



COUNCILLOR CODE OF CONDUCT CASE STUDIES/SCENARIOS

Misuse of Position

Scenario 1

Councillor Milosevic is a member of Sunnyside political party. His comrade is standing for pre-selection for the same political party in one of the State seats which takes in part of Cr Milosevic's ward. Cr Milosevic has provided his comrade with a glowing endorsement for publication supporting his pre-selection campaign which he signed off as 'Cr Milosevic, Councillor for Sunnyside City Council'. Is Cr Milosevic's use of his position and title likely to amount to a misuse of his position?

Response:

It is unlikely that a Councillor using their position or title in a related (or even non-council related) context would amount to a misuse of position. This may change if the title was used in connection with something which was dishonest or misleading.

Scenario 2

Council Littlejohn is a long standing Councillor. His council has a policy of providing all Councillors with cab charge vouchers which can be used at any time by Councillors providing that the use is in connection with council business. Councillor Littlejohn has a few too many drinks at the MCG one afternoon with some of his friends from university while supporting his victorious football team and decides to catch a taxi home rather than drive his vehicle. As he lives in the outer suburbs, he does not want to pay out of his own pocket for the \$90 fare so he uses one of his cab charge vouchers. Is this likely to amount to a misuse of his position?

Response:

Cr Littlejohn has used public funds (i.e. a voucher to cover a \$90 taxi fare) for a private purpose which is likely to be considered improper. Further, his Council also has a policy that cab charge vouchers can only be used in connection with council business. Travelling home from an afternoon at the football with mates is not related to council business so this use is unauthorised.

Improper direction and improper influence

Scenario 1

Councillor Taylor has developed a concern about how the Local Law Officers at her council have been applying one of the Council's by-laws which provides that property owners must not allow their property to become unsightly. Councillor Taylor is of the view that some infringement notices have been issued to residents unfairly and unreasonably. Councillor Taylor calls the Council's Local Law Enforcement Officer who she has been issuing the infringements she is concerned about and expresses her dismay at the way he appears to be interpreting the Council's policy. Although quite unhappy about the situation, Cr Taylor makes a conscious effort to remain calm as she does not want to be accused of bullying an Officer. She tells him that if he continues to issue infringement notices in this way that she will have no other option than to raise the matter with his Manager.

Response:

It is likely that Cr Taylor's actions in speaking to the Officer and threatening him with a complaint to his Manager would constitute attempting to improperly influence a Council Officer. Councillors should be particularly mindful of how their conversations with Council Officers (particularly with Officers who are not Senior Managers) could be perceived as intimidating or unreasonably coercive.

Scenario 2

The Mayor tells the CEO that a majority of Councillors oppose a particular development application which the Council's Director of Planning is intending to recommend to the Council for approval and directs the CEO to change the recommendation so that it is in line with the view of the Council.

Response:

This is likely to amount to an improper direction by the Mayor of a Council Officer (i.e. the CEO and Director of Planning). Council Officers have a duty to provide professional advice to the Council. The Act expressly provides that a council must not direct or influence a Council Officer in relation to the advice which they provide to the Council.

Confidential information

Scenario 1

A matter has the potential to embarrass the Mayor because the Mayor has previously taken a strong public position on the issue and the Council now has professional advice which shows that the Mayor's view is not the best course of action for the Council to take.

Response:

Embarrassment of a Councillor or staff (or the Council for that matter) is not a ground for confidentiality.

Scenario 2

A Council meeting is closed to the public for a matter to be presented to Council that relates to budget approval for parameters for an enterprise bargaining agreement negotiation with the Council's employees.

Response:

The Act provides that industrial matters can be considered confidentially by councils.

Code of Conduct

Scenario 1

The Mayor requests that the Code of Conduct includes a provision which provides that confidential information may not be designated by the CEO unless agreed by the Mayor.

Response:

This cannot be included in the Code of Conduct. Such a provision is inconsistent with the Local Government Act which sets the grounds on which information can be designated as confidential information. A Councillor Code of Conduct must not be inconsistent with any Act or regulation. In this instance, the provision is seeking to fetter the broad power conferred on CEOs by the Act to declare information as confidential information by requiring the agreement of the Mayor. This is beyond the power of the Council to restrict and cannot be included in the Councillor Code of Conduct because it is inconsistent with the Act.

Scenario 2

Councillor Smith is aggrieved at the way that Cr Brown has been treating her and believes that Cr Brown has been acting in breach of the Councillor Code of Conduct which is in place at their Council. She intends to write to the CEO or Mayor (or both) setting out the details of the alleged breach.

Response:

Breaches of a council's Councillor Code of Conduct are a matter for the Council to investigate.

Conflict of Interest

Scenario 1

Conflicts of interest for Councillors require a Councillor to disclose them at all times but only to leave the room and not participate in discussion on the matter if the Councillor has a direct pecuniary interest (i.e. a financial interest) in the matter.

Response:

If a Councillor has a direct interest or an indirect interest in a matter, then they have a conflict of interest and must leave the room during discussion and for any vote (unless a specific exemption or relief applies). It does not matter whether their interest is financial or not.

Scenario 2

A Councillor or Council officer has a conflict of interest when that person has either a direct interest or indirect interest in a matter.

Response:

The Act provides that both direct interests and indirect interests in a matter before the Council constitute a conflict of interest for a Councillor, Council Officer or a member of a special committee.