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2006 IPMA-HR Western Region Annual Conference

“Public Service 101 – Living Life in a Fishbowl”

May 3, 2006
2:00 pm – 3:15 pm

Presented by:
Scott Tiedemann

Public Service 101 – Living Life in a Fishbowl

IPMA-HR Western Region Annual Conference – The HR Trek

Presented by Scott Tiedemann

5-3-06

**Public Service 101 – Living
Life in a Fishbowl**

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Agenda

- Open Government
- Ethics in Public Service
- Personnel Management
 - Rights
 - Discipline
- Labor Relations
- Liability and Immunity

Open Government

“The people in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.”

- *Ralph M. Brown Act, 1953*

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Open Meeting Laws

- State laws require that public agency actions “be taken openly and that their deliberations be conducted openly”

Open Meeting Laws

- The public must have notice of any meeting.

(Technical requirements vary by state)

Open Meeting Laws

- A meeting is usually defined as:**
- Any congregation of a majority of the members of the legislative body in the same time and place to hear, discuss or deliberate upon any item within the subject matter jurisdiction

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A Meeting is NOT

- Individual contacts or conversations, but serial meetings generally prohibited
- Attendance of a majority of the members at conferences to discuss issues of general interest
- Attendance of a majority of the members of the legislative body at purely social or ceremonial occasions

Closed/Executive Sessions

- Permissible where allowed by statute
- Disclosure is illegal under some state laws

**Inspection of
Public Records**

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What Are Public Records?

- Laws generally define public records as “any writings containing information relating to the conduct of the business, prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics”

When are Public Records Subject to Inspection?

- Public records are subject to inspection at all times during the business hours of the state or local agency
- Public records must be made available for copying upon:
 - receipt of a request which reasonably describes an identifiable record; and
 - upon payment of appropriate fees, if any.

(Requirements vary by state)

Enforcement

- A court may order production of records improperly withheld.
- The court may award cost and reasonable attorney’s fees to prevailing plaintiff.

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Destruction of Records

- Destruction of public records generally prohibited except as permitted by statute
- Destruction of public records can be a crime

Ethics in Public Service

- Must be personally disinterested in matters where you are officially responsible
- Avoid even the *appearance* or *possibility* of a conflict

Personnel Management: Unique Rights of Public Employees

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Free Speech

- Public employees have a right of free speech
- Speech must pertain to a matter of public concern
- If so, employee’s interests in speech are balanced against employer’s business interests

Privacy

- Information privacy
- Autonomy privacy
- Courts employ a balancing test:

Employee’s reasonable expectations
v.
Employer’s legitimate business needs

Privacy

Electronic use policies are important tools for ensuring appropriate use of electronic equipment.

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**Personnel Management:
Discipline of Public Employees**

Discipline

- Governed by State and Federal law and employing agency's standards and policies.
- Memorandum of understanding
- Ordinances
- Personnel rules
- Department Rules/procedures
- Other agency policies

Types of Discipline

- Counseling
- Verbal reprimand
- Written reprimand
- Suspension
- Reduction in pay
- Demotion
- Discharge

Pre-Disciplinary Due Process

- Provide written notice of charges
- Identify facts upon which charges are based
- Provide documents to support the discipline
- Give the employee an opportunity to respond

Name Clearing Hearings

- Even at-will employees may be entitled to procedural protection if a discharge has the potential to seriously affect an employee's reputation

Liability of Public Officials

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42 U.S.C. § 1983 Claims

- Authorizes damages and injunctive relief against an individual or local government for deprivation of rights, privileges and immunities secured by the United States Constitution and other federal laws.
- Municipality only liable if injury results from custom practice or policy.
- Statute of limitations determined by state personal injury statute of limitations.

42 U.S.C. § 1983 Defenses

- Absolute immunity
- Qualified immunity

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CASE STUDY #1

Andrew and his wife Jill live in a quaint coastal town. Andrew is City Manager. Jill runs a small catering company in town. She has recently inherited a piece of property from her aunt and uncle. This land consists of 25 acre that overlook the ocean. It is perfect for a community performing arts center that the City has long wished to build. The City has been searching for a suitable piece of property. Andrew and his wife want to “give back to the community” and are willing to sell the land to the City for well below its market value.

Questions to Consider:

- 1. Can the City Council purchase the land?**

- 2. What if Andrew abstains from the vote?**

- 3. What if Andrew and his wife sell the land to the college district instead of the city?**

- 4. What if Andrew has never held title to the land and it has always been in his wife’s name?**

- 5. What if Andrew and his wife donate the land to the city**

CASE STUDY #2

Bill Techno is the Chief Information Officer for High Tech County. As the top technology officer, Bill oversees all technology contracts. The County currently runs various software programs, many of which perform the same function. In an effort to standardize the County's software and to save money, Bill ordered all county agencies to buy software from Macrohard. Bill honestly believes that Macrohard's software offers the best product at a competitive price. Bill also happens to own 100 shares of Macrohard. The value of these shares has fluctuated from between \$10,000 and \$700 over the three years that he has owned the stock. Bill has also been taken out to expensive dinners by several software companies, including Macrohard, Shmoracle, and Oldell.

- 1. Did Bill violate any conflict of interest laws by ordering all county agencies to utilize the same software?**
- 2. Does it matter if Bill believes that using the same software is best for the County?**
- 3. Is Bill forbidden from making the decision because he has been taken out to dinner by several software companies?**
- 4. Would it matter if Bill only made a recommendation to the County Board of Supervisors who then voted on whether to adopt the one-software policy?**

CASE STUDY #3

Facts:

Carl is a Senior Engineer for the Flood Plains Water District. He is married and has three children. Paul is the General Manager for the District.

During his lunch break, Carl meets with Sandra (not his wife) at the Valley Motel. Carl turns off his beeper (which was provided by the District) during his lunch break.

While driving back to the District from a meeting, Paul sees Carl kissing Sandra outside the Valley Motel. Carl is in his District uniform.

Upon arriving at the District, Paul is informed by Steve, an Engineer Assistant, that he has not been able to reach Carl. Carl is the only person at the District with the expertise and experience to handle an emergency involving a very expensive piece of equipment. They only had a 30 minute window to act to prevent irreparable damage to the equipment. It is now too late; the equipment is damaged.

Should Paul discipline Carl?

CASE STUDY #4

Facts:

The City receives grant money from the Environmental Protection Agency for the purpose of maintaining and operating its wild animal park. The park attracts tourists from around the world and is open year round.

Baldwin is the Union President. He has had a long dispute with Margaret, the Department Head, regarding his job performance, tardiness and attitude toward supervisors and management in general. Baldwin has received progressive discipline for his misconduct over his five year tenure with the City. Six months ago, he received a one week suspension for verbally abusing and threatening his immediate supervisor and intentionally disregarding a written directive.

Margaret issues a Notice of Intent to Suspend for Thirty Days to Baldwin for his incompetence, excessive tardiness over the last 12 months, defiant attitude toward his superiors, insubordination and violation of 10 District policies and procedures.

Upon receipt of the Notice of Intent, Baldwin becomes upset and contacts the local newspaper. The newspaper runs an article about Baldwin's allegations that 1) Margaret has a personal vendetta against all City employees who participate in union activities, and 2) Margaret misallocated grant funds from the Environmental Protection Agency.

Margaret did use EPA grant money to pay veterinarian fees for cheetahs which became unexpectedly seriously ill. Veterinarian fees are not proper expenditures under the EPA grant. However, the City reimbursed the Department budget for the veterinarian fees within two weeks.

May the Department discipline Baldwin? Are there any potential problems?

CASE STUDY #5

John Smith is a new deputy sheriff for Country County. The County has been having trouble attracting qualified candidates and Smith was the beneficiary of lowered hiring standards. Before being hired by the County, Smith worked as a police officer for a local city. He was released from probation as a result of a sustained complaint of excessive force. Smith's initial assignment for the County is working in the jail. Most recently, he was working in transportation services, assisting with transportation of prisoners to the courthouse for court appearances. One morning, while one of the prisoners was stepping off the bus, the prisoner fell. The prisoner was handcuffed and fell on his face, fracturing his jaw and also dislocating his shoulder.

An internal affairs investigation was conducted and it is concluded that Smith pushed the prisoner who had been "mouthing off" the entire ride from the jail to the courthouse. As a result, Smith is released from probation as a deputy sheriff for "use of excessive force upon a prisoner."

To make matters worse, the prisoner institutes a lawsuit against the County and Smith under 42 U.S.C. Section 1983 for violation of his Fourth Amendment rights.

Smith submits a written request for a defense and indemnification and also requests a Lubey hearing.

- 1. Can Smith be personally liable for his actions under 42 U.S.C. Section 1983?**

- 2. Can the County be held liable under 42 U.S.C. section 1983 for Smith's misconduct?**