



61

ORIGINAL DATE: February 7, 1997
REVISED DATE: April 11, 1997

Los Angeles County
Metropolitan
Transportation
Authority

TO: BOARD OF DIRECTORS
FROM: RYAN J. NAKAGAWA, ETHICS OFFICER
SUBJECT: CODE OF CONDUCT FOR EMPLOYEES

One Gateway Plaza
Los Angeles, CA
90012-2932

RECOMMENDATION

Approve MTA Code of Conduct for Employees.

213.922.6000

ORGANIZATIONAL IMPACT

This Code of Conduct will be applied to and affect all MTA employees.

Ethics/Lobby
Registration

BUDGET IMPACT

It is not anticipated that this Code of Conduct will have any significant budget impact in the current fiscal year and the 1998 fiscal year.

ALTERNATIVES CONSIDERED

The Board may direct that a different version of this Code of Conduct be considered.

BACKGROUND

A motion by Supervisor Molina and Supervisor Yaroslavsky and approved by the Board directed that staff prepare a Code of Conduct for Employees. This Code was drafted incorporating comments from MTA staff.

This item was originally set to be considered at the February Board meeting. The item was pulled by the Ethics Committee Chair and re-agendized for the March Board meeting. The Ethics Committee did not meet in March and the item was set for the April Board meeting.

ATTACHMENTS

MTA Code of Conduct for Employees

Ryan J. Nakagawa, Ethics Officer

Code of Conduct for MTA Employees

Introduction¹

As a public agency, the Metropolitan Transportation Authority shall conduct its business in an honest and ethical manner, reflecting values such as integrity, fairness and trustworthiness. This Code of Conduct for Employees is based on these values along with state and federal laws which we are mandated to follow.

No Code of Conduct can cover all situations or answer all questions. When in doubt as to how to handle a matter, you should ask questions of the Ethics Office before taking action or making decisions.

In most situations, your values and honesty will guide your decisions. But in your capacity as an employee and representative of the MTA, you must always consider how your actions affect the integrity and credibility of the agency as a whole. Our success as an agency is dependent upon gaining and maintaining the public trust. When we conduct ourselves ethically and honestly in the workplace, the organization is perceived as being worthy of public trust and support.

Living up to the letter and the spirit of the law, while not always easy, is always necessary. We must avoid the appearance of impropriety in all our business dealings. Strict compliance with the Code is not necessarily sufficient and any attempts to evade or circumvent ethics laws and rules are improper.

The MTA Commitment

The MTA is committed to upholding the highest ethical standards in all our business and professional operations and relationships. We will carry out our mission with unquestionable ethics and integrity, the cornerstone of achieving and maintaining credibility and ensuring public trust. We owe this, and no less, to the public we serve.

The ability of the MTA to achieve its mission is directly dependent on the day-to-day choices you make and your actions while representing the MTA. We are accountable for creating and maintaining credibility and trust with our customers, dealing fairly and honestly with our suppliers, contractors and consultants and avoiding actual or perceived conflicts of interest that may arise due to outside activities, employment and gifts.

Ethics Office

The MTA has established an Ethics Office to oversee ethics issues which arise in the workplace. Ethics Office functions include creating ethics policies and codes of conduct, training MTA employees and contractors on these policies, and providing opinions and advice relating to ethics questions that arise at the MTA.

¹ This Code of Conduct for Employees is not an employment contract. The MTA does not create any contractual rights by issuing this Code of Conduct.

Reporting Possible Ethics Violations

You should report any concerns about MTA business practices that appear to be unethical, or which may violate the Code or any applicable laws, to your supervisor or the Inspector General. The MTA is committed to fair treatment of all employees, including the responsibility under federal and state law to protect an individual from punishment and harassment for raising a potential ethics issue whether or not the allegations are found to have merit.

Federal and state laws prohibit retaliation against “whistle blowers.” No action will be taken or threatened against any employee as a reprisal for making a complaint or disclosing information, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

Enforcement

All employees have a responsibility to insure that the provisions of this Code of Conduct are followed. Violations of this Code are investigated by the Inspector General. Violations of the Code, and/or violations of applicable laws, may result in disciplinary action and civil and/or criminal prosecution. Code sections based on local ordinances, state and federal laws will also be enforced by the appropriate enforcement agencies.

Legal Questions

Legal questions, including those relating to conflicts of interest, campaign contributions and financial interests in contracts should be addressed to the General Counsel.

Our Common Working Environment

It is our goal at the MTA that all employees are treated fairly and with respect. Individually, every MTA employee is responsible for using good judgment and discretion in his or her business and personal conduct while at work. It is up to each of us to create and sustain a pleasant, secure, and productive environment. This means that employees treat each other with courtesy and professionalism at all times.

It is the policy of the MTA that no person will be discriminated against in employment because of race, color, creed, religion, sex, ancestry, age, national origin, marital status, sexual orientation, veteran status, physical or mental disability (including HIV and AIDS) or any other status protected by applicable federal or state statutes, except where a bonafide occupational qualification applies.

Racial slurs, jokes or comments are forbidden at the MTA. Any comment which relates to race, ethnicity, religion, national origin or sexual orientation may be offensive to the listener, no matter what your intention. This type of language is not appropriate and unacceptable in a professional environment.

Sexual harassment will not be tolerated and the MTA has a policy prohibiting sexual harassment. Sexual harassment may include unwelcome sexual advances or requests for sexual favors where submission or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual. Sexual harassment also includes verbal, visual or physical

conduct of a sexual nature which creates an intimidating, hostile or offensive working environment.

Clear communication between staff members is necessary in the workplace in order to get the job done. Differences of opinion on work issues are unavoidable, but we must work at making the expression of our ideas both direct and constructive. We have to develop the skills to listen as well as to speak. The ability to resolve problems and work effectively as team members is necessary to meeting the challenges of our jobs. The cornerstone to good working relationships is respect. When you treat others with respect, you are creating a positive working environment for everyone.

Appearance of Impropriety

MTA employees have a special relationship of trust with the public. Because this agency was created by the state legislature and is dependent upon public funds to operate, employees have restrictions and reporting obligations which are significantly different from that of private industry. MTA's rules help to insure that the public's confidence in the agency is not undermined by the actions of its staff.

In the arena of public trust, perception is reality. If we conduct our business in ways that "look bad" to the public, we will be judged accordingly whether or not any impropriety has actually taken place. It is a matter of opinion as to what "looks bad" or "looks wrong" means, but a standard we can use is that if a fair-minded, reasonable person would interpret something in a negative light, an appearance of impropriety may exist.

The concept of "ethics in the workplace" is not an exact science and defies rigid interpretation as to what is allowable in every situation. Some situations require the use of judgment based on values and the workplace propriety. It is our goal to avoid the appearance of impropriety in all MTA dealings.

Relationships with Contractors

MTA business shall be conducted in a manner above reproach, with complete impartiality, and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct.

Particularly in relationships with contractors and potential contractors, the general rule is to avoid any conflict of interest or even the appearance of a conflict of interest. Your conduct must be such that you would have no reluctance to make full public disclosure of your actions. Even if you are conducting yourself within the guidelines of this Code of Conduct, you must always be aware of how a situation may look to an outside observer. Remember that even the opinion of one observer is enough to raise the issue of the appearance of impropriety.

Beginning at the time an RFP, RFIQ, or an IFB² is issued and ending at the time when the contract award recommendation is made public, all staff involved in that procurement³ shall disclose all contacts with proposers to that procurement including their lobbyists, agents and representatives. This disclosure shall include all contacts with these proposers, and their lobbyists, agents and representatives including, but not limited to, meals, lobbying meetings, sporting events, and cultural events. This disclosure shall not include contacts made as part of the procurement process, including, but not limited to, pre-bid or pre-proposal meetings, exchange of information which is given to all proposers, interviews and protest applications. MTA staff engaging in such contacts shall file a Disclosure of Contacts Form with the Chief Executive Officer within 5 days of the contact(s) and in any event, no later than the date the item is to be considered by Board of Directors or the appropriate Board committee, whichever is sooner.

The MTA has the right, in its absolute discretion, to require the removal of a contractor's personnel at any level assigned to the performance of services if the MTA considers such removal necessary in the best interests of the project and requests such removal in writing. This action is taken when it has been determined that the contractor's personnel are not able to adequately perform the services required by the scope of services for a particular contract.

As the contractor is entirely responsible for the quality of its staff, that consultant must retain responsibility for the selection of its personnel. In no case should MTA staff direct or recommend personnel which the contractor should hire even if the contractor asks for a recommendation. MTA staff shall not respond with any recommendation, suggestion or direction. Staff's failure to comply with this provision may result in disciplinary action as provided in this Code of Conduct including, but not limited to, written reprimand, suspension, demotion or reduction in pay, termination or any other penalties determined to be appropriate.

Relationships with contractors can raise complicated issues. In each specific situation, staff must exercise judgment and discretion, keeping in mind that even the appearance of impropriety may and does create negative consequences for the MTA.

Professional Associations

Memberships in professional associations and organizations are encouraged and can contribute to the professional development of MTA employees in their field of expertise. These relationships, however, can give other association members more access to you than non-members and create the appearance of bias or favoritism in their dealings with the MTA. You must always insure that your dealings with other members of your organization are consistent with the provisions of this Code of Conduct and do not result in preferential treatment or the appearance of preferential treatment in their favor.

² Request For Proposal (RFP), Request for Interest and Qualification (RFIQ), and Invitation For Bid (IFB).

³ "Staff involved in the procurement" includes, but is not limited to, the contract administrator, project manager, in house-evaluator(s) of a proposal, staff responsible for determining and writing the specifications of a procurement, staff responsible for drafting and creating the solicitation documents, staff involved in determining and drafting the contract award recommendation, clerical staff who prepared (including word-processing) any documents relating to the procurement, and all staff in the chain of approval, up to the recommendation for award to the Executive Office.

Use of MTA Equipment

The use of MTA property for personal gain is against state law. You should not use the MTA's time, facilities, equipment (including, but not limited to, computers, stationery, photocopy machines, company vehicles), records, mailing lists, supplies, badge, prestige or influence for non-MTA related activities.

Telephone Use

The telephones at the MTA should be used for MTA business. Occasional and limited personal use is permitted so long as it does not interfere with the performance of your official duties and there is no appearance of impropriety. Employees are expected to reimburse the MTA for all personal toll calls.

The MTA reserves the right to review records of phone usage by MTA employees. Abuse of telephone privileges may result in disciplinary action, including termination, depending on the severity of the abuse.

Internet Use

Internet use and access from MTA equipment is for MTA business only. The MTA reserves the right to monitor and review records of Internet usage by MTA employees. Abuse of Internet privileges may result in disciplinary action, including suspension from Internet access, depending on the degree of use or abuse.

Confidential Information

As an MTA employee, you may have access to confidential information relating to contracts, construction, procurement or personnel files. You are bound to maintain the confidentiality of such information and not use it for any purpose other than in the performance of your job, or for the benefit of the agency. Disseminating confidential information may result in disciplinary action, including termination.

Gift Policy

A "gift" is defined as anything of value which is provided to the extent that payment or consideration of equal or greater value is not received in return. This includes, but is not limited to, tickets to sporting or cultural events, items of food, meals, use of facilities, forgiveness of debts, interests in real property, investments, or merchandise. A rebate or discount in the price of anything of value unless the rebate or discount is normally given to any member of the public is also a gift.

Employees may accept gifts totaling \$10 in a calendar month and up to \$50 in a calendar year from a single source from an MTA contractor, subcontractor or anyone doing business with the MTA. Employees may accept no gifts from a bidder or proposer on an MTA contract. Usually, the value of a gift is its cost to the donor. Where the cost cannot be determined, or is substantially less than its market value, market value may be used.

Employees who are required to file an annual Statement of Economic Interests (designated employees) may accept gifts totaling less than \$290⁴ from a single source in a calendar year from entities which are not MTA contractors or subcontractors or have not submitted a bid or proposal on an MTA contract. Designated employees must report gifts totaling \$50 or more from a single source in a calendar year on their annual Statements of Economic Interests according to state law.

The gift policy exists to assure the public that you, as a public employee, are not influenced, or appear to be influenced, to make decisions or take actions to award a contract or show favoritism to an outside contractor based on receiving gifts. Gifts may appear to be an inducement, payment, reward or expression of appreciation for doing your job in a way that benefits the giver of the gift. The acceptance of gifts from those with whom we do business raises the issue of the appearance of impropriety.

Even when the acceptance of a gift is allowed under this Code of Conduct and state law, extreme caution is advised. When dealing with the issue of gifts, appearance and perception are of primary importance. Even if permitted, a gift may have the appearance of being improper. The exercise of discretion is recommended before accepting any gift in your capacity as an MTA employee. Employees are best advised to refuse all gifts.

If you receive a gift in excess of the limitations in this Code of Conduct or state law from a contractor, subcontractor, bidder or proposer, you must either return it or donate it to a charity within thirty (30) days of receipt. If you prefer, you may bring any gifts to the MTA Ethics Office for distribution to a charitable organization.

Allowable Gifts

Under California law certain items are exempted from the state law's definition of gifts:

Informational materials, such as books, reports, pamphlets, calendars, or periodicals.

Items that are not used and which are returned to the giver or delivered to a charitable organization, within thirty (30) days of receipt, without being claimed as a charitable contribution for tax purposes.

Items from a spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or the spouse of any of the above, or significant other (primary dating relationship), provided that an item from any person listed above must be considered a gift if the giver is acting on behalf of someone else who is not mentioned above.

Campaign contributions, up to legally allowable limits.

Any inheritance.

⁴ As adjusted biennially by the Fair Political Practices Commission pursuant to Government Code Sections 89502 and 89503 to reflect changes in the Consumer Price Index.

Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

Hospitality (including food, beverages, or occasional lodging) provided to an employee by an individual in his or her home when the individual or member of the individual's family is present.

Presents exchanged between an employee designated on the MTA's Conflict of Interest Code and an individual, other than a lobbyist, on holidays, birthdays or other similar occasions provided the items exchanged are not substantially disproportionate in value.

Gifts from lobbyists

Employees may not accept gifts totaling more than ten dollars (\$10) in a calendar month from an MTA registered lobbyist, lobbying firm, or lobbyist employer.

Honoraria

Under state law, designated employees⁵ may not accept any honoraria. The rationale for this rule is that honoraria payments can be, or appear to be, a disguised way of providing personal benefits to public employees as an inducement to influence their conduct.

Travel Costs

In certain specified situations, payment or reimbursement for travel and lodging may be considered a gift for purposes of gift limits where the travel is related to MTA business or for the purpose of making a speech. That payment, however, may have to be reported on your annual Statement of Economic Interests and may require your disqualification from MTA issues concerning the donor of the travel. If you have questions about a specific situation, please contact General Counsel.

Conflicts of Interest

A conflict of interest is a conflict between the financial interests of an employee and the interests of the MTA. A conflict of interest may exist when an employee's interests, investments, outside employment or enterprises conflict with, or appear to conflict with, his or her job performance, objectivity, impartiality, ability to make fair business decisions, or the best interests of the MTA in addition to interests which may have the appearance of impropriety.

Conflicts of interest between an employee and the MTA agency are issues of the appropriateness of financial gain or benefit on the part of the employee. Conflicts arise in any situation in which an employee uses his or her contacts or position in the agency to advance his/her own private business or financial interests, whether or not at the expense of the MTA, or members of an employee's immediate family receive personal, unearned benefits as a result of the employee's position with the MTA.

Any MTA employee who may have a conflict of interest relative to a prospective contractor, subcontractor, bidder or contract or any other MTA decision or issue must, at the earliest possible

⁵ Employees who are required to file annual Statements of Economic Interest (Form 700).

time, advise his or her supervisor of his or her concerns. As an MTA employee, you must disqualify yourself from making, participating in the making, or in any way attempting to use your official position to influence an MTA decision in which you know, or have reason to know, that you have a financial interest.

You are deemed to have a financial interest in a decision if the decision will have a material financial effect on you or your immediate family, distinguishable from its effect on the public generally, or if you have any of the following interests:

Any business entity in which you have an investment worth one thousand dollars (\$1,000) or more.

Any real property in which you have an interest worth one thousand dollars (\$1,000) or more.

Any source of income, other than gifts and other than loans by a commercial lending institution made in the regular course of business on terms available to the general public, totaling two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to you within twelve months before the decision is made.

Any donor of, or any intermediary or agent for a donor of a gift aggregating \$290 or more in value provided to or received by you within twelve months prior to the time the decision is made.

Any business in which you are a director, officer, partner, trustee, employee, or hold any position of management.

You may also have a conflict of interest if you participate in a decision involving your former employer(s). If you are called upon to make a decision involving a former employer, you should disclose your former employment in writing to your supervisor. Your supervisor should determine whether it would be appropriate for you to participate in any decision involving your former employer.

Prohibition Against Financial Interest in Contracts

As an MTA employee you shall not participate in the making of any contract in which you have a financial interest. You may not buy anything from or sell anything to the MTA in connection with a contract you worked on in your official capacity.

The restrictions discussed above are set forth in state law (Government Code § 1090). A violation of this provision is a misdemeanor under state law and could result in civil and criminal penalties. MTA employees should seek specific advice from the General Counsel in interpreting and applying provisions of this act.

Statements of Economic Interests

Certain employees, depending on their job duties, are required to file annual Statements of Economic Interest (Form 700) with the agency, disclosing personal financial information, including information about investments, interests in real property, investments in business entities, outside income, loans, gifts, commissions, travel payments, advances and reimbursements and outside business positions. If you are required to file a Statement of Economic Interest, the form will be provided to you by the Ethics Office. Completed forms will be retained by the Ethics Office. Although this is a public document, it will only be released if the Ethics Office receives a proper request according to the Public Records Act.

Incompatible Activities

As an employee of the MTA, you shall not do any outside work for compensation that is inconsistent, incompatible, or that in any way interferes with your ability to carry out your duties at the MTA.

You may not accept money or other consideration from an outside employer for work which you would be required or expected to do as part of your job at the MTA.

You may not perform work for an outside employer which may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by any other MTA employee.

You should not accept outside employment which would interfere with your efficiency and ability to effectively do your job at the MTA.

You should not accept outside employment in which your employment with the MTA is a prerequisite.

Outside Employment

If you want to work outside the MTA, you must submit a request for permission, in writing, to your immediate supervisor before starting any outside job.

If you are found to be engaging in prohibited outside employment, you may be subject to disciplinary action.

MTA Contracts with Employees

The MTA shall not contract directly with current MTA employees.

The MTA shall not contract with businesses in which current MTA employees serve as officers, principals, partners, or major shareholders.

Post-Employment Restrictions

After leaving the MTA by resignation MTA employees are restricted from certain types of employment for a period of twelve (12) months. These restrictions are designed to prevent an unfair competitive advantage to companies hiring former MTA employees.

Former MTA employees may not register as lobbyists and lobby the MTA for one (1) year after leaving MTA employment.

The MTA shall not contract with former employees who, within the preceding twelve months, held a position of substantial responsibility in the area of service to be performed by the contract or participated in any way in developing the contract or its specifications.

For the twelve months after an MTA employee has left the agency, the MTA shall not contract with a business where the former MTA employee serves as an officer, principal, partner, major shareholder or has been identified as a key personnel and where the former MTA employee held a position of substantial responsibility in the area of service to be performed by the contract or participated in any way in developing the contract or its specifications.

The MTA shall not contract with a business which has a subcontractor which employs a former MTA employee who has left the agency within the previous twelve months, and where the former MTA employee serves as an officer, principal, partner, major shareholder or has been identified a key personnel and where the former MTA employee held a position of substantial responsibility in the area of service to be performed by the contract or participated in any way in developing the contract or its specifications.

Participation in Political Activities

MTA employees may not engage in political activities during official duty hours or while on MTA premises. MTA employees may pursue such interests when off duty.

Employees shall not solicit political contributions from other employees or contractors while on duty and at no time shall attempt to coerce such contributions.

Employees shall not use employee lists, MTA mailings lists, vendor lists and lobbyist lists to solicit political contributions. You may, however, communicate through the mail, or by other means, requests for political funds or contributions from a significant segment of the public which may include officers or employees of the MTA.

An employees who holds elective office shall not be involved in MTA projects within the geographic jurisdiction of his or her elective office. At the time of election, the employee shall disclose this information to his or her supervisor and shall disqualify himself or herself from participating in any MTA project within the jurisdiction of the office.

Employees subject to the Hatch Act may not run for partisan elective office. The Hatch Act is a set of provisions in the United States Code (Title 5, Chapter 15, U.S.C. Section 1501 *et seq.*) which governs the partisan political activities of employees of state or local agencies whose principal employment is in connection with an activity that is financed in whole or in part by loans or grants made by a federal agency.

Contacts by Staff Prior to Issuance of a Solicitation

While informational and market research contacts with prospective contractors/suppliers are a valuable source of data to the MTA, such contacts may be perceived as being improper. All MTA employees must exercise sound judgment and caution to prevent an actual or implied impression of an obligation on the part of the MTA to any prospective contractor or vendor. The primary pitfalls to be avoided are implications of a promise of a future contract and requests for complimentary services or supplies which may create the impression of an obligation on the part of the MTA. Some specific services or assistance from potential suppliers which should be avoided are:

- a. testing services
- b. custom drawings
- c. special investigations
- d. major demonstrations
- e. furnishing significant samples
- f. free trips for specific individuals to view products

Staff should also be aware that certain types of marketing contacts may be considered lobbying and require compliance with the MTA Lobby Registration Policy.

Contacts with Board Members/Alternates and their Staff During Procurement

Beginning when an RFP, RFIQ, or IFB is issued and ending when the contract award recommendation is made public, staff shall not communicate with Board Members/Alternates and their staff regarding the procurement.

If a Board Member/Alternate or their staff attempts to communicate with MTA staff to influence the recommended award, this communication shall be reported by staff to the Inspector General.

Penalties for Violating this Policy

If you violate any provisions of this code you will be held accountable and may be disciplined. Sanctions will be determined by the employee's supervisor in consultation with the department director and Executive Officer and the Director of Human Resources. The sanctions imposed for violations of this Code of Conduct will depend upon the severity of the violation and may be progressive unless the violation is determined to be so serious as to warrant more severe action initially. Penalties which may be imposed include, but are not limited to:

- a. Informal counseling;
- b. Written reprimand;
- c. Suspension;
- d. Demotion or reduction in pay;
- e. Termination; or
- f. Any other penalties determined to be appropriate.

Penalties may vary depending on the severity of the violation and whether or not it was inadvertent, and will be administered in accordance with the MTA discipline policies and

procedures. In addition to any discipline administered by the MTA, violations of the provisions included in this Code based on federal or state law may result in criminal prosecution and/or civil liability or both.