

CONFLICT OF INTEREST OUTLINE

UCA §§ 67-16-1, et al.

UCA § 76-8-105

Conflict of interest law is generally defined in the "Utah Public Officers' and Employees' Ethics Act" (UCA § 67-16-1, *et seq.*), but understanding and applying the statute to specific instances of conduct is often very difficult. Accordingly, the following guidelines are provided to assist Utah Department of Agriculture and Food employees and board and commission members in more effectively and efficiently determining actual conflicts of interest that require abstention from voting, as opposed to perceived conflicts that may be handled by simply declaring affiliations with organizations having an interest in the outcome of a proposal.

A. Conflicts of Interest

1. *Actual Conflicts Requiring Abstention:* Public body members and employees should declare affiliations and withdraw from the decision-making process on any proposal or action where one or more of the following situations exist:
 - The employee/member is also an officer, employee, director, or administrator in an organization or business that may be financially or economically impacted (positive or negative) by a decision of the employee/member;
 - The employee/member, or their spouse or minor children holds a substantial ownership interest (10% or greater) in an organization or business that may be financially or economically impacted (positive or negative) by a decision of the employee/member;
 - The employee/member may be financially or economically impacted (positive or negative) in a manner different from that of the general public by a decision of the employee/member;
 - The employee/member's immediate family may be financially or economically impacted (positive or negative) in a manner different from that of the general public by a decision of the employee/member;
 - The employee/member is unable to objectively evaluate and make an independent decision on a proposal before the public body for decision due to affiliation with any individual, organization, or business; or
 - The member has personal investments in any organization or business which will create a substantial conflict between private interests and public responsibilities.

Penalties: Knowing and intentional violations of the Utah Public Officers and Employees' Ethics Act (UCA § 67-16-1, *et seq.*) may result in criminal prosecution and/or dismissal from office.

2. *Perceived Conflicts Requiring an Affiliation Declaration:* Employee/members should publicly declare, prior to making a decision on a given issue, any affiliation with organizations or businesses not requiring abstention from voting under the criteria in the abstention section, but which may reasonably appear to the public as a conflict of interest. In such circumstances, the employee/member should declare the nature of the affiliation and affirmatively state that it will not adversely affect their objectivity or independence in making an informed decision.

B. Prohibited Activities

1. It is unlawful under Section 67-16-4(1) for an employee/member to:
 - Disclose or improperly use private, controlled, or protected information acquired in the course of official duties in order to substantially further personal economic interests or to secure privileges or exemptions for self or others;
 - Use or attempt to use official position to substantially further personal economic interests or to secure privileges or exemptions for self or others; or
 - Accept employment that is reasonably likely to impair independent judgement or interfere with ethical responsibilities in the performance of official duties.

C. Gifts and Bribes

1. *Gifts:* It is unlawful under Section 67-16-5(2) for employee/members to knowingly accept or solicit for themselves or another a gift of substantial value or an economic benefit tantamount to a gift (substantially reduced interest rates or substantially increased compensation for private services) that:

- May improperly influence them to depart from the faithful and impartial discharge of their public duties;
- They have reason to believe is for the purpose of rewarding them for official action taken; or
- They have recently been or in the near future may be involved in any governmental action directly affecting the donor or lender.

Exceptions: The gift restrictions in this section do not apply to:

- occasional non-monetary gifts of \$50 or less;
- publicly presented awards for recognition of public services; or
- bona fide loans made in the ordinary course of business.

Penalties: Any employee/member that knowingly and intentionally violates these gift restrictions is guilty of a:

- Second degree felony, if the value of compensation exceeds \$1,000;
- Third degree felony, if the value of compensation exceeds \$250 but is less than \$1,000;
- Class A misdemeanor, if the value of compensation exceeds \$100 but is less than \$250; or
- Class B misdemeanor, if the value of compensation is \$100 or less.

Governor Huntsman's Ethics Executive Order: State employees are "prohibited from accepting any gift or other compensation that might be intended to influence or reward the individual in the performance of official business." This includes occasional non-monetary gifts of \$50 or less.

Exceptions: For purposes of Governor Huntsman's order, "gift or other compensation": does not include:

- food, refreshments, or meals of limited value;
- rewards and prizes open to the general public or all state employees;
- plaques or mementos recognizing service;
- trinkets or mementos of nominal value;
- gifts from extended family members or personal friends;
- small efforts of common courtesy or other services of nominal monetary value; and
- attendance or participation at events sponsored by another governmental agency.

2. **Requiring Donations:** It is unlawful to demand or offer a donation of personal property, money, or services to any agency as a condition to granting a permit, approval, or other authorization. (Sections 67-16-5.3 and 5.6).

Exceptions: The donation is:

- Expressly required by statute or rule;
- Mutually agreed to between the applicant and the agency;
- Voluntarily made by the applicant; or
- Made without condition.

3. **Receiving Compensation:** An employee/member may not receive or agree to receive compensation for assisting any person or business entity in any transaction involving a matter over which the state agency has regulatory authority. (Section 67-16-6).

Exception: The employee/member files a sworn written statement with the Department and the Attorney General's Office describing the services to be rendered and the compensation to be received. If there are Departmental policies regarding conflicts, the employee must also ensure compliance with that process.

4. **Disclosure of Substantial Business Interest:** Employee/members who are officers, directors, agents, employee, or owners of a substantial interest in any business subject to regulation by the Department must disclose the affiliation in a sworn statement. (Section 67-16-7).

Participation in Transactions: Employee/members may not participate in an official capacity or receive compensation regarding any transaction between the state or any of its agencies and any business entity as to which the member is also an officer,

director, or employee or owns a substantial interest, unless disclosure has been made. (Section 67-16-8) .

5. *Bribes*: An employee/member is guilty of bribery under Section 76-8-105 if they directly or indirectly solicit or accept any benefit with the understanding or agreement that the purpose is to influence his or her decision, opinion, recommendation, judgment, vote, or exercise of discretion.
6. *Penalties*: Any employee/member that knowingly and intentionally violates this section is guilty of a:
 - Second degree felony if the value of compensation exceeds \$1,000;
 - Third degree felony if the value of compensation is between \$1,000 and \$251;
 - Class A misdemeanor if the value of compensation is between \$250 and \$101;
 - Class B misdemeanor if the value of compensation is \$100 or less.

OPEN AND PUBLIC MEETINGS ACT OUTLINE

Utah Code §§ 52-4-101, et al.

A. Policy Behind Open and Public Meetings

"The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business. It is the intent of the Legislature that the state, its agencies, and its political subdivisions: 1) take their actions openly; and 2) conduct their deliberations openly." (Section 52-4-102).

B. Public Bodies and Specified Bodies

Meetings involving "public bodies" and "specified bodies" are subject to the Open and Public Meetings Act under prescribed circumstances. (Section 52-4-103(9)(b)&(13))

- a. "Public body" includes any administrative, advisory, executive, or legislative body of the state that:
 - i. is created by the Utah Constitution, statute, rule, ordinance or resolution;
 - ii. consists of two or more persons;
 - iii. expends, disburses, or is supported in whole or in part by tax revenue; and;
 - iv. is vested with the authority to make decisions regarding the public's business.
- b. "Specified body" includes any administrative, advisory, executive, or legislative body of the state that:
 - i. is not a public body;
 - ii. consists of three or more members; and
 - iii. includes at least one state legislator officially appointed to the body by the president of the Senate, speaker of the House, or governor.

C. Meetings Subject to the Open and Public Meeting Act

The Open and Public Meetings Act governs any meeting convened by a public body or specified body that satisfies all the following requirements:

- a. The meeting is convened with a quorum present. (Section 52-4-103(6)).
- b. The meeting is convened by an authorized person. (Section 52-4-103(3)).
- c. The meeting is convened for the purpose of discussing, receiving comments from the public, or acting upon a matter over which the body has jurisdiction or advisory power. (Section 52-4-103(6)(a)).
 - i. This includes workshops, executive sessions, site visits and traveling tours. (Sections 52-4-201(2)(a)).
- d. Meetings conducted in person or by electronic means, including telephone, e-mail, text messaging, electronic chat, social media, or video conferencing, are all subject to open meeting requirements.
- e. Bona fide chance or social gatherings are not subject to open meeting requirements. (Section 52-4-208).

D. Requirements of the Open and Public Meeting Act

Public meetings subject to the Act must be open to the public and comply with the following requirements:

- a. Public notice of meetings is required. (Section 52-4-202(1)).
 - i. 24 hours advance written notice must be provided to the public of the meeting agenda, date, time, and location for each meeting. (Section 52-4-202(1)(a)(i)&(b)).
 - ii. An annual public notice must be given posting meeting dates, times and locations where regular meetings are scheduled for public bodies in advance over the course of a year. (Section 52-4-202(2)).
- b. Public notice requires: 1) posting written notice at the principal office of the public or specified body or at the building where the meeting will be held; 2) "providing notice to at least one newspaper of general circulation within the geographic jurisdiction of the public body, or to a local media correspondent;" and 3) posting notice on the Utah Public Notice Website. (Section 52-4-202(3)).
- c. Public notice includes: 1) an "agenda" that provides reasonable specificity of the topics that will be considered at the meeting; and 2) any public materials provided to the public body concerning matters that will be discussed at the meeting. Topics not listed or adequately specified in a published agenda may not be considered, except as provided below. (Section 52-4-202(6)).
 - i. Topics not listed on an agenda that are raised by the public during an open meeting may be discussed, but no final action may be taken. (Section 52-4-202(6)(b)).
- d. All aspects of the meeting, including discussions, motions, and deliberations must be open to the public.
- e. Written minutes and an audio or video recording must be kept of all open meetings. (§ 52-4-203).
 - i. The minutes and recording must include:
 1. The date, time, and place of the meeting;
 2. The names of members present and absent;
 3. The substance of all matters proposed, discussed, or decided;
 4. A record, by individual member, of votes taken;
 5. The name of each person who provided testimony and the substance in brief of their testimony; and
 6. Any other information that any member requests be entered in the minutes or recording.
- f. Pending written minutes (awaiting formal approval) are public records and must be available to the public within 30 days of the meeting that is the subject of the minutes. (Section 52-4-203(4)).
- g. Approved written minutes are also public records and must be posted on the Public Notice Website and otherwise made available to the public within three business days of approval. (52-4-203(4)(e)).

- h. Public materials distributed at the meeting are public records and must be posted on the Public Notice Website and otherwise made available to the public within three business days of approval. (52-4-203(4)(e)).
- i. Meetings must be recorded and the unedited recording of the meeting must be:
 - i. Posted or linked on the Public Notice Website; and
 - ii. Otherwise made available to the public within three business days after the meeting. (Section 52-4-203(3), (4)(e)).
 - 1. Recordings cannot be modified to correct or remove ill-advised statements. Be mindful that the microphones are sensitive and often pick up whispered conversations between members.
- j. Open meetings may be independently recorded by any person in attendance, provided the recording does not interfere with the conduct of the meeting. (Section 52-4-203(5)).
- k. A recording is not required to be kept of an open meeting that is a site visit or traveling tour, provided no vote or action is taken by the public body. (Section 52-4-203(7)).
- l. A public or specified body member may transmit an electronic message to another member when not convened in an open meeting, with the following caveats. (Section 52-4-210):
 - i. Electronic messages concerning public body business or specified body business are public records under GRAMA, even when transmitted on private devices; and
 - ii. A "meeting" is defined to include "electronic communications" when a quorum is present.

E. Electronic Meetings.

Public body meetings convened or conducted, in whole or part, by means of a conference using electronic communications are authorized when the following conditions are satisfied:

- a. The public body has adopted an administrative rule or resolution authorizing and governing the use of electronic meetings. (Section 52-4-207(2)).
- b. Notice is published consistent with regular meeting requirements informing the public of the meeting's agenda, date, time, and anchor locations. (Section 52-4-207(3)).
- c. Space and facilities are provided at the anchor locations for interested persons to attend and monitor the meeting.
- d. One of the anchor locations is the building or location where the public body normally meets.

F. Closed Meetings.

Meetings otherwise subject to the Open and Public Meetings Act may be closed to the public under very limited circumstances.

- a. Very few of the closed meeting exceptions will ever involve matters normally before public bodies and specified bodies of the Department of Agriculture and Food. Due to the extremely limited circumstances authorizing closure of a public

meeting, the complex procedural requirements associated with doing so, and the civil and criminal penalties imposed for violating the Act's closed meeting requirements, members should never close or attempt to close a public meeting without first consulting the Attorney General's Office.

G. Disruptions.

A person may be removed from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised. (Section 52-4-301).

H. Violations.

A public body or specified body may be sued in a court of competent jurisdiction to compel compliance with the Act or to void any decision made or action taken in violation of the Act. If successful, the plaintiff may be awarded attorney fees and costs. (Sections 52-4-302 and 52-4-303).

- a. A member who knowingly or intentionally violates any closed meeting provision is guilty of a class B misdemeanor. (Section 52-4-305).

Closed Meeting Requirements

(1) A closed meeting may be held for strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would:

- (a) disclose the appraisal or estimated value of the property under consideration; or
- (b) prevent the public body from completing the transaction on the best possible terms.

(2) A closed meeting may be held if:

- (a) a quorum is present;
- (b) the meeting is an open meeting for which notice has been given under Section 52-4-

202; and

(c) two-thirds of the members of the public body present at the open meeting vote to close the meeting;

(3) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:

- (a) the reason or reasons for holding the closed meeting;
- (b) the location where the closed meeting will be held; and
- (c) the vote by name, of each member of the public body, either for or against the

motion to hold the closed meeting.

COVID-19 Electronic Meeting Notice

Due to the COVID-19 pandemic and the ability of the virus to spread from person to person, the Governor's Office has implemented a number of Executive Orders directed at controlling spread of the virus by minimizing face-to-face interactions. Public gatherings are strongly discouraged by the CDC, State of Utah, and local health departments since they facilitate face-to-face contact and pose an elevated risk for virus transmission. The Utah Department of Agriculture and Food and the Chair of this public body have determined that public gathering at meetings presents a substantial risk to the health and safety of those who attend-and will conduct this meeting using a fully electronic format. This meeting format is authorized by recent amendment to the Utah Code¹ and Executive Order by the Governor's Office²-and will be temporarily used in place of the in-person public meetings that usually occurs. Anyone wishing to comment on the meeting's agenda topics or to observe the meeting may do so by following the link included on the Public Notice Website where instructions and links are provided.

NOTE: This statement, or one substantially similar, must be (1) included in each public meeting notice where the fully electronic format will be used; and (2) read by the chair at the beginning of each board or commission meeting. This notice expires after thirty (30) days. Both UDAF and the chair must renew this notice for each electronic meeting after the 30-day timeframe has expired and ensure that subsections (1) and (2) are both met.

Please remove the bolded paragraph from being read aloud at the meeting, and do not post on the Public Notice Website.

1 Utah Code Section 52-4-207(4).

2 Executive Order Suspending the Enforcement of Provisions of Utah Code §§ 52-4-202 and 52-4-207, and Related State Agency Orders, Rules, and Regulations, Due to Infectious Disease COVID-19 Novel, March 18, 2020.

GOVERNMENT RECORDS AND ACCESS MANAGEMENT ACT

Utah Code §§ 63G-2-101 et seq.

A. Records Subject to Disclosure Under GRAMA:

1. "*Governmental entity*" means executive department agencies of the state, including every office, agency, board, bureau, committee, department, advisory board, or commission of an executive department agency that is funded or established by the government to carry out the public's business.
2. "*Record*" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics: (i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and (ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

"*Record*" does not mean: (i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity in the employee's or officer's private capacity; (ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working; (iii) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;

B. A Word to the Wise:

1. Do not write or record anything in an e-mail, voice mail, text message, or similar communication medium concerning Board business that will make you feel uncomfortable if printed in the newspaper.
 - Presume that all recordable communications will find their way to the media or your opponents.
2. This applies to both personal and work communication devices. It is the substance of the communication that triggers GRAMA, not the ownership of the device.

DISCLOSURE STATEMENT

Pursuant to the Utah Public Employee's Ethics Act
Utah Code Ann. §§ 67-16-1 through 15

I _____, do hereby disclose as follows:

1. I reside at _____

2. I was appointed or am employed as a member of _____

on _____

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 Utah Department of Agriculture and Food:

Name of entity: _____

Position Held: _____

Nature and value of interest held (must exceed \$2,000.00 in value): _____

Note refer to Utah code Ann §67-16-7 (3) and 63G-24-301(1) for exemptions and/or exclusions.

DATED this _____ day of _____, 2021

I hereby declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signature

Date

Printed Name

Location

Witnessed before me _____ **on** _____.

Printed Name (Witness)