

UTAH'S OPEN & PUBLIC MEETINGS ACT
COMPLIANCE AUDITING

What is OPMA?

- OPMA requires that the public's business be done in public. It provides requirements for conducting meetings of public officials, who have the authority to make policy and budget decisions in the public's interest. It requires that there be notice and an open deliberative process before a public body votes on matters under its jurisdiction. ALL votes are taken in public.

NOTICE and AGENDA

<ul style="list-style-type: none"> • NOTICE • At least 24 hrs. in advance of meeting • Posted in body's office • Posted on Utah Public Notice Website • Newspaper of general circulation 	<ul style="list-style-type: none"> • AGENDA • Posted with Notice • Must be "Reasonably Specific" (an average person would be on notice as to all topics of discussion and action planned for the meeting)
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OPEN MEETING RECORDS

- Written minutes and a complete, unedited recording required
- Written minutes must be thorough. To include: time, date, location, members present, discussions, motions made, votes taken by member, summary of any testimony or public comment, and anything else a member of the public body asks to have included in record during the meeting.
- Recording to be available to the public & posted to Public Notice Website w/in three days.
- Proposed minutes To be available & posted to Public Notice website w/in 30 days.
- Minutes should be approved at the next public meeting.

Emergency and Electronic Meetings

- Emergency Meetings
 - IF due to unforeseen circumstances an emergency meeting is necessary:
 - Attempts are made to contact all member of the public body, AND a majority of the members approve the meeting.
 - Regular notice is not required, but the best possible notice of the meeting and topics to be addressed must be made.
 - No action can be taken on any matter for which notice was not given.
- Electronic Meetings
 - A public body may hold electronic meetings IF it has adopted a rule/resolution, etc. for electronic meetings.
 - Must comply with notice and agenda requirements
 - Must provide means for public to participate electronically or at an anchor location.
 - *See Charter sch electronic meeti





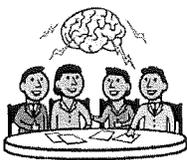
Closed Meetings

- A public body can go from an open meeting into a closed meeting under certain circumstances.
- 52-4-205 lists all of the reasons for closing an open meeting.
- A motion to close the meeting must be made, naming the specific statutory reason for closure, then a roll call vote must be taken.
- If the closed meeting is held to discuss 52-4-205(1)(a), (1)(f), or (2), the presiding member of the public body is to execute a sworn statement that the sole purpose of the closed meeting was to discuss these issues. No recording is required.
- If the meeting is closed for any other statutory reason, a recording shall be made, and written minutes can also be made. These are protected records under GRAMA.
- NO VOTES ARE TAKEN IN CLOSED MEETINGS

Challenging a Closed Meeting

- When a complaint is filed with a court alleging that a meeting was closed illegally, the Court must:
- Review the recording or minutes of the closed meeting *in camera*.
- Decide the legality of the closed meeting.
- If the closed meeting did not violate the law, the complaint will be dismissed and no information will be released.
- If the closed meeting did violate the law, the court can reveal or release those portions of the closed meeting record that were in violation of the law.

CHARTER SCHOOLS



- 52-4-209 Provides for Charter School Boards to hold electronic meetings by using a website that members may access. Notice is required, but the method of participation by the board members and public is unique to Charter Schools.



TRAINING

The presiding officer of a public body shall ensure that the body receives OPMA training on an annual basis.

Remedies & Enforcement

Avoiding final action

- Any final action taken in violation of Section 52-4-201*, 52-4-202*, 52-4-207, or 52-4-209 is voidable by a court of competent jurisdiction.
- File a Complaint with court within 90 days. If the alleged violation involves bonds, notes, or other evidences of indebtedness the Complaint must be filed within 30 days.
- **Does not apply to some notice exemptions for municipalities, special district with less than \$1 million annual budgets.*

Who can take action?

- Attorney General and County Attorneys
- Any party denied a right by the action taken
- Court may order compliance and enjoin violation
- Aggrieved party may recover attorney's fees



Criminal Penalty for Violating Closed Meetings Law

A member of a public body who knowingly or intentionally violates the closed meeting provision of OPMA, OR knowingly or intentionally abets or advises a member of the public body to violate the closed meeting provision is guilty of a Class B Misdemeanor.

OVERVIEW: AN INTRODUCTION TO GRAMA

A. WHAT IS "GRAMA"?

The Government Records Access and Management Act (GRAMA) is a comprehensive law dealing with management of government records and access to those records. It is an attempt to balance the public's constitutional right of access to information concerning the conduct of the public's business, the individual's constitutional right of privacy in relation to personal data gathered by government entities, and the public policy interest in allowing government to restrict access to certain records for the public good. See § 102.

B. GRAMA APPLIES TO GOVERNMENT RECORDS. WHAT IS A RECORD?

The definition of "record" is broad and includes anything that provides information in documentary form. Letters, memos and reports on paper are obviously documents, but so are photographs, tape recordings, maps and information stored electronically, as on a computer disc. See § 103(19)(a).

There are some objects, such as physical evidence, that are not records even though they may contain information. Water samples, for example, may provide information about the quality of the water from which the samples were taken, but the samples themselves are not records. The resulting laboratory reports are records. GRAMA also exempts some items from its definition of a record. For example, temporary drafts, personal notes and personally owned documents are not records

C. HOW DOES GRAMA WORK?

GRAMA establishes record classifications. To protect individual privacy, GRAMA allows certain records to be classified as "private" or "controlled." Records to which access may be restricted for the public good are classified as "protected." Access to a record depends on its classification.

- **Public records:** Under GRAMA, all records are public unless they fit within one of the categories exempt from public disclosure – private, controlled, protected, or limited. See §§ 201(2), 201(3)(b) and (c). In addition, GRAMA specifically identifies several kinds of records that are public. See § 301. Any requester may inspect a public record free of charge during normal working hours, subject to §§ 203 and 204. See § 201(1).

- **Private records:** Private records are records about individuals that contain personal information, such as medical or personal financial information. See § 302. Private records are ordinarily available only to the subject of the record or to a person with written permission from the subject.

- **Controlled records:** If a governmental entity reasonably believes that release of a medical, psychiatric, or psychological records to the individual who is the subject of that information would be detrimental to the subject's mental health or to the safety of any individual, or would constitute a violation of normal professional practice and medical ethics, the record may be classified "controlled." See § 303. Controlled records ordinarily may be released only to a physician, psychologist, certified

social worker, insurance provider or agent, or a government public health agency with a release from the subject, and that person or entity may not disclose the information not the subject. See § 202(2).

- Protected records: Protected records are records that may be kept confidential to protect various interests, including: - business interest in the case of information that would give competitors an advantage if disclosed, and - the public interest in the case of information where confidentiality is necessary to prevent persons from gaining an unfair advantage by means of information held by their government.

Protected records are originally available only to the person that submitted the records or to an individual who has written authorization from all individuals or entities whose interests are sought to be protected. A 2001 amendment also allows disclosure of protected records to the owner of a mobile home park, subject to the conditions of Utah Code § 41-1a-116(5).

- Limited records: Access to some government records is limited by the specific law that authorizes or requires the keeping of the record. Examples include the Family Educational Rights & Privacy Act (FERPA), the federal Health Insurance Portability & Accountability Act of 1996 (HIPAA) and federal Medicaid laws. If there is an applicable statute, federal regulation, or court rule, GRAMA only applies to the extent that it does not conflict with that statute, regulation or rule. See §§ 201(3)(b) and 201(6).

It is important to note that a record may not be classified as private, controlled, protected or limited unless specifically authorized by GRAMA or another law, and public release of a record may not be prevented unless confidentiality is specifically allowed by GRAMA or another law. See §§ 201(4) and 201(6). It should also be recognized that in some circumstances, any record may be released to the public. See § 202(9)

**ETHICS AND CONFLICTS
LAWS—STAFF UPDATE
2015**

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ETHICS 

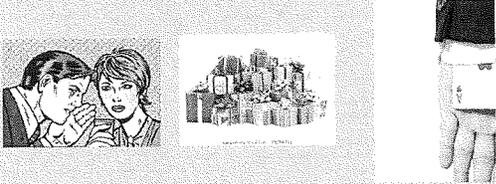
- There are many sources for laws on ethics and conflicts:
 - The Public Officers and Employees Ethics Act (U.C.A. 67-16-1 et seq)
 - Additional General Requirements for Public Employees (67-25-1 et seq)
 - The Governor's Executive Order regarding Executive Branch Employees
 - The Procurement Code
 - 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)

PUBLIC EMPLOYEES ETHICS ACT 

- Applies to: "public officers" and public employees"
- **Public officer:** All elected or appointed officers of the state or any of its political subdivisions who occupy policymaking posts.
- **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.

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**

- It is an offense for a public officer, public employee, or legislator to:
 - accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to improperly disclose information that he has gained by reason of his official position; OR
 - disclose or improperly use controlled, private, or protected information acquired in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others.
- It is an offense for a public officer or public employee to use or attempt to use his official position to:
 - further substantially the officer's or employee's personal economic interest; or
 - secure special privileges or exemptions for himself or others.
- It is an offense for a public officer or employee to:
 - accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or
 - accept other employment that he might expect would interfere with the ethical performance of his public duties.

**PROHIBITED CONDUCT 2
ACCEPTING GIFTS & LOANS**

- It is an offense for a public officer or public employee to 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 improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;
 - that the public officer or public employee knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the public officer or public employee for 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.

GIFTS AND LOANS CONTINUED 

- It is an offense for a public officer or public employee to 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 IF:
 - The public officer or public 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?
 - 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.

DISCUSSION: WHAT IS A GIFT OF SUBSTANTIAL VALUE?????



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



**PROHIBITED CONDUCT 3:
INFLUENCING GOVERNMENT TRANSACTIONS**

- It is an offense for a public officer or public employee, to 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.
- It is an offense for a person to donate or offer to donate...on the condition that the agency approve any application or request or other authorization..

INFLUENCING TRANSACTIONS, CONT.

- ▣ THERE ARE EXCEPTIONS, IF THE TRANSACTION IS:
 - 1. expressly required by statute, ordinance, or agency rule;
 - 2. mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;
 - 3. made voluntarily by the applicant; or
 - 4. a condition of a consent decree OR settlement agreement.
- ▣ If a person donates property, funds, or services to an agency, the agency shall, as part of the permit or other written authorization:
 - identify that a donation has been made;
 - describe the donation;
 - certify, in writing, that the donation was voluntary; and
 - place that information in its files.

INFLUENCING TRANSACTIONS

- ▣ It is an offense for a public officer or public employee to receive or agree to 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 a 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

THE SWORN WRITTEN STATEMENT

- ▣ 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.
- ▣ The statement required to be filed (WITH THE AGENCY AND WITH THE ATTORNEY GENERAL'S OFFICE) and shall be filed within 10 days after the date of any agreement between the public officer or public employee and the person or business entity being assisted or the receipt of compensation, whichever is earlier.
- ▣ The statement is public information and shall be available for examination by the public.

DISCLOSURE OF SUBSTANTIAL INTEREST

- Every public officer or public employee who is an officer, director, agent, employee, or the owner of a substantial interest in any business entity which is subject to the regulation of the agency by which the officer or employee is employed, shall disclose any such position held and the precise nature and value of the public officer's or public employee's interest upon first becoming a public officer or public employee, and again whenever the public officer's or public employee's position in the business entity changes significantly or if the value of his interest in the entity is significantly increased.
- "Substantial Interest"=10% interest or greater, and includes your interest and spouse, or minor children...
- "Regulation of the agency" is not defined...
- "Disclose"= a sworn written statement, similar to one used for helping with transactions.

SUBSTANTIAL INTEREST, CONT.

- No public officer or public employee shall participate in his official capacity or receive compensation in respect to any transaction between the state or any of its agencies and any business entity as to which such public officer or public 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.

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
 - Relevant AG opinions
 - 1991 opinion: dealing with whether the head of tourism can also sit on the Board of the Utah Ski Association.
- A few case Highlights:
 - NOT OK for county commissioner to vote on land sale, when commissioner is potential purchaser of the land...

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.



DISCUSSION: ETHICS ACT



Ethics Act allows disclosure and participation. When is this a good idea? When is this a bad idea?

Ethics Act doesn't define "conflict of interest" under catch-all. Should Agency define? How?

Other Ethics Act questions and comments?

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

**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.



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.

**GOVERNOR'S EXECUTIVE ORDER:
LOBBYING**

- An employee covered by this order 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;
 - interferes with the ability of the employee to fulfill the employee's job responsibilities;
 - constitutes the provision of political services, political consultation, or lobbying;
 - involves the provision of consulting services, legal services, or other services to a person that the employee could, within the course and scope of the employee's primary employment, provide to the person; or
 - interferes with the hours that the employee is expected to perform work under the direction or control of an executive branch elected official, unless the employee takes authorized personal leave during the time that the person engages in the outside employment.
- (2) An executive branch official shall be subject to the same restrictions on outside employment as a career service employee.
- (3) This section does not prohibit an employee from advocating the position of the state office that employs the employee regarding legislative action or other government action.

MEETING ANYONE???

- A state agency shall:
 - provide information, accessible from a conspicuous link on the home page of the state agency's website, on a method that a person may use to schedule an in-person meeting with a representative of the state agency; and
 - contact a person who makes a request for an in-person meeting; and
 - when appropriate, schedule and hold an in-person meeting with the person that requests an in-person meeting.
- A state agency is not required to comply...to the extent that the contact or meeting:
 - would constitute a conflict of interest;
 - would conflict or interfere with a procurement governed by Title 630, Chapter 6a, Utah Procurement Code;
 - would violate an ethical requirement of the state agency or an employee of the state agency; or
 - would constitute a violation of law.



The letter of the law

The Court of public opinion

PROCUREMENT CODE ETHICS

- In 2014, The procurement code was substantially modified. Highlights include:
 1. Creating different types of procurement authority
 - GOED has "executive branch procurement authority"
 2. Categorizing types of persons related to the procurement
 - More on that later.
 3. Modifying how procurements are conducted and scored.
 4. Modifying how an entity can protest a procurement
 5. Creating very strict ethical requirements for persons involved with a procurement OR GRANT
 - Grants are generally exempt from procurement, but are included in the ethics provisions.
 - The ethics provisions now have criminal and civil consequences.

PROCUREMENT CODE BACKGROUND

- Procurement code applies whenever a governmental entity is seeking to purchase a "procurement item"
- "Procurement item" means a supply, a service, construction, or technology.
 - Services" means the furnishing of labor, time, or effort by a contractor... BUT does not include an employment agreement. (don't need to go through procurement to hire staff).
- EXCEPT FOR ETHICS PROVISIONS, CODE DOES NOT APPLY TO:
 - Grants awarded by the state or contracts between the state and any of the following:
 - an educational procurement unit;
 - a local district;
 - public corporation (and other entities N/A to GOED)
- Procurement Code does not apply to any action taken by a majority of both houses of the Legislature.
- DISCUSSION: PASS THROUGH MONEY: DOES PROCUREMENT APPLY??????

ETHICS AND THE PROCUREMENT CODE

- Procurement Code applies to: **Procurement Professionals: An individual who is an employee of a procurement unit, and who, by title or primary responsibility:**
 - has procurement decision making authority; and
 - is assigned to be engaged in, or is engaged in:
 - the procurement process; or
 - the process of administering a contract or grant, including enforcing contract or grant compliance, approving contract or grant payments, or approving contract or grant change orders or amendments; and
- **Excludes:** Any individual who, by title or primary responsibility, does not have procurement decision making authority;
 - an individual holding an elective office;
 - a member of a governing body (in this case, most of our Board members. STEM AC may be exception).
- Excludes an executive director or director of an executive branch procurement unit who:
 - by title or primary responsibility, does not have procurement decision making authority; and
 - is not assigned to engage in, and is not engaged in, the procurement process.
- **INCLUDES: FAMILY MEMBERS OF THE PROCUREMENT PROFESSIONAL**

ETHICS AND THE PROCUREMENT CODE

- The Ethics Requirements of the Procurement Code Breaks down conduct into 4 Categories
- **HOSPITALITY GIFTS**
- **CONTRIBUTIONS**
- **GRATUITIES** and
- **KICKBACKS**
- Hospitality Gifts and Contributions are generally 'good'
- Gratuities and Kickbacks are generally 'bad'






PROCUREMENT ETHICS: THE GOOD

- **HOSPITALITY GIFTS** A token gift of minimal value, including:
 - a pen, pencil, stationery, toy, pin, trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes; and
- **CONTRIBUTIONS**
 - a voluntary gift or donation of money, service, or anything else of value, to a public entity for the public entity's use and not for the primary use of an individual employed by the public entity; and includes:
 - a philanthropic donation;
 - admission to a seminar, vendor fair, charitable event, fundraising event, or similar event that relates to the function of the public entity;
 - the purchase of a booth or other display space at an event sponsored by the public entity or a group of which the public entity is a member; and
 - the sponsorship of an event that is organized by the public entity.
- **GENERALLY: THESE ITEMS ARE OK TO RECEIVE.**

PROCUREMENT ETHICS: THE BAD

- **GRATUITY:** means anything of value given:
 - without anything provided in exchange; or
 - in excess of the market value of that which is provided in exchange.
- **KICKBACK** means a negotiated bribe provided in connection with a procurement or the administration of a contract or grant.
- Generally speaking, offering or receiving Gratuities and Kickbacks is BAD.

DEFINITION OF GRATUITY IS BROAD

- **GRATUITY** includes:
 - a gift or favor;
 - interest;
 - a loan at an interest rate below the market rate of with terms that are more advantageous to the borrower than terms offered generally on the market;
 - anything of value provided with an award, other than a certificate, plaque, or trophy;
 - employment;
 - admission to an event;
 - a meal, lodging, or travel;
 - reimbursement for which a charge is normally made; and
 - a cable, telegram, or letter.
- **BUT GRATUITY** does not include:
 - an item, including a meal in association with a training seminar, that is:
 - included in a contract or grant; or
 - provided in the proper performance of a requirement of a contract or grant;
 - an item requested to evaluate properly the award of a contract or grant;
 - a rebate, coupon, discount, rebate, travel award, dividend, or other offering included in the price of a procurement item;
 - a meal provided by an organization or association, including a professional or educational association, an association of vendors, or an association composed of public agencies or public entities, that does not, as an organization or association, request or solicit awards;
 - a product sample submitted to a public entity to assist the public entity to evaluate a subcontract;
 - a political campaign contribution;
 - an item generally available to the public; or
 - anything of value that any public agency provides to another public agency.

NOTE: THERE IS NO DOLLAR VALUE SET BY THE DEFINITION OF GRATUITY HERE, AND THIS IS WAY MORE STRICT THAN GOVERNOR'S EXECUTIVE ORDER.

PROCUREMENT ETHICS: THE UGLY

- It is unlawful for a person who has or is seeking a contract with or a grant from a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:
 - the public entity;
 - a procurement professional or contract administration professional; or
 - an individual who the person knows is a family member of a procurement professional or contract admin. Professional.
- It is unlawful for a procurement professional or contract administration professional, or a family member of either, to 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 a grant from a public entity.

**PROCUREMENT ETHICS
THE CONSEQUENCES**

CONSEQUENCES FOR VIOLATING PROCUREMENT ETHICS CODE ARE SEVERE AND OCCUR ON MANY FRONTS:

- 1. CRIMINAL: IF KICKBACK OR GRATUITY EXCEEDS \$1000.00- IT'S A FELONY
- 2. CIVIL: Contract may be VOIDED, resulting in civil litigation or delay in performance
- 3. EMPLOYMENT: Consequences for violation also include:
 - dismissal from employment or other disciplinary action;
 - for an elected officer, removal from office;
 - requiring the public officer or employee to return the value of the unlawful gratuity or kickback; and
 - any other civil penalty provided by law.

**PROCUREMENT CODE:
DISCUSSION**

DISCUSSION:
Who is a "procurement professional" or a "contract administration professional" and how do we insulate those persons from liability.

OTHER QUESTIONS ABOUT WHAT IS AND ISN'T ALLOWED UNDER PROCUREMENT CODE

NOTE: There is an exception for things that are:

1. UNDER 10.00 AND
2. UNDER 50.00 in the aggregate from the same entity.

COMPARE: PROCUREMENT CODE TO PUBLIC OFFICERS ETHICS ACT AND GOVERNOR'S EXECUTIVE ORDER...

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.



Let's Be Honest

CRIMINAL CODE

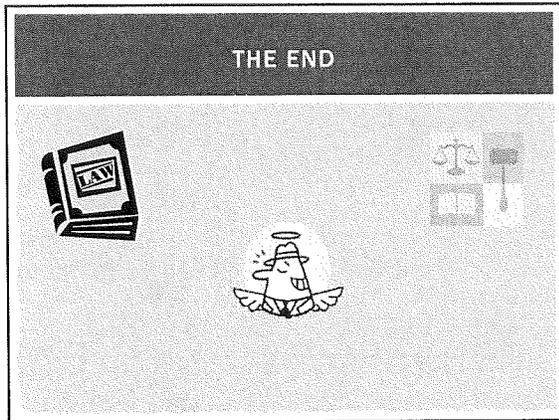
- **76-8-202. Official misconduct --** A public servant is guilty of a class A misdemeanor if, knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:
 - acquires 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.

**OTHER POTENTIAL PITFALLS
PROBABLY FOR ANOTHER DAY..**

- **Government Records Ethics:**
- **All records created or maintained by a state governmental entity are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or part, except as provided in this chapter and Title 63G, Chapter 2, Government Records Access and Management Act.**
 - It is unlawful for a person to intentionally mutilate, destroy, or to otherwise damage or dispose of the record copy of a record knowing that the mutilation, destruction, damage, or disposal is in contravention of:
 - a governmental entity's properly adopted retention schedule; or
 - If no retention schedule has been properly adopted by the governmental entity, the model retention schedule, as provided in Section 63G-2-604.
- **Violation is a class B misdemeanor.**
 - An employee of a governmental entity that violates this section may be subject to disciplinary action.



COMING THIS FALL
SARAH AND GREGG'S
SPECIAL DRAMA UNIT



1. Trust Basics – Division of Legal and Equitable Title
 - a. Trustor /Settlor
 - b. Trustee
 - c. Beneficiary

2. The Duties of a Private Trustee are imposed on this Board.

The core of our holding today is that the constitutional appointment of the State as trustee over the school trust lands does no more than impose on the State the ordinary authority and obligations of a trustee. We, as well as the legislature, have recognized this principle in the past. State ex rel. Sch. & Institutional Trust Land Admin. v. Mathis, 2009 UT 85, 223 P.3d 1119, 1124

3. The Duties/Powers of a Common law Trustee are:
 - a. General Powers:
 - (ii) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property Utah Code Ann. § 75-7-813
 - b. Duty to Administer
 - i. Upon acceptance of a trusteeship, the trustee shall administer the trust expeditiously and in good faith, in accordance with its terms and purposes and the interests of the beneficiaries Utah Code Ann. § 75-7-801
 - c. Duty of Loyalty
 - i. A trustee shall administer the trust solely in the interests of the beneficiaries. Utah Code Ann. § 75-7-802
 - d. Impartiality
 - i. If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests. Utah Code Ann. § 75-7-803
 - e. Control and Protection of Trust Property
 - i. Must control and not waste trust res (Property)
 - f. Record Keeping
 - i. Keep adequate records
 - g. Duty to Inform and Report
 - i. a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, and unless otherwise provided by the terms of the trust a trustee shall promptly respond to a qualified beneficiary's request for information related to the administration of the trust. Utah Code Ann. § 75-7-811
 - h. Prudent Administration
 - i. A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Utah Code Ann. § 75-7-804

Note* HB 168 has other requirements imposed as well.

FINAL ADOPTED November 14, 2014

School and Institutional Trust Fund Board

ETHICS AND CONFLICTS POLICY

1. Each board member shall review the “Ethics Act and Conflicts of Interest” section of the *Governor’s Handbook for Members of the State of Utah Boards and Commissions*.
2. Each board member shall review Utah Public Officers' and Employees' Ethics Act (U.C.A. 67-16-1).
3. Each board member shall review 53D-1-103 (6), which outlines additional ethical constraints placed on the on School and Institutional Trust Fund Board members.
4. For the purposes of this policy, a “conflict of interest” is defined as any financial interest that a person may have, directly or indirectly, through business, investment, or family, by way of:
 - a. An ownership or investment interest in any entity with which the Trust Fund has a transaction or arrangement;
 - b. A compensation arrangement with the Trust Fund or with any entity or individual with which the Trust Fund has a transaction or arrangement; or
 - c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Trust Fund is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

5. Each board member shall complete a statement certifying that he or she is in compliance with the conflict of interest and ethics requirements of this policy and the laws outlined in the aforementioned Handbook prior to carrying out their duties as a member of the School and Institutional Trust Fund Board.
6. Each board member shall annually sign a conflict of interest and disclosure form listing positions or interests that may engender a conflict of interest with his or her ability to carry out duties as a member of School and Institutional Trust Fund Board now or in the future.
7. Regardless of prior disclosures, each board member shall inform the Board Chair when possessed of the knowledge or belief that he or she may have a conflict of interest with a

particular transaction, create the appearance of impropriety by voting on or discussing a particular transaction, or cause to arise any other circumstance that would call into question his or her ability to comply with the requirements set forth in this policy. After disclosure of the circumstances and all material facts, and after any necessary discussion with the interested board member, the interested board member shall leave the board meeting while the determination of a conflict of interest is discussed and voted upon by the remaining board members. The remaining board members shall decide if a conflict of interest exists, and the appropriate course of action.

School and Institutional Trust Fund Board

ETHICS AND CONFLICTS CERTIFICATION

I, _____ (please print name), hereby certify the following:

1. That I have reviewed the "Ethics Act and Conflicts of Interest" section of the *Governor's Handbook for Members of the State of Utah Boards and Commissions* and other laws as required by the School and Institutional Trust Fund Board Ethics and Conflicts Policy.
2. That to the best of my knowledge and belief, I am in compliance with the conflict of interest and ethics requirements of the laws outlined in the Ethics and Conflicts Policy, including but not limited to those contained in the *Governor's Handbook*, and will carry out my duties as a member of the School and Institutional Trust Fund Board in full compliance thereof.
3. That to the best of my knowledge and belief, I have completed the attached conflict of interest and disclosure form listing positions or interests that may engender a conflict of interest in my ability to carry out my duties as a member of School and Institutional Trust Fund Board now or in the future.
4. That if at any time I have knowledge or belief that I have a conflict of interest with a particular transaction, create the appearance of impropriety by voting on or discussing any particular transaction, or cause to arise any other circumstance that would call into question my ability to comply with the requirements set forth the Ethics and Conflicts Policy, that I will inform the Board Chair. A determination will then be made as to whether I should recuse myself from a particular matter, whether I should be on the Board, or whether another action may be appropriate to assure compliance with the Ethics and Conflicts Policy using the procedures stated therein.

Signed

Date

Schools and Institutional Trust Fund Board

ETHICS ACT DISCLOSURE FORM – Related Statutes and Form

The following are some of the statutes in the Utah Public Officers' and Employees' Ethics Act and is not a substitute for reading the entire act, Sections 67-16-1 through 67-16-15.

67-16-3. Definitions (Excerpts).

As used in this chapter:

(1) "Agency" means any department, division, agency, commission, board, council, committee, authority, or any other institution of the state or any of its political subdivisions.

(2) "Agency head" means the chief executive or administrative officer of any agency.

(3) "Assist" means to act, or offer or agree to act, in such a 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.

(4) "Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.

(5) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone other than the governmental employer for or in consideration of personal services, materials, property, or any other thing whatsoever.

(7) "Governmental action" means any action on the part of the state, a political subdivision, or an agency, including:

(a) any decision, determination, finding, ruling, or order; and

(b) any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect to.

(13) "Public officer" means all elected or appointed officers of the state or any of its political subdivisions who occupy policymaking posts. "Public officer" does not include legislators or legislative employees.

(15) "Substantial interest" means the ownership, either legally or equitably, by an individual, the individual's spouse, or the individual's minor children, of at least 10% of the outstanding capital stock of a corporation or a 10% interest in any other business entity.

67-16-6. Receiving compensation for assistance in transaction involving an agency -- Filing sworn statement.

(1) Except as provided in Subsection (5), it is an offense for a public officer or public employee to receive or agree to 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 containing the information required by Subsection (2) with:

(a) the head of the officer or employee's own agency;

(b) the agency head of the agency with which the transaction is being conducted; and

(c) the state attorney general.

(2) The statement shall contain:

(a) the name and address of the public officer or public employee involved;

(b) the name of the public officer's or public employee's agency;

(c) the name and address of the person or business entity being or to be assisted; and

(d) a brief description of:

(i) the transaction as to which service is rendered or is to be rendered; and

(ii) the nature of the service performed or to be performed.

(3) The statement required to be filed under Subsection (1) shall be filed within 10 days after the date of any agreement between the public officer or public employee and the person or business entity being assisted or the receipt of compensation, whichever is earlier.

(4) The statement is public information and shall be available for examination by the public.

(5) This section does not apply to a public officer or public employee who engages in conduct that constitutes a violation of this section to the extent that the public officer or public employee is chargeable, for the same conduct, under Section 63G-6a-2304.5 or Section 76-8-105.

67-16-7. Disclosure of substantial interest in regulated business.

(1) Every public officer or public employee who is an officer, director, agent, employee, or the owner of a substantial interest in any business entity which is subject to the regulation of the agency by which the officer or employee is employed, shall disclose any such position held and the precise nature and value of the public officer's or public employee's interest upon first becoming a public officer or public employee, and again whenever the public officer's or public employee's position in the business entity changes significantly or if the value of his interest in the entity is significantly increased.

(2) The disclosure required under Subsection (1) shall be made in a sworn statement filed with:

(a) the state attorney general in the case of public officers and public employees of the state;

(b) the chief governing body of the political subdivision in the case of public officers and public employees of a political subdivision;

(c) the head of the agency with which the public officer or public employee is affiliated; and

(d) in the case of a public employee, with the immediate supervisor of the public employee.

(3) This section does not apply to instances where the total value of the interest does not exceed \$2,000. Life insurance policies and annuities shall not be considered in determining the value of any such interest.

(4) Disclosures made under this section are public information and shall be available for examination by the public.

67-16-8. Participation in transaction involving business as to which public officer or employee has interest -- Exceptions.

(1) No public officer or public employee shall participate in his official capacity or receive compensation in respect to any transaction between the state or any of its agencies and any business entity as to which such public officer or public employee is also an officer, director, or employee or owns a substantial interest, unless disclosure has been made as provided under Section 67-16-7.

(2) A concession contract between an agency, political subdivision, or the state and a certified professional golf association member who is a public employee or officer does not violate the provisions of Subsection (1) or Title 10, Chapter 3, Part 13.

67-16-9. Conflict of interests prohibited.

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.

School and Institutional Trust Fund Specific Ethics Requirements

53D-1-103. Application of other law

(6)(a) A board member, the director, and an office employee or agent are subject to:

(i) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and

(ii) other requirements that the board establishes.

(b) In addition to any restrictions or requirements imposed under Subsection (6)(a), a board member, the director, and an office employee or agent may not directly or indirectly acquire an interest in the trust fund or receive any direct benefit from any transaction dealing with trust fund money.

Utah Code Ann. § 53D-1-103

(1) The office, board, and nominating committee are subject to Title 52, Chapter 4, Open and Public Meetings Act.

(2) Subject to Subsection 63E-1-304(2), the office may participate in coverage under the Risk Management Fund, created in Section 63A-4-201.

(3) The office and board are subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(4)(a) In making rules under this chapter, the director is subject to and shall comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except as provided in Subsection (4)(b).

(b) Subsections 63G-3-301(6) and (7) and Section 63G-3-601 do not apply to the director's making of rules under this chapter.

(5) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to a board member to the same extent as it applies to an employee, as defined in Section 63G-7-102.

(6)(a) A board member, the director, and an office employee or agent are subject to:

(i) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and

(ii) other requirements that the board establishes.

(b) In addition to any restrictions or requirements imposed under Subsection (6)(a), a board member, the director, and an office employee or agent may not directly or indirectly acquire an interest in the trust fund or receive any direct benefit from any transaction dealing with trust fund money.

(7)(a) Except as provided in Subsection (7)(b), the office shall comply with Title 67, Chapter 19, Utah State Personnel Management Act.

(b)(i) Upon a recommendation from the director after the director's consultation with the executive director of the Department of Human Resource Management, the board may provide that specified positions in the office are exempt from Section 67-19-12 and the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act, as provided in Subsection 67-19-15(1), if the board determines that exemption is required for the office to fulfill efficiently its responsibilities under this chapter.

(ii) The director position is exempt from Section 67-19-12 and the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act, as provided in Subsection 67-19-15(1).

(iii)(A) After consultation with the executive director of the Department of Human Resource Management, the director shall set salaries for positions that are exempted under Subsection (7)(b)(i), within ranges that the board approves.

(B) In approving salary ranges for positions that are exempted under Subsection (7)(b)(i), the board shall consider salaries for similar positions in private enterprise and other public employment.

(8) The office is subject to legislative appropriation, to executive branch budgetary review and recommendation, and to legislative and executive branch review.

DISCLOSURE STATEMENT

Pursuant to the Utah Public Officers' and Employees' Ethics Act
Utah Code Ann. §§ 67-16-1 through 67-16-15

I _____, being first sworn, do hereby disclose as follows:

1. I reside at: _____.
2. I was appointed or am employed as a member of The School and Institutional Trust Fund Board on _____
on _____, 20__.
3. I am an officer, director, agent, employee, or owner of a substantial interest in the following business entities which are subject to regulation by the agency identified in Paragraph 2, or which it could be reasonably foreseen may conduct business with the agency identified in Paragraph 2:

Name of entity: _____

Position Held: _____

Nature and value of interest held: _____

(Note: "Substantial interest" means the ownership, either legally or equitably, by an individual, the individual's spouse, or the individual's minor children, of at least 10% of the outstanding capital stock of a corporation or a 10% interest in any other business entity. Only need to report if exceeds \$2,000.00 in value. Please refer to Utah Code Ann §67-16-7 (3) for other exemptions and/or exclusions)

4. I have solicited, received, or have agreed to receive for myself or another, compensation, loans or gifts, directly or indirectly, from the following persons or business entities who in the past, now, or in the future may be subject to Utah Code Ann § 67-16-5:

Name and address of person or business entity: _____

A brief description of the gift, loan, or compensation and the action or proposed action that may be affected or give an appearance of being affected: _____

(Note refer to Utah Code Ann §97-16-5 for exemptions and/or exclusions)

5. I have participated in, or received, or have agreed to receive, or anticipate I will receive, compensation in respect to a transaction between state agencies and a business entity which I am an officer, director, employee, own a substantial interest, or for assisting personal or business entities in transactions involving a state agency and disclose as follows:

Name and address of the Agency: _____

Name and address of the person or business entity being or to be assisted:

A brief description of the transaction as to which service is rendered or is to be rendered; the nature of the service performed or to be performed: _____

(Note: Refer to Utah Code Ann §67-16-6)

DATED this _____ day of _____, 20__.

Signature

SUBSCRIBED and SWORN to before me this ____ day of _____, 20__.

Notary Public

Residing at:

My Commission Expires: