

PRESENTED AT

26th Annual Land Use Conference

April 21-22, 2022

Austin, TX

The Fiduciary “Bone” AKA Duty: Do I Have One?

Barbara Boulware-Wells

THE FIDUCIARY “BONE” AKA DUTY:

DO I HAVE ONE?

During various campaigns for all levels of office, one hears calls for government ethics and a push for transparency. The parlance of Government Ethics refers to the unique set of duties that public officials *owe* to the public that they serve.

- These duties arise *upon entering the public work force either as an elected representative, an appointed official, or a member of government staff – all of whom are referred to as public officials.*
- Public ethical obligations exist *in addition* to general ethical obligations and sometimes government ethics may *conflict* with personal ethical duties.

The relationship between public officials and the public has been described by scholars as fiduciary in nature. So, short answer is that if you are a public official, you now have a fiduciary “bone” aka DUTY.

What Is a Fiduciary?

How might concepts underlying fiduciary duty relate to the public’s expectations of public officials? Noted in the Western City publication, a monthly magazine for municipal entities in California (similar to TML), the term "fiduciary." derives from the Latin terms *fides* or *fiducia*, both of which mean trust and confidence.¹

Even definitionally we find that the term has weighty implications:

Dictionary.com defines the term fiduciary as relating to, “a person to whom property or power is entrusted for the benefit of another.” There at least four factors that identify a relationship as a fiduciary one:

1. The beneficiary has delegated authority to the fiduciary to act on its behalf;
2. The fiduciary has discretionary powers over the beneficiary’s assets or interests;
3. The fiduciary is in a position superior to that of the beneficiary due to specialized access, knowledge or ability; and

¹ WESTERN CITY / FEBRUARY 2008 / SEMPER PRO POPULUS: FIDUCIARY DUTIES AND PUBLIC SERVICE

4. The beneficiary trusts that the fiduciary will act in the beneficiary's best interest. (Ponet & Leib, 2011.)

In the Public Servant Arena:

Certainly when the public chooses an elected official, the public is putting its trust and confidence in him or her to act in the public's best interests. The same can be said when one becomes an employee of a public agency. The agency trusts everyone on its team to put the public's interests first. Indeed, always putting the public's interests first is the essence of public service ethics.

A fiduciary is also someone who acts for another. That is why trust and confidence are so important.

In a representative democracy, the public elects officials to act in their interests. Elected officials make important decisions on behalf of the public, including how to spend taxpayer and other public monies on infrastructure and services.

Public officials also exercise the power of the collective will when they adopt and enforce regulations. Regulations intrude on individuals' prerogatives. Essentially, in a given situation, what an individual wants to do must yield to the concept of the greater good of the community.

The term servant leader is brought to mind and with it the characteristics that make a good servant leader: James Sipe and Don Frick, in their book *The Seven Pillars of Servant Leadership*, state that servant-leaders are individuals of character, put people first, are skilled communicators, are compassionate collaborators, use foresight, are systems thinkers, and exercise moral authority.

As noted in an article, *The Fiduciary Obligations of Public Officials*, by Vincent R. Johnson, posted in St. Mary's Journal on Legal Malpractice and Ethics, 2019, Johnson offers:

.... notwithstanding the proliferation and usefulness of government ethics codes, common law fiduciary-duty principles continue to play an important role in shaping the law of government ethics. Regardless of whether specific rules of government ethics have been adopted, public officials have a broad fiduciary duty to carry out their responsibilities in a manner that is faithful to the public trust that has been reposed in them. The duties of public officials may extend beyond minimal compliance with codified ethics rules. Even if

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: The Fiduciary “Bone” AKA Duty: Do I Have One?

Also available as part of the eCourse

[2022 Land Use eConference](#)

First appeared as part of the conference materials for the
26th Annual Land Use Conference session

"Ethics in the Local Government World of Land Use and Development"