

Effective 5/1/2024

76-8-402 Misusing public money or public property -- Disqualification from office.

- (1)
- (a) As used in this section, "authorized personal use" means:
 - (i) the use of public property, for a personal matter, by an actor who is a public servant if:
 - (A) the actor is authorized to use or possess the public property to fulfill the actor's duties as a public servant;
 - (B) the primary purpose of the actor using or possessing the public property is to fulfill the actor's duties as a public servant;
 - (C) at the time the actor uses the public property for a personal matter, a written policy of the actor's public entity is in effect that authorizes the actor to use or possess the public property for personal use in addition to the primary purpose of fulfilling the actor's duties as a public servant; and
 - (D) the actor uses and possesses the public property in a lawful manner and in accordance with the policy described in Subsection (1)(a)(i)(C); or
 - (ii) incidental or de minimus use of public property for a personal matter by an actor who is a public servant if:
 - (A) the value provided to the actor's public entity by the actor's use or possession of the public property for a public purpose substantially outweighs the personal benefit received by the actor from the incidental use of the public property for a personal matter; and
 - (B) the incidental or de minimus use of the public property for a personal matter is not prohibited by law or by the actor's public entity.
 - (b) Terms defined in Sections 76-1-101.5 and 76-8-101 apply to this section.
- (2) An actor commits misusing public money or public property if the actor is a public servant and knowingly:
- (a) appropriates public money to the actor's own use or benefit or to the use or benefit of another person without authority of law;
 - (b) loans or transfers public money without authority of law;
 - (c) fails to keep public money in the actor's possession until disbursed by authority of law;
 - (d) deposits public money in a bank or with another person in violation of the written policy of the actor's public entity or the requirements of law;
 - (e) keeps a false account or makes a false entry or erasure in an account of, or relating to, public money;
 - (f) fraudulently alters, falsifies, conceals, or destroys an account described in Subsection (2)(e);
 - (g) refuses or omits to pay over, on demand, any public money in the actor's custody or control, upon the presentation of a draft, order, or warrant drawn upon the public money by competent authority;
 - (h) omits to transfer public money when the transfer is required by law;
 - (i) omits or refuses to pay over, to an officer or person authorized by law to receive public money, public money received by the actor under any duty imposed on the actor by law;
 - (j) damages or disposes of public property in violation of the written policy of the actor's public entity or the requirements of law;
 - (k) obtains or exercises unauthorized control of public property with the intent to deprive the owner of possession of the public property;
 - (l) obtains or exercises unauthorized control of public property with the intent to temporarily appropriate, possess, use, or deprive the owner of possession of the public property;
 - (m) appropriates public property to the actor's own use or benefit or to the use or benefit of another person without authority of law;

- (n) loans or transfers public property without authority of law; or
 - (o) fails to keep public property in the actor's possession until returned to the property owner or disposed of or relinquished in accordance with the written policy of the actor's public entity and the requirements of law.
- (3)
- (a) Except as provided by Subsection (3)(b), a violation of Subsections (2)(a) through (i) is a third degree felony.
 - (b) A violation of Subsections (2)(a) through (i) is a second degree felony if:
 - (i) the value of the public money exceeds \$5,000;
 - (ii) the amount of the false account exceeds \$5,000;
 - (iii) the amount falsely entered exceeds \$5,000;
 - (iv) the amount that is the difference between the original amount and the fraudulently altered amount exceeds \$5,000; or
 - (v) the amount falsely erased, fraudulently concealed, destroyed, or falsified in the account exceeds \$5,000.
 - (c) A violation of Subsection (2)(j) is:
 - (i) a class B misdemeanor if the cost to repair or replace the public property is less than \$500;
 - (ii) a class A misdemeanor if the cost to repair or replace the public property is \$500 or more, but less than \$1,500;
 - (iii) a third degree felony if the cost to repair or replace the public property is \$1,500 or more, but less than \$5,000; or
 - (iv) a second degree felony if the cost to repair or replace the public property is \$5,000 or more.
 - (d) A violation of Subsection (2)(k), (m), (n), or (o) is:
 - (i) a class B misdemeanor if the value of the public property is less than \$500;
 - (ii) a class A misdemeanor if the value of the public property is \$500 or more, but less than \$1,500;
 - (iii) a third degree felony if the value of the public property is \$1,500 or more, but less than \$5,000; or
 - (iv) a second degree felony if the value of the public property is \$5,000 or more.
 - (e) A violation of Subsection (2)(l) is:
 - (i) a class C misdemeanor if the value of the public property is less than \$500;
 - (ii) a class B misdemeanor if the value of the public property is \$500 or more, but less than \$1,500;
 - (iii) a class A misdemeanor if the value of the public property is \$1,500 or more, but less than \$5,000; or
 - (iv) a third degree felony if the value of the public property is \$5,000 or more.
- (4) It is not a defense to a violation of Subsection (2) that:
- (a) subsequent to the violation, a public entity modifies or adopts a policy or law, or takes other action, to retroactively authorize, approve, or ratify the conduct that constitutes a violation; or
 - (b) a written policy of the actor's public entity permits private use of the public property if it is proven, beyond a reasonable doubt, that the actor did not comply with the written policy.
- (5) Subsections (2)(j) through (2)(o) do not apply to the authorized personal use of public property.
- (6) In addition to the punishment described in Subsection (3), an actor who:
- (a) is convicted of a felony offense under this section may not disburse public funds or access public accounts; or
 - (b) is a public officer and is convicted of a felony offense under this section is disqualified from holding public office if:

- (i) regardless of whether the public officer receives, safekeeps, transfers, disburses, or has a fiduciary relationship with public money, the public officer makes a profit from or out of public money or public property; or
- (ii) the public officer uses public money or public property in a manner or for a purpose not authorized by law.

Amended by Chapter 96, 2024 General Session