



Ethics Guide for Legislators



Produced by the
Wyoming Legislative Service Office





Background

In 1998, the Wyoming Legislature passed the Ethics and Disclosure Act, W.S. 9-13-101 through 9-13-109. (1998 Wyo. Session Laws, Chapter 116). The Ethics and Disclosure Act basically prohibits a legislator from receiving any gift which was given as a result of the legislator's holding office.

The Legislature amended the Ethics Act in the 1999 Wyo. Session Laws, Chapter 140. All the amendments to the act pertained to the exceptions to the definition of "gift." Also, an important amendment to the act involved deleting the reference to the criminal bribery statute (W.S. 6-5-101 et seq.). Previously, the act excluded from the definition of "gift" anything excluded from the definition of "pecuniary benefit" under the criminal bribery law. That reference was deleted. The current exceptions to the definition of "gift", as amended by the 1999 Legislature, are set forth in Question 1 on the next page. In 2005, the Legislature amended the definition of "local office" to include a member of a joint powers board or special district so that they are now subject to the act.

It is important to note that the Ethics Act is different from the Lobbyist Disclosure Act which was also passed in 1998 (1998 Wyo. Session Laws, Chapter 112). The Lobbyist Disclosure Act is mainly a reporting requirement placed upon lobbyists. Essentially any registered lobbyist must file an annual report with the Secretary of State containing a listing of the lobbyist's sources of funding and each "loan gift, gratuity, special discount or hospitality paid or given to or on behalf of any legislator, state elected official or state employee which exceeds \$50 in value." W.S. 28-7-201(d). The report must also contain a listing of special events sponsored by the lobbyist to which legislators are invited. However, if the total expenditures by the lobbyist required to be reported under the act do not exceed \$500, no report is required. The Secretary of State is charged with administering the act and has promulgated rules and regulations under the act.



Ethics and Disclosure Act Questions and Answers

The answers in this brochure are intended to guide legislators through some of the common questions which may arise under the Ethics and Disclosure Act. The Legislative Service Office (LSO) will attempt to provide further guidance to legislators when questions arise in these matters, but the advice is not legally binding. Any official interpretation of Wyoming law must come from the Attorney General's Office. The LSO has consulted with the Attorney General's Office regarding the issues contained in this brochure. While the Attorney General's Office agrees generally with the guidance contained in the brochure, the Office cautions that individual situations may warrant a closer review.

A brief analysis of the process of determining whether the act prohibits the acceptance of something is as follows:

- **Is the item a “gift”?**
- **If so, does the item fit into any one of the exceptions to a gift under the act?**
- **If not, and the item is a gift, am I being given the gift because of my status as a legislator?**
- **If so, I am probably prohibited from receiving the item**

On the next page are a few common questions and answers about the Ethics Act:

Question 1: Am I allowed to accept a gift in my capacity as a legislator?

Answer: The “crux” of the Ethics and Disclosure Act, W.S. 9-13-101 through 9-13-109, is found in W.S. 9-13-103(a) which states: “No public official...shall use his office or position for his private benefit.” The statute goes on to define “private benefit” as the receipt of a gift “which resulted from his holding that office”. “Gift” is defined in W.S. 9-13-102(a)(vi) as “anything of value to the extent that consideration of equal or greater value is not received”. “Anything of value” is defined by W.S. 9-13-102(a)(i) to include almost anything which is “pecuniary or compensatory in value to a person.”

The first question to ask is whether the thing being offered is in fact a “gift”. If nothing is being given in consideration for the gift, then the receipt of the gift is probably prohibited by the act, unless an exception to the definition of gift applies.

Exceptions to the definition of “gift” are listed in W.S. 9-13-102(a)(vi) and include:

- printed information
- a gift which is not used and returned within 30 days
- a gift which is donated to charity (so long as the recipient does not claim a deduction on his income tax)
- a gift or inheritance from the legislator’s family, a personal friend, or from someone based upon a social or private business relationship
- a gift of nominal value given in recognition of a special occasion such as marriage, illness or retirement
- a certificate, token or item, or plaque with a value of \$250 or less
- compensation, per diem or other payments to which the legislator is entitled under law for the performance of services
- food and beverage

- any loan, gift, gratuity, special discount or hospitality with a value of \$250 or less
- travel, registration and lodging for any conference or meeting while attending in official capacity as a legislator.

The next question to ask is whether the gift is being given as a result of the legislator's holding office. Nothing in the act prohibits general gift-giving as a result of personal or social or private business relationships. But if the gift is given on the basis of the legislator's holding office, then the above analysis should be considered. And if the gift does not fall within one of the exceptions to the definition, then the gift should not be accepted.

No mention is made in the act as to who bears the responsibility of keeping track of the value of property given. The act imposes a penalty upon "any person" who violates the act. W.S. 9-13-109. Further, violation of the act constitutes sufficient cause for removal from office. Therefore, it would seem prudent for a legislator to keep track of any property given and by whom, even though the donor may be required under other provisions such as the Lobbyist Disclosure Act to report the donation and its value.

Question 2: Am I allowed to accept the following examples of gifts under the act in my capacity as a legislator?

• A cup of coffee, lunch or a meal?

Answer: Yes. The act specifically excludes food and beverage from the definition of "gift". W.S. 9-13-102(a)(vi)(E).

• Entertainment, recreation, tickets to a sporting event, play or show?

Answer: So long as the entertainment, recreation, tickets, etc. are less than \$250 in value since the act excludes from the definition of "gift" any

“loan, gift, gratuity, special discount or hospitality with a value of \$250 or less”. W.S. 9-13-102(a)(vi)(H).

• Travel, registration and lodging for a conference or meeting in my capacity as a legislator?

Answer: Yes. Travel, registration and lodging are specifically exempted from the definition of “gift”. W.S. 9-13-102(a)(vi)(J).

Question 3: Can I advocate for a member of my family to be appointed to a state board or commission, or hired for a public position?

Answer: No. W.S. 9-13-104(a) states in part that “No public official... shall advocate or cause the employment, appointment, promotion, transfer or advancement of a family member to an office or position of the state, a county, municipality or a school district.” The statute prohibits this activity.

Question 4: Is an elected official’s family member prohibited from working in the office of the elected official?

Answer: Yes, the act prohibits a public official from supervising or managing a family member who is in an office or position of the state, county, municipality or school district. The Attorney General has determined that the provision prohibits a family member from working in an office which is supervised by an elected official. Attorney General Opinion No. 2005-001.

Question 5: Can I use my calling card issued by the state to make personal calls?

Answer : No. W.S. 9-13-105 prohibits a public official from using public funds, time, personnel, facilities, or equipment for his private benefit or that of another unless the use is authorized by law. Long-standing Management Council policy has dictated that the phone card be only

used for official legislative business. If the card is used for a personal call, the legislator is asked to note the call and reimburse the State for the cost of the call when the bill is received.

Question 6: How do I determine whether I have a personal or private interest in a matter which prohibits me from voting on the matter?

Answer: The act prohibits a public official from making an official decision or vote on an official decision if the official has a personal or private interest in the matter. The act defines personal or private interest as an interest which is direct and immediate as opposed to speculative and remote, and is an interest that provides the official a greater benefit or a lesser detriment than it does for a large or substantial group or class of persons who are similarly situated. The statute also states that in determining whether the legislator has a personal or private interest in a matter, the legislator shall recognize the importance of his right to represent his constituency and shall abstain from voting only in clear cases of a personal or private interest.

In the case of an issue which affects many persons including the legislator such as a driver's license issue, or a sales tax issue, the legislator should not have a conflict since the legislator is in a large class of persons similarly situated and will be affected by the law in the same manner as the large class of driver's license-holders or sales taxpayers.

Question 7: As a lessee of state lands, can I vote on issues affecting state lands?

Answer: In the case of a legislator who is a lessee of state lands, the analysis is the same as outlined above. Since state land lessees are a large class of persons similarly situated under the act, it would seem that a legislator may vote on an issue regarding public lands even if the legislator is a lessee of state lands since the vote or decision would in all likelihood affect all state land lessees the same. An Attorney General Opinion has reached the same conclusion: "Legislators holding [state

land] leases are members of a defined group, grazing or agricultural leaseholders, and they incur no greater benefit and suffer no greater detriment than other members of the group.” Attorney General Opinion No. 97-004.

This appears to be in compliance with House Rule 17-3(d) which excludes from the definition of “personal or private interest” a financial gain or loss received or incurred by a member if the gain or loss shall also be received or incurred by a substantial class of persons.

Question 8: If I am employed by a public school district may I vote on matters affecting public education?

Answer: The above analysis is also relevant here. Since the class of persons affected by any legislation relevant to public education is a large one, any impact upon the legislator should not be any different than the impact upon the entire class of persons. The Attorney General has also found it permissible for a legislator employed by a public school district to participate in legislation affecting the funding of the public education system. Attorney General Opinion No. 97-004.

Question 9: If I do have a conflict with potential legislation, should I abstain from participating in the legislation?

Answer: The act prohibits a legislator from making “an official decision or vote on an official decision” if the legislator has a personal or private interest in the matter. W.S. 9-13-106(a). The act does not prohibit the legislator from any and all participation, but does prohibit an official decision or vote thereon. So a legislator could still provide factual information to the decision-making body such as a legislative committee assigned to consider the potential legislation. However, the legislator should abstain from any vote affecting the potential legislation to avoid the appearance of impropriety.

Question 10: In regards to the financial disclosure form I am required to file each year, do I have to list specific dollar amounts?

Answer: No. W.S. 9-13-108 requires the state's five elected officials and each member of the legislature to file a financial disclosure statement each year. The form is to be filed by January 31 annually and must include a list of all offices, directorships and salaried employment held by the official and a list describing the sources of, but not the amount of, the member's income. So it is clear that only the sources of income, not the amounts, must be filed.



Wyoming Ethics and Disclosure Act Statutes

9-13-101. Short title.

This article shall be known and may be cited as the Ethics and Disclosure Act.

9-13-102. Definitions.

(a) As used in this article:

(i) “Anything of value” means:

(A) A pecuniary item, including money or a bank bill or note;

(B) A promissory note, bill of exchange, order, draft, warrant, check or bond given for the payment of money;

(C) A contract, agreement, promise or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money;

(D) A stock, bond, note or other investment interest in an entity;

(E) A right in action;

(F) A gift, tangible good, chattel or an interest in a gift, tangible good or chattel;

(G) A work of art, antique or collectible;

(H) An automobile or other means of personal transportation;

(J) Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest or other beneficial interest in realty;

(K) An honorarium or compensation for services arising out of the person's service as a public official, public member or public employee;

(M) The sale or trade of anything of value:

(I) For reasonable consideration that would ordinarily not be available to a member of the public; or

(II) With a rebate or at a discount in its price, unless the rebate or discount is made in the ordinary course of business to a member of the public, or any group or category thereof, but without regard to that person's status as a public official, public member or public employee.

(N) A promise or offer of employment;

(O) Any other thing of value that is pecuniary or compensatory in value to a person.

(ii) "Anything of value" does not mean a campaign contribution properly received and reported, if reportable, as required under the Wyoming Election Code;

(iii) "Compensation" includes:

(A) An advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value; or

(B) A contract, agreement, promise or other obligation

for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value, for services rendered or to be rendered.

(iv) “Compensation” does not include:

(A) Reimbursement of expenses if the reimbursement does not exceed the amount actually expended for the expenses, and if the reimbursement is substantiated by an itemization of expenses; or

(B) Per diem payments or mileage allowances paid by the employing government entity in accordance with applicable law.

(v) “Family member” means an individual:

(A) Who is the spouse, parent, sibling, child, grandparent or grandchild; or

(B) Is a member of the individual’s household.

(vi) “Gift” means anything of value to the extent that consideration of equal or greater value is not received, but excludes the following:

(A) Printed informational, educational or promotional material;

(B) A gift that:

(I) Is not used; and

(II) No later than thirty (30) days after receipt, is returned to the donor or delivered to a charitable organization and is not claimed as a charitable contribution for federal income tax purposes.

(C) A gift, devise or inheritance from any of the following, if the donor is not acting as the agent or intermediary for someone other than a person covered by this subparagraph:

(I) An individual's spouse;

(II) An individual's child, parent, grandparent, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin;

(III) The spouse of any individual listed in subdivision (II) of this subparagraph;

(IV) Any person, including an organization, which has a bona fide social or private business relationship with the individual, where the circumstances demonstrate that the motivation for the gift arises out of that relationship and not from the recipient's holding of public office or employment. For the purposes of this subdivision, relevant circumstances include but are not limited to the source of funds used by the donor to acquire the gift;

(V) Any person, including an organization, where the gift does result from the person's holding an office or position, but where the gift is of nominal value, is made voluntarily by the donor and is made in recognition of a special occasion, such as marriage, illness or retirement.

(D) A certificate, commemorative token or item, or plaque with a value that does not exceed two hundred fifty dollars (\$250.00);

(E) Food and beverage;

(F) Compensation, per diem or other payments or benefits which the public official, public member or public employee receives in the performance of services for the governmental entity;

(G) Repealed by Laws 1999, ch. 140, sec. 2;

(H) Any loan, gift, gratuity, special discount or hospitality with a value of two hundred fifty dollars (\$250.00) or less; or

(J) Travel, registration and lodging for any conference or meeting while attending in his official capacity as a public official, public member or public employee.

(vii) “Local office” means the offices of county commissioner, county treasurer, county assessor, county clerk, county sheriff, county coroner, district attorney, county attorney, mayor and member of the council of a municipality and member of the board of trustees of a community college district or a school district; and member of a joint powers board or special district. As used in this paragraph “special district” means any special district specified under W.S. 22-29-103(a) and any other corporate district authorized to be formed as a political subdivision under the laws of this state;

(viii) “Negotiating” or “negotiate for employment” means a communication, directly or indirectly, with a prospective employer to discuss rendering services for compensation to that prospective employer;

(ix) “Negotiation for employment” means the period that begins with a communication to a prospective employer to discuss rendering services for compensation to the prospective employer;

(x) “Official responsibility or official capacity” means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct government action;

(xi) “Participation” includes decision, approval, disapproval or vote;

(xii) “Public employee” means any of the following state employees:

(A) The attorney general and the director of any department of the executive branch appointed by the governor under W.S. 9-2-1706, or the director of any legislative agency;

(B) The chief executive officer of any separate operating agency under W.S. 9-2-1704(d), except those listed in paragraphs (d)(vi) and (x) of that section;

(C) To the extent the incumbent in the position serves at the pleasure of persons listed in subparagraphs (A) and (B) of this section, administrators of department or agency divisions, and deputy directors of departments;

(D) Commissioners of the public service commission and members of the state board of equalization;

(E) Deputies and administrators of divisions within the offices of state elected officials under W.S. 9-2-1704(a). The positions, in the governor’s office, of chief of staff, attorney for intergovernmental affairs and chief of policy are included within this subparagraph.

(xiii) “Public member” means a member appointed to a part-time position on a state board, commission or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services. The term includes a member of the board of trustees of the University of Wyoming and the community college commission. The term does not include a public member of an advisory board, advisory commission or advisory council;

(xiv) “Public official” means an individual elected to a state or local office, or an individual who is appointed to fill a vacancy in a state or local office, whether or not the individual has yet assumed the office;

(xv) “State entity” means a state agency, office, department, division, bureau, board, commission or council, including the legislature, Wyoming community development authority and Wyoming science, technology and energy authority. The term does not include a court or an agency in the judicial branch;

(xvi) “State office” means the state offices of governor, treasurer, superintendent of public instruction, auditor, secretary of state and member of the state legislature;

(xvii) “This act” means W.S. 9-13-101 through 9-13-109.

9-13-103. Use of title and prestige of public office.

(a) No public official, public member or public employee shall use his office or position for his private benefit.

(b) As used in this section, “private benefit” means the receipt by the public official, public member or public employee of a gift which resulted from his holding that office.

9-13-104. Nepotism.

(a) No public official, public member or public employee shall advocate or cause the employment, appointment, promotion, transfer or advancement of a family member to an office or position of the state, a county, municipality or a school district. A public official, public member or public employee shall not supervise or manage a family member who is in an office or position of the state, a county, municipality or school district.

(b) A public official, public member or public employee, acting in his official capacity, shall not participate in his official responsibility or capacity regarding a matter relating to the employment or discipline of a family member.

9-13-105. Misuse of office.

(a) A public official, public member or public employee shall not use public funds, time, personnel, facilities or equipment for his private benefit or that of another unless the use is authorized by law.

(b) A public official, public member or public employee shall not use public funds, time, personnel, facilities or equipment for political or campaign activity unless the use is:

(i) Authorized by law; or

(ii) Properly incidental to another activity required or authorized by law and the public official, public employee or public member allocates and reimburses the governmental entity for any additional costs incurred for that portion of the activity not required or authorized by law.

(c) A public official, public employee or public member shall not disseminate to another person official information which the public official, public employee or public member obtains through or in connection with his position, unless the information is available to the general public or unless the dissemination is authorized by law.

9-13-106. Official decisions and votes.

(a) A public official, public member or public employee shall not make an official decision or vote on an official decision if the public official, public member or public employee has a personal or private interest in the matter. In determining whether he has a personal or private interest in a matter the public official shall recognize the

importance of his right to represent his constituency and shall abstain from voting only in clear cases of a personal or private interest as defined in this subsection. A public official or public member shall not vote to give money or any direct financial benefit to himself except for tax reductions affecting the general public. For the purposes of this section, a personal or private interest:

(i) Is, with respect to the public official, public employee or public member, an interest which is direct and immediate as opposed to speculative and remote; and

(ii) Is an interest that provides the public official, public employee or public member, a greater benefit or a lesser detriment than it does for a large or substantial group or class of persons who are similarly situated.

(b) A public official, public member or public employee described by subsection (a) of this section shall abstain from voting on the decision and from making any official decision in the matter. The public official's, public member's or public employee's abstention from voting must be recorded in the governmental entity's official records.

(c) This section shall not be construed to supersede W.S. 15-9-220, 16-6-118 or 16-9-203(f). Those provisions shall control to the extent inconsistent with this section.

9-13-107. Actions taken while negotiating for employment.

A public official, public member or public employee may not vote or take an official action in a matter affecting a person with whom the public official, public member or public employee is negotiating for prospective employment.

9-13-108. Disclosure required.

(a) Not later than January 31 annually, each of the state's five (5)

elected officials and each member of the Wyoming legislature shall file a financial disclosure form with the secretary of state. The form shall be signed by the elected official or legislator filing it and under a certification that it is accurate. The financial disclosure form shall contain the following information current as of January 15 of that year:

(i) A list of all offices, directorships and salaried employment held by the person filing the form in any business enterprise, but excluding offices and directorships in a nonprofit corporation where no compensation is received for service;

(ii) A list generally describing the sources of, but not the amount of, the member's income.

(b) Forms may be submitted by facsimile transmission under the same terms and conditions specified for campaign reports under W.S. 22-25-106. For the purposes of this section, "salaried employment" means an employment relationship under which the employee is compensated, at least in part, by payment of a specified dollar amount for each month, or longer period, of service.

(c) The disclosure form shall be as prescribed by the secretary of state but in substantially the following form:

"State Elected Official Financial Disclosure Form

Name of Official:

Office held:

Business address:

Business phone number:

Home address:

Home phone number:

I. Offices, directorships and employment

a. Offices held in business enterprises (includes partnerships)

Office Name and address of business enterprise

b. Directorships held in business enterprises

Name and address of business enterprise

c. Salaried employment

Job Title Name and address of business enterprise

II. Sources of income

a. Employment

Name and address of Employer

b. Business interests

Name and address of all business entities but excluding interests if less than ten percent (10%) of the entity is owned, or sole proprietorship from which income is earned, or describe generally

c. Investments

Income earned

Yes No

i. Any security or interest earnings

___ ___

ii. Real estate, leases, royalties

___ ___

d. Other (Describe generally)”.

9-13-109. Penalties.

(a) Any person who violates this act is guilty of a misdemeanor punishable upon conviction by a fine of not more than one thousand dollars (\$1,000.00).

(b) Violation of any provision of this act constitutes sufficient cause for termination of a public employee’s employment or for removal of a public official or public member from his office or position.

(c) If any action is prohibited both by this act and any provision of title 6, the provisions of this act shall not apply and the provisions of title 6 shall apply.



Please contact the Legislative Service Office if you have questions about these guidelines.

If you would like assistance from LSO, please call or e-mail us with your request at the number listed below. You do not need to worry about knowing the section or person you should ask for when you make a request for our services. Our administrative staff will put you in contact with the LSO staff member who can best handle your request.

Remember, as the Wyoming Legislature's professional, non-partisan staff, LSO exists in order to help the Legislature as a body, and you as an individual legislator, accomplish the job you were elected to do. Please contact us to help you most effectively perform your legislative work.

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