

ETHICS FOR PUBLIC EMPLOYEES AND OFFICERS

Prepared by Susan Eisenman
Assistant Attorney General
May 2017

ETHICS



- There are many sources for laws on ethics and conflicts:
 - The Public Officers and Employees Ethics Act (U.C.A. 67-16-1 et seq)
 - Additional General Requirements for Public Employees (U.C.A. 67-25-1 et seq)
 - County Officers and Employees Disclosure Act (U.C.A. 17-16a-1 et seq.)
 - The Governor's Executive Order regarding Executive Branch Employees
 - The Procurement Code (U.C.A. 63G-6a-101 et seq.)
 - The Criminal Code
- Other sources we won't discuss today
 - DOPL (for persons whose employment is regulated there)
 - Rules of Professional Conduct (for Lawyers)
 - SEC (for persons involved in securities activities)

ETHICS ACTS; TO WHOM DO THEY APPLY?



STATE ethics act

Public officer: All elected or appointed officers of the state or any of its political subdivisions who occupy policymaking posts

NEW in 2017: AGENCY—includes Public Education Associations— and requires that they comply with the Act.

Public employee: A person who is not a public officer who is employed on a full-time, part-time or contract basis by the state or any of its political subdivisions.

COUNTY ethics and disclosure act

Appointed officer: Any person appointed to any statutory office or position or ...any position of employment with a county, including persons serving on special, regular or full-time committees, agencies, or boards. The use of the word "officer" in this part is not intended to make appointed persons or employees "officers" of the county.

Elected officer"= means any person elected or appointed to any office in the county.

4 TYPES OF PROHIBITED CONDUCT

- 1. IMPROPER USE OF INFORMATION OR POSITION
- 2. ACCEPTING GIFTS AND LOANS
- 3. IMPROPERLY INFLUENCING GOVERNMENT TRANSACTIONS
- 4. The "CATCH-ALL:" CONFLICT OF INTEREST



PROHIBITED CONDUCT 1: IMPROPER USE OF INFO OR POSITION



- A Public Employee or Officer CANNOT:
 - Engage in any professional activity that might induce them to use information gained from the public position;
 - Disclose or improperly use controlled, private, or protected information to **further substantially the officer's or employee's personal economic interest** or to **secure special privileges or exemptions for himself or others**;
 - **Further substantially the officer's personal economic interest; or secure special privileges or exemptions for himself or others**;
 - Accept other employment that he might expect would **impair her independence of judgment** or interfere with the ethical performance of her public duties.
- **COUNTY EXCEPTION:** Notwithstanding the provisions of this section, a county or county official may encourage support from a public or private individual or institution, whether in financial contributions or by other means, **on behalf of an organization or activity that benefits the community.**
- **NOTE:** *This part of the statute talks about the public officer not taking a different or other job that interferes with the public job—often board members or others HAVE other jobs already...*

PROHIBITED CONDUCT 2 ACCEPTING GIFTS & LOANS



- A public officer or public employee can't receive (or secure for another person) a **gift of substantial value** or an **economic benefit tantamount to a gift**:
 - that would tend improperly to influence **a reasonable person** to depart from the faithful and impartial discharge of the person's public duties or that is given primarily for the purpose of rewarding the public officer or employee for an official action taken.
- **Economic Benefit tantamount to a gift** =
 - Loan at a lower interest rate than the prevalent commercial rate; or
 - Compensation for services that substantially exceeds FMV.
- **NOTE:** The "reasonable person" standard...

GIFTS AND LOANS CONTINUED



- Public Officer or Employee can not receive or solicit a gift of substantial value or a substantial economic benefit tantamount to a gift IF:
 - The public officer or employee recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a **disclosure** of the gift, compensation, or loan and other relevant information has been made.
 - "Governmental action" means any action on the part of the state, a political subdivision, or an agency, including: any decision, determination, finding, ruling, or order; and any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect to.
 - **Disclosure** usually means a sworn statement that is made public.

TAKING GIFTS, CONTINUED

- What Gifts are Okay (both State and County)?
 - An occasional non-pecuniary gift;
 - Having a value of \$50.00 or less;
 - An award publicly presented in recognition of public service;
 - Any bona fide loan made in the ordinary course of business; or
 - A campaign contribution.



NOTE: THERE
ARE MORE
RESTRICTIONS
UNDER OTHER
LAWS...Stay
Tuned



PROHIBITED CONDUCT 3: INFLUENCING GOVERNMENT TRANSACTIONS

- It is an offense to demand a donation as a condition of granting any application or request for a permit, approval, or other authorization.
- It is an offense to donate or offer to donate something to an Agency on the condition that the agency approve an application, request or authorization.
- If a person donates property, funds, or services to an agency, the agency shall, as part of the permit or other written authorization:
 - (i) identify that a donation has been made;
 - (ii) describe the donation;
 - (iii) certify, in writing, that the donation was voluntary; and
 - (iv) place that information in its files.

INFLUENCING TRANSACTIONS

- Public Officers/Employees **CANNOT receive compensation** for assisting any person or business entity in any transaction involving an agency unless the public officer or public employee files a **sworn, written statement**.
 - “Assist” means: to act, offer, or agree to act, in such as way as to help, represent, aid, advise, furnish information to or otherwise provide assistance to a person or business entity believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to assist such person or business entity

COUNTY STATUTE : 17-16A-5

- **Similar to State Statute, but adds disclosure requirement:**
- No elected or appointed officer may receive or agree to receive compensation for assisting any person or business entity in any transaction involving the county in which he is an officer ***unless he files with the county legislative body a sworn statement giving the information required by this section, and discloses in open meeting to the members of the body of which he is a member, immediately prior to the discussion....***

Both County and State Statutes have to be filed at least 10 days prior to the transaction.

THE SWORN WRITTEN STATEMENT

STATE:

- The **sworn written statement** is filed with the Agency AND the Attorney General's office
- The statement is public information and shall be available for examination by the public.
- The **sworn written statement** shall contain:
 - the name and address of the public officer or public employee involved;
 - the name of the public officer's or public employee's agency;
 - the name and address of the person or business entity being or to be assisted; and
 - a brief description of:
 - the transaction as to which service is rendered or is to be rendered; and
 - the nature of the service performed or to be performed.

COUNTY

- The statement is public information and is available for examination by the public.
- The statement and disclosure shall contain the following information:
 - the name and address of the officer;
 - the name and address of the person or business entity being or to be assisted, or in which the appointed or elected official has a substantial interest; and
 - a brief description of the transaction as to which service is rendered or is to be rendered and of the nature of the service performed or to be performed.

DISCLOSURE OF SUBSTANTIAL INTEREST

- **State:** You Must DISCLOSE if you have a management position or own a **substantial interest** in any business entity which is subject to the **regulation of the agency** where you are serving.
- "Management position" means: Officer, director, agent, employee, or the owner of a substantial interest in any business entity
- "Substantial Interest" means 10% interest or greater, and includes your interest and spouse, or minor children...
 - For County---must be over \$2000.
- "Regulation of the agency" is not defined...
- "Disclose"= a sworn written statement, similar to one used for helping with transactions.
- **County:** You must disclose if an appointed or elected officer has a **substantial interest** in any business entity which is subject to the regulation of the county
- Officer shall disclose the position held and the precise nature and value of the officer's interest upon first becoming appointed or elected, and again during January of each year thereafter
- The disclosure shall be made in a sworn statement filed with the county legislative body.
- The commission shall report the substance of all such disclosure statements to the members of the governing body or may provide to the members of the governing body, copies of the disclosure statement within 30 days after the statement is received.

SUBSTANTIAL INTEREST: PARTICIPATION & DISCLOSURE

- **STATE:**
- public officer/employee CANNOT participate in his official capacity or receive compensation for any transaction between the and any business entity as to which such public officer/employee is also an officer, director, or employee or owns a substantial interest, **unless disclosure has been made as provided.**
- **DISCLOSURE**= a sworn statement similar to the one for assisting with a transaction that is filed with the AG's office and the executive director.
- **COUNTY:**
- **17-6a-17:** Every appointed or elected officer who is an officer, director, agent, or employee, or owner of a substantial interest in any business entity which does or anticipates doing business with the county in which he is an appointed or elected officer, **shall publicly disclose to the members of the body on which he is a member immediately prior to any discussion by such body matters relating to such business entity, the nature of his interest in that business entity. The disclosure statement shall be entered in the minutes of the meeting.**
- **17-16a-8** Any personal interest of or investment by any elected or appointed official of a county which creates a potential or actual conflict between the official's personal interests and his public duties shall be disclosed in open meeting to the members of the body.

DISCUSSION: PARTICIPATION

- Public Employees and Officers Ethics Act allows a person to participate in a transaction where the person has a substantial interest as long as that interest is disclosed.
- BUT, does that mean you should?
 - Other portions of the Ethics Act may counsel against participation even if this portion specifically allows it– such as the CATCH-ALL provision.
 - Other portions of the Ethics act make it an offense to accept employment that would impair independent of judgment or interfere with ethical performance—
 - Other portions of Ethics Act make it an offense to “substantially benefit” from your position on UCA.
 - Would participating in the transaction create a “substantial benefit?”
- The “Court of Public Opinion” vs. the letter of the law

PROHIBITED CONDUCT 4: THE “CATCH-ALL”



- “No public officer or public employee shall have personal investments in any business entity which will create a “substantial conflict” between his private interests and his public duties.
 - “substantial conflict” is NOT defined in this statute.
- Opinions referencing public employees ethics act
 - NOT OK for county commissioner to vote on land sale, when commissioner is potential purchaser of the land...

WEARING MULTIPLE GOVERNMENT HATS

- In 2016, the Ethics Act was amended to address persons who have multiple government duties—including government employees or appointees who sit on multiple Boards:

The provisions of (The Ethics Act):

- apply to all public officers and public employees; and
- do not apply to a conflict of interest that exists between **two or more government positions held by the same individual**, unless the conflict of interest is also due to a personal interest of the individual that is not shared by the general public.

- **DISCUSSION: Wearing multiple Government Hats...**



PENALTIES

- The penalties for violating the Public Employees Ethics Act are Severe:
- IF THE AMOUNT IN CONTROVERSY IS OVER \$250.00—IT'S A FELONY
- EVEN IF THE AMOUNT IS UNDER \$100.00—IT'S A CLASS B MISDEMEANOR.
- VIOLATION OF THE ACT REQUIRES MANDATORY DISMISSAL.



GOVERNOR'S EXECUTIVE ORDER

- In addition to the statutory provisions reviewed above, the Governor, by executive order, has additional conditions that apply to “all executive branch department or agency employees”
- Only applies to “employees”—not specifically to Boards and Commissions...although they may adopt them.
- 3 prohibited types of conduct
 - Receipt of Gifts
 - Nepotism in Hiring and Contracting
 - Lobbying

NEPOTISM



- Employee may not take part in any hiring or employment decision relating to a family member.
 - Employee must advise supervisor of relationship and must be recused from any and all discussions or decisions related to hiring.
- Employee may not take part in any contracting decision related to Family member; or any entity where a family member is an officer, director, or partner; or in which a family member owns or controls 10% or more of the stock of such entity.
- Family Member: spouse, siblings, step-siblings, siblings-in-law, parents, step-parents, parents-in-law, children, step-children, children-in-law, and any person living in the same household as the employee.

NEPOTISM, CONTINUED

UTAH CODE SECTION 52-3-1

- There's also a nepotism STATUTE:
- Public officer can't employ or appoint a relative when the salary, wages, pay, or compensation of the appointee will be paid from public funds **and** the appointee will be directly supervised by a relative: **AND**
- Public officer can't directly supervise an appointee who is a relative when the salary, wages, pay, or compensation of the relative will be paid from public funds:
- **EXCEPTIONS:**
 - the appointee is eligible or qualified to be employed by a department or agency of the state or a political subdivision of the state as a result of his compliance with civil service laws or regulations, or merit system laws or regulations;
 - the appointee will be compensated from funds designated for vocational training;
 - the appointee will be employed for a period of 12 weeks or less;
 - the appointee is a volunteer as defined by the employing entity; or
 - the chief administrative officer determines that the appointee is the only or best person available, qualified, or eligible for the position.

GOVERNOR'S EXECUTIVE ORDER: GIFTS



- Executive Order prohibits "accepting a gift or other compensation, either directly or indirectly that might be intended to influence or reward the individual in the performance of official business."
 - **THIS PROHIBITION INCLUDES** gifts under 50.00, which are generally OK under The Public Employee Ethics Act.
- **EXCEPTIONS: Gift does NOT include:**
 - Food, refreshments, or meals of limited value;
 - Item presented by a foreign government that become State property
 - Plaques or mementos recognizing service
 - Trinkets or mementos of nominal value
 - Attendance at events sponsored by other governmental entities or related to governmental duties
 - Travel to and from widely attended events related to governmental duties where acceptance of such travel would result in financial savings to the State
 - And other things---campaign contributions, funeral flowers, etc... (**CONSULT ORDER FOR MORE DETAIL**)

GOVERNOR'S EXECUTIVE ORDER: GIFTS, CONTINUED

- If an employee receives a gift, either directly or indirectly, that cannot be accepted, the employee may:
 - Return the gift
 - Pay its market value
 - Donate the gift to the State of Utah.
 - If the gift is perishable or not practical to return, the gift may, with the approval of the Department Head, be shared with co-workers or given to charity.



GOVERNOR'S EXECUTIVE ORDER: LOBBYING

- An employee may not knowingly permit a former employee, previously subject to this order during the course of his/her employment, to lobby the current employee unless a **two year period** has passed since the former employee's employment was terminated.
- "Lobbying" means: to receive compensation or remuneration for attempting to induce executive action.



OTHER STATE STATUTES RELATED TO ETHICS/CONFLICTS

- **67-25-302 Restrictions on outside employment by executive branch employees.**
- An employee who is under the direction or control of an executive branch elected official may not engage in outside employment that constitutes a conflict of interest; or interferes with the ability of the employee to fulfill the employee's job responsibilities;
- Executive Branch employee also can't engage in provision of political services, political consultation, or lobbying;
- Executive Branch employee can't accept employment that would interfere with the hours expected of them in the Executive Branch job.

DISCUSSION



The letter of the law

VS



The Court of public opinion

CRIMINAL CODE



- **76-8-103. Bribery or offering a bribe.** A person is guilty of bribery or offering a bribe if that person promises, offers, or agrees to give or gives, directly or indirectly, any benefit to another with the purpose or intent to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion of a public servant, party official, or voter.
- **It is not a defense** to a prosecution under this statute that:
 - (a) the person sought to be influenced was not qualified to act in the desired way, whether because the person had not assumed office, lacked jurisdiction, or for any other reason;
 - (b) the person sought to be influenced did not act in the desired way; or
 - (c) the benefit is not conferred, solicited, or accepted until after:
 - (i) the action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, has occurred; or
 - (ii) the public servant ceases to be a public servant.

CRIMINAL CODE

- **76-8-201. Official misconduct -- Unauthorized acts or failure of duty:** A public servant is guilty of a class B misdemeanor if, with an intent to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.



CRIMINAL CODE

- **76-8-202. Official misconduct --** A public servant is guilty of a class A misdemeanor if, knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:
 - acquires or divests himself of a pecuniary interest in any property, transaction, or enterprise which may be affected by such action or information;
 - speculates or wagers on the basis of such action or information; or
 - knowingly aids another to do any of the foregoing.
- **Public Servant means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, and persons otherwise performing a governmental function.**

THE END

