

Conflict of Interest:

REVIEW OF APPLICABLE STATUTORY AND REGULATORY AUTHORITY:

“Utah Public Officer’s and Employees’ Ethics Act,” Utah Code Annotated §67-16-1 et seq .

67-16-2. Purpose of chapter.

The purpose of this chapter is to set forth standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between their public duties and their private interests. In this manner the Legislature intends to 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.

§67-16-3 Definitions.

11) "Political subdivision" means a district, school district, or any other political subdivision of the state that is not an agency, but does not include a municipality or a county.

(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.

§67-16-4. Improperly disclosing or using private, controlled, or protected information -- Using position to secure privileges or exemptions -- Accepting employment that would impair independence of judgment or ethical performance -- Exception.

(1) Except as provided in Subsection (3), it is an offense for a public officer, public employee, or legislator to:

(a) accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to improperly disclose controlled information that he has gained by reason of his official position;

(b) disclose or improperly use controlled, private, or protected information acquired by reason of his official position or 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;

(c) use or attempt to use his official position to:

(i) further substantially the officer's or employee's personal economic interest; or

- (ii) secure special privileges or exemptions for himself or others;

§67-16-9 Conflict of interest 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.

§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.

§67-16-11. Applicability of provisions.

The provisions of this chapter apply to all public officers and public employees.

DISCUSSION:

The Utah conflict of interest statute is very broad and when seen in conjunction with the stated purpose of the chapter – to “strengthen the faith and confidence of the people of Utah in the integrity of their government” – its breadth is magnified. In addition, while there is an attempt to give a technical definition of the extent of the interest which might be effected by the statute by reference to what would be termed a “significant interest,” the statement of purpose of the statute also indicates that it is meant to address “potential” conflicts bringing back in those matters which might not actually be technical conflicts but which may be reasonably seen as conflicts or have that potentiality. Furthermore, the breadth of the statute is also seen by reference to the fact that a benefit or potential benefit from a conflict does not have to flow to the real or potentially conflicted individual but also may benefit “others.” “Others” is not a defined term so the actual limits of who it may effect are anything but clear but it is clear that the connection between the conflicted individual and the person potentially benefitted would come into question and the closer the tie the more real the concern of a potential conflict.

Thus, in applying this statute the following should be considered:

1. Is the employee or official a party intended to be covered by the statute?
2. Is the action to be taken part of that individual's official duties?
3. Does the official have a “substantial interest” in the business entity affected by the official action?
4. Is there a conflict between the official's conduct and the business entity affected by the official action?
5. Is there reasonably perceived to be a conflict between the official and the business entity affected by the official action?
6. Is there reasonably perceived to be a conflict between the official's action and a benefit or privilege granted to any individual?

7. Is there a relationship between the benefitted individual and the official which would appear to be inappropriate under the circumstances?
8. Should, under the circumstances, the conflict be waived after full disclosure?

PROPOSED BOARD POLICY:

In addition to the guidance provided above the Board should consider adopting a policy in dealing with real or potential conflicts as follows:

A board member has a real or potential conflict of interest with respect to a matter to be considered by the board if:

- (1) the Board member's participation may be prohibited under Title 67, Chapter 16, the Utah Public Officers' and Employees' Ethics Act; or
- (2) the Board member's participation may call into question the integrity of the actions of the Board.

A board member who has a real or potential conflict of interest with respect to a matter before the board may:

- (1) recuse himself or herself from participation in the board's discussion of the matter and from voting with the board on the matter; or
- (2) disclose the potential conflict of interest and seek a determination by the board about how to proceed in the matter.

Decision of the Board dealing with real or potential conflicts.

- (1) In making a decision the Board should consider:
 - (a) the nature of the matter before the Board;
 - (b) the nature of the potential conflict; and
 - (c) the Legislative intent that the Board reflect balanced viewpoints.
- (2) The Board should determine:
 - (a) whether the circumstances constitute a conflict of interest such that the Board member should be recused from voting with the board on the matter (including whether the board should accept a board member's recusal); and
 - (b) if the Board member has a conflict of interest, whether the Board member should also be recused from any participation in the Board's discussion of the matter.