

TOWN OF PARADISE VALLEY CONFLICT OF INTEREST

Applicability

All public officers and employees of incorporated cities and towns are covered by conflict of interest law. This includes the mayor, council members and members of all appointed boards and commissions; the town manager, his appointees and all consultants; and full-time, part-time and contractual employees of the town.

The conflict of interest law is also applicable when the private interests of a public official's or public employee's relative are under consideration. The law defines a relative to be a husband or wife, brother, sister, parent, grandparent, child or grandchild. In addition, the provisions apply to the following in-laws: brothers, sisters, parents as well as the child of a spouse. All other relatives, whether by blood or marriage, are not subject to the restrictions of this law.

Conflict of Interest Defined

The conflict of interest law distinguishes between interests which are "remote" and those which are "substantial".

Remote conflicts are so minor they do not constitute illegal conflicts of interest, and any interest which is not remote, as detailed in State law, is a substantial interest. If you have a remote interest in a matter before the council, board, or commission, then you can vote and participate in the discussion. Here is what the law defines as a remote interest.

Remote interests exist when the public officer or employee or a relative is:

1. A non-salaried officer or member of a non-profit corporation doing business with or requesting money from the town. Thus, being a non-salaried officer or member of a non-profit health agency would not constitute a conflict.
2. The landlord or tenant of a contracting party. For example, a council, board or commission member may lease office space to a party which has a private interest in a public matter without it resulting in a conflict of interest.
3. An attorney of a contracting party.
4. A member of a non-profit cooperative marketing association doing business with the town.
5. The owner of less than three percent of the shares of a corporation doing business with the town, provided that:
 - a. Total annual income from dividends, including the value of stock dividends, does not exceed five percent of the officer's or employee's total annual income;
 - b. Any other payments made to the public officer or employee by the corporation do not exceed five percent of the officer's or employee's total annual income.
6. Being reimbursed for actual and necessary expense incurred in performance of official duties.

7. Receiving municipal services on the same terms and conditions as if not an officer or employee of the municipality. Thus, when a council, board or commission member who owns a business within the town votes for or against an increase in the business license tax, a conflict would not exist because this action would apply to all businesses in the corporate limits.
8. An officer or employee of another political subdivision, a public agency of another political subdivision or any other public agency unless it is the same governmental entity and is voting on a contract or decision which would not confer a direct economic benefit or detriment upon the officer. Thus, a council member who is a school teacher may vote to enter into an intergovernmental agreement with the school district, unless such agreement would confer some direct economic benefit, such as a salary increase, upon the council member.
9. A member of a trade, business, occupation, profession or class of persons consisting of at least ten members and has no greater interest than the other members of that trade, business, occupation, profession or class of persons. For example, a plumber who serves on a city council may vote to increase or decrease plumbing inspection fees since the effect of this decision will be equal on all plumbers within the city.

Substantial interest is defined indirectly in State law as any pecuniary or proprietary interest other than those which are remote. In general, a conflict of interest will most often result when a public officer or employee of the town is involved in substantial ownership or salaried employment with a private corporation doing business with the town. For example, if a council, board or commission member owns or is employed by a lumberyard selling to the town, a conflict may exist. On the other hand, if the council, board or commission member is a lawyer of that lumberyard, or if the council, board or commission member leased land to the lumberyard, no conflict may exist.

A public officer or an employee may sell equipment, material, supplies or services to the municipality in which the officer or employee serves if this is done through an award or contract let after public competitive bidding. An exception to this law allows the town to purchase supplies, materials and equipment from a member of the council, board or commission without going to public competitive bids as long as the single transaction does not exceed three hundred dollars and the annual total of such transaction does not exceed one thousand dollars. The town must adopt a policy governing such purchases and must approve this policy on an annual basis. All transactions above and beyond these limits must take place as a result of public competitive bidding. However, the town public officer or employee would not be able to influence the bidding process in any way and must make known such interest in the official records of the town.

The Attorney General has concluded there is no statutory restriction on a school board member or employee from bidding on property being sold by the district, as long as the board member or employee publicly discloses such interest in the property sale and refrains from participating in any manner in the decision to sell the property.

Additional Provisions

The conflict of interest law also contains the following restrictions on the activities of public officers and employees which should be reviewed with the town attorney.

1. When a public officer or employee has exercised "administrative discretion" in an issue, that officer or employee cannot receive compensation if representing another person before an agency of the town on the same issue. This restriction extends to twelve months after termination of office or employment with the town.

2. A public officer or employee cannot use confidential information obtained during the term of office or employment for personal gain.
3. A public officer or employee of the town cannot receive any compensation for performance of services in any case, special proceedings, application or other matter pending before any agency of the town. This does not apply, however, to activities such as filing or amending tax forms, applying for permits, licenses or other documents.
4. A public officer or employee of the town cannot use his or her position to obtain anything of value which would normally not be received in the performance of official duties. Something is considered to have "value" when it exerts a "substantial and improper" influence on the duties of the public official.

Declaration of a Conflict of Interest

When a substantial conflict exists, the public officer or employee must:

1. Refrain from voting or in any way influencing a decision of the governing body or agency of the town; and,
2. Make this conflict of interest known in the official records of the town. For a member of the council, board or commission, this can be done by declaring at a council, board or commission meeting that a conflict of interest exists and having this declaration officially entered into the minutes. For an employee who faces a conflict of interest situation, the employee should file a letter with the manager or clerk declaring in writing that a conflict exists and refrain from participating in the decision or issue.

Penalty

A public officer or employee who intentionally or knowingly conceals or fails to disclose any substantial interest or engages in any of the activities prohibited by Sections 38-503 through 38-505, Arizona Revised Statutes, is guilty of a class 6 felony, and upon conviction will automatically forfeit office. A class 6 felony carries a penalty of 1 1/2 years imprisonment or a maximum fine of \$150,000. A public officer or employee who negligently or recklessly violates the conflict of interest law by failing to disclose a substantial interest or engaging in the activities prohibited by Section 38-503 through 38-505, A.R.S. is guilty of a class 1 misdemeanor which is punishable by imprisonment for up to six months or a fine of not more than \$2500. Any person affected by a decision of a public agency where a conflict of interest is alleged may bring suit in superior court, and the court may order appropriate reimbursement including attorneys fees to the prevailing party. In addition, any contract made in violation of the law may be voided by action of the town. **When in doubt ask your town attorney!**