

2014 Legislative Update

Utah Municipal Attorneys Association
Spring Conference
May 7-9, 2014

Brandon Johnson, Partner
bjohnson@chapman.com
801.536.1407

SB 179 – Procurement Revisions

- Municipal governments are still generally exempt from the state procurement code
- Ethics provisions of the procurement code (and governmental ethics acts) apply to all state and local governmental entities
- The purpose of ethics provisions of the procurement code is to ensure public officials act with impartiality, independent judgment, and integrity in connection with:
 - Procurement of supplies or services
 - Award of contract or grant
 - Administration of contracts and grants

Entities to Which the Ethics Provisions Apply

- State agencies
- All political subdivisions of the State, including:
 - Municipalities (regardless of whether they have adopted the other Procurement Code provisions)
 - Counties (regardless of whether they have adopted the other Procurement Code provisions)

Officers to Which the Ethics Provisions Apply

- Procurement professional
 - Procurement decision-making authority; *and*
 - Either a position or job title that focused primarily on the procurement process; *and*
 - Public officer not specifically excepted
- Contract administration professional
 - Is under contract with the public entity
 - Has responsibility in:
 - developing a solicitation or grant,
 - conducting the procurement process, or
 - supervising or overseeing the administration or management of a contract or grant
 - Does not include an employee of the public entity

Public Officers Excepted from Procurement Professional Definition

- Elected officials
- Members of public entity's governing body
- Chief executive of local district, special service district, or interlocal agency
- Chief executive of public entity (or chief assistant or deputy) who has a variety of duties and responsibilities in addition to procurement
- Superintendent, business administrator, principal, or vice principal of a school district or charter school (or chief assistant or deputy)
- University/college president, vice president, business administrator, or dean

Conduct Prohibited by Ethics Provisions of Procurement Code

- A person who has a contract or is seeking a contract with a public entity may not knowingly give or offer a gratuity (anything of value) or kickback to:
 - Procurement professional
 - Contract administration professional
 - Known family member of either of the above
 - The public entity
- Procurement professionals and contract administration professionals may not knowingly accept or ask for a gratuity or kickback from a person who has a contract or is seeking a contract with a public entity

Exceptions

- No intent to influence the procurement/administration process
- Hospitality gifts under \$10 (aggregate value of all hospitality gifts from the person to the recipient in a calendar year is less than \$50)
- Included in the price of a procurement item or in the contract or grant
- Product sample or other item requested for the purpose of evaluating the award of a contract or grant
- Political campaign contribution

Possible Consequences of Violation of Ethics Provisions

- Criminal sanctions
 - Class A/B misdemeanor or 1st/2nd degree felony depending on dollar value of the gratuity
- Dismissal from employment or removal from office
- Damage to personal, professional, or organization reputation
- Contract may be declared void and unenforceable by public entity; exceptions for
 - Reliance by third party
 - Contracts for bonds already issued
 - Payment for value already provided under the contract
- Procurement professional with knowledge of violation
 - Required to notify A.G.
 - Subject to disciplinary action or civil penalties for failure to do so

Summary of Procurement Code Ethics Provisions

- Most client/business development meals, marketing trinkets, and bond closing mementos given to public officials and employees do not fall within the scope of the ethics provisions because one or more of the following applies:
 - The recipient is not a procurement professional
 - The giving or receiving does not occur during or in contemplation of the procurement/administration process
 - There is no intent (by the giver or recipient) for the gift to influence the procurement/administration process
- However, public officers and employees are also subject to other government ethics laws

Utah Public Officers' and Employees Ethics Act ("Government Ethics Act"): Prohibition on Gifts and Gratuities

- A public officer or employee cannot "accept or solicit for himself or another any gift of substantial value or any substantial economic benefit tantamount to a gift" if:
 - The gift or benefit would tend to improperly influence a reasonable person from the faithful and impartial discharge of public duties; or
 - The officer or employee knows or a reasonable person in that position should know that the gift or benefit is primarily for the purpose of rewarding the officer or employee for official action taken; or
 - The officer or employee recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless disclosure is made as required in the Government Ethics Act

Government Ethics Act: Prohibition on Gifts and Gratuities

- Doesn't apply to occasional, non-pecuniary gifts with value of \$50 or less
- “Reasonable person” standard

Other Utah Ethics Laws Applicable to Public Entities

- Municipal Officers' and Employees' Ethics Act
 - Substantially same as Government Ethics Act but applies to municipal officers and employees
- County Officers and Employees Disclosure Act
 - Substantially same as Government Ethics Act but applies to county officers and employees

HB 17 – Interlocal Act Amendments

- Interlocal entity is subject to each state law that governs each public agency that is a member of the interlocal entity (to the extent the law governs an activity or action of the public agency in which the interlocal entity is also engaged)
 - Does not include a local ordinance or other local law
- If a state law that governs a member of the interlocal entity conflicts with a state law that governs another member, the interlocal entity must choose and comply with one of the conflicting state laws

HB 102 – Assessment Area Amendments

- Vetoed by Governor
- Would have prohibited a governing body from designating an assessment area between May 13, 2014 and May 12, 2015

HB 104 – School Planning and Zoning Compliance

- Did not pass
- Would have amended certain municipal and county land use exceptions for a school district or charter school
- Would have required a school district or charter school to coordinate the siting of a new school with a municipality or county to implement the municipal or county general plan

HB 340 – Local District Boundary Adjustments

- Authorizes a municipality and a local district to adjust the boundary of the local district within an expansion area identified in the municipality's annexation policy plan

HB 379 – Transparency of Ballot Propositions

- Provides for the submission and posting of arguments in favor of and against certain ballot propositions:
 - Opinion question or other question concerning a tax increase
 - Bond proposition
- Does not apply to an initiative or referendum
- Requires a governing body of a taxing entity to conduct a public meeting to allow interested parties to:
 - Present arguments in favor of and against certain ballot propositions
 - Provide oral testimony regarding the ballot proposition

SB 51 – Local Government Entities Amendments

- Referred to as UASD annual “clean-up” bill
- Prohibits, with certain exceptions, a governing body from spending money deposited in an enterprise fund for a purpose that is not directly related to the goods or services provided by the enterprise for which the enterprise fund was created
- Authorizes a local district to provide services, nonmonetary assistance, or monetary assistance to a nonprofit entity

SB 134 – Taxation–Related Referendum Amendments

- Allows for a referendum election to occur in the same calendar year as the Truth in Taxation hearing
- Provides that a municipality will have 2 days to number and prepare the referendum packets relating to tax increases and 12 days to verify signatures
- Condenses the timeline to give citizen groups 40 days to gather signatures and still provide at least 30 days for a campaign to occur

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

© 2014 Chapman and Cutler LLP