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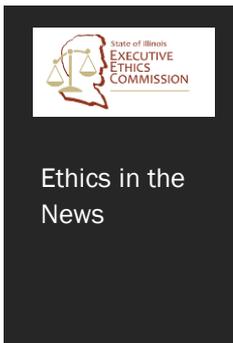
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- OVERVIEW**
- ◆ The EEC and the State Officials and Employees Ethics Act
  - ◆ Senate Bill 539 and Its Impact on Units of Local Government
  - ◆ The Gift Ban
  - ◆ Prohibited Political Activity
  - ◆ Other Ethical Behavior

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## Who we are...



The Executive Ethics Commission (EEC) is an independent nine-member commission charged with promoting ethics in public service and ensuring that the State's business is conducted with efficiency, transparency, fairness, and integrity.

The EEC's nine-members are appointed by:

- ♦ Governor (5)
- ♦ Attorney General (1)
- ♦ Secretary of State (1)
- ♦ Treasurer (1) and
- ♦ Comptroller (1)

No more than 5 members of the Commission may come from any one political party

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## What we do...



Conduct hearings and issuing determinations related to the State Officials and Employees Ethics Act



Appoint Special Executive Inspectors General



Provide independent oversight of the State procurement process



Oversee training for State employees under its jurisdiction



Prepare, redact and publish Executive Inspectors Generals' summary reports

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## Who is subject to the EEC's Jurisdiction

♦ Officers and Employees of the Executive Branch

♦ Officers and Employees of State Universities

♦ Officers and Employees of the Regional Transit Authorities

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## State Officials and Employees Ethics Act (5 ILCS 430/1-1 et seq.)

The State Officials and Employees Ethics Act was passed in 2003. The purpose of the Ethics Act is to set forth ethical standards of conduct for elected and appointed officials and employees of State government.

"To truly change the culture in state government, we need to ensure that everyone involved--from the elected officials down to the mailroom clerks--understands what the rules are and how they apply to our work as employees of the public."

- Governor Rod Blagojevich to USA Today, December 2003

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### Areas Covered by the Ethics Act

Personnel Policies

Ethics and Harassment and Discrimination Prevention Training for State Officials and Employees

**Prohibited Political Activities**

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### Areas Covered by the Ethics Act

Public Service Announcements or Promotional Materials

Prohibited Offers or Promises

Political Contributions and Fundraising

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Areas Covered by the Ethics Act

Revolving Door Prohibition

Ex Parte Communications

Gift Ban

Horizontal lines for notes under 'Areas Covered by the Ethics Act' section.

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Violations of the Ethics Act

Penalties for a violation of the Ethics Act vary from offense to offense. However, penalties include:

- Administrative fine for a violation of the revolving door provisions of up to 3 times the total annual compensation that would have been obtained in violation of the revolving door provisions. 5 ILCS 430/50-5(a-1).
Administrative fine of up to \$5,000 against any person who violates this Act, who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general, or who intentionally makes a false, frivolous, or bad faith allegation. 5 ILCS 430/50-5(e).

Horizontal lines for notes under 'Violations of the Ethics Act' section.

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What does the Ethics Act have to do with Local Government?

- The legislature extended certain provisions to units of local government
Specifically, the Ethics Act states:

"each governmental entity... shall adopt an ordinance or resolution that regulates, in a manner no less restrictive than Section 5-15 and Article 10 of this Act, (i) the political activities of officers and employees of the governmental entity, and (ii) the soliciting and accepting of gifts by and the offering and making of gifts to officers and employees of the governmental entity."

5 ILCS 430/ 70-5(a).

Horizontal lines for notes under 'What does the Ethics Act have to do with Local Government?' section.

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# The Gift Ban

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## Ethics in the News

### Gift Ban Example

Leslie is the business licensing manager for a local municipality. The municipality uses an outside vendor as part of the business licensing process. The vendor, Pawnee Parks and Investigations, conducts background checks on license applicants.

Andy, a Customer Service Representative for Pawnee Parks and Investigations, is assigned to the municipality. During the holidays, Andy sends Leslie a \$250 gift card to a local golf course as gratitude for the Municipality's continued business.

What should Leslie do? Discuss.

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## Haling v. Hernandez (18-EEC-011)

- ◆ Gift Ban Example 1 was inspired by the facts set forth in *Haling v. Hernandez*, 18-EEC-011
- ◆ In this EEC published decision, an employee received a \$100 gift certificate and a \$197 bottle of spirits from a vendor that was a prohibited source
- ◆ As a result of the employee's receipt of the gifts and failure to promptly remedy the situation in accordance with the provisions of the Ethics Act, the OEIG's Unopposed Motion for Summary Judgment was granted and an administrative fine in the amount of \$1000 was assessed

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## The Gift Ban

✦ In accordance with Section 70 of the Ethics Act, each unit of local government must adopt an ordinance/resolution governing:

- ✦ the soliciting and accepting of gifts by and
- ✦ the offering and making of gifts to
- ✦ officers and employees of the governmental entity



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## The Gift Ban

✦ A unit of local government's ordinance/resolution may not be less restrictive than the provisions of the Ethics act. See Article 10.

✦ The Illinois Attorney General has published a model ordinance for use by units of local government ([https://illinoisattorneygeneral.gov/government/ethics\\_ordinance.html](https://illinoisattorneygeneral.gov/government/ethics_ordinance.html)).



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## Gift Ban Model Ordinance

Section 10-1: "Except as permitted by this Article, no officer or employee, and no spouse of or immediate family member living with any officer or employee (collectively referred to herein as "recipients"), shall intentionally solicit or accept any gift from any prohibited source, as defined herein, or which is otherwise prohibited by law or ordinance. No prohibited source shall intentionally offer or make a gift that violates this Section."

Penalty in section 25-1(b): fine of \$1,001 - \$5,000, possible discipline or discharge



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# Who is subject to the Gift Ban?

- ❖ Officers
- ❖ Employees
- ❖ "Spouse or immediate family member living with any officer or employee"

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## Officials

- ❖ The Gift Ban applies to both elected and appointed officials
- ❖ An official is an individual holding an office created by statute or ordinance
- ❖ The Gift Ban applies regardless of whether the official is compensated

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## Employees

- ❖ The Gift Ban applies to both full- and part-time employees
- ❖ An employee is someone whose duties are subject to direction and control with regard to material details of how work is to be performed
- ❖ An independent contractor is NOT an employee for purposes of the Gift Ban

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# What is a gift?

- ❖ Section 1-1 of the Model Ordinance defines a gift as:
  - ❖ Gratuity
  - ❖ Discount
  - ❖ Entertainment
  - ❖ Hospitality
  - ❖ Loan
  - ❖ Forbearance
  - ❖ Other tangible or intangible item having monetary value
  - ❖ Cash
  - ❖ Food and drink
  - ❖ Honoraria for speaking engagements



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# What is a gift?

Continued

- ❖ Pretty much any benefit, potentially including the waiver of fees
- ❖ Does not include fees or compensation for services
- ❖ Does not include a legitimate reimbursement for damages to an Official or Employee's property



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# What is a "Prohibited Source?"

The model ordinance states that a "prohibited source" is any person or entity that:

- is seeking official action...
- does business or seeks to do business...
- conducts activities regulated...
- has interests that may be substantially affected...

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# “Prohibited Source” Issues to Consider




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Prohibited sources may not launder gifts through non-prohibited sources



Exercise caution when soliciting for charity; No known prohibited sources, Not on municipal letterhead or time

# “Prohibited Source” Issues to Consider

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# Gift Ban Exceptions

Opportunities, benefits, and services that are available on the same conditions as for the general public

Anything for which the officer or employee, or his or her spouse or immediate family member, pays the fair market value

Any (i) contribution that is lawfully made under the Election Code or (ii) activities associated with a fundraising event in support of a political organization or candidate

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Gift Ban  
Exceptions  
Continued

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Educational materials and missions

Travel expenses for a meeting to discuss business

A gift from a relative

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Gift Ban  
Exceptions  
Continued

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***Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient or his or her spouse or immediate family member and not because of the personal friendship***

Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared or (ii) catered

Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of an officer or employee), if the benefits have not been offered or enhanced because of the official position or employment of the officer or employee, and are customarily provided to others in similar circumstances

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Gift Ban  
Exceptions  
Continued

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Intra-governmental and inter-governmental gifts

Bequests, inheritances, and other transfers at death

Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100

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## Gift on the Basis of Friendship

In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as:

- (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals;
- (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and
- (iii) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other officers or employees, or their spouses or immediate family members.

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## Ethics in the News

### Gift Ban Example Two

Rebecca is a member of the Richmond City Council. Rebecca has been friends with Keely for 10 years after the two met at a political fundraiser.

Keely is a lobbyist for Richmond Supply Co., an office supply company with a contract with the City of Richmond. Richmond's contract with the City expires in 18 months.

After hearing that Rebecca is having a medical procedure, Keely gives Rebecca an interest free loan in the amount of \$1,100 to pay for medical expenses not covered by Rebecca's medical insurance. Rebecca has not repaid Keely for the loan.

Has Rebecca violated the City's Gift Ban? Discuss.

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## California Council Woman

◆ Gift Ban Example Two is from a news story in El Monte, California. See: <https://www.sgytribune.com/2021/08/01/el-monte-councilwoman-didnt-report-lobbyists-1100-gift-for-breast-augmentation-records-show/>

◆ The Council Woman accepted a loan of \$1,100 for surgery from a lobbyist whose company conducted business with the City and was seeking a contract extension worth \$700,000

◆ The matter was referred to the Los Angeles County District Attorney's Office and the state Fair Political Practices Commission

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Ethics in the News

5 Minute Break

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Horizontal lines for writing on page 34.

Gift Ban Example Three

Mayor Quimby is the Mayor of the fictional city of Springfield. Springfield is home to the Isotopes Baseball Club.

In the first game of the playoffs, the Isotopes play their rivals the Shelbyville Snakes. Tickets for the game are sold out. However, Mayor Quimby would like to take his children to the game.

Mayor Quimby calls the VP of Governmental Affairs for the Isotopes and secures four free tickets usually worth \$200 each. Mayor Quimby and the Isotopes' VP know each other through Isotopes' lobbying of the Mayor's Office and the City Council.

Mayor Quimby worries that he may have violated the City's Gift Ban. What should he do? Discuss.

35

Horizontal lines for writing on page 35.

What to do if you receive an improper gift?

An officer or employee, his or her spouse or an immediate family member living with the officer or employee, does not violate this Ordinance if the recipient promptly takes reasonable action:

- return a gift from a prohibited source to its source; or
gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501 (c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, renumbered, or succeeded

36

Horizontal lines for writing on page 36.



## Gift Ban Example Three

What should Mayor Quimby do with the Isotopes baseball tickets?

- ❖ **If he has not gone to the game, return the tickets**
  - ❖ If he has gone to the game, donate \$800 dollars to a 501(c)(3) charity asap
- What should Mayor Quimby NOT do?
- ❖ Donate \$700 to stack upon a \$100 exception
  - ❖ Not advisable to seek a tax deduction

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## New York Governor Ticket Scandal

- ❖ In 2009, the then-New York Governor solicited and accepted five free tickets from the New York Yankees to attend the World Series. The Yankees had multiple pending issues before the state involving real estate, stadium development and tax matters
- ❖ New York's State Ethics Commission determined that the Governor improperly accepted the gift and lied about this acceptance. As a result, the Governor was fined \$62,215
- ❖ See: <https://cityroom.blogs.nytimes.com/2010/12/20/gov-paterson-fined-62125-for-taking-world-series-tickets/>

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## Final Thoughts on the Gift Ban

Do not accept non-prohibited gifts if it could lead to appearance that giver will receive unfair benefit	Do not accept from vendors, if possible	Solicitations for charity are better off coming from non-employees
"Stringing" (e.g., ten \$90 gifts from ten different company employees) is not appropriate	Consider sending Gift Ban reminders around holidays	

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# Prohibited Political Activity

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## Prohibited Political Activity

It is a violation of the Prohibition on Political Activity to:

- ◆ intentionally perform prohibited political activities on compensated time
- ◆ intentionally misappropriate any State property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization

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## Prohibited Political Activity (Cont.)

Additionally, employees may not be required to perform any prohibited political activity:

- ◆ As part of that employee's duties
- ◆ As a condition of employment
- ◆ During any compensated time-off

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## Prohibited Political Activity (Cont.)

❖ Employees may not be awarded with an additional benefit or compensation for participating in a prohibited political activity

❖ No person either (i) in a position that is subject to recognized merit principles of public employment ... shall be denied or deprived of State employment or tenure solely because he or she is a member or an officer of a political committee, of a political party, or of a political organization or club

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## What is Prohibited Political Activity?

❖ The Ethics Act provides 15 examples from soliciting contributions and votes, preparing and attending political meetings, circulating petitions, etc.

❖ #12 "Campaigning for any elected office or for or against any referendum question"

❖ Campaign for elective office: "any activity in furtherance of an effort to influence the selection, nomination, election or appointment of any individual to any federal, State or local public office..."

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## What is **NOT** Prohibited Political Activity?

❖ Activity relating to the support or opposition of any executive, legislative or administrative action

❖ Activity relating to collective bargaining

❖ Activity otherwise in furtherance of the person's official duties or governmental and public service functions

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## Prohibited Political Activity (Cont.)

Issues to consider:

- ◆ Prohibition against PPA during compensated time or misappropriating government resources for PPA
- ◆ What is "compensated time?"
- ◆ "Misappropriate" v. "use"
- ◆ Employer Policies

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## Prohibited Political Activity

### Example One

Alicia is a professor of law at State College. Her husband Peter is currently running for State's Attorney.

In the lead up to the election, Alicia posts to her social media profile endorsing her husband's candidacy. These posts are made outside of business hours using her personal computer but are viewable by the public, including her students and colleagues.

Alicia also supervises a number of teaching assistants. She offers her teaching assistants a flexible work schedule, if they volunteer on her husband's campaign.

Has Alicia violated the prohibition on political activity? If so, how? Discuss.

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## Louisiana Political Activity Firing

◆ Facts in the example were inspired by news story out of Louisiana <https://www.ksla.com/2021/04/04/investigators-law-professor-claims-state-employee-unjustly-banned-public-service-over-political-posts/>

◆ Louisiana law prohibits state employees from engaging in political activity

◆ State employee shared several posts about candidates for national political office

◆ "While it is against Louisiana law for state employees to engage in political activity, Levy says that includes campaigning for someone or raising money for a candidate. Levy believes by simply posting and retweeting posts, LaFleur did not cross the line and instead he says it's the Civil Service Commission that has gone too far."

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Prohibited Political Activity  
Example Two  
Erwin,  
11-EEC-005

- Used State email and telephone to:
  - Plan trip to Democratic National Convention for herself, nephew, and friend
  - Send and receive emails about political fundraisers
  - Call potential donors on behalf of political candidates
  - Serve as a way to reach her for campaign matters
- Used State employees to:
  - Make travel arrangements to attend political functions
  - Hand-deliver campaign contribution checks
  - Send her information about a political fundraiser

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### Senate Bill 539 and the Impact on Local Government

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### SB539

- The legislature recently accepted Governor Pritzker's Amendatory Veto of Senate Bill 539 (SB539). SB539 is an ethics package designed to address multiple newsworthy issues.
- While the bill primarily impacts State government, and more specifically the legislative branch, the bill may impact local governments. For example, SB539 amends the Illinois Governmental Ethics Act to restrict government official lobbying

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### SB539 Lobbying Restrictions Apply to:

- ◆ Legislators
- ◆ Constitutional Officers
- ◆ Elected or Appointed County Executives or Legislative Officials
- ◆ Elected or Appointed Municipal Executives or Legislative Officials
- ◆ Elected or Appointed Township Executives or Legislative Officials




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### SB539 Lobbying Restrictions

These Officials may not:  
 "...engage in compensated lobbying of the governing body of a county, municipality, township, the General Assembly, a State executive branch office or agency, or an official thereof, on behalf of any lobbyist or lobbying entity that is registered to lobby the [governmental entity] in which the official is elected or appointed."  
 5 ILCS 420/2-101(b) - (e).

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### Ethics in the News

### Lobbying Restriction

"State Rep. Luis Arroyo was supposed to be with his fellow lawmakers in Springfield on Monday for the first day of the busy fall veto session.  
 Instead, the Chicago Democrat was ducking reporters as he left the Dirksen U.S. Courthouse in Chicago, where he was the latest elected official to be charged in what has become a sprawling federal public corruption investigation.  
 Arroyo, 65, an assistant majority leader who has been in office since 2006, was charged with one count of federal program bribery alleging he agreed to pay a state senator \$2,500 a month in kickbacks in exchange for the senator's support on legislation involving video gambling sweepstakes games that would benefit one of Arroyo's lobbying clients..."  
<https://www.chicagotribune.com/news/criminal-justice/ct-state-representative-corruption-charge-20191028-rcrvx2tc6vh4veengdni47zspe-story.html>

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# Ethical Practices in Government

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## Ethical Public Service

As previously stated, part of the mission of the EEC is to promote ethics in public service. One clear-cut way to ethically serve in government is to comply with applicable laws

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## Ethics in the News Open Meetings Act

"For the third time in less than three years, the Illinois Attorney General's Office has concluded that the Aurora Public Library Board has violated the Open Meetings Act.

Leah Bartelt, an assistant attorney general in the Public Access Bureau, said in a letter written Tuesday that the board violated the act in four separate meetings during 2018.

She said it appeared that during all four meetings, the board adjourned into closed session for legitimate reasons, but "for short portions of each of the four meetings at issue," the discussion veered off the subject that allowed the meeting to be closed.

At that point, things were discussed that should not have been in a closed session, she said."

<https://www.chicagotribune.com/suburbs/aurora-beacon-news/ct-abn-aurora-library-st-0407-story.html>

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## Ethics in the News

### Records Retention and FOIA

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Several senior employees within the police department and the city attorney's office hastily struck a deal with the police union to shred the records to avoid making public embarrassing revelations about Buscher's conduct and arrest during a 2008 Missouri fishing trip.

Rob Williams, who was police chief at the time, signed an agreement - a memorandum of understanding - to have the files destroyed after four years instead of five. Ex-city attorney Mark Cullen gave the legal OK for the deal. Documents show that several other high-level city employees were in on the secret, too; Houston apparently was kept out of the loop.

The night the files were to be shredded, the lieutenant in charge of the internal affairs division protested; Williams issued a direct order that he proceed with the shredding.

Once the shredding was complete, city lawyers told Christian the city did not have the records he was seeking.

Later, after the shady deal and the illegal file destruction became public, Williams abruptly retired from his post, and Cullen eventually resigned.

The city subsequently settled a federal lawsuit with Christian over the matter for \$100,000 - a tidy sum for a cash-strapped local government.

<https://www.sjr.com/article/20150212/OPINION/150219779>

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## Ethics in the News

### Official Misconduct

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"Winnebago County Coroner Bill Hintz faces several new felony counts of theft and official misconduct after being charged back in October 2020 for forgery, stealing government funds and official misconduct..."

The Illinois State Police (ISP) initially began investigating Hintz over the alleged fraudulent use of a Winnebago County gasoline card and credit card. Following the 2020 indictment, the ISP received additional information that Hintz had stolen around \$2,500 paid by the families of people who had been cremated at the county's expense."

<https://www.wifr.com/2021/09/02/winnebago-co-coroner-faces-new-charges-accused-stealing-14500-dead/>

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## Questions?



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