

CHAPTER 7

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TAXES, CAMPAIGN FINANCE, AND ETHICS LAWS

Numerous legal provisions affect legislators personally, both during their service and for some time thereafter. This chapter addresses three major kinds of laws of which legislators need to be aware. For advice on the application of these provisions, legislators may want to contact their caucus legal staffs, or experienced private tax preparers or legal counsel depending on the topic.

Income Tax Status of Legislators' Expenses

Food and Lodging

As described in chapter 1, the state reimburses legislators for the cost of transportation for one round trip, if actually taken, between their homes and Springfield each week the General Assembly is in session, and makes a flat per diem payment (now \$129)¹ to cover lodging, food, and other expenses for each day the General Assembly is in session. For most legislators, neither of these amounts paid by the state is taxable. A provision in the Internal Revenue Code applying specifically to state legislators who live more than 50 miles from their state's capitol building allows them to elect (choose) to treat their residences in their districts as their tax homes.² Legislators who make that election (on a form available from the Comptroller) will not have their \$129 per diems reported to the IRS on Forms W-2 after the tax year, and need not pay federal income tax on those per diems. (Legislators who live within 50 miles of the State House have the option of declining to accept the per diems, thus avoiding having to deal with the money for tax purposes. The Comptroller's legal counsel can offer guidance on whether to do this.)

Furthermore, the Internal Revenue Code counts as a legislative day for these purposes not only days when the General Assembly is in session, but also any day when the legislator's presence is recorded at a committee meeting—*plus* any day that is part of a legislative recess of 4 or fewer days.³ Thus when the General Assembly is meeting on Tuesday through Thursday of each week (as it typically does in early months of a session), although the state does not pay per diems for the other four days, a legislator who resides over 50 miles from the State House can deduct for federal tax purposes \$129 for each of those other 4 days per week.

(Note for tax filing time: IRS Form 2106, Employee Business Expenses, is used to claim the \$129 deduction for days when the General Assembly is out of session no more than 4 days at a time. The completed Form 2106 should show per diems actually reimbursed by the state, along with the \$129 deductions that were not reimbursed. But the amounts that *were* reimbursed (for days attending floor sessions or committee meetings) are then subtracted out on Form 2106 before arriving at the result—which goes onto Schedule A as a

miscellaneous itemized deduction, subject to the threshold of 2% of Adjusted Gross Income.)

A legislator who spends *more* than the \$129 state per diem on lodging, food, and other personal expenses in Springfield faces a rather complex limit on deducting the excess. The latest authority on this appears to be a 1987 IRS interpretation of changes made by the Tax Reform Act of 1986—which set limits on deductions for meals, entertainment, and similar expenses. That interpretation said that if a person seeks to deduct more for daily living costs when away from home than the person’s employer reimbursed, the excess must be allocated for tax purposes between two categories: (1) meals and expenses such as entertainment, and (2) lodging and similar costs. This allocation must be in the same ratio as the ratio between the amounts the federal government allows its employees for meals and for lodging in that city (currently about 38% for meals and 62% for lodging for Springfield). The significance of that allocation is this:

- Of the part of the excess over the \$129 state reimbursement that went for *meals and similar expenses*, half is not deductible at all. The other half—plus all of the amount allocated for *lodging*—is deductible by itemizers as a “miscellaneous deduction” (to the extent that the sum of all miscellaneous deductions exceeds 2% of adjusted gross income).⁴

Example: A legislator gets \$129 in state reimbursement for a day of legislative business in Springfield, but actually has \$145 of ordinary and necessary legislative expenses that day. The \$129 reimbursement from the state is excluded from gross income, and thus not taxable. The remaining \$16 must be allocated like this:

38% for meals and entertainment = \$6.08

62% for lodging and other travel-related expenses = \$9.92

Half of the \$6.08 for meals is nondeductible. The other half, along with the \$9.92 for lodging and other expenses, qualifies as “miscellaneous” deductions. The total of miscellaneous deductions (to the extent that the total exceeds 2% of adjusted gross income) is deductible from federal taxable income.

Transportation

For the cost of transportation on legislative business (such as between the district and Springfield) in a vehicle that the legislator either owns or leases, the Internal Revenue Service allows the legislator to deduct either of the following:

- (a) a flat rate per mile, which is 58.5¢⁵ at this writing but is likely to decline if fuel prices continue to moderate (the state also uses this amount, which the IRS allows to be deducted for travel in a privately owned vehicle, as the amount of its mileage reimbursement to legislators⁶), or
- (b) the share of the actual cost of operating one or more vehicles that is attributable to the miles driven on legislative business.⁷

Under option (b), if a legislator drives 20,000 miles in a year, including 8,000 miles on legislative business, $\frac{2}{5}$ of the cost of operating a car that year (such as fuel, repairs, and depreciation) is deductible. If the legislator instead uses public transportation such as airlines, the fares are deductible. No spending for political, as distinguished from legislative, purposes can be deducted.

Proving
Nonreimbursed
Expenditures

Treasury regulations require that to deduct additional expenditures *beyond* the automatically deductible amounts—such as travel on legislative business that is not reimbursed by the per diem and mileage allowances for attending the General Assembly—these five elements must be recorded:

- (1) Amount (which may be totaled within reasonable categories for each day, such as meals, gasoline, and taxi fares);
- (2) Time of departure and return, and number of days spent on state business;
- (3) Place (name of city visited);
- (4) The business (legislative) purpose for the travel; and
- (5) Business relationship with persons visited or entertained.

The records must include (a) an account book or other record containing information on expenditures, recorded at or shortly after the time of each expenditure; and (b) documentary evidence such as receipts and paid bills for lodging away from home, and for any other expenditures of at least \$75 (except transportation charges for which the carrier provides no receipt or other documentary evidence).⁸ Again, these *nonreimbursed* expenses may be deducted only to the extent they and other “miscellaneous” itemized deductions exceed 2% of adjusted gross income.⁹

Illinois
Income Tax

The amount of tax imposed under the Illinois Income Tax Act is determined from the taxpayer’s “net income,” which is based on the taxpayer’s federal adjusted gross income.¹⁰ Since *reimbursed* legislative expenses are not part of federal adjusted gross income, and thus do not appear on the legislator’s Form W-2, those amounts cannot be deducted from income on the legislator’s state income tax return. Amounts spent beyond the \$129 daily state reimbursement also are *not* deductible from Illinois taxable income.

Note
on Return
Preparation

As the discussion above demonstrates, legislators are subject to complex rules and face important decisions when reporting and paying taxes on income. Veteran legislators strongly recommend that new members seek experienced preparers for their tax returns, rather than preparing their returns themselves.

Campaign Finance Reporting

The Election Code requires every “state political committee” to file reports with the State Board of Elections on the campaign contributions it receives and the expenditures it makes for legislative offices. The law defines a “state political committee” as a candidate or any other individual, or an organization or group of persons, that within a 12-month period collects or spends more than \$3,000, if any of the following is true:

- (a) those amounts were received or spent on behalf of or against any candidate or candidates for public office who are required to file statements of economic interests under the Illinois Governmental Ethics Act;
- (b) those amounts were received or spent to promote or oppose a public-policy question submitted to the voters of more than one county;
- (c) the organization is a nonprofit public-policy organization that publicly endorses or opposes any candidate(s) who must file statements of economic interests; or
- (d) the contributions or expenditures were made for “electioneering communications” (defined basically as advertising within the last 30 days before a primary, or the last 60 days before a general election, that mentions an identified political party, or a candidate or proposition on the ballot at that election).¹¹

The treasurer of each “political committee” (a term that includes a “state political committee” as just defined—including a candidate who fits the definition¹²) must keep for 2 years a record showing the name and address of each person who makes a campaign contribution over \$20 to, or receives over \$20 from, the “political committee,” including the amount and date.¹³ The committee (or candidate) must also report semiannually to the State Board of Elections on total campaign receipts (including those from sales of tickets or other items), expenditures, loans, and other fund transfers; balances on hand; the name and address of anyone whose total contributions exceeded \$150; and the name, address, occupation, and employer of any person whose total contributions exceeded \$500 during the reporting period.¹⁴

Violation of these or other requirements for reporting campaign funding can bring a fine up to \$5,000. The Attorney General or a state’s attorney can prosecute alleged violations.¹⁵

In August 2008 the Governor, in an amendatory veto, recommended that political committees of candidates for all nonjudicial state offices be prohibited from accepting contributions from any state or local government employees.¹⁶ At this writing the General Assembly has not acted on his recommendation. If the General Assembly accepts it, the prohibition will take effect June 1, 2009.

Ethics, Conflicts of Interest, and Worse

Legislators and candidates for legislative office are subject to many legal requirements designed to protect the integrity of legislative service in Illinois. These include annual filing of statements of economic interests; prohibitions on use of state workers' time or other public resources for political purposes; restrictions on receipt of gifts by legislators and their families; restrictions on interests in public contracts and dual officeholding; prohibitions on misuse of official powers and bribery; and ethical principles that are not legally enforceable but have been enacted as guides to behavior. Penalties for violation of the legally enforceable requirements range from fines to prison terms, loss of office, and pension disqualification. The length of disqualification from office for serious crimes is not entirely clear due to conflicting provisions.

Some of these legal provisions are quite complex. The remainder of this chapter is offered as a brief guide to them. Legislators should become thoroughly familiar with these provisions to avoid unintentionally committing criminal violations.

Economic Interest Statements

The Illinois Constitution¹⁷ and Illinois Governmental Ethics Act¹⁸ require candidates for and holders of state offices to file statements listing their economic interests. The Secretary of State is required to send notices to all such candidates and officers at least 30 days before the May 1 filing deadline. Each notice includes a form for filing the statement.

The form requires all of the following information on the economic interests of the legislator (and of the legislator's spouse and any other person, if constructively controlled by the legislator):

- (a) Any professional group or individual professional practice in which the legislator was an officer, partner, or proprietor, or served in an advisory capacity, and received over \$1,200 in the last calendar year.
- (b) Any other unit of government for which the legislator worked during the last calendar year. The Act uses the word "employed" but likely would be construed to include service as an officer.
- (c) Any entity from which the legislator received one or more gifts or honoraria, worth a total of over \$500, in the last calendar year.
- (d) The name of any compensated lobbyist who is a partner or business associate of the legislator, and the kind of lobbying the person does.
- (e) The nature of any professional services, other than to the state, for which the legislator received over \$5,000 in fees in the last calendar year.
- (f) Any firm doing business in Illinois in which the legislator's ownership interest exceeds \$5,000 or from which the legislator got over \$1,200 in dividends in the last calendar year. The Act specifically excludes any "time or demand deposit in a financial institution" and any "debt instrument." But the requirement literally would include accounts in money-market mutual funds, and other mutual funds, that are based in Illinois.

(g) Any capital asset, including real estate, from which the legislator realized a capital gain of at least \$5,000 in the last calendar year. (A capital gain normally is “realized” at the time property is sold.)

(h) Any entity doing business in Illinois that paid the legislator over \$1,200 in the past year other than for professional services; and any position the legislator held in that entity.¹⁹

The economic interests statement is not to include campaign receipts. Penalties for failure to file become progressively steeper, culminating in forfeiture of office for failure to file by May 31. But no fines or forfeitures of office are to be imposed if (a) the legislator did not file due to lack of notification by the Secretary of State of the need to file and (b) the legislator files within 30 days after getting such notice.²⁰

Note: As required by law,²¹ the Secretary of State posts all statements of economic interests of state officers and employees on the Internet. They are thus available to the news media, political opponents, and the public. Statements are posted as PDF files, but filers’ signatures are blacked out.

State Officials
and Employees
Ethics Act

This 2003 act²² imposes many requirements on state officers and employees to protect ethics in government. It applies generally to officers and employees in the state’s executive and legislative branches. The following briefly summarizes the Act as it affects state legislators. Legislators with concerns about the application of the Act are urged to examine it and/or seek advice from their caucus legal staffs or other reliable sources. The Act can be read and printed by going to

www.ilga.gov

and clicking on each of the following links, in turn, when the page containing it opens:

Illinois Compiled Statutes

CHAPTER 5 GENERAL PROVISIONS

5 ILCS 430/ State Officials and Employees Ethics Act.

The Act contains three articles (5, 10, and 25) that have major effects on state legislators. Each of those articles has numerous provisions. They are outlined below, and described in more detail in the next few pages.

Article 5 (“Ethical Conduct”) has several kinds of requirements significantly affecting state legislators: (1) ethics training for legislators and their staffs; (2) personnel policies for staffs; (3) ban on requiring employees to engage in political activities; (4) restrictions on “public service announcements” that identify state officers; (5) ban on offering anything in return for contributions; (6) ban on receiving contributions on state property, and restriction on fundraising in Sangamon County; and (7) restrictions on employment with state contractors following state service.

Article 10 (“Gift Ban”) has detailed provisions on what kinds of gifts state legislators and their families can accept. Article 25 (“Legislative Ethics Commission and Legislative Inspector General”) has institutional and procedural provisions on enforcing the Act. (Additionally, Article 50 lists penalties. Those are stated below when discussing the prohibitions to which they apply.)

Ethical conduct

Article 5 of the Act contains a variety of requirements and prohibitions. The following briefly describes them.

Ethics training. All legislators and their employees must receive ethics training at least annually. This requirement is to be implemented by the four legislative leaders for their caucuses, and overseen by the Legislative Ethics Commission and Legislative Inspector General²³ (discussed later). Violation is punishable by a fine of \$1,001 to \$5,000.²⁴ (The legislative leadership has developed an on-line training and review program that can be completed in about an hour to help legislative personnel comply with this requirement.)

Hours worked. All legislative-branch employees (but not legislators themselves) must be covered by personnel policies adopted by the leaders of the caucuses for which they work. These policies must require that employees report when they began and ended their work for the state each day, rounded to the nearest quarter-hour.²⁵

Similar requirements apply to legislators’ own employees, who typically work in district offices. Each legislator must adopt policies for employees that require them to report their beginning and ending hours of work to the nearest quarter-hour. A legislator may fulfill this requirement by adopting the policies issued by the leader of that legislator’s caucus.²⁶

Political activities. State employees may not be required to perform, or voluntarily perform, any “prohibited political activity” while being paid to work for the state (other than during paid vacation, personal, and other time off).²⁷ The Act lists 15 categories of activities to which this prohibition applies.²⁸ Violation is a Class A misdemeanor,²⁹ punishable by up to 364 days in jail and/or a fine up to \$2,500.³⁰

Public service announcements. Advertisements or announcements promoting state programs may not contain the name, image, or voice of a state legislator. Items such as billboards, stickers, and magnets that are made or distributed using public funds may not show the name or image of a state legislator—unless they further the legislator’s “official State duties or governmental and public service functions”³¹ Violation is punishable by a fine of \$1,001 to \$5,000.³²

Promises for contributions. No legislator, legislative employee, or candidate for legislative office may promise anything of value related to state government, such as a state job or promotion, in return for a contribution to a political committee, party, or other entity that financially promotes a political candidate.³³ Violation is a Class A misdemeanor.³⁴

Contributions on state property. With minor exceptions, legislators, legislative employees, candidates for legislative office, lobbyists, and personnel of

political organizations may not intentionally solicit, receive, offer, or make political contributions on state property. The exceptions apply to (a) property owned by the state but leased to a private entity, and (b) residences of state officers or employees—except that fundraising events are prohibited at such residences.³⁵ Violation is punishable by a fine of \$1,001 to \$5,000.³⁶

Fundraisers in Sangamon County. Most legislators and candidates for legislative office, along with their political caucuses or committees, are prohibited from holding fundraising events in Sangamon County on any regular session day from February 1 until both houses have adjourned their spring session; or during a fall veto session. This prohibition does not apply to perfunctory sessions. It also does not apply, during the part of any spring session that goes beyond May 31, to legislators and candidates in a district that is entirely within Sangamon County.³⁷ Violation is a Class A misdemeanor.³⁸

Employment after public service. For 1 year after ending state service, no former legislator, or spouse or immediate family member living with the former legislator, may knowingly accept employment or compensation for services to any entity if the legislator, during the last year of state service, participated “personally and substantially” in a decision to award one or more state contracts worth a total of over \$25,000 to that entity. This restriction can be waived in writing by the Legislative Ethics Commission upon a showing that the possibility of employment with the private entity did not affect the contracting decision.³⁹ Violation is a Class A misdemeanor.⁴⁰

Gift ban

Article 10 of the Act imposes detailed restrictions on the receipt of gifts by legislators (among other state officers and employees), and by their spouses and immediate family members who live with them. These restrictions are not aimed at outright bribery (which is addressed by an act described later), but at the appearance of impropriety that could result from the making of a gift in hopes of affecting state actions. Violating any part of Article 10 is punishable by a fine of \$1,001 to \$5,000.⁴¹

The method that the Act uses to avoid improper gifts is to (1) ban every gift from a “prohibited source” (as defined in the Act) to a legislator or state employee, or to an immediate family member of a legislator or state employee, but (2) make exceptions for gifts that have a low probability of impropriety. Thus whenever a legislator or legislative employee—or a spouse or family member living with such a person—receives *any* gift from an entity that *may* be a “prohibited source,” it is necessary to consult the definition and exceptions to determine whether it can be kept. If a gift violates the Act, the recipient can avoid liability by “promptly” doing one of the following:

- (1) Returning it to the giver.
- (2) Donating it to an “appropriate” charity that is exempt from taxation under subsection 501(c)(3) of the Internal Revenue Code.
- (3) Keeping it but donating an amount equal to its value to such a charity.⁴²

Of course, any such actions should be documented to avoid the risk of legal problems. If the recipient chooses method (2) or (3), the Act does not address the propriety of deducting the donation from income for federal tax purposes.

The Act defines “prohibited source” broadly. The definition is quoted in full below, with parts that are important to legislators (referred to as “members”⁴³) boldfaced for easier comprehension. Legislators should especially note item (4).

“Prohibited source” means any person or entity who:

(1) is seeking official action (i) by the member or officer or (ii) in the case of an employee, by the employee or by the member, officer, State agency, or other employee directing the employee;

(2) does business or seeks to do business (i) with the member or officer or (ii) in the case of an employee, with the employee or with the member, officer, State agency, or other employee directing the employee;

(3) conducts activities regulated (i) by the member or officer or (ii) in the case of an employee, by the employee or by the member, officer, State agency, or other employee directing the employee;

(4) has interests that may be substantially affected by the performance or non-performance of the official duties of the member, officer, or employee; or

(5) is registered or required to be registered with the Secretary of State under the Lobbyist Registration Act, except that an entity not otherwise a prohibited source does not become a prohibited source merely because a registered lobbyist is one of its members or serves on its board of directors.⁴⁴

The Act defines “gift” broadly to include any good, service, or other tangible or intangible thing of value—even a loan.⁴⁵ Any such “gift” from a “prohibited source” to a legislator or employee of the legislative branch, or spouse or family member living with such a person, *presumptively* violates the Act.⁴⁶ But the Act has 12 exceptions for kinds of gifts that are believed to have a low probability of involving impropriety. Those exceptions are summarized below; in the event of uncertainty about any of them, the actual list of exceptions⁴⁷ should be consulted.

The exceptions to the gift ban apply to the following kinds of gifts:

- (1) Anything that was offered on the same terms to the general public.
- (2) Anything for which the recipient paid market value.
- (3) Lawful political contributions, and assistance with fundraisers for a political organization or candidate.

- (4) “Educational materials and missions” (which may be further defined by the Legislative Ethics Commission).
- (5) Travel expenses for meetings to discuss state business (which also can be further defined by Legislative Ethics Commission rule).
- (6) Gifts from persons who are relatives listed in the Act of the recipient, or are parents or grandparents of the recipient’s spouse, fiancé, or fiancée.
- (7) A gift provided by an individual based on personal friendship—unless the recipient has reason to believe that it was really given because of the recipient’s official position. The Act lists three considerations (not necessarily excluding others) that a recipient should take into account in determining whether this exception covers a gift.
- (8) Food or refreshments worth up to \$75 per recipient per calendar day, if they (1) were consumed where they were bought or prepared, or (2) were catered (meaning bought ready to eat and delivered).
- (9) Benefits (including transportation, lodging, and food) that were provided because of the recipient’s outside business or employment activities (or other activities unrelated to legislative duties), if they are customarily provided to persons in such circumstances.
- (10) Gifts from another person within “any governmental entity,” including the General Assembly, any other Illinois state agency, and the federal government.⁴⁸
- (11) Inheritances and other transfers at death.
- (12) Items from any one “prohibited source” if their total value during a year is under \$100.⁴⁹

Article 10 adds that any state agency (which includes the House, Senate, and other legislative entities⁵⁰) can set more restrictive rules on receipt of gifts.⁵¹

*Ethics Commission
and Inspector
General*

Article 25 of the Act requires appointment of a Legislative Ethics Commission with eight members—two appointed by each of the four legislative leaders. The Commission can include state legislators, but not other state officers or employees.⁵² It makes recommendations for a Legislative Inspector General, who is appointed through the passage of a joint resolution by at least three-fifths of the members elected to each house.⁵³ The Commission’s other major duties include issuing rules on investigations by the Legislative Inspector General; hearing matters brought before it in pleadings filed by the Inspector General; issuing subpoenas on matters before it; and making rulings and imposing administrative fines under the Act.⁵⁴

The Legislative Inspector General’s duties include investigating allegations of violations of the Act (which may not be made anonymously); issuing subpoenas and hearing testimony from witnesses; and (through the Attorney General’s office) filing pleadings with the Legislative Ethics Commission if

the Attorney General finds that reasonable cause exists to think a violation has occurred.⁵⁵ The Legislative Ethics Commission can appoint a Special Legislative Inspector General if the regular Legislative Inspector General takes more than 6 months to complete an investigation without sufficient reason, or if the Legislative Inspector General's office itself is under investigation.⁵⁶

Each of the four legislative leaders is to appoint an ethics officer. These officers' duties include (1) reviewing statements of economic interests filed by legislators and employees in the appointing leader's caucus, and (2) providing guidance to legislators and employees for interpreting the Act. The Act says that legislators and employees can rely on that guidance if they do so in good faith.⁵⁷

The identity of a person providing information or reporting possible misconduct to the Legislative Ethics Commission or Legislative Inspector General is to be kept confidential except to the extent that person consents to disclosure or disclosure is required by law.⁵⁸ Also, all ethics commissions acting under the State Employees and Officials Ethics Act are exempt from the Open Meetings Act.⁵⁹ Documents obtained or created by the Commission regarding allegations are exempt from disclosure under the Freedom of Information Act unless the Commission finds that a violation has occurred. In that case, the documents can be disclosed after deletion of material that is not exempt from disclosure.⁶⁰

Other provisions in Article 25 describe procedures to be followed during ethics investigations,⁶¹ and quarterly reports by the Legislative Inspector General and Attorney General.⁶²

Other parts of the Act

Other articles of the Act address protection of whistleblowers;⁶³ appointing an Inspector General for personnel under the Auditor General;⁶⁴ application of the Act to the executive branch;⁶⁵ and its application to local governments and school districts.⁶⁶ The Act also made numerous changes in other Illinois laws on ethics in government,⁶⁷ which are reflected in the discussion below.

Interest in Public Contracts

Three separate laws address interests of legislators and their families in public contracts.

Office-allowance nepotism

The most specific of the three prohibits use of the so-called "district office allowance" to pay anything to the legislator's "spouse, parent, grandparent, child, grandchild, aunt, uncle, niece, nephew, brother, sister, first cousin, brother-in-law, sister-in-law, mother-in-law, father-in-law, son-in-law, or daughter-in-law."⁶⁸ That law lists no penalty. However, the Criminal Code's section on official misconduct says that any public officer who, in an official capacity, performs an act knowing it is forbidden by law commits a Class 3 felony (punishable by 2-5 years in prison and/or a fine up to \$25,000⁶⁹) and also forfeits office.⁷⁰

Public Officer Prohibited Activities Act

This Act prohibits any public officer from being "in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote." The Act also prohibits a public officer from representing any entity regarding a contract or bid on which the officer may need

to vote.⁷¹ These prohibitions do not apply to persons serving only on advisory panels and commissions.⁷² In some situations the Act permits a member of a governing body, or a company in which that member has an interest, to contract with the unit of government in which the member serves, if the member discloses the interest and abstains from voting on the contract.⁷³

Both the general wording of this Act and the cases reported under it suggest that it is aimed primarily at officers having direct control over contracts—such as officers in the state executive branch, and some local officers. But it could occasionally apply to legislators if the General Assembly votes on an appropriation that would directly benefit a particular business. Violation is a Class 4 felony (1-3 years and/or up to \$25,000) and also results in forfeiture of office.⁷⁴

*Illinois
Procurement
Code*

This comprehensive code,⁷⁵ enacted in 1998, governs purchases by agencies under the Governor, and to a lesser extent the state's five other elected executive officers.⁷⁶ Its "Procurement Ethics and Disclosure" article⁷⁷ also has prohibitions that affect legislators in some instances. The most important says in relevant part (subject to exceptions described later):

(a) Prohibition. It is unlawful for any person . . . holding a seat in the General Assembly . . . or who is the spouse or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly . . . or in any contract of the Capital Development Board or the Illinois Toll Highway Authority.

(b) Interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) is entitled to receive (i) more than 7½% of the total distributable income or (ii) an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.

(c) Combined interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) together with his or her spouse or minor children is entitled to receive (i) more than 15%, in the aggregate, of the total distributable income or (ii) an amount in excess of 2 times the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.⁷⁸

Violation is a business offense, punishable by a fine of \$1,000 to \$5,000.⁷⁹

The Illinois Supreme Court in a 1967 case held that the term "direct pecuniary interest" in a predecessor of subsection (a) did not include mere ownership of stock in a corporation having a state contract.⁸⁰ But subsections (b) and (c) go on to establish specific ownership percentages that will make a contract illegal. They prohibit a business in which a legislator is entitled to

over 7½% of the income—or in which the legislator, legislator’s spouse, and minor children are entitled to over 15% of the income—from having any state contract of a kind described in subsection (a) or a direct pecuniary interest in it. The Illinois Supreme Court in the case just mentioned held that a nearly identical prohibition applied only to the business, and did not subject the shareholder to personal liability.⁸¹ Of course it is not certain that the courts would apply the current law similarly.

There are several exceptions to these prohibitions, including contracts for teaching; contracts to perform “ministerial” (such as clerical) duties by the member’s spouse or minor child; payments to foster parents by the Department of Children and Family Services (DCFS); and payments to licensed professionals that either are competitively bid, or are part of “a reimbursement program for specific, customary goods and services” of DCFS, the Department on Aging, or the Departments of Human Services, Healthcare and Family Services (formerly Public Aid), or Public Health.⁸² Also, this section does not invalidate any contract that was made before the legislator’s election; but the contract is voidable if it cannot be completed within 365 days after the legislator takes office.⁸³

Finally, the Governor (or an executive ethics board or commission designated by the Governor), with the approval of the relevant agency’s chief procurement officer,⁸⁴ can exempt a named person from the prohibitions of this section after determining that “the public interest in having the individual in the service of the State outweighs the public policy evidenced in” this section. To take effect, such an exemption must be filed with the Secretary of State and Comptroller; must state all the facts involved, including the reason for the exemption; and must be published in the Illinois Procurement Bulletin.⁸⁵

Another section of the Illinois Procurement Code prohibits all current and former elected and appointed state officials and employees from using confidential information that is available to them due to their offices or employment “for actual or anticipated gain for themselves or another person.”⁸⁶ No specific penalty is stated for violating that prohibition, but it presumably is subject to a general provision making violation of the Code a Class A misdemeanor⁸⁷ (punishable by up to 364 days in jail and/or a fine up to \$2,500⁸⁸).

The Illinois Procurement Code does not cover procurement for the General Assembly’s own use, although legislative procurement rules can incorporate provisions of the Code.⁸⁹

Misuse of Office and Bribery

Some kinds of actions in the course of legislating are specifically prohibited. The Illinois Governmental Ethics Act forbids a legislator to:

- Lobby the General Assembly for compensation;⁹⁰ represent clients before the Court of Claims or the Workers’ Compensation Commission (formerly called the Industrial Commission) if the state is the opposing party; or (by implication) allow a “close economic” associate of the legislator, when representing a client, to use that association with the legislator to influence the Court of Claims or Workers’ Compensation Commission.⁹¹ Violation of any of these prohibitions is a Class A misdemeanor (punishable by up to 364 days in jail and/or a fine up to \$2,500).

- Accept any compensation, other than the salary and allowances provided by law, for performing official legislative duties. Violation is a petty offense, punishable by a fine up to \$1,000.⁹²
- Accept any honorarium. That term is defined essentially as a payment for an appearance or speech, except reimbursements for actual travel, lodging, and meal expenses for a legislator and one relative. The definition specifically excludes payments made on a legislator's behalf to a tax-exempt organization; agents' fees and commissions; and political contributions reported under the Election Code. The Act does not mention a criminal penalty for violation, although violation may be punishable under the Official Misconduct section of the Criminal Code.⁹³ The Act requires any non-exempt honorarium paid to be surrendered to the state.⁹⁴

From there the statutes proceed to actual bribery. Soliciting, giving, or taking a bribe is prohibited by criminal laws, with violation either a Class 2 or Class 3 felony depending on the facts. The exact wording of the provision on a legislator's taking a bribe is as follows:

No member of the General Assembly shall accept or receive, directly or indirectly, any money or other valuable thing, from any corporation, company or person, for any vote or influence he may give or withhold on any bill, resolution or appropriation, or for any other official act.⁹⁵

Violation is a Class 3 felony,⁹⁶ which is punishable by 2-5 years in prison and/or a fine up to \$25,000.⁹⁷ Another provision that could apply to legislators in some situations makes a person guilty of bribery who

receives, retains or agrees to accept any property or personal advantage which he is not authorized by law to accept knowing that such property or personal advantage was promised or tendered with intent to cause him to influence the performance of any act related to the employment or function of any public officer⁹⁸

Violation of that prohibition is a Class 2 felony,⁹⁹ which is punishable by 3-7 years in prison and/or a fine up to \$25,000.¹⁰⁰ In addition, any public officer who fails to report a bribe attempt to the proper law-enforcement officer commits a Class A misdemeanor. It is not entirely clear from the law whether the proper entity to receive a report from a legislator is the local state's attorney or the Department of State Police, but the latter seems more likely.¹⁰¹

In addition, Article 3 of the Governmental Ethics Act prohibits several more specifically defined kinds of actions related to bribery:

- Accepting any "economic opportunity" (a business or other profitmaking opportunity) if the legislator knows or should know that there is a substantial possibility it is being offered to influence the legislator.¹⁰²

- Charging a person known to have a legislative interest substantially more to lease or buy any property, or to obtain any service, than would be charged in the ordinary course of business.¹⁰³
- Using confidential information obtained in official duties for private benefit.¹⁰⁴
- Accepting a representation case (for example, if the legislator is a lawyer) if there is substantial reason to believe it is being offered to obtain improper influence over a state agency.¹⁰⁵
- Using improper means to influence a state agency in a representation case involving the legislator or a close economic associate of the legislator.¹⁰⁶
- “[O]ther conduct which is unbecoming to a legislator or which constitutes a breach of public trust.”¹⁰⁷

Although the Act lists no specific penalty for violating these provisions, violations may be punishable under the Official Misconduct section of the Criminal Code (as a Class 3 felony that also results in forfeiture of office).¹⁰⁸

Misuse of Public Funds

Both the Illinois Constitution and a statute prohibit use of government funds for political purposes. The constitutional prohibition is quite general:

Public funds, property or credit shall be used only for public purposes.¹⁰⁹

The Attorney General, in a 1975 opinion on the subject of legislative newsletters, advised that “public purposes” within the meaning of that provision do not include promotion of partisan political causes.¹¹⁰ Also, the statute authorizing the office allowance for legislators says that each legislator may use the allowance “in connection with his or her legislative duties and not in connection with any political campaign.”¹¹¹

Drawing the line between governmental and partisan political uses of public money can be difficult at times. The problem frequently arises with newsletters that legislators send to some of their constituents. Ideally, a legislative newsletter helps inform constituents about recent laws or pending bills likely to affect them. However, the political value of getting an incumbent’s name and accomplishments before the voters is well known. There are no court decisions or other official interpretations of what “not in connection with any political campaign” in the statute means. However, seeking political contributions or other political help using public funds is clearly forbidden by the Constitution, as the Attorney General noted in that 1975 opinion.¹¹²

State law also requires items such as newsletters, if printed by a state agency such as the Legislative Printing Unit, to contain the words “Printed by authority of the State of Illinois” and the date of publication, number of copies, and printing order number.¹¹³ Privately printed materials need not contain that information. But if printed using a legislator’s office allowance or other public funds, they are subject to the constitutional and statutory restrictions mentioned above. Penalties, in addition to damaging publicity, could

include being required by a court to pay back any money improperly spent, and possible conviction under the general official-misconduct law.¹¹⁴

Other laws set specific periods in election years during which no legislative “newsletters or brochures” prepared using state funds may be printed or distributed. Those times are from December 15 of the year preceding an election year until the day after the primary election, and from September 1 until the day after the general election. During those times, the Legislative Printing Unit is prohibited from printing such publications, and legislators are prohibited from mailing them if they were printed by the Legislative Printing Unit¹¹⁵ or were paid for in whole or in part from a legislator’s “district office” allowance.¹¹⁶ These prohibitions have exceptions that allow mailing a newsletter or brochure to a constituent in response to a specific request or inquiry.¹¹⁷

Finally, a little-known section of the Illinois Procurement Code prohibits any publication prepared by or through a state agency from having written, stamped, or printed on it, or attached to it, words such as “Compliments of [person’s name].”¹¹⁸ This law presumably is intended to prevent state officers or employees from trying to get credit with the public for giving away publications (such as the *Illinois Blue Book*) that are printed using state funds. The Illinois Procurement Code does not directly apply to the General Assembly,¹¹⁹ but this prohibition may apply to items procured through the executive branch.

Prohibitions
Involving Specific
Kinds of Entities

The Horse Racing Act bars racing organizations licensed to race in Illinois from having public officials, or members of their families, as holders of direct or indirect ownership or financial interests in those organizations.¹²⁰ The Act also prohibits any such organizational licensee or racing concessionaire, or an officer, director, or person with at least a 5% interest in either, from making a political contribution to a public official or political candidate.¹²¹

The Foreign Trade Zones Act prohibits any legislator or other state officer, or anyone with a described kind of kinship to such a person, from having a contract or a direct pecuniary interest in a contract made under that Act.¹²²

Other provisions that could apply in rare situations are in the article of the Criminal Code of 1961 on public contracts. That article bars public officials from providing information (not made available to the public generally) to prospective bidders on public contracts to help them prepare bids, and related practices that tend to prevent the state from getting the best price or quality when contracting.¹²³

Other Ethical
Principles

Article 3 of the Illinois Governmental Ethics Act, entitled “Code of Conduct,” contains both “Rules of Conduct for Legislators”¹²⁴ (summarized above) and “Ethical Principles for Legislators.”¹²⁵ The “Ethical Principles” are not legally enforceable¹²⁶ but serve as guides to legislators and the public on the propriety of questioned conduct.

Fair Campaign
Practices Act

An article of the Election Code encourages candidates for public office to sign a “Code of Fair Campaign Practices” contained in it. The Code contains general statements that the candidate will avoid unjustified personal attacks on opponents, distortion of facts, and dishonest or unethical prac-

tices.¹²⁷ Signing the Code is voluntary, and courts cannot force a signer to adhere to it.¹²⁸ Any copy of the Code signed by a candidate and filed with the State Board of Elections becomes a public record.¹²⁹

Disqualification
for Crime

The Illinois Constitution says this about disqualification from office due to crime:

A person convicted of a felony, bribery, perjury or other infamous crime shall be ineligible to hold an office created by this Constitution. Eligibility may be restored as provided by law.¹³⁰

The exact scope of “infamous” crimes is not clear. The Illinois Supreme Court, interpreting a similar provision in the 1870 Constitution, said a “felony which falls within the general classification of being inconsistent with commonly accepted principles of honesty and decency, or which involves moral turpitude” is infamous.¹³¹ But the provision in the 1970 Constitution applies more broadly to *all* felonies and to any lesser crimes that are infamous.

The statutes on this subject bring more uncertainty. A section in the Election Code says a person convicted of an infamous crime is thereafter ineligible for any office of trust or profit unless eligibility is restored by a pardon “or otherwise according to law.”¹³² But provisions in the Unified Code of Corrections imply that eligibility for public office is restored automatically upon completion of a prison sentence.¹³³ An Illinois Appellate Court panel in 1980 found a denial of equal protection in different standards established by these two statutes, and held that a local official who had been convicted of extortion could run for office after completing his sentence.¹³⁴ That decision was not appealed to the Illinois Supreme Court. Thus the duration of ineligibility for office due to a felony or other infamous crime is not entirely clear.

Another section of the Election Code says that an elective office is automatically vacated upon the holder’s conviction of, or written agreement to plead guilty to, an infamous crime. A “conviction” for this purpose occurs on the date the jury returns a guilty verdict or, if the trial is by a judge, the date the judge enters a finding of guilty.¹³⁵

Loss of Pension
Due to Crime

Benefits under the General Assembly Retirement System will not be paid to anyone convicted of a felony relating to, or arising out of or in connection with, legislative service.¹³⁶

Dual Officeholding

The issue of legislators’ holding other public office is addressed in this provision of the Illinois Constitution:

No member of the General Assembly shall receive compensation as a public officer or employee from any other governmental entity for time during which he is in attendance as a member of the General Assembly.¹³⁷

Thus the Constitution does not prohibit dual public officeholding if the legislator is not being paid for working at another unit of government while actually attending the General Assembly.

Two Attorney General's opinions under the 1970 Constitution have advised on the compatibility of being a legislator while also being a county board member or township supervisor. These opinions cited several conditions that can make two offices incompatible: If the Constitution or a statute specifically prohibits one person from holding both offices; if the interests of one office would conflict with those of the other; or if the duties of one office are such that its holder cannot in every instance fully and faithfully perform the duties of the other. The Attorney General concluded that none of these conditions was present so as to prevent a legislator from also holding office as a county board member or township supervisor.¹³⁸ Another principle occasionally cited in the dual-officeholding area is separation of powers among the three branches of government. However, it does not appear that this principle now applies to a person with offices or employment at different levels of government (such as mayor and state legislator).

Thus there is little legal barrier to legislators' holding local public office or employment, provided the time commitments are compatible. But the principle of separation of powers almost certainly would prevent a state legislator from simultaneously serving in the state's executive or judicial branch.

- Notes
1. Downloaded Sept. 18, 2008 from the page for Illinois on the U.S. General Services Administration's Internet site showing per diems by state and locality.
 2. 26 U.S. Code subsec. 162(h)(1) and (4).
 3. 26 U.S. Code subsec. 162(h)(2).
 4. 26 U.S. Code subsecs. 274(n)(1), 162(a), and 67(a). The 1987 IRS interpretation was in IRS Notice 87-23, 1987-1 Cum. Bull., p. 467.
 5. "Privately Owned Vehicle (POV) Mileage Reimbursement Rates" (downloaded Sept. 2, 2008 from U.S. General Services Administration Internet site). These amounts are also published in 41 Code of Fed. Regs. sec. 301-10.303.
 6. 25 ILCS 115/1, second paragraph, adopting the amount allowed by the federal regulation cited in the note immediately above as the mileage reimbursement for legislators.
 7. Rev. Proc. 95-54 (1995-2 Cum. Bull., p. 450).
 8. 26 U.S. Code subsec. 274(d); 26 Code of Fed. Regs. secs. 1.274-5, 1.274-5T(c), and 1.162-17(d).
 9. See 26 U.S. Code subsecs. 67(a) and (b).
 10. See 35 ILCS 5/203(e)(1) and (a)(1); 5/202; and 5/201(b).
 11. 10 ILCS 5/9-1.8 and 5/9-1.14.
 12. See 10 ILCS 5/9-1.9.
 13. 10 ILCS 5/9-7.
 14. 10 ILCS 5/9-11. Subsec. 9-11(4) makes an exception to the requirement of reporting a contributor's occupation and employer if the committee has made a good-faith but unsuccessful effort to obtain that information.
 15. 10 ILCS 5/9-26.
 16. Amendatory veto message to S.B. 2190 (Aug. 29, 2008).
 17. Ill. Const., Art. 13, sec. 2.

18. 5 ILCS 420/1-101 ff., and specifically 420/4A-101 ff.
19. 5 ILCS 420/4A-102. The items to be disclosed have been re-arranged from the order in which they are listed in the law.
20. 5 ILCS 420/4A-105.
21. 5 ILCS 420/4A-106, ninth paragraph as amended by P.A. 93-617 (2003).
22. The State Officials and Employees Ethics Act resulted from two Public Acts that became law late in 2003. It was enacted by P.A. 93-615, and then extensively expanded and changed by P.A. 93-617. It is codified as 5 ILCS 430/1-1 ff.
23. 5 ILCS 430/5-10.
24. 5 ILCS 430/50-5(b).
25. 5 ILCS 430/5-5.
26. 25 ILCS 115/4, third paragraph.
27. 5 ILCS 430/5-15.
28. 5 ILCS 430/1-5 (definition of "Prohibited political activity").
29. 5 ILCS 430/50-5(a).
30. 730 ILCS 5/5-8-3(a)(1) and 5/5-9-1(a)(2).
31. 5 ILCS 430/5-20.
32. 5 ILCS 430/50-5(b).
33. 5 ILCS 430/5-30.
34. 5 ILCS 430/50-5(a).
35. 5 ILCS 430/5-35.
36. 5 ILCS 430/50-5(b).
37. 5 ILCS 430/5-40.
38. 5 ILCS 430/50-5(a).
39. 5 ILCS 430/5-45.
40. 5 ILCS 430/50-5(a).
41. 5 ILCS 430/50-5(c).
42. 5 ILCS 430/10-30.
43. See 5 ILCS 430/1-5, definition of "Member."
44. 5 ILCS 430/1-5, definition of "Prohibited source."
45. 5 ILCS 430/1-5, definition of "Gift."
46. 5 ILCS 430/10-10.
47. 5 ILCS 430/10-15.
48. This exception should be read in conjunction with the definition of "State agency" in 5 ILCS 430/1-5.
49. 5 ILCS 430/10-15.
50. See definition of "State agency" in 5 ILCS 430/1-5.
51. 5 ILCS 430/10-40.
52. 5 ILCS 430/25-5(b) and (c).
53. 5 ILCS 430/25-10(b).
54. 5 ILCS 430/25-15.
55. 5 ILCS 430/25-20.
56. 5 ILCS 430/25-21.
57. 5 ILCS 430/25-23.
58. 5 ILCS 430/25-90.
59. 5 ILCS 120/1.02, definition of "Public body," last sentence.
60. 5 ILCS 430/25-95. See the corresponding provision in 5 ILCS 140/7(hh).
61. 5 ILCS 430/25-35 to 430/25-80.
62. 5 ILCS 430/25-85 and 430/25-86.
63. 5 ILCS 430/15-5 ff.
64. 5 ILCS 430/30-5 ff.

65. 5 ILCS 430/20-5 ff. and 430/35-5 ff.
66. 5 ILCS 430/70-5 ff.
67. See P.A. 93-615 (2003), secs. 90-3 ff.
68. 25 ILCS 115/4.2.
69. 730 ILCS 5/5-8-1(a)(6) and 5/5-9-1(a)(1).
70. 720 ILCS 5/33-3.
71. 50 ILCS 105/3(a).
72. 50 ILCS 105/3(a).
73. 50 ILCS 105/3(b), (b-5), and (c).
74. 50 ILCS 105/4.
75. 30 ILCS 500/1-1 ff.
76. See 30 ILCS 500/1-30.
77. 30 ILCS 500/50-1 ff.
78. 30 ILCS 500/50-13(a) to (c).
79. 30 ILCS 500/50-13(g).
80. *People v. Isaacs*, 37 Ill. 2d 205, 226 N.E.2d 38 (1967).
81. 37 Ill. 2d at 214-215, 226 N.E.2d at 45.
82. 30 ILCS 500/50-13(f).
83. 30 ILCS 500/50-13(e).
84. Another section of the Illinois Procurement Code (30 ILCS 500/1-15.15) defines who is the Chief Procurement Officer for each kind of state procurement. For general state purchasing, that person is the Director of the Department of Central Management Services.
85. 30 ILCS 500/50-20.
86. 30 ILCS 500/50-50.
87. 30 ILCS 500/50-75(b).
88. Penalties for misdemeanors are listed in 730 ILCS 5/5-8-3 and 5/5-9-1(a).
89. 30 ILCS 500/1-30(b).
90. 5 ILCS 420/2-101.
91. 5 ILCS 420/2-104.
92. 5 ILCS 420/2-103. The maximum fine for a petty offense is stated in 730 ILCS 5/5-9-1(a)(4).
93. See 720 ILCS 5/33-3.
94. 5 ILCS 420/2-110.
95. 720 ILCS 645/1.
96. 720 ILCS 645/2.
97. 730 ILCS 5/5-8-1(a)(6) and 5/5-9-1(a)(1).
98. 720 ILCS 5/33-1(d).
99. 720 ILCS 5/33-1(f).
100. 730 ILCS 5/5-8-1(a)(5) and 5/5-9-1(a)(1).
101. See 720 ILCS 5/33-2, which says in relevant part: “Any public officer, public employee or juror who fails to report forthwith to the local State’s Attorney, or in the case of a State employee to the Department of State Police, any offer made to him in violation of Section 33-1 commits a Class A misdemeanor” (emphasis added). In strict usage, legislators are public *officers* rather than employees. The mention of both public officers and public employees at the beginning of the quoted sentence indicates that the drafter was aware of the distinction; and the terms “public officer” and “public employee” are defined separately (720 ILCS 5/2-17 and 5/2-18) in the Criminal Code of 1961, of which this section is a part. But it seems unlikely that the General Assembly intended for state *em-*

- ployees* to report bribe attempts to the State Police, but state *officers* to report them to the state's attorney for the county.
102. 5 ILCS 420/3-102.
 103. 5 ILCS 420/3-103.
 104. 5 ILCS 420/3-104.
 105. 5 ILCS 420/3-105.
 106. 5 ILCS 420/3-106.
 107. 5 ILCS 420/3-107.
 108. 720 ILCS 5/33-3.
 109. Ill. Const., Art. 8, subsec. 1(a).
 110. Opinion S-960 (1975 Ops. Atty. Gen., p. 212).
 111. 25 ILCS 115/4, end of first sentence.
 112. Opinion S-960 at p. 213.
 113. 30 ILCS 500/20-105.
 114. 720 ILCS 5/33-3.
 115. 25 ILCS 130/9-2.5.
 116. 25 ILCS 115/4, fourth paragraph.
 117. 25 ILCS 130/9-2.5 and 25 ILCS 115/4, fourth paragraph.
 118. 30 ILCS 500/20-105, last sentence.
 119. See 30 ILCS 500/1-30(b).
 120. 230 ILCS 5/24(c) and (d).
 121. 230 ILCS 5/24(f).
 122. 50 ILCS 40/2.
 123. 720 ILCS 5/33E-1 ff. (especially 5/33E-6).
 124. These rules are in 5 ILCS 420/3-102 to 420/3-107.
 125. 5 ILCS 420/3-201 to 420/3-205.
 126. See 5 ILCS 420/3-206.
 127. 10 ILCS 5/29B-10.
 128. 10 ILCS 5/29B-35.
 129. 10 ILCS 5/29B-25.
 130. Ill. Const., Art. 13, sec. 1.
 131. *People ex rel. Keenan v. McGuane*, 13 Ill. 2d 520 at 534, 150 N.E.2d 168 at 176 (1958), cert. den. 358 U.S. 828, cited in *People ex rel. City of Kankakee v. Morris*, 126 Ill. App. 3d 722 at 725, 467 N.E.2d 589 at 592 (1984), review denied by Ill. Sup. Ct.
 132. 10 ILCS 5/29-15. This section refers to “an infamous crime as such term is defined in Section 124-1 of the Code of Criminal Procedure of 1963” (Ill. Rev. Stat. through 1985, ch. 38, sec. 124-1); but that section was repealed in 1986.
 133. 730 ILCS 5/3-3-8(d) and 5/5-5-5(b).
 134. *Coles v. Ryan*, 91 Ill. App. 3d 382, 414 N.E.2d 932 (1980).
 135. 10 ILCS 5/25-2(5) and fifth unnumbered paragraph in the section.
 136. 40 ILCS 5/2-156.
 137. Ill. Const., Art. 4, subsec. 2(e), first paragraph.
 138. Opinions S-1027 (1976 Ops. Atty. Gen., p. 49) and 80-027 (1980 Ops. Atty. Gen., p. 116).

