6 (1).

Idem

(2) Every declaration of interest made under section 5, but not the general nature of that interest, shall, where the meeting is not open to the public, be recorded in the minutes of the next meeting that is open to the public. R.S.O. 1990, c. M.50, s. 6 (2).

REMEDY FOR LACK OF QUORUM

Quorum deemed constituted

7. (1) Where the number of members who, by reason of the provisions of this Act, are disabled from participating in a meeting is such that at that meeting the remaining members are not of sufficient number to constitute a quorum, then, despite any other general or special Act, the remaining number of members shall be deemed to constitute a quorum, provided such number is not less than two. R.S.O. 1990, c. M.50, s. 7 (1).

Application to judge

(2) Where in the circumstances mentioned in subsection (1), the remaining number of members who are not disabled from participating in the meeting is less than two, the council or local board may apply to a judge without notice for an order authorizing the council or local board, as the case may be, to give consideration to, discuss and vote on the matter out of which the interest arises. R.S.O. 1990, c. M.50, s. 7 (2).

Power of judge to declare s. 5 not to apply

(3) The judge may, on an application brought under subsection (2), by order, declare that section 5 does not apply to the council or local board, as the case may be, in respect of the matter in relation to which the application is brought, and the council or local board thereupon may give consideration to, discuss and vote on the matter in the same manner as though none of the members had any interest therein, subject only to such conditions and directions as the judge may consider appropriate and so order. R.S.O. 1990, c. M.50, s. 7 (3).

ACTION WHERE CONTRAVENTION ALLEGED

Who may try alleged contravention of s. 5 (1-3)

8. The question of whether or not a member has contravened subsection 5 (1), (2) or (3) may be tried and determined by a judge. R.S.O. 1990, c. M.50, s. 8.

Who may apply to judge

9. (1) Subject to subsection (3), an elector may, within six weeks after the fact comes to his or her knowledge that a member may have contravened subsection 5 (1), (2) or (3), apply to the

judge for a determination of the question of whether the member has contravened subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 9 (1).

Contents of notice of application

(2) The elector in his or her notice of application shall state the grounds for finding a contravention by the member of subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 9 (2).

Time for bringing application limited

(3) No application shall be brought under subsection (1) after the expiration of six years from the time at which the contravention is alleged to have occurred. R.S.O. 1990, c. M.50, s. 9 (3).

Power of judge to declare seat vacant, disqualify member and require restitution

10. (1) Subject to subsection (2), where the judge determines that a member or a former member while he or she was a member has contravened subsection 5 (1), (2) or (3), the judge,

- (a) shall, in the case of a member, declare the seat of the member vacant; and
- (b) may disqualify the member or former member from being a member during a period thereafter of not more than seven years; and
- (c) may, where the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, where such party is not readily ascertainable, to the municipality or local board of which he or she is a member or former member. R.S.O. 1990, c. M.50, s. 10 (1).

Saving by reason of inadvertence or error

(2) Where the judge determines that a member or a former member while he or she was a member has contravened subsection 5 (1), (2) or (3), if the judge finds that the contravention was committed through inadvertence or by reason of an error in judgment, the member is not subject to having his or her seat declared vacant and the member or former member is not subject to being disqualified as a member, as provided by subsection (1). R.S.O. 1990, c. M.50, s. 10 (2).

Member not to be suspended

(3) The authority to disqualify a member in subsection (1) does not include the right to suspend a member. R.S.O. 1990, c. M.50, s. 10 (3).

Transition: disqualification

(4) A disqualification of a member of a school board under this section that would have continued after December 31, 1997 but for the dissolution of the school board continues for its duration with respect to membership on any board whose members are elected by members of the electoral group who elected the member. 1997, c. 31, s. 156 (2).

Definition

(5) In subsection (4),

“electoral group” has the same meaning as in Part VIII of the *Education Act* as the Part read on January 1, 1997. 1997, c. 31, s. 156 (2).

Appeal to Divisional Court

11. (1) An appeal lies from any order made under section 10 to the Divisional Court in accordance with the rules of court. R.S.O. 1990, c. M.50, s. 11 (1).

Judgment or new trial

(2) The Divisional Court may give any judgment that ought to have been pronounced, in which case its decision is final, or the Divisional Court may grant a new trial for the purpose of taking evidence or additional evidence and may remit the case to the trial judge or another judge and, subject to any directions of the Divisional Court, the case shall be proceeded with as if there had been no appeal. R.S.O. 1990, c. M.50, s. 11 (2).

Appeal from order or new trial

(3) Where the case is remitted to a judge under subsection (2), an appeal lies from the order of the judge to the Divisional Court in accordance with the provisions of this section. R.S.O. 1990, c. M.50, s. 11 (3).

Proceedings not invalidated but voidable

12. The failure of any person to comply with subsection 5 (1), (2) or (3) does not of itself invalidate any proceedings in respect of any such matter but the proceedings in respect of such matter are voidable at the instance of the municipality or of the local board, as the case may be, before the expiration of two years from the date of the passing of the by-law or resolution authorizing such matter unless to make void the proceedings would adversely affect the rights of

any person acquired under or by virtue of the proceedings who acted in good faith and without actual notice of the failure to comply with subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 12.

Other procedures prohibited

13. Proceedings to declare a seat vacant or to disqualify a member or former member for conflict of interest, or to require a member or former member to make restitution where a contravention has resulted in personal financial gain, shall be had and taken only under this Act. R.S.O. 1990, c. M.50, s. 13.

GENERAL

Insurance

14. (1) Despite section 279 of the *Municipal Act, 2001* or section 218 of the *City of Toronto Act, 2006*, as the case may be, the council of every municipality may at any time pass by-laws,

(a) for contracting for insurance;

(b) despite the *Insurance Act*, to enable the municipality to act as an insurer; and

(c) for exchanging with other municipalities in Ontario reciprocal contracts of indemnity

or inter-insurance in accordance with Part XIII of the *Insurance Act*,

to protect a member of the council or of any local board thereof who has been found not to have contravened section 5, against any costs or expenses incurred by the member as a result of a proceeding brought under this Act, and for paying on behalf of or reimbursing the member for any such costs or expenses. R.S.O. 1990, c. M.50, s. 14 (1); 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (2).

Insurance Act does not apply

(2) The *Insurance Act* does not apply to a municipality acting as an insurer for the purposes of subsection (1). R.S.O. 1990, c. M.50, s. 14 (2).

Surplus funds

(3) Despite section 387 of the *Insurance Act*, any surplus funds and the reserve fund of a municipal reciprocal exchange may be invested only in such securities as a municipality may invest in under the *Municipal Act, 2001* or the *City of Toronto Act, 2006*, as the case may be. R.S.O. 1990, c. M.50, s. 14 (3); 1996, c. 32, s. 76 (1); 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 33 (3); 2007, c. 7, Sched. 27, s. 1.

Reserve funds

(4) The money raised for a reserve fund of a municipal reciprocal exchange may be expended or pledged for, or applied to, a purpose other than that for which the fund was established if two-thirds of the municipalities that are members of the exchange together with two-thirds of the municipalities that previously were members of the exchange and that may be subject to claims arising while they were members of the exchange agree in writing and if section 386 of the *Insurance Act* is complied with. R.S.O. 1990, c. M.50, s. 14 (4); 2009, c. 33, Sched. 21, s. 7.

Local boards

(5) A local board has the same powers to provide insurance for or to make payments to or on behalf of its members as are conferred upon the council of a municipality under this section in respect of its members. R.S.O. 1990, c. M.50, s. 14 (5).

Former members

(6) A by-law passed under this section may provide that it applies to a person who was a member at the time the circumstances giving rise to the proceeding occurred but who, prior to the judgment in the proceeding, has ceased to be a member. R.S.O. 1990, c. M.50, s. 14 (6).

Conflict with other Acts

15. In the event of conflict between any provision of this Act and any provision of any general or special Act, the provision of this Act prevails. R.S.O. 1990, c. M.50, s. 15.

ภาคผนวก ค.

District of Columbia Official Code 2001

District of Columbia Official Code 2001

DC ST § 1-1106.01

(a) The Congress declares that elective and public office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust.

(b) No public official shall use his or her official position or office to obtain financial gain for himself or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated, other than that compensation provided by law for said public official. This subsection shall not affect a vote by a public official: (1) On any matter which affects a class of persons (such a class shall include no less than 50 persons) of which such public official is a member if the financial gain to be realized is de minimus; (2) on any matter relating to such public official's compensation as authorized by law; or (3) regarding any elections law. If an action is taken by any department, agency, board, or commission of the District of Columbia, except by the Council of the District of Columbia, in violation of this section, such action may be set aside and declared void and of no effect, upon a proper order of a court of competent jurisdiction.

(c) No person shall offer or give to a public official or a member of a public official's household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that such public official's official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his or her duties, or as a reward, except for political contributions publicly reported pursuant to § 1-1102.06 and transactions made in the ordinary course of business of the person offering or giving the thing of value.

(d) No person shall offer or pay to a public official, and no public official shall solicit or receive any money, in addition to that lawfully received by the public official in his or her official capacity, for advice or assistance given in the course of the public official's employment or relating to his or her employment.

(e) No public official shall use or disclose confidential information given in the course of or by reason of his or her official position or activities in any way that could result in financial gain for himself or herself or for any other person.

(f) No member or employee of the Council of the District of Columbia or Board of Education of the District of Columbia shall accept assignment to serve on a committee the jurisdiction of which consists of matters (other than of a de minimis nature) in which he or she or a member of his or her family or a business with which he or she is associated, has financial interest.

(g) Any public official who, in the discharge of his or her official duties, would be required to take an action or make a decision that would affect directly or indirectly his or her financial interests or those of a member of his or her household, or a business with which he or she is associated, or must take an official action on a matter as to which he or she has a conflict situation created by a personal, family, or client interest, shall:

(1) Prepare a written statement describing the matter requiring action or decision, and the nature of his or her potential conflict of interest with respect to such action or decision;

(2) Cause copies of such statement to be delivered to the District of Columbia Board of Elections and Ethics (referred to in this part as the "Board"), and to his or her immediate superior, if any;

(3) If he or she is a member of the Council of the District of Columbia or member of the Board of Education of the District of Columbia, or employee of either, deliver a copy of such statement to the Chairman thereof, who shall cause such statement to be printed in the record of proceedings, and, upon request of said member or employee, shall excuse the member from votes, deliberations, and other action on the matter on which a potential conflict exists;

(4) If he or she is not the Mayor or a member of the Council of the District of Columbia, his or her superior, if any, shall assign the matter to another employee who does not have a potential conflict of interest, or, if he or she has no immediate superior, except the Mayor, he or she shall take such steps as the Board prescribes through rules and regulations to remove himself or herself from influence over actions and decisions on the matter on which potential conflict exists; and

(5) During a period when a charge of conflict of interest is under investigation by the Board, if he or she is not the Mayor or a member of the Council of the District of Columbia or a member of the Board of Education, his or her superior, except the Mayor, if any, shall have the arbitrary power to assign the matter to another employee who does not have a potential conflict of interest, or if he or she has no immediate superior, he or she shall take such steps as the Board shall prescribe through rules and regulations to remove himself or herself from influence over actions and decisions on the matter on which there is a conflict of interest.

(h) Neither the Mayor nor any member of the Council of the District of Columbia may represent another person before any regulatory agency or court of the District of Columbia while serving in such office. The preceding sentence does not apply to an appearance by such an official before any such agency or court in his or her official capacity or to the appearance by a member of the Council (not the Chairman) licensed to practice law in the District of Columbia, before any court or non-District of Columbia regulatory agency in any matter which does not affect his or her official position.

(h-1)(1) No member of a board or commission shall be eligible for appointment by the members of that board or commission to any paid office or position under the supervision of that board or commission.

(2) No former member of a board or commission shall be eligible for appointment to any paid office or position under the supervision of the board or commission on which he or she served, unless:

(A) At least 45 days have passed since the date of termination of his or her service as a member of the board or commission; and

(B) He or she has followed the same employment application requirements required of other applicants for the paid office or position.

(i) As used in this section, the term:

- (1) "Public official" means any person required to file a financial statement under § 1-1106.02.
- (2) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted for profit.
- (3) "Business with which he or she is associated" means any business of which the person or member of his or her household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value, and any business which is a client of that person.
- (4) "Household" means the public official and his or her immediate family.
- (5) "Immediate family" means the public official's spouse or domestic partner and any parent, brother, or sister, or child of the public official, and the spouse or domestic partner of any such parent, brother, sister, or child.

DC ST § 1-1106.02

(a) Any candidate for nomination for election, or election, to public office at the time he or she becomes a candidate, who does not occupy any such office, shall file within one month after he or she becomes a candidate for such office, and the Mayor and the Chairman and each member of the Council of the District of Columbia holding office under the District of Columbia Home Rule Act, a Representative or Senator elected pursuant to § 1-123, the President and each member of the Board of Education, and each member of the Retirement Board, and persons serving as subordinate agency heads or serving in positions designated as within the Legal Service, the Excepted Service, or the Management Supervisory Service (regardless of date of appointment) and paid at a rate of DS-13 or above, or MS-13 or above in case of the Management Supervisory Service, or designated in § 1-609.08, and each member of the District of Columbia Board of Accountancy, established by § 3-1503; the Board of Examiners and Registrars of Architects, established by § 3-1601; the Board of Directors of the Public Parking Authority of the District of Columbia, established by § 50-2503; the Board of Barber Examiners for the District of Columbia, established by § 3-1703; the District of Columbia Boxing and Wrestling Commission, established by § 3-604; the Board of Dental Examiners, established by § 3-2101; the District of Columbia Board of Cosmetology, established by § 3-2002; the Education Licensure Commission, established by § 38-1303; the Electrical Board, established by Commissioners' Order No. 54-1301, dated June 17, 1954; the Board of Funeral Directors, established by § 3-403; District of Columbia Taxicab Commission, established by Chapter 3 of Title 50; the Commission on Licensure to Practice the Healing Art in the District of Columbia, established by § 3-2903; the Board of Examiners for Nursing Home Administrators, established by Commissioner's Order No. 70-37, effective October 15, 1970; the Board of Occupational Therapy Practice, established by § 3-2305.5; the Board of Optometry, established by § 3-2403; the Board of Pharmacy, established by Chapter 20 of Title 2; the Practical Nurses' Examining Board, established by § 3-2302.06; the Physical Therapists' Examining Board, established by § 3-2303.05; the Board of Psychologist Examiners, established by § 3-2304.05; the Plumbing Board, established by § 3-2501; the Board of Podiatry Examiners, established by § 3-2601; the District of Columbia Board of Registration for Professional Engineers, established by § 47- 2886.05; the Real Estate Commission of the District of Columbia, established by § 42-1723; the Refrigeration and Air Conditioning Board,

established by Commissioners' Order No. 55-2028, effective October 18, 1955; the Nurses Examining Board, established by § 3-2301.02; the Board of Examiners of Steam and Other Operating Engineers, established by § 3-2702; the Board of Examiners in Veterinary Medicine, established by § 3-531; the Alcoholic Beverage Control Board, established by § 25-104; the Board of Appeals and Review, established by Part I of Commissioners' Order No. 55-1500, effective August 11, 1955; the District of Columbia Armory Board, established by § 3-302; the Commission on the Arts and Humanities, established by § 39-203; the Condemnation Review Board, established by Commissioners' Order No. 54-2305, dated September 27, 1954; the Contract Appeals Board, D.C., established by Part VI of Commissioner's Order No. 68-399, dated June 6, 1968; the Criminal Justice Supervisory Board, established by § 3-903; the D.C. General Hospital Commission, established by § 44-1911 et seq.; the District of Columbia Developmental Disabilities Planning Council, established by Mayor's Order No. 77-51a, dated March 30, 1977; the District of Columbia Board of Elections and Ethics, established by § 1-1001.03; the Office of Employee Appeals, established by subchapter VI of Chapter 6 of this title; Board of Real Property Assessments and Appeals for the District, established by § 47-825.01; the Board of Library Trustees, established by § 39-104; the District of Columbia Small and Local Business Opportunity Commission, established by § 2-218.21; the District of Columbia Occupational Safety and Health Board, established by Reorganization Plan No. 1 of 1978, effective June 27, 1978; the Public Employee Relations Board, established by subchapter V of Chapter 6 of this title; the Committee for the Purchase of Products and Services of the Blind and Other Severely Handicapped, established by § 32-303; the District of Columbia Rental Accommodations Commission, established by Chapter 40 of Title 42; the Statewide Health Coordinating Commission, established by Mayor's Order No. 72-43, dated March 15, 1977; the Board of Trustees of the University of the District of Columbia, established by § 38-1202.01 et seq.; the Board of Zoning Adjustment, established by § 6-641.07; the Zoning Commission, established by § 6-621.01; the District of Columbia Commission on Postsecondary Education, established by Mayor's Order No. 75-23a, dated February 1, 1975; the District of Columbia Redevelopment Land Agency, established by § 6-301.03; the District of Columbia Housing Finance Agency, established by § 42-2702.01; and any board or commission created after April 23, 1980, which makes decisions in areas of contracting, procurement, administration of grants or subsidies,

planning or developing policies, inspecting, licensing, regulating, auditing or acting in areas of responsibility involving any potential conflict of interest shall file annually with the Board a report containing a full and complete statement of:

(1) the name of each business entity (including sole proprietorships, partnerships, and corporations) transacting any business with the District of Columbia government (including any of its agencies, departments, boards, commissions, or educational bodies) in which such person (or his or her spouse, if property is jointly titled): (A) has a beneficial interest (including those held in such person's own name, in trust, or in the name of a nominee) exceeding in the aggregate \$1,000; provided, however, if such interest consists of corporate stocks which are registered and traded upon a recognized national exchange, such aggregate value must exceed \$5,000; or (B) earns income for services rendered during a calendar year in excess of \$1,000; or (C) serves as an officer, director, partner, employee, consultant, contractor, or in any other formal capacity or affiliation;

(2) any outstanding individual liability in excess of \$1,000 for borrowing by such person or his or her spouse if such liability is joint, from anyone other than a federal or state insured or regulated financial institution (including any revolving credit and installment accounts from any business enterprise regularly engaged in the business of providing revolving credit or installment accounts) or a member of such person's immediate family;

(3) all real property located in the District of Columbia (and its actual location) in which such person or his or her spouse if such property is jointly titled, has an interest with a fair market value in excess of \$5,000; provided, however, that this provision shall not apply to personal residences actually occupied by such person or his or her spouse;

(4) all professional or occupational licenses issued by the District of Columbia government held by such person;

(5) all gifts received in an aggregate value of \$100 in a calendar year by such person from any business entity (including sole proprietorships, partnerships, and corporations) transacting any business with the District of Columbia government (including any of its agencies, departments, boards, commissions, or educational bodies); and

(6) an affidavit stating that the subject candidate or office holder has not caused title to property to be placed in another person or entity for purposes of avoiding the disclosure requirements of this subsection. In addition to the foregoing information required to be disclosed pursuant to this subsection, the Mayor, the members of the Council, and the members of the Board of Education shall also disclose annually all outside income and honoraria, as defined in § 1-1108.01, accepted during the calendar year, as well as the identity of any client for whom the public official performed a service in connection with the public official's outside income if the client has a contract with the government of the District of Columbia or the client stands to gain a direct financial benefit from legislation that was pending before the Council during the calendar year. For the purpose of this subsection, "outside income" means any fixed payment at regular intervals for services rendered, self-employment, and royalties for any publication. For the purpose of this subsection, the words "immediate family" shall have the same meaning as in § 1-1106.01. The Board may, by rule, provide forms for the submission of the statement required by this subsection in aggregate categories. Information supplied pursuant to this subsection shall be modified by the filer within 30 days of any changes therein, and failure to inform the Board of such modifications is deemed to be a willful violation of this filing requirement. The Board may, on a case-by-case basis, provide for certain exemptions to this filing requirement which are deemed to be de minimis by the Board.

(b) Before the 1st day of February of each year, the Mayor of the District of Columbia for persons appointed under the authority of subchapter VIII-B of Chapter 6 of this title (and paid at a rate of DS-13 or above), subchapter X of chapter 6 of this title or §§ 1-609.01 through 1-609.03 or § 1-609.09 (and paid at a rate of GS-13 or above in the District Schedule or comparable compensation under subchapter XI of Chapter 6 of this title), subchapter IX-A of Chapter 6 of this title (and paid at a rate of DS-13 or above, or MS-13 or above in the case of the Management Supervisory Service or comparable compensation under subchapter XI of Chapter 6 of this title) or designated in § 1-609.08 (and appointed by the Mayor) and members of boards and commissions listed in subsection (a) of this section; the Chairman of the Council of the District of Columbia for persons appointed under the authority of subchapter VIII-B of Chapter 6 of this title (and paid at a rate of DS-13 or above), §§ 1-609.01 through 1-609.03 or § 1-609.09 (and paid at a rate of GS-13 or above in the District Schedule or comparable compensation under subchapter XI of Chapter 6 of

this title), subchapter IX-A of Chapter 6 of this title) (and paid at a rate of DS-13 or above, or MS-13 or above in the case of the Management Supervisory Service or comparable compensation under subchapter XI of Chapter 6 of this title) or designated in § 1-609.08 and employed by the Council; and the Chief Executive Officer of the Board of Education, the University of the District of Columbia, or any independent agency or instrumentality by whom a person appointed under subchapter VIII-B of Chapter 6 of this title (and paid at a rate of DS-13 or above), or a person designated in § 1-609.08 is employed shall submit on behalf of their respective agency, the names and current mailing addresses of all persons required to file a financial statement as required by this section with the Director of Campaign Finance. It shall be the responsibility of each chief executive to maintain the currency of the names and current mailing addresses of all persons required to file under this chapter, and to advise the Director of Campaign Finance within 21 days of such person's appointment, election, resignation, termination, or death. During April of each year, the Board shall publish, in the District of Columbia Register, a list of names of candidates, officers, and employees required to file under this section as of the last day of the preceding March.

(c) Except as otherwise provided by this section, all papers filed under this section shall be kept by the Board in the custody of the Director for not less than 4 years. Upon receipt of a request by any member of the Board adopted by a recorded majority vote of the full Board requesting the examination and audit of any of the reports filed by any individual under subsection (b) of this section, the Director shall transmit to the Board the envelopes containing such reports. Within a reasonable time after such recorded vote has been taken, the individual concerned shall be informed of the vote to examine and audit, and shall be advised of the nature and scope of such examination. If, upon such examination, the Board determines that further consideration by the Board is warranted and within the jurisdiction of the Board, or the Director or General Counsel of the Board which is required for the discharge of his or her official duties, the Board may receive the papers as evidence, after giving to the individual concerned due notice and opportunity for hearing in a closed session. The Board shall publicly disclose not later than the 1st day of June each year the names of the candidates, officers, and employees who have filed a report. The Director shall dispose of papers filed pursuant to this section in accordance with Chapter 17 of Title 2.

(d) (1) Reports required by this section (other than reports so required by candidates) shall be filed not later than 60 days following August 14, 1974, and not later than May 15th of each succeeding year. In the case of any person who ceases, prior to such date in any year, to occupy the office or position, the occupancy of which imposes upon him or her the reporting requirements contained in subsection (a) of this section, he or she shall file such report on the last day he or she occupies such office or position, or on such later date, not more than 3 months after such last day, as the Board may prescribe. The Board shall publish, in the District of Columbia Register, not later than the 15th day of June each year, the name of each candidate, officer, and employee who has filed a report under this section; the name of each candidate, officer, and employee who has sought and received an extension of the deadline filing requirement and the reason therefor; and the name of each candidate, officer, and employee published in the District of Columbia Register under subsection (c) of this section who has not filed a report and the reason for not filing, if known. The Director shall dispose of papers filed pursuant to this section in accordance with Chapter 17 of Title 2.

(2) Any report required to be filed with the Director from an employee who is no longer covered under the provisions of this subchapter on March 1, 1979, shall be returned to

(e) Reports required by this section shall be in such form and detail as the Board may prescribe. The Board may provide for the grouping of items of income, sources of income, assets, liabilities, dealings in securities or commodities, and purchases and sales of real property, when separate itemization is not feasible or is not necessary for an accurate disclosure of the income, net worth, dealing in securities and commodities or purchases, and sales of rental property of any individual.

(f) All public reports filed under this section shall be maintained by the Board as public records which, under such reasonable regulations as it shall prescribe, shall be available for inspection by members of the public.

(g) For the purposes of any report required by this section, an individual shall be considered to have been a public official, if he or she has served as a public official for more than 30 days during any calendar year in a position for which financial disclosure reports are required under this part.

(h) For purposes of this section, the term:

(1) "Income" means gross income as defined in § 61 of the Internal Revenue Code of 1954.

(2) "Security" means security as defined in § 2 of the Securities Act of 1933, as amended (15 U.S.C. § 77b).

(3) "Commodity" means commodity as defined in § 2 of the Commodities Exchange Act, as amended (7 U.S.C. § 2).

(4) "Transactions in securities or commodities" means any acquisition, holding, withholding, use, transfer, or other disposition involving any security or commodity.

(5) "Immediate family" means the child, parent, grandparent, brother, or sister of an individual, and the spouse or domestic partner of such person.

(6) "Tax" means the taxes imposed under Chapter 1 of the Internal Revenue Code of 1954, under the District of Columbia Revenue Act of 1947, and under the District of Columbia Public Works Act of 1954 and any other provision of law relating to the taxation of property within the District of Columbia.

(7) "Gift" means a payment, subscription, advance, forbearance, rendering or deposit of money, services or any thing of value, unless consideration of equal or greater value is received, for the purpose of influencing the actions of a public official in making or influencing the making of an administrative decision or legislative action; and shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person's immediate family.

(i) (1) This section shall not apply to any candidate for nomination for election, or election as a member of an Advisory Neighborhood Commission, or to any member of an Advisory Neighborhood Commission, except to the extent that the section applies to the candidate or member because of his or her status other than as the candidate or member.

(2) Members of Advisory Neighborhood Commissions shall be covered under the conflict of interest provisions of § 1-1106.01.

(j) No person shall unlawfully disclose or use for any purpose other than in accordance with the terms of this subchapter any information contained in financial statements required by this subchapter.