

d) Public sector – Officials

i. Public Service

The Public Service encompasses all those government employees who fall under the Public Service Act and the Public Service Regulations. It includes employees in national and provincial departments, but excludes those in local government.

Most of the standards on conflicts of interest relevant to this sphere are contained in the Public Service Regulations (2016).

While there is a separate section on financial disclosures, one should first look at Chapter 2, Part 1 of the regulations which contains the Code of Conduct for Public Servants. The following is an extract of some of the most applicable broad principles that indicate the duty of good faith and objectivity:



11. *An employee shall:*

- (a) be faithful to the Republic and honour and abide by the Constitution and all other law in the execution of his or her official duties;*
- (b) put the public interest first in the execution of his or her official duties;*



12. *(b) serve the public in an unbiased and impartial manner in order to create confidence in the public service;*



13. *(b) not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties.*

Furthermore, the Code contains rules on:

- Receiving ‘gratification’;
- Conducting business with an organ of state (which is prohibited);
- Declaration of conflicts and recusal from such decisions;
- Favours friends and relatives;

- Gifts (where everything above R350 requires permission); and
- External remunerative work (which requires permission and may not be done in work time).

When managers decide whether something constitutes a conflict of interest, they should first use the principles, and then consider the rules. In other words, the rules cannot trump the principles.



Private sector companies should note that politicians and public servants are not allowed to be directors of companies who do business with an organ of state, so they should not be appointed to these positions if the company wants to do business with government or state-owned entities.

Chapter 2, Part 1 of the Regulations deal specifically with financial disclosures. It sets out predominantly who needs to disclose, what needs to be disclosed, as well as other procedural issues.

Importantly it also sets out that the Public Service Commission will verify the interests of all senior managers in the Public Service. Potential conflicts of interest will be directed back to departments who need to manage any conflicts and disciplinary matters arising from these.

A different process is followed for ‘designated employees’ who have to disclose but who are not senior managers. Here the department has to do the verification itself, to identify possible conflicts of interest, and manage them appropriately.



According to the Regulations it is the responsibility of ethics officers in the department to manage the disclosure system and also any processes related to external remunerative work.

Interestingly there is a specific section on ‘Decision-making in cases of conflict of interest’ which triggers when a ‘functionary’ has to take a decision but has a conflict. While not clearly stated it seems that this relates to specific senior functions, such as heads of department, who are assigned responsibilities, but may be conflicted.

ii. Municipalities

The majority of the principles and rules for municipal staff members related to conflicts of interest can be found in the Code of Conduct for Municipal Staff Members, which is contained in the Municipal Systems Act.

The relevant principles are contained in section 2 on General Conduct:

A staff member of a municipality must at all times-

- a. *perform the functions of office in good faith, diligently, honestly and in a transparent manner;*
- b. *act in such a way that the spirit, purport and objects of section 50 (of the Municipal Systems Act dealing with basic values and principles governing local public administration) are promoted;*
- c. *act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and*
- d. *act impartially and treat all people, including other staff members, equally without favour or prejudice.*

Furthermore, there are more specific rules related to conflicts of interest. Among other things municipal staff members may not:



- Abuse their position for personal gain (for themselves or someone else);
- Do business with the municipality;
- Unduly influence other functionaries to their own benefit or the benefit of others; and
- Accept or request gifts or favours for abusing their powers.

There is no requirement for general annual disclosures of interest, but staff members must disclose if they, or their “*spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality*”.