



Ethics in Procurement Conflict of Interest Laws

ETHICS

- A system of moral principles
- The rules of conduct recognized in respect to a particular class of human actions or a particular group, culture, etc.

PURCHASING ETHICS

- Moral principles or code to be respected and followed by not only procurement personnel, but all public employees.
- Prohibit a breach of the public trust by any attempt to realize personal gain by a public employee through conduct inconsistent with the proper discharge of the employee's duties.

WORDS TO LIVE BY

- Just because an action is legal does NOT mean the action is ethical.
- Clearly, the law cannot set out to define all ethical and unethical actions. Our own moral compasses have to guide us.

Self check: Would I be comfortable with my action being posted online or on the front page of the newspaper?

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Northern Illinois President Resigns as Spending Questioned

By [Rick Seltzer](#) // June 16, 2017

1 COMMENT 



The president of Northern Illinois University announced at a Thursday Board of Trustees meeting that he will resign at the end of June after an investigation found he and other university administrators had sidestepped bidding requirements when hiring highly paid consultants.

ARKANSAS PROCUREMENT LAW

- The ethics portion of the Arkansas Procurement Law can be found in Ark. Code Ann § 19-11-701 et seq.

Subchapter 7

Ethics

19-11-701. Definitions.

As used in this subchapter:

(1) "Blind trust" means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in or other dispositions of the property subject to the trust;

STATEMENT OF POLICY

The Legislature set out the overriding policy for state employees and non-employees.

19-11-703. Statement of policy.

(a) Public employment is a public trust. It is the policy of the state to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the state. The policy is implemented by prescribing essential restrictions against conflict of interest without creating unnecessary obstacles to entering public service.

(b) Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the state procurement organization.

(c) To achieve the purpose of this subchapter, it is essential that those doing business with the state also observe the ethical standards prescribed in this subchapter.

History. Acts 1979, No. 483, § 2; A.S.A. 1947, § 14-1102.

The general standard of conduct for employees is that working in government is a public trust. Thus, any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

-- Ark. Code Ann. § 19-11-704(a)

NON-EMPLOYEE STANDARDS

- This ethical standard not only applies to state employees, but also to non-employees.

“Any effort to influence any public employee to breach the standards of ethical conduct set forth in this subchapter is also a breach of ethical standards.”

EMPLOYEE CONFLICT OF INTEREST

Under Arkansas law, it is a violation for any state employee to participate, either directly or indirectly, in any matter pertaining to any contract or subcontract, and any solicitation or proposal, in which to the employee's knowledge:

1. The employee or any member of the employee's immediate family has a financial interest;
2. A business or organization has a financial interest in which business or organization the employee, or any member of the employee's immediate family, has a financial interest; or
3. Any person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is a party.

--Ark. Code Ann. § 19-11-705(a)(1)

WHAT DOES ALL THIS MEAN?

What is “direct or indirect participation?” The statute defines “direct or indirect participation” as including (but certainly not limited to) the “involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.”

-- Ark. Code Ann. § 19-11-705(a)(2)

Who is my “immediate family member?” The statute defines “immediate family member” as “a spouse, children, parents, brothers and sisters, and grandparents .”

-- Ark. Code Ann. § 19-11-701(11)

ETHICS BREACH

- A vendor providing ATU employee anything of value at no cost or substantially below market value even if that vendor is not currently participating in a solicitation.

Examples include

- Meals, equipment, clothing, vehicles, and event tickets
- Any attempt to circumvent the bidding process.

Please note: Product samples or sponsored meetings (i.e. conferences or trade shows) are permissible but must not allow for individual gain.

HOW DO I HANDLE A POSSIBLE CONFLICT?

The statute sets out that procedure as well.

1. Upon discovery of a possible conflict of interest, an employee shall promptly file a written statement of disqualification with the director and shall withdraw from further participation in the transaction involved.
2. The employee may, at the same time, apply to the (DF&A) director ... for an advisory opinion as to what further application, if any, the employee may have in the transaction, or for a waiver....

-- Ark. Code Ann. § 19-11-705(c)

What is an advisory opinion?

- The ethics laws allows an employee or a contractor for the State (but NOT the State Agency, either for itself or on behalf of either) to ask the DF&A Director to issue a written advisory opinion regarding the appropriateness of the course of conduct to be followed in a proposed transaction.
- Following the course of action set out in the advisory opinion will be considered as having followed the ethics portion of the law.

-- See Ark. Code Ann. § 19-11-715(b).

WAIVERS?

Yep.

- Upon request, the director can, if a conflict of interest is found, choose to waive the conflict so as to allow the given transaction to continue if he finds that
 - a) the ethical conflict is insubstantial or remote, or
 - b) the best interests of the State are served by granting the waiver.



-- See Ark. Code Ann. § 19-11-715(c).

FORMER EMPLOYEES AND STATE CONTRACTS

- Arkansas law also prohibits (most) state employees from obtaining a state contract within a year of the termination of their state employment (whether voluntarily or involuntarily). That's in Ark. Code Ann. § 19-11-709(d).

(d) SELLING TO THE STATE AFTER TERMINATION OF EMPLOYMENT IS PROHIBITED.

(1) It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed ten thousand five hundred dollars (\$10,500), to engage in selling or attempting to sell commodities or services, including technical or professional consultant services, to the state for one (1) year following the date employment ceased.

Don't try this. If you know of a colleague who's thinking about doing this, remind him or her of this statute.

READ THE STATUTE

As a matter of prudence, everyone is advised to read § 19-11-709 in its entirety because it sets out additional restrictions on both contemporaneous employment (if you work in procurement, you can't also go to work for a vendor that contracts with your agency) and post-state employment (some of those restrictions are only for one year and others are permanent).

There are more restrictions and prohibitions in the Ethics Section, such as laws against:

- Kickbacks
- Gratuities (for securing state contracts)
- Using contingent fees
- Using confidential information for personal gain
- Other restrictions and prohibitions on private-sector employment upon leaving state government.

Read these at your leisure. Don't read them at your peril.

PENALTIES FOR EMPLOYEES

- The code sets out the penalties for violating the ethics laws. Criminal penalties include up to five years imprisonment and up to a \$10,000 fine (or both). -- Ark. Code Ann. § 19-11-702

19-11-702. Penalties.

Any employee or nonemployee who shall knowingly violate any of the provisions of this subchapter shall be guilty of a felony and upon conviction shall be fined in any sum not to exceed ten thousand dollars (\$10,000) or shall be imprisoned not less than one (1) nor more than five (5) years, or shall be punished by both.

In addition to criminal prosecution, the code permits civil and administrative remedies as well.

19-11-712. Civil and administrative remedies against employees who breach ethical standards.

(a) EXISTING REMEDIES NOT IMPAIRED. Civil and administrative remedies against employees which are in existence on July 1, 1979, shall not be impaired.

(b) SUPPLEMENTAL REMEDIES. In addition to existing remedies for breach of the ethical standards of this subchapter, or regulations promulgated thereunder, the Director of the Department of Finance and Administration may impose any one (1) or more of the following:

- (1) Oral or written warnings or reprimands;
- (2) Forfeiture of pay without suspension;
- (3) Suspension with or without pay for specified periods of time; and
- (4) Termination of employment.

(c) RIGHT TO RECOVER FROM EMPLOYEE VALUE RECEIVED IN BREACH OF ETHICAL STANDARDS. The value of anything received by an employee in breach of the ethical standards of this subchapter, or regulations promulgated thereunder, shall be recoverable by the state as provided in § 19-11-714, which refers to recovery of value transferred or received in breach of ethical standards.

(d) DUE PROCESS. Notice and an opportunity for a hearing shall be provided prior to imposition of any of the remedies set forth in subsection (b) of this section.

PENALTIES FOR NON-EMPLOYEES

Yes, penalties also apply to non-employees.

19-11-713. Civil and administrative remedies against nonemployees who breach ethical standards.

(a) **EXISTING REMEDIES NOT IMPAIRED.** Civil and administrative remedies against nonemployees which are in existence on July 1, 1979, shall not be impaired.

(b) **SUPPLEMENTAL REMEDIES.** In addition to the existing remedies for breach of the ethical standards of this subchapter, or regulations promulgated thereunder, the Director of the Department of Finance and Administration may impose any one or more of the following:

- (1) Oral or written warnings or reprimands;
- (2) Termination of transactions; and
- (3) Suspension or debarment from being a contractor or subcontractor under state contracts.

(c) **RIGHT TO RECOVER FROM NONEMPLOYEE VALUE RECEIVED IN BREACH OF ETHICAL STANDARDS.** The value of anything transferred in breach of the ethical standards of this subchapter, or regulations promulgated thereunder, by a nonemployee shall be recoverable by the state from such person as provided in § 19-11-714, which refers to recovery of value transferred or received in breach of ethical standards.

(d) **DUE PROCESS.** Notice and an opportunity for a hearing shall be provided prior to imposition of any of the remedies set forth in subsection (b) of this section.

NOW THAT YOU KNOW...

Remember, government service is a public trust. But those who may wish to breach that trust for their own personal gain, regardless of how small they may view that gain, risk loss of position, criminal proceedings, and public humiliation.