

PERSPECTIVE

The Ethics of Conflicted Interests

Thomas R. Cuba

During my 12 years in an administrative government position and my time on various boards as a government appointee, I have been briefed frequently on the basis for the conflict of interest laws of Florida. I am, probably incorrectly, going to presume that most other states have similar if not exact criteria for determining a conflict of interest. The backdrop for this installment and the change of tense in the title is this: In most situations the determination of whether one has a conflict of interest is based in financial interest. All the documents and papers I had to file and the cautions from the attorney dealt with whether a decision made or influenced by me would result in monetary gain. Conflicted interests, on the other hand, are often much more challenging to resolve.

Take the case of the agency administrator, Jim, whose brother, John, applies for an environmental permit normally issued by the administrator's department. John cannot complete his project without Jim's permit. Because John and Jim have no financial relationship, there is no technical conflict of interest. Jim is expected to behave professionally and examine the permit on its merits alone. The perception of a conflict of interest may arise depending on the profile of the project and if the news media become involved.

Fortunately, Jim is the administrator and can easily step aside and allow his staff to review the application without his ever seeing it. Jim can even delegate to the staff the authority to issue or deny the application without Jim ever having seen it. This is an easy technical correction to the conflict but is it real?

Jim's environmental views are very probably conservative¹ while we do not know of John's orientation. What if the permit application is for a totally unsuitable project? What if Jim knows that John has no intention of adhering to the conditions? Does he now have a responsibility to share that knowledge with the reviewing staff? What if the project is really a good one but Jim knows John will lose financing if things aren't bureaucratically hurried along? When and where can and should Jim step back into the process? These are conflicted interests, not conflicts of interest.

In another situation, the administrator, Jim finds on his desk one morning the environmental application for improvements to his child's school. The improvements will allow his child to participate in a special program not currently available and may well improve his child's chances at being accepted to a quality university. Unless his child is under consideration for a scholarship, there is no conflict of interest, but there are conflicted interests. The same option, that of self-recusation, is available but the same problems arise.

Finally, Jim receives a permit application from his neighbor, good friend, or a fishing buddy. The point here is that if Jim lives in the community in which he issues permits, he cannot avoid eventually facing one of these types of situations. The question is how to deal with them.

To gain some insights, consider the problems from these points of view: the press; the applicant; and Jim's staff.

From the viewpoint of the press, the conflicted interest will make good copy and if the project is a controversial one,² either the press or the opponents will make a news story out of it. There is not much Jim can do about this situation.

From the applicant's perspective, Jim excusing himself would only be irritating if the applicant had been counting on his help to expedite things or to push through a bad permit. Again, there is not much Jim can do to correct this situation.

Now consider Jim's staff. Will they wonder about repercussions if they decline to issue a permit they know will benefit the boss? In John's case, will they wonder how much advice Jim gave John on the actual application? Will they insult Jim in their review? When the press calls to ask about how staff feels reviewing the boss's brother's application, will they say that they felt obliged to issue even though Jim stepped aside? Will they overreact and put this permit through extra levels of scrutiny creating an unfair burden on the applicant? Again, Jim cannot correct a fearful staff in the few moments available.

In fact, in all three instances, the best defense against conflicted interests is prior practice and your staff. If Jim has been the sort of administrator who has developed through example and practice a relationship with his staff wherein they would know they were expected to do their job and not presume nor act upon Jim's desires, then the conflicts fade. Staff will not feel threatened and will defend the administrator to

the press. The press will be aware of his history and not see the story as being that volatile. The friends and neighbors will not expect Jim's help because they know his ethics. The rule is that ethical conduct must be practiced all the time not just when you think there might be trouble. This establishes you as an ethical professional and will earn you the respect of both friend and foe.

Notes

1. Here I use the term *conservative* in the traditional political sense representative of such leaders as Abraham Lincoln and Theodore Roosevelt, as opposed to the current connotation of the term in US politics.
2. Controversy can be social or political, not just environmental.

Address correspondence to Thomas R. Cuba, PhD, CEP, Delta Seven Inc., PO Box 3241, St. Petersburg, FL 33731; (fax) 727-550-2513; (e-mail) Delta-Seven@worldnet.att.net.