



ARIZONA DEPARTMENT OF TRANSPORTATION POLICIES AND PROCEDURES

PER-6.02 CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES

Effective: March 13, 2009

Supersedes: PER-6.02 (2/23/2004)

Responsible Office: Human Resources, (602) 712-8188

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Page 1 of 7

2.01 PURPOSE

To familiarize Arizona Department of Transportation (ADOT) officers and employees, including newly-hired employees, with the (1) State's conflict of interest laws, (2) ADOT's policy related to conflict of interest, (3) the State's Standards of Conduct, and (4) [ADOT's Code of Conduct](#).

2.02 SCOPE

- A. This chapter summarizes the conflict of interest laws, which establishes minimum standards for the conduct of public officers and employees who are, or may become, involved with a contract or decision in their official capacity which might affect their personal pecuniary interest or those of their relatives, i.e., spouse, children, grandchildren, parent, grandparent, brother, sister and their spouses, or the parent, brother, or sister or child of one's spouse.
- B. "Interest", as described in the conflict of interest laws, refers to a pecuniary, financial, or property interest by which a public officer, employee, and/or relative, stands to gain.
- C. Public officers are defined under the State's conflict of interest laws as all elected and appointed officers of a public agency (such as the State Transportation Board, MAG employee, ADOT Director, etc.), whereas employees are defined as anyone employed by an incorporated city or town, political subdivision of the State, the State, or any of its departments, commissions, agencies, bodies, or boards for compensation, whether on a full-time, part-time, or contract basis.

2.03 AUTHORITY

Authority for this policy is provided by Arizona Revised Statute ([A.R.S. § 38-501 through A.R.S. § 38-511](#)), Conflict of Interest of Officers and Employees, and by [Section R-2-5-501](#) of the Arizona Department of Administration Personnel Rules (Exhibit 1).

2.04 DEFINITIONS

See Exhibit 2 – [A.R.S. § 38-502 Definitions](#).

2.05 BACKGROUND

This policy was formerly titled Conflict of Interest of Officers and Employees and Secondary Employment. The sections related to Secondary Employment were removed and placed into a new policy, [PER-6.07](#), Secondary Employment, on March 13, 2009.

2.06 THE ARIZONA CONFLICT OF INTEREST LAW

- A. **Impact** - The Arizona conflict of interest law affects ADOT and its officers and employees in the following manner:

PER-6.02 CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES

Effective: March 13, 2009

Transmittal: 2009 - March

Supersedes: PER-6.02 (2/23/2004)

Page 2 of 7

1. A conflict of interest potentially arises whenever a public officer or employee of ADOT has, or whose relative has, a substantial interest in *any contract with, sale to, purchase from, or service provided* to ADOT. When such an interest exists, a public officer or employee shall make known that interest in writing to ADOT, and shall refrain from voting upon or otherwise participating in any manner as an officer or employee regarding such contract, sale, purchase or service.
 2. A conflict of interest also potentially arises whenever a public officer or employee of ADOT has, or whose relative has, a substantial interest in any *decision* of ADOT. When such an interest exists, a public officer or employee shall make known that interest in writing to ADOT, and shall refrain from participating in any manner as an officer or employee in such decision.
 3. Notwithstanding the provisions of section 2.05 A. 1. and 2. above, no public officer or employee of ADOT shall supply to ADOT any equipment, material, supplies, or services, *unless* pursuant to an award or contract let after public competitive bidding.
- B. **Substantial Interest** - To determine whether a substantial interest exists, the public officer or employee must ask the following questions:
1. Will the contract, sale, purchase, service, or decision have an impact, either positive or negative, on an interest of him/herself or a relative?
 2. Is the interest pecuniary or proprietary? (A pecuniary interest involves money; a proprietary interest involves ownership.)
 3. Is the interest other than one statutorily designated as a remote interest? See Section 2.06 C.

If the answer to any of these questions is yes, then a substantial interest exists which requires disclosure and disqualification by the public officer or employee. See Section 2.06 D.

Thus, although the officer or employee may not have a substantial interest in a decision in which he is about to participate, if one of his relatives has a substantial interest in the decision, he /she must disclose the interest and refrain from participating in the decision. See Section 2.06 D. He/she may not justify his/her failure to comply with the conflict of interest laws by stating he/she was unaware of his/her relative's interest. Public officers and employees have an affirmative obligation to become aware of any interests their relatives may have in which they may become involved.

- C. **Remote Interests** - [A.R.S. § 38-502 \(11\)](#), Exhibit 2, excludes from the definition of a substantial interest ten enumerated remote interests, [A.R.S. § 38-502\(10\) \(a to i\)](#). Any interest in a decision or contract not covered by one or more of the enumerated remote interests is a substantial interest requiring compliance with the disclosure and withdrawal requirements of the law.
- D. **Compliance** - The officer or employee must be aware of and identify the circumstances in which an agency's actions might affect the interests of himself or his relatives and avoid any situation in which a conflict of interest exists. Once a determination is made that the interest is a substantial and not a remote interest, disclosure of that interest and withdrawal from participation is mandatory. Even if the public officer or employee believes that he/she can be objective in the matter and that the public interest would not be harmed by his/her participation, he/she must both disclose the conflict and completely withdraw from consideration of the matter in which his/her interests are involved. Disclosure and

PER-6.02 CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES

Effective: March 13, 2009

Transmittal: 2009 - March

Supersedes: PER-6.02 (2/23/2004)

Page 3 of 7

disqualification must occur even if there is little or no likelihood that the officer or employee would participate in the matter.

Arizona's conflict of interest statutes are broadly construed in favor of the public and, substantial civil and criminal penalties are provided for failure to comply with the statutory requirements.

1. **Disclosure of Interest** - [A.R.S. § 38-509](#), requires that all state agencies "maintain for public inspection in a special file, all documents necessary to memorialize" disclosures of potential conflicts of interests. Any public officer or employee who has a conflict of interest in any agency decision or in the award of a contract must disclose that interest in the special conflict of interest file of the public agency, [A.R.S. § 38-503\(A\)\(B\)](#). The officer or employee may either file a signed written disclosure statement fully disclosing the interest or file a copy of the official minutes of the agency which fully discloses the interest, [A.R.S. § 38-502\(3\)](#) and [§ 38-509](#).
2. **What To Do If You May Have A Conflict of Interest: Specific Disclosure and Blanket Disclosure** - Any officer or employee who feels that he/she may have a conflict of interest in a specific matter should immediately disqualify himself from participation in all related activities and decisions and prepare a memorandum, directed to the officer's or employee's supervisor, explaining in detail the conflict of interest and affirming that the officer or employee has disqualified himself. This memorandum will be placed in the conflict of interest file maintained by the agency for public inspection pursuant to [A.R.S. § 38-509](#). The officer or employee should identify the specific matter in which there may be a substantial interest based on whatever knowledge he/she possesses.

Having disclosed the conflict of interest and disqualified himself, the officer or employee must not communicate about the matter with anyone involved in the decision making process in order to avoid the appearance of impropriety.

3. **Rule of Impossibility** - In the unlikely situation that the majority of members of an agency have a conflict of interest and the agency is unable to act in its official capacity, [A.R.S. § 38-508\(B\)](#) provides the members may participate in the agency's decision after making known their conflict of interest in the official records of their public agency.
4. **Representation of Others** - [A.R.S. § 38-504\(A\)](#) states: " No public officer or employee may represent another person for compensation before a public agency by which he is or was employed within the preceding twelve months or on which he serves or served within the preceding twelve months concerning any matters with which such officer or employee was directly concerned and in which he personally participated during his employment or service by a substantial and material exercise of administrative discretion."
5. **Disclosure or Use of Information Declared Confidential by Law** - Current and former public officers and employees are prohibited from disclosing or using, without appropriate authorization, any information designated confidential by statute or rule, acquired by them in the course of their official duties. [A.R.S. § 38-504\(B\)](#).
6. **Disclosure or Use of Information Designated Confidential by Agency Action** - [A.R.S. 38-504\(B\)](#) prohibits a public officer or employee from disclosing or using for profit information acquired in the course of official duty which is designated as confidential, other than by statute or rule, and which he/she obtained from his/her agency as a result of his employment or service with the agency. The prohibition exists during the course of employment and for two years after employment has terminated, unless appropriate authorization from his/her agency has been obtained.

The prohibition includes either the disclosure or use of the information. Thus, even though no personal profit inures to the benefit of the public officer or employee through its use, he still is prohibited from disclosing the information for the statutory period.

7. **Improper Use of Office for Personal Gain** - [A.R.S. § 38-504\(C\)](#) prohibits public officers and employees from using or attempting to use their official position in order to secure valuable benefits for themselves, unless such benefits are part of the compensation they would normally be entitled to for performing their duties.
8. **Receiving Additional Income for services** - [A.R.S. § 38-505\(A\)](#) prohibits a public officer or employee from agreeing to receive or receiving, either directly or indirectly, compensation other than as provided by law for services rendered by him/her in any case, proceeding, application or other matter pending before his/her agency.

E. Sanctions for Violations

1. **Criminal Penalties** - The knowing or intentional violation of any provision of the conflict of interest of law is a class 6 felony, [A.R.S. § 38-510\(A\)\(1\)](#).

The negligent or reckless violation of the law is a class 1 misdemeanor. This means that a public officer or employee may be prosecuted if he fails to disclose a conflict of interest, of which he did not, but should have known, [A.R.S. § 38-510 \(A\)\(2\)](#).

The knowing falsification, concealment, or cover-up of a material fact pursuant to a scheme to defraud in any matter related to the business conducted by a state agency or any political subdivision of the state is a class 5 felony, [A.R.S. § 13-2311](#).

2. **Forfeiture of Public Office** - Upon conviction of a violation of the conflict of interest laws, a public officer or employee forfeits his public office or employment, [A.R.S. § 38-510\(B\)](#).
3. **Contract Cancellation** - Any contract made by the state or any of its departments or agencies is subject to cancellation by the Governor if anyone significantly involved in the contract process on behalf of the state was or is also employed by or acted as consultant to any other party to the contract during the time the contract or extension to the contract is in effect, [A.R.S. § 38-511](#).

2.07 ADOT'S CONFLICT OF INTEREST POLICY

- A. It is ADOT policy to encourage all its officers and employees to become thoroughly familiar with [A.R.S. § 38-502 to § 511](#) and to not violate the intent of these statutes while conducting official business. In addition, ADOT has specifically developed the following policy, based on [A.R.S. § 38-502](#) and [§ 503](#), concerning the business conduct of officers and employees. (For secondary employment rules and procedures, see ADOT Policy and Procedure [PER-6.07](#), Secondary Employment.)
- B. The officers or employees shall not affiliate themselves with public or private organizations or entities so as to raise an expectation that official favors will be granted.
 1. No officer or employee shall accept or solicit, directly or indirectly, anything of economic value which is or may appear to be designed to influence official conduct, particularly from persons seeking to obtain contractual, business or other financial arrangements with the Department or who has interests that might be substantially affected by the performance of the officer's or employee's duty.

PER-6.02 CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES

Effective: March 13, 2009

Transmittal: 2009 - March

Supersedes: PER-6.02 (2/23/2004)

Page 5 of 7

2. Officers or employees should exercise caution when accepting meals, beverages or other refreshments from individuals who are seeking or already conducting official business with the state. The acceptance of beverages or other incidental refreshments should be limited to the infrequent occasions when offered in the ordinary course of a meeting or conference, and when such foods are offered at no charge to all participants.
3. This policy does not restrict an officer or employee from seeking a loan from a financial institution on customary terms and for proper purposes, nor does it prohibit the acceptance of unsolicited promotional materials of nominal value.
4. Since the intention of this policy is to avoid even the appearance of any impropriety, officers or employees are encouraged to report any offer of a gift or gratuity to the immediate supervisor as soon as possible after such an offer is made.

2.08 PROCEDURE FOR REPORTING SUBSTANTIAL INTERESTS OF OFFICERS OR EMPLOYEES AND RELATIVES

- A. Arizona law requires that public officers and employees make known the existence of any substantial interest which they and their relatives have in:
 1. Any contract, sale, purchase, or service to ADOT, and
 2. Any decision to be made by ADOT.
- B. Officers or employees shall submit a memorandum to his/her supervisor with the following information:
 1. The nature of the substantial interest of the officer or employee or relative.
 2. The contract sale, purchase, service or agency decision to which the substantial interest applies.
 3. The name, address and telephone number of the relative.
 4. The name, address and telephone number of the entity or persons involved in the contract, sale purchase, service or decision by ADOT.
 5. A statement that the officer or employee will refrain from participating in any manner in the contract, sale purchase, service or decision by ADOT.
- C. A copy of the memorandum shall be forwarded to the ADOT Human Resources Office to be placed in a special conflict of interest file maintained for public inspection.

2.08 CORRESPONDING POLICIES

- A. [Arizona Administrative Code \(A.A.C.\), Title 2, Chapter 5](#) (the State Personnel Rules).
- B. [A.R.S. § 38-501 through 511](#).
- C. [ADOT Code of Conduct](#).
- D. [ADOT Policy and Procedure PER-6.07](#), Secondary Employment.

R2-5-501. Standards of Conduct

A. General. In addition to statutorily prohibited conduct, including but not limited to A.R.S. § 41-770, a violation of the standards of conduct listed in subsections (B), (C), and (D) is cause for discipline or dismissal of a state service employee.

B. Required conduct. A state service employee shall at all times:;

- 1. Maintain high standards of honesty, integrity, and impartiality, free from personal considerations, favoritism, or partisan demands;*
- 2. Be courteous, considerate, and prompt in dealing with and serving the public and other employees;*
- 3. Conduct himself or herself in a manner that will not bring discredit or embarrassment to the state; and*
- 4. Comply with federal and state laws and rules, and agency policies and directives.*

C. Prohibited conduct. A state service employee shall not:

- 1. Use his or her official position for personal gain, or attempt to use, or use, confidential information for personal advantage;*
- 2. Permit himself or herself to be placed under any kind of personal obligation that could lead a person to expect official favors;*
- 3. Perform an act in a private capacity that may be construed to be an official act;*
- 4. Accept or solicit, directly or indirectly, anything of economic value as a gift, gratuity, favor, entertainment, or loan that is, or may appear to be, designed to influence the employee's official conduct. This provision shall not prohibit acceptance by an employee of food, refreshments, or unsolicited advertising or promotional material of nominal value;*
- 5. Directly or indirectly use or allow the use of state equipment or property of any kind, including equipment and property leased to the state, for other than official activities unless authorized by written agency policy or as otherwise allowed by these rules;*
- 6. Engage in outside employment or other activity that is not compatible with the full and proper discharge of the duties and responsibilities of state employment, or that tends to impair the employee's capacity to perform the employee's duties and responsibilities in an acceptable manner; or*
- 7. Inhibit a state employee from joining or refraining from joining an employee organization.*

D. Employee rights. An employee shall not take disciplinary or punitive action against another employee that impedes or interferes with that employee's exercise of any right granted under the law or these rules. An employee or agency representative who is found to have acted in reprisal toward an employee as a result of the exercise of the employee's rights is subject to discipline, under Title 2, Chapter 5, Article 8. The discipline shall be administered in accordance with state and federal laws affecting employee rights and benefits.

Exhibit 1

PER-6.02 CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES

Effective: March 13, 2009

Transmittal: 2009 - March

Supersedes: PER-6.02 (2/23/2004)

Page 7 of 7

A.R.S. § 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 defined in title 41, chapter 4, article 3, 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.
10. "Remote interest" means:
 - (a) That of a nonsalaried officer of a nonprofit corporation.
 - (b) That of a landlord or tenant of the contracting party.
 - (c) That of an attorney of a contracting party.
 - (d) That of a member of a nonprofit cooperative marketing association.
 - (e) The ownership of less than three per cent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five per cent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five per cent of his total annual income.
 - (f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.
 - (g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.
 - (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 upon the officer, employee or his relative, of any of the following:
 - (i) Another political subdivision.
 - (ii) A public agency of another political subdivision.
 - (iii) A public agency except if it is the same governmental entity.
 - (j) That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.
11. "Substantial interest" means any pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

Exhibit 2