

American Jurisprudence, Second Edition
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Public Officers and Employees
IX. Powers, Duties, and Rights, in General
C. Particular Powers and Duties; Requirements As to Performance Thereof
1. In General; Responsibilities to Government and Public; Ethical Duties
a. Overview

63C Am Jur 2d Public Officers and Employees § 247

§ 247 Statutory or administrative provisions

A federal statute prohibits, subject to criminal liability, conflicts of interest. n1 Statutory conflicts of interest provisions also exist in some states; n2 the legislative intent of some such provisions has been said to engender confidence in public bodies and to eliminate situations in which preference or undue influence could come to bear in the operation of government. n3

Some states and localities have regulations which forbid or regulate outside employment of public employees and public officers. Thus, for example, administrative code provisions have prohibited a state employee from engaging in outside employment or other outside activity not compatible with the full and proper discharge of his or her public duties and responsibilities, and have provided that the outside employment or other outside activity must not impair his or her independence of judgment as to his or her official responsibilities, pose a likelihood of conflict of interest, or require him or her or persuade him or her to disclose confidential information acquired by him or her as a result of his or her official duties. n4 Such a provision has been upheld as not unconstitutionally vague or overbroad for failure to give certain public employees notice of what was prohibited. n5 Other such regulations have also been upheld against assertions that they were vague and overbroad. n6 Regulations concerning the outside employment of governmental employees or officers have also been upheld as against the contention that they were unreasonable, n7 although the position has been taken that an ordinance concerning outside employment operates as a direct infringement upon the basic individual freedom of the right to work, and is unconstitutional as violative of the due process provisions of the state and federal constitutions. n8 Regulations prohibiting outside employment have also been challenged on other grounds but have been held valid as against claims that such regulations deprived employees of their rights under a state constitution to enjoy life and liberty and to acquire and protect property. n9

However, equal protection is violated when an outside employment policy is discriminatorily applied, as where some employees are permitted to engage in outside employment while others are prohibited from doing so. n10

A state statute dealing with conflict-of-interest activities of local agency officers or employees did not preclude a public employer from imposing restrictions on off-duty employment not specifically

mentioned in the statute, where the statute's legislative history indicated that it was intended to leave local agencies free to set standards different or more rigorous than those suggested in the enactment.
n11

Statutes dealing with conflicts of interest may provide that a person is not disqualified from holding an office or position that conflicts with other interests of that person. Such laws may provide that if such conflicts exist, one of two things must occur -- either the person complies with the requirements of the statutes by absenting herself or himself during consideration of proposals and votes thereon, or the contract or other action is a nullity and the person is subject to criminal prosecution.
n12

Observation: Federal statutes known as the Hatch Act place restrictions on political activities by federal employees, and are applicable to the political activities of state and local government employees if their principal employment is in connection with an activity that is partially or fully financed by the Federal Government. n13 Furthermore, most states have legislation regulating the political activities of public employees. n14

FOOTNOTES:

n1 §§ 370 et seq.

n2 *Burgess v. City of Baton Rouge*, 951 So. 2d 1128 (La. Ct. App. 1st Cir. 2006); *Vokal v. Nebraska Accountability and Disclosure Com'n*, 276 Neb. 988, 759 N.W.2d 75 (2009); *Williams v. Augusta County School Bd.*, 248 Va. 124, 445 S.E.2d 118, 92 Ed. Law Rep. 686 (1994).

n3 *State v. Ross*, 214 Ariz. 280, 151 P.3d 1261 (Ct. App. Div. 1 2007), as amended, (Mar. 28, 2007) and review denied, (Sept. 25, 2007); *Klistoff v. Superior Court*, 157 Cal. App. 4th 469, 68 Cal. Rptr. 3d 704 (2d Dist. 2007), as modified, (Dec. 14, 2007); *In re Advisory Committee on Professional Ethics Opinion 705*, 192 N.J. 46, 926 A.2d 839 (2007).

n4 *Indiana State Ethics Com'n v. Nelson*, 656 N.E.2d 1172 (Ind. Ct. App. 1995).

As to the rights of public officers and employees to engage in political activities, and the government's ability to restrict such activities, see § 239.

n5 *Indiana State Ethics Com'n v. Nelson*, 656 N.E.2d 1172 (Ind. Ct. App. 1995).

n6 *Trelfa v. Village of Centre Island*, 54 A.D.2d 985, 389 N.Y.S.2d 22 (2d Dep't 1976).

n7 *Johnson v. Trader*, 52 So. 2d 333 (Fla. 1951); *Jurgens v. Davenport, R.I. & N. Ry. Co.*, 249 Iowa 711, 88 N.W.2d 797 (1958); *Flood v. Kennedy*, 12 N.Y.2d 345, 239 N.Y.S.2d 665, 190 N.E.2d 13 (1963); *Croft v. Lambert*, 228 Or. 76, 357 P.2d 513, 88 A.L.R.2d 1227 (1960).

n8 *City of Crowley Firemen v. City of Crowley*, 280 So. 2d 897, 94 A.L.R.3d 1221 (La. 1973).

n9 *Hopwood v. City of Paducah*, 424 S.W.2d 134 (Ky. 1968).

n10 *Gosney v. Sonora Independent School Dist.*, 603 F.2d 522 (5th Cir. 1979).

n11 *Long Beach Police officers Assn. v. City of Long Beach*, 46 Cal. 3d 736, 250 Cal. Rptr. 869, 759 P.2d 504 (1988).

n12 *Coyne v. State ex rel. Thomas*, 595 P.2d 970 (Wyo. 1979).

As to personal interests of public officers or employees in contracts, generally, see § 256.

n13 *Am. Jur. 2d, Elections* § 460.

n14 *Am. Jur. 2d, Elections* § 461.

REFERENCE: West's Key Number Digest, Officers and Public Employees [westkey]103 to 105, 110 to 112

5 *U.S.C.A. App. 4* §§ 101 et seq., 401 et seq.

28 *U.S.C.A.* § 414

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