No Free Lunch!

**Ethics in Local Government**
2017 UPC Government Civil Practice Conference
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**Today's Objective**
Review statutory prohibitions, limitations and requirements related to ethical behavior of public officers and employees (and those that interact with them).

These prohibitions, limitations and requirements are not all consolidated in one statute, and are found in several different titles and chapters throughout the code.

**Ethics - ethics**
moral principles that govern a person's behavior.

*synonyms: moral code, morals, morality, values, rights and wrongs, principles, ideals, standards of behavior, value system, dictates of conscience*

Society has created laws to force certain moral values on to certain businesses such as investment and banking to protect consumers and the public at large.

Laws have also been adopted to set standards for those who are part of the government, to protect the tax payer and the public at large.

**Legislative Intent**
“Promote the public interest and strengthen the faith and confidence of the people of Utah in the integrity of their government.”

“It does not intend to deny any public officer or employee the opportunities available to all other citizens of the state to acquire private economic or other interests so long as this does not interfere with his full and faithful discharge of his public duties.”

**Conflict of Interest**
While not defined in statute, a conflict of interest includes any situation in which an officer's or employee's faithful performance of job duties or independence of judgement may be compromised by that officer's or employee's private business or economic interests.

The statutes generally apply to:
Actual or potential conflicts of interest between public duties and private interests*.
*Generally includes interests of spouse and family members.*

The Political Subdivisions Ethics Committee, which hears complaints of ethics violations, seems to consider "potential conflicts" as conflicts that any person can dream up in their mind, rather than a clear conflict that has the potential to occur at some time in the future.

**Utah Government Ethics Laws**
• Utah Public Officers’ and Employees’ Ethics Act (67-16-1)
• County Officers and Employees Disclosure Act (17-16a-1)
• Municipal Officers and Employees' Ethics Act (10-3-13)
• Prohibiting Employment of Relatives (52-3-1)
• Utah Procurement Code (63G-6a-2401) Unlawful Conduct and Penalties section
• Offenses Against Administration of Government (76-8-1)

*This is not intended to be an exhaustive list of laws regulating ethics of public servants as there are other statutes that create limitations, requirements and restrictions on the actions of specific public officials and employees.

7  “Accepting” a “Gift”
Prohibited: under 67-16-5 and 17-16a-4 (and 76-8-105 if considered a bribe)
May not accept a gift that would tend to improperly influence a reasonable person to
depart from the faithful and impartial discharge of public duties or as a reward for official
action.
Exception: Any other acceptance of a gift must be disclosed if governmental action
affecting the donor has or will occur.

Penalty: Removal from office or employment and class B misdemeanor to 2nd degree
felony under title 67 and class A misdemeanor under title 17 (and 3rd to 2nd degree
felony under 76-8-105 if considered a bribe).

8  “Accepting” defined:
“Accepting” means to knowingly receive, accept, take, seek, or solicit, directly or
indirectly for himself or another.

9  “Gift” defined:
Of course cash, property, meals, trips and other items commonly considered “gifts”, but
also:

“Economic benefit tantamount to a gift” includes:
• A loan at an interest rate substantially lower than the commercial rate; and
• Compensation received for private services rendered at a rate substantially exceeding
the fair market value.

10  “Not a Gift” defined
“Gift” does not include:
• An occasional non-pecuniary gift having value less than $50;
• An award publicly presented in recognition of public service;
• A bona fide loan made in the ordinary course of business; or
• A political campaign contribution.

11  Disclosure of Controlled Information
If disclosure is to secure other employment:
Prohibited: under 67-16-4(1)(a)
May not accept other employment or engage in any business or professional activity that he might reasonably expect would require him to improperly disclose controlled information that he has gained by reason of his official position.

Penalties: Removal from office or employment and class B misdemeanor to 2nd degree felony.

Disclosure of Controlled Information

If for economic interest or special privilege:

Prohibited: under 67-16-4(1)(b) and 17-16a-4
May not disclose or improperly use controlled, private, or protected information acquired by reason of official position or in the course of official duties in order to:
• further substantially the officer’s or employee’s personal economic interest; or
• secure special privileges or exemption for himself or others.
Penalties: Removal from office or employment and class B misdemeanor to 2nd degree felony under title 67 and class A misdemeanor under title 17.

Other Employment Impairing Judgment

Prohibited: under 67-16-4(1)(d)
May not accept other employment that he might expect would impair his independence of judgment in the performance of his public duties.
Penalty: Removal from office or employment and class B misdemeanor to 2nd degree felony

Other Employment Interfering with Ethical Performance of Public Duties

Prohibited: under 67-16-4(1)(e)
May not accept other employment that he might expect would interfere with the ethical performance of his public duties.
Penalty: Removal from office or employment and class B misdemeanor to 2nd degree felony

Use of Position for Economic Interest or Special Privilege

Prohibited: under 67-16-4(1)(c) and 17-16a-4
May not use or attempt to use official position to:
• further substantially the officer’s or employee’s personal economic interest; or
• secure special privileges or exemption for himself or others.
Penalties: Removal from office or employment and class B misdemeanor to 2nd degree felony under title 67 and class A misdemeanor under title 17.
Requiring Donation, Payment or Service to Government Agency in Exchange for Approval

Prohibited: under 67-16-5.3
May not demand from any person as a condition of granting any application or request for a permit, approval, or other authorization, that the person donate personal property, money, or services to any agency.

Exception: donation that is:
• Required by statute, ordinance or rule;
• Mutually agreed to between the applicant and entity;
• Made voluntarily by applicant (must be disclosed in writing)
• A condition of a consent decree, settlement or other binding instrument related to an enforcement action.
Penalty: Removal from office or employment and class B misdemeanor to 2nd degree felony

Offering Donation, Payment or Service to Government Agency in Exchange for Approval

Prohibited: under 67-16-5.6
May not donate or offer to donate personal property, money, or services to any agency on the condition that the agency or any other agency approve any application or request for a permit, approval, or other authorization.

Exception: donation that is:
• Required by statute, ordinance or rule;
• Mutually agreed to between the applicant and entity;
• Made voluntarily by applicant (must be disclosed in writing)
• A condition of a consent decree, settlement or other binding instrument related to an enforcement action; or
• Made without condition
Penalty: Removal from office or employment and class B misdemeanor to 2nd degree felony

Personal Investments in Business Which Creates Substantial Conflict.

Prohibited: under 67-16-9
May not have personal investments in any business entity which will create a substantial conflict between his private interests and his public duties.
Penalty: Removal from office or employment and class B misdemeanor to 2nd degree felony

Failure to Disclose Personal Investments in Business Which Creates Conflict.
Prohibited: under 17-16a-8
Any personal interest or investments in any business entity which will create a potential or actual conflict between the official's personal interests and his public duties shall be disclosed by sworn statement in open meeting to the members of the body. Penalties: Removal from office or employment and class A misdemeanor.

**Compensation for Assisting in Transaction with Agency.**

Prohibited: under 67-16-6 and 17-16a-5
May not receive or agree to receive compensation for assisting any person or business entity in any transaction involving an agency unless the public officer or employee files a sworn, written statement with the commission.

Penalty: Removal from office or employment and class B misdemeanor to 2nd degree felony under title 67 and class A misdemeanor under title 17.

**Failure to Disclose Interest in Regulated Business.**

Prohibited: under 67-16-7 and 17-16a-6
May not be an officer, director, agent, employee, or the owner of substantial interest in any business entity which is subject to regulation of the agency by which the public officer or employee is employed unless the nature and value of such interest is disclosed upon becoming a public officer or employee, and whenever such interest changes significantly.
Exception: If interest is not "substantial" disclosure is only required each January.
Penalty: Removal from office or employment and class B misdemeanor to 2nd degree felony under title 67 and class A misdemeanor under title 17.

**Participating in an Official Transaction with a Business the Officer or Employee has an Interest in Without Disclosure.**

Prohibited: under 67-16-8
May not participate in official capacity or receive compensation in respect to any transaction between the agency and any business entity which the officer or employee is also an officer, director, or employee or owns a substantial interest, unless public disclosure to the governing body is made prior to discussion of that business.
Penalty: Removal from office or employment and class B misdemeanor to 2nd degree felony under title 67.

**Inducing Others to Commit Violation.**

Prohibited: under 67-16-10 and 17-16a-9
May not induce or seek to induce any public officer or public employee to violate any of the provisions of Chapter 67-16.

Penalty: Removal from office or employment and class B misdemeanor to 2nd degree felony under title 67 and class A misdemeanor under title 17.

**Ethics in Purchasing**

Utah Procurement Code

Purpose: to ensure fair and equitable treatment of all person who deal with the procurement system.

Unlawful Conduct: Gifts—Persons involved in procurements or contract administration or any of their family members may not knowingly receive or accept, offer or agree to receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who has or is seeking a contract with or grant from a public entity.

Exceptions – May accept a hospitality gift of less than $10 per gift and no more than $50 of gifts per year.

**Ethics in Purchasing**

Utah Procurement Code

Penalty: Class B misdemeanor if the total value is less than $100;
Class A misdemeanor if $100 or more but less than $250;
3rd degree felony if gift is $250 or more but less than $1,000;
2nd degree felony if gift is $1,000 or more.

**Ethics in Purchasing**

Your County/City Procurement Code

Restrictions: ?

Penalties: ?

**Nepotism**

Prohibiting Employment of Relatives (52-3-1)

Purpose: To restrict employment of relatives in local government to limit conflicts of interest.

"Relative" means: a father, mother, husband, wife, son, daughter, sister, brother, grandfather, grandmother, uncle, aunt, nephew, niece, grandson, granddaughter, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

**Employment or Appointment**

Prohibited: under 52-3-1

No officer may employ, appoint, vote for or recommend the appointment of a relative in any employment paid from public funds if employee will be supervised by a relative.

Exceptions: 1) appointee qualified through civil service or merit system laws; 2) appointee paid from vocational training funds; 3) employment is for period of 12 weeks or less; 4) appointee is a volunteer; 5) CAO determines appointee is only or best person available, qualified or eligible for position.
Penalties: Misdemeanor for each day employed.

29 ■ Acceptance of Employment or Appointment
Prohibited: under 52-3-1
No appointee may accept or retain employment if paid from public funds and under direct supervision of a relative.
Exceptions: 1) appointee qualified through civil service or merit system laws; 2) appointee paid from vocational training funds; 3) employment is for period of 12 weeks or less; 4) appointee is a volunteer; 5) CAO determines appointee is only or best person available, qualified or eligible for position.
Penalties: Misdemeanor for each day employed.

30 ■ Exceptions to Direct Supervision

1) relative was employed prior to supervisor assuming position,
2) appointee qualified through civil service or merit system laws;
3) appointee paid from vocational training funds;
4) employment is for period of 12 weeks or less;
5) appointee is a volunteer;
6) appointee is only person available, qualified or eligible for position;
7) CAO determines supervisor is only person available, or best qualified to supervise employee.
Requirements of Direct Supervision under Exception: Disclosure – Supervisor shall make complete written disclosure of relationship to employee/appointee to the CAO.
No Evaluation – Supervisor may not evaluate performance or recommend salary increase for relative.

31 ■ Requirements of Direct Supervision under Exception

Disclosure – Supervisor shall make complete written disclosure of relationship to employee/appointee to the CAO.
No Evaluation – Supervisor may not evaluate performance or recommend salary increase for relative.

32 ■ Exception in Rural Areas

Employment of relative restrictions do not apply if fewer than 3,000 people live within 40 miles of place of employment and
1) the job opening had reasonable public notice; and
2) the relative is the best qualified candidate.

33 ■ Offenses Against Administration of Government

Corrupt Practices (76-8-1)
• Bribery or Offering a Bribe
• Threats to Influence Official or Political Action
• Receiving or Soliciting a Bribe or Bribery by a Public Servant
• Receiving Bribe or Bribery for Endorsement of Person as Public Servant
• Peace Officer Prohibited from Acting as Compensated Collection Agent for Collection Agencies or Creditors
34 **Bribery of a Public Servant**

Bribery or Offering a Bribe (76-8-103)
Promising, offering, agreeing to give or giving, either directly or indirectly any benefit to another with the purpose or intent to influence an action, decision, opinion, recommendation, judgement, vote nomination, or exercise of discretion of a public servant, party official or voter.
It is not a defense to bribery that: the person bribed was not qualified to act in the desired way; they did not act in the desired way; or the benefit is not conferred, solicited or accepted until after the action is taken or the person ceases to be a public servant.
Penalty: 3rd degree felony if benefit is $1,000 or less; 2nd degree felony if benefit exceeds $1,000.

35 **Threatening a Public Servant**

Threats to Influence Official or Political Action (76-8-104)
Threatening any harm against a public servant, party official or voter with a purpose of influencing his action, decision, opinion, recommendation, nomination, vote, or other exercise of discretion.
"Harm" means: any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the public servant is interested.
Penalty: - Class A misdemeanor.

36 **Receiving or Soliciting a Bribe**

Receiving or Soliciting Bribe or Bribery by a Public Servant (76-8-105)
Asking for, soliciting, accepting, or receiving, either directly or indirectly, any benefit with the understanding or agreement that the purpose is to influence an action, decision, opinion, recommendation, judgement, vote nomination, or exercise of discretion of a public servant, party official or voter.
It is not a defense to soliciting a bribe that: the public servant was not qualified to act in the desired way; they did not act in the desired way; or the benefit is not conferred, solicited or accepted until after the action is taken or the person ceases to be a public servant.
Penalty: 3rd degree felony if benefit is $1,000 or less; 2nd degree felony if benefit exceeds $1,000.

37 **Bribery for Endorsement**

Receiving Bribe or Bribery for Endorsement of a Person as Public Servant (76-8-106)
Soliciting, accepting, giving, offering, promising, agreeing to accept for himself, another person, or a political party, money or any other pecuniary benefit as compensation for his endorsement, nomination, appointment, approval, or disapproval of any person for a position as a public servant or for the advancement of any public servant.
Penalty: - Class B Misdemeanor.

38 **Peace Officer Prohibited from Acting as Compensated Collection Agent for Collection Agencies or Creditors**

A peace officer may not have any interest in any collection agency or act as a compensated collection agent for any creditor or collection agency.
Penalty: - Class C Misdemeanor.
This is a Summary Only
If you have questions or concerns with any items summarized in this presentation, you should review the entire statute referenced and confer with your personal attorney or the County Attorney if appropriate.

Thank You!
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