

CONFLICTS OF INTEREST

Different parts of the Colorado Statutes speak to conflicts of interest as applied to public officials, and the overlap is not clear. To make things more complicated, some of the statutory provisions are mandatory in nature; others are not. The following is a summary of the mandatory standards as they apply to public officials. It is not intended to be an exhaustive resource on this particular subject matter. Because of the complexity of these laws and the varying interpretation thereof, legal counsel should be consulted when questions do arise.

There are generally two sets of standards to consider here: (1) the Mandatory Rules of Conduct as set forth in CRS §§24-18-109 and 201; and (2) the Requirements of Municipal Officers as set forth in CRS §31-4-404. While they are summarized separately, they need to be considered together.

1. Mandatory Rules of Conduct

The first set of standards is a list of mandatory rules of conduct as set forth in Section 24-18-109. These standards prohibit a public official from performing any act which “directly and substantially affects to its economic benefit a business or other undertaking in which he either has a *substantial financial interest* or is engaged as counsel, consultant, representative or agent.”¹ The statute defines a “financial interest” to include (1) ownership interest in a business; (2) creditor interest in an insolvent business; (3) employment or prospective employment for which negotiations have begun; (4) ownership interest in real or personal property; (5) loan or any other debtor interest; or (6) directorship in a business.²

The standards further require a public official to disclose any *personal or private* interest in any matter proposed or pending before the governing body and withhold from voting thereon. Public officials may be elected or appointed officials of a local government.³ These provisions consequently apply to both the Town Council and the Planning & Zoning Commission.

As the statutes provide, financial interest may arise out of direct or personal relationship to the transaction in question, or “ownership” or “directorship” in a business involved in the transaction. This could include non-profit corporations. Bear in mind that actual economic gain is not a requirement for this conflict to exist ... the mere potential for economic gain could be enough.

The same rules prohibit an official from disclosing or using confidential information acquired in the course of official duties to “further substantially his personal financial interest”; accepting a gift of substantial value or economic benefit if it would “improperly influence” a reasonable person; and engaging in a substantial financial transaction for private business purposes with a person whom the official or employee inspects or supervises in the course of official duties.⁴

With regard to contract situations, § 24-18-201 provides that local government officials shall not have any interest in a contract “made by them in their official capacity or by any body, agency, or board of which they are members ...”. The term “interest” in this regard is not so specifically defined, and there are some exceptions to this particular law that will not be addressed here. It suffices to understand that in general terms, public officials should avoid sitting on both sides of a negotiation table.

2. Rules for Municipal Officials

In addition to the provisions in Title 24 as referenced above, there are similar provisions under Title 31 of the Statutes that apply specifically to municipal officials:

Any member of the governing body of any city or town who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body, shall not vote thereon, and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.⁵

Analysis of the Statutes

While the statutory provisions taken together relate to varying terms of “interest” for purposes of defining the conflict, the overall concept of “interest” appears to be quite broad. As mentioned above, actual money compensation is not always required. Indirect interest, through business or corporate affiliations, may also create a conflict.

On the other hand, there are many instances where conflicts may be perceived, but do not legally exist because of the absence of an actual “interest”, or because the interest is so remote or minimal. On occasion public officials may elect to abstain simply because of such an “appearance” of conflict, which in some instances does not create a problem. Bear in mind, however, that there may be an affirmative duty to vote⁶ and often times a vote will be critical to break a tie or make a quorum. The better advice is to consult with the attorney in advance, and determine whether an actual conflict exists.

In some instances, the statutes provide that official action may be taken, notwithstanding a conflict of interest, based upon written disclosures including (1) the amount of the interest; (2) the purpose and duration of services rendered, if any; (3) compensation received for such services; (4) other information necessary to describe the interest, and (5) if choosing to perform the act, stating on record the fact and summary nature of the interest at the time of performing the act. The writing is to be provided to the Secretary of State. Bear in mind however that the written disclosure requirement only constitutes an affirmative defense to any civil or criminal action or other sanctions ... it is not an absolute bar to legal challenge. Legal counsel should be consulted to assist in this determination, and if written disclosure is necessary, to further assist in the drafting of such documents.

The issue of conflict of interest is inherently complicated and the answers to questions concerning these situations are seldom clear. Accordingly, it is always advisable to simply understand the basics (personal or financial “interest” may mean conflict, which in most cases, means the official should abstain from participating).

In summary,

- **Determination of conflict of interest is rarely black and white. The complexity and interplay of the statutes require careful scrutiny on a case-by-case basis.**
- **As a general rule, officials with personal or financial interests in any matter before the governing body should abstain from discussion and voting, or attempting to influencing voting in such matters;**
- **What constitutes a “substantial financial” interest may be more easily ascertainable, but often times, what constitutes a “personal interest” is much less clear; again, legal consultation in advance of the transaction or hearing is encouraged;**
- **Written disclosures of conflicts of interest may be required, and legal staff can assist in preparing such disclosures. These disclosures are intended to provide some legal protection, but it is rebuttable.**
- **Often times, conflicts are perceived and not necessarily grounded in law. Again, consultation in advance is suggested. Remember, officials in most instances have an affirmative duty to vote.**

¹ CRS §24-18-109(2).

² CRS §24-18-102(4).

³ CRS §24-18-102(5).

⁴ CRS §24-18-109.

⁵ CRS §24-18-109(3)(a); CRS §31-4-404(2).

⁶ See, Ridgway Town Charter, Article II, §4