

The following is to provide information on ethics requirements and potential or actual conflicts of interest of members of the Air Ambulance Committee (AAC), formed pursuant to Utah Code 26-1-7(1)(c).

As you are aware, pursuant to Utah Code 26-8a-107, the Committee is comprised of members who by statute are representatives of various interests and groups. These statutorily-established criteria for membership on the Committee make conflicts of interest inevitable.

Applicable Law

Committee members are covered by the Utah Public Officers' and Employees' Ethics Act ("Ethics Act"). A copy is attached. The definition of "public officer" means "all elected or appointed officers of the State ... who occupy policymaking posts." Committee members are appointed and determine State policy under their respective statutory powers. Prior to 1989, Committee members were considered specifically by statute as "special employees" who were excluded from the requirements of the Ethics Act. Amendments in 1989 deleted the exclusion.

Requirements of the Ethics Act

A. Disclosure

Under §67-16-7 of the Ethics Act, every public officer 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 is required to disclose:

1. the position held; and,
2. the precise nature and value of interest. (Does not apply where total value does not exceed \$2,000.00. Life insurance policies and annuities are not considered in determining value.)

If the position changes or value is significantly increased, it must be reported.

Under §67-16-6, a public officer may not receive or agree to receive compensation for assisting any person or business in any transaction involving any agency unless the public officer discloses the name and address of the public officer and the agencies involved, and provides a brief description of the transaction.

Under §67-16-8, a public officer may not participate or receive compensation in respect to any transaction between the State and any business entity to which the public officer is also an officer, director, or employee, or owns a substantial interest, unless disclosure is made as indicated below.

B. Method of Disclosure

A sworn, written statement by the public officer giving the information listed above is to be filed with the head of the agencies involved and the Utah Attorney General's Office (see attached form/outline).

C. Prohibitions

Restrictions outlined in the Ethics Act include:

No public officer shall:

1. accept employment or engage in any business or professional activity that he or she may reasonably expect would require or induce him or her to improperly disclose controlled information;
2. disclose or improperly use controlled, private, or protected information acquired by reason of his or her position or in the course of official duties to further substantially his or her personal economic interest or obtain special privileges or exemptions for himself or herself, or others;
3. use or attempt to use his or her position to further substantially his or her personal economic interest or to secure special privileges or exemptions for himself or herself, or others;
4. accept employment that would impair his or her independence of judgment or interfere with the ethical performance of his or her public duties;
5. receive, take, seek, or solicit, directly or indirectly, for himself or herself, or another a gift of substantial value or a substantial economic benefit tantamount to a gift,¹
 - a. that would tend to improperly influence him in the discharge of his duties,
 - b. that the person knows or a reasonable person in that position should know under the circumstances is primarily to reward the person for official action taken, or
 - c. if he or she recently has been or is or will be involved in a government action affecting the donor or lender unless a disclosure of the gift, compensation, or loan has been made in the manner described above;
6. have personal investments in any business entity which will create a substantial conflict between his or her private interests and his or her public duties; or
7. donate or to demand donations of personal property, money, or services on a condition of granting a permit, approval, or other authorization.

Conflicts of Interest

A. What is a conflict of interest?

¹ "Economic benefit tantamount to a gift" includes:

- (1) a loan at an interest rate that is substantially lower than the commercial rate for similar loans; and,
- (2) substantially higher compensation received for private services than the fair market value of those services.

Excluded from this definition is an occasional nonpecuniary gift of a value not in excess of \$50.00, an award publicly presented in recognition of public service, any bona find loan made in the ordinary course of business, or a political campaign contribution.

One question which often arises is what constitutes a potential conflict of interest. It is generally considered that a potential conflict of interest is any direct and immediate interest or relationship, including financial interest (described in the Ethics Act), with persons or businesses regulated by or directly affected by decisions of the Committee, or persons or organizations which may present requests or issues before the Committee.

The interest of a spouse or other members of the immediate family/household or the interest of any other person which is constructively controlled by the member is included.

It is recognized that some relationships and interests have more “potential” for being a conflict of interest than others. There are some interests and relationships which because of their nature are so “de minimus” as to be insignificant. The financial interest may be so small or the relationship so remote that it does not present an actual conflict.

B. Approach

The Committee needs to determine how it will handle conflicts of interest. The Committee can include the procedure in its by-laws. It is incumbent on each Committee member to identify whether he or she has a conflict of interest. In the past, different approaches have been taken by various members of other Committees when they have had conflicts of interest. These approaches have included:

1. oral disclosure of the conflict before discussion and then participating in the discussion but not the vote;
2. oral disclosure of the conflict at the beginning of the discussion with no participation in discussion or the vote; or,
3. oral disclosure of the conflict and physically withdrawing from the meeting when an action is being discussed and voted upon.

There are several options for managing actual or potential conflicts of interest. One example follows:

Recusal.

- (1) A Committee member shall be recused from voting during any Committee proceeding involving a matter in which the member has a conflict of interest.
- (2) A Committee member may also be recused from participating in the Committee’s discussion of a matter in which the member has a conflict of interest.

Potential Conflicts of Interest.

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

- (1) the Committee member’s participation may be prohibited under Title 67, Chapter 16, the Utah

Public Officers' and Employees' Ethics Act; or,

(2) the Committee member's participation may constitute a violation of constitutional due process under the Utah or United State Constitutions.

Procedures.

A Committee member who has a potential conflict of interest with respect to a matter before the Committee, as described above, may:

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

Decision of the Committee.

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

The Committee needs to determine how they will handle the inherent conflict of interest issues before they arise and set up a system of how each member and the Committee as a whole will deal with it.