

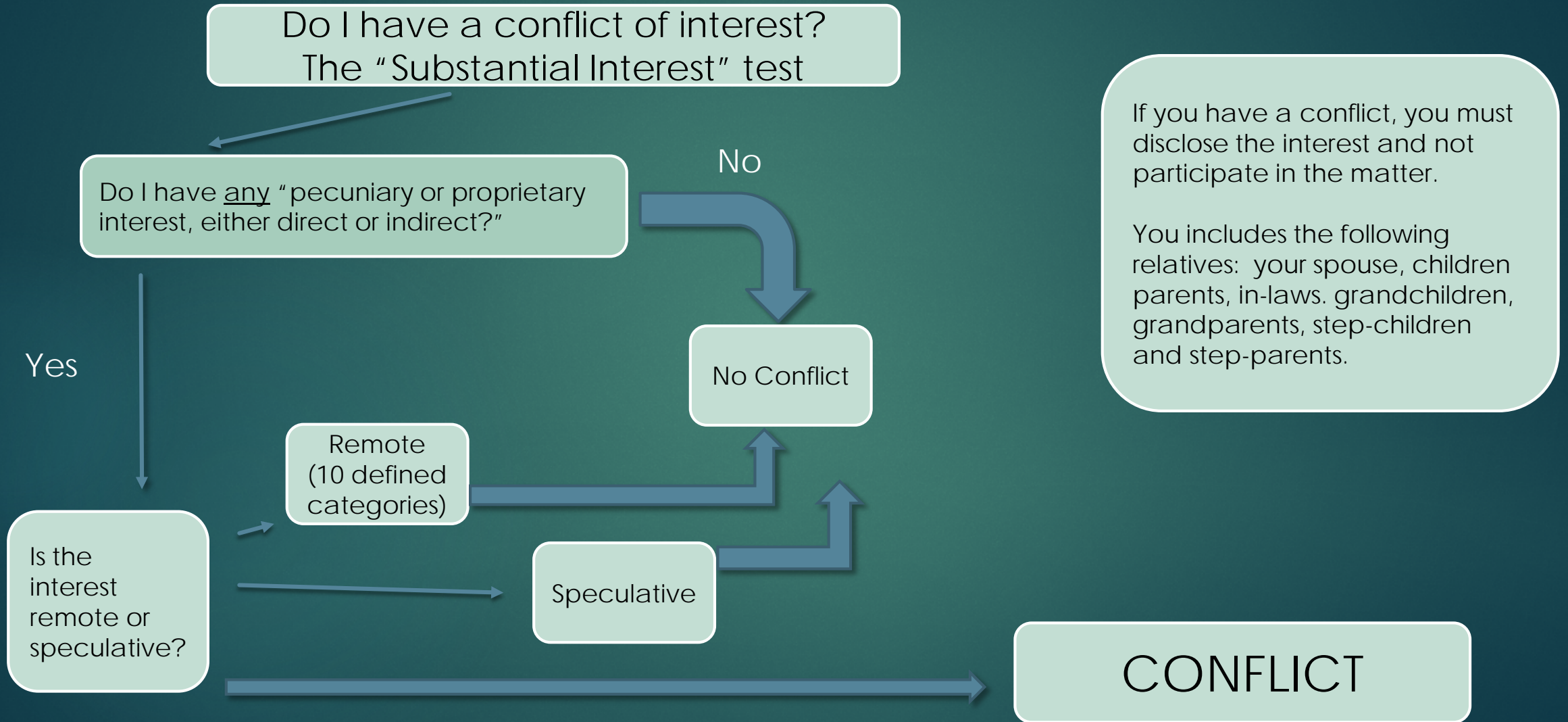


Conflicts, Ethics, & Gifts

Conflict of Interest – two cornerstones

1. Statutory Conflict of Interest Analysis – detailed but sometimes counterintuitive state statute, AG Handbook provides some guidance, statutory penalties for violations.
 2. The City of Mesa Ethics Handbook for Elected Officials & Advisory Board Members – states that “officials should declare possible conflicts to avoid any appearance of impropriety.” Section III(C). City Council enforces. City Charter, Section 206(B)(2).
- Hypothetical: P&Z Board member who is an architect and has, in the past, frequently worked with Developer A and markets to Developer A. Developer A has a site plan review before the P&Z Board that this Board member did not work on.

Conflict of Interest - simplified



Conflict of Interest - details

1. The core statutory language: “Any public officer or employee who has or whose relative has, a *substantial interest* in any decision of a public agency shall make known that interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.” A.R.S. §38-503(B).
2. The use of the word “substantial” in the statute is very misleading because the definition of “substantial interest” eliminates any need for “substantiality” and only requires “any” interest—so do not rely on substantial as a defense. Here is the definition: “Substantial Interest means any non-speculative pecuniary or proprietary interest, either direct or indirect, other than a remote interest.” A.R.S. §38-502(11).

Exceptions: Remote & Non-speculative

1. Remote – The statute defines ten remote interests—it must be within one of the ten categories to be a remote interest. The most common are:
 - o Non-Salaried Nonprofit Officer
 - o Insignificant Stock Ownership
 - o Recipient of Public Services Generally Available (e.g., Mesa Utilities)
2. Non-speculative interest – not defined and case law has only handled extreme examples. The most helpful clarification is the following: “The term ‘interest’ does not mean a mere abstract interest in the general subject or a contingent interest but is ‘a pecuniary or proprietary interest, by which a person will gain or lose something, as contrasted with a general sympathy feeling or bias.’”

Examples

- ❖ Outside Employers – when to conflict off a matter that involves an outside employer, past employer, or possible employer (e.g., the P&Z example) involves the most difficult conflict issues.
 - The P&Z Example. Spectrum from legal conflict to appearance of a conflict.
 - Case law mostly has addressed the extreme examples, Attorney General Handbook creates more issues and indicates an aggressive interpretation.
- ❖ HUD Funded Non-Profits – complex issues that can affect the non-profits funding—need to review before you go onto such a board.
- ❖ 300' Rule of Thumb - If a Councilmember (or a relative) owns property within 300' of a rezoning case (site plan approval, etc.), the councilmember has historically conflicted off to avoid the appearance of a conflict. This is done because rezoning property increases the value of the property and may increase the value of adjacent property.

Compliance, Disclosure, Penalties

- ❖ Compliance – once you determine you have a conflict, you must disclose the interest and withdraw from all participation in the decision.
- ❖ Disclosure - once you determine you have a conflict, you need to either file a written disclosure statement with the City Clerk or have the City Clerk file a copy of the official minutes where you disclose the conflict. I recommend filling out the form with the City Clerk.
- ❖ Penalties – depends on whether it is determined to be knowing/intentional or negligent/reckless: felony vs. misdemeanor. And forfeiture of public office!

Gifts – my three step review

I look at gift issues in this order:

1. State Statutes – Matters that are Pending or Proposed

- Entertainment Ban: no entertainment gifts (from a person who is paid to influence/lobby legislation—broadly worded) if there is a matter pending or proposed. ARS § 41-1232.08
- No Improper Gain: prohibited from agreeing to receive or receiving anything of value in any case, proceeding, application, or other matter which is pending before the public agency. ARS § 38-505(A)

Gifts – continued

2. Ethics Handbook for Employees – Specifically Scenario #7 (page 19).
 - Consultant who does work for the City on and off for several years gives gifts to City Department—some gifts are of nominal value (\$25) and can be shared with the public (e.g., cookies) and gifts of greater value (\$60) for the Department Manager. Analysis: shared with all vs. individual; nominal vs. more than nominal. Pending vs. not pending. Note: conceptually similar to proposed or pending but broader to include reasonably expected future proposals.
3. Ethics Handbook for Elected Officials - Section II(B)(2) deals with disclosure and policy on acceptance of gifts and favors.
 - File a disclosure statement with the City Clerk within two business days (or within two business days of returning from out of town) if you accept a gift that exceeds \$50 or any tickets to a sporting event or some other type of entertainment if the person who gave you the gift has some issue that may come before the City.
 - Note: The state passed A.R.S. § 41-1232.08(B) after the adoption of this Ethics Handbook, so the handbook doesn't reference these statutory restrictions.

Other Ethical/Legal Prohibitions

- ❖ Anti-Lobbying Provisions During Procurement
 - This prohibition is imposed from the time of the first public notice of the solicitation until the City cancels the solicitation, rejects all responses, awards a contract or otherwise takes action which ends the solicitation process.
 - Phoenix Taser Example
- ❖ No Influencing Any Election With City Resources - These prohibitions apply to all elections (e.g., PSPRS constitutional change election).
 - Prohibits spending or using "resources, including the use or expenditure of monies, accounts, credit, facilities, vehicles, postage, telecommunications, computer hardware and software, web pages, personnel, equipment, materials, buildings or any other thing of value of the city or town, for the purpose of influencing [supporting or opposing a candidate or issue] the outcomes of elections." A.R.S. § 9-500.14.



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