

TITLE 76, UTAH CRIMINAL CODE
CHAPTER 8, OFFENSES AGAINST THE ADMINISTRATION OF GOVERNMENT
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The Criminal Code, Chapter 8, Offenses Against the Administration of Government identifies activities that have been determined to be crimes. The criminal code chapter, for offenses against Government Administration, has been on the books for a long time. These types of activities offend even students in kindergarten. Identified in this chapter of the criminal code are about 120 different types of prohibited activities. Some are related to procurement issues, others have to deal with the broad spectrum of Government activities. The following selected provisions are issues that public water suppliers will have to interface with in the administration of their specific statutory authorizations. For a complete list, refer to the criminal code cited above. This list does not purport to identify all of the offenses identified in Chapter 8.

76-8-101. Definitions.

For the purposes of this chapter:

(1) "Candidate for electoral office" means a person who has filed as a candidate for office under the laws of the state.

(2) "Party official" means any person holding any post in a political party whether by election, appointment, or otherwise.

(3) "Peace officer" means any employee of a police or law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose duties consist primarily of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(4) (a) "Pecuniary benefit" means any advantage in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain.

(b) "Pecuniary benefit" does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

(5) (a) "Public servant" means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, and persons otherwise performing a governmental function.

(b) A person is considered a public servant upon his election, appointment, or other designation as such, although he may not yet officially occupy that position.

76-8-103. Bribery or offering a bribe.

(1) A person is guilty of bribery or offering a bribe if that person promises, offers, or agrees to give or gives, directly or indirectly, any benefit to another with the purpose or intent to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion of a public servant, party official, or voter.

(2) It is not a defense to a prosecution under this statute that:

(a) the person sought to be influenced was not qualified to act in the desired way, whether because the person had not assumed office, lacked jurisdiction, or for any other reason;

(b) the person sought to be influenced did not act in the desired way; or

- (c) the benefit is not conferred, solicited, or accepted until after:
 - (i) the action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, has occurred; or
 - (ii) the public servant ceases to be a public servant.
- (3) Bribery or offering a bribe is:
 - (a) a third degree felony when the value of the benefit asked for, solicited, accepted, or conferred is less than \$1,000; and
 - (b) a second degree felony when the value of the benefit asked for, solicited, accepted, or conferred is \$1,000 or more.

76-8-104. Threats to influence official or political action. (See also 76-8-301.)

(1) A person is guilty of a class A misdemeanor if he threatens any harm to a public servant, party official, or voter with a purpose of influencing his action, decision, opinion, recommendation, nomination, vote, or other exercise of discretion.

(2) As used in this section:

- (a) "Harm" means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the public servant, party official, or voter is interested.
- (b) "Public servant" does not include jurors.

76-8-105. Receiving or soliciting bribe or bribery by public servant. (This is the primary criminal provision cited in the new procurement code in Section 63G-6a-2304.5.)

(1) A person is guilty of receiving or soliciting a bribe if that person asks for, solicits, accepts, or receives, directly or indirectly, any benefit with the understanding or agreement that the purpose or intent is to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, of a public servant, party official, or voter.

(2) It is not a defense to a prosecution under this statute that:

- (a) the person sought to be influenced was not qualified to act in the desired way, whether because the person had not assumed office, lacked jurisdiction, or for any other reason;
- (b) the person sought to be influenced did not act in the desired way; or
- (c) the benefit is not asked for, conferred, solicited, or accepted until after:
 - (i) the action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, has occurred; or
 - (ii) the public servant ceases to be a public servant.
- (3) Receiving or soliciting a bribe is:
 - (a) a third degree felony when the value of the benefit asked for, solicited, accepted, or conferred is \$1,000 or less; and
 - (b) a second degree felony when the value of the benefit asked for, solicited, accepted, or conferred exceeds \$1,000.

76-8-106. Receiving bribe or bribery for endorsement of person as public servant.

A person is guilty of a class B misdemeanor if:

- (1) He solicits, accepts, agrees to accept for himself, another person, or a political party, money or any other pecuniary benefit as compensation for his endorsement, nomination,

appointment, approval, or disapproval of any person for a position as a public servant or for the advancement of any public servant; or

(2) He knowingly gives, offers, or promises any pecuniary benefit prohibited by paragraph (1).

76-8-109. Failure to disclose conflict of interest.

(1) As used in this section:

(a) "Conflict of interest" means an action that is taken by a regulated officeholder that the officeholder reasonably believes may cause direct financial benefit or detriment to the officeholder, a member of the officeholder's immediate family, or an entity that the officeholder is required to disclose under the provisions of this section, and that benefit or detriment is distinguishable from the effects of that action on the public or on the officeholder's profession, occupation, or association generally.

(b) "Entity" means a corporation, a partnership, a limited liability company, a limited partnership, a sole proprietorship, an association, a cooperative, a trust, an organization, a joint venture, a governmental entity, an unincorporated organization, or any other legal entity, whether established primarily for the purpose of gain or economic profit or not.

(c) "Filer" means the individual filing a financial declaration under this section.

(d) "Immediate family" means the regulated officeholder's spouse and children living in the officeholder's immediate household.

(e) "Income" means earnings, compensation, or any other payment made to an individual for gain, regardless of source, whether denominated as wages, salary, commission, pay, bonus, severance pay, incentive pay, contract payment, interest, per diem, expenses, reimbursement, dividends, or otherwise.

(f) "Regulated officeholder" means an individual that is required to file a financial disclosure under the provisions and requirements of this section.

(g) "State constitutional officer" means the governor, the lieutenant governor, the state auditor, the state treasurer, or the attorney general.

(2) (a) Before or during the execution of any order, settlement, declaration, contract, or any other official act of office in which a state constitutional officer has actual knowledge that the officer has a conflict of interest which is not stated on the financial disclosure form required under Subsection (4), the officer shall publicly declare that the officer may have a conflict of interest and what that conflict of interest is.

(b) Before or during any vote on legislation or any legislative matter in which a legislator has actual knowledge that the legislator has a conflict of interest which is not stated on the financial disclosure form required under Subsection (4), the legislator shall orally declare to the committee or body before which the matter is pending that the legislator may have a conflict of interest and what that conflict is.

(c) Before or during any vote on any rule, resolution, order, or any other board matter in which a member of the State Board of Education has actual knowledge that the member has a conflict of interest which is not stated on the financial disclosure form required under Subsection (4), the member shall orally declare to the board that the member may have a conflict of interest and what that conflict of interest is.

(3) Any public declaration of a conflict of interest that is made under Subsection (2) shall be noted:

(a) on the official record of the action taken, for a state constitutional officer;

(b) in the minutes of the committee meeting or in the Senate or House Journal, as applicable, for a legislator; or

(c) in the minutes of the meeting or on the official record of the action taken, for a member of the State Board of Education.

(4) (a) The following individuals shall file a financial disclosure form:

(i) a state constitutional officer, to be due on the tenth day of January of each year, or the following business day if the due date falls on a weekend or holiday;

(ii) a legislator, at the following times:

(A) on the first day of each general session of the Legislature; and

(B) each time the legislator changes employment;

(iii) a member of the State Board of Education, at the following times:

(A) on the tenth day of January of each year, or the following business day if the due date falls on a weekend or holiday; and

(B) each time the member changes employment.

(b) The financial disclosure form shall include:

(i) the filer's name;

(ii) the name and address of the filer's primary employer;

(iii) a brief description of the filer's employment, including the filer's occupation and, as applicable, job title;

(iv) for each entity in which the filer is an owner or an officer:

(A) the name of the entity;

(B) a brief description of the type of business or activity conducted by the entity; and

(C) the filer's position in the entity;

(v) for each entity that has paid \$5,000 or more in income to the filer within the one-year period ending immediately before the date of the disclosure form:

(A) the name of the entity; and

(B) a brief description of the type of business or activity conducted by the entity;

(vi) for each entity in which the filer holds any stocks or bonds having a fair market value of \$5,000 or more as of the date of the disclosure form, but excluding funds that are managed by a third party, including blind trusts, managed investment accounts, and mutual funds:

(A) the name of the entity; and

(B) a brief description of the type of business or activity conducted by the entity;

(vii) for each entity not listed in Subsections (4)(b)(iv) through (4)(b)(vi), in which the filer serves on the board of directors or in any other type of formal advisory capacity:

(A) the name of the entity or organization;

(B) a brief description of the type of business or activity conducted by the entity; and

(C) the type of advisory position held by the filer;

(viii) at the option of the filer, any real property in which the filer holds an ownership or other financial interest that the filer believes may constitute a conflict of interest, including:

(A) a description of the real property; and

(B) a description of the type of interest held by the filer in the property;

(ix) the name of the filer's spouse and any other adult residing in the filer's household that is not related by blood or marriage, as applicable;

(x) a brief description of the employment and occupation of the filer's spouse and any other adult residing in the filer's household that is not related by blood or marriage, as applicable;

- (xi) at the option of the filer, a description of any other matter or interest that the filer believes may constitute a conflict of interest;
 - (xii) the date the form was completed;
 - (xiii) a statement that the filer believes that the form is true and accurate to the best of the filer's knowledge; and
 - (xiv) the signature of the filer.
- (c) (i) The financial disclosure shall be filed with:
- (A) the secretary of the Senate, for a legislator that is a senator;
 - (B) the chief clerk of the House of Representatives, for a legislator that is a representative; or
 - (C) the lieutenant governor, for all other regulated officeholders.
- (ii) The lieutenant governor, the secretary of the Senate, and the chief clerk of the House of Representatives shall ensure that blank financial disclosure forms are available on the Internet and at their offices.
- (d) Financial disclosure forms that are filed under the procedures and requirements of this section shall be made available to the public:
- (i) on the Internet; and
 - (ii) at the office where the form was filed.
- (e) This section's requirement to disclose a conflict of interest does not prohibit a regulated officeholder from voting or acting on any matter.
- (5) A regulated officeholder who violates the requirements of Subsection (2) is guilty of a class B misdemeanor.

76-8-201. Official misconduct -- Unauthorized acts or failure of duty.

A public servant is guilty of a class B misdemeanor if, with intent to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

76-8-202. Official misconduct -- Unlawful acts based on "inside" information.

A public servant is guilty of a class A misdemeanor if, knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:

- (1) acquires or divests himself of a pecuniary interest in any property, transaction, or enterprise which may be affected by such action or information;
- (2) speculates or wagers on the basis of such action or information; or
- (3) knowingly aids another to do any of the foregoing.

76-8-203. Unofficial misconduct.

(1) A person is guilty of unofficial misconduct if the person exercises or attempts to exercise any of the functions of a public office when the person:

- (a) has not taken and filed the required oath of office;
- (b) has failed to execute and file a required bond;
- (c) has not been elected or appointed to office;

(d) exercises any of the functions of his office after his term has expired and the successor has been elected or appointed and has qualified, or after his office has been legally removed; or

(e) knowingly withholds or retains from his successor in office or other person entitled to the official seal or any records, papers, documents, or other writings appertaining or belonging to his office or mutilates or destroys or takes away the same.

(2) Unofficial misconduct is a class B misdemeanor

76-8-301. Interference with public servant. (See also 76-8-104.)

(1) A person is guilty of interference with a public servant if he:

(a) uses force, violence, intimidation, or engages in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function; or

(b) knowingly or intentionally interferes with the lawful service of process by a public servant.

(2) Interference with a public servant is a class B misdemeanor.

(3) For purposes of this section, "public servant" does not include jurors.

76-8-308. Acceptance of bribe or bribery to prevent criminal prosecution -- Defense.

(1) A person is guilty of a class A misdemeanor if he:

(a) solicits, accepts, or agrees to accept any benefit as consideration for his refraining from initiating or aiding in a criminal prosecution; or

(b) confers, offers, or agrees to confer any benefit upon another as consideration for the person refraining from initiating or aiding in a criminal prosecution.

(2) It is an affirmative defense that the value of the benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for the loss caused or to be caused by the offense.

76-8-401. "Public funds," "public money," and "public officer" defined.

As used in this title:

(1) "Public funds" or "public money" means funds, money, and accounts, regardless of the source from which they are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body. "Public money" also includes money, funds, or accounts that have been transferred by any of those public entities to a private contract provider of programs or services. The money, funds, or accounts maintain the nature of public money while in the possession of the private entity that has contracted with a public entity to provide programs or services.

(2) "Public officer" means:

(a) all elected officials of the state, a political subdivision of the state, a county, town, city, precinct, or district;

(b) a person appointed to or serving an unexpired term of an elected office;

(c) a judge of a court of record and not of record including justice court judges; and

(d) a member of the Board of Pardons and Parole.

76-8-402. Misusing public money.

(1) Every public officer of this state or a political subdivision, or of any county, city, town, precinct, or district of this state, and every other person charged, either by law or under contract, with the receipt, safekeeping, transfer, disbursement, or use of public money commits an offense if the officer or other charged person:

- (a) appropriates the money or any portion of it to his own use or benefit or to the use or benefit of another without authority of law;
- (b) loans or transfers the money or any portion of it without authority of law;
- (c) fails to keep the money in his possession until disbursed or paid out by authority of law;
- (d) unlawfully deposits the money or any portion in any bank or with any other person;
- (e) knowingly keeps any false account or makes any false entry or erasure in any account of or relating to the money;
- (f) fraudulently alters, falsifies, conceals, destroys, or obliterates any such account;
- (g) willfully refuses or omits to pay over, on demand, any public money in his hands, upon the presentation of a draft, order, or warrant drawn upon such money by competent authority;
- (h) willfully omits to transfer the money when the transfer is required by law; or
- (i) willfully omits or refuses to pay over, to any officer or person authorized by law to receive it, any money received by him under any duty imposed by law so to pay over the same.

(2) A violation of Subsection (1) is a felony of the third degree, except it is a felony of the second degree if:

- (a) the value of the money exceeds \$5,000;
- (b) the amount of the false account exceeds \$5,000;
- (c) the amount falsely entered exceeds \$5,000;
- (d) the amount that is the difference between the original amount and the fraudulently altered amount exceeds \$5,000; or
- (e) the amount falsely erased, fraudulently concealed, destroyed, obliterated, or falsified in the account exceeds \$5,000.

(3) In addition to the penalty described in Subsection (2), a public officer who violates Subsection (1) is subject to the penalties described in Section **76-8-404**.

76-8-403. Failure to keep and pay over public money.

Every person who receives, safekeeps, transfers, or disburses public money who neglects or fails to keep and pay over the money in the manner prescribed by law is guilty of a felony of the third degree.

76-8-404. Making profit from or misusing public money -- Disqualification from office -- Criminal penalty.

A public officer, regardless of whether or not the officer receives, safekeeps, transfers, disburses, or has a fiduciary relationship with public money, who makes a profit from or out of public money, or who uses public money in a manner or for a purpose not authorized by law, is guilty of a felony as provided in Section **76-8-402** and shall, in addition to the punishment provided by law, be disqualified to hold public office.

76-8-412. Stealing, destroying or mutilating public records by custodian.

Every officer having the custody of any record, map, or book, or of any paper or proceedings of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering, falsifying, removing, or secreting the whole or any part thereof, or who permits any other person so to do, is guilty of a felony of the third degree.

76-8-413. Stealing, destroying or mutilating public records by one not custodian.

Every person, not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section is guilty of a class A misdemeanor.

76-8-414. Recording false or forged instruments.

Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed or registered or recorded under any law of this state or of the United States, is guilty of a felony of the third degree.

76-8-502. False or inconsistent material statements.

A person is guilty of a felony of the second degree if in any official proceeding:

- (1) He makes a false material statement under oath or affirmation or swears or affirms the truth of a material statement previously made and he does not believe the statement to be true; or
- (2) He makes inconsistent material statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true.

76-8-503. False or inconsistent statements.

A person is guilty of a class B misdemeanor if:

- (1) (a) he makes a false statement under oath or affirmation or swears or affirms the truth of the statement previously made and he does not believe the statement to be true if:
 - (i) the falsification occurs in an official proceeding, or is made with a purpose to mislead a public servant in performing his official functions; or
 - (ii) the statement is one which is authorized by law to be sworn or affirmed before a notary or other person authorized to administer oaths; or
 - (b) he makes inconsistent statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true.
- (2) A person is not guilty under this section if the falsification is retracted before it becomes manifest that the falsification was or would be exposed.