

HANDBOOK PUBLIC EMPLOYEES

The purpose of this brochure is to inform public employees as to the guidelines and prohibitions contained in the Alabama Ethics law which became effective on October 1, 1995.

It should be pointed out that this is intended as an overview. If further information is needed, please contact the Alabama Ethics Commission at: Post Office Box 4840, Montgomery, Alabama 36103-4840, (334) 242-2997.

DEFINITION

A public employee is defined as:

"Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income." Section (36-25-1(23))

*DO'S AND DON'T'S UNDER THE NEW ETHICS LAW

A. "DON'T'S"

1. Don't ... use your position to obtain personal gain for yourself or family member or any business with which you are associated. Section 36-25-5(a).
2. Don't ... use or cause the use of equipment, facilities, time, materials, human labor, or other public property under your discretion or control for the private benefit of you, any other person, or principal campaign committee (defined in section 17-22A-2), which would materially affect your financial interest. Section 36-25-5(c).
3. Don't ... solicit a "thing of value" from a subordinate or person or business with whom you directly inspect, regulate, or supervise in your official capacity *other than in the ordinary course of business*. Section 36-25-5(e).
4. Don't ... solicit or receive a "thing of value" for yourself or a family member for the purpose of influencing official action. Section 36-25-7(b).
5. Don't ... solicit or receive any money *in addition to* that received in an official capacity for advice or assistance on matters concerning the legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which you are a member. Section 36-25-7(d).
6. Don't ... use or disclose confidential information gained in the course of or by reason of your position in any way that could result in financial gain, other than your regular salary, for yourself, a member of your family, or any other person or business. Section 36-25-8.
7. Don't ... serve as a member or employee of a state, county, or municipal regulatory board or commission or other body that regulates any business with which you are associated. Section 36-25-9(a).

8. Don't ... you, a member of your household, or a business with which you are associated, enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds, *unless the contract complies with Alabama competitive bidding laws and a copy of the contract is filed with the Ethics Commission within 10 days after the contract has been entered into.* Section 36-25-11.

9. Don't ... offer, give, solicit, or accept a "thing of value" to or from a member or employee of a governmental agency, board, or commission that regulates a business with which you are associated, *other than in the ordinary course of business.* Section 36-25-12.

10. Don't ... serve for a fee as a lobbyist or otherwise represent clients, including your employer, before the board, agency, commission, department, or legislative body, of which you are a former member for a period of two years after you leave such membership, *unless you are a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.* Section 36-25-13(b).

11. Don't ... solicit or accept employment with a private business, corporation, partnership or individual which you formerly directly regulated, audited or investigated, within two years of your departure from such employment. Section 36-25-13(d).

12. Don't ... act as an attorney for any person other than yourself or the state, or aid, counsel, advise, consult or assist in representing any other person in a matter in which the state is a party, or has a direct and substantial interest, and in which you participated personally and substantially as a public employee or was within your official responsibility as an employee, for a period of two years after termination of your state employment. Section 36-25-13(e).

13. Don't ... solicit any lobbyist to give you any thing whether or not the thing is a thing of value to any person or entity for any purpose other than a campaign contribution. Section 36-25-23(b).

14. Don't ... file a complaint or otherwise initiate action against a public official or other public employee without a good faith basis for believing the complaint to be true and accurate. Section 36-25-24(c). If you do, you will be subject to civil action in the circuit courts of Alabama as well as appropriate and applicable personnel action. Section 36-25-24(e).

15. Don't ... file a complaint against a supervisor to prevent, mitigate, lessen, or otherwise to extinguish existing or anticipated personnel action by a supervisor, or you may be found guilty of the crime of false reporting. Section 36-25-24(f).

B. "Do's"

1. Do ... file notice with the Ethics Commission if you, a member of your family, or a business with which you are associated represents a client or constituent for a fee before any quasi-judicial board or commission, regulatory body, or executive department or agency, within ten days of the first day of the appearance. Section 36-25-10.

2. Do ... file with the Ethics Commission a copy of any contract that you, a member of your household, or a business with which is to be paid in whole or in part out of state, county or municipal funds, within ten days after the contract has been entered into. Section 36-25-11.

3. Do ... feel free to exercise your right to publicly or privately express your support for or to encourage others to support and contribute to any candidate, political committee (as defined in section 17-22A-2), referendum, ballot question, issue or constitutional amendment. Section 36-25-13(f).

4. Do ... file a Statement of Economic Interests with the Ethics Commission no later than April 30 of each year covering the period of the preceding calendar year *if your position is listed under these sections 36-25-14(a)(5) to (24) or you earn \$50,000 or more.* Section 36-25-14.

5. Do ... report a violation of the Ethics Act. A supervisor shall not discharge, demote, transfer, or otherwise discriminate against you regarding your compensation, terms, conditions or privileges of employment based on your reporting a violation of the Ethics Act or giving truthful testimony concerning an alleged ethics violation. Section 36-25-24(a).

Specifically Governmental Agency Heads

1. Do ... file reports with the Ethics Commission within ten days on any matters that come to your attention in your official capacity which constitutes a violation of the Ethics Act. Section 36-25-17(a).

2. Do ... cooperate in every possible manner in connection with any investigation or hearing, public or private, which may be conducted by the Ethics Commission. Section 36-25-17(b).

***THIS SECTION PREPARED BY AND USED WITH THE EXPRESS PERMISSION OF THE LAW FIRM OF BRADLEY, ARANT, ROSE & WHITE.**

QUESTIONS AND ANSWERS

QUESTION: Who must file a statement of economic interest?

ANSWER: Section 36-25-14, Code of Alabama, 1975, states:

"(a) A statement of economic interests shall be complete and filed in accordance with this chapter with the commission...by each of the following:

"(1) All elected public officials at the state, county, or municipal level of government or their instrumentalities.

"(2) Any person appointed as a public official and any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is fifty thousand dollars (\$50,000) or more annually.

"(3) All candidates, simultaneously with the date he or she becomes a candidate as defined herein, or the date the candidate files his or her qualifying papers whichever comes first.

"(4) Member of the Alabama Ethics Commission; appointed members of boards and commissions having statewide jurisdiction (but excluding members of solely advisory boards).

"(5) All full-time nonmerit employees, other than those employed in maintenance, clerical, secretarial, or other similar positions.

"(6) Chief clerks and chief managers.

"(7) Chief county clerks and chief county managers.

"(8) Chief administrators.

"(9) Chief county administrators.

"(10) Any public official or public employee whose primary duty is to invest public funds.

"(11) Chief administrative officers of any political subdivision.

"(12) Chief and assistant county building inspectors.

"(13) Any county or municipal administrator with power to grant or deny land development permits.

"(14) Chief municipal clerks.

"(15) Chiefs of police.

"(16) Fire chiefs.

"(17) City and county school superintendents and school board members.

"(18) City and county school principals or administrators.

"(19) Purchasing or procurement agents having the authority to make any purchase.

"(20) Directors and assistant directors of state agencies.

"(21) Chief financial and accounting directors.

"(22) Chief grant coordinators.

"(23) Each employee of the Legislature or of agencies, including temporary committees and commissions established by the Legislature, other than those employed in maintenance, clerical, secretarial, or similar positions.

"(24) Each employee of the judicial branch of government, including active supernumerary district attorneys and judges, other than those employed in maintenance, clerical, secretarial or other similar positions."

QUESTION: When must a statement of economic interest be filed?

ANSWER: A statement of economic interest must be filed with the commission no later than April 30 of each year covering the preceding calendar year.

QUESTION: What information is required to be included in the statement of economic interest?

ANSWER: The statement of economic interest must include the name, residential address, business; name, address, and business of the living spouse, and dependents of the public official or public employee required to file, as well as the name of living adult children, the name of parents and siblings, name of living parents of the spouse.

The statement must also contain a list of occupations to which one-third or more of working time was given during the previous reporting year by the public official, public employee, or his or her spouse.

The statement must contain a total combined household income of the public official or public employee from sources such as salaries, fees, dividends, profits, commissions, and other compensation. The income is to be listed and broken down into categories depending on the amount.

If the public official or employee or his or her spouse has during the last reporting year engaged in a business which provided legal, accounting, medical or health related, real estate, banking, insurance, educational, farming, engineering, architectural management, or other professional services, then the filing party is required to report the number of clients of the business in each of several categories. These categories are set out in Section 36-25-14(4) of the new Ethics law.

QUESTION: What is a conflict of interest?

ANSWER: Section 36-25-1 states:

"(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.

QUESTION: What is not a conflict of interest?

ANSWER: Section 36-25-1 states:

"(8)...A conflict of interest shall not include any of the following:

"a. A loan or financial transaction made or conducted in the ordinary course of business.

"b. An occasional nonpecuniary award publicly presented by an organization for performance of public service.

"c. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for the personal attendance of a public official or public employee at a convention or other meeting at which he or she is scheduled to meaningfully participate in connection with his or her official duties and for which attendance no reimbursement is made by the state.

"d. Any campaign contribution, including the purchase of tickets to, or advertisements in journals, for political or testimonial dinners, if the contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the contribution is to substantially influence a public official in the performance of his or her official duties."

QUESTION: What is a thing of value?

ANSWER: Section 36-25-1 states:

"(31) THING OF VALUE. a. Any gift, benefit, favor, service, gratuity, or passes to an entertainment, social or sporting event offered only to public officials, unsecured loan, other than those loans made in the ordinary course of business, reward, promise of future employment, or honoraria."

QUESTION: What is not a thing of value?

ANSWER: Section 36-25-1(31) states:

"b. The term thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

"1. Campaign contribution as defined in Section 17-22A-2.

"2. Seasonal gifts of an insignificant economic value of less than one hundred dollars (\$100) if the aggregate value of such gifts from any single donor is less than two hundred fifty dollars (\$250) during any one calendar year.

"3. Hospitality extended to a public official, public employee, and his or her respective household as a social occasion in the form of food and beverages where the provider is present, lodging in the continental United States and Alaska incidental to the social occasion, and tickets to social or sporting events if the hospitality does not extend beyond three consecutive days and is not continuous in nature and the aggregate value of such hospitality in excess of two hundred fifty dollars (\$250) within a calendar day is reported to the commission by the provider provided that the reporting requirement contained in this section shall not apply where the expenditures are made to or on behalf of an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code, of 1986, as amended, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, and where the public official or public employee does not receive any direct financial benefit. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.

"4. Reasonable transportation, food and beverages where the provider is present, and lodging expenses in the continental United States and Alaska which are provided in conjunction with an educational or informational purpose, together with any hospitality associated therewith; provided, that such hospitality is less than 50 percent of the time spent at such event, and provided further that if the aggregate value of such transportation, lodging, food, beverages, and any hospitality provided to such public employee, public official, and his or her respective household is in excess of two hundred fifty dollars (\$250) within a calendar day the total amount expended shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.

"5. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence of a public official or public employee in connection with an economic development research or trade mission, or for attendance at a mission or meeting in which he or she is scheduled to meaningfully participate, or regarding matters related to his or her official duties, and for which attendance no reimbursement is made by the state; provided, that any hospitality in the form of entertainment, recreation, or sporting events shall constitute less than 25% of the time spent in connection with the event. If the aggregate value of any such hospitality extended to the public employee, public official, and his or her respective household is in excess of two hundred fifty dollars (\$250) within a calendar day, the total amount expended for that day shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of such expenditures, the date or dates of the expenditures, and the type of expenditure."

"6. Promotional items commonly distributed to the general public and food or beverages of a nominal value."

QUESTION: Who may initiate a complaint with the Ethics Commission?

ANSWER: Section 36-25-4(11), Code of Alabama, states:

"(c) ...The complaint may only be filed by a person who has or persons who have actual knowledge of the allegations contained in the complaint. A complainant may not file a complaint for another person or persons in order to circumvent this subsection... A complaint may be initiated by the unanimous vote of the commission..."

QUESTION: What is personal gain?

ANSWER: Section 36-25-5 states:

"...Personal gain is achieved when the public official public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain."

QUESTION: What is an advisory opinion, and who may rely on an advisory opinion?

ANSWER: An advisory opinion is the commission's interpretation of a specific or hypothetical set of facts based on the law.

Section 36-25-4 states:

"(9) ... Such advisory opinions shall be adopted by a majority vote of the members of the commission present and shall be effective and deemed valid until expressly overruled or altered by the commission or a court of competent jurisdiction. The written advisory opinions of the commission shall protect the person at whose request the opinion was issued and any other person reasonably relying, in good faith, on the advisory opinion in a materially like circumstance from liability to the state, a county, or a municipal subdivision of the state because of any action performed or action refrained from in reliance of the advisory opinion. Nothing in this section shall be deemed to protect any person relying on the advisory opinion if the reliance is not in good faith, is not reasonable, is not in a materially like circumstance. The commission may impose reasonable charges for publication of the advisory opinions and monies shall be collected, deposited, dispensed, or retained as provided herein. Upon the effective date of this amendatory act, all prior advisory opinions of the commission in conflict with this chapter, shall be ineffective and thereby deemed invalid and otherwise overruled unless there has been any action performed or action refrained from in reliance of a prior advisory opinion.

QUESTION: What are the penalties for violation of the Ethics law?

ANSWER: Section 36-25-14(6) states:

" (e) A person who intentionally violates any financial disclosure filing requirement of this chapter shall be subject to administrative fines imposed by the commission, or shall, upon conviction, be guilty of a Class A misdemeanor, or both.

Any person who unintentionally neglects to include any information relating to the financial disclosure filing requirements of this chapter shall have 90 days to file an amended statement of economic interests without penalty."

Section 36-25-26 states:

"No person, for the purpose of influencing legislation, may do either of the following:

"(1) Knowingly or willfully make any false statement or misrepresentation of the facts to a member of the legislative or executive branch.

"(2) Knowing a document to contain a false statement, cause a copy of the document to be received by a member of the legislative or executive branch without notifying the member in writing of the truth.

Section 36-25-27 states:

"(a)(1) Except as otherwise provided, any person subject to this chapter who intentionally violates any provision of this chapter other than those for which a separate penalty is provided for in this section shall, upon conviction, be guilty of a Class B felony.

"(4) Any person who knowingly makes or transmits a false report or complaint pursuant to this chapter shall, upon conviction, be guilty of a Class A misdemeanor and shall be liable for the actual legal expenses incurred by the respondent against whom the false report or complaint was filed.

"(5) Any person who makes false statements to an employee of the commission or to the commission itself pursuant to this chapter without reason to believe the accuracy of the statements shall, upon conviction, be guilty of a Class A misdemeanor.

"(6) Any person subject to this chapter who intentionally violates this chapter relating to secrecy shall, upon conviction, be guilty of a Class A misdemeanor.

"(7) Any person subject to this chapter who intentionally fails to disclose information required by this chapter shall, upon conviction, be guilty of a Class A misdemeanor."

QUESTION: If a public employee files a complaint with the Ethics Commission against a public official or employer in the public sector, are there any measures to safeguard the employee making the complaint?

ANSWER: Yes.

Section 36-25-24 states:

"(a) A supervisor shall not discharge, demote, transfer, or otherwise discriminate against a public employee regarding such employee's compensation, terms, conditions, or privileges of employment based on the employee's reporting a violation, or what he or she believe in good faith to be a violation, of this chapter or giving truthful statements or truthful testimony concerning an alleged ethics violation."

QUESTION: If a public employee makes a false complaint against an employer or a complaint that the employee knows lacks merit, is there any recourse on the part of the employer?

ANSWER: Yes.

Section 36-25-24 states:

"(b) Nothing in this chapter shall be construed in any manner to prevent or prohibit or otherwise limit a supervisor from disciplining, discharging, transferring, or otherwise affecting the terms and conditions of a public employee's employment so long as the disciplinary action does not result from or is in no other manner connected with the public employee's filing a complaint with the commission, giving truthful statements, and truthfully testifying."

QUESTION: Are there any administrative remedies available under the new Ethics law?

ANSWER: Yes.

Section 36-25-27 states:

"(b) The commission if petitioned or agreed to by a respondent and the Attorney General or district attorney having jurisdiction, by unanimous vote of the members present may administratively resolve a complaint filed pursuant to

this chapter for minor violations. The commission may levy an administrative penalty not to exceed one thousand dollars (\$1,000) for any minor violation of this chapter including, but not limited to, the failure to timely file a complete and correct Statement of Economic Interests. The commission shall, in addition to any administrative penalty, order restitution in the amount of any economic loss to the state, county, and municipal governments and their instrumentalities and such restitution shall when collected be paid by the commission, to the entity having the economic loss.

QUESTION: Who is charged with enforcing the Ethics law?

ANSWER: Section 36-25-27 states:

"(c) The enforcement of this chapter shall be vested in the commission; provided however, nothing in this chapter shall be deemed to limit or otherwise prohibit the Attorney General or the District Attorney for the appropriate jurisdiction from enforcing any provision of this chapter as they deem appropriate.

QUESTION: What is the statute of limitations under the Ethics law?

ANSWER: Section 36-25-27 states:

"(g) Any felony prosecution brought pursuant to this chapter shall be commenced within four years after the commission of the offense.

"(h) Any misdemeanor prosecution brought pursuant to this chapter shall be commenced within two years after the commission of the offense."

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