



Guidelines to the

# Montana Code of Ethics



For Local Government Officers & Employees



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## Conclusion

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In complying with the provisions of the Code of Ethics, local government officials and employees should focus on the fact they owe an undivided duty to the public. The Code does not permit them to place themselves in a position which would subject them to conflicts of interest or which could create the temptation to act in a manner other than in the best interest of the people of the state. When situations arise where the possibility exists that private interests might impinge on public responsibilities, each and every officer and employee must personally examine the facts in light of the standards established by the Code and act accordingly.

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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 section 2-2-144(5), MCA. 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. (Section 2-2-144, MCA)

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

## MONTANA ASSOCIATION OF COUNTIES JOINT POWERS INSURANCE AUTHORITY (JPIA)

To Local Government Officials and Employees:

The 1995 Legislature passed major legislation which generally revised the existing Montana Code of Ethics. These amendments have been codified and published in Section 2-2-101, Montana Codes Annotated et seq.

The Code prohibits conflicts between public duty and private interest, as required by Article XIII of the Montana Constitution. It recognizes that holding office is a public trust, created by the confidence which the voters have in the integrity of public officers and employees.

(Section 2-2-103, MCA)

Numerous local government officials and employees have asked the Montana Association of Counties questions concerning the various provisions of the Code. In response to the apparent need for guidance, MACo, in conjunction with the Joint Powers Insurance Authority, has prepared a booklet containing relevant Code provisions and examples.

This publication is designed to provide general information in regard to the subject matter covered, is advisory only and may not apply in particular fact situations. This publication should not be utilized as a substitute for professional advice in specific situations. Officials and employees with questions regarding specific Code applications are encouraged to seek legal advice from their County Attorneys.

A number of individuals were generous with their time and shared their observations and comments regarding this project. I wish to thank these people for their help:

David Patterson, Law Professor, University of Montana  
Kimberly Chladek, Attorney at Law  
Mike McGrath, Montana Attorney General  
Chris Tweeten, Montana Assistant Attorney General

Hopefully, this booklet will provide you with some direction in the performance of your public duties.

Sincerely,  
*Mike Sehestedt*

Mike Sehestedt  
MACo General Counsel & Personnel Services Administrator

# Contents

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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:

- (1) PROHIBITED EMPLOYMENT ACTIONS.....page 1
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F. A LOCAL GOVERNMENT OFFICER OR EMPLOYEE MAY AVOID THE EMPLOYMENT SOLICITATION PROHIBITIONS CONTAINED IN SECTION 2-2-121, MCA, BY GIVING WRITTEN NOTIFICATION TO THE OFFICER'S OR EMPLOYEE'S SUPERVISOR.

(SECTION 2-2-121(2)(f), MCA)

**EXAMPLE:**

An officer or employee may engage in employment negotiations with persons whom the officer or employee regulates as long as written notice has been given to the supervisor.

INTEREST CREATING THE APPEARANCE OF IMPROPRIETY.  
(SECTION 2-2-125(3), MCA)

**EXAMPLE:**

A county commissioner owning the only heavy equipment rental business in the area may avoid the self dealing prohibitions of Section 2-2-125, MCA, and rent equipment to the county road department if the commissioner's presence is necessary to obtain a quorum and the commissioner discloses the interest creating the appearance of impropriety.

- D. A MEMBER OF A QUASI-JUDICIAL OR RULEMAKING BOARD MAY PERFORM AN OFFICIAL ACT DIRECTLY AND SUBSTANTIALLY ECONOMICALLY BENEFITING A BUSINESS IN WHICH THE LOCAL GOVERNMENT OFFICER OR EMPLOYEE HAS AN INTEREST OR IS ENGAGED AS COUNSEL, CONSULTANT, REPRESENTATIVE, OR AGENT IF PARTICIPATION IS NECESSARY TO THE ADMINISTRATION OF A STATUTE AND THE DISCLOSURE PROVISIONS OF 2-2-131, MCA, ARE COMPLIED WITH. (SECTION 2-2-121, MCA)

**EXAMPLE:**

A member of the county planning board having an interest in a proposed subdivision which is before the board may participate in the decision if the statutory time for decision is expiring and he notifies the Secretary of State in writing of the interest and indicates the interest for the record when votes are cast.

- E. A LOCAL GOVERNMENT EMPLOYEE WHO IS A MEMBER OF A QUASI-JUDICIAL BOARD (BOARD MAKING DECISIONS ON CONTESTED MATTERS) OR RULE MAKING BOARD OR COMMISSION, MUST DISCLOSE CONFLICTING PRIVATE INTERESTS THAT APPEAR IMPROPER PRIOR TO PARTICIPATING IN OFFICIAL ACTION. (SECTION 2-2-105(4), MCA)

**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 the discharge have been proven.

## Prohibited Employment Activities

**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'S OR EMPLOYEE'S SUPERVISOR AND DEPARTMENT DIRECTOR. (SECTION 2-2-121, MCA)

**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 2-2-121 MCA 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. (SECTION 2-2-104(3), MCA)

**NOTE:** Before this section becomes operational, an officer or employee must be receiving pay from two separate public employers for the same hours of work.

- C. OBTAIN EMPLOYMENT WHERE THE OFFICER OR EMPLOYEE WILL TAKE ADVANTAGE OF MATTERS HE OR SHE WAS DIRECTLY INVOLVED IN 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.

(SECTION 2-2-105(3), MCA)

**EXAMPLES:**

- A deputy county attorney violates this section by accepting employment within 12 months of county employment with a private law firm to work on cases the attorney had previously worked on for the county.
- A county commissioner violates this section by accepting employment within 12 months of his service as county commissioner with a firm having pending claims against the county which the commissioner was familiar with.

- D. CONTRACT OR BE EMPLOYED BY AN EMPLOYER WHO CONTRACTS WITH THE STATE OR ANY OF ITS SUBDIVISIONS INVOLVING MATTERS THE EMPLOYEE WAS DIRECTLY INVOLVED IN DURING EMPLOYMENT WITHIN 6 MONTHS OF TERMINATION OF EMPLOYMENT. (SECTION 2-2-201(1),MCA)

"CONTRACT" DOES NOT INCLUDE CONTRACTS AWARDED BY COMPETITIVE BIDDING PROCEDURES.

(SECTION 2-2-201(1)(b)(I), MCA)

**EXAMPLES:**

- A former county computer programmer violates this section by contracting within 6 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 6 months of county employment with the county to perform county surveys as a private consultant.

- E. APPOINT ANY PERSON RELATED BY "CONSANGUINITY WITHIN THE FOURTH DEGREE OR AFFINITY WITHIN THE SECOND DEGREE".

## Public Disclosure

- 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. (SECTION 2-2-104(3)(c), MCA)

**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:** In addition to disclosure, Section 2-2-104(3)(i) and (ii), MCA, require either reimbursement or salary reduction.

- B. A LOCAL GOVERNMENT OFFICER OR EMPLOYEE MUST DISCLOSE TO THE SECRETARY OF STATE IN WRITING, THE INTENTION OF ENGAGING IN AN ACT THAT MAY CREATE A CONFLICT BETWEEN PUBLIC DUTY AND PRIVATE INTEREST. (SECTION 2-2-131, MCA)

AT THE TIME OF PERFORMANCE, THERE MUST BE A STATEMENT FOR THE RECORD OF THE FACT AND NATURE OF THE INTEREST. (SECTION 2-2-131, MCA)

**EXAMPLE:**

A county road supervisor requesting commission approval for an encroachment permit for land he has an interest in and whose opinion regarding the issuance of permits is normally sought by the commission should notify the Secretary of State in writing of his private interest in the land.

**NOTE:** This section does not excuse or exonerate a potential violation of the Code of Ethics, except as provided in sections 2-2-121(6) and 2-2-125(3), MCA. 37A.G.Op.104(1978).

- C. A MEMBER OF THE GOVERNING BODY OF A LOCAL GOVERNMENT, TO OBTAIN A QUORUM, MAY AVOID THE PROHIBITIONS CONTAINED IN SECTION 2-2-125(2), MCA, BY DISCLOSING THE IN-

## Campaign Practices

### *A LOCAL GOVERNMENT OFFICER OR EMPLOYEE CANNOT:*

USE PUBLIC TIME, FACILITIES, EQUIPMENT, SUPPLIES, PERSONNEL OR FUNDS FOR ANY CAMPAIGN ACTIVITY THAT PERSUADES OR AFFECTS A POLITICAL DECISION UNLESS THE USE IS AUTHORIZED BY LAW OR THE ACTIVITY IS IN THE NORMAL COURSE OF DUTIES.  
(SECTION 2-2-121(3), MCA)

### EXAMPLE:

Officers or employees violate this section by using county resources such as copying machines, paper, telephones, 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.

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))

County Commissioners do not violate this section by authorizing the payment of dues to MACo even if the dues are used to participate in ballot issues. Additionally, any action taken by a Commissioner as an officer of MACo in support or opposition to ballot issues is not a violation of the section as MACo is not covered by the Code of Ethics.  
(SECTIONS 2-2-101 through 2-2-144, MCA)  
(A.G. Letter of Advice to Hill County Commissioners 9/27/2006.)

(SECTION 2-2-302, MCA)

THIS PROHIBITION 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.  
(SECTION 2-2-302(2), MCA)

IT IS ALSO A CRIME TO AGREE WITH OTHER PUBLIC OFFICIALS OR EMPLOYEES TO APPOINT THEIR RELATIVES.  
(SECTION 2-2-303, MCA)

### EXAMPLES:

- A county commissioner who appoints his son-in-law to a county position violates this section even though he may be the most qualified for the position.  
(37A.G.Op.49(1977))
- A county road worker and his daughter may both be employed in the road department because the road worker has no power to hire and fire employees.  
(27A.G.Op.21(1957))

**NOTE:** This section includes great uncles, first cousins, and great-grandchildren, and a spouse's brother, mother, and grandparent's, but does not include second cousins, first cousins once removed, or a spouse's uncle, nephew or second cousin twice removed.

- ! Abstention from voting by a related board member does not circumvent the prohibitions in the statute.  
(34A.G.Op.3)
- ! Resignation by a related board member, employment of the member's relative, and re-appointment of the board member is unlawful.  
(37A.G.Op. 6 (1977))

## Prohibited Self-Dealing Activities

### *A LOCAL GOVERNMENT OFFICER OR EMPLOYEE CANNOT:*

- A. USE PUBLIC TIME, FACILITIES, EQUIPMENT, SUPPLIES, PERSONNEL, OR FUNDS FOR PRIVATE BUSINESS PURPOSES.

(SECTION 2-2-121(2)(a), MCA)

#### EXAMPLES:

- A county surveyor violates this section by using county time, equipment, or employees to do his private survey work.
- County road department employees violate this section by using county road materials or equipment for a road repair business.

**NOTE:** A part-time county attorney may conduct private practice using office space, equipment, or support staff provided by the county if the county governing body has agreed in writing to the arrangement. (46A.G.Op10(1995))

- B. ASSIST A PERSON FOR A FEE OR OTHER COMPENSATION IN OBTAINING A CONTRACT, CLAIM, LICENSE, OR ECONOMIC BENEFIT FROM THE OFFICER'S OR EMPLOYEE'S AGENCY OR ANY OTHER AGENCY. (SECTION 2-2-121(2)(c)(d), MCA)

#### 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 county commissioner violates this section by charging a machinery supplier a fee for obtaining a supply contract with the county.
- A county purchasing agent violates this section by receiving a personal discount in return for assuring a tire dealer a contract for county road department tires.

#### EXAMPLE:

County officers may not purchase county rural improvement district warrants without violating this section. The only exceptions relate to evidence of indebtedness held by the officer for services rendered or as evidence of the funded indebtedness of the county. (38A.G.Op.79(1980))

- 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.  
(SECTIONS 2-2-121(2)(e), and 2-2-125(2)(b), MCA)

**EXAMPLES:**

- A county commissioner who acts officially and awards county contracts for monetary payments to a corporation on which he serves as a voting member of the board violates these sections. However, subsection (3) of section 2-2-125, MCA, goes on to provide that notwithstanding his interest, a county commissioner may perform an otherwise prohibited official act if his participation is necessary to commission action and he discloses the interest creating the appearance of impropriety.  
(38A.G.Op.55(1979))
- A county coroner who is also a mortician may violate these sections, when acting in his official capacity as coroner, he directs that a body be taken to a funeral parlor he owns.  
(37A.G.Op.104 (1978))
- There would be no violation of the sections if the coroner owned the only mortuary in the county as he would have no discretion. An "official" act involves the use of discretionary authority.  
(SECTION 2-2-102 (4), MCA)

- 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. (SECTION 2-2-202, MCA)

**EXAMPLE:**

A county fair board member violates this section by purchasing hardware for the fair from his own hardware store.

- K. COUNTY, CITY, AND TOWN OFFICERS, THEIR DEPUTIES AND CLERKS, CANNOT DEAL IN COUNTY WARRANTS, SCRIPS, ORDERS, CLAIMS, OR OTHER DOCUMENTS OF INDEBTEDNESS.  
(SECTION 2-2-204, MCA)

- C. DISCLOSE OR USE CONFIDENTIAL INFORMATION ACQUIRED IN THE COURSE OF OFFICIAL DUTIES TO FURTHER PERSONAL ECONOMIC INTERESTS. (SECTION 2-2-104(1)(a), MCA)

**EXAMPLE:**

A county road supervisor violates this section by using proposed right of way acquisition information to purchase the property.

- 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 INTENDED TO BE A REWARD FOR OFFICIAL ACTION TAKEN.  
(SECTION 2-2-104(1)(b), MCA)

LEGALLY REPORTED CAMPAIGN CONTRIBUTIONS ARE NOT GIFTS OR ECONOMIC BENEFITS TANTAMOUNT TO GIFTS.

(SECTION 2-2-104(2), MCA)

**EXAMPLE:**

A county commissioner violates this section by accepting three days 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.

- E. BE INTERESTED IN ANY CONTRACT MADE IN AN OFFICIAL CAPACITY OR BY ANY BODY OF WHICH THEY ARE MEMBERS OR EMPLOYEES. "CONTRACT" DOES NOT INCLUDE CONTRACTS BASED ON COMPETITIVE BIDDING PROCEDURES, SALES AT AUCTION TO THE HIGHEST BIDDER, OR DEALINGS WITH FINANCIAL INSTITUTIONS WHICH LOAN OR RECEIVE MONEY.

(SECTION 2-2-201(1), MCA)

**EXAMPLES:**

- A county commissioner, who is also a private contractor, may violate this section if the commissioners enter into a contract with his company that was not awarded by competitive bidding procedures.  
(40A.G.Op.32(1984))

- A county officer who is a majority stockholder in a company providing supplies and equipment to his office may violate this section as the exception relating to minority stockholders would not apply. (37A.G.Op.78(1977))
- The combination of being a bank officer and minority stockholder brings the public official within the prohibitions contained in this section. (37A.G.Op.2(1977))

**NOTE:** In addition to the exceptions listed above, 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 body, agency, or board of which they are members. (See Sections 2-2-201(1)(b)(iv) and 2-2-201(2), MCA.) The exceptions contained in the section must be incorporated into the sections that provide strict prohibitions relating to conflicts of interest for county commissioners and city officials.

(Sections 7-5-2106 and 7-5-4109, MCA; 40A.G.Op.28(1983))

If the interest is not permissible under the exceptions listed in this section, then the contract is voidable, and abstinence from voting will not exonerate the official as officers "must not be interested in any contract made by them in their official capacity or by any body, agency or board of which they are members or employees". (40A.G.Op.28 (1983))

F. ACQUIRE AN INTEREST IN ANY BUSINESS DIRECTLY AND SUBSTANTIALLY AFFECTED TO ITS ECONOMIC BENEFIT BY OFFICIAL ACTION TAKEN BY HIS AGENCY. (SECTION 2-2-105(2), MCA)

**EXAMPLES**

- A county commissioner violates this section by purchasing a car dealership with a contract to provide trucks to the county road department.
- A secretary to the solid waste board violates this section by becoming a partner in a waste hauling business or engineering firm doing business with the board.

G. PERFORM AN OFFICIAL ACT DIRECTLY AND SUBSTANTIALLY AFFECTING A BUSINESS TO ITS ECONOMIC DETRIMENT WHEN HE OR

SHE HAS AN INTEREST IN A COMPETING BUSINESS.

(SECTION 2-2-105(5), MCA)

**EXAMPLE:**

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

H. ENGAGE IN SUBSTANTIAL FINANCIAL TRANSACTIONS FOR PRIVATE BUSINESS PURPOSES WITH A PERSON WHOM THE OFFICER OR EMPLOYEE SUPERVISES OR INSPECTS.

(SECTIONS 2-2-121(2)(b), and 2-2-125(2)(a), MCA)

**EXAMPLES:**

- A county board member who has a partnership agreement with other individuals to develop property and whose partners appear before the board on matters unrelated to property development may violate sections 2-2-125(2)(a) and 2-2-121(2)(b), MCA, even though the proposed development did not require board action. The fact that the board member's partners appear before the board on other matters may well be "inspection or supervision". (37A.G.Op.104(1978))
- A deputy sheriff may work as a security guard on his off-duty hours without violating these sections. His work would probably be a substantial financial transaction, however it would not be a transaction with a person whom he "inspects" or "supervises". Inspect means "to look upon; to view closely and critically, esp. so as to ascertain quality or state, to detect errors, etc.; to scrutinize; to view and examine officially." Supervise means "to oversee for direction; to superintend; to inspect with authority." (37A.G.Op.104(1978))
- 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 decision of whether the activity is a "substantial financial transaction" must be decided on a case-by-case basis. Consideration should be given to the nature and extent of the transaction; the nature and extent of the employee-supervisor relationship; and the amount of remuneration in proportion to the individual salaries involved, as well as the intent and purpose of the Code. (37A.G.Op.104(1978))