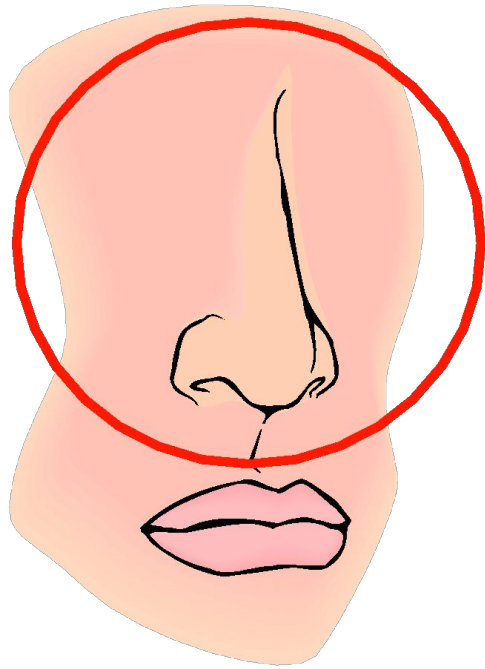




What's that Smell?

An Overview of Ethics for
Public Officials



The Nose

From the Headlines



KTVB 7 News Weather Sports **KTVB 7+**

← ADVERTISE WITH US THE 208 GROWING IDAHO CRIME EN ESPAÑOL

CRIME

School district money manager jailed for embezzling funds

A former money manager will spend the next six months in jail for embezzling more than \$50,000 from the Horseshoe Bend School District.

CRIME WATCH

Former Clark County Library board member sentenced to prison after embezzling over \$200,000

🕒 Published at 4:20 pm, June 27, 2024 | Updated at 4:20 pm, June 27, 2024



Andrea Olson, EastIdahoNews.com

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PRESS RELEASE

Former City Clerk / Treasurer Pleads Guilty to Stealing Over \$196,000 from the City of New Plymouth

KTVB 7 News Weather Sports **KTVB 7+**

← ADVERTISE WITH US THE 208 GROWING IDAHO CRIME EN ESPAÑOL

Former Jerome County Sheriff sentenced for misusing public money to buy gun safe at Costco

The former sheriff was sentenced to three years, with one year minimum, but the court suspended the sentenced and placed him three years of probation.

Examples

- Receipt of gifts/trips/perquisites.
- Corrupt, Illegal or “Sub Rosa” practices by public officials.
- Misuse of public monies/credit cards.
- Abuse of authority.
- Ex parte contacts

Examples

- Nepotism/discrimination in hiring.
- Self-Interest in contracts.
- Failure to comply with open meetings act.
- Unlawful employment practices or harassment.
- Failure to comply with public records law.

Ethics in Government

- Six different Acts, with terminology that is in some instances undefined or inconsistent, with requirements that conflict. You must review all six.

Ethics in Government

- Ethics in Government Act, [Title 74, Chapter 4, Idaho Code.](#)
- Bribery and Corrupt Influence, [Title 18, Chapter 13, Idaho Code.](#)
- Misuse of Public Moneys, [Title 18, Chapter 57, Idaho Code.](#)

Ethics in Government

- Local Planning Act, [I.C. § 67-6506](#)
- Interest and Contracts Prohibited, [Title 74, Chapter 5, Idaho Code](#)
- Public Integrity in Elections, [Title 74, Chapter 6, Idaho Code](#)

Ethics in Government Act

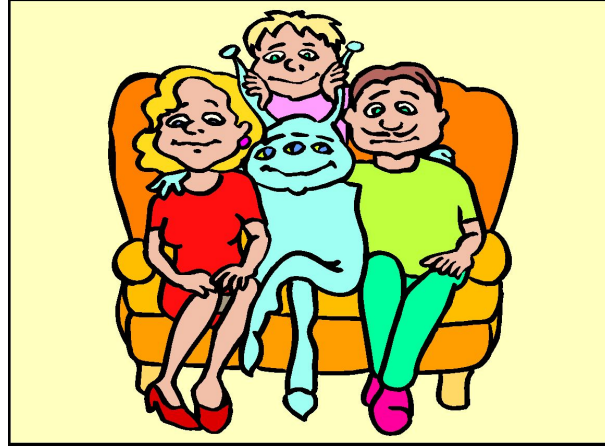
Title 74, Chapter 4, Idaho Code

- (6) "Governmental entity" means:
 - (b) Counties and municipalities of the state of Idaho, all other political subdivisions including, but not limited to, highway districts, planning and zoning commissions or governmental bodies not specifically mentioned in this chapter.

- (10) "Public official" means any person holding public office in the following capacity:
 - (a) As an elected public official meaning any person holding public office of a governmental entity by virtue of an elected process, including persons appointed to a vacant elected office of a governmental entity, excluding members of the judiciary; or

- (10) "Public official" cont.
 - (c) . . . any person holding public office of a governmental entity by virtue of formal appointment as required by law; or
 - (d) . . . any person holding public office of a governmental entity by virtue of employment, or a person employed by a governmental entity on a consultative basis.

- (7) "Members of a household" mean the spouse and dependent children of the public official and/or persons whom the public official is legally obligated to support.



- (5) "Economic gain" means increase in pecuniary value from sources other than lawful compensation as a public official.



- (3) "Business with which a public official is associated" means any business of which the public official or member of his household is a director, officer, owner, partner, employee or holder of stock over five thousand dollars (\$5,000) or more at fair market value.



- (4) "Conflict of interest" means *any official action* or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the *private pecuniary benefit of the person or a member of the person's household, or a business with which the person or a member of the person's household is associated.*
- Limited exceptions in situations of only general impact.

- Disclosure is a required action in conflicts
 - Prior to taking any action
 - May be verbal, but must be on the record, except appointed/employed public officials are required to disclose in writing to their appointing authority



- "SAFE HAVEN"

- Elected Officials may rely on legal advice from the public entity's legal counsel, the Attorney General, or private counsel.

Query: What if the legal advisors disagree?



- Penalties:
 - \$500 Civil penalty

Questions



Bribery and Corrupt Influence

Title 18, Chapter 13, Idaho Code

- Unless a different meaning plainly is required in this chapter:
 - (1) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.



- (2) "Confidential information" means knowledge gained through a public office, official duty or employment by a governmental entity which is not subject to disclosure to the general public and which, if utilized in financial transactions would provide the user with an advantage over those not having such information or result in harm to the governmental entity from which it was obtained.

- (7) "Pecuniary benefit" is any benefit to a public official or member of his household in the form of money, property or commercial interests, the primary significance of which is economic gain.

- A person is guilty of bribery, *a felony*, if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:
 - Any pecuniary benefit for any discretionary action as a public official or



- Any benefit for an exercise of discretion in judicial/administrative proceeding, or for violating a known legal duty or
- Any benefit as consideration for a violation of a known legal duty as public servant or party official.
- It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he *had not yet assumed office, or lacked jurisdiction*, or for any other reason.

- Protects against threats of harm to any public servant, or threats of unlawful harm against any person, for the purpose of influencing a public servant's decision or action.
- Includes private representations or communications "to influence the outcome (of a proceeding) on the basis of considerations other than those authorized by law."
 - Query: Where is the line between free speech/political activity and criminal conduct?

- Threats and other improper influence in official and political matters.
- Violations are misdemeanors unless the threat was to commit a crime or made with the purpose to influence a judicial or administrative proceeding (felony).

- Threats against state, county, and city officials:
 - Prohibits making threats to kill or inflict great bodily harm on an elected official.
 - Misdemeanor unless the threat is made while exhibiting a deadly weapon (felony).
 - Second offense is also a felony.

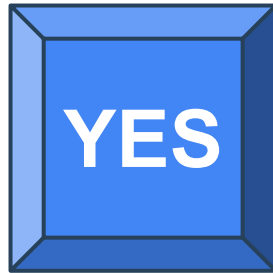
- Misdemeanor to solicit or accept any pecuniary benefit for past official actions.

- Gifts to public servants:
 - Misdemeanor to offer or accept gifts (pecuniary benefit) from:
 - Anyone subject to ongoing regulation/inspection/investigation
 - Anyone interested in government contracts or purchasing
 - Anyone interested or likely to become interested in a governmental judicial or administrative matter

- Exceptions:
 - Fees authorized by law
 - Gifts/benefits based on kinship or other personal/professional/business relationships independent of the official status of the receiver
 - Trivial benefits (not more than \$50.00) related to personal/professional /business contacts and “involving no substantial risk of undermining official impartiality.”

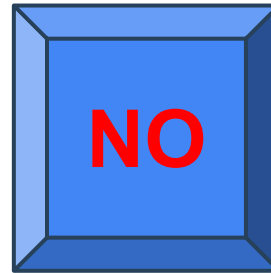
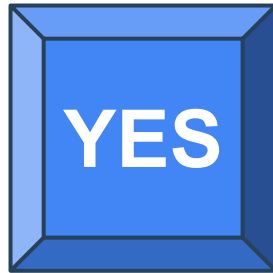
Hypothetical: Gifts

You are a county treasurer. Around Christmas, you receive an envelope addressed to you from a local banker with a gift certificate to a bed and breakfast valued at \$250 because "you are such a great county treasurer."
Can you accept it?



Hypothetical: Gifts

You are a county treasurer. Around Christmas, you receive an envelope addressed to you from a local banker with a gift certificate to a bed and breakfast valued at \$250 because "you are such a great county treasurer."
Can you accept it?



Answer: Idaho Code §18-1356

- Public officials should not accept gifts unless:
 - It is a fee prescribed by law or any other benefit for which she is otherwise legally entitled to receive;
 - It is a gift from a family, friend or business acquaintance; or
 - It is a gift objectively valued at less than \$50.

BUT, also ask yourself, “does it pass the smell test?”

- Using public position for personal gain:
 - (1) No public servant shall:
 - (a) Without the specific authorization of the governmental entity for which he serves, use public funds or property to obtain a pecuniary benefit for himself.



Using Position for Personal Gain

- Using public position for personal gain:
 - No public servant shall:
 - (b) Solicit, accept or receive a pecuniary benefit as payment for services, advice, assistance or conduct customarily exercised in the course of his official duties. *This prohibition shall not include trivial benefits not to exceed a value of fifty dollars (\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.*

Using Position for Personal Gain

- No public servant shall:
 - (c) *Use or disclose confidential information* gained in the course of or by reason of his official position or activities in any manner with the intent to obtain a pecuniary benefit for himself or any other person or entity in whose welfare he is interested or with the intent to harm the governmental entity for which he serves.
 - (d) *Be interested in any contract made by him in his official capacity, or by any body or board of which he is a member.*

- No public servant shall:
 - (e) **Appoint or vote for the appointment/ employment** of anyone related by blood or marriage within the second degree when the compensation is to be paid from public funds
 - Includes appointments/employment to persons related within the second degree to any other public servant when the appointment/employment is based on an agreement or promise of the other public servant.

- (e) cont.:
 - Any public servant who pays out of any public funds under his control or who draws or authorizes the drawing of any warrant or authority for the payment out of any public fund of the salary, wages, pay, or compensation of any such ineligible person, knowing him to be ineligible, is guilty of a misdemeanor and shall be punished as provided in this chapter.



- (4) No person related to a county commissioner by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the commissioner's county when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

- (5) (a) An employee of a governmental entity holding a position prior to the election of a local government official, who is related within the second degree, shall be entitled to retain his or her position and receive general pay increases, step increases, cost of living increases, and/or other across the board increases in salary or merit increases, benefits and bonuses or promotions.

- (5) (b) Nothing in this section shall be construed as creating any property rights in the position held by an employee subject to this section, and all authority in regard to disciplinary action, transfer, dismissal, demotion or termination shall continue to apply to the employee.

Idaho AG Consanguinity Chart

CONSANGUINITY CHART

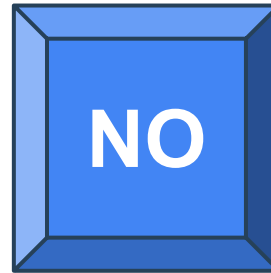
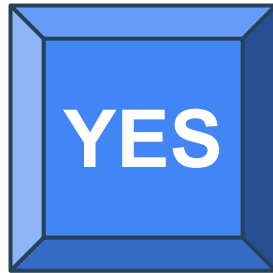
			4 Great Great Grandparent
		4 Great Grand Uncle/Aunt	3 Great Grandparent
	3 Child of Great Uncle/Aunt	3 Great Uncle/Aunt	2 Grandparent
3 Second Cousin	2 Cousin	2 Uncle/Aunt	1 Parent
3 Cousin's Child	2 Nephew/Niece	1 Sibling	1 Person 'A'
3 Grand Nephew/Niece			1 Child
			2 Grandchild
			3 Great Grandchild

- The Small Town Exception
 - The prohibitions on “self-interested contracts” do not apply where there are less than three suppliers of the good/service within a 15-mile radius and
 - The contract is reasonably necessary to respond to a disaster or;
 - The contract is competitively bid and neither the public servant nor his relatives take part in the preparation of the contract or bid, or in the voting /approval of the contract or bid, and the public servant makes full disclosure in writing to the governing board.

- The small town exception:
 - The same rules without the 15-mile limit for non-compensated public servants.

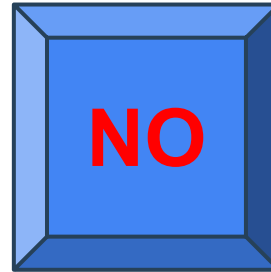
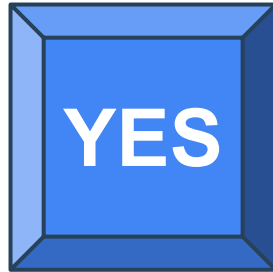
Hypothetical: Nepotism

You've been elected county commissioner and your son-in-law is currently employed by the county as a jail deputy. Must your son-in-law resign his position once you take office?



Hypothetical: Nepotism

You've been elected county commissioner and your son-in-law is currently employed by the county as a jail deputy. Must your son-in-law resign his position once you take office?

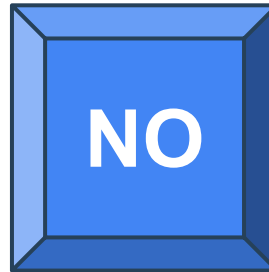
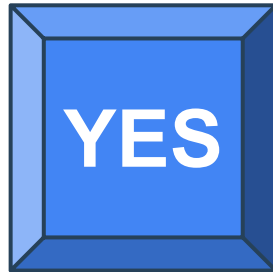


Answer: Idaho Code §18-1359(5A)

An employee of a governmental entity holding a position prior to the election of a local government official, who is related within the second degree, shall be entitled to retain his or her position and receive general pay increases, step increases, cost of living increases, and/or other across the board increases in salary or merit increases, benefits and bonuses or promotions.

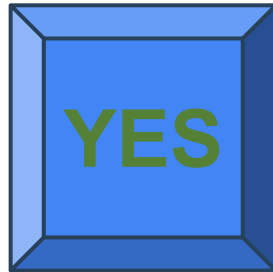
Hypothetical: Nepotism 2.0

You are a sitting county commissioner. The county assessor is hiring an appraiser and would like to hire your second cousin who is an experienced appraiser in a neighboring county. Your second cousin was the only person who applied for the position. Can the county assessor hire your relative?



Hypothetical: Nepotism 2.0

You are a sitting county commissioner. The county assessor is hiring an appraiser and would like to hire your second cousin who is an experienced appraiser in a neighboring county. Your second cousin was the only person who applied for the position. Can the county assessor hire your relative?



Answer: Idaho Code §18-1359(4)

No person related to a county commissioner by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the commissioner's county when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

A prosecuting attorney or the attorney general may bring an action in the district court of the county in which a public servant resides to enjoin a violation of the provisions of this chapter and to require the public servant to make restitution to the government of any pecuniary gain obtained. The prevailing party shall be awarded his costs and reasonable attorney fees.

Misuse of Public Moneys

Title 18, Chapter 57, Idaho Code

- Misuse of public funds:
 - No public officer or public employee shall:
 - (1) Without authority of law, appropriate public moneys or any portion thereof to his own use, or to the use of another; or
 - (2) Loan public moneys or any portion thereof; or, having the possession or control of any public moneys, make a profit, directly or indirectly out of public moneys, or use public moneys for any purpose not authorized by law; or

- No public officer or public employee shall:
 - (3) Fail to keep public moneys in his possession until disbursed or paid out by authority of law when legally required to do so; or
 - (4) Deposit public moneys or any portion thereof in any bank, or with any banker or other person, otherwise than on special deposit, or as otherwise authorized by law; or

- No public officer or public employee shall:
 - (5) Change or convert public moneys or any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law; or
 - (6) Knowingly keep any false account, or make any false entry or erasure in any account of or relating to public moneys; or fraudulently alter, falsify, conceal, destroy or obliterate any such account; or

- No public officer or public employee shall:
 - (7) Willfully refuse or omit to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order or warrant drawn upon such public moneys by competent authority; or
 - (8) Willfully omit to transfer public moneys when such transfer is required by law; or

- No public officer or public employee shall:
 - (9) Willfully omit or refuse to pay over to any public officer, employee or person authorized by law to receive the same, any public moneys received by him under any duty imposed by law so to pay over the same; or

- No public officer or public employee shall:
 - (10) Knowingly use any public moneys, or financial transaction card, financial transaction card account number or credit account issued to or for the benefit of any governmental entity to make any purchase, loan, guarantee or advance of moneys for any personal purpose or for any purpose other than for the use or benefit of the governmental entity.

- Punishment for misuse of public funds:
 - (1) Any public employee who is not charged with the receipt, safekeeping or disbursement of public moneys and who misuses public moneys in violation of section 18-5701, Idaho Code, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one (1) year, or by both, if the amount of public moneys misused is less than three hundred dollars (\$300).

- (2) Any public officer or public employee charged with the receipt, safekeeping or disbursement of public moneys, who misuses public moneys in violation of section 18-5701, Idaho Code, is guilty of a felony punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for not more than five (5) years, or by both, if the amount of public moneys misused is less than three hundred dollars (\$300).

- (3) Except as otherwise provided in subsections (1) and (2) of this section, any public officer or public employee who misuses public moneys in violation of section 18-5701, Idaho Code, is guilty of a felony punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both.

- (4) (a) A series of events or continuous course of conduct can be aggregated to meet the \$300 threshold.
- (4) (b) Second and subsequent convictions are always felonies.

- (5) Penalties also include termination from public employment, restitution for the misused public moneys (and any profits), and disqualification from any future public position charged with the receipt/ safekeeping or disbursement of public money.

- (5)(d) In the discretion of the court, and unless otherwise prohibited by law, be ordered to apply for distribution of any retirement moneys held by any entity on behalf of the person, in order that such moneys shall be used to make restitution to the public entity or its insurer, unless other funds are otherwise available.

Local Land Use Planning Act Conflicts

Idaho Code 67-6506

- A member or employee of a governing board, commission, or joint commission shall not participate in any proceeding or action when the member or employee or his employer, business partner, business associate, or any person related to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any proceeding shall be disclosed at or before any meeting at which the action is being heard or considered. (Cont.)

- For purposes of this section the term "participation" means engaging in activities which constitute deliberations pursuant to the open meeting act. No member of a governing board or a planning and zoning commission with a conflict of interest shall participate in any aspect of the decision-making process concerning a matter involving the conflict of interest. A knowing violation of this section shall be a misdemeanor.

Questions



Interest in Contracts Prohibited

Title 74, Chapter 5, Idaho Code

- Interest in contracts prohibited:
 - Members of the legislature, state, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.

Interest in Contracts Prohibited

- State, county, district, precinct and city officers must not be purchasers at any sale nor vendors at any purchase made by them in their official capacity.

- (1) The prohibition does not apply if there is only a “remote interest” in the contract and such interest is disclosed to the government body and noted in the official minutes/ records.

- Remote interest means:
 - A non salaried officer of a non-profit corporation or
 - Employees/agents of a contracting party where their compensation consists entirely of fixed wages or salary; or
 - Landlord/tenant of a contracting party or
 - A holder of less than 1% of the shares of the contracting party

- (2) Although a public official's interest in a contract may be only remote, a public official shall not influence or attempt to influence any other officer of the board of which he is an officer to enter into the contract. Violation of the provisions of this subsection shall be a misdemeanor as provided in section 74-509, Idaho Code. Any contract created or entered into in violation of the provisions of this subsection shall be void.

Interest in Contracts Prohibited

- Every contract made in violation of any of the provisions of the two (2) preceding sections may be avoided at the instance of any party except the officer interested therein.

Public Integrity and Elections Act

Title 74, Chapter 6, Idaho Code

- Prohibits the use of public funds, public property or resources to advocate for or against “a candidate or a ballot measure.”
- Also prohibits providing college credit to encourage students to vote (or not vote) or to influence a student’s vote regarding a candidate or ballot measure.
- Applies to public entities and its employees.

- Definitions:

- “Advocate” – campaign for/against candidate or a ballot measure. Does not include “providing factual information about a ballot measure and the public entity’s reason for the ballot measure stated in a factually neutral manner.”
- “Ballot Measure” – constitutional amendments, bond or levy measures.
- “Candidate” – anyone for whom it is contemplated or desired that votes be cast in a political convention or election, and who tacitly or expressly agrees to be considered.

Definitions

- “Expenditure” – purchase, donation, loan, gift, anything else of value or a promise or agreement to make such expenditure.
- “Property or Resources” – includes goods, services, computer soft and hardware, facilities, etc. Does not include property or resources available to the general public.
- “Public Entity” – any state or local agency including schools and tax districts.

- “Public Funds” – any money received by a public entity from appropriations, taxes, fees, interest or other returns on investment.
- “Public Official” – any elected or appointed member of a public entity who has authority to determine policy, authority to supervise personnel or approve expenditure of public funds.

- Exclusions:
 - Exercising First Amendment Rights for political purposes so long as no public funds are used.
 - Neutral encouragement of voters to vote.
 - Personally campaigning or advocating for/against a ballot measure so long as no public funds, property or resources are used.
 - Preparing and distributing to electors an “objective statement explaining the purpose and effect of the ballot measure” including taxpayer costs, taxable value, etc., based on reasonable good faith estimates

Exclusions:

- Formulating and publishing statements regarding proposed amendments to the constitution (per Idaho Code 67-453).
- Publication of information described in 34-913, 34-914 and 34-1406, or similar provisions of law.
- A "balanced student classroom discussion or debate of current or pending election issues."
- An elected and currently serving Idaho legislator personally making use of public property or resources for sole purpose of advocating for/against an initiative or referendum..."--this is limited to electronic or traditional physical correspondence or media from recordings or legislative proceedings and does not apply to travel-related expenses or advocacy for or against a candidate. (per Idaho Code 74-605).

- Violations:
 - \$250 civil penalty for violations, \$1,500 for a knowing violation, \$2,500 for a second violation within 12 months.
 - AG enforces as to state government, prosecuting attorneys enforce for local agencies.

Once a public official becomes the target of an investigation or enforcement action, the prospect of a legal penalty is only part of the costs he/she will incur.

Potential costs:

1. Attorney's fees
2. Defense costs
3. Loss of work
4. Loss of prestige
5. Loss of position
6. Loss of the Public Trust
7. Loss of freedom

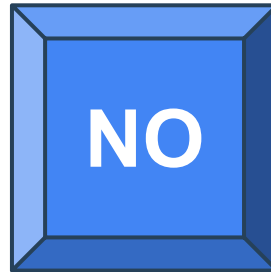
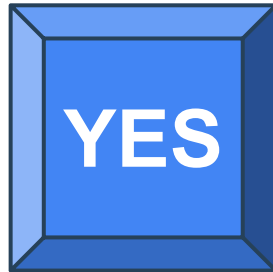
Personal Costs

Personal costs to those who are the object of an enforcement effort are the most significant. Most describe the proceedings as being “one of the most unhappy experiences and periods of their lives.”

- The effort to vindicate oneself can become an all-consuming focus.
- Negative publicity associated with being under investigation creates a terrible stress on public officials and their families.
- This can be exacerbated by the financial stress associated with drawing down one's savings and retirement accounts and/or going into debt to pay for one's defense.

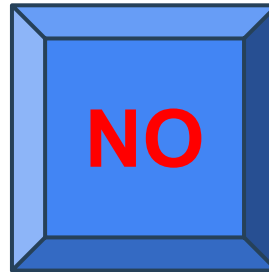
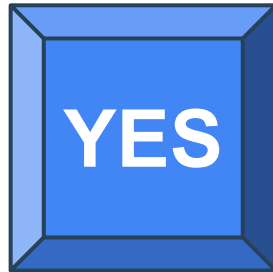
Hypothetical: Integrity in Elections

You are an elections clerk. The county clerk has asked you to take a county vehicle to go and pick up ballots for the upcoming election. The county coroner overhears that you are headed to the print shop and asks that you deliver one of his campaign signs to the mortuary across the street from the print shop. Is this legal?



Hypothetical: Integrity in Elections

You are an elections clerk. The county clerk has asked you to take a county vehicle to go and pickup ballots for the upcoming election. The county coroner overhears that you are headed to the print shop and asks that you deliver one of his campaign signs to the mortuary across the street from the print shop. Is this legal?



Answer: Idaho Code §74-604

Neither a public official nor its employee shall use, nor shall a public official authorize or use, public property or resources to advocate for or against a candidate or a ballot measure.

- WHEN IN DOUBT ASK YOUR PROSECUTOR.
- WHEN IN DOUBT DON'T ACCEPT GIFTS.

If you have even the slightest questions about accepting a benefit - don't. Pay your own way and decline the benefit. Remember that if you guess wrong it is a crime. It just isn't worth the risk. Even if you don't get charged with a crime it will wind up being embarrassing and perhaps even a political liability for you.

- AS HARD AS IT MAY BE, GET ALL CONTACTS IN ZONING MATTERS ON THE RECORD.

Until we find out how our Supreme Court will deal with the ex parte contact issue in conjunction with the Bribery and Corrupt Influence Act, you run significant risk.

- WHEN IN DOUBT DISCLOSE YOUR ETHICAL CONCERNS AND REFRAIN FROM PARTICIPATION IN THE DECISION OR DISCUSSION.
- IF IT SMELLS BAD, IT PROBABLY IS.

Questions

