

**UTAH SPECIAL DISTRICTS ASSOCIATION  
 PROCUREMENT TRAINING WORKSHOP  
 Comparative Analysis of Ethical/Criminal Procurement Activities  
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The difference between ethical, unethical and criminal activities related to procurement activities are defined in three legislative statutes:

1. Title 76 Criminal Code, Chapter 8, offenses Against the Administration of Government.
2. Title 67, chapter 16, Utah Public Officers' & Employees' Ethics Act.
3. Title 63G, Chapter 6a, Part we, Unlawful Conduct and Penalties.

<b>Procurement Code</b>	<b>Ethics Act</b>	<b>Criminal Code</b>
<b>Prohibited Activities</b>	<b>Prohibited Activities</b>	<b>Prohibited Activities</b>
To offer or receive a gratuity, to give or receive a kickback, or to obtain personal benefit by use of position or inside information. 63G-6a-2304.5. To avoid procurement process by dividing purchase. 63G-6a-2305.	Improper use of inside information, use of position to secure personal benefit, and accepting a job that would impair judgment. 67-16-4. Accepting a Gift/gratuity. 67-16-5. Requiring a donation for approval. 67-16-5.3. Offering a donation for approval. 67-16-5.6. Receiving compensation for approval. 67-16-6. Failure to disclose substantial interest. 67-16-7. Participation in transaction with business ownership. 67-16-8. Conflicts of interest prohibited. 76-16-9. Inducing others to violate the Ethics Act. 67-16-10	Bribe or bribery. 76-8-103. Threats to Influence. 76-8-104. Receiving or soliciting a bribe. 76-8-105. Failure to disclose conflict of interest. 76-8-105. Failure to disclose conflict of interest. 76-8-109. Official misconduct unauthorized act. 76-8-201. Official misconduct/ Inside information. 76-8-202. Unofficial misconduct. 76-8-203. Misusing public money. 76-8-402. Failure to keep or pay over public money. 76-8-403. Making a profit or misusing public money. 76-8-404
<b>Penalties</b>	<b>Penalties</b>	<b>Penalties</b>
For violations of 2304.5 & 2305: 2 <sup>nd</sup> degree felony if greater \$1000; 3 <sup>rd</sup> degree felony (\$250 – \$1000); Class A misdemeanor (\$100 - \$250); Class B misdemeanor (less \$100). 63G-6a-2304.5 & 2305.	For all violations, except 6 & 7: 2 <sup>nd</sup> degree felony if greater \$1,000; 3 <sup>rd</sup> degree felony (\$250 - \$1,000); 3 <sup>rd</sup> degree felony after two prior convictions of Class A or Class B convictions; Class A misdemeanor (\$100 - \$250); Class B misdemeanor (less \$100). 67-16-12.	2 <sup>nd</sup> degree felony if violation amount is greater than \$1000 for sections 103, 105, and 402 & 404 if the value of money used is greater than \$5000; 3 <sup>rd</sup> degree felony if violation amount is less than \$1000 for sections 103, 105, and 402 if the value of money used is less than \$5000, and section 403; Class A misdemeanor for violations of sections 104, & 202; Class B misdemeanor for violations of sections 201, & 203.
<b>Additional Penalties</b>	<b>Additional Penalties</b>	<b>Additional Penalties</b>
Violations also require:	Violations also require:	No additional penalties.

I. dismissal of employment and removal from office. 63G-6a-2306. ii. Contract obtained by violation is void and unenforceable. 63G-6a-2307.	i. Dismissal of employment and removal from office. 67-16-12. ii. Rescind contract as void. 67-16-14.	
<b>Exceptions</b>	<b>Exceptions</b>	<b>Exceptions</b>
Gratuities: i. Hospitality gifts of \$10 or less with an annual limit of \$50. ii. Contribution to public entity not given with intent to induce person to make a procurement decision. iii. The receipt of the contribution was not accepted in exchange for a favorable procurement decision. iv. The gift prohibition is restricted to "procurement participants." (Items ii, iii, & iv were added this year as additional exemptions.)	Gratuities: i. Does not apply to an occasional nonpecuniary gift having a value not in excess of \$50. There is no annual limit. 67-16-5(3). ii. Donations to the agency that are required by rule, mutually agreed to, or are voluntarily made, or as a condition of a consent decree. 67-16-5.3(2) and 67-16-5.5(2). iii. The value of the ownership interest requiring disclosure is less than \$2000. 67-16-7(3).	No exceptions are noted; however, the potential for prosecution is limited practicably by the amount or value of the crime. Additionally, criminal prosecution requires proof of intent as well as the actual violation.
<b>Applies to:</b>	<b>Applies to:</b>	<b>Applies to:</b>
State government, see exemptions in 63G-6a-2308.	All government (state and broad local governments) employees and officers whether in procurement or not. Also applies to those who deal unlawful with government employees and officers.	All government (state and broad local governments) employees and officers whether in procurement or not. Also applies to those who deal unlawful with government employees and officers.
<b>Enforcement</b>	<b>Enforcement</b>	<b>Enforcement</b>
Dismissal from office is an administrative action required if conviction is obtained. AG is required to prosecute criminal action. Agency would most likely be the complaining witness.	Dismissal from office is an administrative action required if conviction is obtained. AG is required to prosecute criminal action. Agency would most likely be the complaining witness.	Prosecution is governmental requirement, most likely county attorney or maybe AG.