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Conflicts of interest in the public sector

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Abstract

Serving the public interest is the fundamental mission of the state. Citizens expect employees of public authorities to perform their duties honestly, transparently and in a fair way. If a civil servant ignores these expectations and put his own interests first, it undermines people's trust in the state. What is a conflict of interest, and how can it be dealt with?

Keywords: *Public sector, conflicts of interest, mission of state*

Introduction

The Organization for Economic Co-operation and Development (OECD) defines a conflict of interest as follows: in the public service (OECD Guidelines and Country Experiences, 2003, p. 15). It is not always possible to avoid such situations, but that does not mean that you cannot handle them. The key here is not to prevent the situation, but to manage it properly.

Let us also emphasize that everyone can have certain interests and several responsibilities. This does not mean a conflict of interest in all cases. In that case, there is a possibility of a conflict of interest where the performance of official duties affects a person's personal interests in one form or another (OMBUDSMAN, 2008), Conflict of Interest in the Public Sector, Victorian Government Printer, March, P.P. No: 82). For example, A is a member of a private tender commission. A is also a shareholder in one of the companies participating in the tender. In this case, the person must be removed from the commission. Even if it does not violate, the possibility of a conflict of interest remains.

Discussion.

A number of factors can contribute to a conflict of interest. This includes whether the person operates in another organization or owns a business, is a member of another organization, is related or has other personal relationships, and so on. This interest may be material, intangible, personal, or family. From a material point of view, conflicts of interest are investigated more seriously than others. Legislation also focuses on this area. Note that finance is not just about money. This includes stocks, securities, real estate, etc., and also applies. If we look at common law, we see that such a conflict of interest leads to the automatic disqualification of a person from the decision-making process, regardless of the position held (*Auckland Casino Ltd v Casino Control Authority* [1995] 1 NZLR 142 (CA)).

A 1996 report by the Independent Commission Against Corruption identified the following types of potential conflicts of interest: procurement, hiring, second jobs, relationships with former civil servants, gifts, approval of architectural plans, permits, etc. (ICAC) Practical Guide, 1996). There are enough examples of potential conflicts of interest: A human resources officer has a close relationship with the interviewer. This can affect a person's decision to hire. The Washington Code of Ethics explains this topic in detail (Code of Ethics, State of Washington, <https://apps.leg.wa.gov/rcw/default.aspx?cite=42.52>). Another example: police officers who work as security guards in a nightclub on the side. Although there are frequent negative incidents at the club, the police do not investigate the matter. The reason is very simple. The police officer working as a security guard at the club asks his colleagues to remain silent on the matter, and the case is closed without investigation.

It is important for the organization to manage conflicts of interest. Both the factors that contribute to corruption are eliminated (failure to identify or manage conflicts of interest often creates a fertile ground for corruption offenses, and therefore, managing conflicts of interest is one of the most important strategies to prevent corruption). It demonstrates loyalty (Reed, Quentin, 2008, "Sitting on the Fence: Conflicts of Interest and How to Regulate Them," U4 ISSUE 6: 2008). In order to effectively manage a conflict of interest, it is important that the organization and its staff have a broad understanding of the conflict of interest. One of the goals of effective conflict management is to maintain stability within the organization and strengthen public confidence in the state. To do this, it is necessary to investigate frequent conflicts of interest in the organization, formulate an effective strategy to combat them, apply a control mechanism for its implementation, inform employees through various trainings and seminars in this area, and draw conclusions from mistakes (UNODC, 2009, Technical Guide to the United Nations Convention against Corruption, p.25). It should also be noted that the structure, functions, and responsibilities of the institution, as well as

the risks of possible conflicts of interest, should be taken into account when developing this strategy.

Once a conflict of interest has been identified, the entity should carefully consider what to do to adequately protect or mitigate the effects of the conflict of interest (Polaine, M., Guide to the UN Convention Against Corruption (UNCAC), London Center for International Law Practice, Anti- corruption Forum, 2015). The head of the organization, lawyers, and other managers should play an active role in this matter. In these cases, the following factors should be carefully investigated:

- type or importance of the person's interests;
- The extent to which a person's interests can influence an institution's decision or activities;
- the nature or extent to which the person is currently or intends to participate in the institution's decisions or activities;
- Practicality of all options to prevent or mitigate conflict.

In the case of more serious problems, a number of measures are taken depending on their importance: imposing additional control or inspection on a person; deprivation of the right to vote; removal from the committee or working group dealing with the issue; entrusting the performance of certain tasks or responsibilities to another person; restricting access to certain confidential information; transfer of a person (temporarily or permanently) to another position or position;

Dismissal (recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service).

A number of principles are proposed for the effective management of conflicts of interest (ICAC, Managing Conflicts of Interest in the Public Sector, November 2004). Let's look at each one separately:

Respect the public interest. Keeping the public interest in the forefront and serving it should be the basis of civil servants activities. The main goal of a conflict of interest management strategy is to ensure that the public interest is respected. In the performance of their duties, public officials should not only act within the law but also apply broader values such as impartiality, honesty, and service to the public interest;

To ensure transparency and accountability. Conflict of interest management must be effective. To achieve this, the process of identifying, disclosing, and managing conflicts of interest must be transparent, i.e., the processes must be open to control and help maintain accountability.

Form an organizational culture. Leaders are responsible for providing an environment that facilitates effective decision-making and conflict resolution in the event of a conflict of interest.

Finally, conflict of interest standards are based on international standards and guidelines. The UN Convention against Corruption represents a set of international standards adopted by 140 countries and signed by them on combating corruption, including conflicts of interest. Among other things, the Organization for Economic Co-operation and Development has published Conflict of Interest Standards for 36 member countries, such as the Conflict of Interest Rules 2003⁴, the Public Integrity Council Recommendation 2017⁵ and the Guidelines for Combating Corruption and Integrity in Public Institutions. These standards, together with the principles set out in the Convention, are presented as a benchmark for international practice. These international guidelines set the standard for states to develop and adopt systems that promote transparency and prevent conflicts of interest in public institutions.

CONCLUSION

There is no single approach to developing a system for identifying and managing conflicts of interest in government. Some countries adopt a principled approach based primarily on codes of conduct, while others adopt a rule-based approach; a number of countries (e.g., Australia, Canada, the United Kingdom, and the United States) prefer a hybrid approach. In these cases, among other acts, the basic principles set out in the standards set by international organizations are applied (James Whitaker and James Ford, *Conflicts of Interest in the Public Sector: International Standards and Best Practices*, 2020).

As the Organization for Economic Co-operation and Development's 2003 Conflict of Interest Instruction points out, conflict of interest standards should essentially strengthen public confidence in government officials and institutions. The general conclusion is that best practice is defined by training, research, and frequent review of applied strategies. The more knowledgeable the organization and its staff are about the issue, the more deeply they are taught national and international law, and the more advanced methods are used to address the issue (Soccoja, Pierre- Christian, 2007, *Prevention of Corruption in State Administration*). : France, Conference on Public Integrity and Anticorruption in the Public Service, "Bucharest"). Relying on international experience also plays an important role. The adoption of a legislative act regulating this issue and the formation of specific mechanisms for its implementation, bringing existing legislation in line with international standards, expanding cooperation with international organizations in this area, public awareness and strong political will will play an important role in managing conflicts of interest in the public sector.

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