

The Municipal Officers' and Employees' Ethics Act

All municipal officers and employees must abide by the Municipal Officers and Employees Ethics Act.¹ The stated purposes of this state law are to establish standards of conduct for municipal officers and employees and to require a disclosure of actual or potential conflicts of interest between public duties and personal interests. The Act does two things: 1) It sets up a disclosure system for conflicts of interest; and 2) it describes crimes specific to public service.

The ethics law applies to all elected and appointed officers and employees of a city and town. These include persons serving on special, regular, or full-time committees, agencies, or boards whether or not they are compensated for their services. It applies to both full and part-time employees.

The law makes it a crime to commit the following:

(1) Disclose or improperly use private, controlled, or protected information acquired by reason of an official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interests or to secure special privileges or exemptions for the officer or employee or others. Private, controlled or protected information is information that has been classified as such under the Government Records Access and Management Act.

(2) Use or attempt to use an official position to further substantially the officer's or employee's personal economic interest or secure special privileges for himself or others.

(3) Knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another, a gift of substantial value or a substantial economic benefit tantamount to a gift that would tend to improperly influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties or that a reasonable person in that position should know under the circumstances is given to him or her primarily for the purpose of rewarding the person for official action taken.

(4) An officer or employee may not receive compensation for assisting any person or entity in any transaction with the city or town without making a written and oral disclosure to the mayor and public.

The exceptions to the above are for an employee or officer to receive an occasional non-pecuniary gift having a value of less than 50 dollars or an award publicly presented or a loan made in the ordinary course of business, or a political campaign contribution actually used in a political campaign. An economic benefit tantamount to a gift includes loans at substantially less than commercial rates and compensation for services at a rate substantially higher than fair market value.

¹ Utah Code 10-3-1301 et seq.

In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates the above referenced sections of the Act (not the disclosure requirement discussed below) must be dismissed from employment or removed from office and is guilty of the following:

- (1) A felony of the second degree if the total value of the compensation, conflict of interest, or assistance exceeds \$1,000.
- (2) A felony of the third degree if:
 - (a) the total value of the compensation, conflict of interest, or assistance is more than \$250 but not more than \$1,000; or
 - (b) The elected or appointed officer or municipal employee has been convicted twice before of a violation of this chapter and the value of the conflict of interest, compensation, or assistance was \$250 or less.
- (3) A class A misdemeanor if the value of the compensation or assistance was more than \$100 but does not exceed \$250.
- (4) A class B misdemeanor if the value of the compensation or assistance was \$100 or less.

There is a disclosure requirement of the ethics law as well. Two types of disclosure may be required—written and oral. An officer or employee is required to make a disclosure in writing and file it with the mayor. This written statement must be sworn and include certain minimal information about the conflict of interest. A simple sample disclosure form is contained in the appendix. The second required disclosure is oral and must be made in an open meeting to the members of the body of which he is a member immediately before the discussion about the topic involved in the conflict of interest. An appointed officer who is not a member of a public body or a municipal employee must also disclose the information required to his or her immediate supervisor.

The following must be disclosed:

- (1) Agreements to receive compensations for assisting any person or business entity in any transaction involving the municipality.
- (2) Whether an officer or municipal employee is an officer, director, agent, or employee or the owner of a substantial interest in any business entity that is subject to the regulation of the municipality.
- (3) Interests in a business entity doing business with the municipality.
- (4) Any personal interest or investment by a municipal employee or by any elected or appointed official of a municipality which creates a conflict between the employee's or official's personal interests and his public duties.
- (5) The nature of the personal conflict of interest including, if applicable, the position held and the nature and value of a business interest held in a regulated business or one which is doing business with the municipality.

If the conflict involves an agreement for compensation to assist a person in their business with the municipality, the disclosure must contain the following:

- (1) The name and address of the officer or municipal employee.

- (2) The name and address of the person or business entity being or to be assisted or in which the appointed or elected official or municipal employee has a substantial interest.
- (3) 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.

The officer or employee should file the disclosure statement upon first getting elected or appointed and again when there is a change in the nature of the conflict. In the case of a contract with the city, ten days before the date of any agreement between the elected or appointed officer or municipal employee and the person or business entity being assisted or ten days before the receipt of compensation by the officer or employee, whichever is the earlier.

The oral disclosure must be made in the open meeting of the governing body on the record before any discussion of the relevant material takes place. The written disclosure is to be made in a sworn statement filed with the mayor. The mayor must report the substance of all such disclosure statements to the members of the governing body, or he or she may provide to the members of the governing body copies of the disclosure statement within 30 days after the statement is received by him. The oral disclosure statement is to be entered in the minutes of the meeting. The written statement is public information and must be available for examination by the public.

If any transaction is entered into in connection with a violation of the disclosure requirements the municipality performs the following:

- (1) Must dismiss or remove the appointed or elected officer or municipal employee who knowingly and intentionally violates the Act from employment or office.
- (2) May rescind or void any contract or subcontract entered into pursuant to that transaction without returning any part of the consideration received by the municipality.

Any complaint against a person, who is under the merit system, charging that person with a violation of the Act, must be filed and processed in accordance with the provisions of the merit system. If the person charged with the violation is not under any merit system, then the complaint is filed with the mayor or city manager. The mayor or city manager investigates the complaint and must give the person an opportunity to be heard. A written report of the findings and the recommendation of the mayor or city manager must be filed with the governing body. If the governing body finds that the person has violated the Act, it may dismiss, suspend, or take such other appropriate action with respect to the person.

In addition, complaints of criminal conduct will be investigated by county attorneys, and in some cases, the Utah Attorney General's office.

The Act does not require anyone who complies with the disclosure provisions to abstain from voting or participating in the discussion. The Act does not prevent a person who

appropriately discloses the conflicts from doing business with or in the municipality. The Act set out a minimum standard of ethics. Once an appropriate disclosure is made of the conflict of interest it is presumed that the officer or employees personal sense of propriety and values along with public scrutiny will guide the officer or employee to do the right thing.