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**SOME PRACTICAL ADVICE FOR STAYING OUT OF TROUBLE**

This is not a typical liability-prevention article. Rather than focus on a specific legal issue or court ruling, I thought it might be helpful if I shared some general observations about how elected officials should conduct themselves in order to stay out of trouble. The comments which follow are not necessarily "rules" that have legal consequences if they are broken. Instead, they are suggestions about how elected officials should conduct themselves, both during and outside of public meetings, in order to reduce the risk of situations that sometimes lead to lawsuits.

This material is taken from an actual ordinance adopted by one of my clients, a board of commissioners for a rural Georgia county. The provisions would be applicable to any city or county that has a multi-member board or council that serves as the governing authority for the local government (as opposed to those jurisdictions which have either a sole commissioner or a full-time elected official who serves as a chief executive officer). It also contemplates a local government using a city manager or county manager form of administration. Because there are many local governments in Georgia that fit into this category, I believe this information could be of benefit to many of the readers of this publication.

I have made this a generic ordinance by utilizing a fictitious town called "Mt. Pleasant." The ordinance could easily be adapted to apply to your local government, whether it be a city or a county. Again, let me emphasize that there is no legal requirement that you adopt such an ordinance, nor am I representing that a violation of any of these provisions is necessarily "illegal." However, based upon my experience in refereeing many, many disputes among local elected officials, I can tell you that a lot of trouble, expense, and even a few lawsuits, could have been avoided if elected officials would have observed these principles and governed themselves in the manner directed below. With that disclaimer, here is "Mt. Pleasant's" ordinance establishing a code of conduct for its elected officials:

AN ORDINANCE ESTABLISHING A CODE OF CONDUCT  
FOR ELECTED OFFICIALS OF MT. PLEASANT

The members of the Mt. Pleasant Town Council recognize that, when acting as a body, they are the governing authority of Mt. Pleasant. As a Council they possess the full power of local government, both legislative, executive and quasi-judicial, within the parameters established by the Constitution and laws of the State of Georgia. As individual council members, however, each member acknowledges that he has no legal power or authority, and that official action can exist only by majority vote of the Council. Accordingly, it is important and in the public interest to establish a code of conduct for elected officials that addresses conduct both during and outside of public meetings. This Ordinance is adopted in order to preserve the integrity of local government, to promote the efficiency with which local government services are provided, and to protect Mt. Pleasant from exposure to liability due to conduct that is unauthorized, *ultra vires*, or in excess of an elected official's authority.

NOW THEREFORE, it is hereby ORDAINED by the Mt. Pleasant Town Council that this Code of Conduct for elected officials is hereby adopted:

I. CONDUCT DURING MEETINGS

During the public portions of Public Meetings and Public Hearings, elected officials of Mt. Pleasant shall not:

- (1) Speak without first being recognized by the Chair;
- (2) Interrupt anyone who has the floor;
- (3) Use profanity during the public portion of any meeting;
- (4) Refuse to yield the floor, or argue with the Chair, if he is ruled out of order by the Chair;
- (5) Make disparaging remarks about any person's character during the public portion of any meeting. By way of example, it would be permissible to say "I don't believe that" or "I cannot accept that," but it is improper to say "He's a liar," or "He can't be trusted." Remarks should be limited to the subject under discussion, and shall not address the character of the persons involved. Nothing herein shall limit or restrict the free and open debate of these matters in executive or closed session.
- (6) Confront anyone about a prior statement in an accusatory manner during the public portion of any meeting. By way of example, it would be permissible to ask someone if something different had been said on a prior occasion, and the question should be phrased "Did you tell me \_\_\_\_\_?" or "Do you remember telling me \_\_\_\_\_?" It is impermissible to say "Didn't you tell me \_\_\_\_\_," or "Why did you tell me \_\_\_\_\_ before the meeting." The purpose of the public portion of a meeting is to allow each elected official, town representatives and members of the public to state their positions in an orderly fashion; it is not a trial where persons are to be cross-examined, interrogated, belittled or held out for public ridicule or embarrassment. Nothing herein shall limit or restrict the free and open debate of these matters in executive or closed session.
- (7) State during the public portion of any meeting that a town employee has not done his or her job, or has not done his or her job properly. By way of example, it would be permissible to ask if a town employee did or did not do a specific task, but the question must be phrased in a such a way that a simple "yes" or "no" answer is all that is requested. It would also be permissible to state or comment that a job was not done, or that it was not done correctly, so long as the person responsible is not singled out for blame; remarks concerning the subject of job performance are proper, but negative

references to the person responsible are not. It is not proper to accuse town employees of not doing their jobs, or doing them improperly, during the public portions of the meeting. Town employees shall not be placed in the position of responding to accusations of wrongdoing by an elected official during the public portion of a meeting (unless the meeting has been called as a hearing for the express purpose of determining disciplinary action), nor shall their integrity or competency be challenged by an elected official during the public portion of any meeting. Nothing herein shall limit or restrict the free and open debate of these matters in executive or closed session.

(8) Represent their personal position or beliefs as being the position or beliefs of the Council as a whole. By way of example, unless and until a majority vote has been obtained on a specific issue, an elected official shall not state that the Council will or will not do something, nor shall an elected official state what the Council's vote will be on an issue. No single elected official can speak on behalf of the Council unless specifically authorized by majority vote to do so.

(9) Refuse to recognize the validity of action approved by majority vote of the Council. By way of example, an elected official is free to state that he does not agree with the majority vote, or that he would like to see the majority reconsider its action and vote a different way. However, an elected official shall not refuse to sign any ordinance, resolution, contract or other legal document because he did not vote for the action taken. The minutes shall reflect his opposition to the majority's decision, but he shall not be authorized to withhold his signature on the basis that he did not vote for the action taken.

(10) Divulge the subject matter of any confidential information, legal advice, or strategy discussions revealed during an executive session called for the purpose of discussing actual or potential litigation against the town or any town employee. There may be occasions when an elected official will be asked to make a specific commitment to this rule in connection with a particular case. If an elected official is unwilling to pledge his commitment to the other members of the council, he shall be excluded from participating in that portion of the executive session.

## II. CONDUCT OUTSIDE OF MEETINGS

An elected official of Mt. Pleasant shall not:

(1) Direct any department head or town employee to do a job or perform a task. All such requests shall be made to the Town Manager. Once such a request is made, the elected official shall follow-up with the Town Manager regarding the performance of the work, not with the department head or town employee whom the elected official expects to do the job. If the job is not performed to the elected official's satisfaction, this shall be taken up with the Town Manager first; if the elected official is still not satisfied, the matter shall next be discussed with all members of the Council in executive session, under the exemption to the Open Meetings Act for discussion of employee performance. There shall be no criticism or disparaging remarks made about any town employee in a public meeting unless and until all of these steps have been exhausted.

(2) Publicly state that he intends to fire or discipline any town employee. No single elected official has the authority to hire or fire town personnel.

(3) Reprimand any town employee. If an elected official believes a town employee should be reprimanded he shall so inform the Town Manager. If an

elected official believes the Town Manager should be reprimanded he shall notify the other members of the Council. No single elected official has the authority to discipline town personnel.

(4) Use profanity, insulting or demeaning words about a town employee in the presence of that employee, or in the presence of any other town employee.

(5) Call into question the qualifications or competency of a town employee in the presence of that employee, or in the presence of any other town employee. Concerns of this nature shall be addressed in the stages outlined in Section II, Rule 1, above.

(6) Demand that the Town Manager or any department head stop what he or she is doing and immediately attend to the elected official's business. If the Town Manager or a department head requests that the elected official schedule a time to discuss a matter that is mutually convenient to all concerned, the elected official shall honor that request.

(7) Promise on behalf of Mt. Pleasant or the Town Council to undertake any act, or to pass any ordinance, resolution, contract or agreement. A single elected official has no authority to bind the Town of Mt. Pleasant.

(8) Agree to buy or sell anything of value on behalf of the Town without advance approval by a majority vote of the Town Council.

(9) Attempt to negotiate Town business with any private party or any representative of another governmental unit without the advance approval of a majority of the Town Council. By way of example, it is permissible for any elected official to discuss town business in general terms with private parties and representatives of other governmental units (unless there is actual or threatened litigation against Mt. Pleasant by the parties involved). However, an elected official shall not make any written offers, draft any agreements, edit or revise any proposed agreements or plans, or suggest or propose (whether orally or in writing) any specific terms concerning money or services to be provided or received by the Town unless that elected official has received express authorization in advance by a majority vote of the Town Council. The fact that the subject matter involves property or persons in an elected official's district is of no consequence, as an elected official has no additional legal authority over a matter simply because it is in his district.

(10) Speak to any representative of the news media on behalf of the Town or the Council without advance approval by majority vote of the Council. By way of example, an elected official is free to express his personal views or opinions to anyone. However, an elected official shall not make a statement in the name of the Town Council or in the name of Mt. Pleasant unless he has been authorized in advance to do so by majority vote of the Town Council.

### III. PENALTIES

The Town Council shall have the responsibility to police itself and to enforce this Ordinance. Any elected official shall have the right to bring a suspected violation of this Ordinance to the attention of the full Council. Any such accusation may be deliberated upon in Executive Session, but a vote upon any penalty to be imposed must be taken in open, public session, with all members of the Council present. If the Council determines by majority vote that a violation of this Ordinance has occurred, the Council shall have the authority to impose one or more of the following penalties upon the offending elected official:

- (1) A verbal censure that shall be noted in the Minutes without further elaboration;
- (2) A written censure, to be made a part of the Minutes, specifically outlining the facts underlying the violation;
- (3) Removal of the elected official from membership on any committee, association or group in which the offending elected official is involved in his capacity as a Mt. Pleasant elected official; removal shall take place by the delivery of a letter, signed by the Council, to the head of such committee, association or group, stating that the offending elected official is no longer authorized to represent Mt. Pleasant. This sanction shall last for a period of up to one year from the date of offense.
- (4) A fine, not to exceed \$500 per offense, which shall be paid by the offending elected official to the general fund of Mt. Pleasant, Georgia within ten (10) days of the Council's vote establishing a violation; if the offending elected official fails to make this payment within the time specified herein, the amount of the penalty shall be withheld from the offending elected official's compensation as an elected official.

The decision of the Mt. Pleasant Town Council on any question concerning a violation of this Ordinance, or the penalty imposed, shall be final, it being the express intent of all the elected officials to govern themselves, and not to abdicate this responsibility to any other person or entity.

This Ordinance shall take effect immediately. It shall remain in effect for so long as the current membership of the Mt. Pleasant Town Council remains unchanged. It is acknowledged that the enforceability of this Ordinance is authorized by and dependant upon the consent of the undersigned, who hereby agree to be bound by this Ordinance. Therefore, this Ordinance shall terminate upon the addition of any new person to the Mt. Pleasant Town Council. This Ordinance may thereafter be re-adopted upon the consent and affirmative vote of the members of the Town Council as it is then constituted, subject to this termination and re-adoption provision for all future councils.

SO ORDAINED, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.