

Conflict of Interest Training for Government Employees and Volunteers

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Disclaimer

The following information is intended to provide overall guidance and education regarding the subject matter. This information should not be substituted for legal advice in relation to specific fact scenarios.

When in doubt, contact the GOYFF Staff who may seek legal assistance as necessary.

Scope of Conflict of Interest Law

- ARS §§ 38-501 to 38-511 set the minimum expectations of public officers and employees who are faced with a decision or contract that might affect their **pecuniary** (financial) or **proprietary** (ownership) interests, or those of a relative.

Scope of Conflict of Interest Law (Continued)

- These standards apply to **ALL** public officers and employees of the state, and any of its departments, commissions, agencies, or boards.
 - Also is applicable to volunteers serving on boards and commissions.

Purpose of Conflict of Interest Law

1. To avoid situations where a public employee's personal or financial concerns conflict with the unbiased performance of the employee's public duties.
2. To insure that public resources are used for public purposes.
3. To prevent self-dealing.

"One Cannot Serve Two Masters with Conflicting Interests"

Substantial Interest

- A pecuniary or proprietary interest, direct or indirect, of a public officer or employee or their relative that is not one of the "remote" interests listed in A.R.S. § 38-502(10).

Substantial Interest (Continued)

- A public employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall disclose that interest and refrain from voting upon or participating in any manner as a public employee in such contract, sale or purchase. A.R.S. §38-503(A).

Substantial Interest (Continued)

- Any public employee who has, or whose relative has, a substantial interest in any decision of a public agency shall disclose such interest and refrain from participating in any manner in such decision. A.R.S. § 38-503(B).

Conflict of Interest Relatives

- Even if the employee does not have a substantial interest in a decision or contract, if one of his/her relatives has a substantial interest, the public employee must disclose the interest and refrain from participating in the matter. A.R.S. § 38-503(B).

Conflict of Interest Relatives Continued

- “A public officer or employee has an obligation to become aware of the interests of relatives in matters in which the officer or employee may become involved.” See Arizona Attorney General Agency Handbook

Which Relatives Apply?

- Spouse
- Child
- Grandchild
- Parent
- Grandparent
- Siblings (including half-brothers and sisters)
- Spouses of siblings
- The parent, brother, sister or child of a spouse (i.e., In-laws)
- Does not include first cousins

Remote Interests

- The Arizona State Legislature has enumerated **TEN** “remote interests” that do not impermissibly influence a person’s decisions or actions.
- Unless the interest falls within one of the statutorily specified remote situations, the pecuniary or proprietary interest is considered substantial.

Remote Interests

- ❖ Non-salaried officer of a non-profit corporation
- ❖ Landlord/tenant of a contracting party
- ❖ Attorney of a contracting party
- ❖ Member of a non-profit cooperative marketing association
- ❖ Stock ownership of less than 3% of the shares of a corporation for profit, if the income provides less than 5% of your total annual income

Remote Interests (Continued)

- ❖ Reimbursement of expenses
- ❖ Recipient of public services generally available
- ❖ Relatives of School Board members, other than spouses or dependents
- ❖ Interests of other public agencies
- ❖ Class interests (your interests are the same as everyone else's in the group)

Conflict of Interest Problem Prevention

- Disclose the conflict of interest in writing to GOYFF staff.
- List any holding by you or a relative that may require disqualification in future matters.
- Notify GOYFF staff of new conflicts when they arise.

Evaluating Whether a Conflict Exists

- A violation of the conflict of interest laws does not require intent
- It doesn't matter whether you actually will be influenced – what matters is whether you meet the criteria set forth in the law
– **ASK THREE QUESTIONS...**

Question 1

Could the decision affect, either directly or indirectly, an interest of the employee or his/her relative?

- If the answer is no, stop. There is no conflict of interest.
- If the answer is yes, proceed to question 2.

Question 2

Is the interest a pecuniary or proprietary (financial or ownership) interest?

- If the answer is no, stop. The interest will not disqualify you.
- If yes, go to Question 3.

Question 3

Is the interest one that is statutorily designated as a remote interest?

- If you have a remote interest = **no conflict**.
- If you do not have a remote interest = **conflict**.

When a Conflict Arises

- Refrain and Recuse yourself. . .
 - From voting or participating in any manner on all:
 - Discussions, decisions, contracts, sales, or purchases related to the conflict.

When a Conflict Arises (Continued)

- Fully disclose the conflict of interest in writing to GOYFF staff.
- Disclose sufficient information to allow the agency and the public to understand the nature of the conflict.

Consequences of Violating the Conflict of Interest Statutes

- Civil suit, costs and attorneys' fees
- Criminal penalties
 - Intentional violation = class 6 felony
 - Negligent violation = class 1 misdemeanor
- Forfeiture of public employment
- Nullifying contracts

Personal Gain

- Public officers and employees are prohibited from using or attempting to use their official position to secure valuable things or benefits for themselves that would not be part of their normal compensation for performing their duties. A.R.S. § 38-504(C).
- Violations range from a class 4 felony to a class 6 felony.

Personal Gain (Continued)

- For example, if a member of Commission X offered to support an application for an activity in return for a gift, the commission member would violate the above-referenced criminal laws as well as the conflict of interest laws.
- A criminal violation of A.R.S. §38-504(C) requires an action related to the public officer's official duties.
- *Think about what official duties you have in your role with the State – does it result in personal gain?*

Additional Income

- Public officers and employees are prohibited from agreeing to receive or receiving, either directly or indirectly, compensation other than as provided by law for services they render in any case, proceeding, application, or other matter pending before the public agency for which the officer or employee serves. A.R.S. § 38-505(A).

For More Information on Conflicts of Interest

- See Arizona Attorney General Agency Handbook Chapter 8.
 - <https://www.azag.gov/sites/default/files/sites/all/docs/agency-handbook/ch08.pdf>

Conclusion

- Each employee must strive to avoid even the appearance of impropriety.
- Please make sure you err on the side of caution in these matters.
- If you are ever in doubt about whether a certain activity is permissible, please consult GOYFF staff who can reach out to legal.