



**GUIDELINES**  
**TO THE MONTANA CODE OF ETHICS**  
**FOR LOCAL GOVERNMENT OFFICERS & EMPLOYEES**



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The Code of Ethics contains specific provisions regarding conduct and disclosure by local government officers and employees. It generally regulates the activities of local government officers and employees in the following areas:

1) Employment, 2) Self-Dealing, and 3) Campaign Practices.

A summary of the code sections relating to local government officials and employees follows:

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# 1

## PROHIBITED EMPLOYMENT ACTIONS

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### A LOCAL GOVERNMENT OFFICER OR EMPLOYEE CANNOT:

- A. Accept employment or engage in employment negotiations with a person whom the officer or employee regulates without first giving written notification to the officer or employee's supervisor and department director. MCA 2-2-121(2)(f).

#### EXAMPLES:

- A county sanitarian violates this section by entering into employment negotiations or being hired by a local food establishment the sanitarian inspects.
- A county planner violates this section by entering into employment negotiations with an engineering firm doing mapping work for the county community development office.

NOTE: A local government officer or employee may avoid the prohibition contained in MCA 2-2-121 by first giving written notice to the supervisor and department director. An elected official should probably give written notice to the county commissioners.

- B. Receive salaries from two separate public employment positions that overlap for the hours being compensated unless there is reimbursement to the public entity for the absence incurred, or the salary is reduced by the amount of money received from the other public employer. An officer or employee must disclose the amounts received from the two positions to the Commissioner of Political Practices. MCA 2-2-104(3).

- Watch out for "incompatible offices".

- C. Obtain employment where the officer or employee will take advantage of matters in which he/she was directly involved during employment within 12 months of voluntary termination of office or employment. These matters include rules other than general rules, applications, claims, or contested cases. MCA 2-2-105(3).

#### EXAMPLES:

- A deputy county attorney violates this section by accepting employment with a private law firm, within 12 months of county employ-

ment, to work on cases he/she had previously worked on for the county.

- A county commissioner violates this section by accepting employment within 12 months of his/her service as county commissioner with a firm having pending claims against the county with which the commissioner was familiar.

D. Contract or be employed by an employer who contracts with the State or any of its subdivisions involving matters in which the employee was directly involved during employment within six months of termination of employment. MCA 2-2-201(1). “Contract” does not include contracts awarded by competitive bidding procedures after leaving employment. MCA 2-2-201(2)(b)(i).

EXAMPLES:

- A former county computer programmer violates this section by contracting within six months of county employment with a private computer firm to do county programming work which the former programmer had previously done for the county.
- A former county surveyor violates this section by contracting within six months of county employment with the county to perform county surveys as a private consultant.
- There is an exception for small counties related to cost and time factors. MCA 2-2-201(2)(b)(iv).

E. Appoint any person related by “consanguinity within the fourth degree or affinity within the 2<sup>nd</sup> degree”. MCA 2-2-302. (See charts below after the Note).

EXAMPLE:

- A county road worker and his/her daughter may both be employed in the road department because the road worker has no power to hire and fire employees. 27 A.G. Op. 21 (1957).

NOTE: The prohibition in Section E does not apply to sheriffs appointing cooks and/or attendants, employment of election judges, or renewal of an employment contract for a relative initially hired before a related member assumed duties. MCA 2-2-302(2). There is an exception for counties with a population of less than 10,000. However, related commissioners must abstain from voting on the hiring decision.

Prohibited Employment Activities

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RELATIONSHIP OF CONSANGUINITY

<u>1<sup>st</sup> degree</u>	<u>2<sup>nd</sup> degree</u>	<u>3<sup>rd</sup> degree*</u>	<u>4<sup>th</sup> degree*</u>
Child	Grandchild	Great-grandchild	Great-great-grandchild
Parent	Sister	Niece	Grandniece
	Brother	Nephew	Grandnephew
	Grandparent	Aunt*	First cousin
		Uncle*	Great aunt*
		Great-grandparent	Great uncle*
			Great-great-grandparent

\*does not apply to aunts or uncles by marriage.

RELATIONSHIP

1<sup>st</sup> Degree

2<sup>nd</sup> Degree

OF AFFINITY

Spouse	Brother-in-law
Mother-in-law	Sister-in-law
Father-in-law	Spouse's grandparent
Son-in-law	Spouse's grandchild
Daughter-in-law	Grandchild's spouse
Stepson	Spouse of grandparent
Stepdaughter	
Stepmother	
Stepfather	

## PROHIBITED SELF-DEALING ACTIVITIES

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### A LOCAL GOVERNMENT OFFICER OR EMPLOYEE CANNOT:

A. Use public time, facilities, equipment, supplies, personnel, or funds for private business purposes. MCA 2-2-121(2)(a).

#### EXAMPLES:

- A county surveyor violates this section by using county time, equipment, or employees to do his/her private survey work.
- Selling Mary Kay cosmetics in the office?
- How about selling Girl Scout cookies?

B. Assist a person for a fee or other compensation in obtaining a contract, claim, license, or economic benefit from the officer or employee's agency or any other agency. MCA 2-2-121(2)(c)(d).

#### EXAMPLES:

- A county sanitarian violates this section by charging a fee for approving a sanitary system for a trailer park located in the county.
- A Fair manager violates this section by receiving personal benefits for contracting with a Fair sponsor for advertising.

C. Disclose or use confidential information acquired in the course of official duties to further personal economic interests. MCA 2-2-104(1)(a).

#### EXAMPLES:

- A county road supervisor violates this section by using proposed right-of-way acquisition information to purchase property.
- How about purchasing tax deeds?

D. Accept a gift of \$50 or more or a substantial economic benefit that would influence a reasonable person to depart from the faithful discharge of public duties or is intended to be a regard for official action taken. MCA 2-2-104(1)(b). However, legally reported campaign contributions are not gifts or economic benefits tantamount to gifts. MCA 2-2-104(2).

EXAMPLE:

- A county commissioner violates this section by accepting free lodging and meals at Fairmont Hot Springs from a local subdivider with numerous subdivisions subject to approval by the commission.

NOTE: Food and beverages consumed by officers or employees at official functions or related charitable, civic or community events are not considered gifts. A low interest loan is a gift. MCA 2-2-104(2).

- E. Be interested in any contract made in an official capacity or by any body, agency, or board of which they are members or employees. “Contract” does not include contracts based on competitive bidding procedures conducted after the date of employment termination, sales at auction to the highest bidder, or dealings with financial institutions that loan or receive money. MCA 2-2-201(1).

EXAMPLE:

- A county commissioner who is also a private contractor may violate this section if the commission enters into a contract with his/her company that was not awarded by competitive bidding procedures. 40 A.G. Op. 32 (1984).
- This section includes other exclusions to the rule prohibiting local government officers or employees from being interested in contracts made by them in their official capacities or by any agency, body, or board of which they are members. MCA 2-2-201(2)(b)(iv).

- F. Acquire an interest in any business that would be directly and substantially affected to its economic benefit by official action taken by his/her agency. MCA 2-2-105(2).

EXAMPLE:

- A county commissioner violates this section by purchasing a car dealership with a contract to provide trucks to the county road department.

- G. Perform an official act directly and substantially affecting a business to its economic detriment when he/she has an interest in a competing business. MCA 2-2-105(5).



EXAMPLE:

- A county sanitarian with a business interest in a dump site violates this section by ordering a competing dump site to be closed.

H. Engage in substantial financial transactions for private business purposes with a person whom the officer or employee supervises or inspects. MCA 2-2-121(2)(b).

EXAMPLES:

- A county employee who supervises a number of other county employees violates the sections if he employs them in his private part-time business and the employment involves a “substantial financial transaction”.
- The “work-around”.

I. Perform an official act which directly economically benefits a business or undertaking in which the official or employee has a financial interest or is engaged as counsel, consultant, representative or agent. MCA 2-2-121(2)(e).

EXAMPLES:

- A county commissioner violates this section if he/she, acting officially, awards county contracts for monetary payments to a corporation on which he/she serves as a voting member of the board.
- A county coroner who is also a mortician may violate this section if, when acting in his/her official capacity as coroner, he/she directs that a body be taken to a funeral parlor that he/she owns. 37 A.G. Op. 55 (1979).

NOTE: There would be no violation of this section if the coroner owned the only mortuary in the county, as he/she would have no discretion. An “official” act involves the use of discretionary authority. MCA 2-2-102 (4).

J. County, town, and city officers cannot purchase at any sale or be a vendor at any purchase made by them in an official capacity. MCA 2-2-202.

EXAMPLE:

- A county Fair Board member violates this section by purchasing hardware for the Fair from his/her own hardware store.

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## CAMPAIGN PRACTICES

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A LOCAL GOVERNMENT OFFICER OR EMPLOYEE CANNOT:

- A. Use public time, facilities, equipment, supplies, personnel, or funds for any campaign activity that is intended to persuade or affect a political decision, unless the use is authorized by law or the activity is in the normal course of duties. MCA 2-2-121(3).

EXAMPLE:

- Officers or employees violate this section by using county resources such as copy machines, paper, telephones, computers and/or Emails, vehicles, or personnel for political campaigns or to support or defeat political issues such as school mill levies.

NOTE: Officers do not violate this section by providing information to the public regarding the impact of passage or failure of a ballot issue on local government operations. They are prohibited in their official capacities from advocating either the passage or failure of the ballot issue.

Elected officials and employees have a right to express their personal political beliefs in speech and in letters to the editor with their official titles, as long as public facilities, equipment, supplies, or funds are not involved.

Law enforcement officers may wear a uniform to campaign for a political issue or candidate. 51 A.G. Op. 1 (2005).

## PUBLIC DISCLOSURE

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- A. A local government officer or employee must disclose to the Commissioner of Political Practices the amounts received from two separate public employment positions that overlap for the hours being compensated. MCA 2-2-104(3)(c).

EXAMPLE:

- Officers and employees violate this section by failing to disclose to the Commissioner of Political Practices the salary amounts they are receiving from two separate public employment positions when the hours of compensation overlap.

NOTE: MCA 2-2-104(3)(i) and (ii) also require either reimbursement or salary reduction.

- B. A local government employee who is a member of a quasi-judicial board (a board making decisions on contested matters) or a rule-making board or commission, must disclose conflicting private interests that appear improper prior to participating in official action. MCA 2-2-105(4).

EXAMPLE:

- A county employee who is also a member of the public safety commission, who has had past business dealings with a discharged deputy sheriff, must disclose that interest prior to making a determination of whether the charges resulting in that discharge have been proven.

- C. A local government officer or employee must disclose to the Commissioner of Political Practices in writing, the intention of engaging in an act that may create a conflict between public duty and private interest. At the time of the performance, there must be a statement for the record of the fact and nature of the interest. MCA 2-2-131.

EXAMPLE:

- A county road supervisor requesting commission approval for an encroachment permit for land in which he/she has an interest, and whose opinion regarding the issuance of permits is normally sought by the commission, should notify the Commissioner of Political Practices in writing of his/her private interest in the land.
- Recusal

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## ENFORCEMENT

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A person alleging violation of the Code of Ethics by a local government officer or employee notifies the county attorney of the county where local government is located, or the three-member review panel that may be established under MCA 2-2-144(5). The county attorney may request necessary information from the complainant or the person who is the subject of the complaint to make a determination regarding the validity of the complaint. If the county attorney determines the complaint is justified, action can be brought in District Court and result in a civil fine and, in certain instances, a criminal penalty. If the county attorney declines to bring an action, the complainant may file a civil action in District Court. If the Court determines there was a violation, it may assess a civil fine, costs, and attorney fees against the charged officer or employee. If the Court finds no violation, it may assess costs and attorney fees against the complainant and may impose sanctions if it determines the action was frivolous or intended for harassment. MCA 2-2-144.

In addition to civil fines and criminal penalties, the employing entity may take disciplinary action against an employee violating the Code. MCA 2-2-144.

## **CONCLUSION**

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DON'T USE PUBLIC OFFICE FOR PRIVATE GAIN.







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