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Conflicts of Interest

ARS Title 38, Public Officers and Employees

- Chapter 3, Article 8
- A.R.S. §§ 38-501-38-511





Why Are there Conflict of Interest Laws?



“Public officers must have no personal interests in transactions with the government which they represent. The rule is...evolved from the self-evident truth... that no person can, at one and the same time, faithfully serve two masters.”

State v. Bohannon, 421 P.2d 877 (Ariz. 1967)

38-501. Application of article



A. This article shall apply to all public officers and employees of incorporated cities or towns, of political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards.



B. Notwithstanding the provisions of any other law, or the provisions of any charter or ordinance of any incorporated city or town to the contrary, the provisions of this article shall be exclusively applicable to all officers and employees of every incorporated city or town or political subdivision or the state and any of its departments, commissions, agencies, bodies or boards and shall supersede the provisions of any other such law, charter provision or ordinance.



C. Other prohibitions in the state statutes against any specific conflict of interests shall be in addition to this article if consistent with the intent and provisions of this article.

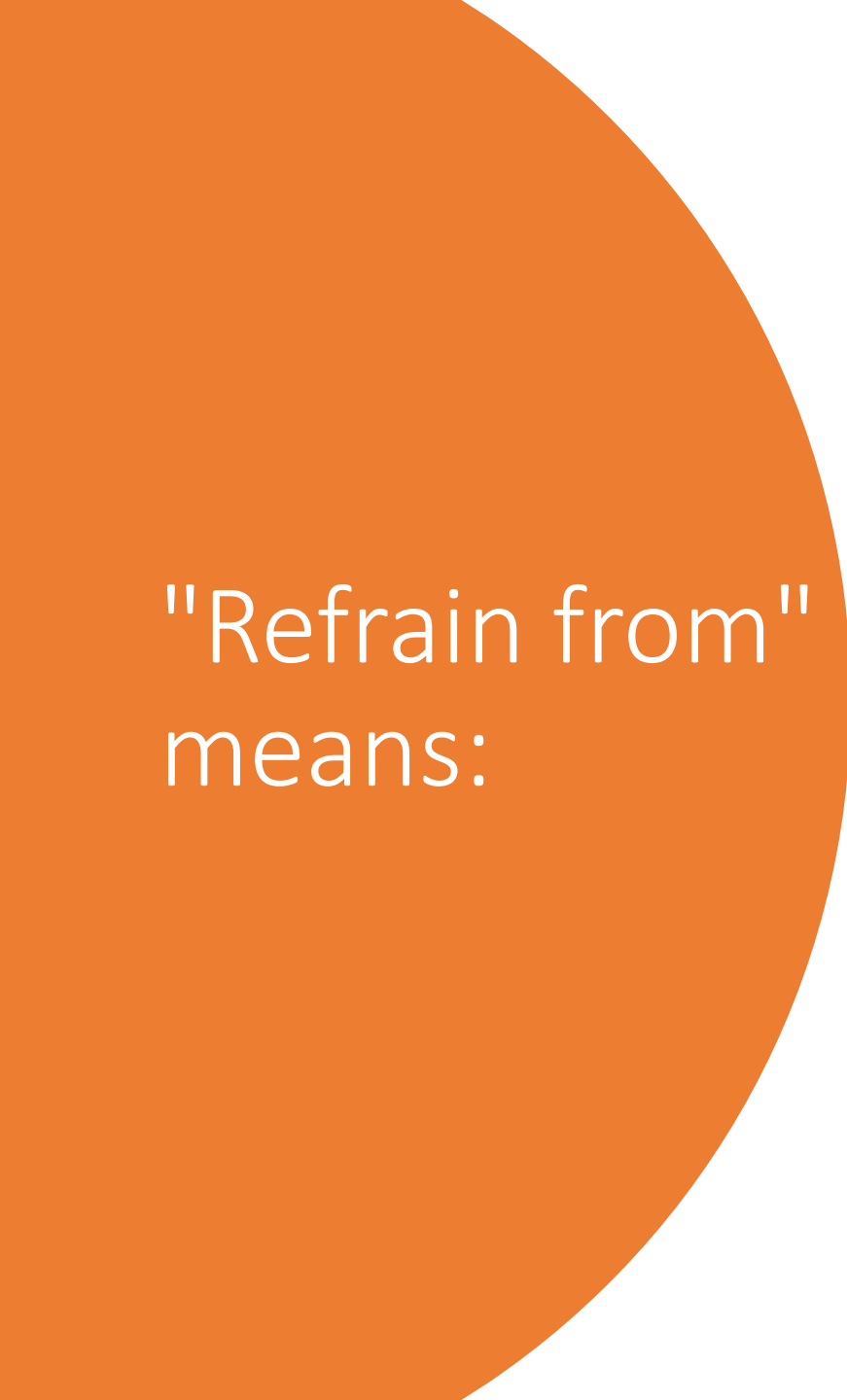
Key Aspects of Arizona's Conflict of Interest Laws

Substantial Interest: A public officer or employee (or their relative) cannot have a "substantial interest" in any contract, sale, purchase, service, or decision involving their public agency.

Definition of "Substantial Interest": This means a non-speculative, non-remote pecuniary or proprietary interest, whether direct or indirect, where the individual would gain or lose something (as opposed to a general feeling or bias).

Relatives: The law includes a broad definition of "relative", covering spouses, children, grandchildren, parents, grandparents, siblings (including half-siblings), and their spouses

Disclosure and Recusal: If a conflict exists, the public officer or employee must disclose the interest in the official records of the agency and refrain from participating in any decision-making or action related to the conflict.



"Refrain from"
means:

- No involvement.
 - No attendance at pre-decision meetings, even if just to listen.
 - No discussion.
 - No voting on the matter.
 - No recommending.
 - No decision making.
 - No handling of the paperwork and advance work.
 - No entries, actions or approvals in the District's business system
 - No participation in any manner.
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Substantial vs. Remote Interests

The law also specifies "remote interests" which are exceptions to the general rule and do not trigger a conflict of interest.



These include situations like being a nonsalaried officer of a non-profit organization or a landlord/tenant of a contracting party. If the interest is "remote," the officer or employee need not disclose it and may participate in the action or decision.



To be considered "remote" the interest must fall within one of the declared statutorily specified situations. If it does not, it is substantial, and must be disclosed.

The Test

To determine whether a substantial interest exists, the public officer should ask:

- 1) Could the decision affect, either positively or negatively, an interest of the officer or employee or the officer's or employee's relative?
- 2) Is the interest a pecuniary or proprietary interest? Could it affect a financial or ownership interest?
- 3) Is the interest something that is not statutorily designated as a remote interest?

If the answer to all three questions is "yes", disclosure is required. A conflict of interest form should be filed and the individual must refrain from participating in any manner in discussions or decisions relating to the matter.

Consequences of Failing to Disclose a Conflict

Knowingly or intentionally violating the law: Class 6 felony

Negligently or recklessly violating the law: Class 1 misdemeanor

Knowingly falsifying, concealing, or covering up a material fact as part of a scheme to defraud: Class 5 felony.

Forfeiture of Public Office upon conviction

Contract Cancellation within three years

Private Citizen Suits to invalidate the contract (and attorneys fees)



Relationship to District Employees

ARS 15-421 (D):



“No employee of a school district or the spouse of such employee may hold membership on a governing board of a school district by which such employee is employed.”

Extends to some volunteer positions as well; not those that a parent would be allowed to do.

ARS 38-502

Definitions

In this article, unless the context otherwise requires:

1. "Compensation" means money, a tangible thing of value or a financial benefit.
2. "Employee" means all persons who are not public officers and who are employed on a full-time, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration.
3. "Make known" means the filing of a paper which is signed by a public officer or employee and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to section 38-509.
4. "Official records" means the minutes or papers, records and documents maintained by a public agency for the specific purpose of receiving disclosures of substantial interests required to be made known by this article.
5. "Political subdivision" means all political subdivisions of the state and county, including all school districts.
6. "Public agency" means:
 - (a) All courts.
 - (b) Any department, agency, board, commission, institution, instrumentality or legislative or administrative body of the state, a county, an incorporated town or city and any other political subdivision.
 - (c) The state, county and incorporated cities or towns and any other political subdivisions.
7. "Public competitive bidding" means the method of purchasing prescribed by title 41, chapter 23, or procedures substantially equivalent to such method of purchasing, or as provided by local charter or ordinance.
8. "Public officer" means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.
9. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.

ARS 38-502

Definitions (Cont.)

10. "Remote interest" means:

...

(f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.

...

(h) That of a public school board member when the relative involved is not a dependent, as defined in section 43-1001, or a spouse.

(i) That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment on the officer, the employee or his relative, of any of the following:

(i) Another political subdivision.

(ii) A public agency of another political subdivision.

...

(k) That of a relative who is an employee of any business entity or governmental entity that employs at least twenty-five employees within this state and in the capacity as an employee, does not assert control or decision-making authority over the entity's management or budget decisions.

...

11. "Substantial interest" means any nonspeculative pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

ARS 38-503.

Conflict of interest;
exemptions;
employment
prohibition

A. Any public officer or 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 make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.

B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

C. Notwithstanding the provisions of subsections A and B of this section, no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding, except that:

1. A school district governing board may purchase, as provided in sections 15-213 and 15-323, supplies, materials and equipment from a school board member.

2. Political subdivisions other than school districts may purchase through their governing bodies, without using public competitive bidding procedures, supplies, materials and equipment not exceeding three hundred dollars in cost in any single transaction, not to exceed a total of one thousand dollars annually, from a member of the governing body if the policy for such purchases is approved annually.

D. Notwithstanding subsections A and B of this section and as provided in sections 15-421 and 15-1441, the governing board of a school district or a community college district may not employ a person who is a member of the governing board or who is the spouse of a member of the governing board.

ARS 38-504.

Prohibited acts

A. A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.

B. During the period of a public officer's or employee's employment or service and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.

C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

ARS 38-505

Additional
income
prohibited for
services

A. No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.

B. This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

ARS 38-506

Remedies

A. In addition to any other remedies provided by law, any contract entered into by a public agency in violation of this article is voidable at the instance of the public agency.

B. Any person affected by a decision of a public agency may commence a civil suit in the superior court for the purpose of enforcing the civil provisions of this article. The court may order such equitable relief as it deems appropriate in the circumstances including the remedies provided in this section.

C. The court may in its discretion order payment of costs, including reasonable attorney's fees, to the prevailing party in an action brought under subsection B.

38- 508. Authority of public officers and employees to act

A. If the provisions of section 38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior authority of the conflicting interest. The superior authority may empower another to act or such authority may act in the capacity of the public officer or employee on the conflicting matter.

B. If the provisions of section 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.



ARS 38-509

Filing of disclosures

Every political subdivision and public agency subject to this article shall maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article.



ARS 38-510

Penalties

A. A person who:

1. Intentionally or knowingly violates any provision of sections 38-503 through 38-505 is guilty of a class 6 felony.

2. Recklessly or negligently violates any provision of sections 38-503 through 38-505 is guilty of a class 1 misdemeanor.

B. A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.

C. It is no defense to a prosecution for a violation of sections 38-503 through 38-505 that the public officer or employee to whom a benefit is offered, conferred or agreed to be conferred was not qualified or authorized to act in the desired way.

D. It is a defense to a prosecution for a violation of sections 38-503 through 38-505 that the interest charged to be substantial was a remote interest.

ARS 38-511

Cancellation of political subdivision and state contracts; definition

A. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

B. Leases of state trust land for terms longer than ten years cancelled under this section shall respect those rights given to mortgagees of the lessee by section 37-289 and other lawful provisions of the lease.

C. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.

D. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

E. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.

F. Notice of this section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party.

G. For purposes of this section, "political subdivisions" do not include entities formed or operating under title 48, chapter 11, 12, 13, 17, 18, 19 or 22.