

# Conflicts of Interest and Gifts: the Rules of the Road

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## 20 Dos and Don'ts

- Know the Arizona laws and regulations:
  - A.R.S. §15-213 (as recently amended).
  - School District Procurement Code.
  - A.R.S. § 38-502 et seq., including A.R. S. §38-504(C).

## 20 Dos and Don'ts

### Conflicts of Interest

- Know what a “substantial interest” is.
- Train your employees.
- Adopt a policy to require all employees to declare whether they have a conflict or **not**.
  - Upon hiring
  - Annually.
  - In the interim when a conflict occurs.
- Understand what “family member” means.
- Educate your Board members and ask them to comply.

## 20 Dos and Don'ts

- Refrain, refrain, refrain if you have a conflict.
- Maintain a conflicts file in a central place-not just in employee file.
- Take appropriate and prompt personnel action when the law or policy is broken.
- Promptly report significant violations to the Auditor General and the Attorney General.
- In procurements, have persons who evaluate proposals sign a declaration of no contact and no interest.
- Understand when sponsored trips (travel and meals paid for by vendor) are allowed and make sure your employees know.

## 20 Dos and Don'ts

### Gifts

- Adopt a **Clear Policy** that employees can follow.
- Know what “nominal value” is.
- Know and follow the test set out in A.R.S. §38-504(C).

## 20 Dos and Don'ts

### **Personnel Policies**

- Do not retaliate against employee who makes a good faith complaint or report.

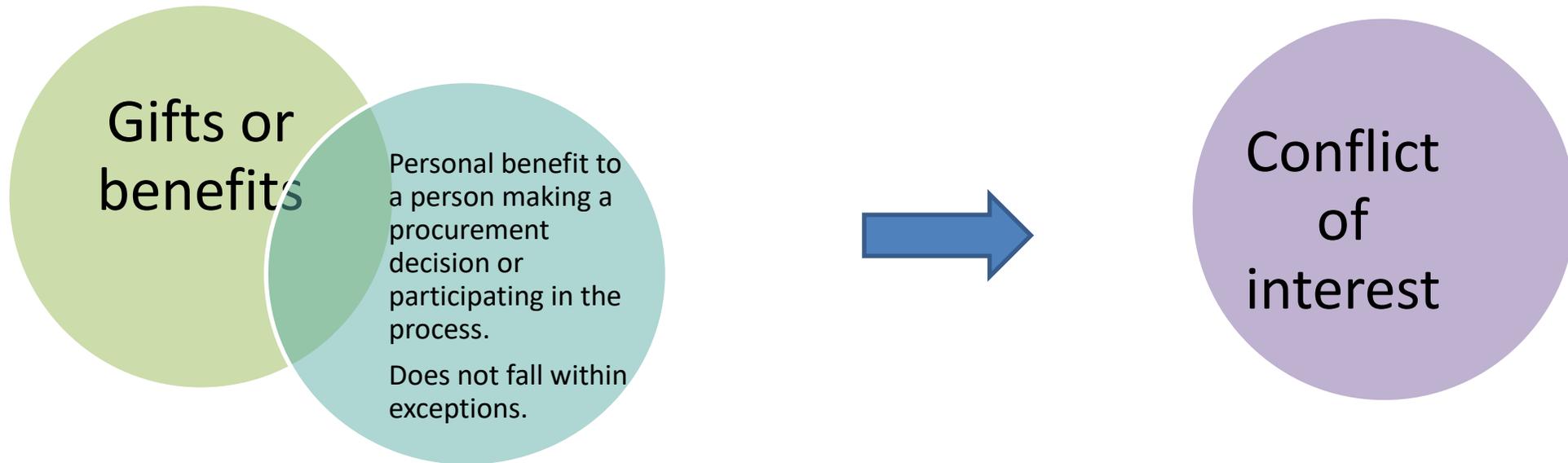
### **Practical Advice**

- Be transparent and don't go on the defense.
- When the media and members of the public start inquiring and asking for public records, investigate the situation yourself.
- Make sure your policies are up to date.
- Follow best practices.

## Gifts vs. Conflicts

Not all gifts or benefits constitute a conflict  
but all conflicts involve a gift or benefit.

## Conflicts of Interest



## When is a gift or benefit okay?

On a personal level, “gift or benefit” means a payment, distribution, expenditure, advance, deposit or donation of monies, any intangible personal property or any kind of tangible personal or real property.

Gift or benefit **does not** include either:

(a) Food or beverage.

(b) Expenses or sponsorships relating to a special event or function to which persons participating in a procurement decision are invited.

A.R.S. §15-213(S).

## When is a gift or benefit okay?

**“A GIFT OR BENEFIT DOES NOT INCLUDE AN ITEM OF NOMINAL VALUE SUCH AS A GREETING CARD, T SHIRT, MUG OR PEN.”**

**A.R.S. §15-213(N).**

## Who does the Title 15 prohibition apply to?

A **person** who supervises or participates in contracts, purchases, payments, claims or other financial transactions, or a **person** who supervises or participates in the planning, recommending, selecting or contracting for materials, services, goods, construction, or construction services of a school district or school purchasing cooperative. A.R.S. §15-213(N).

- Board members—that may include you.
- Evaluation committee members.
- Administrators and employees who participate in the decision to acquire services, goods or construction.

## Gifts or benefits to a foundation.

- Ariz. Op. Atty. Gen. No. I18-012 , November 2018.

“Donations to an independent foundation that supports the school district do not fall within the definition of “personal gift or benefit.”

But remember, Title 15 does not end the inquiry.

Although the Legislature changed A.R.S. §15-213 in 2018, the Conflict of Interest laws in Title 38 still apply to ALL public employees and officers.

That means the standard conflict of interest laws.

This includes A.R.S. § 38-504(C).

## Gifts: Current Law

The test

38-504. Prohibited acts

C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of **such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.**

## How does this interface with Title 15?

- Definition of gift or benefit in Title 15 may be used to determine whether a “thing or benefit” is of **such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.**
- **\$300 test.**

## The Statutes A.R.S. § 38-503

- A. Any public officer or employee of a public agency who has, or **whose relative** has, a **substantial** interest in **any contract, sale, purchase or service to such public agency** shall make known that interest in the official records of such public agency and **shall refrain from voting upon or otherwise participating in any manner** as an officer or employee in such contract, sale or purchase.

## A.R.S. § 38-503

- Does not just apply to a contract, sale, purchase or service. Applies to a **decision** too.
- Applies when a relative has a substantial interest.
- B. Any public officer or employee who has, or whose **relative has**, a **substantial interest** in **any decision** of a public agency shall make known such interest in the official records of such public agency and **shall refrain from participating in any manner** as an officer or employee in such decision.

## Definitions

“Substantial interest” means any pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

So what is a remote interest?

## Definitions

“Remote interest” includes:

(a) That of a nonsalaried officer of a nonprofit corporation.

...

(e) The ownership of **less than three percent** of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five percent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five percent of his total annual income.

## Definitions

“Remote interest” includes:

(f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.

...

(h) That of a public school **board member** when the relative involved is not a dependent, as defined in section 43-1001, or a spouse.

# Definitions

“Remote interest” includes:

(j) That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.

From AG Agency Handbook: “If the public officer or employee or a relative is a member of a trade, business, profession, or other class of persons consisting of at least ten members, and his or her interest is no greater than the interest of the other members of the class, the public officer or employee has a remote interest in any decision affecting the class.”

## What about an insurance trust?

- Nonsalaried officer.
- What benefit does he or she get by selecting or recommending a trust insurance plan?

# Definitions

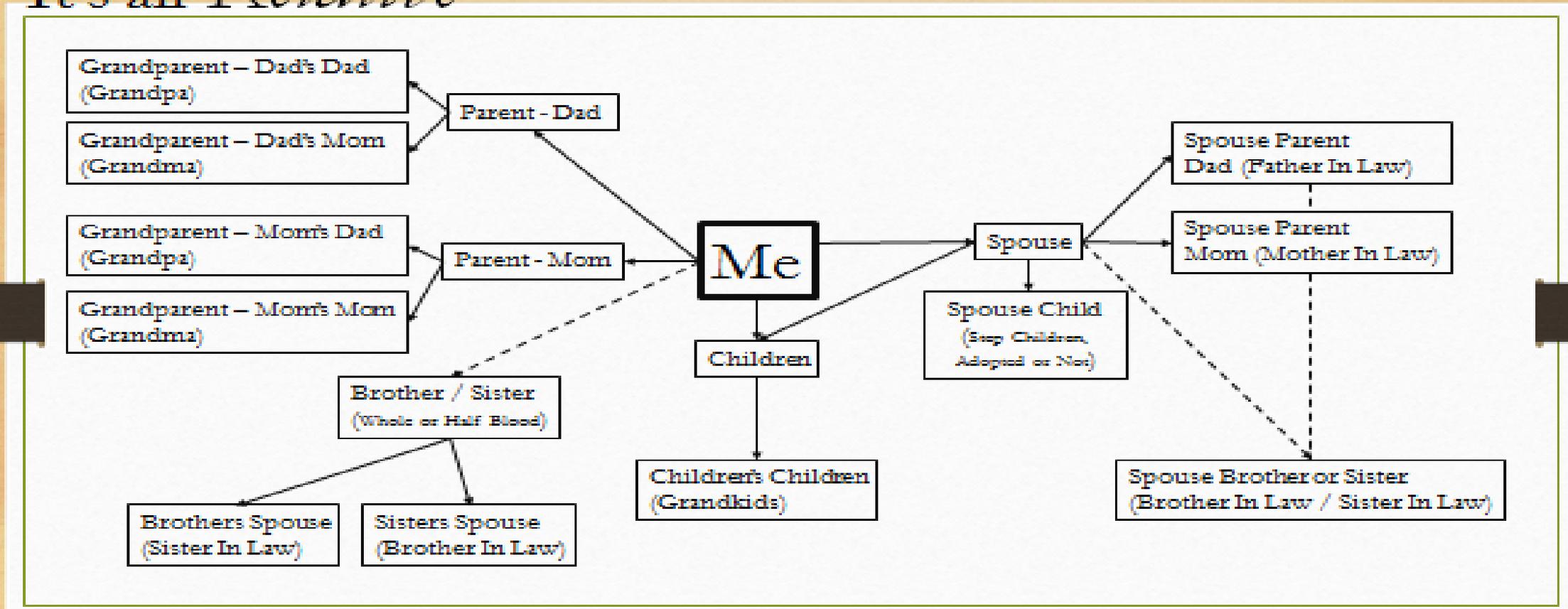
“Relative”:

"Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.



# Definitions

## It's all *Relative*



(chart created by Lila McCleery-Phoenix Union HSD)

“Refrain from” means NO involvement.

- No recommending.
- No butting in.
- No attendance at meetings even if just to listen.
- Nada, Non, Rien, Nien, Nichts, Nyet- a thousand times no!



## ASBA Policy Changes

ASBA Policy Advisory 621 June, 2018

### **Policy GBEAA New language**

#### **Adds definition of “refrain from.”**

“Refrain from participating in any manner” means more than just refraining from making a final decision. It means participating in any way in the process leading up to a decision. An employee with a conflict of interest must not make recommendations, give advice, or otherwise communicate in any manner with anyone involved in the decision-making process.

## Also be Aware of Other Policies

- For example, Mesa USD governing board policy GBCA - Staff Conflict of Interest implements state law but is more broadly prohibitive:  
No employee will accept or solicit, directly or indirectly, anything of economic value as a gift, gratuity, favor, entertainment or loan that is, or **may appear to be**, designed to influence the employee's official conduct. This provision will not prohibit acceptance by an employee of food or refreshments that are incidental to a business meeting, or unsolicited advertising or promotional material of nominal value.
- Under this policy, the question of a gift's influence is not whether the employee believes that the gift would influence his or her judgment, but whether a reasonable person observing the relationship between the vendor and employee would feel that the gift may influence the employee's judgment.

## A.R.S. § 41-2616(A)

A person who contracts for or purchases any material, services, construction or construction services in a manner contrary to the requirements of this chapter, the rules adopted pursuant to this chapter, the rules adopted by the state board of education pursuant to section 15-213 . . . is **personally liable for the recovery of all public monies paid plus twenty per cent of such amount and legal interest from the date of payment and all costs and damages arising out of the violation.**

## §38-506. Remedies

- A. In addition to any other remedies provided by law, any contract entered into by a public agency in violation of this article is **voidable** at the instance of the public agency.
- B. Any person affected by a decision of a public agency may commence a civil suit in the superior court for the purpose of enforcing the civil provisions of this article. The court may order such equitable relief as it deems appropriate in the circumstances including the remedies provided in this section.
- C. The court may in its discretion order payment of costs, including reasonable attorney's fees, to the prevailing party in an action brought under subsection B.

## Criminal Liability

The sanctions for a person violating Arizona's conflict of interest laws are not insignificant:

A. A person who:

1. Intentionally or knowingly violates any provision of sections 38-503 through 38-505 is guilty of a **class 6 felony**.
2. Recklessly or negligently violates any provision of sections 38-503 through 38-505 is guilty of a **class 1 misdemeanor**.

B. A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.

A.R.S. §38-510.

# Criminal Liability

Persons who conspire with vendors to violate procurement and antitrust laws or who accept gifts from vendors are also subject to other criminal penalties.

A.R.S. § 41-2616(B); A.R.S. § 44-1416(C); A.R.S. § 38-510

## Criminal Liability

It is a class 4 felony to intentionally or knowingly contract for or purchase materials, services or construction pursuant to a scheme or artifice to avoid the requirements of the School Procurement Code.

A.R.S. § 41-2616(B)

## Criminal Liability

Current indictment pending in Maricopa County Superior Court awaiting trial. Defendant is a former school district business official.

### Scheme and artifice to defraud-

On or about [REDACTED], in any matter related to the business conducted by any department or agency of this state or any political subdivision thereof, pursuant to a scheme or artifice to defraud or deceive, knowingly falsified, concealed or covered up a material fact by any trick, scheme or device or made or used any false writing or document knowing such writing or document contains any false, fictitious or fraudulent statement or entry, in violation of A.R.S. §§13-2311, 13-701, 13-702 and 13-801.

# 2018 HB 2663: New Requirements and Sanctions

## Amended 15-213

- to require State Board of Education to amend school district procurement rules:
  - Have to ensure maximum practicable competition-as prescribed by 41-2565.
  - New sanctions and criminal penalties.
  - Expands scope of who may be subject to penalties.
- Expanded Attorney General powers.
- Prevented reprisals against employees who report violations.
- Defined “gift or benefit.”
- Specifically spelled out penalties for accepting gifts—depending on value. No more a subjective test for school districts.
- Provided for debarment of vendors.

## 2018 HB2663

SBOE School District Procurement Code amendments:

“THE STATE BOARD SHALL ADOPT RULES FOR THE PROCUREMENT BY SCHOOL DISTRICTS OF ANY MATERIALS, SERVICES, GOODS, CONSTRUCTION OR CONSTRUCTION SERVICES THAT ENSURE MAXIMUM PRACTICABLE COMPETITION AS PRESCRIBED IN SECTION 41-2565”

– **Now incorporates State Procurement Code requirement of maximum practicable competition.**

## 2018 HB2663

### SBOE School District Procurement Code amendments:

“SHALL REQUIRE THAT A PERSON:

- (a) THAT CONTRACTS FOR OR PURCHASES ANY MATERIALS, SERVICES, GOODS, CONSTRUCTION OR CONSTRUCTION SERVICES IN A MANNER CONTRARY TO THE RULES ADOPTED BY THE STATE BOARD PURSUANT TO THIS SECTION IS **PERSONALLY LIABLE FOR THE RECOVERY OF ALL PUBLIC MONIES PAID PLUS TWENTY PERCENT OF THAT AMOUNT AND LEGAL INTEREST** FROM THE DATE OF PAYMENT AND ALL COSTS AND DAMAGES ARISING OUT OF THE VIOLATION AS PRESCRIBED IN SECTION 41-2616.
- (b) THAT INTENTIONALLY OR KNOWINGLY CONTRACTS FOR OR PURCHASES ANY MATERIALS, SERVICES, GOODS, CONSTRUCTION OR CONSTRUCTION SERVICES PURSUANT TO A SCHEME OR ARTIFICE TO AVOID THE RULES ADOPTED BY THE STATE BOARD PURSUANT TO THIS SECTION IS GUILTY OF A **CLASS 4 FELONY** AS PRESCRIBED IN SECTION 41-2616.
- (c) THAT PREPARES PROCUREMENT SPECIFICATIONS MAY NOT RECEIVE ANY DIRECT OR INDIRECT BENEFIT FROM USING THOSE SPECIFICATIONS. “
  - **Not new penalty.** Just incorporates 41-2616 into Title 15.
  - “Person” definition shall be up to the SBOE.

## 2018 HB2663

### SBOE School District Procurement Code amendments:

“SHALL REQUIRE THAT A PERSON:

...

(c) THAT PREPARES PROCUREMENT SPECIFICATIONS MAY NOT RECEIVE ANY DIRECT OR INDIRECT BENEFIT FROM USING THOSE SPECIFICATIONS.

(d) THAT SERVES ON A SELECTION COMMITTEE FOR A PROCUREMENT MAY NOT BE A CONTRACTOR OR SUBCONTRACTOR UNDER A CONTRACT AWARDED UNDER THE PROCUREMENT OR PROVIDE ANY SPECIFIED PROFESSIONAL SERVICES, CONSTRUCTION, CONSTRUCTION SERVICES, MATERIALS OR OTHER SERVICES UNDER THE CONTRACT. A PERSON THAT SERVES ON A SELECTION COMMITTEE FOR A PROCUREMENT AND THAT FAILS TO DISCLOSE CONTACT WITH A REPRESENTATIVE OF A COMPETING VENDOR OR FAILS TO PROVIDE REQUIRED ACCURATE INFORMATION IS SUBJECT TO A CIVIL PENALTY AS PRESCRIBED IN SECTION 41-2616.”

- **Not** new language or penalty. Incorporates 41-2616, which has been on the books since the 1980s.
- “Person” definition shall be up to the SBOE.

## 2018 HB2663

### SBOE School District Procurement Code amendments:

SBOE Rules shall require:

“SCHOOL DISTRICTS TO OBTAIN AND MAINTAIN A RECORD OF PROOF THAT A CONSTRUCTION OR CONSTRUCTION SERVICES PROVIDER THAT HAS BEEN AWARDED A CONTRACT WITH THE SCHOOL DISTRICT, OR SCHOOL PURCHASING COOPERATIVE, HAS A VALID LICENSE TO PRACTICE IN THIS STATE.”

- **This is new.** Seems directly targeted to unlicensed architects or other construction providers.
- Where do you find out if an architect is licensed in this state?
- Where do you find out if someone is a registered contractor?

## 2018 HB2663

### **New Attorney General powers:**

“ IF THE ATTORNEY GENERAL HAS REASONABLE CAUSE TO BELIEVE AN EMPLOYEE OF A SCHOOL DISTRICT OR SCHOOL PURCHASING COOPERATIVE, OR AN EMPLOYEE OF AN ENTITY THAT HAS BEEN AWARDED A CONTRACT BY A SCHOOL DISTRICT OR SCHOOL PURCHASING COOPERATIVE, HAS ENGAGED IN, IS ENGAGING IN OR IS ABOUT TO ENGAGE IN ANY PRACTICE OR TRANSACTION THAT VIOLATES THE RULES ADOPTED BY THE STATE BOARD OF EDUCATION PURSUANT TO THIS SECTION, THE ATTORNEY GENERAL MAY:

1. **REQUIRE THAT PERSON TO FILE ON FORMS PRESCRIBED BY THE ATTORNEY GENERAL A STATEMENT OR REPORT IN WRITING AND UNDER OATH** AS TO ALL THE FACTS AND CIRCUMSTANCES CONCERNING A VIOLATION OF THE RULES ADOPTED BY THE STATE BOARD PURSUANT TO THIS SECTION BY THAT PERSON AND ANY OTHER DATA AND INFORMATION DEEMED NECESSARY BY THE ATTORNEY GENERAL.
2. **EXAMINE UNDER OATH** ANY PERSON IN CONNECTION WITH A VIOLATION OF THE RULES ADOPTED BY THE STATE BOARD PURSUANT TO THIS SECTION. “

## 2018 HB2663

Prohibits reprisal against persons who disclose information:

“A SCHOOL DISTRICT SCHOOL EMPLOYEE WHO HAS CONTROL OVER PERSONNEL ACTIONS MAY NOT TAKE REPRISAL AGAINST A SCHOOL DISTRICT SCHOOL EMPLOYEE FOR THAT EMPLOYEE'S DISCLOSURE OF INFORMATION THAT IS A MATTER OF PUBLIC CONCERN, INCLUDING A VIOLATION OF THIS SECTION, TO A PUBLIC BODY PURSUANT TO TITLE 38, CHAPTER 3, ARTICLE 9.”

- **This is new language that incorporates the Whistleblower Act.**

## Recap

Persons involved in a procurement decision

- §15-213
- § 38-502 et seq.

Persons not involved in a procurement decision

- § 38- 502 et seq.

2018 HB2663

The \$300 test

## 2018 HB2663

Remember the subjective test of 38-504? “if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer’s or employee’s duties?”



Throw it out the window as to persons involved in the “chain of command” in selecting a vendor. Still applies to other employees and officers.

## New penalties and a new test as to employees in the procurement chain.

**“A PERSON WHO SUPERVISES OR PARTICIPATES IN CONTRACTS, PURCHASES, PAYMENTS, CLAIMS OR OTHER FINANCIAL TRANSACTIONS, OR A PERSON WHO SUPERVISES OR PARTICIPATES IN THE PLANNING, RECOMMENDING, SELECTING OR CONTRACTING FOR MATERIALS, SERVICES, GOODS, CONSTRUCTION, OR CONSTRUCTION SERVICES OF A SCHOOL DISTRICT OR SCHOOL PURCHASING COOPERATIVE IS GUILTY OF A CLASS 6 FELONY IF THE PERSON SOLICITS, ACCEPTS OR AGREES TO ACCEPT ANY PERSONAL GIFT OR BENEFIT WITH A VALUE OF THREE HUNDRED DOLLARS OR MORE FROM A PERSON OR VENDOR THAT HAS SECURED OR HAS TAKEN STEPS TO SECURE A CONTRACT, PURCHASE, PAYMENT, CLAIM OR FINANCIAL TRANSACTION WITH THE SCHOOL DISTRICT OR SCHOOL PURCHASING COOPERATIVE. SOLICITING, ACCEPTING OR AGREEING TO ACCEPT ANY PERSONAL GIFT OR BENEFIT WITH A VALUE OF LESS THAN THREE HUNDRED DOLLARS IS A CLASS 1 MISDEMEANOR.”**

## And Applies to Vendors

**ANY PERSON OR VENDOR** THAT HAS SECURED OR HAS TAKEN STEPS TO SECURE A CONTRACT, PURCHASE, PAYMENT, CLAIM OR FINANCIAL TRANSACTION WITH A SCHOOL DISTRICT OR SCHOOL PURCHASING COOPERATIVE THAT OFFERS, CONFERS OR AGREES TO CONFER ANY PERSONAL GIFT OR BENEFIT WITH A VALUE OF **THREE HUNDRED DOLLARS OR MORE** ON A PERSON WHO SUPERVISES OR PARTICIPATES IN CONTRACTS, PURCHASES, PAYMENTS, CLAIMS OR OTHER FINANCIAL TRANSACTIONS, OR ON A PERSON WHO SUPERVISES OR PARTICIPATES IN PLANNING, RECOMMENDING, SELECTING OR CONTRACTING FOR MATERIALS, SERVICES, GOODS, CONSTRUCTION OR CONSTRUCTION SERVICES OF A SCHOOL DISTRICT OR SCHOOL PURCHASING COOPERATIVE, **IS GUILTY OF A CLASS 6 FELONY**. OFFERING, CONFERRING OR AGREEING TO CONFER ANY PERSONAL GIFT OR BENEFIT WITH A VALUE OF **LESS THAN THREE HUNDRED DOLLARS IS A CLASS 1 MISDEMEANOR**.

## For Those Interested in the Legal Mechanisms for Enforcement and Imposing Sanctions

### §38-510

- Intentional-Class 6 Felony.
- Reckless or Negligent-Class 1 Misdemeanor

### §15-213

- \$300 and over-Class 6 Felony
- Under \$300-Class 1 Misdemeanor

## Teacher Trips with “Incentives” for Recruiting

- Is it permissible for a teacher to get a free trip from a tour company, in exchange for recruiting students to go on the trip?
- No, this is a violation of the conflict of interest laws, as well as Governing Board Policy in most instances.

## Teacher Trips with “Incentives” for Recruiting

- Violates Conflict of Interest Laws
- This practice also violates Governing Board Policy DJ, Purchasing (Purchasing Ethics Policy)

## Are “Referral Fees” from Vendors Allowed?

- May a school district employee accept “referral fees” from a vendor for successfully promoting the vendor’s product to others?
  - Typically professional development and curriculum offerings
  - “Train the Trainer”

No.

## Are “Referral Fees” from Vendors Allowed?

- Violates Conflict of Interest Laws
  - If a current district vendor offers employees compensation for promoting the vendor’s products or services to others, that poses a conflict of interest problem for the employee and the vendor
  - If fees are less than \$300 = Class 1 Misdemeanor
  - If fees are more than \$300 = Class 6 Felony
- Violates Policy DJ, Purchasing (Purchasing Ethics Policy)

## What You Should be Doing ASAP

- Look at your policies. DJ and GBEAA.
  - You may need to refine GBEAA to incorporate definitions of A.R.S. §38-502.
  - New ASBA policies.
- Look at your form-usually an exhibit to GBEAA.
  - I would add a place for the employee or public officer to say “none.” *See below.*
  - Does the form provide employee adequate instructions on how to fill it out?
  - **New recommendation by the Auditor General:** “These forms should allow for full disclosure of all substantial interests as outlined in A.R.S. §§38-501 through 511 and **should require a deliberate indication of ‘none’ if no such interest exists.**”

## What You Should be Doing ASAP

- Require employees to fill out this form when hired and then each year. **New recommendation by the Auditor General:** “Ensure all employees complete and sign conflict-of-interest forms at least every year. “
- Conduct training. **New recommendation by the Auditor General:** “Conduct annual training to ensure district conflict-of-interest policies are communicated to employees and acknowledged as received and understood.”
- Promptly investigate. **New recommendation by the Auditor General:** “Timely and thoroughly investigate allegations of inadequate disclosure of substantial interests and/or inappropriate participation when a substantial interest may exist.”

Recent Auditor General Report can be found at  
[https://www.azauditor.gov/sites/default/files/Scottsdale\\_USD\\_Report\\_5-14-18.pdf](https://www.azauditor.gov/sites/default/files/Scottsdale_USD_Report_5-14-18.pdf).

## Board Members Must Comply with the Law as Well

§38-502(8): “Public officer” means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.

§15-213 may apply if the board member participates in the procurement.

## 2018 ASBA Policy Changes

ASBA Policy Advisory 621 June, 2018

**Policy DJ All new language**

Incorporates the new language of §15-213.

But you can make it even tighter.

## New ASBA Policy Changes

ASBA Policy Advisory 621 June, 2018

### **Policy GBEEA New language**

#### **Changes what gifts may be accepted.**

No employee of the District will accept gifts a gift or benefit from any person, group, or entity doing, or desiring to do, business with the District as described in Policy DJ, Purchasing (Purchasing Ethics Policy). The acceptance of any business-related gratuity is specifically prohibited, except for widely distributed, advertising items of nominal value.

This policy should not be construed to deem unacceptable inexpensive novelty advertising items of general distribution. Acceptance of business meals and holiday gifts for general consumption are acceptable under this policy.

## New ASBA Policy Changes

ASBA Policy Advisory 621 June, 2018

### **Policy GBEAA New language**

#### **Adds optional annual training and mandatory disclosure.**

The Governing Board may require annual employee training to ensure District conflict of interest policies are communicated to employees and acknowledged as received and understood.

Each employee shall complete and sign the conflict of interest form, GBEAA-E, as determined by the District.

#### **Adds mandatory investigation.**

The District will investigate allegations of inadequate disclosure of substantial interests and/or inappropriate participation when a substantial interest may exist.

## New ASBA Policy Changes

ASBA Policy Advisory 621 June, 2018

**Policy GBEAA Exhibit E-New language**

**Gives deadline for disclosure and designates where forms are kept.**

1. Employees must file a Conflict of Interest Disclosure within five (5) calendar days after commencing work and at least annually thereafter, either identifying any conflict the employee or the employee's relative has or stating that the employee or the employee's relative has no conflict.

2. All Conflict of Interest Disclosures shall be kept on file at [name District location].

3. It is the employee's responsibility to update and submit to both District Legal and Human Resources Departments within fifteen (15) calendar days of any new conflict arising after the date of the most recent Disclosure.

## New ASBA Policy Changes

ASBA Policy Advisory 621 June, 2018

**Policy GBEAA Exhibit E-New language**

**Adds Statement of No Conflict**

STATEMENT OF NO CONFLICT

To be completed only if you do not or your relative does not  
have a conflict of interest.

I, \_\_\_\_\_, do hereby indicate that I do not have,  
and none of my relatives has, a substantial interest in any contract, sale, purchase, service,  
decision, investigation, or other matter of the  
School District.

# New ASBA Policy Changes

## **Policy BCB-Board Conflict of Interest**

New Policy Advisory 625.

Issued in August, 2018.

- Reflects many of the changes that have been addressed in GBEAA.
  - Language has been added to this policy and exhibit to clarify conflict of interest and to more closely reflect the language applicable to employees which was released in Policy Advisory No. 621.

## Updates on 2018 Procurement Requirements that Were Problematic or Controversial

- THE STATE BOARD OF EDUCATION SHALL ADOPT RULES FOR THE PROCUREMENT BY SCHOOL DISTRICTS OF ANY MATERIALS, SERVICES, GOODS, CONSTRUCTION AND CONSTRUCTION SERVICES THAT REQUIRE CONTRACTS TO BE AWARDED BASED ON THE **LOWEST QUALIFIED BIDDER.**

**This requirement was repealed in the last legislative session—thank you ASBA**

## Updates on 2018 Procurement Requirements that Were Problematic or Controversial

- Q. A SCHOOL DISTRICT MAY NOT HIRE THE SAME AUDITOR OR AUDITING FIRM FOR MORE THAN THREE CONSECUTIVE YEARS.
- R. AN AUDITOR OR AUDITING FIRM HIRED BY A SCHOOL DISTRICT MAY NOT ALSO RECEIVE CONSULTING FEES FROM THAT SCHOOL DISTRICT.

**This requirement was repealed in the last legislative session—thank you ASBA**

## Other Procurement Rules and Best Practices

- No special meetings ahead of time.
- No special access to decision-makers.
- Know if the law or regulations require credentials for members of evaluation committee (i.e. registered architect in case of CMARs.). Double check credentials.
- If you use cooperative procurement, do your due diligence. Do not just rely upon their word. Also, If you use cooperative procurement, do your due diligence. Remember that you must record the rationale for awarding a contract for any specified professional services, construction, construction services or materials from a qualified select bidders list or a school purchasing cooperative. **New language.**
- Evaluate only on the factors you have listed in the solicitation.

## Personnel Practices

- Do not retaliate against an employee who in good faith reports a procurement violation.

## Other Practical Advice

- Be transparent and don't go on the defense.
- When the media and members of the public start inquiring and asking for public records, investigate the situation yourself.
- Make sure your policies are up to date.
- Follow best practices.

# Questions?

