

When an Elected Official Skirts the Law and Scandal Looms

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Question

One of our elected officials owns rental property that is in very poor condition: over-crowded, lots of code violations and a fairly high incidence of police calls for problems like drug dealing. Neighbors have complained to our agency, and the staff. I have spoken with the official about these issues repeatedly.

Her consistent response has been to express surprise, promise to take action "right away," and then nothing ever seems to happen. We have gotten this response several times. Frustrated neighbors and housing advocates have teamed up and threatened to go to the district attorney (who is very ambitious and publicity oriented). I wonder if the official simply believes that our agency either won't or shouldn't take any further action because of her position.

The irony is that this particular official has been an outspoken and very visible advocate on both crime and affordable housing issues.

I have discussed this with other elected officials and we are worried that, if nothing is done, the agency is going to be embarrassed in a number of ways. Yet it is obviously awkward for the agency to be in an adversarial position with one of its elected officials. What should we do?

Answer

Your question raises several interesting ethical dimensions. A key one is the special obligation for public officials to comply with the law. This obligation involves ethical values of trustworthiness, responsibility and fairness. A key aspect of the public's trust in government is the notion that everyone is held to the same standards in terms of law enforcement. This is an ethical issue for the council member.

This situation also poses ethical issues for staff and the elected official's council colleagues. As part of the team, they also have a responsibility to take steps to maintain the public's trust

ILG is particularly grateful for the input of California State University, San Diego Professor Craig Dunn and communications expert Scott Summerfield on this column.

in the integrity of the agency law enforcement efforts. This is in spite of any feelings of loyalty they may have to a colleague who is devoting significant time in service to the agency. Moreover, the even handedness and skill with which the agency responds to this situation is likely to have a significant impact on the public's trust in the agency as an entity- not to mention the agency's top leadership.

As such, this dilemma has elements of both a right-versus-right ethical dilemma for staff (conflicting sets of "right" values of loyalty versus responsibility, fairness and trustworthiness) as well as a personal cost ethical dilemma (because any action the agency is likely to take will damage the relationship with the elected official).

An Elected Official's Special Obligation to Comply with Laws

The elected official may be thinking that both the agency and the public should cut her some slack on her rental property's problems as a kind of recognition for the many hours of service that elected officials provide. Furthermore, elected officials sometimes get a mixed message regarding their station in the community. Constituents and those who do business in the area can sometimes send the message that elected officials occupy a special status by treating them with special respect and admiration. This status does not, however, translate into a license to violate the law.

Why? Central to the notion of fairness and equality in our political system is that everyone's conduct is held to the same standards. For those who make laws the imperative to comply with laws is even more acute. How can public officials encourage others to follow the law when they themselves do not? What does it say about the legitimacy of the act of lawmaking if lawmakers themselves ignore laws?

Perhaps it relates to the William Blake quote about what it takes to truly do good within a community. Blake noted that those that would do good must do so in "minute particulars" lest they be accused of being hypocrites. The elected official in this scenario is professing to "do good" with respect to her public service and her advocacy relating to affordable housing and crime. Yet in her private life, she is turning what appears to be a blind eye to these very problems at her rental property. The apparent inconsistency between the official's walk and talk threatens to severely undermine her effectiveness as an advocate.

Moreover, perceived hypocrisy is something to which both the public and the media tend to react particularly adversely. In fact, being a public figure does the opposite of insulating one from accountability. It gives the media and critics more fodder- making the situation more newsworthy than if it involved a non-elected official. This is one of the reasons that being both squeaky clean in one's personal affairs as well as in public conduct is not only good ethics but also good politics.

Perhaps the most important negative risk this scenario presents is the public's perceptions of the elected official's motivation for public office. As California State University, San Diego Professor Craig Dunn notes, the public's trust in an official is premised on the notion that

public officials will set aside their self-interested inclinations and promote the greater good. When that doesn't happen (or appears not to have happened), the agency will be scrutinized. Critics and the media will charge- fairly or unfairly- that the council member's service is about using her position for personal advantage as opposed to promoting the public good. Once significant segments of a community lose trust in a public official's motivations, such trust is very difficult to regain.

How Should the Agency Respond?

Uncomfortable as it is, top level management and elected officials have a responsibility to quickly, decisively and proactively address potential ethics scandals. In this case, it is vital to the public's trust that elected officials be treated just as any landlord would be treated in a similar situation. In fact, there may be an argument that the agency should be even stricter because of the risk of public skepticism about insiders receiving preferential treatment.

Alert and Consult With Other Leadership

It sounds like you have already discussed this issue with your mayor, and the mayor shares your concerns about the city being embarrassed. This is a good strategy, according to the thoughts shared at the managers' meeting.

What if the mayor had not been supportive of addressing the situation? This is where the personal cost aspect to this ethical dilemma comes in. As Rushworth Kidder observes, having values is different from living by values.¹ Living by values involves: 1) a commitment to those values; 2) an awareness of the risks associated with standing up for those values; and 3) a willingness to endure those risks.² Kidder defines this as "moral courage" in his book *Moral Courage: Taking Action When Your Values Are Put to the Test*.

Have the Conversation with the Problem Elected Official

Another personal cost aspect to this dilemma is confronting the elected official on this issue. This conversation will be delicate inasmuch as there is a very real risk of damaging the relationship with the official. The county administrator or city manager should have a private heart-to-heart with the problem official early on about the potential consequences of continuing on a particular course of (in)action or have a trusted fellow elected official do so.

As discussed above, these consequences have political, legal and media relations dimensions. By encouraging the council member to address the problem, the agency's leaders are trying to spare both the elected official and the agency the embarrassment that would occur should the situation persist. As Henry Wadsworth Longfellow said, "It takes less time to do a thing right than to explain why you did it wrong." There are few contexts in which this statement is truer than politics.

It may also be useful to encourage the elected official to consult with her own legal counsel about the potential penalties and expenses associated with further inaction. These can have significant financial consequences for the official. There also is the risk that a judge or jury would be inclined to make an example of the official because of her station in the community and to rebut any inference of lenient treatment.

In addition, there seems to be a tendency to assume that "no one will find out" about ethical or legal lapses. As Professor Dunn counsels, it is important not to underestimate individuals' capacity for self-delusion when it comes to ethics issues. A key goal of this conversation is to overcome any state of denial and self-delusion the council member may be in.

The agency may also want to get the official to commit to a specific and immediate course of remedial action. Consult with the agency counsel's office to determine whether and how to put this commitment in writing. Let the official know what the agency will have to do if she does not take the promised steps and then follow up promptly.

Prepare a Media Relations Strategy

Brewing ethics scandals, especially ones that involve a publicity-savvy district attorney, will attract media attention sooner rather than later. The agency's leadership should anticipate media probing, and seek input from the agency's public information officer to determine which messages should be consistently delivered to reassure a skeptical public that the agency is indeed taking action.

If the agency lacks a communications professional, an effective alternative is to form a strategy team. This team should develop a set of key messages for leaders and create two question-and-answer documents:

1. An internal one that includes every tough question you hope you are never asked about the issue (such as "Why did the agency ignore the official's code violations?"); and
2. An external one containing general questions (How does the agency deal with code violations?) that can be distributed to the public, reporters and on the agency's website as the issue unfolds.

Key messages and questions and answers provide a wealth of benefits in pre-crisis situations, including:

- Anticipating difficult questions and developing thoughtful answers that incorporate key messages;
- Providing consistent answers to reporters and others; and
- Helping the public understand the situation in an easy-to-digest format.

These relatively simple preparations do two things. First, they force officials to think about what they don't want to read about in the local newspaper. This is a variation of the newspaper test: "If you don't want to read about a certain course of action in the newspaper, don't do it." Thinking about how alternative courses of action will play in the media can assist the agency in charting the most positive and responsive course of action. Second, these preparations can go a long way toward solidifying the agency's credibility during a difficult time.

What If the Situation Is Not Addressed?

If the elected official does not take the promised steps to address the problems, once again be scrupulously careful not to treat them differently than you would any other landlord. Some tips:

- **Make full (and early) disclosure.** One of the most critical components of managing an ethical crisis is to make sure there is full and fair disclosure of all relevant facts. The goal is to inform if inquiries are made about the official's property - but not to grandstand, of course. Whatever happens, avoid any inclination to suppress unflattering information about the agency. There have been many instances (Watergate, for example) where an alleged "cover-up" ends up superseding the original alleged ethical breach in terms of its impact on the public's trust.
- **Keep the organization focused.** During an ethical crisis, it is easy for an organization to become distracted and be less effective in providing its important services. If the leaders of the organization don't appear distracted by the crisis, it can help the organization keep its focus.
- **Support the innocent.** There may be a number of "innocent bystanders" within the organization that are dragged into an ethical crisis and its aftermath. Do whatever you can to support these individuals to help minimize any negative impacts on them. For example, it's not uncommon for a person who feels under attack to try to turn the tables and accuse the accusers of improper motivations. Something to be prepared for is a charge that staff is singling out the offending council member for selective enforcement because of the official's efforts to reform the agency's activities in this or some other regard. Prepare staff for this kind of response and stick to the facts as the agency understands them.

Conclusion

Prevention plays a key role in guiding an organization through situations like the one described here. Having a values-based ethics code in place helps prevent scandals and provides a framework of shared expectations in responding to a developing problem. Such a code serves as a standing reminder of an agency's commitment to promoting public trust and confidence, as well as the importance of "doing the right thing" even in difficult situations.

The group also noted the hard truth is that individuals in leadership roles are held accountable for not only their own conduct but also the organization's and others' within the organization. Leaders need to be able to answer these three critical questions:

- What did you know?
- When did you know it?
- What did you do about it?

Having good answers to these questions is a key element of any strategy to both forestall and, if necessary, deal with an ethics scandal.

About the Institute for Local Government

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The Institute welcomes feedback on this resource:

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References and Resources:

¹ Kidder, Rushworth M. *Moral Courage: Taking Action When Your Values Are Put to the Test* (William Morrow 2005) at 3.

² *Id.* At 7-8.