

Ethics and Transparency in Government

**Prepared for the DeKalb County
Operations Task Force**

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This report was prepared for the DeKalb County Operations Task Force of 2014. This report provides a review of the DeKalb County ethics code and areas where the County may strengthen its ethics and government transparency policies. Section 1 reviews tools that can be used by governments to encourage an ethical environment. Section 2 provides a comparison of the ethics code of DeKalb County with those from Cobb, Fulton, and Gwinnett counties. Section 3 discusses the establishment, powers, and jurisdictions of the DeKalb County ethics board as well as the ethics boards of Cobb, Fulton, and Gwinnett counties. Section 4 focuses on aspects of government transparency and section 5 discusses the establishment of an internal auditing department.

Section 1 – How to encourage a culture of ethics in an organization

Ethics and transparency in government is the cornerstone of trust and support of government actions. During times of stress, governments with strong citizen support and confidence can weather the period better than those without this support. DeKalb County is in a unique period of its history. Unfortunately, there have been several recent high profile scandals among the county leadership. Even if allegations are later proven false the damage may be done because it is often the initial claims of wrongdoing that make the headlines and not the later findings of innocence. Therefore, it is important for a county, or any other government organization, to have a strong sense of ethics and transparency so as to withstand the inevitable storms that will come its way.

Ethics codes and various disclosure requirements are not written simply to be a deterrent from public corruption and illegal activity. They can act as a guide to behavior and as a reinforcement for the importance of protecting taxpayer resources. Several ethical management tools are reviewed in Don Menzel's book, *Ethics Management for Public Administrators*. These include setting examples of the importance of ethics as leaders, ethics codes, ethics audits, and human resources management. The ethical tone of the county needs to be made a priority by the county leaders and managers. "Those who pronounce that their supervisors and street-level workers must adhere to the highest ethical standards in the conduct of their work must themselves adhere to those same standards. Leaders must be exemplars in their personal and professional lives."¹

Ethics codes are seen as a critical component of ethics management. Most ethics codes contain an aspirational section but others also contain a section outlining specific issues that prohibit activities. Below is the ethics code of the National Association of Counties (NACo).

The ethical county official should²:

- Properly administer the affairs of the county.

¹ Menzel, p. 51.

² From the NACO website accessed 10/11/2014.

- Promote decisions which only benefit the public interest.
- Actively promote public confidence in county government.
- Keep safe all funds and other properties of the county.
- Conduct and perform the duties of the office diligently and promptly dispose of the business of the county.
- Maintain a positive image to pass constant public scrutiny.
- Evaluate all decisions so that the best service or product is obtained at a minimal cost without sacrificing quality and fiscal responsibility.
- Inject the prestige of the office into everyday dealings with the public employees and associates.
- Maintain a respectful attitude toward employees, other public officials, colleagues and associates.
- Effectively and efficiently work with governmental agencies, political subdivisions and other organizations in order to further the interest of the county.
- Faithfully comply with all laws and regulations applicable to the county and impartially apply them to everyone.

The ethical county official should not:

- Engage in outside interests that are not compatible with the impartial and objective performance of his or her duties.
- Improperly influence or attempt to influence other officials to act in his or her own benefit.
- Accept anything of value from any source which is offered to influence his or her action as a public official.
- The ethical county official accepts the responsibility that his or her mission is that of servant and steward to the public.

The NACo code above is aspirational in that it sets the tone for behavior and choices but offers little in the way of how to navigate day-to-day situations. Ideally both an aspirational section and a more specific list of rules are important components of an ethics code but many counties only contain one or the other. No code of ethics will be specific enough to foresee all situations and an approach of simply “enforcing the rules” still does not lead to a culture of ethical behavior but leads to more of a culture of avoiding punishment. According to Menzel, “Most codes fail because they raise unrealistic expectations or they try to control too much.”³ On the other hand, Successful codes emphasize the behaviors and norms that are to be exemplified by the employees and officials of the county. According to NACo, an ethics code should address the specific areas of: conflicts of interest, conflicts in voting procedures, gifts, exploitation of

³ Menzel, p. 69.

official position, prohibition on use of confidential information, financial disclosure reporting, outside employment.⁴

In an effort to help local city and county governments strengthen their awareness of ethics issues, the Georgia Municipal Association has developed and modified over time a certification program of city and county governments. To be certified as a County of Ethics, counties must adopt a resolution establishing the five ethical principle for the county officials:

- Serve others, not ourselves
- Use resources with efficiency and economy
- Treat all people fairly
- Use the power of our position for the well being of our constituents
- Create an environment of honest, openness, and integrity⁵

In addition to the adoption of these principles, the GMA certification process requires that county ordinances contain definitions of such things as family members, substantial interest, employee, a list of permissible and non-permissible activities for elected officials, and the due process procedures for officials charged with a violation. Over the years, many cities and several counties have been involved in this process.

Two additional tools for ethics management is an ethics audit and strong hiring practices. An ethics audit can identify areas where there is confusion and uncertainty in daily practices. It can also be used to assess the ethical environment and help to determine its relative importance within an organization. Because personnel make up the largest expense of county government and are usually the face of the county for most interactions, strong hiring practices are essential. For this reason, providing employees with a clear understanding of the importance of ethics in the work place and the expectations on them is vital. Assessing ethical judgment as part of initial hiring decisions and during annual employee assessments is a critical component of the building an organization of integrity.

Ethical training was found to be an important component of achieving an ethical culture. Menzel cites a 2004 report by Valentine and Fleischman in which the authors find “significant statistical support for the notion that business persons employed in organizations that have formalized ethics training programs have more positive perceptions of their companies than do individuals employed in organizations that do not. They further note that employees in business organizations that have a stronger ethical context are more satisfied with their work than employees in organizations with a weak ethical context.”⁶ West and Berman conducted a follow-up study in 2002 to an earlier study to assess the impact of ethics programs on organizational culture, employee productivity and labor-management relations. Menzel reports their findings in

⁴ “County Code of Ethics”, National Association of Counties, September 2009.

⁵ Georgia Municipal Association, Becoming a County of Ethics.

⁶ Menzel, p.56.

his work. “Cities that offer ethics training report that they experience improvements in their organizational culture, better labor-management relations and higher employee productivity. West and Berman also find positive correlations between leadership strategies and improvements in the organizational culture, better labor-management relations, and higher employee productivity. Code-based strategies, those that stress adopting a code and monitoring adherence to it, are much less likely to be correlated with these three organizational variables.”⁷

Section 2. DeKalb County’s Ethics Code Review

In an effort to assess the DeKalb County Code of Ethics, we compared it to the codes of Cobb County, Fulton County and Gwinnett County on the basis of several different criteria. This list of criteria was taken from a larger list used in a 2006 Carl Vinson study on county ethics codes and overlaps greatly with the specific items suggested by NACo. These include issues in the area of ethics and transparency of government such as, conflicts of interest, activities that give the appearance of impropriety, gifts, private use of county property, nepotism, restrictions on employees or officials after they leave county service, penalties, ethics education, disclosure and disqualification, and the procurement process.

Conflicts of Interest

DeKalb County’s Code of Ethics acknowledges the importance of maintaining public confidence in the integrity of its governing authority. The code contains provisions that, in general, outline requirements to preclude government officials from using public office for private gain or for offering preferential treatment. Specifically, the code defines an “interest” to indicate the personal and business relationships and ownership conditions that necessarily play a role in determining whether a potential conflict of interest might exist. The conflict of interest provisions in the DeKalb Code of Ethics are similar to those contained in the codes for Fulton, Cobb and Gwinnett counties.

Activity that Gives the Appearance of Impropriety

In addition to providing specific requirements on conduct to address potential conflicts of interest, the DeKalb code also contains more wide-sweeping provisions that go further to prevent even the appearance of impropriety by county government officials. Namely, the code states that “no member of the governing authority shall: (1) By his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official acts or actions, or that he is affected unduly by the rank or position of or kinship or association with any person”. The code goes on to list several requirements for conduct in various conditions, situations, and relationships where the appearance of undue influence may exist. Although the specific provisions of the DeKalb County code may differ

⁷ Menzel, p.58.

slightly from those of other metro counties, all contain this type of provision and they are all generally similar.

Gifts

The treatment of gifts is included in all metro county ethics codes, likely due to a significant potential for both the appearance of impropriety as well as actual undue influence on public officials who accept them. DeKalb, Fulton, Cobb and Gwinnett County codes are all similar in their prohibitions for gifts. DeKalb County is the only one of this group that does not specify a dollar amount for its exception to the acceptance of gifts. DeKalb County's code simply provides an exception for "an occasional non-pecuniary gift of insignificant value", while other counties declare either \$100 or \$101 as the limit for gifts. Gwinnett County goes further to limit any gifts to a total value of \$100 in any calendar year.

Private use of county property

The private use of county property is not specifically addressed in the DeKalb County ethics ordinance, although private use restrictions may be implied in conflict of interest and financial disclosure requirements. Similar to DeKalb, the unauthorized private use of county property is not found in Cobb and Fulton County ethics ordinances. The Gwinnett County ethics ordinance prohibits the use of county owned vehicles, equipment, materials, and property for personal convenience or profit.

Nepotism

The DeKalb County nepotism policy is not found in the ethics ordinance but is presented on county employment applications and upon request from the Human Resources Department. Disclosure requirements include providing the name(s) and the department of a relative employed by the DeKalb County Government on an employment application form submitted for hire, promotion, transfer or demotion. DeKalb County's nepotism policy does not permit county employee's relatives to work within the same department if they are in a direct or indirect supervisor/subordinate relationship. The Cobb County nepotism policy states an officer may not directly or indirectly participate in any approval, disapproval, recommendation, contract or any other matter involving an immediate relative to the officer. The Fulton County ethics ordinance bans officials and employees from influencing or advocating employment advancement, hiring, appointment, promotion, or transfer of a member of his or her family to any county position. Gwinnett County addresses nepotism in the county employee handbook instead of the ethics ordinance. Nepotism prohibitions found in the employee handbook include the hiring of a family member of a county elected official during the official's term of office, two family members being employed in the same division of a department without the Merit System Board's approval, and any actions related to employment that results in a family member supervising or influencing the work activities or status of another family member.

Restrictions on employees or officials after they leave county service

It is the policy of DeKalb County not to enter into any contract or take any official action favorably affecting, any person, or business represented by such person, who was a member of

the governing authority within the preceding twelve-month period. Post county service restrictions are not outlined in the Cobb County ethics ordinance. The Fulton County ethics ordinance prohibits former officers and employees from participating in a managerial, entrepreneurial, or consulting roles on any contract with the county or any attempts to influence any department, board, or other county authority related to official employment duties during county service. These restrictions are effective for a period of one year for former officers and employees and for a period of two years for former Board of Commissions members. The Gwinnett County ethics ordinance bans former county officials and employees from accepting paid employment with any county board, commission, committee, agency, or authority personally connected to official duties during county service of to any case, proceeding, or application. These restrictions do not have an established time limit.

Penalties

The DeKalb County Board of Commissions has the power to adopt ordinances by prescribing maximum penalties and punishment for violation of all ordinances adopted by the commission and to carry out any provisions of any law including warnings, reprimands, fines, suspensions or terminations. The ethics board may conduct investigations, hold and conduct hearings, issue subpoenas, examine witnesses, and administer oaths. If appropriate, the ethics board will recommend appropriate penalties or sanctions. The Board of Ethics may impose the following penalties on any member of the governing authority who violates any provision of the code of ethics: reprimand, suspension from office for up to thirty (30) days, or removal from office, after notice and hearing, by the affirmative vote of five board members.

Cobb County penalties for ethics code violations apply to public officials, who are subject to disciplinary actions such as censure, reprimand, or other applicable law sanctions. The Fulton County permanent ethics body has the power to enforce penalties for any intentional ethics violation, the furnishing of false or misleading information to the Board of Ethics, the failure to follow an opinion or decision issued by the Board of Ethics, or the failure to comply with a subpoena issued by the Board of Ethics. Fulton County penalties consist of public reprimand, administrative sanction not to exceed \$1,000, recommendation to the Board of Commissioners or the appropriate appointing authority for disciplinary action, and recommendation to the purchasing agent that debarment proceedings be initiated against any contractor, business, or other entity that violates the ethics code.

Penalties for employees, officials, and private firms and organizations are addressed in the Gwinnett County Code of Ethics. The ethics board of Gwinnett County has a duty to present non-binding penalty recommendations to the Board of Commissioners for further enforcement to take place following ethics violation investigations. Employees are subject to contract cancellation or bid/offer rejection, written reprimand or warning, suspension without pay, termination of employment, recovery of value transferred or received by the county, and referral to the appropriate criminal authorities. Officials are subject to contract cancellation or bid/offer rejection, public censure or reprimand, written warning, removal from office as provided by Georgia law, recovery of value transferred or received by the county, and referral to the appropriate criminal authorities. Private firms and organizations are subject to contract

cancellation or bid/offer rejection, debarment or suspension from award of a county contract for a period of up to three years, restitution of value transferred or received by the county, and referral to the appropriate criminal authorities.

Procurement Process

As outlined in the Organizational Act, the Chief Executive of DeKalb County establishes purchasing rules for all county departments, offices and agencies except for the tax commissioner, clerk of the Superior Court, District Attorney and Sheriff. The Act also specifies certain high-level purchasing requirements; namely, that sealed bids must be obtained for all purchases exceeding \$50,000. Exceptions to the sealed bid requirement are allowed for purchases from vendors with existing contracts or schedules with the State of Georgia or federal government, as long as the purchase is made pursuant to the terms of the contract and the county receives all benefits of the contract. In addition, the Act specifies that all county expenditures above \$100,000, except for employment contracts, must be approved by the Board of Commissioners. For comparison, Table 1 contains an overview of the contracts approval authority limits for Fulton, Cobb and Gwinnett counties. These limits are not contained within each county's ethics code. Instead, they are outlined in separate procurement ordinances or codes.

Table 1. Comparison of Procurement Policies

County	Procurement Process Approval Authority	Sealed Bid Minimum Value	Contract Approval Authority			
			Board of Commissioners	County Administrator	CEO	Director of Financial Services
DeKalb	Chief Executive	\$50,000	Above \$100,000		\$100,000	
Fulton	Board of Commissioners	\$50,000	Above \$50,000			
Cobb	Board of Commissioners	\$50,000	Above \$50,000	\$50,000		
Gwinnett	Board of Commissioners	\$100,000	Above \$100,000	\$100,000		\$50,000

A case study: City of Atlanta

The City of Atlanta is recognized by the Georgia Municipal Association (GMA) as a certified city of ethics due to its ethics ordinance meeting the minimum standards approved by the GMA Board. The Atlanta Board of Ethics is a citizen-appointed (selected by legal, business, civic, and educational groups) board composed of seven Atlanta city residents who serve a three year term. Instead of a confirmation process, members undergo an employment, education, and criminal history background check. According to a 2009 Ethics Case Study published by The Atlanta Committee for Progress and Georgia State University's Andrew Young School of Public Policy, the greatest strength of Atlanta's current ethics policy is the independence of the ethics office and Board of Ethics which promote public trust and confidence in city government.

In 2002 the City of Atlanta Board of Ethics was reconstituted and the position of Ethics Officer was created. Duties of the Ethics Officer include:

Educating and training all city officials and employees to have an awareness and understanding of the mandate for and enforcement of ethical conduct and advising of the provisions of the code of ethics of the city;

Maintaining the records of the Board of Ethics as required by the Georgia Open Records Act;

Meeting with the Board of Ethics;

Advising officials and employees regarding disclosure statements and reviewing same to ensure full and complete financial reporting;

Urging compliance with the code of ethics by calling to the attention of the board of ethics any failure to comply or any issues, including the furnishing of false or misleading information, that the ethics officer believes should be investigated by the board so that the board may take such action as it deems appropriate;

Monitoring, evaluating and acting upon information obtained from an "ethics hotline" which shall be a city telephone number for the receipt of information about ethical violations. Each complaint, as of the time it is reported, whether by telephone or otherwise, shall be deemed to be a separate pending investigation of a complaint against a public officer or employee as provided by the Georgia Open Records Act;

Notifying the subject of a report of any alleged violation of the ethics code, whether the report is anonymous, made by an identified individual or is written. Such notice shall be given in writing, by facsimile or hand delivery, to the subject of the complaint at the same time and in the same form that any disclosure of information is required by the Georgia Open Records Act;

Notifying the board of ethics of any report of an alleged violation of the ethics code received by the ethics officer. Reporting, as appropriate, suspected ethical violations to the city Board of Ethics;

Reporting, as appropriate, suspected criminal violations to state or federal law enforcement agencies;

Filing with the board, the mayor and the council each January a written report describing the activities of the ethics officer in carrying out the goals of his or her office and the Code of Ethics and reporting on the ethical health of the city.”^{8,9}

To encourage a culture of ethics, the Ethics Office creates a two year work plan report describing the implementation process necessary to achieve ethics related goals. Other helpful resources available to the public published by the Ethics Office include an annual report detailing the work and highlighting specific activities in numbers of the Ethics Office and the state of ethics within

⁸ Atlanta city ordinance no. 2002-27, section 1, 4-10-02

⁹ These same duties have been incorporated into the duties for the proposed position of DeKalb County Integrity Officer, see section 3 of DeKalb County Executive Order No. 2014-4.

the City of Atlanta, an Integrity telephone hotline to report unethical, fraudulent, or illegal acts by City of Atlanta officials, employees, and contractors, and other ethics reports on specific investigations.

Section 3. Ethics Board Creation

In addition to a review of the county's ethics policies, we review the policies associated with the creation of the ethics board and compared the procedure used in DeKalb to that used in the surrounding counties.

The Board of Ethics is a department of the DeKalb County government composed of 7 members who serve for 7 years. 2 members are appointed by the Chief Executive and the remaining 5 are appointed by a majority vote of the full membership of the Board of Commission. Board members are required to be DeKalb County residents for 1 year prior to serving and may not have had an interest in any contract, transaction, or official county action during the preceding 2 year period. Once appointed, the board may be considered independent and not under the control or supervision of the Chief Executive, the Commission members, or any other officer, department, or agency of the county government. The Board of Ethics is authorized to employ its own staff and clerical personnel.

Each of the 7 members on the permanent Cobb County Board of Ethics is appointed by different groups (Cobb County Bar Association, Homeowners' associations from commissioner districts 1-4 of the county, Cobb County Board of Elections and Registration, Board of Commissioners, county employees, and the Cobb County Civil Service Board). Members serve 4 years with a limit of 2 consecutive full terms per member, per position and must meet resident and employment restrictions set by Cobb County. The Cobb County Board of Ethics may not be completely independent of the Board of Commissioners because in Cobb County the BOC has the power to dismiss members of the Board of Ethics.¹⁰

Fulton County has a permanent 7 member Board of Ethics nominated by different groups (President of the Atlanta Bar Association from its membership, President of the Gate City Bar Association from its membership, President of the North Fulton Chamber of Commerce from its membership, President of the Atlanta Business League from its membership, President of the Atlanta Airport Chamber of Commerce from its membership, Personnel board of the county from its membership; and the Board of Commissioners) with final approval by the Board of Commissioners. Members serve a 3 year term and must meet resident and employment

¹⁰ Sec. 2-69. - Removal of member states: "The Board of Commissioners may remove a member of the board of ethics on the grounds of neglect of duty, misconduct in office, a disability rendering the member unable to discharge the powers and duties of the office as specified in this division, or engagement in political activity in violation of section 2-74. Before initiating the removal of a member from the Board of Ethics, the Board of Commissioners shall give the member written notice of the reason for the intended action, and the member shall have an opportunity to reply. Thereafter, the Board of Commissioners shall afford such member an opportunity for a hearing."

restrictions set by Fulton County. Once appointed the Fulton County ethics board may be considered independent of the Board of Commission and other government entities.

The Gwinnett County grand jury creates a temporary 5 member Board of Ethics panel after an ethics complaint is filed. Members on the ethics board panel are appointed by the Board of Commissioners, Grand Jury and from the roll of grand juror then in session, President of the Gwinnett County Bar Association, Association County Commissioners of Georgia who is not a Gwinnett County sitting county commissioner, and the Official or employee who is the subject of the ethics complaint. Panel members serve only for the complaint(s) they were created to investigate and must meet resident and employment restrictions set by Gwinnett County. The Gwinnett County Board of Ethics is not independent of the Board of Commissioners because the Gwinnett County Board of Commissioners review and enforce the findings of the ethics board decisions.

Jurisdiction

In DeKalb County, ethics complaints handled by the Board of Ethics may be filed against the following: Chief Executive Officer, any Commissioner of DeKalb County, any member of a board who was appointed by the governing authority of DeKalb County, and any elected or appointed officer or county employee who is not covered by the DeKalb County Merit System.

The Cobb County ethics board only has jurisdiction over elected officials. Ethics ordinances in Fulton and Gwinnett County apply to employees as well as elected and appointed officers.

Powers

The DeKalb, Cobb, and Fulton ethics boards have the power to:

- 1) Establish procedures, rules, and regulations for its internal organization and the conduct of its affairs, including meeting scheduling.
- 2) Render advisory opinions.
- 3) Receive, hear, investigate, hold hearings, issue subpoenas, and make findings concerning code of ethics complaints as the board deems necessary.

DeKalb County and Fulton County ethics boards have the power to prescribe necessary disclosure forms and to make available to the public disclosed information. Cobb County and Fulton County ethics boards have the power to recommend code of ethics revisions to the Board of Commissioners.

In DeKalb County, the Board of Ethics also has the power to refer complaints to other agencies. The DeKalb County ethics board does not have the power to levy fines but may suspend for up to 30 days or remove an elected official from office as a penalty for knowingly violating the code of ethics. The Cobb County ethics board does not have the power to level fines, suspend, or remove an elected official from office as penalties to knowingly violating the code of ethics. In Fulton County, the Board of Ethics has the power recommend to the Board of Commissioners or the appropriate appointing authority disciplinary action. The Fulton County ethics board does not

have the power to remove an elected official but may levy an administrative sanction not to exceed \$1,000.00 as a penalty to knowingly violating the code of ethics.

Gwinnett County ethics board members have the power to establish their own procedural rules and meeting schedule, investigate ethics complaints, issue a subpoena, and make recommendations to the Board of Commissioners. The Gwinnett County ethics board does not have the power to levy fines but may recommend removal of an elected official from office as a penalty for knowingly violating the ethics code.

Funding

Expenditures for operation of the Board of Ethics is approved by the Board of Ethics. The governing authority of DeKalb County provides adequate office and meeting space along with necessary supplies and equipment for the board of ethics to carry out its duties and responsibilities. Board of Ethics members serve without compensation in DeKalb County.

The Cobb County Board of Commissioners provides staff, adequate office and meeting space, along with other supportive services necessary for the ethics board to carry out its duties and responsibilities. Board of Ethics members serve without compensation in Cobb County.

Fulton County bears the costs of issuing subpoenas and the cost of having a court reporter present to record hearings if desired by the Board of Ethics. The legal counsel and secretary selected by the board of ethics are compensated from funds approved by the board of commissioners. Board of Ethics members serve for a per diem in the amount of \$150.00 in Fulton County.

The Gwinnett County Board of Commissioners provides adequate meeting space along with other supportive services necessary for the ethics board to carry out its duties and responsibilities. Board of Ethics members serve at a compensation rate deemed proper by the Board of Commissioners in Gwinnett County.

Preliminary Investigation

Following a written complaint, the legal counsel for the DeKalb ethics board reviews the complaint to determine if the complaint is a violation of the ethics code, if the ethics board will legally have jurisdiction over the matter, and any other identifiable issues before reporting conclusions to the Board of Ethics. These findings must be presented to the board prior to the scheduled meeting on the matter. Complainants who present complaints which do not show a clear code of ethics violation will be notified in writing of that fact and the decline to take jurisdiction of the case by the board. The board also sends a copy of the complaint and written response to the governing authority member that is the subject of the complaint. In contrast, complaints which allege code of ethics violations may be preliminarily investigated by the board in an informal hearing to determine whether the board should take jurisdiction on the case or not and if there is sufficient evidence of a code of ethics violation. If sufficient evidence is found following the preliminary investigation, a formal hearing is scheduled and the board takes

jurisdiction on the complaint. If sufficient evidence is not found, the board dismisses the matter. At any time the board may decline to proceed with a complaint.

The Cobb County Board of Ethics is responsible for hearing and deciding any complaints filed regarding alleged ethics code violations by any person. In the event the ethics board makes an initial determination that a complaint is technically deficient, the board submits a list of deficiencies to the complainant and offers the complainant an opportunity to correct the deficiencies within 7 days prior to the ethics board's investigatory review of the complaint. Within 60 days of receiving of a complaint, the ethics board conducts a preliminary investigation and majority vote to determine whether substantiated evidence from a credible source(s) exists to support a reasonable belief of the alleged code of ethics violation. The board may dismiss the complaint if no specific evidence confirms an ethics violation has occurred. In the event a complaint is dismissed on the basis of a deficiency in the form of the complaint, rather than upon the merits of the complaint, the complaint may be re-filed within 15 days of said dismissal if the deficiency has been corrected. If sufficient evidence is found and there is an affirmative vote of at least four members of the ethics board following the preliminary investigation, a complaint investigation is conducted and a formal hearing is scheduled.

Fulton County Board of Ethics members conduct a preliminary investigation within 30 days following the filing of a complaint to determine whether probable cause exists to believe the alleged ethics code violation. If the Board of Ethics determines by majority vote probable cause does not exist, the complaint is dismissed and all involved parties are advised of this decision in writing. If the Board of Ethics determines by majority vote probable cause does exist, the involved parties are advised of this decision in writing. If sufficient evidence is found following the preliminary investigation, a formal hearing is scheduled, all involved parties are advised of this decision in writing, and the board takes jurisdiction on the complaint.

After an ethics complaint is received in Gwinnett County, the County Attorney immediately delivers the complaint to the Hearing Officer for a technical requirements review to serve as the preliminary investigation. Complaints that do not meet the technical requirements outlined in the ethics ordinance may be re-filed within 10 days of the date of notice. If after one amendment the complaint does not meet technical requirements, it will be dismissed. A complaint which meets technical requirements and is determined to be a potential ethics code violation is forwarded to the County Attorney and appointing authorities in order for an ethics panel to be assembled and a formal investigation and hearing on the matter begins.

Enforcement

Ethics violations found in DeKalb, Cobb, and Fulton are determined by a majority vote of ethics board members and do not require additional approval by a government authority for enforcement of sanctions to take place.

Ethics violations found in Gwinnett are determined by a majority vote of ethics board members and must be labeled "sustained" or "not-sustained" in non-binding penalty recommendations presented to the Board of Commissioners and other appropriate authorities. Within 30 days of

the findings of the ethics board, the Board of Commissioners must give a public hearing and decide by majority vote if enforcement will take place.

Table 2 – County Ethics Boards Comparisons

<i>County</i>	DeKalb	Cobb	Fulton	Gwinnett
<i>Board Creation</i>				
Number of Members	7	7	7	5
Term Length (years)	7	4 with a limit of 2 consecutive full terms per member	3	N/A
Staff	✓	✓ pending Board of Commission funding approval	✓	✓ pending Board of Commission funding approval
<i>Jurisdiction</i>				
Appointed Official	✓		✓	✓
Elected Official	✓	✓	✓	✓
Employees	✓		✓	✓
<i>Powers</i>				
Internal Organization	✓	✓	✓	✓
Render advisory opinions	✓	✓	✓	
Receive, hear, investigate, hold hearings, and make findings concerning code of ethics violations	✓	✓	✓	✓

Levy Fines			✓ Not to exceed \$1,000.00	
Remove an Elected Official from Office	✓			✓
<i>Funding</i>				
Member Compensation	None	None	✓ Per Diem of \$150.00	✓ pending Board of Commission rate

Section 4. Transparency in Government

Transparency and ethics in government are closely related in that transparency enables the public to adequately monitor the activities of its public officials and hold them accountable for their conduct as outlined in ethics codes and policies. A strong commitment to transparency can boost confidence and trust in government while also enhancing public officials' efforts to engage the public in addressing local issues and solving community problems. This section of the report explores two broad areas of transparency, information disclosure and fiscal transparency.

The public's ability to effectively monitor and evaluate the performance of government officials is highly dependent upon the level of transparency in the information provided by the government. This includes the timely disclosure of information about public officials' relevant relationships and interests, as outlined in ethics codes, as well as information about government meetings, activities and performance.

Disclosure Requirements for Public Officials

In his book, "Local Government Ethics Programs: A Resource for Ethics Commission Members, Local Officials, Attorneys, Journalists, and Students, And A Manual for Ethics Reform", Director of Research for City Ethics.org Robert Wechsler describes the benefits of disclosure and the types of disclosure that should be included in ethics programs. The mere existence of disclosure requirements dictates that both public officials and those seeking benefits from a relationship with the government must recognize and disclose any relationships and interests that could lead to conflicts of interest. In addition, disclosure provides transparency by informing other public officials and the public about possible conflicts that may lie ahead. Finally, in paying attention to disclosure requirements, public officials participate in the ethics program and help foster an environment that encourages and supports participation by others.

According to Wechsler, the most effective ethics disclosure programs include transactional, annual and applicant disclosure requirements. Transactional disclosure requirements are those that are applicable when dealing with a specific transaction that may involve a potential conflict. Ethics programs should address what to disclose, when to disclose, and to whom to disclose and in what manner. Best practices for transactional disclosure include the following items:

1. Disclosure should occur as soon as the public official has reason to believe that a conflict of interest may occur. This may be well before a specific matter creating the conflict officially comes before the public official for consideration or a vote.
2. In disclosing potential conflicts of interest, public officials should provide as many details as possible on the circumstances, especially if the official has discretion on whether to withdraw from participation and chooses not to do so.
3. Mandatory withdrawal from participation in matters involving a potential conflict of interest should be written into ethics codes. Discretion on whether to withdraw should not be an option for public officials.

DeKalb County's ethics code includes specific requirements for disclosure and disqualification of members of the governing authority. These requirements apply to members who knowingly have any interest, direct or indirect, in current or pending contracts with the County or in any business with the County. The disclosures shall be made public by the Board of Ethics. Governing authority members shall disqualify themselves from "participating in any official act or action of DeKalb County directly affecting a business or activity in which he has any interest, whether or not a remote interest." In addition, DeKalb County is prohibited from entering into contracts, or taking "any official act or action favorably affecting, any person, or business represented by such person, who has been within the preceding 12 month period a member of the governing authority." Fulton, Cobb and Gwinnett counties all have disclosure and disqualification sections in their codes with similar provisions.

Annual Financial Disclosure

Jurisdictions that require the submission of annual disclosure documents from public officials typically focus on the financial interests and business relationships of public officials and their immediate families. These disclosures are made public information and they provide additional transparency to citizens about the potential areas of conflict for public officials. A study of counties outside Georgia by Carl Vinson Institute of Government found that this practice was common among those counties surveyed in California, Florida, Tennessee, Kentucky and Maryland. Within metro Atlanta, Fulton County requires annual disclosure from certain specified individuals, as does the City of Atlanta. Fulton County's ethics code includes the additional requirement of an annual income and financial disclosure report. This report must be filed by a number of county officials, including all elected officials, judges of the juvenile and magistrate courts, the county manager, deputy county managers, all department heads and members of a number of county boards. The annual report must disclose the source of certain income, ownership interests in businesses or real estate, or reimbursements for expenses that exceed various specified minimum levels. The report must also contain the name and description of any organization in which the official is affiliated with as described and received more than \$1,000 in income during the preceding year.¹¹ DeKalb, Cobb and Gwinnett counties, however, do not have annual disclosure requirements within their respective ethics codes. Below

¹¹ A similar provision has been proposed for DeKalb County in Executive Order No. 2014-4.

is a partial list of the items Robert Wechsler recommends including in annual disclosure provisions.

1. Name of employers or other income sources.
2. Ownership of non-public companies in the jurisdiction or those outside that do business with the jurisdiction.
3. Real estate interests in the jurisdiction.
4. Substantial creditors.
5. Relatives employed by the government, by contractors or as consultants to the government, or by a lobbying firm.
6. Clients that do or seek business with, or are regulated by, the government.
7. Officer positions in local nonprofits.

Applicant Disclosure

Applicant disclosure requirements, applied to individuals, officers and directors of businesses seeking contracts or other benefits from local government, provide another mechanism for notifying the public of potential conflicts of interest. The disclosure of relationships with public officials by those seeking business with the government also serves to remind public officials of their potential conflicts of interest and disclosure requirements. Applicant disclosure requirements, if utilized, may more likely be found within procurement codes and policies rather than in ethics codes.

Section 5. Internal Auditing Best Practices

While the county's executive branch currently does have some auditing capabilities, there have been some concerns voiced over its proximity to the Finance Department, and its independent position within the executive branch. The Organizational Act allows the Commission to retain an outside auditor, however, in practice the Commission's role has been limited. Finally, although the DeKalb Organizational Act in section 10 (d) allows the Commission, through the auditing committee, to employ an internal auditor, it remains quite unclear how such an internal auditor would operate.

The Association of Local Government Auditors (ALGA) believes such an internal independent auditor will enhance *"the government's accountability to the public for its use and stewardship of resources and the extent to which the public's objectives are being achieved."* and *"increase credibility with the public"*.¹² Creating such a department in DeKalb County, with the power to conduct financial and performance audits could enhance transparency and enforce a culture of ethics within the DeKalb county government.

¹² Association of Local Government Auditors, *A Government Official's Guide to Establishing a Performance Audit Function*.

This section will provide some further examples of best practices among elected-executive county governance systems with internal auditing departments (as well as an ethics board), that might prove useful for implementation of an internal auditing department in DeKalb.

The practice of having an Internal Auditing departments is widely used among both county and city governments. However, for DeKalb's purposes it is instructive to look at two particularly interesting examples; Orange County, California, and Prince George's County, Maryland (often considered a 'peer county' to DeKalb).

After severe problems and bankruptcy in 1994, Orange County reformed and adopted an internal auditing department, explicitly separating it from the county's executive branch to ensure its independence. Since the reforms, the internal auditing department has won a number of awards, and Orange County is now widely recognized as a benchmark county in local government auditing structures and financial and performance audits.

Independence

A key feature of a well-functioning internal auditing department is ensuring its independence from the executive branch. The practice of retaining an independent audit committee is widely supported by the ALGA, Sarbanes-Oxley, the SEC, the Institute of Internal Auditors, Government Finance Officers, and under AICPA and GAGAS standards. The ALGA recommends that such a committee range from five to seven members, and is fully independent from the county's executive branch. The committee can take multiple forms, ranging from fully composed by the legislature (as is presently the practice under section 10 of the Organizational Act), to a full citizens board. The ALGA recommends a mixed legislative-citizen representatives form, composed of members with knowledge of government accounting, auditing and reporting practices (it recommends CPA, CIA and CMA certifications), and appointed by the legislature, as the most independent possible committee.¹³ The functions of such a committee can differ, but could include:

- Staffing and oversight of the auditing department
- Recommending or hiring the director of the auditing department (note that this could leave selection in the hands of the Board of Commissioners)
- Issuing salary and budget recommendations for staff auditors
- Offer advice on annual auditing plans
- Performance evaluation of the auditing director.¹⁴

In both Orange and Prince George's counties. Prince George's county charter explicitly places the auditing department under the legislative branch, giving it broad powers over the appointment and firing of the director, ordering audits and audit department staffing and duties:

¹³ Richardson, A., Hogan, A. and Samsel, P., 2005.

¹⁴ Hogan, A. and Richardson, H., 2006.

Section 313. Office of Audits and Investigations.

There shall be an Office of Audits and Investigations, under the supervision and direction of a County Auditor who shall be appointed by the Council. The County Auditor shall serve at the pleasure of the Council and shall receive such compensation as the Council may determine. [...]

In addition to the annual audit, either the Council or the County Executive may at any time order a special audit of the accounts of any agency receiving or disbursing County funds. [...]

The Council shall have the power to implement the provisions of this section and to assign additional functions, duties, and personnel to the County Auditor.

While Orange County has structured the internal auditing department to report directly to the legislative branch, it also adopted an Audit Oversight Committee, tasked with approving the annual audit plan and selecting the auditing director. Here, the committee consists of two legislators, a citizen member, a constitutional officer and the CEO.¹⁵ The committee organizes quarterly meetings, open to the public.

Outline of Powers and Functions

Another important element of a well-functioning internal auditing department is that there exists a clear outline of its powers and functions. Prince George's County's charter provides a clear description of the powers of the auditor, including compelling oaths and the attendance of witnesses, protecting employees that provide information to the auditor from retaliation, and granting the auditor a great deal of leeway to initiate investigations:

Section 313. Office of Audits and Investigations.

[...]

The Auditor is also empowered to conduct necessary audits of any agency, which is the recipient of funds appropriated or approved by the Council whenever he deems it appropriate. No employee or official of the County shall interfere with, threaten with disciplinary action, or otherwise attempt to restrain an employee of the County from providing information to the County Auditor, nor shall any adverse action be taken against such employee. Any adverse action taken within twelve (12) months after the employee has provided information to the County Auditor shall be presumed to be

¹⁵ Hughes, P., 2009.

retaliatory, which presumption may be rebutted only by clear and convincing evidence to the contrary. [...]

All records and files pertaining to the receipt and expenditure of County funds by all officers, agents, and employees of the County and all agencies thereof, shall at all times be open to the inspection of the County Auditor. [...]

The County Auditor shall have the power to administer oaths, to compel the attendance of witnesses, and to require the production of records and other materials in connection with any audit, investigation, inquiry, or hearing authorized by law or by this Charter.

The ALGA lists several other important elements, such as having “*unrestricted access to local government employees, officials, records, vendor contracts and reports*”, setting quality and compensation standards for staff, allowing the auditing director to place items on the legislative agenda for discussion, requiring departments head to respond within a certain timeframe to problems that surface through audits, to require follow ups on any previous audits performed, and to require that county government contracts contain a ‘right to audit’ provision.¹⁶

Budget

A well-organized funding structure is crucial to ensuring the independence of the county’s auditing system. The ALGA’s model legislation on implementing an internal auditing department also provides for the option that the budget is submitted by the director directly to the legislative branch, and for exempting such a department from across the board cuts. Most importantly, the ALGA stresses that “*funding for the auditor should not be under control of management of the entity under audit.*”¹⁷ While its unavoidable that creating and operating an internal auditing department would lead to increased costs, the ALGA posits that such a department could reduce red tape, improve government efficiency, and in some cases “*realize annual returns on investment between 200% and 400%*” through costs savings, detecting and preventing fraud and by providing the legislature with data on operations and risk analysis.¹⁸

Board of Ethics and Internal Auditing Department

While not all counties have both, Internal Auditing departments and Boards of Ethics, or similar institutions do coexist and operate jointly in some counties. While Orange County does not currently have an ethics board, they do have a ‘Grand Jury’ tasked with controlling government efficiency and honesty, which has urged the county to adopt either a commission or an ‘office of ethics and compliance’ to complement its auditing operations as recently as June.¹⁹ However, Orange County does have a 24/7 ‘Fraud Hotline’ where people and employees are encouraged to anonymously “*report questionable behavior, waste, and abuse involving County vendors,*

¹⁶ Association for Local Government Auditors, *Model Legislation Guidelines for Local Government Auditors*, 2014.

¹⁷ Association for Local Government Auditors, *Model Legislation Guidelines for Local Government Auditors*, 2014.

¹⁸ Ibid.

¹⁹ Flores, A., 2014.

employees, and processes.” Additionally, the grand jury meets annually with the auditing department and director, and sits in on the Auditing Oversight Committee meetings.²⁰

Prince George’s County has both an Office of Ethics and Accountability as well as a Board of Ethics, operating beside the internal auditing department. In section 2-303 of the county code of ethics, it outlines that this office:

- (d) Receive and investigate complaints from any source or upon its own initiative concerning alleged abuse, fraud, and service deficiencies including deficiencies in the operation and maintenance of facilities;
- (f) Conduct joint investigations and projects with the Office of Audits and Investigations and other oversight or law enforcement agencies.

This allows for direct communication and cooperation between the internal audit department and the office of ethics or ethics board. If DeKalb were to implement an internal audit department it would be important to clearly delineate the relationship between its ethics board and auditing functions.

Transparency

Since transparency is a key part of improving the county’s ethics structure, it is evident this should be included in any reform of the auditing system. Both Prince George’s and Orange counties explicitly deal with how any audits are to be reported. In Prince George, any improprieties have to be immediately reported to both the legislative as well as the chief executive, and audits have to be made publicly available:

Section 313. Office of Audits and Investigations.

Any audit, including performance audits, special audits, and State audits which form the basis for an exemption by the Council from a County audit, shall be published in suitable form and made available to the public at reasonable hours at the Office of Audits and Investigations. [...]

The Auditor shall promptly call to the attention of the Council and the County Executive any irregularity or improper procedure which he may discover.

Orange County additionally requires: *“Distributing all internal audit reports to the Board of Supervisors, AOC, and Department Heads, as well as posting on Internal Audit’s website, to give countywide visibility to findings and related risks identified.”*²¹

²⁰ Hughes, P., 2009, p. 7.

²¹ Hughes, P., 2009, p. 6.

Peer review

Both the ALGA and the Institute for Internal Auditors stress that auditing standards require a peer-review, or external quality assessment of the auditing department by an independent reviewer. This ensures that “the audit organization’s internal quality control system is suitably designed and operating effectively to provide reasonable assurance of complying with applicable professional standards.”²² IIA standards require that such an external assessment takes place every three years and that the results are reported to the legislative branch. Orange County, for instance, had its 2010 peer review conducted by San Diego’s Office of Audits and Advisory Services.

Conclusion.

This report highlights several tools used by organizations to encourage an ethical environment and increase emphasis on the importance of ethics. For instance, the County could chose to undertake an ethics audit and increase the emphasis of ethics in the hiring and promotion of employees. In addition, the County could choose to work with the GMA Counties of Ethics program to receive a certification as a County of Ethics.

While our comparison of the County’s ethics code did not reveal a glaring deficiency when compared to the surrounding counties, several issues have been raised. The first is a need to alter the selection process for the ethics board members. Under the current system, these members are chosen by the individuals they are selected to monitor. A preferred model may be that used by the City of Atlanta and Cobb County where outside individuals are chosen to serve. The second is that the funding for the ethics board is not protected. A strong ethics code is only part of the equation. The county also needs an adequately funded ethics board. A solution could be to base funding on some minimum amount used by counties of equal size around the country but also to include a provision for a mid-year adjustment of the budget if an investigation is ongoing and more funds are required. A third area which has come to light, especially based on the 2006 Vinson Institute review is a need for ethics training. In the 2006 review, the Vinson Institute highlights the fact that no Georgia counties included in the review participate in ethics education on an ongoing basis. Lastly, this report offers guidance in the area of financial disclosure and internal audit so as to address areas government transparency.

²² Association of Local Government Auditors, *A Government Official’s Guide to Establishing a Performance Audit Function*.

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Appendix. Summary of Findings from County Ethics Ordinances: An Analysis and Comparison for Gwinnett County.

In addition to our own review of the county ethics policies, we have included three summary tables of a 2006 review of county ethics policies conducted by the Carl Vinson School of Government for Gwinnett County. This review considers the ethics policies of several Georgia Counties and 13 other counties around the country on the basis of 15 different criteria. The tables from the original report have been reproduced below in Tables 2A-2C. The results of the review are summarized in Table 2A and 2B. Table 2C indicates the application of the policies.

Table 2A. Except from "County Ethics Ordinances: An Analysis and Comparison for Gwinnett County, Georgia.

Comparison County	Conflict of Interest	Appearance of Impropriety	Gift Ban	Disclosure of Interest and Disqualification	Lobbying	Procurement	Permanent Ethics Body
Gwinnett County	X		X	X		*	
Augusta-Richmond	X	X	X	X	X	X	
Chatham County	X	X	X	X			X
Cherokee County	X	X	X	X			X
Clayton County	X	X		X			
Cobb County	X	X	X	X			X
Columbus-Muscogee County	X		X	X			
DeKalb County	X	X	X	X			X ²³
Fulton County	X	X	X	X	X	X	X
Kern County, CA	X		X				
San Francisco, CA	X		X	X	X		X
Denver, CO	X		X	X ²⁴	X		X
Orange County, FL	X		X	X	X	X	²⁵
Palm Beach County, FL	X		X	X	X		²⁶
Lake County, IL							
Lexington-Fayette County, KY	X		X ²⁷	X			X
Louisville-Jefferson County, KY	X			X			X
Montgomery County, MD	X	X	X	X ²⁸	X	X	X
Bernalillo County, NM	X			X			X

²³ The table as published in the original report did not list DeKalb County as having a permanent ethics board.

²⁴ State law requirement.

²⁵ State Commission fulfills function for local governments.

²⁶ State Commission fulfills function for local governments.

²⁷ Ordinance is only a ban on gifts as required by state law.

²⁸ Disqualified official or employee may act under limited circumstances if the nature of conflict is disclosed.

Nashville-Davidson County, TN	X	X	X	X		X ²⁹	X
King County, WA	X	X	X	X			X
Snohomish County, WA	X	X	X	X	X		X

Table 2B. Except from "County Ethics Ordinances: An Analysis and Comparison for Gwinnett County, Georgia, continued.

Comparison County	Incompatible Employment	Disclosing Confidential Information	Use of Public Property	Representing 3 rd Party	Nepotism	Post-service Restriction	Penalties	Ethics Education
Gwinnett County	X	X	X	X		X	X	
Augusta-Richmond	X	X			X		X	
Chatham County	X	X					X	
Cherokee County	X	X		X		X	X	
Clayton County	X	X		X				
Cobb County	X	X						
Columbus-Muscogee County	X	X	X	X			X	
DeKalb County	X	X		X			X	
Fulton County	X	X		X	X	X	X	
Kern County, CA	X	X	X				X	
San Francisco, CA	X	X		X	X	X	X	X
Denver, CO	X	³⁰			X	X		X
Orange County, FL	X							
Palm Beach County, FL	X							X
Lake County, IL							X	X
Lexington-Fayette County, KY		X	X	X	X	X	X	
Louisville-Jefferson County, KY	X	X		X	X		X	X
Montgomery County, MD	X	X	X	X	X	X	X	X

²⁹ Procurement-related standards, only applicable to employees.

³⁰ State law prohibition applies to local governments.

Bernalillo County, NM			X				X ³¹	
Nashville-Davidson County, TN	X	X	X	X		X	X	
King County, WA	X	X	X	X		X	X	
Snohomish County, WA		X	X			X	X	

Table 2C. Except from "County Ethics Ordinances: An Analysis and Comparison for Gwinnett County, Georgia, continued.

Comparison County	To Elected Officials	To Appointed Officials	To Employees
Gwinnett County	X	X	X
Augusta-Richmond	X	X	X
Chatham County	X		
Cherokee County	X	X	
Clayton County	X	X	X
Cobb County	X		
Columbus-Muscogee County	X	X	X
DeKalb County	X	X	
Fulton County	X	X	X
Kern County, CA	X	X	X
San Francisco, CA	X	X	X
Denver, CO	X	X	X
Orange County, FL	X ³²		
Palm Beach County, FL	X	X	X
Lake County, IL	X	X	X
Lexington-Fayette County, KY	X	X	X
Louisville-Jefferson County, KY	X	X	X
Montgomery County, MD	X	X	X
Bernalillo County, NM	X	X	X
Nashville-Davidson County, TN	X ³³		

³¹ Penalties apply to employees only.

³² Local act on lobbying is applicable only to Board of Commissioners; charter incorporates state ethics law by reference which applies to elected, appointed officials, and employees.

³³ Limited application to employees.

King County, WA	X	X	X
Snohomish County, WA	X	X	X

About the Center for State and Local Finance:

The Center for State and Local Finance is a collaborative effort of the Andrew Young School's nationally ranked faculty to provide research on issues affecting the future of state and local public finance and to educate the next generation of leaders in public financial management. Our mission is to develop the people and technologies for next generation public finance. Key initiatives include:

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- Building technical assistance capacity in next generation technologies for the public sector that include the use of "big data" and improved analytics to better inform policy-makers and to better target solutions to public sector problems;
- Supporting scholarship on critical challenges in state and local fiscal and economic policy, and
- Building a strong capacity to translate and communicate academic research for the practitioner audience.

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