



GAO Technical Bulletin

Arizona Department of Administration ♦ General Accounting Office

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| Subject: | <i>Related Party Transactions</i> | Issued: | 6/12/09 |
| Manual Section(s): | N/A | Effective: | 6/12/09 |
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| TO: Technical Bulletin Administrators Human Resources Personnel Payroll Personnel All Agencies | FROM: D. Clark Partridge State Comptroller |
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AUTHORITY

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| A.R.S. § 35-131 | Accounting system; reports; notice of deficiency; forms. |
| A.R.S. § 38-501 | Application of article. |
| A.R.S. § 38-502 | Definitions. |
| A.R.S. § 38-503 | Conflict of interest; exemptions; employment prohibition. |
| A.R.S. § 38-504 | Prohibited acts. |
| A.R.S. § 38-505 | Additional income prohibited for services. |
| A.R.S. § 38-506 | Remedies. |
| A.R.S. § 38-507 | Opinions of the attorney general, county attorneys, city or town attorneys and house and senate ethics committee. |
| A.R.S. § 38-508 | Authority of public officers and employees to act. |
| A.R.S. § 38-509 | Filing of disclosures. |
| A.R.S. § 38-510 | Penalties. |
| A.R.S. § 38-511 | Cancellation of political subdivision and state contracts; definition. |
| A.R.S. § 41-703 | Duties of director. |
| A.R.S. § 41-722 | Powers and duties relating to finance. |
| AAC R2-5-501 | Standards of Conduct. |

DEFINITIONS

Agency: Any department, authority, board, commission, council, administration, court, registrar, office, institution, or other entity in the Executive, Legislative, or Judicial branch of State of Arizona Government.

Employee: Any full- or part-time individual being paid under the authority of any payroll system of the Government of the State of Arizona or any public officer, deputy, or board or commission member. To be defined as an officer of the State, the person must be participating on a board, commission, authority, council or committee created by law, the Governor, or by an Agency head with the proper authorization to create such an entity. For the purpose of this technical bulletin elected officials are excluded.

Form GAO-CI-101: An Annual Declaration and Disclosure form that must be filled out annually by certain State employees.

GAO: The Arizona Department of Administration, General Accounting Office.

He/him/his: For brevity and clarity, masculine singular pronouns are used throughout. Feminine or plural pronouns may be substituted, as appropriate.

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Management: For the purpose of this Technical Bulletin includes any director, deputy director, assistant director or any other position responsible for establishing policy, or affecting decisions on contracts or awards and excludes any elected officials.

Related Party: Parties are considered to be related if one party has the ability to control the other party or to exercise significant influence or joint control over the other party in making financial and operating decisions.

Related Party Transaction: Interaction between two parties, one of whom can exercise control or significant influence over the financial activities of the other; any activity or business conducted with an individual or organization with or in which one party has a substantial or remote interest; any activity or business conducted with an individual who is a relative; any activity or business conducted with an individual or entity identified in a “Annual Declaration and Disclosure Form” filed with the agency.

Relative: Spouse, child, grandchild, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.

“Remote Interest” means the following in the following contexts:

1. Nonprofit Corporation. A State employee or a relative of a State employee who is a non-salaried officer of a nonprofit corporation has a remote interest in any State transaction with or decision affecting that corporation.
2. Landlord/Tenant of a Contracting Party. A State employee or relative of a State employee who is a landlord or tenant of another party has a remote interest in any State transaction with or decision affecting the other party.
3. Attorney of a Contracting Party. A State employee or relative of a State employee who is an attorney for a client has a remote interest in any State transaction with or decision affecting the client.
4. Nonprofit Cooperative Marketing Association. A State employee or relative of a State employee who is a member of a nonprofit cooperative marketing association has a remote interest in any State transaction with or decision affecting that association.
5. Insignificant Stock Ownership. A State employee or relative of a State employee who owns shares of a for-profit corporation has a remote interest in any State transaction with or decision affecting the corporation, if all three of the following conditions are satisfied:
 - a. ownership is less than three percent of the shares of the corporation
 - b. the dividends (including the value of stock dividends) from the corporation do not exceed five percent of the person’s total annual income, and
 - c. Any other payments made to the person by the corporation do not exceed five percent of the person’s total annual income.
6. Reimbursement of Expenses. A State employee or relative of a State employee being reimbursed for actual and necessary expenses incurred in the performance of official duty has a remote interest in any decision affecting the reimbursement.
7. Recipient of Public Services Generally Available. A State employee or relative of a State employee who receives public services provided to the general public by a government or governmental agency by which he or she is employed has a remote interest in any contract with or decision affecting services to the employee or relative. The services must be provided on the same terms and conditions as they are provided to nonemployees.

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8. Public School Board Member. The interest of a public school board member is a remote interest when the decision involves a relative who is not a dependent or a spouse of the school board member.
9. Public Agency Employee. The interest of a State employee or relative of a State employee is a remote interest when the transaction with the State or the State decision indirectly affects that person as a public officer or employee of another public agency or political subdivision and does not confer a direct economic benefit or detriment upon the State employee or relative.
10. Class Interests. A State employee or relative of a State employee who is a member of a trade, business, profession, or other class of persons of at least ten members with an interest no greater than the interest of the other members of the class has a remote interest in a decision by the State affecting the class.

Substantial Interest: Any pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

INTRODUCTION

The management of each agency is charged with the fiduciary responsibility to safeguard public funds and to use resources wisely. A major factor in fulfilling this responsibility and achieving agency goals is to ensure that adequate internal controls exist. The prevention and elimination of conflicts of interest is an example of a control objective that, when in place and effective, aids in the achievement of an agency's goals.

Conflict of interest laws, rules and policies govern interactions between public employees' financial interests and the public interest. Arizona's conflict of interest statutes, A.R.S. § 38-501 et seq., apply to "all public officers and employees...of the State." Consequently it is the responsibility of the public officers and employees of the State to:

1. Be aware of the conflict of interest requirements of State law,
2. Recognize conflict of interest situations,
3. Take the required action in each conflict of interest situation.

Violations of the conflict of interest statutes, rules or policies may result in disciplinary action, up to and including dismissal, as well as criminal prosecution.

Elected officials as well as the Legislative and Judicial branches of the State are governed by the State Constitution and applicable laws pertaining to their office. Accordingly they may adopt the procedures for completing the annual declaration and disclosure form(s) or may substitute an equivalent process consistent with Policy Items # 1 and #2 below. Such requirements should extend to all applicable staff.

POLICY

It is the responsibility of all State employees to learn the requirements of, and comply with, general conflict of interest statutes, rules and policies. In addition, it is the responsibility of certain State employees to complete an Annual Declaration and Disclosure form GAO-CI-101. The purpose of this policy is to increase the awareness of and compliance with the conflict of interest and related party requirements. Due care should be taken to ensure that situations are identified where judgment may be impaired or may be perceived to be impaired.

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- 1) All members of management must file a completed Annual Declaration and Disclosure form GAO-CI-101 with the Agency annually. The form ***must*** be filed even if there are no conflicts noted. These forms shall be maintained by the agency for administrative and audit purposes consistent with the record retention period promulgated by the Arizona Department of Library and Archives (currently 5 fiscal years).
- 2) All members of management must file an amended Annual Declaration and Disclosure form GAO-CI-101 with the Agency within fifteen (15) days of any change in financial interest.
- 3) Management at each agency is responsible for monitoring any transactions that occur between the agency, agency management or individuals or organizations in or with which agency management or its employees have a substantial or remote interest. Documentation of any issues should be maintained and kept on file at each agency.
- 4) By August 31st of each year, the Agency shall, as part of the annual closing package, submit a report to the State Comptroller identifying all related party transactions in excess of \$100,000 cumulative that occurred in the prior fiscal year.
- 5) Any related party or conflict of interest issues should be appropriately discussed with legal counsel and resolved.

ON-LINE AVAILABILITY

Copies of all Technical Bulletins and many GAO Forms are available for viewing and downloading from the General Accounting Office Website located at:

<http://www.gao.az.gov>

AREAS IMPACTED

All State agencies.

CONTACTS

If you have any questions concerning this Technical Bulletin, please contact your GAO Liaison. You may also e-mail questions or comments concerning State policy and procedure to us at:

gaopolicy@azdoa.gov