

## **Chapter 16**

### **Utah Public Officers' and Employees' Ethics Act**

#### **67-16-1 Short title.**

This chapter is known as the "Utah Public Officers' and Employees' Ethics Act."

Amended by Chapter 147, 1989 General Session

#### **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.

Amended by Chapter 147, 1989 General Session

#### **67-16-3 Definitions.**

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.
- (6) "Controlled, private, or protected information" means information classified as controlled, private, or protected in Title 63G, Chapter 2, Government Records Access and Management Act, or other applicable provision of law.
- (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.
- (8) "Improper disclosure" means disclosure of controlled, private, or protected information to any person who does not have the right to receive the information.
- (9) "Legislative employee" means any officer or employee of the Legislature, or any committee of the Legislature, who is appointed or employed to serve, either with or without compensation,

for an aggregate of less than 800 hours during any period of 365 days. "Legislative employee" does not include legislators.

- (10) "Legislator" means a member or member-elect of either house of the Legislature of the state of Utah.
- (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.
- (12) "Public employee" means 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. "Public employee" does not include legislators or legislative employees.
- (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.
- (14) "State" means the state of Utah.
- (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.

Amended by Chapter 202, 2012 General Session

**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;
  - (d) accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or
  - (e) accept other employment that he might expect would interfere with the ethical performance of his public duties.
- (2)
  - (a) Subsection (1) does not apply to the provision of education-related services to public school students by public education employees acting outside their regular employment.
  - (b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.
- (3) This section does not apply to a public officer, public employee, or legislator who engages in conduct that constitutes a violation of this section to the extent that the public officer, public employee, or legislator is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

Amended by Chapter 196, 2014 General Session

**67-16-5 Accepting gift, compensation, or loan -- When prohibited.**

- (1) As used in this section, "economic benefit tantamount to a gift" includes:
  - (a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and
  - (b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.
- (2) Except as provided in Subsection (4), 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:
  - (a) 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;
  - (b) 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; or
  - (c) 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 in the manner provided in Section 67-16-6.
- (3) Subsection (2) does not apply to:
  - (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;
  - (b) an award publicly presented in recognition of public services;
  - (c) any bona fide loan made in the ordinary course of business; or
  - (d) a political campaign contribution.
- (4) 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-2404 or Section 76-8-105.

Amended by Chapter 196, 2014 General Session

**67-16-5.3 Requiring donation, payment, or service to government agency in exchange for approval -- When prohibited.**

- (1) Except as provided in Subsection (3), it is an offense for a public officer, public employee, or legislator 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.
- (2)
  - (a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:
    - (i) expressly required by statute, ordinance, or agency rule;
    - (ii) mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;
    - (iii) made voluntarily by the applicant; or
    - (iv) a condition of a consent decree, settlement agreement, or other binding instrument entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.
  - (b) 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.
- (3) This section does not apply to a public officer, public employee, or legislator who engages in conduct that constitutes a violation of this section to the extent that the public officer, public employee, or legislator is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

Amended by Chapter 196, 2014 General Session

**67-16-5.6 Offering donation, payment, or service to government agency in exchange for approval -- When prohibited.**

- (1) Except as provided in Subsection (3), it is an offense for any person to 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.
- (2)
- (a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:
    - (i) otherwise expressly required by statute, ordinance, or agency rule;
    - (ii) mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;
    - (iii) a condition of a consent decree, settlement agreement, or other binding instrument entered into to resolve, in whole or in part, an actual or threatened agency enforcement action; or
    - (iv) made without condition.
  - (b) The person making the donation of property, funds, or services shall include with the donation a signed written statement certifying that the donation is made without condition.
  - (c) The agency receiving the donation shall place the signed written statement in its files.
- (3) This section does not apply to a person who engages in conduct that constitutes a violation of this section to the extent that the person is chargeable, for the same conduct, under Section 63G-6a-2404 or Section 76-8-105.

Amended by Chapter 196, 2014 General Session

**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-2404 or Section 76-8-105.

Amended by Chapter 196, 2014 General Session

**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.

Amended by Chapter 147, 1989 General Session

**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, Municipal Officers' and Employees' Ethics Act.

Amended by Chapter 93, 1990 General Session

**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.

Enacted by Chapter 128, 1969 General Session

**67-16-10 Inducing others to violate chapter.**

No person shall induce or seek to induce any public officer or public employee to violate any of the provisions of this chapter.

Amended by Chapter 147, 1989 General Session

**67-16-11 Applicability of provisions.**

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

Amended by Chapter 92, 1998 General Session

**67-16-12 Penalties for violation -- Removal from office or dismissal from employment.**

In addition to any penalty contained in any other provision of law:

- (1) any public officer or public employee who knowingly and intentionally violates this chapter, with the exception of Sections 67-16-6 and 67-16-7, shall be dismissed from employment or removed from office as provided by law, rule, or policy within the agency; and
- (2) any public officer, public employee, or person who knowingly and intentionally violates this chapter, with the exception of Sections 67-16-6 and 67-16-7, shall be punished as follows:
  - (a) as a felony of the second degree if the total value of the compensation, conflict of interest, or assistance exceeds \$1,000;
  - (b) as a felony of the third degree if:
    - (i) the total value of the compensation, conflict of interest, or assistance is more than \$250 but not more than \$1,000; or
    - (ii) the public officer or public employee has been twice before convicted of violation of this chapter and the value of the conflict of interest, compensation, or assistance was \$250 or less;
  - (c) as a class A misdemeanor if the value of the compensation or assistance was more than \$100 but does not exceed \$250; or
  - (d) as a class B misdemeanor if the value of the compensation or assistance was \$100 or less.

Amended by Chapter 108, 2000 General Session

**67-16-14 Unethical transactions -- Duty to dismiss officer or employee -- Right to rescind or void contract.**

If any transaction is entered into in violation of Section 67-16-6, 67-16-7, or 67-16-8, the state, political subdivision, or agency involved:

- (1) shall dismiss the public officer or public employee who knowingly and intentionally violates this chapter from employment or office as provided by law; and
- (2) may rescind or void any contract or subcontract entered into in respect to such transaction without returning any part of the consideration that the state, political subdivision, or agency has received.

Amended by Chapter 147, 1989 General Session

**67-16-15 Complaint -- Political Subdivisions Ethics Review Commission.**

A person may file a complaint for an alleged violation of this chapter by a political subdivision officer or employee in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission.

Enacted by Chapter 202, 2012 General Session