

1 **GIFTS TO PUBLIC OFFICERS, PUBLIC**
2 **EMPLOYEES, AND LEGISLATORS**

3 1998 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Jordan Tanner**

6 AN ACT RELATING TO ETHICS; DEFINING "GIFT"; PROHIBITING CERTAIN GIFTS OF
7 \$50 OR MORE TO LEGISLATORS, PUBLIC OFFICERS, AND PUBLIC EMPLOYEES;
8 ESTABLISHING PENALTIES; AND MAKING TECHNICAL CORRECTIONS.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **63A-1-102**, as renumbered and amended by Chapter 212, Laws of Utah 1993

12 ENACTS:

13 **67-16a-101**, Utah Code Annotated 1953

14 **67-16a-102**, Utah Code Annotated 1953

15 **67-16a-201**, Utah Code Annotated 1953

16 **67-16a-301**, Utah Code Annotated 1953

17 REPEALS:

18 **67-16-5**, as last amended by Chapter 188, Laws of Utah 1997

19 *Be it enacted by the Legislature of the state of Utah:*

20 Section 1. Section **63A-1-102** is amended to read:

21 **63A-1-102. Duties.**

22 The department shall:

23 (1) provide specialized agency support services commonly needed;

24 (2) provide effective, coordinated management of state administrative services;

25 (3) serve the public interest by providing services in a cost-effective and efficient manner,
26 eliminating unnecessary duplication;

27 (4) enable administrators to respond effectively to technological improvements;

1 (5) emphasize the service role of state administrative service agencies in meeting the
2 service needs of user agencies;

3 (6) use flexibility in meeting the service needs of state agencies; [and]

4 (7) protect the public interest by insuring the integrity of the fiscal accounting procedures
5 and policies that govern the operation of agencies and institutions to assure that funds are
6 expended properly and lawfully[-]; and

7 (8) dispose of items donated under Subsection 67-16A-102(3)(c)(x) by assignment to state
8 agencies for official use or by public sale.

9 Section 2. Section **67-16a-101** is enacted to read:

10 **CHAPTER 16a. GIFTS TO PUBLIC SERVANTS ACT**

11 **Part 1. General Provisions**

12 **67-16a-101. Title.**

13 This chapter is known as the "Gifts to Public Servants Act."

14 Section 3. Section **67-16a-102** is enacted to read:

15 **67-16a-102. Definitions.**

16 As used in this chapter:

17 (1) "Chief executives" means the governor, the lieutenant governor, the attorney general,
18 the state treasurer, the state auditor, the speaker of the Utah House of Representatives, the
19 president of the Utah Senate, each justice of the Utah Supreme Court, each judge of the Utah Court
20 of Appeals, each department head, the Olympic coordinator, each county commissioner, each
21 county executive, and each mayor.

22 (2) "Department head" means:

23 (a) the head of the Department of Administrative Services, the Department of Agriculture
24 and Food, the Department of Alcoholic Beverage Control, the Department of Commerce, the
25 Department of Community and Economic Development, the Department of Corrections, the
26 Department of Environmental Quality, the Department of Financial Institutions, the Department
27 of Health, the Department of Human Resource Management, the Department of Human Services,
28 the Insurance Department, the National Guard, the Department of Natural Resources, the
29 Department of Public Safety, the Department of Workforce Services, and the Department of
30 Transportation;

31 (b) the Labor Commissioner and each president of each institution within the state system

1 of higher education; and

2 (c) each member of the Public Service Commission, the State Board of Education, the
3 State Board of Regents, and the State Tax Commission.

4 (3) (a) "Gift" means anything received by a public servant for which consideration of equal
5 or greater value is not given.

6 (b) "Gift" includes:

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

8 (ii) a promissory note, bill of exchange, order, draft, warrant, check, or bond given for the
9 payment of money;

10 (iii) a contract, agreement, promise, or other obligation for an advance, conveyance,
11 forgiveness of indebtedness, deposit, distribution, loan, payment, pledge, or transfer of money;

12 (iv) a stock, bond, note, or other investment interest in an entity;

13 (v) a receipt given for the payment of money or other property;

14 (vi) a tangible good, chattel, or an interest in a tangible good or chattel;

15 (vii) real property or an interest in real property, including:

16 (A) title to realty;

17 (B) a fee simple or partial interest, present or future, contingent or vested, within realty;

18 (C) a leasehold interest; or

19 (D) other beneficial interest in realty;

20 h [(viii) a rebate or discount in the price of anything of value unless the rebate or discount
21 is made in the ordinary course of business to all members of the public;

22 — [(ix)] (viii) h a promise or offer of employment in exchange for legislative action;

23 h [(x)] (ix) h any other thing of value that is pecuniary or compensatory in value to a person, or
23a the

24 primary significance of which is economic gain.

25 (c) "Gift" does not include:

26 (i) anything for which the public servant pays or gives full value;

27 (ii) a campaign contribution properly received and reported, if reportable, as required by
28 Title 20A, Chapter 11, Campaign and Financial Reporting Requirements;

29 (iii) compensation, food, beverages, entertainment, transportation, lodging, or other goods
30 or services extended to a public servant by the public servant's private employer, by the state, by
31 a relative, or by a personal friend, unless the relative or personal friend is acting as an agent or

1 intermediary for an entity or for another person;

2 (iv) a usual and customary commercial loan made in the ordinary course of business,
3 without regard to the recipient's status as a public servant, and by a person or institution authorized
4 by law to engage in the business of making loans;

5 (v) unsolicited awards of appreciation, honorary degrees, or bona fide awards in
6 recognition of public service in the form of a certificate, plaque, trophy, desk item, wall memento,
7 or commemorative token, provided that the item is not in a form that can be readily converted to
8 cash;

9 (vi) informational, educational, or promotional items such as books, articles, periodicals,
10 other written materials, audiotapes, videotapes, or other forms of communication, that have no
11 substantial resale value and that are related to the performance of the public servant's official
12 duties;

13 (vii) a subscription to a newspaper, news magazine, or other news publication or
14 legislative periodical;

15 (viii) anything received from a relative unless the relative is acting as an agent or
16 intermediary for an entity or for another person who is not a relative;

17 (ix) any devise or inheritance unless the donor is acting as an agent or intermediary for
18 another person or entity;

19 (x) a gift that:

20 (A) is not used; and

21 (B) no later than 30 days after receipt, is:

22 (I) returned to the donor;

23 (II) donated to a public body or to the Department of Administrative Services; or

24 (III) delivered to a bona fide nonprofit charitable or educational organization and is not
25 claimed as a charitable contribution for federal income tax purposes;

26 (xi) a gift or gifts from one member of the Legislature to another member of the
27 Legislature;

28 (xii) any service spontaneously extended to a public servant in an emergency situation;

29 (xiii) items received from a bona fide charitable, professional, educational, or business
30 organization to which the public servant belongs as a dues-paying member, if the items are given
31 to all members of the organization without regard to individual members' status or positions held

1 outside of the organization and if the dues paid are not inconsequential when compared to the
2 items received;

3 (xiv) funeral flowers or memorials to a church or a nonprofit organization given to honor
4 a public servant or a public servant's relative;

5 (xv) unsolicited flowers, plants, and floral arrangements received by a public servant;

6 (xvi) tickets for athletic events involving teams representing in-state schools or other
7 events at those institutions if offered by the institution;

8 (xvii) food, refreshments, and lodging reasonably related to making a public speech in his
9 capacity as a public servant, as well as reasonable transportation from the public servant's home
10 or place of official employment to and from the site of the speaking engagement;

11 (xviii) for public officers and public employees, tickets to charitable, cultural, educational,
12 or political events held within Utah when customarily provided as a courtesy to all public officers
13 or public employees of similar rank in the event's jurisdiction;

14 (xix) for legislators, the cost of admittance, attendance, or participation, and of food and
15 beverages consumed, at events:

16 (A) to which all members of the Utah Senate or the Utah House of Representatives, or
17 both, are invited;

18 (B) to which all members of a joint committee or task force of the Utah Senate and the
19 Utah House of Representatives are invited;

20 (C) sponsored or coordinated by a state or local government entity, including a state
21 institution of higher education, provided that the cost of the food, beverages, and attendance is paid
22 by the state or local government entity or state institution of higher education; or

23 (D) to which an individual legislator is invited and for which the legislator receives prior
24 approval from a majority of the Legislative Management Committee;

25 (xx) for legislators, the cost, paid, reimbursed, raised, or obtained by a legislator for
26 attendance or participation, and for food and beverages consumed at, and funds, goods, and
27 services provided for conducting events sponsored or coordinated by multistate or national
28 organizations of, or including, state governments, state legislatures, or state legislators, if the
29 attendance and expenditures by the legislator are approved in advance by the speaker or president;
30 or

31 (xxi) for chief executives, the cost of attendance or participation provided by the

1 sponsoring entity, of lodging, and of food and beverages consumed, at events sponsored by or in
2 conjunction with a civic, charitable, governmental, trade association, or community organization
3 if the event is held within Utah and all chief executives are invited.

4 (4) "Political subdivision" means each county, municipality, school district, and special
5 district.

6 (5) "Public employee" means each person who is not a public officer who is employed on
7 a full-time, part-time, or contract basis by the state or any of its political subdivisions.

8 (6) "Public officer" means each elected and appointed official of the state and its political
9 subdivisions who occupies a policymaking post.

10 (7) "Public servant" means:

11 (a) a legislator or relative of a legislator;

12 (b) a public officer or relative of a public officer; and

13 (c) a public employee or relative of a public employee.

14 (8) "Relative" means a spouse, child, parent, grandparent, grandchild, brother, sister,
15 parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or spouse of
16 any of these individuals.

17 Section 4. Section **67-16a-201** is enacted to read:

18 **67-16a-201. Acceptance of gifts prohibited.**

19 A public servant may not accept a gift having a value of \$50 or more.

20 Section 5. Section **67-16a-301** is enacted to read:

21 **67-16a-301. Penalties.**

22 (1) (a) It is unlawful for a public officer or public employee to knowingly and intentionally
23 violate this chapter.

24 (b) Each public officer and public employee who knowingly and intentionally violates this
25 chapter is guilty of:

26 (i) a felony of the second degree, if the total value of the gift was greater than \$1,000;

27 (ii) a felony of the third degree, if:

28 (A) the total value of the gift is more than \$250 but not more than \$1,000; or

29 (B) the public officer or public employee has been twice before convicted of violation of
30 this chapter and the value of the gift was \$250 or less;

31 (iii) a class A misdemeanor, if the value of the gift was more than \$100 but not more than

1 \$250; or

2 (iv) a class B misdemeanor, if the value of the gift was \$100 or less.

3 (c) In addition to or in lieu of the penalties established by Subsection (1)(b), a public
4 officer or public employee who violates this chapter may be dismissed from employment, removed
5 from office as provided by law, or disciplined according to the disciplinary procedures and
6 penalties established by the Department of Human Resource Management.

7 (2) (a) It is unlawful for a legislator to knowingly and intentionally violate this chapter.

8 (b) Each legislator who violates this chapter is subject to discipline by the house of which
9 he is a member according to the procedures established in legislative rule.

10 Section 6. **Repealer.**

11 This act repeals:

12 Section **67-16-5, Accepting gift, compensation, or loan -- When prohibited.**

Legislative Review Note
as of 1-6-98 12:21 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel