



# Chief Election Officers and Conflicts of Interest

for **Election Reformers Network**

January 14, 2020

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## Secretary of State Reports: Alabama

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Elected Secretary of State
- ALA. CODE § 17-1-18 authorizes the secretary of state to provide guidance for all election activities. Section 17-25-4 grants the secretary of state the authority to adopt uniform and non-discriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting.

#### **II. Source of Conflict of Interest Laws**

- Statutory
  - ALA. CODE § 17-1-3
    - No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself ... unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.
  - ALA. CODE § 36-25-1
    - A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest ... in a manner different from the manner it affects the other members of the class to which he or she belongs.
  - ALA. CODE § 36-25-9(c)

- Members of any agency, board or commission cannot vote or participate in any matter in which they or a family member have a financial gain or interest.
- ALA. CODE § 13A-10-62
  - Public servants must disclose any known potential conflicting interests. Failing to disclose a conflict of interest is a Class A misdemeanor.
- Regulatory – Alabama Ethics Commission
  - Generally deals with issues involving conflicts of interest, or the use of office for personal gain, on the part of public officials and public employees in Alabama.
    - This is done through the Opinions process and the enforcement process.
  - Upon investigation a complaint may be:
    - Closed because the Ethics Commission does not have jurisdiction regarding the alleged wrongdoing or the Statute of Limitations has expired
    - Dismissed due to lack of evidence to support the complaint
    - Presented to Commission for Determination of Probable Cause
      - Then refer the matter to the Office of the Attorney General, the District Attorney in the location where the violation occurred, or impose an Administrative fine
  - Relevant decisions:
    - Alabama Ethics Commission Advisory Opinion 2010-03 ([link](#))
      - Commission ruled that it would be a conflict of interest for an incumbent mayor in an election contest to vote as a member of the city council on matters involving a contemplated challenge to a

court order that would change the city's election procedure.

- Commission found that winning the election could qualify as a "personal gain" and ruled that the mayor should not vote.

- Alabama Ethics Commission Advisory Opinion 2017-05 ([link](#))

- An individual holding one office, who is termed-out from seeking re-election to that office, or who seeks election to another office, may not loan money to their existing principal campaign committee, but must establish a new and separate principal campaign committee for the new office sought.
- Case Law – No case law appears to bear directly on the state conflict of interest laws in their application to the Secretary of State.

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. See ALA. CODE § 36-25-1 (definition of a covered public official).
  - Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county or municipal level of government or their instrumentalities, including governmental corporations.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- No rule that speaks directly to this issue.

### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- *Ex parte Merrill*, 264 So. 3d 855 (Ala. 2018)
  - Plaintiffs filed a civil action against Merrill, in his capacity as Secretary of State, and Packard, in his capacity as director of elections, seeking injunctive and declaratory relief for allegations that certain electronic voting machines used in Alabama elections created digital images of the paper ballots scanned and counted by the machines.

- Plaintiffs allege that defendants will not instruct election officials to preserve the digital ballot images that, under state and federal law, must be preserved. Plaintiffs contend that this failure “infringe[d] upon their right to a fair and accurate election.”
  - Court dismissed the case.
- *Rice v. Chapman*, 51 So. 3d 281 (Ala. 2010)
  - Petitioners contend that Secretary of State Chapman improperly certified a candidate for Associate Justice because the candidate didn’t comply with the Alabama Codes that requires prospective candidates to timely file “Appointment of Principal Campaign Committee” and “Statement of Economic Interest forms.”
  - Court found there was no subject-matter jurisdiction.

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- None.

### **VII. Public Perception/Recent Coverage**

- Eileen Jones, “Nancy Worley Indicted, Turns Herself In,” WSFA 12 News, March 14, 2007. (Link) (“Former Secretary of State Nancy Worley turned herself in at the Montgomery County Jail Thursday and was released on bond. Her surrender comes after a grand jury indicted Worley on charges stemming from her unsuccessful campaign for re-election last year.”).
- Decca Muldowney, “The Malleable Conflicts of Interest in State Legislature Rules,” Pacific Standard, June 7, 2018. (Link)
- John Sharp, “Corruption, Ethics Top List of Voters Concerns in Alabama,” Al.com, October 28, 2018. (Link)
- Mary Scott Hodgins, “State Elections Chief Faces Criticism Over Partisanship,” WBHM, November 2, 2018 (Link) (“Like many candidates running in Tuesday’s midterms, Merrill is campaigning for himself and his party. The thing is, as secretary of state, Merrill is Alabama’s chief elections official, so he oversees the election he is a part of. That has led to questions about whether that crosses an ethical line. “I think it’s an unavoidable conflict of interest,” David Kimball, political science professor at the University of Missouri-St. Louis says.”).
- Pema Levy, “Alabama’s Top Elections Official Thinks Voting Shouldn’t Be Easy. Now He’s Running for Senate,” Mother Jones, June 25, 2019. (Link) (“John Merrill, Alabama’s Republican secretary of state who made national headlines in

2016 by asserting that registering to vote and casting a ballot should not be easy, declared his candidacy for the US Senate on Tuesday. Merrill said Tuesday that he would not resign his post during the campaign, meaning he will oversee the rules and procedures governing his own race—a potential conflict of interest between his duties as an election official and his priorities as a candidate.”).

## Secretary of State Reports: Alaska

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Elected Lieutenant Governor. Controls and supervises the Division of Elections.
  - The Lieutenant Governor appoints a Director of Elections.
  - The Director of Elections acts for the Lieutenant Governor in the supervision of central and regional election offices, the hiring, performance, evaluation, promotion, termination, and all other matters relating to the employment and training of election personnel. The Director of Elections also acts for the Lieutenant Governor in the administration of all state elections as well as those municipal elections that the state is required to conduct. The Director is responsible for the coordination of state responsibilities under the National Voter Registration Act of 1993. The Director serves at the pleasure of the Lieutenant Governor. *See AS 15.10.105(a).*
  - The Director of Elections appoints Election Supervisors to assist in the administration of elections in the house districts designated by the Director. *See AS 15.10.110.*
  - An Election Supervisor, in each precinct within the Supervisor's district, appoints an election board. *See AS 15.10.120.*
    - In addition to the three qualified voters registered to vote in the precinct, district, or state, an election supervisor may also appoint not more than two members of the youth vote ambassador program. A party district committee or state party central committee of each political party may nominate two candidates for each election board. An election supervisor shall appoint one nominee of the political party of which the governor is a member and one nominee of the political party that received the second largest number of votes statewide in the preceding gubernatorial election. An election supervisor appoints a chairperson for each election board within the election supervisor's district. For a municipal election in which voters cast ballots at polling places in their precincts, election boards shall be appointed by the appropriate municipality.

#### **II. Source of Conflict of Interest Laws**

- *Statutory* – Alaska has codified statutes governing ethics in the Division of Elections as well as in the Executive branch generally.
  - Division of Elections
    - AS 15.10.105(b) – Personnel Rules
      - Maintains the nonpartisan nature, integrity, credibility, and impartiality of the administration of elections. Provides that the Director of Elections, the Election Supervisors, and the full-time members of the Director’s staff may not join, support, or otherwise participate in partisan political organization, faction or activity. This includes but is not limited to the making of political contributions. The Director of Elections, the Election Supervisors, and the full-time members of the Director’s staff also may not hold or campaign for elective office, be an officer of a political party or member or officer of a political committee, permit their name to be used, or make any contributions, in support of or in opposition to a candidate or a ballot proposition or question, participate in any way in a national, state, or local election campaign, or lobby or employ or assist a lobbyist.
  - Executive Branch Public Employees
    - AS 39.52 – Alaska Executive Branch Ethics Act.
      - The various provisions of the Alaska Executive Branch Ethics Act prohibit substantial and material conflicts of interest, and provide that public employees and their immediate families may not improperly benefit from their actions as public employees. *See* AS 39.52.110. The Act specifically prevents public employees from misusing their positions for personal gain or to give an unwarranted benefit or treatment to any person. *See* AS 39.52.120.
      - Complaints, Hearings, and Enforcement
        - Any person may file a complaint with the Attorney General about potential ethics violations of a current or former public employee. The Attorney General may also initiate complaints based on information provided by designated ethics supervisors. *See* AS 39.52.310-330.
        - All complaints, *except for those alleging violations by the Governor, Lieutenant Governor, or the Attorney General*, are reviewed by the Attorney General. Such exempted complaints are reviewed by independent counsel appointed by the Personnel Board. *See* AS 39.52.310(c).

- Complaints and all documents and information regarding the investigation are confidential and not subject to inspection by the public. The person filing the complaint and all persons contacted during the course of an investigation are required to maintain confidentiality regarding the existence of the investigation. Confidentiality may only be waived by the subject of the complaint. (Link).
- Complaints against a Governor or Lieutenant Governor who is a Candidate for State Office *See* AS 39.52.310(j).
- The Personnel Board’s jurisdiction over complaints against a Governor or Lieutenant Governor who is a candidate for state office is suspended during the campaign period, unless the Governor or Lieutenant Governor permits the personnel board to assume jurisdiction. If the candidate does not permit the personnel board to assume jurisdiction, the personnel board shall return the complaint to the complainant with notice of the suspension of jurisdiction and of the right of the complainant to file the complaint after the end of the campaign period.
  - A campaign period begins on the later of 45 days before a primary election in which the governor or lieutenant governor is a candidate for state office or on the day on which the individual files as a candidate for state office and ends at the close of election day for the general or special election in which the individual is a candidate or on the day that the candidate withdraws from the election, if earlier. For a candidate who loses in the primary election, the campaign period ends on the day that results of the primary election showing that another individual won the election are certified. *See* AS 39.52.310(k).
- *Regulatory* – The Alaska Public Offices Commission (“APOC”) typically investigates and imposes sanctions on election-related violations. The APOC receives and responds to complaints about candidates and groups. The APOC also investigates, holds hearings, imposes civil sanctions, and makes referrals to the Attorney General when warranted. *See* AS 15.13.030; AS 15.13.045; AS 15.13.380.
- *Case Law* – No case law appears to bear directly on the state conflict of interest laws in their application to Election Officials. APOC advisory opinions are stored and can be found on the APOC website. (Link)

### III. Conflict of Interest Applicability to Elections Officer

- Yes. *See* AS 39.52.960(21) (definition of a covered public officer).

- “Public officer” or “officer” means: a public employee; a member of a board or commission; and a state officer designated by the governor to act as trustee of the trust or a person to whom the trustee has delegated trust duties; in this paragraph, “trust” has the meaning given in AS 37.14.450.
- Additionally, AS 15.10.105(b) specifically applies to Election Officers.

#### **IV. Duty to Abstain, Regardless of Disclosure?**

- Yes; there is a limited duty to abstain regardless of disclosure. *See* AS 39.52.210(b).
  - (b) A public employee's designated supervisor shall make a written determination whether an employee's involvement violates any provision of the Code of Ethics and shall provide a copy of the written determination to the public employee and to the attorney general. If the supervisor determines that a violation could exist or will occur, the supervisor shall,
    - (1) reassign duties to cure the employee's potential violation, if feasible; or
    - (2) direct the divestiture or removal by the employee of the personal or financial interests that give rise to the potential violation.
  - “Supervisors” under AS 39.52.210(b) include the commissioner of each department in the executive branch, for public employees within the department; the president of the University of Alaska, for university employees; the attorney general, for the governor and lieutenant governor; the executive director of a board or commission for the staff of the board or commission; the chair or acting chair of the board or commission, for the members and the executive director of a board or commission; and the governor, for commissioners and for other public officers not included in (A) - (E) of this paragraph; or a public officer designated by a commissioner, the university president, or the governor to act as the supervisor if the name and position of the officer designated has been reported to the attorney general. *See* AS 39.52.960(8).

#### **V. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of such a rule. Same general rules relating to conflicts of interest.

#### **VI. Public Perception/Recent Coverage**

Report, “*Alaska Gets C Grade in 2015 State Integrity Investigation*,” The Center for Public Integrity, Nov. 12, 2015 ([Link](#)) (comprehensive assessment of state

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government accountability and transparency. Includes a comprehensive overview of Alaska's elector oversight, for which it received a D+ grade).

## Secretary of State Reports: Arizona

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Secretary of State, elected. Mandated by Arizona Constitution.
- Supervises state and local elections. Certifies statewide candidates and ballot questions. Certifies election results. The Secretary is responsible for deciding which candidates qualify for the ballot and tabulating signatures collected for ballot access initiatives. *See* Article IV § 10. [Link](#). These elections are overseen by a board of disinterested electors. The Secretary of State is also responsible for deciding procedure for all complaint requests and makes a final determination on the action. [Link](#).

#### **II. Source of Conflict of Interest Laws**

- *Statutory* – Arizona enacted A.R.S. § 16-531(D), prohibiting election-related board members from being a federal, state, county, or precinct officer or a candidate for office at the election. [Link](#). A larger body of statutory law exists outlining public/corporate conflict of interest laws. A.R.S. § 38-500-511. [Link](#).
- *Regulatory* – No evidence of regulations.
- *Case law* – Several cases with holding arguably relevant to the scope of the conflict of interest rules:
  - *Yetman v. Naumann*, 492 P.2d 1252, 1255 (Ariz. 1972). Special action was filed to prevent participation by member of State Board of Health in decision concerning petition to reduce or modify certain state air pollution standards, and the Superior Court dismissed the complaint. The court held that term ‘substantial interest,’ legislatively defined, for purposes of statute disqualifying public officers or employees with such interest from participating in decision of a board, administrative official, commission, or legislative or administrative body of which he is a member, as being any interest which did not fall within seven specified situations declared to be a ‘remote interest’ was not unconstitutionally vague.

- *Maucher v City of Eloy*, 701 P.2d 593, 595-96 (Ariz. App. Ct. 1985). City engineer brought action for alleged breach of contract by city, seeking alleged deficiencies in payment for engineering services. The court held that: (1) explanation that one of the prime motivations in being city engineer was fact that any available contracts would be available to city engineer as private consultant did not excuse compliance with conflict of interest statute; (2) result of permitting city to reap fruits of contract and then void it under the conflict of interest statute was authorized and appropriate when public interest in avoiding contract between city and city engineer was taken into account, even though result was harsh; and (3) quantum meruit would not be permitted to circumvent conflict of interest statute.

### III. Conflict of Interest Applicability to Elections Officer

- Yes. See A.R.S. § 38-503(definition of a covered public official). [Link](#).
  - “Public Officer” means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.
  - “Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.”
  - Every political subdivision and public agency subject to A.R.S. §§ 38-501 to -511 must "maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article [A.R.S. §§ 38-501 to - 511]." A.R.S. § 38-509.
    - [Link to current Secretary of State’s Disclosures.](#)
    - Any public officer or employee who has a conflict of interest in any agency decision or in the award of a contract *must* provide written disclosure of that interest in the agency's special conflict of interest file. A.R.S. § 38-503(A), (B). The officer or employee may either file a signed written disclosure statement fully disclosing the interest or file a copy of the official minutes of the 8-8 Revised

2014 agency which fully discloses the interest. A.R.S. §§ 38-502(3).

#### **IV. Duty to Abstain, Regardless of Disclosure?**

- Yes. Once the public officer or employee has disclosed the conflict of interest and withdrawn from participation in the matter, the employee or officer must not communicate about the matter with anyone involved in the decision-making process in order to avoid a violation of A.R.S. § 38-503(A) or (B) and the appearance of impropriety. [Link](#).

#### **V. Specific Election Officer Conflict of Interest Rules?**

- A.R.S. § 16-531(D), prohibiting election-related board members from being a federal, state, county, or precinct officer or a candidate for office at the election. [Link](#).

#### **VI. Historical Allegations of Partisan Interference by Election Officer in Election Administration?**

- Not partisan interference, but foreign interference in elections. [Link](#).

#### **VII. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of such a rule.

#### **VIII. Public Perception/Recent Coverage**

- Susan Crabtree, “Arizona Creates Election-Integrity Unit to Gird for 2020,” *Real Clear Politics* (May 31, 2019) [Link](#) (“Democratic officials, however, appear more wary of disparaging the new elections integrity unit. C. Murphy Hebert, a spokeswoman for Secretary of State Katie Hobbs, a Democratic official elected last year, said the current election process isn’t broken but she still welcomed an additional layer of protection. “The secretary of state feels like the processes in place currently are doing the job of protecting from voter fraud,” Hebert said. “If this unit reinforces that narrative, then it’s a good thing for us. If it provides additional peace of mind for the voters in Arizona, that’s okay.”)
- Elvia Diaz, “*Opinion: Arizona Republicans Skimp on Election Security to Stick it to Democrats?*” *AZ Central* (May 29, 2019) [Link](#)
- Alan Greenblatt, “Not Just Georgia’s Brian Kemp: Other Secretaries of State Accused of Abusing Elections Power” *Governing* (Oct. 17, 2018) [Link](#) (“Arizona GOP Secretary of State Michele Reagan is being sued for allegedly failing to

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update voter registration information as required under the federal motor-voter law, potentially disenfranchising tens of thousands of voters.”).

## Secretary of State Reports: Arkansas

### Election Reformers Network

#### **I. Election Officials – Background and Responsibilities**

- State Board of Election Commissioners
- The State Board of Election Commissioners consists of seven members, including: the Secretary of State; one person designated by the chair of the state Democratic Party; one person designated by the chair of the state Republican party; one person chosen by the President Pro Tempore of the Senate; one person chosen by the Speaker of the House of Representatives; two persons chosen by the Governor, one of whom must be a county clerk and one of whom must have served for at least three years as a county election commissioner. The Secretary of State shall serve as chair and secretary of the board. Except for the Secretary of State and the county clerk, no member of the board shall be an elected public official. A.C.A. § 7-4-101.
- The Board is charged with promoting fair and orderly election procedures through education, assistance, and monitoring. It is responsible for developing resources to assist candidates and county election administrations; conducting statewide training; monitoring compliance by local election authorities with federal and state election laws; investigating complaints of alleged misconduct and election law violations; and, distributing funds to the counties for state-supported political party primary elections. The Board is also responsible for monitoring all election law-related legislation, as well as formulating, adopting, and promulgating all necessary rules to assure the consistent application of voter registration laws. A.C.A. § 7-4-101; *see also* Link to Board's Website.

#### **II. Source of Conflict of Interest Laws**

- *Constitutional*
  - Article 19, Section 6 of the Arkansas Constitution
    - No person shall hold or perform the duties of more than one office in the same department of the government at the same time, except as expressly directed or permitted by this Constitution.
- *Statutory*
  - A.C.A. § 21-8-1001 – Conflicts of Interest

- No member of a state board or commission or board member of an entity receiving state funds shall participate in, vote on, influence, or attempt to influence an official decision if the member has a pecuniary interest in the matter under consideration by the board, commission, or entity.
- A member of a state board or commission or board member of an entity receiving state funds may participate in, vote on, influence, or attempt to influence an official decision if the only pecuniary interest that may accrue to the member is incidental to his or her position or accrues to him or her as a member of a profession, occupation, or large class to no greater extent than the pecuniary interest could reasonably be foreseen to accrue to all the other members of the profession, occupation, or large class.
- No member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member.
- A.C.A. § 21-8-1002 – Use of position for privileges or exemptions
  - No member of a state board or commission or board member of an entity receiving state funds shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.
- A.C.A. § 21-8-1003 – Confidential Information
  - No member of a state board or commission or board member of an entity receiving state funds shall disclose confidential information acquired by him or her in the course of the member's official duties or use such information to further his or her personal interests.
- A.C.A. § 21-8-801 – Prohibited acts generally
  - No public servant shall purposely use or disclose to any other person or entity confidential government information acquired by him or her in the course of and by reason of the public servant's official duties, to secure anything of material value or benefit for himself or herself or his or her family.
- *Rules*
  - § 402 Fair Treatment –Arkansas Ethics Commission, Rules on Conflicts
    - No member of a state board or commission or board member of an entity receiving state funds shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.

- § 403 Decision Making –Arkansas Ethics Commission, Rules on Conflicts
  - No member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member.
- FAQs State Board of Election Commissioners
  - The moment a commissioner files for public office, he or she is no longer eligible to serve on the commission.
- *Case Law*
  - *Byrd v. State*, 402 S.W.2d 121, 123 (Ark. 1966)
    - “Clearly, there is a conflict of interest when an individual, who has some part in conducting an election, becomes a candidate at that same election.” The question presented in this case was whether an individual was eligible to serve as a member of the school board and as a member of the county board of education. The lower court determined the offices were incompatible, and, thus, the individual was to be ousted from both. On appeal, the Arkansas Supreme Court determined incompatibility existed when there a conflict of interest is present. According to the court, it was obvious that a county board had a great deal of supervisory responsibility over a district school board. By analogy, the court noted the duties of a member on the board of election commissioners were clearly inconsistent with becoming a candidate for school board because the commissioners were responsible for helping select the candidates.

### **III. Conflict of Interest Applicability to Election Officials**

- Yes. “The State Board of Election Commissioners is an agency of the state government.” § 1100 Board Organization – State Board of Election Commissioners, Rules of Practice and Procedure. State government means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of the State of Arkansas. § 400 Definitions – Arkansas Ethics Commission, Rules on Conflicts.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Yes:
  - Any member who has an actual conflict of interest in any proceeding before the Board of Election Commissioners shall recuse voluntarily from any involvement in the matter. If four

members determine that a member has a conflict, they may, by affirmative vote, disqualify said member from participation in the matter. §1103 Meeting Procedures – State Board of Election Commissioners, Rules of Practice and Procedure.

### **V. Specific Election Official Conflict of Interest Rules/Cases?**

- *Libertarian Party of Arkansas v. Thurston*, Case No. 4:19-cv-00214-KGB
  - A recent law raised the petition requirement to qualify for an election from 10,000 signatures to 3% of the votes cast in the last governor's race, further restricting access to the ballot. A federal judge enjoined the Arkansas Secretary of State from implementing the law.
- *Rockefeller v. Purcell*, 434 S.W.2d 65, 65-66 (Ark. 1968).
  - Evidence showed the State Board of Election Commissioners appointed "men who have lately been active and loyal democrats" to the various County Boards of Election Commissioners. The court held that the individuals appointed to the county board did not need to be Republican, but should be someone "that would represent th[e] party in the selection of judges and clerks, a person who would act on behalf of, and work with, the majority (Republican) party in selecting election officials."
- Arkansas AG Opinion No. 2002-298
  - Opinion stating that an individual cannot serve on the county board of election commissioners during a general election in which that individual's spouse is a candidate for office in that county, so long as an objection is made within 10 days of the posting of the list of election officials. If no objection is presented, the individual may serve on the board.

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- Yes, the cited conflict of interest rules apply to "public officials," which include any person holding an elective office of any governmental body. More broadly, the rules apply to "public servants," which include all public officials, public employees, and public appointees. § 400 Definitions – Arkansas Ethics Commission, Rules on Conflicts.

## VII. Public Perception/Recent Coverage

- Brantley, Max, “Blake announces voter reform legislation.” Arkansas Times, November 15, 2018. ([Link](#))
- Brantley, Max, “Jefferson County suit filed to end dual election commission service by Stu Soffer.” Arkansas Times, March 17, 2018. ([Link](#))
- Brantley, Max, “Secretary of State Mark Martin in middle of voter data controversy.” Arkansas Times, November 10, 2017. ([Link](#))
- Brawner, Steve, “Democrats hire Rose Law Firm, may sue Arkansas Secretary of State over FOIA violation, voter list.” Talk Business & Politics, August 14, 2016. ([Link](#))
- “Election fraud unlikely, state official assures, in spit of the occasional chicken-dinner-vote swap.” Arkansas Money & Politics. ([Link](#))
- Ellison, Andrew, “Some Arkansas voters worried about fraud on election day.” News Channel 3 Memphis, November 2, 2018. ([Link](#))
- Faull, Colton, “As early voting began, one Arkansas County failed to list Secretary of State candidate.” KUAR, October 22, 2018. ([Link](#))
- Field, Hunter, “Arkansas secretary of state candidates at odds over vote security.” Arkansas Democrat Gazette, October 11, 2018. ([Link](#))
- Ramsey, David, “Arkansas gets D- grade in 2015 state integrity investigation,” The Center for Public Integrity, November 9, 2015. ([Link](#))
- Roth, Zachary, “Arkansas voter ID law causes chaos and confusion.” MSNBC, June 3, 2014. ([Link](#))
- Satter, Linda, “Judge blocks new rule to get parties on ballot in state.” Northwest Arkansas Democrat Gazette, July 6, 2019. ([Link](#))
- Turnure, Jessi, “Dismissal of 10 Secretary of State employees creates confusion at Arkansas Capitol.” KARK.com, December 10, 2018. ([Link](#))

## Secretary of State Reports: California

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Secretary of State, elected (at same time and for same term as the Governor). Mandated by California Constitution, Article V, Section 11.
- The Secretary of State is responsible for administering and certifying elections in California, and that includes monitoring and upgrading the voting equipment and database systems. The office also educates voters, ensures accessibility to both information and voting, and establishes procedures that allow voters to file complaints about voting issues. *See* (Link) (Link). The officeholder is also responsible for disclosure of campaign and lobbyist financial information, under the California Political Reform Act of 1974.
- California Government Code Section 12172.5 (Link)
  - (a) The Secretary of State is the chief elections officer of the state, and shall administer the provisions of the Elections Code. The Secretary of State shall see that elections are efficiently conducted and that state election laws are enforced. The Secretary of State may require elections officers to make reports concerning elections in their jurisdictions.

#### **II. Source of Conflict of Interest Laws**

- *Statutory* – Government Code Section 1090 (“Prohibitions Applicable to Specified Officers” (Link)) governs conduct by government officials. The statute sets out a code of ethical standards. *See also* Political Reform Act of 1974.
  - *Political Reform Act*: “The people find and declare State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth. Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.”
    - *Section 87100-87103* – These provisions regulate public official conflicts of interests and prohibit actions by public

officials to influence governmental decisions in which the official has a financial interest.

- The Political Reform Act mandates that every state and local agency must adopt a conflict of interest code that identifies all officials and employees within the agency who make governmental decisions based on the positions they hold. The individuals in the designed positions must disclose their financial interests as specified in the agency's conflict of interest code. ([Link](#))
- The conflict of interest provisions apply to all public officials, including the Secretary of State. The Attorney General noted that the purpose of Section 1090 is to avoid even the appearance of impropriety in government.
- *Regulatory* – The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs., Section 18730, which contains the terms of a standard conflict of interest code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments to the Political Reform Act after public notice and hearings.
  - *Political Reform Act, Section 87200-87207* – These provisions require disclosure by public officials of investments and interests.
  - *Political Reform Act, Section 87300-87312* – These provisions mandate that all state and local governmental agencies adopt conflict of interest codes.
    - Some advisory opinions promulgated by the Commission may bear indirectly on the question but do not provide clear guidance. In Opinion No. I-02-173 (July 22, 2002) ([link](#)) establishes that the Political Reform Act does not prevent an individual from holding a position a Fire District Board when the individual's spouse is running for another seat. The Commission stated: "A public official's community property interest in the spouse's income is considered income to the public official. This means that the public official has an economic interest in the source of

that income and may lead to the public official being potentially disqualified from making decisions regarding the source of the income.”

- *Case law* – California courts have previously addressed the conflict of interest standards applicable to the state’s legislature and relationship with the secretary of state. See, e.g., *Costa v. Superior Court*, 37 Cal. 4th 986, 1040 (2006) (holding that initiative measure can not be circulated if changed significantly prior to circulation, setting forth the Voter Empowerment Act, and stating, “[o]ur legislature should be responsive to the demands of the voters, but existing law places the power to draw the very districts, in which legislators are elected, in the hands of incumbent state legislators, who then choose their voters, which is a conflict of interest”).
  - *Howard Jarvis Taxpayers Assn. v. Brown*, 192 Cal. App. 4<sup>th</sup> 110, 120-127 (2011) (holding that the legislature had a conflict of interest in preparing the ballot summary, that the legislature violated conflict of interest laws set forth in the Political Reform Act, which require that the Attorney General prepare the ballot summaries to be circulated by the Secretary of State, and that the legislature’s amendments to the Political Reform Act, which would have required the Secretary of State to use the legislature’s ballot summary, were invalid because they violate the purpose of the Political Reform Act to reduce impartiality in government).
  - *Porter v. Bowen*, 496 F.3d 1009 (2007) (holding that Secretary of State did not illegally threaten prosecution against website advertising vote-switching because the constitutionality of halting vote swapping had not been clearly established and the Secretary of State was entitled to qualified immunity).

### **III. Conflict of Interest Applicability to Elections Officer**

- *Political Reform Act*: Public Officials = Every member, officer, employee or consultant of a state or local government agency.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- To help identify potential conflicts of interest, the law requires public officials and employees in designated positions in a conflict of interest code to report their financial interests on a form called Statement of Economic Interests (Form 700).
- 2 California Code of Regulations 18707: Disqualification Requirements ([Link](#))
- Yes, there is a duty to abstain in some circumstances, even when a conflict is disclosed. See Recognizing Conflicts of Interest – A Guide to the Conflict of Interest Rules of the Political Reform Act, *Fair Political Practices Commission* ([Link](#)):
  - Once an official determines that they have a conflict of interest, the official can examine if an exception permits the official's participation despite the conflict:
    - *The Public Generally Exception*: Even if an official otherwise has a conflict of interest, the official is not disqualified from the participating in the decision if the “public generally” exception applies. This public generally exception applies when the financial effect on a public official or the official's interests is indistinguishable from its effect on the public generally. (Gov. Code Section 87103)
      - *People v. Honig*, 48 Cal.App.4th 289 (1996) (holding that conflict of interest exists for state grants and not just contracts and that the material benefit of the grants to the state are excluded from evidence in a case evaluating a public official's financially-biased decision)
      - *Breakzone Billiards v. City of Torrance*, 97 Cal.Rptr.2d 467 (App. 2 Dist. 2000) (holding that conduct of recipients of political contributions in making votes while in office which advance interest of persons with history of contributing to their political campaigns is not forbidden by Political Reform Act, or provision of Government Code under which public officials may not have a financial interest in any contract made by

them in their official capacity and also because contributions were made more than 12 months before decision).

- *Legally Required to Participate Exception*: Even if an official has a disqualifying conflict of interest, is the participation legally required? In certain rare circumstances, an official may be called upon to take part in a decision despite the fact that the official has a disqualifying conflict of interest. This “legally required participation” rule applies only in certain very specific circumstances in which the government agency would be paralyzed or unable to act. The FPPC or the agency’s counsel must generally make this determination and will instruct the official on how to proceed. (Gov. Code Section 87101; 2 CCR section 18705 [\(Link\)](#) [\(Link\)](#))
  - *Downey Cares v. Downey Community Development Com.*, 196 Cal. App. 3d 983 (1987) (holding that writ invalidating ordinance was proper where vote of council member with conflict of interest because he owned several properties and a real estate business in redevelopment area was essential to passage).
  - *Kunec v. Brea Redevelopment Agency*, 55 Cal.App.4th 511, 520-526 (1997) (holding that Agency could not claim that conflicted Agency members were legally required to participate due to their failure to adequately disclose conflicts despite their votes being necessary to satisfy supermajority requirements because the Political Reform Acts demands propriety for Government actions)
  - *Affordable Housing Alliance v. Feinstein*, 179 Cal.App.3d 484, 489 (1986) (Holding that Mayor of San Francisco, Dianne Feinstein, was permitted to veto a rent control ordinance even though she owned apartment units in the city and rejecting plaintiffs’ argument that Feinstein’s vote was not

legally required because failure of the Mayor to sign or veto the ordinance would constitute automatic approval of the ordinance).

- *Brown v. Fair Political Practices Com.*, 100 Cal.Rptr.2d 606 (App. 1 Dist. 2000) (Holding that Mayor's participation in redevelopment projects was legally required for the city government to function in the manner demanded by the city charter, and thus, the conflict of interest provisions of the Political Reform Act did not prevent the Mayor from participating in decisions concerning a redevelopment project near property he owned because the mayor's role in redevelopment projects was unique and essential to the balance of power between himself, the city council, and the city manager)
- Once an official determines that they have a conflict of interest and that an exception does not apply, the official must disqualify from all of the following (disqualified from everything in 2 California Code of Regulations Section 18704 ([Link](#))):
  - *Making the governmental decision.* A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.
  - *Participating in making the governmental decision.* A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.
  - *Influencing the governmental decision.* A public official uses his or her official position to influence a governmental decision if he or she: contacts or appears before (1) any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the

purpose of affecting a decision; or (2) any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.

- All public officials that have established a conflict must publicly identify in detail the interest that creates the conflict, step down from the dais, and must then leave the room. The official must identify the interest following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences. (Political Reform Act Section 87105; 2 California Code of Regulations 18707, applicable to persons holding positions in Political Reform Act Section 87200)
  - 87200 (*applicability of conflict of interest laws to public officials*) – “this article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government . . . members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers . . . mayors . . . chief administrative officers . . . and other public officials who manage public investments, and to any candidates for any of these offices at any election.”
  - This indicates that the Secretary of State as Chief Election Official would be included squarely under 87200 as a chief administrative officer/elected state officer.

### **V. Specific Election Officer Conflict of Interest Rules?**

- The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs., Section 18730, which contains the terms of a standard conflict of interest code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments to the Political Reform Act after public notice and hearings. (Link)
- The Fair Political Practices Commission adopts and enforces campaign finance and conflict-of-interest regulations.

## **VI. Historical Allegations of Partisan Interference by Election Officer in Election Administration?**

- Former Secretary of State, Kevin Shelley, was investigated for misappropriating federal funds and for rewarding a campaign supporter's relative with a job but he was not prosecuted (*See Below* "Taking the Politics out of Elections" and "SHELLEY QUILTS").

## **VII. Conflict of Interest Rules for Other Constitutional Officers?**

- California Election Code, Section 9003 – Addresses the situation where the Attorney General has a conflict of interest with respect to preparation of a ballot title and summary of a proposed initiative measure.

## **VIII. Public Perception/Recent Coverage**

- Editorial, "*California Conflict of Interest Laws Target of Bill by Senator Tony Mendoza – SB 330*," California Newswire, Feb. 23, 2015 (Link) (discussing State Senator's bill to clarify conflict of interest laws and when a public official should abstain from voting when a family member has a financial interest in the matter).
- *California Elections / Secretary of State; Democrats Put on Spirited Race; Outcome Uncertain*, Los Angeles Times, May 18, 1994 (Link) (discussing that Jerry Brown "detonate[d] enough fireworks during a single term" when he was Secretary of State to eventually get himself elected as Governor and that a Secretary of State candidate was fined for a conflict of interest violation when serving on the LA County Transportation Commission).
- *Commentary; Taking the Politics out of Elections*, Los Angeles Times, February 8, 2005 (Link) (discussing former Secretary of State, Kevin Shelley's, resignation in the midst of multiple criminal and legislative investigations, looking into charges that he rewarded the son of a campaign supporter with a job, that he spent federal money, which was supposed to be used to run elections in CA, for partisan political purposes and that he created a hostile work environment).
  - Shelley was investigated, but was not prosecuted.
- *SHELLEY QUILTS / Secretary of State Says Controversies Over Fund Raising, Use of Federal Money and His Volatile Temper Damaged His Office's Ability to Function Effectively*, SF Gate, February 5, 2005 (Link) (discussing Kevin Shelley's resignation amidst investigations into his diversion of \$125,000 from a state grant for a nonprofit group into his campaign account, his anger that caused a hostile work environment for subordinates, his mispending of as much as \$1.5 million that was meant for the Help America Vote Act program in order to hire contract workers who attended partisan events on his behalf, and his promotion of a campaign donor's son using altered civil-service examination scores).

## **Secretary of State Reports: Colorado**

### **Election Reformers Network**

#### **I. Election Officer – Background and Responsibilities**

- a. Secretary of State, elected. Mandated by Colorado Constitution
- b. Supervise primary, general, congressional vacancy, and statewide ballot issue elections; enforce and make uniform interpretations of Title 1 of Colo. Rev. Stat.; ensure Colorado conforms with Voter Registration Act of 1993; hire and review practices of election personnel; maintain voter registration file; verify initiative petition signatures; receive conflict of interest disclosure statements

#### **II. Source of Conflict of Interest Laws**

- a. Statutory
  - i. Co. Const. art. XXIX.
    - 1. This article, entitled “Ethics in Government,” acknowledges public officers must act ethically, and thus creates an Independent Ethics Commission to hear complaints, issue findings, assess penalties, and issue advisory opinions under state law. This article also creates a partial gift ban and restricts public officials’ ability to lobby before the general assembly immediately after leaving office.
  - ii. Colo. Rev. Stat. § 25-28-101-113 (2018).
    - 1. These statutes elaborate on the partial gift ban in the Constitution, discourage former public officers from taking employment “in which he will take direct advantage . . . of matters with which he was directly involved during his term of employment,” prohibit public officers from engaging economically with any business in which he or she has an interest, and prohibit assessing any fees for his/her services, etc.
  - iii. Colo. Rev. Stat. § 18-8-308 (2018).
    - 1. Colorado’s criminal code provides that if a “public servant” fails to disclose a conflict of interest, that person is guilty of a class 2 misdemeanor. The statute also provides that a

conflict of interest exists where “the public servant is a director, president, general manager, or similar executive officer or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction.”

b. Regulatory

i. Independent Ethics Commission:

1. Established by the Colorado Constitution, this Commission reviews conduct related to conflicts of interest (mostly monetary conflicts of interest), the appearance of impropriety, and post-government employment.
  - a. *See* the Commission’s Handbook. The Commission also encourages elected officials to reach out to the Commission for advice regarding what is or is not a conflict of interest.
2. In 2009, the Commission issued an opinion regarding the Secretary of State. In the opinion, the Commission considered: 1) whether the Secretary of State knowingly let a department employee and former campaign staffer operate a side business selling voter data; 2) whether the Secretary of State failed to disclose a conflict of interest when he approved a voting machine contract with a company that was represented by his personal political consultant. The Commission cleared the Secretary of State of both charges.

c. Case Law

- i. *Gessler v. Colorado Common Cause*, 327 P.3d 232 (Colo. 2014). The Colorado Supreme Court held a rule promulgated by Secretary of State Scott Gessler that “increased the contribution and expenditure threshold that triggered issue committee status from \$200 to \$5000” violated the Colorado Constitution and the Fair Campaign Practices Act.
- ii. *Gessler v. Smith*, 419 P.3d 964 (Color. 2018). The Colorado Supreme Court upheld the Independent Ethics Commission’s decision that Secretary of State Scott Gessler violated discretionary fund and public trust statutes by obtaining reimbursement for personal travel expenses.

### III. Conflict of Interest Applicability to Election Officer

a. Yes.

- i. Co. Const. art. XXIX and Colo. Rev. Stat. § 24-28-102 (2018): “‘Public officers’ means any elected officer, the head of a principal government department of the executive branch, and any other state officer. ‘Public officer’ does not include a member of the general assembly, a member of the judiciary, any local government official, or any board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.”
- ii. Colo. Rev. Stat. § 18-1-901 (2018): “‘Public servant,’ means any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses.”

#### **IV. Duty to Abstain, Regardless of Disclosure?**

a. No.

#### **V. Specific Election Officer Conflict of Interest Rules/Cases**

a. Colo. Rev. Stat. § 1-1-107 (2018).

Powers and duties of secretary of state - penalty

(7) “No person while serving in the office of secretary of state shall serve as the highest ranking official, whether actual or honorary, in the campaign of any candidate for federal or statewide office. This subsection (7) shall not apply to a campaign in which the secretary of state is the candidate.”

#### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

a. State Treasurer:

i. Colo. Rev. Stat. §24-22-110:

1. “Any person holding the office of state treasurer or any person employed in the department of the treasury who, directly or indirectly, accepts or receives from any person, for himself or herself or otherwise than on behalf of the state, any fee, reward, or compensation, either in money or other property or thing of value, in consideration of the deposit or investment of state moneys with any such person or in consideration of any agreement or arrangement

touching upon the use of state moneys commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.”

### **VII. Public Perception/Recent Coverage**

- a. Marshall, Zelinger, “Why is running Colorado’s elections division a partisan job?” 9News, May 24, 2019 ([Link](#)) (Commenting on Secretary of State Jena Griswold’s recent comments about Alabama’s abortion ban, and pointing out that the position of Colorado Secretary of State has always been political because it’s an elected position).
- b. The Gazette Editorial Board, “Colorado Secretary of State Jena Griswold goes off the rails,” The Gazette, May 20, 2019 ([Link](#)) (Arguing that Secretary of State Jena Griswold spent resources on something—opposing Alabama’s abortion ban—that is outside the scope of her role).
- c. Sherrie Peif, “Ethics group suing Secretary of State Jena Griswold over lack of transparency in open records request,” The Complete Colorado, June 13, 2019 ([Link](#)) (Reporting that a conservative organization was suing Secretary of State Jena Griswold for refusing to turn over records related to a bill committing Colorado to the National Popular Vote Interstate Compact).
- d. Valerie Richardson, “Colorado’s Jena Griswold worked with Planned Parenthood on Alabama travel ban release,” The Washington Times, May 23, 2019 ([Link](#)) (Reporting that Secretary of State Jena Griswold consulted with Planned Parenthood on a press release regarding her position on Alabama’s abortion ban).
- e. Joh Frank, “Change to Colorado conflict-of-interest rule limits information elected officials must share with voters,” Denver Post, January 8, 2018 ([Link](#)) (Reporting that Secretary of State Wayne Williams approved a caveat to Colorado’s Sunshine Law that “allows candidates and elected officials to avoid disclosing memberships on boards or committees if they do not receive compensation of individually control how money is spent.”)
- f. Brian Maass, “Denver Grand Jury Investigating Secretary of State Wayne Williams,” CBS4 Denver, March 22, 2018 ([Link](#)) (Reporting that a grand jury was investigating complaints against Secretary of State Wayne Williams related to campaign finance violations).
- g. “Wayne Williams’ Discretionary Fund Follies Continue,” Colorado Pols, October 30, 2018 ([Link](#)) (Commenting on an ethics complaint filed

against Secretary of State Wayne Williams alleging he used state discretionary funds to buy expensive “Western” clothing).

- h. Greg Palast, “Are You One of 769,436 Voters on the Colorado Purge List?” Greg Palast, October 19, 2018 (Link) (Updating readers on blog writer’s lawsuit against Secretary of State Wayne Williams for “purging” voters from Colorado voter rolls).
- i. Marianne Goodland, “Former Secretary of State Scott Gessler loses ethics fight in Colorado Supreme Court,” The Gazette, June 5, 2018 (Link) (Reporting that the Colorado Supreme Court found former Secretary of State Scott Gessler committed an ethics violation when he used his discretionary fund to pay for personal travel).
- j. Marianne Goodland, “Ethics commission could send former Secretary of State Scott Gessler to collections agency,” Colorado Politics, March 18, 2019 (Link) (Reporting that Secretary of State Scott Gessler never paid the \$1,515 fine assessed against him in 2013 when the Independent Ethics Commission found he violated state ethics laws).
- k. Melanie Asmar, “Secretary of State Scott Gessler Accused of Harassment, Retaliation by Ex-Office CFO,” Westworld, August 19, 2014 (Link) (Reporting that Secretary of State Scott Gessler’s former employee alleged Gessler harassed her and retaliated against her when she pushed back against his financial mismanagement).
- l. Mary Winter, “The authoritative take on Colorado’s controversial secretary of state,” Columbia Journalism Review, August 14, 2012 (Link) (Commenting on Secretary of State Scott Gessler’s voter suppression activities).
- m. Scot Kersgaard, “Gessler’s proposed changes to election rules draw heated objections,” The Colorado Independent, July 26, 2012 (Link) (Reporting on the backlash following Secretary of State Scott Gessler’s proposed rule to stop county clerks from mailing ballots to inactive voters in some elections).
- n. Erin Udell, “Judge rejects Colorado Secretary of State Scott Gessler’s changes,” The Denver Post, August 10, 2012 (Link) (Reporting that a district court judge invalidated many of Secretary of State Scott Gessler’s changes to campaign finance regulations).
- o. Dan Frosch and Ian Urbina, “Colorado Agrees to Restore Voters to Rolls,” New York Times, October 30, 2008 (Link) (Reporting that “[t]ens of thousands of Coloradoans who had been removed from the state’s voter

rolls” by Secretary of State Mike Coffman would be allowed to vote in an upcoming election).

## Secretary of State Reports: Connecticut

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Elected Secretary of State
- Secretary of State is responsible for the administration of all state constitutional and statutory provisions relating to elections, primaries, nominating procedures, and the acquirement and use of voting rights, in addition to all federal election requirements relating to the same. The Secretary of State also counts and approves all nominating petitions and oversees the nominating and endorsement processes, in addition to overseeing all absentee voting. The Secretary of State also issues opinions and provides guidance on election law issues.

#### **II. Source of Conflict of Interest Laws**

- *Statutory*
  - Conn. Gen. Stat. Ann. § 1-84 —
    - Section (b) states that “no public official or state employee shall accept other employment which will either impair [their] independence of judgement as to [their] official duties or employment or require [them], or induce [them], to disclose confidential information acquired by [them] in the course of and by reason of [their] official duties.”
  - Conn. Gen. Stat. Ann. § 1-85 — Conflicts of Interest Law
    - Applies to situations where an elected official, including an elected state officials, has reason to believe or expect that they or their spouse, dependent child or a business with which the elected official is associated with will derive a direct monetary gain or suffer a direct monetary loss, beyond a loss or gain available to the broader public, as a result of their official activity. In the case that a public official has a substantial conflict they may not take official action on the matter. An intentional violation of the Code of Ethics for Public Officials is a crime.

- Conn. Gen. Stat. Ann. § 1-86 — provides that in the case of a potential conflict under § 1-85, if the employee or official is a member of a regulatory agency, they must either step down from the matter or prepare a written statement disclosing the matter and the employee/official's ability to remain impartial to the Office of State Ethics. If the individual is not a member of a state regulatory agency, they must prepare a written statement regarding the potential conflict of interest and give it to their immediate supervisor. If they do not have an immediate supervisor, they shall follow the steps proscribed by the Office of State Ethics.
- *Regulatory* — The Connecticut State Elections Enforcement Commission has the authority to enforce provisions of state election laws pertaining to elections, primaries and referenda, in addition to campaign finance. The state's Office of State Ethics administers conflict of interest rules, issues advisory opinions, and takes enforcement actions. None of these advisory opinions or enforcement actions appear to implicate relevant issues.
  - Conn. Agencies Regs. 1-81-28. — Clarifies the meaning of "substantial conflict of interest" as used in Conn. Gen. Stat. Ann. § 1-85 and provides examples of when there is or is not a substantial conflict of interest.
  - Conn. Agencies Regs. 1-81-29. — States that when a public official or state employee other than an elected official has a potential conflict of interest they should inform their superior officer but if there is no superior officer then the public official or state employee shall notify the Office of State Ethics of the conflict in writing
- *Case Law* — No case law appears to bear directly on the state conflict of interest laws in their application to the Secretary of State.
  - *Low v. Town of Madison*, 135 Conn. 1, 8, 60 A.2d 774, 777 (Conn. 1948) — states that the issue of conflicts of interest in regard to government officials is primarily one of public policy.

- “His status forbids the public officer from placing himself in a position where his private interest conflicts with his public duty. The good faith of the official is of no moment because it is the policy of the law to keep him so far from temptation as to insure the exercise of unselfish public interest. He must not be permitted to place himself in a position in which personal interest may conflict with his public duty.”
- Op. Atty. Gen., 1983 WL 180959, at \*1 (Conn. A.G. Sept. 27, 1983) — Deals with a case where the Commissioner of the Department of Corrections was also a member of the State Alcohol and Drug Abuse Commission (SADAC). The SADAC from time to time made decisions on matters that related to programs operating in correctional facilities. The Attorney General of the state found that there was no conflict of interest because there was no possibility of personal gain for the Commissioner; the beneficiary was a state agency and not another state official in their individual or personal capacity.
- Op. Atty. Gen., 1975 WL 28339, at \*5 (Conn. A.G. Aug. 11, 1975) — “[Y]ou are advised that if any commissioner has reason to believe or expect that commissioner or that commissioner's employer or professional affiliate will derive a direct monetary gain or suffer a direct monetary loss by reason of the commissioner's official activity, then such commissioner has an interest which is in substantial conflict with the proper discharge of the commissioner's duties in the public interest. Sec. 1-68, G.S. The commissioner is required to take appropriate steps to eliminate the conflicting interest if the commissioner proposes to continue to hold such public office.”
- Op. Atty. Gen., 1972 WL 25013, at \*1 (Conn. A.G. Aug. 11, 1972) — Connecticut for the most part has relied upon the common law of conflicts of interest rather than upon statutory proscriptions; the question in conflict of interest cases is mostly one of public policy where the court must consider whether an officials personal interest is opposed to their public duty.

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. See Conn. Gen. Stat. Ann. § 1-85 (stating that the law applies to elected state officials)
  - The following executive branch officials (as well as legislators) are included in the definition of "public official" under the ethical practices laws: constitutional officers; commissioners, deputy commissioners, and assistant commissioners of state agencies; and members and chief administrative officers of state boards.

#### **IV. Duty to Abstain, Regardless of Disclosure?**

- There is a duty to abstain in light of a substantial conflict under Conn. Gen. Stat. Ann. § 1-85. However, Conn. Gen. Stat. Ann. § 1-86 does not require abstention in light of a potential conflict.
  - Conn. Gen. Stat. Ann. § 1-86 — provides that in the case of a potential conflict under § 1-85, if the employee or official is a member of a regulatory agency, they must either step down from the matter or prepare a written statement disclosing the matter and the employee/official's ability to remain impartial to the Office of State Ethics. If the individual is not a member of a state regulatory agency, they must prepare a written statement regarding the potential conflict of interest and give it to their immediate supervisor. If they do not have an immediate supervisor, they shall follow the steps proscribed by the Office of State Ethics.

#### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- There do not appear to be any specific election officer conflict of interest rules or cases.

#### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- Conn. Gen. Stat. Ann. § 1-84(n)(2) (West) — states that the State Treasurer shall not pay any compensation, expenses or fees or issue any contract to any firm which provides investment services when a political committee or a principal of the investment services firm has made a contribution to, or solicited contributions on behalf of, any exploratory committee or candidate committee established by the state Treasurer as a candidate for nomination or election to the office of State Treasurer.

## VII. Public Perception/Recent Coverage

- Altimari, Daniela, “Denise Merrill makes last minute push for election bill,” Hartford Courant, June 5, 2019. (Link)
  - Text of proposed bill (Link)
- Munson, Emilie, “Merrill: Voting rights are under attack,” Greenwich Time, January 22, 2018. (Link)
- Cohen, Jeff, “Merrill: You can get bumped from Connecticut voter roles, but not as easily as in Ohio,” Connecticut Public Radio, June 12, 2018. (Link)
- Breen, Thomas, “As goes Georgia, doesn’t go Connecticut,” New Haven Independent, October 22, 2018. (Link) (“In Georgia, Democrats are accusing the secretary of the state of blocking tens of thousands of black people from voting. In New Haven Sunday, women working turn out the black vote heard a promise from Connecticut’s secretary of the state that she’ll help bar the door to voter suppression here.”).
- Bass, Paul, “25,015 Voters Removed from ‘Active’ Rolls,” New Haven Independent, Aug. 4, 2017. (Link)
- Lender, Jon, “Merrill takes a hammering after emails say her staff was told to ‘back off,’” Hartford Courant, January 24, 2015. (Link)
- Pazniokas, Mark, “Secretary of the State Merrill: CT must overhaul elections system,” The CT Mirror, February 25, 2015. (Link)
- Frank, Jenifer, “Connecticut Gets C- Grade in 2015 State Integrity Investigation,” The Center for Public Integrity, November 12, 2015. (Link)

## Secretary of State Reports: Georgia

### Election Reformers Network

#### I. Election Officer – Background and Responsibilities

- Elected Secretary of State, per the Georgia Constitution. *See* Ga. Const., Art. V § 3 ¶ 1 (“The Secretary of State... shall be elected in the manner prescribed for the election of members of the General Assembly and the electors shall be the same.”).
- The Secretary of State has broad responsibility for administering elections, including certifying results and determining when a recount is warranted. *See, e.g.,* O.C.G.A. 21-2-50 (Secretary of State responsible for certifying election results; certifying the qualification of candidates; preparing ballots and election forms; enforcing state election laws); O.C.G.A. § 21-2-499 (tabulating results); O.C.G.A. § 21-2-495 (recounts).
- The Secretary of State serves as Chairperson of the State Board of Elections. The State Board of Election’s duties include: “[t]o investigate, or authorize the Secretary of State to investigate, when necessary or advisable the administration of primary and election laws and frauds and irregularities in primaries and elections and to report violations of the primary and election laws either to the Attorney General or the appropriate district attorney who shall be responsible for further investigation and prosecution.” O.C.G.A. § 21-2-31.

#### II. Source of Conflict of Interest Laws

- *Statutory.* “Any person in government service should: (I.) Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.... (V.) Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.” O.C.G.A. 45-10-1
  - Georgia code provides that “[i]t is essential to the proper operation of democratic government that public officials be independent and impartial, that governmental decisions and policy be made in the proper channels of the governmental structure, that public office not be used for private gain other than

the remuneration provided by law, and that there be public confidence in the integrity of government.” O.C.G.A. 45-10-21(a).

- Financial conflict treatment hinges on an official’s role.
  - O.C.G.A. 45-10-1.
    - (a)(1) It shall be unlawful for any full-time public official who has state-wide powers, for himself or on behalf of any business, or for any business in which such public official or member of his family has a substantial interest to transact any business with any agency.
    - (2) It shall be unlawful for any public official who has limited powers, for himself or on behalf of any business, or for any business in which such public official or member of his family has a substantial interest to transact any business with the agency for which such public official serves.
  - “Substantial interest” defined as “the direct or indirect ownership of more than 25 percent of the assets or stock of any business.” O.C.G.A. 45-10-20(11).
- *Regulatory.* Little on-point regulatory guidance. Several opinions issued by the state Attorney General address conflicts of interest inherent in holding two government offices at once.
  - See, e.g., Ga. Attorney General, Unofficial Op. 99-3 (June 15, 1999) (“The test for determining whether there is a common law conflict is whether the duties of the two offices are incompatible. See 1976 Op. Att’y Gen. p. 355, 365 “Conflicts of Interest of Public Officers, Employees and Agents.” In the instant circumstance the most likely incompatibility would arise if the teacher in his role as county commissioner could affect his personal interest in his employment as a teacher by affecting his pay or other condition of employment. Such a conflict is sometimes referred to as a master-servant conflict of interest. See

*Columbus, Ga. v. Board of Water Commissioners*, 261 Ga. 219 (1991); 1990 Op. Att’y Gen. 90-25.”).

- During the 2018 election, Georgia Secretary of State Brian Kemp was criticized for overseeing an election in which he himself was running for Governor, and allegedly engaging in other official acts evidencing partisan bias in election administration. In an October 3, 2018 letter, a former state prosecutor and a former county judge petitioned the state Attorney General’s office for a ruling as to whether Secretary Kemp’s conduct was legal under Georgia law. According to news coverage, the Attorney General’s office responded with a statement:

“The mission of the Law Department is to provide legal representation to state government and its many departments, agencies, boards, and commissions. This office is not authorized to provide legal advice, research or opinions to private citizens. We would like to note, however, that over the past twenty years a number of Secretaries of State have continued to hold office and discharge their duties as Secretary of State when on the ballot in Georgia, whether running for Governor (Lewis Massey, 1998; Cathy Cox, 2006) or for Secretary of State (Cathy Cox, 2002; Brian Kemp, 2010 and 2014).”

See Jonathan Ringel, *Governor’s Race Poses Conflict Question for Secretaries of State*, Law.com (Oct. 11, 2018) ([link](#)).

- *Case Law*. The most relevant litigation pertains to federal lawsuit related to the 2018 Kemp/Abrams controversy. In *Brown et al. v. Kemp*, No. 1:18-cv-5121 (N.D. Ga. Nov. 6, 2018), plaintiffs sought a temporary restraining order preventing Secretary of State Brian Kemp from overseeing the election in which he was running for Governor. The plaintiffs argued that then-Secretary Kemp refusal to recuse himself from administration of the election, paired with other evidence of bias

administration, violated the Due Process, Equal Protection, and associational rights afforded the plaintiffs under the U.S. Constitution. The challengers did not bring a state-law claim. The litigation was ultimately mooted when then-Secretary Kemp resigned from his office.

### III. Conflict of Interest Applicability to Elections Officer

- Yes.

### IV. Duty to Abstain, Regardless of Disclosure?

- No, absent financial conflict.

### V. Specific Election Officer Conflict of Interest Rules/Cases?

- No such rule appears to exist.

### VI. Conflict of Interest Rules for Other Constitutional Officers?

- There do not appear conflict rules specifically addressing other constitutional officers.

### VII. Public Perception/Recent Coverage

- James Salzer, *Report: Lax rules in U.S., Georgia lead to legislator conflicts*, The Atlanta Journal-Constitution (Dec. 6, 2017) (“Georgia’s conflict of interest laws have traditionally been weak. Members can recuse themselves from voting on issues when they have a direct conflict. Some do, and many don’t. Legislative rules — approved by members of the General Assembly — dictate that unless a bill solely benefits a member’s business, recusal isn’t necessary. So a lawmaker can sponsor a bill that helps his business, and those of others in his profession, and it would not be viewed as a conflict.”).
- The 2018 Kemp/Abrams election generated significant media attention and commentary:
  - Chuck Williams, *William Douglas, Should Brian Kemp oversee his own governor’s race?*, Columbus Ledger-Enquirer (Oct. 17, 2018) (link) (“Brian Kemp is running for governor of Georgia. But he’s currently the Georgia secretary of state, charged with making sure the gubernatorial election is fair. With a governor’s race that could be the closest in recent history — and dogged by allegations about voters being cut from the rolls — Kemp’s dual roles have become a huge campaign issue. Democrat Stacey Abrams wants Kemp to give up his secretary of state post, charging Kemp has an obvious conflict of interest. Democrats maintain he is trying to suppress votes as the election nears.”).

- Alan Greenblatt, *Not Just Georgia's Brian Kemp: Other Secretaries of State Accused of Abusing Elections Power*, *Governing* (Oct. 17, 2018) ([link](#)) (referencing Kansas, Kentucky, and Arizona chief election administration officials).
- Tim Johnson, *Three secretaries of state are refereeing the election while running in the field*, *McClatchy* (Oct. 18, 2018) ([link](#)) (“In three states, the referee for the midterm elections is also on the field as a player. Elected secretaries of state in Georgia and Kansas — who in their official capacities oversee the elections in their states — are running for governor. Ohio’s secretary of state is running for lieutenant governor. All are Republicans. They have faced scattered calls to resign but have refused to do so. Election reformers say the situation underscores the conflict of interest when an official has responsibilities for an election while also running as a candidate.”).
- Sean Keenan, *The complicated business of running for governor when you’re the state’s elections chief*, *Atlanta Magazine* (Nov. 2, 2018) ([link](#)) (“Is there a conflict of interest? As the secretary of state, could he work the state elections code in his favor in the gubernatorial contest? How is he able to hold down the full-time state job while campaigning every day? These are the questions coming from Democratic officials—including his general election opponent Stacey Abrams—and progressive Georgians who want him to step down as secretary of state. Although there’s no law on the state’s books that says a secretary of state running for office must resign from the position, there are statutes that preclude the chairman of the State Elections Board, which is currently Kemp by statutory default, and its board members, if they’re politically involved, from participating in procedures that could affect how elections rules are enforced.”).
- Richard L. Hasen, *Brian Kemp Just Engaged in a Last-Minute Act of Banana-Republic Level Voter Manipulation in Georgia*, *Slate.com* (Nov. 4, 2018) ([link](#)) (“It is bad enough there is a partisan election official running Georgia’s elections. It is also bad enough that this partisan election official is in charge of his very own election, an election where he is running in a very tight race against Democrat Stacey Abrams, and that he has engaged in acts of voters suppression aimed to decrease the turnout for the candidate who would be this nation’s first black woman to win a governor’s mansion. It is *still worse* that we have an election official who, according to audio leaked to Rolling Stone, expressed concern about the state’s citizens exercising their rights to vote via absentee ballot: “[Democrats] have just an unprecedented number of [absentee ballot applications],” he said, “which is something that continues to concern us, especially if everybody uses and exercises their right to vote—which they absolutely can—and mail those ballots in, we gotta have heavy turnout to offset that.”).

- Jeremy Redmon, *Brian Kemp under scrutiny after announcing probe of Democrats*, The Atlanta Journal-Constitution (Nov. 4, 2018) ([link](#)) (“Secretary of State Brian Kemp has had two roles this year: Running Georgia’s elections and running for governor of the state. Democrats, including former President Jimmy Carter, have called on him to step aside, warning repeatedly of potential conflicts of interest. Kemp is now facing renewed scrutiny after his office announced Sunday — without providing evidence and doing so just hours before Election Day — that it is investigating the Georgia Democratic Party for an alleged hack of the state’s voter registration system.”).
- Emily Kopp, *Election Law Experts Decry Brian Kemp’s Hacking Allegation in Georgia*, Roll Call (Nov. 5, 2018) ([link](#)) (“Republican Brian Kemp lobbed an allegation of hacking at Georgia Democrats Sunday, roiling the state’s competitive contents in what election law experts say amounts to an abuse of power and a last-minute partisan ploy. Kemp has simultaneously overseen the election process as secretary of state and run a gubernatorial race against Democrat Stacey Abrams. Kemp has resisted calls to resign that post.”).
- Katie Reilly, *The Race for Georgia Governor Just Keeps Getting Messier. And It Might Not End Tuesday*, TIME (Nov. 6, 2018) ([link](#)) (“The toss-up race between Democrat Stacey Abrams and Republican Brian Kemp has elevated concerns about the effect of voting laws and election security. And if neither candidate receives more than 50% of the vote on Tuesday because of Libertarian candidate Ted Metz, the election will head to a runoff, prolonging the heated race. A runoff, if one is required, would take place Dec. 4. Georgia is just one of several states where new laws have led to concerns about voter suppression. Voters in at least nine states are facing more stringent voting laws than they did in 2016, according to a report by the Brennan Center for Justice.”).

## Secretary of State Reports: Idaho

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Idaho’s Secretary of State serves as its chief election officer. *See* Idaho Code § 34-201 (“The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws.”).
  - In charge of electoral apportionment. *See* Art. III Sec. 2(2) (“Whenever there is reason to reapportion the legislature or to provide for new congressional district boundaries in the state...a commission for reapportionment shall be formed on order of the secretary of state.”).
- Secretary of State is a position mandated by State Constitution. *See* Constitution of the State of Idaho Art. IV Sec. 1 (“The executive department shall consist of a...secretary of state....”).
  - Secretary of State is elected. *See* Constitution of the State of Idaho Art. IV Sec. 2 (“The officers named in section 1 of this article shall be elected by the qualified electors of the state....”)
- Current Officeholder: Lawrence Denney (R), first elected in 2014, re-elected in 2018.

#### **II. Source of Conflict of Interest Laws**

- *Statutory* - For a helpful summary of the two relevant statutes, see Idaho Office of the Attorney General’s Ethics in Government Manual
  - Idaho Code §§ 74-401 et seq. – Ethics in Government Act of 2015
    - When a conflict of interest exists, the public official must disclose the conflict. Under the Ethics in Government Act, disclosure does not affect an elected public official’s authority to be counted for the purpose of determining a quorum and to debate and to vote on the matter.
    - Disclosure of the conflict or consultation with counsel satisfies the requirements of the Ethics in Government Act. It does not, however, permit the public official to engage in acts prohibited by other provisions of the Idaho Code.

- “Conflict of interest” is defined under the Act as involving a “pecuniary benefit.” § 74-403(4). A partisan official would not have a political conflict of interest under the Act when, for example, running state elections, so long as they derive no pecuniary benefit from it.
- Idaho Code §§ 18-1351 et seq.– Bribery and Corrupt Influence Act
  - Regulates the conduct of public servants in the areas of bribery and corrupt practices, including conflicts of interest and nepotism.
- *Regulatory* – No regulations appear to bear directly on the state conflict of interest laws in their application to the Secretary of State.
  - There is no ethics commission for the state of Idaho. See State Ethics and Oversight Agencies, National Conference of State Legislatures, dated 5/7/2019; see also Betsy Z. Russell, *Vermont passes ethics, disclosure laws; now Idaho’s one of just two states without*, The Spokesman-Review, July 17, 2017 (link).
- *Case Law* – No case law appears to bear directly on the state conflict of interest laws in their application to the Secretary of State.

### III. Conflict of Interest Applicability to Elections Officer?

- **Yes.** Elected officials are covered by the Ethics in Government Act.
  - See Idaho Code § 74-403(10) (Definition of a public official) – “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 elective office of a governmental entity”

### IV. Duty to Abstain, Regardless of Disclosure?

- **No.** Public officials need not abstain when a conflict is disclosed.
  - See Idaho Code § 74-404: “A public official shall not take any action or make a formal decisions or formal recommendation concerning any matter where he has a conflict of interest and has

failed to disclose such conflict as provided in this section. Disclosure of a conflict does not affect an elected public official's authority to be counted for purposes of determining a quorum and to debate and to vote on the matter, unless the public official requests to be excused from debate and voting at his or her discretion."

- Idaho is one of two states with no laws requiring state-level officeholders to file a financial disclosure form. See Lauren Gibbons & Taylor DesOrmeau, *50 states of financial disclosure: How Michigan stacks up*, mlive.com, May 24, 2019 (link).
  - In 2018, the Idaho House of Representatives passed House Bill No. 609, which would have required "candidates and officeholders at the state, legislative, county and city levels to file forms with the Idaho secretary of state's office, which would go on the office's planned new statewide campaign disclosure database, disclosing any potential conflict of interest." Betsy Z. Russell, *Idaho lawmakers agree to hear new statewide conflict-of-interest disclosure bill*, The Spokeman-Review, Feb. 16, 2018. (Link). This would have applied to "state constitutional officers," 74-302(a), such as the secretary of state. 74-301(9). However, this bill failed on 3/28/2018. See Bill Track 50.

### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- No election officer conflict of inference cases could be found.

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- The other Constitutional Officers are the Attorney General, State Controller, Governor, and Lieutenant Governor. (Link). To the extent individuals holding these positions are also elected, they would be considered "public officials" covered by the Ethics in Government Act.

### **VII. Public Perception/Recent Coverage**

#### Current Events/Lawrence Denney

- Betsy Z. Russell, *Idaho Legislature to re-examine ethics, campaign finance laws*, The Spokesman-Review, June 12, 2017 (Link)

- “Idaho is one of just three states with no financial disclosure requirements for state legislators – or any elected or appointed state official.”
- “He noted that in 2009, the Idaho Senate unanimously passed legislation to impose the state’s first financial disclosure requirements. The bill died without a hearing in the House, after then-House Speaker Lawrence Denney refused to assign it to a committee. Denney’s now the Idaho Secretary of State, and even he has been talking for the past two years about the need to tighten up Idaho’s campaign finance laws.”
- “In 2015, Idaho earned a D-minus grade for its government ethics, transparency and accountability from the Center for Public Integrity’s State Integrity Investigation, with the state’s low marks reflecting its lack of financial disclosure requirements, revolving door laws, and ethics enforcement, with no state ethics commission.”
- Betsy Russell, *Denney got campaign \$\$ from head of software firm that won election upgrade contract*, Idaho Press, October 30, 2018 ([Link](#))
- Dawson, James, *Lewiston Man Sues Idaho Secretary of State Over Ballot Initiative Laws*, Boise State Public Radio, May 16, 2019 ([Link](#))
- Times-News Editorial Board, *Our View: Corruption Stinks, and Idaho Needs a Bath*, Twin Falls Times-News, Nov. 28, 2014 ([Link](#))
- “Requiring all elected officials to report their personal finances would be a small but important step toward righting the widespread corruption that’s run rampant in Idaho for years. A bill doing just that has passed the state Senate in 2009 only to die in the House, when Secretary of State-elect Lawrence Denney dominated the floor as speaker.”

### Ben Ysursa (previous secretary of state)

- Luke Mayville, *Guest opinion: Corruption, corruption, corruption*, Idaho Press-Tribune, Apr. 3 2019. ([link](#)) – “Former Idaho Secretary of State Ben Ysursa called 1159 ‘a full frontal assault on the constitutional right of initiative.’”
- Betsy Z. Russell, *Idaho Secretary of State Ysursa to retire after 40-year career*, The Spokeman-Review, Dec. 21, 2014. ([link](#)) – During his 12 years as Idaho’s secretary of state, Ysursa helped oversee the public disclosure system established by the Sunshine Law initiative for campaign finance disclosure and lobbyist registration and disclosure.

## Secretary of State Reports: Indiana

### Election Reformers Network

#### I. Election Officer – Background and Responsibilities

- (1) Secretary of State. The secretary of state is the chief election officer of Indiana. Ind. Code § 3-6-3.7-1. The secretary is a constitutional officer—the third highest-ranking state officer/member of the executive branch—and is elected to a 4-year term. Ind. Const. Art. VI, Sec. 1; Art V, Sec. 10(f). The only term limit imposed on the Indiana secretary of state: he or she may serve no more than eight years in any period of twelve years. *Id.*
- (2) Elections Commission. Indiana also has an independent Elections Commission. IN Code § 3-6-4.1-1. It is comprised of four members who are appointed by the governor; however, the Commission can have no more than two members from the same political party. IN Code § 3-6-4.1-2. Members serve until July 1 of the second year after they are appointed, but can be re-appointed by the governor. IN Code § 3-6-4.1-3.
  - The Election Commission’s duties/powers:
    - To administer elections; adopt rules governing elections; and implement and administer the National Voter Registration Act of 1993 (NVRA). IN Code § 3-6-4.1-14.
    - If the Commission determines that there is “substantial reason” to believe an election law violation has occurred, it can initiate an investigation on its own. IN Code § 3-6-4.1-21. After a hearing on the matter, if the Commission determines that a civil violation has occurred, it may refer the matter to the attorney general. If it determines a criminal violation has occurred, it may refer the matter to county prosecutors. *Id.*
    - It has the power to issue advisory opinions and hold hearings. IN Code § 3-6-4.1-25.

#### II. Source of Conflict of Interest Laws

- (a) *Statutory*
  - Indiana has a chapter of its code governing state officers’ and employees’ ethical duties and conflicts of interest. *See* IN Code § 4-2-6-1 through § 4-2-6-17.

- The ethics code contains fairly detailed provisions on what constitutes ethical violations, including in the areas of general conflicts of interest, financial disclosure, business conflicts, state contracts, nepotism, and use of state property for personal activities.
- (b) *Regulatory*
  - Ethics Commission. Indiana has an Ethics Commission, comprised of 5 members appointed by the governor. IN Code § 4-2-6-2. No more than 3 members of the commission can be from the same political party, and the governor selects the chair of the commission.
    - The ethics commission has jurisdiction over: (1) current or former state officers; (2) current or former state employees; (3) persons who have or had a business relationship with a state agency; and (4) current or former special state appointees.
    - Per IN Code § 4-2-6-4, the Commission's general duties and powers include the abilities to:
      - Review ethics complaints filed with it and issue findings of fact;
      - Upon a vote of 4 members, refer a matter to the inspector general or hear a matter referred to it by the inspector general;
      - Issue advisory opinions, which can be accessed here;
        - None of the advisory opinions appear to directly bear on issues related to conflict of interest and election administration.
      - Promulgate ethics regulations (*See* Indiana Administrative Code Ch. 40, Art. 2; *LTV Steel Co. v. Zeller*, 686 N.E.2d 904, 908 (Ind. App. Ct. 1997) (“The legislature authorized the [Ethics] Commission to promulgate the code of ethics rules”)).
- (c) *Case Law*
  - Indiana courts do not appear to have addressed the state's conflict of interest laws as they relate to the secretary of state.
  - However, at least one Indiana court has addressed the standard with respect to state employees. *See LTV Steel Co. v. Zeller*, 686 N.E.2d 904, 908 (Ind. App. Ct. 1997) (“Our analysis of the [ethics] statute, its rules as found in the code of ethics, and the common law lead us to conclude that its application to the action of an individual state employee requires asking the critical question [], to wit: whether his impartiality might reasonably be questioned”).

- Noteworthy is the fact that on appeal, the Indiana Supreme Court implied that the Ethics Commission has exclusive jurisdiction to hear complaints about ethical violations by state officers or employees. *LTV Steel Co. v. Griffin*, 730 N.E.2d 1251, 1259 (Ind. 2000) (“While it appears to us undeniable that all of the Safety Board, trial court, and Court of Appeals engaged in an adjudication that was within the exclusive jurisdiction of the Ethics Commission, we do not rest our analysis exclusively on that conclusion”).

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. The secretary of state is a state officer, IN Code § 4-2-6-1(19)(C), and Indiana’s ethics statutes apply to state officers. IN Code § 4-2-6-5.5(a).

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Yes.
  - Indiana law requires state officers to abstain from any decision or vote, or matter relating to that decision or vote, if the state officer has knowledge that any one of the below individuals has a financial interest in the outcome of the matter:
    - The state officer himself or herself;
    - A member of the immediate family of the state officer;
    - A business organization in which the state officer is serving in a leadership role;
    - Any person or organization with whom the state officer is negotiating or has an arrangement concerning prospective employment. IN Code § 4-2-6-9.
  - If a state officer has a conflict of interest, in addition to abstaining, the state officer must do one of the following:
    - (1) The state officer may seek an advisory opinion from the Ethics Commission to determine the extent, if at all, to which he or she may participate in the decision. IN Code § 4-2-6-9(b)(1).
    - (2) file a written disclosure form with the Commission that will be posted to the inspector general’s website. IN Code § 4-2-6-9(b)(2).
  - Indiana law also prohibits a state officer from having a financial interest in a contract made by the state with a business entity, UNLESS the state officer

disclosed the financial interest before the contract was signed. IN Code § 4-2-6-10.5.

## **V. Specific Election Officer Conflict of Interest Rules?**

- There does not appear to be. All conflict of interest rules appear to apply equally to state officers, state employees, and special state appointees.

## **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of such a rule. Searched for rules applicable to governor, state treasurer, and state auditor, in addition to secretary of state. Same general rules relating to conflicts of interest appear to apply across the board.

## **VII. Public Perception/Recent Coverage**

- In 2015, Indiana earned a D-minus score in an assessment of state government accountability and transparency conducted by the Center for Public Integrity and Global Integrity. That put it at 29<sup>th</sup> overall among the states.
  - The Center for Public Integrity's report on Indiana observed that while Indiana may have a strong ethics code on the books, it may have a problem actually enforcing those provisions.
- Todd Rokita was Indiana secretary of state from 2002 to 2010. He was a member of the U.S. House of Representatives from 2011 to 2019. He ran unsuccessfully for Indiana governor in 2016 and U.S. Senate in 2018, both times losing in the GOP primaries. In 2009, he ran for U.S. House and is reported by the AP to have used government resources and official staff to access Republican donor databases, violating Indiana ethics law. Once GOP party officials learned of Rokita's habit of accessing the database using official resources, they locked Rokita out of the donor database system. His access was restored after he angrily complained to the party.
  - Rokita's campaign denied the contents of the AP report when it was published in 2018.
  - The AP story reported that the statute of limitations had run on potential misdemeanor or felony charges against Rokita.
  - Rokita has also been accused of using government funds to push television advertisements which coincide with his political campaigns, both as secretary of state and as a U.S. Congressman. In 2010, the Indiana General Assembly passed legislation, dubbed the "Rokita Rule," to address the practice of spending public dollars on communication that appears to be geared toward political campaigning.

- Rokita has also developed a reputation as a difficult and needy boss, flouting ethics conventions in Congress.
- Charlie White served as Indiana secretary of state from 2011 to 2012. In March 2011, White was indicted on seven felony counts including voter fraud, perjury, and theft. The charges stemmed from his residency while he served on the Fishers, Indiana Town Council. Prosecutors said he voted and took pay as a council member of a district in which he no longer resided. White claimed he was living with his ex-wife, which was within the council district. But evidence presented during his trial in state superior court indicated that he had been living with his then-fiancée in a new townhome outside the district. White appealed the jury's convictions and got several tossed out, but not all.

Connie Lawson, Indiana's current secretary of state, does not appear to have been embroiled in any ethical scandals. However, she did remove about 20,000 individuals from Indiana's voting rolls pursuant to the "Interstate Voter Registration Crosscheck" system that allows election officials to immediately remove voters identified as having registered to vote in another state. Common Cause of Indiana sued to enjoin the removal of voters. The lawsuit is still pending in S.D. Indiana (1:17-CV-03936).

## Secretary of State Reports: Iowa

### Election Reformers Network

#### I. Election Officer – Background and Responsibilities

- Elected Secretary of State
- The Secretary of State is designated as the state commissioner of elections and supervises the activities of the county commissioners of elections. He/she must prescribe uniform election practices and procedures, assign a number to each proposed constitutional amendment and statewide public measure for identification purposes, and adopt rules. Furthermore, the Secretary of State is the chief state election official and is responsible for coordination of state responsibilities under the National Voter Registration Act. *See* Iowa Code Ann. § 47.1.
  - Within the office of the Secretary of State, there is a division of elections called the Elections and Voter Registration Division. This division supervises the 99 county auditors, elections and voter registration. The Secretary of State may appoint a person to be in charge of the division of elections, and this person performs duties assigned by the Secretary of State. Iowa Code Ann. § 47.1.
  - While statewide elected officials may not hold more than one elective office at a time, Iowa Code Ann. § 39.11, the law does allow an elected official run for another elective office as long as the official chooses only one office in which to serve, *see* Iowa Code Ann. § 39.12.

#### II. Source of Conflict of Interest Laws

- *Statutory* – Iowa has a codified statute governing ethics for public officials. *See* Iowa Code Ann. § 68B.2A et seq.
  - Removal from Office: Any elective officer, except such as may be removed only by impeachment, may be removed from office by the district court for willful or habitual neglect or refusal to perform the duties of the office, willful misconduct or maladministration in office, corruption, and extortion. Iowa Code Ann. § 66.1A. (note that no secretaries of state were implicated in the cases listed in the citing references to this statute)
- *Regulatory* – the Iowa Ethics and Campaign Disclosure Board is a regulatory agency responsible for administering the campaign and ethics laws in Iowa Code

chapter 68A and 68B. *[Note the Board is also responsible for the gift and bequests law in section 8.7]*

- The Board is responsible for administering and setting the standards for Iowa ethics laws as well as “investigating complaints relating to, and monitor the ethics of officials, employees, lobbyists, and candidates for office in the executive branch of state government.” The Board also administers and establishes the standards for, investigates complaints relating to, and monitors the campaign finance practices of candidates for public office. Iowa Code Ann. § 68B.32(1).
- The Board has the authority to “establish and impose penalties” for the failure to comply with the requirements of the campaign, ethics, or gifts and bequests laws. Iowa Code Ann. § 68B.32A(9).
- The Board issues advisory opinions, which, if followed in a similar factual situation, “constitute a defense to a complaint alleging a violation” of the campaign, ethics, or gifts and bequests laws. Iowa Code Ann. § 68B.32A(10). *(all advisory opinions are listed here: <https://ethics.iowa.gov/advisory-opinions>)*
  - IECDB AO 2000-05: The issue is whether public officials can use their official job titles in campaign literature. “In the past, the Board has interpreted [Iowa Code Ann. § 68B.2A(1)] to prohibit the use of job titles by public officials . . . in their campaign literature except when the job title involved the office sought.” For example, “a candidate for Secretary of State could not use the title ‘Deputy Assistant Secretary of State’ in campaign literature” because it would give the person an “advantage over other candidates.” However, the Board decided in this opinion that “a job title is part of ‘who someone is’ and that this section should not be interpreted to prohibit the use of job titles in campaign literature.”
  - IECDB AO 2000-11: The issue is whether one can use public resources to advocate for or against an issue that has not been placed on the ballot. Iowa Code Ann. § 56.12A prohibits the use of public resources for political purposes, which is defined as “advocacy for a ballot issue.” An issue is not a ballot issue until it has been placed on the ballot, so the code does not apply to using public resources to advocate for or against an issue that has not yet been placed on the ballot.
  - IECDB AO 2003-14: The Board holds that candidates for state or local office in Iowa are prohibited from using campaign funds to make a contribution to a candidate for federal office unless the candidate for both offices is the same person.
  - IECDB AO 2005-06: This opinion was written in response to a letter from Mary Mosiman, then-Story County Commissioner of Elections. Mosiman

asked whether she could create standardized profiles for candidates and put them on the Story County Commissioner of Elections website. The profiles would include general background information and a disclaimer. The Board ruled that the profiles as described would not qualify as being “express advocacy.” In other words, the profiles would not seek to solicit votes or raise campaign funds for any candidate. Thus, the profiles could be placed on the County Commissioner of Elections website without violating the prohibition on using public resources for a political purpose.

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. See Iowa Code Ann. § 68B.2. (definition of a covered official and statewide elected official)
  - “Official” means all statewide elected officials.
  - “Statewide elected official” means the governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, and attorney general of the state of Iowa.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Likely no. The Iowa Code prohibits any person who serves the state from engaging in an activity that is subject to the official control, inspection, review, audit, or enforcement authority of the person during the performance of the person’s duties of office. Iowa Code Ann. § 68B.2A(1)(c).
  - If an official finds him/herself engaging in an activity described in subsection 1 paragraph “c”, that official must take one of the following courses of action: (a) cease the activity or (b) publicly disclose the existence of the conflict and refrain from taking any official action or performing any official duty that would detrimentally affect or create a benefit for the activity. Iowa Code Ann. § 68B.2A(2).
- The Iowa Code also prohibits any person who serves the state from engaging in an activity that uses the state’s time, facilities, equipment, and supplies to give the person or a member of the person’s immediate family an advantage that is not available to other similarly situated members of the general public. Any such person is also prohibited from engaging in an activity that involves the receipt of, promise of, or

acceptance of money or other consideration by the person from anyone other than the state. Iowa Code Ann. § 68B.2A(1)(a)-(b).

- If an official finds him/herself engaging in one of these activities, the person shall immediately cease the activity regardless of disclosure. Iowa Code Ann. § 68B.2A(2).

### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- *League of United Latin Am. Citizens of Iowa v. Pate*, No. 18-1276, 2018 WL 3946147 (Iowa Aug. 10, 2018)
  - This was a review of a temporary injunction enjoining Secretary of State Paul Pate from including language on the absentee ballot application indicating that a voter verification number is required and from disseminating materials indicating that Iowa voters will be asked to show identification to vote in 2018, without a clear statement that identification is not required. The court affirmed the temporary injunction.
- *Lunde v. Schultz*, 221 F. Supp. 3d 1095 (S.D. Iowa 2014)
  - The plaintiff, a Republican candidate, claimed, among other things, that Iowa law violated the Equal Protection Clause by requiring party candidates who seek to be included on the ballot as either a Republican or Democrat to obtain more signatures than a nonparty or a third party candidate. The court held that Iowa's unequal treatment of major party and nonparty political candidates was justified by a compelling state interest in promoting greater ballot access.

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- Advisory Opinion IECDDB AO 2004-15
  - A county commissioner of elections may be involved in a ballot issue or a candidate's campaign even if it raises an appearance of impropriety. The Board stated there are enough procedural safeguards in place to prevent a county commissioner of elections from misusing his/her office to affect the outcome of an election. Furthermore, to prohibit county commissioners from being involved in ballot issues or candidate campaigns would be to

impermissibly restrict their freedom of speech. However, the Iowa Code would restrict a county commissioner of elections from using governmental time and other governmental resources to benefit a campaign.

- In a footnote, the Board mentions that if a county commissioner of elections was not allowed to participate in ballot issues or be involved in a candidate campaign, then that would also mean that if he/she was running for reelection, he/she could not administer that election.

### VII. Public Perception/Recent Coverage

- *Iowa gun rights amendment is back to square one after 'bureaucratic oversight'* (January 14, 2019) (discussing Secretary of State Pate's mistake in failing to publish the required notifications that the legislature had begun the process of amending the state constitution in Iowa newspapers, which is a key requirement). [Link](#).
- *Voter ID now required to vote in Iowa* (January 7, 2019) (discussing Pate's new voter ID law, which Pate claims is "about making it easy to vote, but hard to cheat, while ensuring no eligible voter is turned away"). [Link](#).
- *Iowa voter ID law: Judge strikes rule on absentee ballots as 'irrational, illogical and wholly unjustifiable'* (January 24, 2019) (discussing the case surrounding Secretary of State Pate's proposed rule requiring voter ID). [Link](#).
- *Judge dismisses Iowa House District 55 lawsuit over not counted ballots* (December 21, 2018) (discussing a dismissed case filed by a Democratic Iowa House District 55 candidate who was suing to force election officials to count 29 absentee ballots that were not postmarked). [Link](#).
- *Iowa Secretary of State Paul Pate did not disclose side business, AP finds. Pate disputes finding.* (April 17, 2018) (discussing Pate's role in a new corporation that has spent around \$2 million to open storage rental businesses and strip malls). [Link](#).
- *'This is wrong': Iowa's flawed felon list has been disqualifying legitimate voters for years* (January 13, 2019) (explaining how the Iowa database listing felons has had systematic errors and inaccuracies and has thus caused people from being wrongfully banned from voting; the article says that Schultz and Pate knew about the errors). [Link](#).
- *An Iowa Court Blocks 20,000 Ex-Offenders From Voting* (June 30, 2016) (discussing the felon disenfranchisement law in Iowa and the case brought by Schultz against a woman who lied about her conviction on her ballot). [Link](#).

## Secretary of State Reports: Kansas

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Secretary of State, elected. Authorized by Kansas Constitution.
- The direction and duties of the office are defined by state law. The office has over 700 statutory duties with the primary responsibility for administering elections; maintaining records of Kansas business entities; and maintaining uniform commercial code filings. The Elections Division is responsible for the administration of all national and state elections and works with each of the 105 county election officers to execute those elections. All candidates for national office, state office and state judicial positions must file their candidacy with the office. The division maintains the statewide voter registration database and serves as the repository for campaign receipts and expenditure reports of state candidates and financial disclosure statements of state officers and certain state employees. (“About the Office” (Link)).
- In the event of a recount, the Secretary of State has authority to set the amount that the recount will cost. There is no evidence to determine whether there are limits on this power or guidelines for the Secretary to follow.

#### **II. Source of Conflict of Interest Laws**

- *Statutory* – K.S.A. 75-4305 (Link): (a) Any local governmental officer or employee who has not filed a disclosure of substantial interests shall, before acting upon any matter which will affect any business in which the officer or employee has a substantial interest, file a written report of the nature of the interest with the county election officer of the county in which is located all or the largest geographical part of the officer's or employee's governmental subdivision. (b) A local governmental officer or employee does not pass or act upon any matter if the officer or employee abstains from any action in regard to the matter.
  - (a) Violation of K.S.A. 75-4304 (Link) or 75-4305, and amendments thereto, or failure to make any disclosure of substantial interests required by K.S.A. 75-4302a (Link) is a class B misdemeanor.
- *Regulatory* – The Kansas Governmental Ethics Commission (GEC) is charged with administering, interpreting and enforcing the Campaign

Finance Act and laws relating to conflict of interests, financial disclosure and the regulation of lobbying. (Link).

- While the Campaign Finance Act and GEC opinions apply to the Secretary of State, it only addresses issues related to campaign donations and lobbying.
- Several GEC advisory opinions pertain to relevant issues.
  - Opinion No. 2015-03 (Feb. 18, 2015) (link). Quoting an earlier 2007 ruling, the GEC found that “K.S.A. 25-4169a prohibits the use of public funds, equipment or supplies to expressly advocate the election or defeat of any candidate,” emphasizing that “[t]he prohibitions of K.S.A. 25-4169a apply only to express advocacy.”
  - Opinion No. 2011-06 (Sept. 28, 2011) (link). GEC found that “using a sheriff's department vehicle to drive to an election event, when a sheriff or deputy sheriff is required to be constantly available for official duties, would not involve or implicate the sheriff's department vehicle in express advocacy of the election or defeat of a clearly identified candidate to the office of sheriff. Therefore, an incumbent sheriff who is running for re-election for the office of sheriff, or a deputy sheriff who is running for election for the office of sheriff, may use a sheriff's department vehicle to attend election activities.”
- *Case law* – No evidence of pertinent case law addressing this issue.
- *Election Process* – In Kansas the individual counties are responsible for conducting all official elections, both state and national. This process is overseen by the Secretary of State; however, all votes, including recounts, are done at the individual county levels. The process is designed this way to prevent the Secretary of State from directly being involved in the elections process, particularly with recounts. However, the Secretary of State is empowered to set the cost of the recount, running the risks of a conflict of interest.

- Each of the 105 counties in Kansas has a county election officer responsible for conducting all official elections held in the county. In the four largest counties - Johnson, Sedgwick, Shawnee and Wyandotte - the election officer is the election commissioner, appointed by the Secretary of State. For the other 101 counties it is the county clerk, elected by the voters in the county.
  - By statute, counties with a population exceeding 130,000 have an office of commissioner elections. And the commissioner shall be appointed by the secretary of state. See K.S.A. 19-3419 (Counties over 130,000; appointment, term, removal; vacancies; qualifications, oath.) ([Link](#)) However, in January 2019, the Kansas state legislature introduced an amendment to K.S.A. 19-3419 which, if passed, would give the board of county commissioners the ability to appoint election commissioners of large counties instead of the secretary of state. ([Link](#))

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. See K.S.A. 75-4301a (Governmental ethics applicable to local governmental subdivisions; definitions). ([Link](#))

“Local governmental officer” means any elected or appointed officer of any governmental subdivision or any of its agencies.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- No evidence of such a rule.

### **V. Specific Election Officer Conflict of Interest Rules?**

- No evidence of such a rule.

### **VI. Historical Allegations of Partisan Interference by Election Officer in Election Administration?**

- Former Kansas Secretary of State, Kris Kobach, ran for governor in 2018, eventually losing to Democrat Laura Kelly. In the August 2018 Republican primary for the gubernatorial race, Kobach and incumbent Jeff Coyer were apart by less than 200 votes.

- When speculation of recount began to surface the following day, Kobach stated that he is not required to recuse himself because the different counties do the majority of the counting. This safeguard makes the secretary of state's office more of an overseeing entity in the elections process instead of the sole office.
- However, as counting continued, discrepancies emerged between vote totals reported by the secretary of state's office and the numbers posted on at least three county election websites. Coyler sent a letter to Kobach's campaign stating that the secretary of state's office gave advice to county election officials. Kobach recused himself on two days after Election Day and appointed the state attorney general to oversee the election. There still remained a possibility that Kobach could set the price for the recount, if either party requested it. However, Coyler conceded to Kobach the following week without requesting a recount.
- See news sources cited *infra*.

### **VII. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of such a rule. Searched for rules applicable to state treasurer and state controller.

### **VIII. Public Perception/Recent Coverage**

- Article, "*Kobach Says He Will Recuse Himself From Kansas Primary Vote Count*," New York Times, Aug. 9, 2018 (Link) (article that discusses the conflicts of interest issues of Secretary Kris Kobach not being required to recuse himself from the recount of an election where he is a candidate, and how Kobach also has the power to determine the cost of a recount).
- Article, "*Colyer Concedes in Kansas, Handing Governor's Nomination to Kobach*," New York Times, Aug. 14, 2018 (Link) (article that follows up with the above).
- Article, "*Kobach recuses self from Kansas vote count amid criticism*," Politico, Aug 10, 2018, (Link) (article discusses how Coyler sent a letter to Kobach's campaign demanding recusal after allegations that the secretary of state's office was giving advice to county election officials and that Kobach made public statements inconsistent with Kansas law as a way to suppress the vote.)
- Article, "*Recount May Be Called For In Tight Kansas Race For Governor*," NPR, Aug. 9, 2018 (Link) (article discusses the inherent conflict of interest for office of secretary of state in these elections).
- Article, "*Kris Kobach won't recuse himself from a recount in governor's race. No law requires it.*" The Kansas City Star. (Link) (article discusses why Kris Kobach's ability to set the cost of a recount should require that he recuse himself).

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- Editorial, “*Kobach’s Kansas Conflict: Why Elections Officials Should Be Nonpartisan*,” Independent Voter Network, ([Link](#)) (editorial discusses the conflict of interest that exists for the secretary of state’s office in cases where the secretary is a candidate).

## Secretary of State Reports: Kentucky

### Election Reformers Network

#### **VIII. Election Officer – Background and Responsibilities**

- Elected Secretary of State
- According to the official state website, “The Secretary of State is Kentucky’s Chief Election Official.”
- However, a recently enacted law (SB 34, codified in relevant part at Ky. Rev. Stat. 117.015(1), (2)(a)) significantly reduces the Secretary of State’s ability to oversee elections, by removing the Secretary of State as “Chair of the State Board of Elections, an independent agency that administers...election laws, promulgates administrative regulations [and manages voter rolls],” and by instead recognizing the Board of Elections as an “independent agency” and mandating that “The Secretary of State [will] be an ex officio, nonvoting member, and...serve as the chief election official....”
- Kentucky’s current Secretary of State has challenged this law in state court; a request for a temporary injunction to block enforcement of the law was denied in May, but the case is still pending trial, leaving the question of who has ultimate authority over Kentucky elections unresolved for the moment.

#### **IX. Source of Conflict of Interest Laws**

- *Statutory*
  - Ky. Rev. Stat. 11A.040 prohibits “public servants” (defined, in Ky. Rev. Stat. 11A.010(9) to include various executive officials, including the Secretary of State) from several activities, including, among others, using confidential information for personal financial gain, knowingly profiting from their own use of public funds, and representing Kentucky in any transaction with a business in which the official or a family member has a five percent or greater interest.
  - Ky. Rev. Stat. 11A.050 requires public servants to file annual financial disclosure statements.
- *Regulatory*

- Ky. Rev. Stat. 11A.060 provides for the establishment of the Executive Branch Ethics Commission, and Ky. Rev. Stat. 11A.100 empowers that Commission with enforcement of Chapter 11A (except 11A.040, violations of which are to be referred to the Attorney General for prosecution) and sets forth procedures for administrative hearings to that end.
- Ky. Rev. Stat. 11A.110 charges the Commission with, among other duties, promulgating administrative regulations to implement Chapter 11A, educating the public about Chapter 11A, and “issuing advisory opinions on the requirements of” Chapter 11A.
- Several Commission advisory opinions are relevant.
  - Advisory Opinion 10-01 (Mar. 19, 2010) ([link](#)). In a lengthy opinion, the Commission ruled that “it is highly unlikely that any one individual holding the office of Secretary of State could alter or influence the results of a statewide election merely from the powers invested in the office by the General Assembly without having the universal cooperation of election officials across the state.” The Commission found that “Kentucky’s election system is designed so that no one individual has the ability to affect the outcome of a statewide election,” and went on to observe that “[w]hile the Commission believes that a potential conflict of interest is highly unlikely, should such an unforeseen event arise, the Secretary of State should seek additional guidance from the Commission at that time.”
  - Advisory Opinion 18-03 (Sept. 17, 2018) ([link](#)). In 2018, the Commission was asked to reassess its 2010 findings in light of the State Board of Election’s decision to grant the Secretary of State access to personal information of Kentucky voters. The Commission determined that “[t]he change in circumstance discussed above may have implications in the event that a person holding the office of Secretary of State decides to file as a candidate for a future election while also serving as the Chair of the State Board.” The Commission stated that its 2010 Opinion “does not

address the current situation” and that it would “issue additional advice as requested.”

- See also Advisory Op. 19-06 discussed below.

- *Case Law*

- See *Ky. Exec. Branch Ethics Comm’n v. Atkinson*, 339 S.W.3d 472 (Ky. Ct. App. 2010), analyzing the scope of individuals to whom Chapter 11A applies.

### **X. Conflict of Interest Applicability to Elections Officers**

- Yes, Kentucky’s conflict of interest laws under Chapter 11A and described above apply to the Secretary of State, as the Secretary of State is included in the definition of “public servant” found in Ky. Rev. Stat. 11A.010(9) and Chapter 11A’s conflict of interest provisions apply to such defined “public servants.”
- In a 2019 Advisory Opinion, the state Ethics Commission reaffirmed that members of the State Board of Elections were subject to the Ethics Code reflected in Section 11A, despite a recent state law that attempt to confine confines subject state officers to those who were “salaried.” See *Ky. Exec. Branch Ethics Comm’n*, Advisory Op. 19-06 (July 16, 2019).

### **XI. Duty to Abstain, Regardless of Disclosure?**

- Yes, separate from the disclosure provisions of § 11A.050, § 11A.040 prohibits public servants from committing various acts (*see supra* Part II), however, none of the statutory prohibitions explicitly mention election-related activities.

### **XII. Specific Election Officer Conflict of Interest Rules/Cases?**

- No such rule appears to exist, nor do there appear to be any relevant cases.

### **XIII. Conflict of Interest Rules for Other Constitutional Officers?**

- No specific rules for other officers. The provisions of Chapter 11A apply to “All major management personnel in the executive branch” and to “Salaried members of executive branch boards and commissions while the Legislative Ethics Commission oversees ethics for the General Assembly. There are also various restrictions on lobbying by executive agencies, found at Ky. Rev. Stat. 11A.201–.246. Finally, the Registry of Election Finance regulates election financing in Kentucky.

### **XIV. Public Perception/Recent Coverage**

## Reports

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- Ryland Barton, *Grimes Accused of Misusing Voter Data By Elections Staffer*, WFPL (Aug. 27, 2018), <https://wfpl.org/grimes-accused-of-misusing-voter-data-by-elections-staffer/>.
- Daniel Desrochers, *Judge rejects Grimes' lawsuit over access to Kentucky's voter registration system*, LEXINGTON HERALD-LEADER (Mar. 4, 2019, 1:58 PM), <https://www.kentucky.com/news/politics-government/article227002364.html>.
- Jessica Huseman & Daniel Desrochers, *A Power Grab in Kentucky Sparks a Revolt*, PROPUBLICA & LEXINGTON HERALD-LEADER [co-published] (Jan. 31, 2019, 9:00 AM), <https://www.propublica.org/article/kentucky-state-board-of-elections-power-grab>.
- Jessica Huseman & Daniel Desrochers, *The Curious Case of a Kentucky Cybersecurity Contract*, PROPUBLICA & LEXINGTON HERALD-LEADER [co-published] (Feb. 1, 2019, 12:30 PM), <https://www.propublica.org/article/the-curious-case-of-a-kentucky-cybersecurity-contract>.
- Janet Patton & Valarie Honeycutt Spears, *Paul, Grayson campaigns trade jabs over polling activities*, LEXINGTON HERALD-LEADER (May 19, 2010, 12:04 PM), <https://www.kentucky.com/news/state/kentucky/article44032653.html> (describing opposition allegations in the 2010 U.S. Senate election against then-Secretary of State Trey Grayson that Grayson “abus[ed] the power of his office and attempt[ed] ‘to influence poll workers.’”).
- Bruce Schreiner, *Judge refuses to temporarily block new election-related law*, AP NEWS (May 31, 2019), <https://www.apnews.com/6b5158b66a1545429eef6427fb4a121a>.
- Bruce Schreiner, *Ky gov signs bill limiting Grimes' power over election board*, AP NEWS (Mar. 19, 2019), <https://www.apnews.com/26b4132d8ddd4006bfcc7c7f745a1387>

## Secretary of State Reports: Louisiana

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Elected Secretary of State (term: 4 years; no term limit)
- The Secretary of State is the chief election officer in Louisiana. He or she is responsible for preparing and certifying ballots for all elections, promulgating all election returns, and administering election laws, except those related to voter registration. As chief elections officer, “the secretary of state is responsible for qualifying candidates, overseeing the election and tabulating and verifying the results.” In addition, the secretary of state is charged with administering the state corporation and trademark laws, as well as publishing all laws enacted by the legislature. He or she has the power to administer oaths, and perform other duties authorized by law. La. Const. Art. IV, §7; *see also* [Link to Secretary's Website](#).

#### **II. Source of Conflict of Interest Laws**

- *Statutory*
  - La. R.S. § 42:1101 – Declaration of Policy (Code of Governmental Ethics)
    - It is essential to the proper operation of democratic government that elected officials and public employees be independent and impartial; that governmental decisions and policy be made in the proper channel of the governmental structure; that public office and employment not be used for private gain other than the remuneration provided by law; and that there be public confidence in the integrity of government. The attainment of one or more of these ends is impaired when a conflict exists between the private interests of an elected official or a public employee and his duties as such. The public interest, therefore, requires that the law protect against such conflicts of interest and that it establish appropriate ethical standards with respect to the conduct of elected officials and public employees without creating unnecessary barriers to public service.
  - La. R.S. § 42:1116 – Abuse of office (Code of Governmental Ethics)
    - No public servant shall use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to engage in political activity. For the purposes of this Subsection, “political activity” means an effort to support or oppose the election of a candidate for political office in an election. This Subsection

shall not be construed to limit that authority authorized by law, statute, ordinance, or legislative rule in carrying out official duties.

- La. R.S. § 42:1132 – Board of Ethics, Powers, Duties and Responsibilities (Code of Governmental Ethics); La. R.S. § 42:1134
  - Establishes a Board of Ethics to enforce the Louisiana Code of Ethics. The Board is comprised of eleven members, and has the authority to investigate and pursue formal charges against an individual or entity for violations. If a violation is identified, the Board has the authority to impose penalties.
- *Case Law*
  - *Burgess v. City of Baton Rouge*, 951 So. 2d 1128 (La. Ct. App. 2006).
    - The primary objective of the Code of Governmental Ethics is to prevent public officers and employees from becoming involved in conflicts of interest. Such a conflict of interest is present when a conflict exists between the private interests of an elected official . . . and his duties.
    - No public servant shall receive anything of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position. A thing of value excludes emolument, *i.e.*, any advantage, profit, or gain received as a result of one's employment or one's holding of office.

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. "Public servant" means a public employee or an elected official. La. R.S. § 42:1102(19). *See also* La. Const. Art. X, §21 ("The legislature shall enact a code of ethics for all officials and employees of the state and its political subdivisions.").

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Generally, there is no duty to abstain:
  - If any elected official, in the discharge of a duty or responsibility of his office or position, would be required to vote on a matter which vote would be a violation of R.S. 42:1112 (*i.e.*, a public servant who has a personal substantial economic interest), he shall recuse himself from voting. An elected official who recuses himself from voting pursuant to this Section shall not be prohibited from

participating in discussion and debate concerning the matter, provided that he makes the disclosure of his conflict or potential conflict a part of the record of his agency prior to his participation in the discussion or debate and prior to the vote that is the subject of discussion or debate. La. R.S. §42:1120 – Recusal from voting.

- “An elected official who recuses himself from voting shall not be prohibited from participating in discussion and debate concerning the matter, provided that he makes the disclosure of his conflict a part of the record of his agency prior to his participation in the discussion or debate and prior to the vote that is the subject of the discussion or debate.” Ethics Advisory Opinion No. 2017-864.
- That said, there may be a duty to abstain for members of a board or commission:
  - (a) If any appointed member of a board or commission in the discharge of a duty or responsibility of his office or position, would be required to vote on a matter which vote would be a violation of R.S. 42:1112, he shall recuse himself from voting.
  - (b) An appointed member of a board or commission who recuses himself from voting pursuant to this Section shall be prohibited from participating in discussion and debate concerning the matter. La. R.S. § 42:1120.4 – Recusal from voting; certain appointed members of boards and commissions.

### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- *Hurd v. McKeithen*, 663 So. 2d 537 (La. Ct. App. 1995).
  - Secretary McKeithen called a special election to fill a vacancy for associate justice on the Fourth Supreme Court District. Due to the timing of the proposed election, the district court prohibited Secretary McKeithen from including the name of any candidate on any ballot. On appeal, the decision was affirmed, noting Secretary McKeithen did not comply with the mandatory dates during which a special election could occur. Because the election was in violation of statutory law, it was prohibited from taking place as scheduled.

- *Hester v. McKeithen*, 882 So. 2d 1291 (La. Ct. App. 2004).
  - Two candidates lost their respective races for judge and school board. Both individuals, in turn, sued Secretary McKeithen to have the results set aside. The court, however, found there was no basis to take such action, despite several irregularities in the election process, including hundreds of voting machines malfunctioning. In reaching this conclusion, the court determined the individuals would not have won even if there were no irregularities.
- *Williams v. Morrell*, 971 So. 2d 1191 (La. Ct. App. 2007).
  - An unsuccessful candidate for state senate filed a petition to contest the results. Among a number of different allegations, the individual claimed Secretary Dardeene failed to post notices of another candidate's withdrawal prior to the vote. In addition, the candidate alleged Secretary Dardenne conducted an illegal voter canvass on the day of the election (*i.e.*, he improperly removed registered voters from a district and added others to change the outcome of the election). The petition was dismissed because the candidate failed to offer sufficient facts to state a cause of action. Still, the allegations concerning Secretary Dardenne's behavior left some on the court feeling "disturbed."

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- The cited conflict of interest rules apply to all public servants, including other constitutional officers.

### **VII. Public Perception/Recent Coverage**

- Allen, Rebekah, "Louisiana lawmakers are pushing bills that benefit their own businesses. And it's perfectly legal." *The Advocate*, June 6, 2018. ([Link](#))
- Ballard, Mark, "Louisiana gets F grade in 2015 state integrity investigation," *The Center for Public Integrity*, November 9, 2015. ([Link](#))
- Ballard, Mark, "Despite claims he would not run, Kyle Ardoin's change of heart spices up Secretary of State race," *The Advocate*, July 23, 2018. ([Link](#))
- Ballard, Mark, "Louisiana Sec. of State candidates target 'taint of scandal,' but that's just 'baloney,' official says," *The Advocate*, October 8, 2018. ([Link](#))

- Gallo, Andrea, “Why the ‘most egregious’ ethics case in Louisiana remains open nine years later,” ProPublica, May 16, 2019. ([Link](#))
- Gstalter, Morgan, “Louisiana secretary of state resigns amid sexual harassment allegations,” The Hill, May 1, 2018. ([Link](#))
- Hays, Robb, “Gov. Edwards accuses sec. of state of playing ‘political football,’” KPLCTV.com, November 13, 2018. ([Link](#))
- O’Donoghue, Julia, “24 states made it harder to vote. Will Louisiana be next?” NOLA.com, October 24, 2018. ([Link](#))
- Sadow, Jeff, “Why did it take Kyle Ardoin so long to withdraw from voting machine vetting process?” The Advocate, August 18, 2018. ([Link](#))
- Welty, Chris, “Louisiana Secretary of State challenges media report on voter lists,” KATC.com, June 12, 2019. ([Link](#))
- White, Lamar, “Secretary of State Tom Schedler running a racist campaign,” The Independent, August 21, 2015. ([Link](#))

## Secretary of State Reports: Massachusetts

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Elected Secretary of State (in some places “Secretary of the Commonwealth” or “state secretary”).
- Various provisions and structures of state government make clear that the Secretary of State has authority over the administration of elections within the state. *See, e.g.*, Mass. Gen. L. ch. 54, § 121 (requiring that county commissioners deliver voting results to the Secretary of State); Mass. Gen. L., ch. 54, § 135 (providing that the Secretary of State must furnish forms for recount petitions).

#### **II. Source of Conflict of Interest Laws**

- *Statutory*
  - Mass. Gen. L. ch. 268A, § 6A: Conflict of Interest Law
    - Requires that any public official, including, as defined elsewhere, the Secretary of State, provide written disclosure whenever the discharge of their official duties would substantially affect the official’s financial interests, unless such effect is no greater than that on the general public.
  - No statutory provisions that relate specifically to the Secretary of State or the administration of elections
- *Regulatory*
  - The State Ethics Commission, organized under Mass. Gen. L. ch. 268B, § 2, is charged with “issuing opinions interpreting the requirements of [Chapter 268A],” Mass. Gen. L. ch. 268A, § 10.
  - The Ethics Commission has broad rulemaking authority for the conflict of interest laws and acts “as the primary civil enforcement agency for violations” of those laws. Mass. Gen. L. ch. 268B, § 3.
  - It does not appear that the Ethics Commission has promulgated any regulations or issued any legal opinions related specifically to conflicts of interest in administering elections.

- Case Law
  - There does not appear to be any directly relevant case law.

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. The conflict of interest law applies to “public officials,” which is defined as “one who holds public office,” “public office” itself being defined as “a position for which one is nominated at a state primary or chosen at a state election, excluding [certain positions].” The Secretary of State is chosen by state election, Mass. Const. art. XVII, so the conflict of interest law applies to the Secretary of State.
- While not specifically related to conflicts of interest, the state’s law against violating constitutional rights could also plausibly be used against a Secretary of State who improperly interferes in elections. Mass. Gen. L. ch. 12, § 11H (“Whenever any person...whether or not acting under color of law, interfere[s] by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons of rights secured by the constitution [*sic*] or laws of the United States [or of Massachusetts], the attorney general may bring a civil action...”).

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Yes, under Mass. Gen. L. ch. 268A, § 6, “any state employee who participates...in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving...or any [arranged prospective employer], has a financial interest, shall be punished.... Any state employee whose duties would otherwise require him to participate in such a general matter shall advise the official responsible for appointment to his position and the state ethics commission of the nature and circumstances of the particular matter and make full disclosure of such financial interest, and the appointing official shall thereupon either (1) assign the particular matter to another employee; or (2) assume responsibility for the particular matter; or (3) [determine that the interest is not substantial enough to likely create a conflict].”

### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- No such rule appears to exist, nor do there appear to be any relevant cases.

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- There are several provisions prohibiting various officials from receiving income from other sources, *see, e.g.*, Mass. Gen. L. ch. 11, § 1(b) (“The state auditor shall not receive earned income from any other source but may receive unearned or passive income.”).

- There are also provisions prohibiting certain officials from holding other positions that are likely to create a conflict, *see, e.g.*, Mass. Gen. L. ch. 15, § 1E (“No appointive member of [the board of elementary and secondary education] shall be employed by or receive regular compensation from the department of education, or from any school system.”).

### VII. Public Perception/Recent Coverage

- Maggie Mulvihill & Beverly Ford, *Massachusetts Gets D+ Grade in 2015 State Integrity Investigation*, CTR. FOR PUB. INTEGRITY (Dec. 1, 2015, 6:37 PM), <https://publicintegrity.org/state-politics/state-integrity-investigation/massachusetts-gets-d-grade-in-2015-state-integrity-investigation/>.
- Shira Schoenberg, *Post-Labor Day 2018 Massachusetts primary date causing headaches for city officials*, MASSLIVE (Jan. 9, 2018), [https://www.masslive.com/politics/2018/01/post-labor\\_day\\_2018\\_massachuse.html](https://www.masslive.com/politics/2018/01/post-labor_day_2018_massachuse.html) (describing accusations by Secretary of State Galvin’s primary challenger that Galvin scheduled the 2018 primary elections for the day after Labor Day to suppress voter turnout for his own benefit).
- Alison Bruzek, *Mass. Ended Its Participation In Controversial Voter Fraud System In March*, WBUR (Nov. 7, 2017, 12:08 PM), <https://www.wbur.org/radioboston/2017/11/03/massachusetts-crosscheck-system> (describing Massachusetts’ former participation in a voter fraud system that some academics have said suppresses legitimate votes).

## Secretary of State Reports: Michigan

### Election Reformers Network

#### I. Chief Election Officer – Background and Responsibilities

- Secretary of State. Elected.
  - Supervises local election officials, such as the boards of election commissioners and the boards of canvassers for counties, cities, townships, and villages, in the performance of their duties. *See* MCLS § 168.21; MCLS § 168.23. The Secretary must issue rules and directly advise local election officials on the methods for conducting elections. MCLS § 168.31.
  - Investigates, or cause to be investigated by local authorities, the administration of election laws, and report violations of the election laws and regulations to the attorney general or prosecuting attorney, or both, for prosecution. MCLS § 168.31. Secretary of state and county clerks shall conduct election audits. MCLS § 168.31(a).
- Board of State Canvassers. The Board is mandated by Mich. Const., Art. II, § 7, and the Board is appointed by the Governor and confirmed by Senate.
  - Generally, supervises state elections, but is supervised by the Secretary of State. Canvassing and certifying statewide elections, elections for legislative districts that cross county lines and most judicial offices. Conducting recounts for state-level offices. Canvassing nominating petitions filed with the Secretary of State. Canvassing state-level ballot proposal petitions. Assigning ballot designations and adopting ballot language for statewide ballot proposals. Approving electronic voting systems for use in the state.
  - No candidate for an office to be canvassed nor any inspector of elections shall be eligible to serve as a member of a board of canvassers.

#### II. Source of Conflict of Interest Laws

1. *Constitution*: Pecuniary Interests - “No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest. The legislature shall further implement this provision by appropriate legislation.” Mich. Const., Art. IV, § 10.
  - a. *Statutory*: Pecuniary Interests - Michigan has created a special committee of the legislature on conflict of interest. MCLS §

15.307. However, the constitution and statute only apply to contractual/pecuniary interests.

2. *Statutory: Standards of Conduct for Public Officers: Several subsections of MCLS § 15.342 are relevant:*

(3) A public officer or employee shall use personnel resources, property, and funds under the officer or employee's official care and control judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures and not for personal gain or benefit.

(5) A public officer or employee shall not engage in a business transaction in which the public officer or employee may profit from his or her official position or authority or benefit financially from confidential information which the public officer or employee has obtained or may obtain by reason of that position or authority. Instruction which is not done during regularly scheduled working hours except for annual leave or vacation time shall not be considered a business transaction pursuant to this subsection if the instructor does not have any direct dealing with or influence on the employing or contracting facility associated with his or her course of employment with this state.

(6) Except as provided in section 2a, a public officer or employee shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the officer or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties.

3. Additionally, the statute creates a State Board of Ethics in the office of the governor to advise on and investigate conduct. MCLS § 15.343.

- a. None of the State Board of Ethics' advisory opinions directly bear on this topic.

### **III. Conflict of Interest Applicability to Elections Officer**

- *Pecuniary Interests*: Yes. See MCLS § 15.303(a). “State officer” includes the secretary of state. *Id.*
- *Standards of Conduct for Public Officers*: Yes. “Public officer” includes “an elected or appointed official of this state.” M.C.L.A. § 15.341(c).

### **IV. Duty to Abstain, Regardless of Disclosure?**

- *Pecuniary Interests*: No.
- *Standards of Conduct for Public Officers: Board of Ethics*: Yes—statute

### **V. Specific Election Officer Conflict of Interest Rules?**

- No evidence of such a rule.

### **VI. Historical Allegations of Partisan Interference by Election Officer in Election Administration?**

- No evidence of historical allegations of partisan interference.

### **VII. Conflict of Interest Rules for Other Constitutional Officers?**

- None that are specifically targeted at other constitutional officers.

### **VIII. Public Perception/Recent Coverage**

- News, “*Whitmer choice raises questions about state’s conflicts of interest laws*,” Detroit Free Press, Jan. 8, 2019, (Link) (the governor’s appointee’s husband is the owner of one of the biggest lobbying firms, which may be causing public to believe there is a conflict of interest.).
- News, “*Unlike the rest of America, Michigan lawmakers’ personal finances are a secret*,” MLive, May 6, 2019, (Link) (“Michigan is one of two states – and the only one with a full-time legislature – with no requirement for public officials to disclose basic financial information, including income sources, business investments, gifts and travel compensation.”).
- News, “*Tesla subpoenas Michigan governor and others’ records for ‘Anti-Tesla’ law*,” TESLARATI, June 8, 2017, (Link) (In 2014, Tesla filed a lawsuit against major Michigan lawmakers and the then Governor and Secretary of State, alleging conflict of interest.).

- News, “*State Democrats want to let the sunshine in with conflict of interest laws*,” NPR, Mar. 14, 2017, (Link), (Senate Democrat, Steve Bieda, proposed a package of bills to require state-elected officials to disclose their personal finances).
- News, “Michigan ranks last in laws on ethics, transparency,” Detroit Free Press, Nov. 9, 2015, (Link) (“Michigan ranks last in a national study of state ethics and transparency laws and safeguards, . . . partly due to its weak public records law and an absence of laws requiring personal financial disclosures by lawmakers and top state officials.”).

## Secretary of State Reports: Minnesota

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Elected Secretary of State
- The Secretary of State controls all rules for administering elections except county rules where that rule-making authority has not been delegated to the Secretary of State. *See* Minn. Stat. § 201.221. The Office of Secretary of State does not conduct investigations or sanction offenders. Rather, general election issues are dealt with through the Office of Administrative Hearings, which hears complaints of violations, and issues rulings in a judicial-style administrative proceeding.

#### **II. Source of Conflict of Interest Laws**

- Statutory
  - Minn. Stat. § 10A.07 – Conflicts of Interest Law
    - Applies to all public officials including the Secretary of State. Disclosure of a conflict of interest is required when a public official, who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is no greater than on other members of the official's business classification, profession, or occupation.
  - Minn. Stat. § 211C.02 – Grounds for Recall of an Elected State Official
    - A state officer other than a judge may be subject to recall for serious malfeasance or nonfeasance during the term of office in the performance of the duties of the office or conviction during the term of office for a serious crime.
- Regulatory – Minnesota Campaign Finance and Public Disclosure Board has the authority to pursue enforcement actions and issue advisory opinions ([Link](#)).

- The Minnesota Campaign Finance and Public Disclosure Board, which operates in the executive branch of state government, monitors finance issues for state-level offices. The Board has six members, appointed by the Governor on a bi-partisan basis for staggered four-year terms. The appointments are confirmed by a three-fifths vote of the members of each house of the legislature.
- Case Law – No case law appears to bear directly on the state conflict of interest laws in their application to the Secretary of State.

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. See Minn. Stat., § 10A.01. (definition of a covered public officer).
  - The following executive branch officials (as well as legislators) are included in the definition of "public official" under the ethical practices laws: constitutional officers; commissioners, deputy commissioners, and assistant commissioners of state agencies; and members and chief administrative officers of state boards.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Yes, there is a limited duty to abstain in some circumstances, even when a conflict is disclosed. See Minn. Stat. § 10A.07(2):
  - (a) If the official is not a member of the legislature or of the governing body of a metropolitan governmental unit, the superior must assign the matter, if possible, to another employee who does not have a potential conflict of interest.
  - (b) If there is no immediate superior, the official must abstain, if possible, by assigning the matter to a subordinate for disposition or requesting the appointing authority to designate another to determine the matter. The official shall not chair a meeting, participate in any vote, or offer any motion or discussion on the matter giving rise to the potential conflict of interest.

### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- *Erlandson v. Kiffmeyer*, 659 N.W.2d 724 (Minn. 2003)
  - Three individuals (including the Chair of the Minnesota DFL Party) filed suit to challenge several of Secretary Kiffmeyer's ballot-

access decisions following the death of U.S. Senator Paul Wellstone in a plane crash, eleven days before the 2002 general election. The Minnesota Supreme Court issued a decision on October 31, 2002, ordering Secretary Kiffmeyer to mail replacement ballots to absentee voters “who had been mailed ballots before Senator Wellstone's death and who requested a replacement absentee ballot and supplemental ballot.” The court reasoned that the statute on which Secretary Kiffmeyer based her refusal to provide replacement ballots to absentee voters violated equal protection.

- *In re Candidacy of Independence Party Candidates v. Kiffmeyer*, 688 N.W.2d 854 (Minn. 2004)
  - Three Independence Party nominees who petitioned the court for an order compelling Secretary Kiffmeyer to place their names on the 2004 general election ballot. Secretary Kiffmeyer had refused to do so because her interpretation of the applicable statute was that none of the candidates had received the requisite minimum number of votes in the primary election. While sticking to her position throughout the litigation, the Secretary and her counsel, the Minnesota Attorney General, also acknowledged that no rational purpose was being served by Minnesota's primary threshold law--a circumstance noted by the court as “unusual.” As such, the Minnesota Supreme Court struck down the statute as violating the Independence Party candidates' “constitutional rights to vote and to associate for the advancement of political beliefs under the First and Fourteenth Amendments” and ordered Secretary Kiffmeyer to place the candidates on the 2004 general election ballot.
- *ACLU v. Kiffmeyer*, No. 04-CV-4653 (MJR/FLN), 2004 WL 2428690 (D. Minn. Oct. 28, 2004)
  - In 2004, the American Civil Liberties Union, the National Congress of American Indians, and several individuals sued Secretary Kiffmeyer to compel her to accept photographic tribal identification cards as proof of identity and residency for the purpose of voter registration on election day in a case named.

Secretary Kiffmeyer had argued that Minnesota law prohibited the use of such cards to show identity and residence when the holder did not actually reside on their tribal reservation. The plaintiffs, however, cited the Help America Vote Act, [\[redacted\]](#) which explicitly allows an individual to present a “government document that shows the name and address of the voter.” Five days before the 2004 general election, Chief Judge James M. Rosenbaum of the U.S. District Court for Minnesota found that the statute on which Secretary Kiffmeyer relied violated equal protection. Furthermore, he issued a temporary restraining order to compel Secretary Kiffmeyer to accept identification cards issued by federally-recognized American Indian tribes as sufficient proof of identity and residency (or with a current utility bill if no address or current address is shown on the card) for voter registration “without regard to whether the tribal members live on or off their tribal reservations.”

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of such a rule. Searched for rules applicable to state treasurer, state auditor. Same general rules relating to conflicts of interest.

### **VII. Public Perception/Recent Coverage**

- Bierschbach, Briana, “Minnesota has a reputation for good government. So why are the state’s conflict of interest laws so weak?” Minnesota Post, February 8, 2016. ([Link](#))
- Nelson, Katie, “Minnesota Gets D- Grade in 2015 State Integrity Investigation,” The Center for Public Integrity, November 9, 2015. ([Link](#))

## Secretary of State Reports: Mississippi

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- State Board of Election Commissioners (“the Board”), consisting of:
  - The Governor, elected, who serves as chair;
  - The Secretary of State, elected; (Allowed by Mississippi Constitution. Miss. CONST. art. V, § 133.)
  - The Attorney General
    - Note, any two members of the Board may perform the duties required of the Board. *See* Miss. Code Ann. § 23-15-211(1).
- Miss. Code Ann. § 23-15-211(2): “The duties of the board shall include, but not be limited to, the following:
  - (a) Ruling on a candidate’s qualifications to run for statewide, Supreme Court, Court of Appeals, congressional district, circuit and chancery court district, and other state district offices;
  - (b) Approving the state ballot for the offices stated in paragraph (a) . . . ;
  - (c) Removing the names of candidates from the ballot for failure to comply with campaign finance filing requirements for the offices stated in paragraph (a) of this subsection (2) in previous election cycles; and
  - (d) Adopting any administrative rules and regulations as are necessary to carry out the statutory duties of the board.”
- For purposes of the National Voter Registration Act of 1993, the Secretary of State designated as “Mississippi’s chief election officer” which has the “power and duty to gather sufficient information concerning voting in elections in this state. The Secretary of State shall gather information on voter participation and submit an annual report to the Legislature, the Governor, the Attorney General and the public.” Miss. Code Ann. § 23-15-211.1(1)-(2).
  - Additional responsibilities of the Secretary of State pertaining to elections include training elections officials, collecting campaign finance and lobbying reports, managing the statewide voter registry, collecting election returns, and assisting local election officials in carrying out their election related responsibilities. MS.GOV – “Elections and Voting.”

## II. Source of Conflict of Interest Laws

- Constitution – MISS. CONST. art. IV, § 109. Interest of public officer in contracts.
  - “No public officer or member of the legislature shall be interested, directly or indirectly, in any contract with the state, or any district, county, city, or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member, during the term for which he shall have been chosen, or within one year after the expiration of such term.”
- Statutory – Mississippi has a Chapter of its Code titled “Ethics in Government.” See Miss. Code Ann. § 25-4.
  - Requires “public officials and employees be independent and impartial; . . . that public office not be used for private gain other than the remuneration provided by law; that there be public confidence in the integrity of government; and that public officials be assisted in determinations of conflicts of interest.” Miss. Code Ann. § 25-4-1.
    - See *also* MISS. CODE ANN. § 25-4-105 (prohibiting public official from using his or her “official position to obtain, or attempt to obtain, pecuniary benefit for himself, other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he is associated.”).
    - The Ethics Commission is primarily concerned with *economic* conflicts of interest. See Miss. Code Ann. § 25-4-17 (providing duties of commission); See, e.g., *Frazier v. State*, 504 So.2d 675 (Miss. 1987) (holding members of legislature who voted for appropriations funding their respective employment contracts with public school district and state university were in violation of constitutional prohibition regarding economic conflicts of interest).

- “[D]eclares that elective and public office and employment is a public trust and any effort to realize personal gain through official conduct, other than as provided by law, or as a natural consequence of the employment or position, is a violation of that trust. Therefore, public servants shall endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of this trust and which will not reflect unfavorably upon the state and local governments.” Miss. Code Ann. § 25-4-101.
- Statutory – Specific election provisions include:
  - Prohibition with respect to state public officers “who directly or indirectly has the control, . . . over the expenditure of any public funds in this state shall state, suggest or intimate, publicly or privately, or in any manner or form, that any such expenditure shall depend upon or be influenced by the vote of any person, group of persons, or community or group of communities, whether for or against any candidate or group of candidates at any election.” Miss. Code Ann. § 23-15-871(5).

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. All members of the Board fall under definition of “public servant” as elected officials. See Miss. Code Ann. 25-4-103.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- No evidence of duty to abstain rule in Mississippi Code – the word does not appear to be present in the relevant sections of the Code.

### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- Does not appear that there are any specific conflict of interest court cases or rulings pertaining to elections or election officers. Instead the most relevant cases relate to appointment (see *Greene* directly below) and economic conflicts of interest (see *Frazier supra*)
  - *City of Jackson v. Greene*, 869 So.2d 1020 (Miss. 2004) (rejecting challenge brought by parents of students in public school district alleging city councilmembers should have recused themselves

from council vote that confirmed mayor's appointment of two members to district's board of trustees because the parents did not fall under the Ethics in Government statutes as "persons aggrieved").

- No Mississippi Ethics Opinions precisely involve an election officer conflict of interest for their own election, but several do raise issues of impartiality of state officials in state elections:
  - *Ethics Opinion 17-023-E*: "A county election commissioner may not participate in administering and certifying a special election for constable in which his or her son is a candidate on the ballot. Section 25-4-105(1), Miss. Code of 1972, prohibits the election commissioner from using his or her position to obtain any monetary benefit for his or her son, and Section 25-4-101 will require the election commissioner to fully recuse himself or herself from participating in the special election for constable so long as his or her son remains a candidate."
  - *Ethics Opinion 16-081-E*: "A city employee may become a candidate for the board of aldermen. However, the employee should only campaign after hours or while taking personal leave and must refrain from using city equipment, supplies, and resources for his or her campaign to comply with the restrictions in Section 25-4-105(1), Miss. Code of 1972. If elected, the requestor must resign the employment position before taking office as alderman to comply with Section 109, Miss. Const. of 1890, and Section 25-4-105(2)."
  - *Ethics Opinion 07-062-E*: "A candidate's brother-in-law or parent may not serve as a poll worker in a precinct in which the candidate appears on the ballot. Section 25-4-105(1), Miss. Code of 1972, prohibits a public servant like a poll worker from using his or her position in government to obtain pecuniary benefit for a "spouse, child or parent." A candidate's relative may not serve as a poll worker since such a situation may lead to suspicion among the public about the impartiality of the election process, which should be avoided pursuant to Section 25-4-101, Miss. Code of 1972."

## **VI. Historical Allegations of Partisan Interference by Election Officer in Election Administration?**

- No evidence of historical allegations in past twenty years of partisan interference by election officers in administering election.

## **VII. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of an independent rule. Same general rule relating to conflicts of interest for all “public servants,” which includes all elected officials, as stated above.

## **VIII. Public Perception/Recent Coverage**

- News Article, “*Hosemann Should 'Resign' His Office, Democratic Opponent Demands*,” Jackson Free Press, Jan. 10, 2019 (political opponent for lieutenant governor position asserts sitting Secretary of State should resign while he runs for another office, drawing parallels to recent Georgia governor election).
- News Article, “Legal fight over Jim Crow-era law upends Mississippi governor race,” The Hill, Jun. 9, 2019 (ongoing lawsuit concerning Mississippi Constitution election provision, which requires candidate running for governor to win both a majority of the popular vote and a majority of the vote in more than half of the state’s legislative districts, presents potential conflict of interest as current Attorney General, who would normally defend the lawsuit, is a candidate for Governor and would likely benefit from overruling current law)
  - Additional background on the lawsuit available at: <https://www.courthousenews.com/black-voters-call-mississippi-election-system-racist/>.

## Secretary of State Reports: Missouri

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Secretary of State, elected. Mandated by Missouri Constitution.
- Supervises state and local elections. Certifies statewide candidates and ballot questions. Certifies election results. The Secretary is responsible for deciding which candidates qualify for the ballot and tabulating signatures collected for ballot access initiatives. Election returns are overseen by a board of two disinterested state judges and three board of state canvassers. *See* Article IV § 18.

#### **II. Source of Conflict of Interest Laws**

- *Statutory* – Missouri has a codified statute of provision governing ethics in government. Mo. Rev. Stat. § 105.450-498 (2016). These mostly govern nepotism, financial gain, influencing an agency's vote or participating in an agency's vote when she has supervisory power and the like. § 105.542-454.
  - None of the conflict of interest provisions expressly implicate election oversight authority.
- *Regulatory* – The Missouri Ethics Commission has the authority to promulgate regulations and issue advisory opinions, and may "establish by rule a permanent select committee on ethics and shall adopt the rules by which the manner and method of investigations and disciplinary proceedings and actions shall be conducted." § 105.496.
  - Secretary of state may also promulgate rules, receive and dismiss complaints, and provide remedy for substantiated violations of the Help American Vote act of 2002. *See* § 28.035 (2016).
- *Case law* – Missouri courts have previously addressed the conflict of interest standards applicable to the state's attorney general, but do not appear to have addressed the question in the context of the secretary of state. *See, e.g., Kinder v. Nixon*, CN 56892 2000 WL 684860 (Mo. Cir. 2000) (discussing an attorney general's responsibility to not contract with himself on behalf of the state).

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. See MO Rev. Stat. § 105.470 (2016) (definition of a covered public official).
  - any member or member-elect of the general assembly, judge or judicial officer, or any other person holding an elective office of state government or any agency head, department director or division director of state government or any member of any state board or commission and any designated decision-making public servant designated by persons described in this subdivision

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Yes, there is a limited duty to abstain in some circumstances, even when a conflict is disclosed.
  - See § 105.452(1) (prohibition on conflict of interest prevents public officials from acting “by reason of any payment, offer to pay, promise to pay, or receipt of anything of actual pecuniary value paid or payable, or received or receivable, to himself or any third person, including any gift or campaign contribution, made or received in relationship to or as a condition of the performance of an official act, other than compensation to be paid by the state or political subdivision”)
- *See also* Missouri Commission on Ethics, Conflict of Interest for Elected and Public Officials (March 2018).
  - In addition to disclosure, a public officer must abstain from voting on or advocating the passage or failure of a matter with respect to which the independence of judgment of a reasonable person in the public officer’s situation would be materially affected by:
    - (a) the public officer’s acceptance of a gift or loan;
    - (b) the public officer’s significant pecuniary interest; or
    - (c) the public officer’s commitment in a private capacity to the interests of another person.

### **V. Specific Election Officer Conflict of Interest Rules?**

- No evidence of such a rule.

### **VI. Historical Allegations of Partisan Interference by Election Officer in Election Administration?**

- In *Priorities USA v. State*, the plaintiff challenged the constitutionality of HB 1631 and requested a permanent injunction of its enforcement. No. 18AC-CC00226 2018 WL 6031529 (Mo. Cir. 2018). The law required persons to present a photo ID in order to vote, or to sign an affidavit on their provisional ballot if they did not do so. *Id.* at \*1. The secretary of state also issued materials which represented that a photo ID card was required to vote. *Id.* The Plaintiff alleged partisan animus behind the law. The court enjoined both the affidavit requirement and the dissemination of materials representing a photo ID's requirement. *Id.* at 4.

### **VII. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of such a rule.

### **VIII. Public Perception/Recent Coverage**

- *Lobbyist gift ban mulled after audit of Missouri Senate*, Jason Hancock (*Kansas City Star* Sept. 11, 2016) (discussing the prevalence of lobbyist money in politics).
- *Missouri Judge Blocks Parts of State Voter ID Law*, Emily Sullivan (October 10, 2018) (discussing voter ID law above).

## Secretary of State Reports: Montana

### Election Reformers Network

#### **I. Election Officer- Background and Responsibilities**

- **Secretary of State**, an elected position prescribed by the Montana Constitution, Article VI.
  - A complete list of the duties and functions of the Secretary of State is outlined in Title 2, Chapter 15, Part 4, of the Montana Code Annotated (2-15-401 MCA).
    - 2-15-401(f) states the Secretary shall “certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor.”
  - The role of the Secretary of State in elections is further described in Title 13, Chapter 1, part 2, of the Montana Code Annotated (See 13-1-201 – 210).
- “The secretary of state is the chief election officer of this state, and it is the secretary of state's responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in Title 13, chapter 35, 36, or 37.” (13-1-201).
  - Through the role of chief election officer, the Secretary of State:
    - Prepares and provides rules governing elections, including instructions and forms. Evaluates voting data, security, and accessibility. (See 13-1-202).
    - Trains and assists election administrators. (See 13-1-203).
    - Keeps records of elections, including: precinct lists and boundaries, registration information, and voting history. (See 13-1-204).
    - Establishing standardized forms for voter registration and ballot requests. (See 13-1-210).
- The state also has a **Commissioner of Political Practices (COPP)**, which in part oversees campaign practices and campaign finance disclosure. (See Montana Code Annotated 2017, Title 13, Chapter 37, Part 1).

- The COPP is appointed by the governor from a list of 2-5 recommended names, submitted by four member nominating committee (comprised of the speaker of the house, the president of the senate, and the minority leader of both houses). The governor's nomination is then subject to confirmation by a majority of the senate. (*See* 13-37-102).
- The COPP is also responsible for investigating all alleged violations of election laws outlined in Chapter 35 of the Montana Code. (*See* Investigative powers and duties- 13-37-111).
  - When a violation is found, the COPP may issue orders of non-compliance. (*See* 13-37-115 & 121).
  - The Montana Code states that “A person charged with performance of any duty under the provisions of the election laws of this state is guilty of official misconduct... whenever the person (1) knowingly neglects or refuses to perform that duty; or (2) knowingly and fraudulently acts, in the person's official capacity, in contravention or violation of any provision of the election laws.” (13-35-204).
  - The COPP also examines the reports filed by each campaign to determine whether the reports and statements are in compliance. (*See* 13-37-123). The Commission may determine that those not in compliance may not be listed on the ballot (*see* 13-37-126), or post-election may withhold certificates of election/nomination. (*See* 13-37-127).
- The COPP has authority to adopt rules in order to carry out provisions of Chapter 35. (*See* 13-37-114).

## II. Source of Conflict of Interests Laws

- *Constitutional* - The Montana Constitution, Article XIII, Section 4 states that the “legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.”
- *Statutory* - The Montana Code, Title 2, Chapter 2, Part 1 sets forth “a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana.” *See* Montana's Code of Ethics and Administrative Rules.
  - 2-2-105 governs ethics requirements for public officers and employees. Part 2-2-105(2) provides “a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.” 2-2-105(5)

further provides “[a] public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking.”

- This section imposes additional restrictions on public employees, stating that:

When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action. (2-2-105(4)).

- 2-2-121 governs rules of conduct for public officers and employees. Of note, 2-2-121(3) states:

[A] public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is: (i) authorized by law; or (ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

- 2-2-131. Disclosure: “A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict.”
- In addition to the statutes governing ethics of state officers and public employees, the COPP is restricted by ethical rules specific to the office (*see* 13-37-108).

- The COPP while holding office cannot:

(1) hold another position of public trust or engage in any other occupation or business if the position of public trust or the other occupation or business interferes with or is inconsistent with the commissioner executing the duties of the commissioner's office;

- (2) engage in any other occupation or business during the business hours of the commissioner's office unless the commissioner is in a leave status from the office;
  - (3) participate in any political activity or in a political campaign;
  - (4) make a contribution to a candidate or political committee or for or against a ballot issue or engage in any activity that is primarily intended to support or oppose a candidate, political committee, or ballot issue;
  - (5) attend an event that is held for the purpose of raising funds for or against a candidate, political committee, or ballot issue;
  - (6) participate in a matter pertaining to the commissioner's office that:
    - (a) is a conflict of interest or results in the appearance of a conflict of interest between public duty and private interest pursuant to Title 2, chapter 2; or
    - (b) involves a relative of the commissioner.
- *Regulatory* - The Montana Commissioner of Political Practices (“COPP”) is charged with monitoring and enforcing ethical standards for legislators, public officers, and state employees. (See “Ethics Page” here).
  - Individuals may submit complaints to COPP and, if accepted, the complaint proceeds to an informal proceeding where complainant and respondent may collect and present evidence. (See Administrative Rules of Montana 44.10.604 through 44.10.613).
  - The docket of formal complaints can be found here.
  - In May of 2019, the Ninth Court of Appeals held that Montana ethics complaints against elected officials are public information. (See *Tschida v. Motl* opinion here).
- *Case Law* -
  - *Doty v. Montana Com’r of Political Practices*, 340 Mont. 276 (2007) (holding that the “[o]bligation of Commissioner of Political Practices to enforce Montana's election laws, and Montana's campaign finance and practices statutes, is discretionary”).
  - *Common Cause of Montana v. Argenbright*, 276 Mont. 382 (1996) (holding that “Commissioner of Political Practices has discretion to deny petition for rulemaking so far as petition pertains to proposed rule, but Commissioner does not have discretion to summarily deny petition which seeks to invoke Commissioner's legal obligation to engage in mandatory rulemaking.”).

- *State ex rel. Holt v. District Court of First Judicial Dist. In and for Lewis and Clark County*, 103 Mont. 438 (1936) (“Nonjudicial officers are not disqualified for bias or prejudice, though decision in question may call for exercise of judgment and discretion, in absence of contrary statutory provision.”).
- Still good law, only distinguished by *State v. DeMers*, 192 Mont. 367, 369 (1981), but not for its main principle cited above.
- *State ex rel. Grant v. Eaton*, 114 Mont. 199, 133 (1943) (“Public officers, in other words, are but the servants of the people, and not their rulers. They are amenable to the rule which forbids an agent or trustee to place himself in such an attitude toward his principal or cestui que trust as to have his interest conflict with his duty.”) (citing 42 Am.Jur., sec. 8, p. 885.). There has been no negative treatment reported of this case.

### III. Conflict of Interest Applicability to Elections Officer

- Yes, Montana Ann. Stat. 2-2-102(8)(a) defines public officer as including “any state officer and any elected officer of a local government.”

### IV. Duty to Abstain, Regardless of Disclosure?

- The standards of conduct mention nothing about a duty to abstain or recuse when a public official discloses a conflict of interest.
- Montana Code Title 13, Chapter 37, Part 1 provides rules around recusal for the COPP, which states that:

(3) If the commissioner determines that considering a matter would give rise to the appearance of impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

(4) The commissioner is recused from participating in any decision in which the commissioner is accused of violating 13-37-108 or any other ethical standard.

(5) (a) If a campaign finance or ethics complaint is filed in the office of the commissioner against the commissioner, a supervisor within the commissioner's office shall within 10 business days forward the complaint to the attorney general, who shall within 45 days appoint a deputy in the case of a finance complaint or a deputy and a hearings officer in the case of an ethics complaint to make a determination in the matter of the complaint. The attorney general shall, to the extent practicable, ensure that there is no conflict of interest in the appointment of the deputy or hearings officer or in the provision of any legal advice to the office of the commissioner.

(b) A deputy appointed pursuant to this subsection must, in addition to complying with the requirements of subsection (6)(b), be an attorney licensed to practice law in Montana who is engaged in the private practice of law and who has liability insurance applicable to the purposes for which the deputy is appointed.

(c) If a complaint is filed against the commissioner, another employee in the office of the commissioner may not provide the commissioner with any information or documents concerning a complaint against the commissioner beyond that information or those documents normally provided to persons in matters before the commissioner.

(6) (a) If the commissioner is recused pursuant to this section, the commissioner shall, except as provided in subsection (5), appoint a deputy, subject to subsection (6)(b).

(b) The deputy:

- (i) may not be an employee of the office of the commissioner;
- (ii) must have the same qualifications as specified for the commissioner in 13-37-107;
- (iii) with respect to only the specific matter from which the commissioner is recused, has the same authority, duties, and responsibilities as the commissioner would have absent the recusal; and
- (iv) may not exercise any powers of the office that are not specifically related to the matter for which the deputy is appointed.

### **V. Specific Election Conflict of Interest Rules?**

- Yes, see 13-37-108 above governing the COPP.
- Not specifically conflict of interest, but Montana Code 13-35-235 makes it a misdemeanor to purposely mislead about election information or proceedings.
- Montana Code 2-2-121(4)(a) states, in regards to state officials and employees, that:

[a] candidate, as defined in 13-1-101(8)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

- No specific election conflict of interest rules for the Secretary of State.

## **VI. Historical Allegations of Partisan Interference by Election Officer in Election Administration?**

- In 2018, the Montana Democratic Party sued the Secretary of State, Corey Stapleton, claiming he improperly certified the Green Party on the June 2018 primary ballot. Some have speculated that the Secretary of State, a Republican, allowed the Green Party on the ballot and/or defended against this lawsuit because of the possibility that the Green Party would dilute the votes of the Democratic Party, making it more likely that Republicans would win. This speculation was in part fueled by Stapleton hiring an outside attorney (who happened to be the wife of a political consultant and Stapleton donor), instead of using a state attorney. Stapleton said this was because, “this has never been a legal case, it's always been a political case,” and he wanted someone he could trust in the courtroom.
- Corey Stapleton opposed a state bill that would allow all-mail in election voting. He testified in committee hearing against the bill, citing “populism” in the three states that have implemented similar provisions (Oregon, Washington, and Colorado). Other opponents of the bill argued that voting system threatens “the long-term viability of our Republican Party.”
- Local opinion pieces have speculated that currently Secretary of State Corey Stapleton’s high number of election errors could be intentional in order to “malign elections.”
- The former COPP Jonathan Motl faced allegations of partisanship from Republicans. During his four year tenure (the longest of any COPP) Motl filed civil suits alleging campaign finance violations against nine Republican candidates in the 2010 election. Motl denied the allegations, stating that he has enforced more violations against Democrats than Republicans.
  - The same article also mentions that allegations of bias are commonly directed at the office, and that turnover of COPP is high.
  - An attorney for one of the politicians sued stated: “‘Commissioner Motl is coordinating with the Governors office secretly,’ Rhoades said. ‘One of the top officials in his administration, Jim Molloy, has been privy to communication with Motl's office regarding the new regulations that have been implemented. That was disclosed only through Freedom of Information Act disclosures. That shows that either he was also consulting with top republicans or he is not independent and of course there is not any evidence that he ever consulted with any Republicans.’” The lawmaker was found guilty by a jury of violating campaign finance laws.
- Former Commissioner Motl was sued in 2019 by a former Republican State Representative, alleging that Motl illegally used public resources to oppose the 2016 reelection of Rep. Brad Tschida.

- Other allegations of partisanship against COPP Motl:
  - "Motl is engaged in the same type of abuse as his Wisconsin counterparts in the John Doe: Selective and abusive attacks on conservatives designed to smear and suppress political activity that he does not like," says Eric O'Keefe, director of the Wisconsin Club for Growth (who was also at one point under investigation).
  - A former COPP commissioner, Ed Argenbright, wrote an op-ed accusing Motl of using the COPP office "as a political weapon against hard-working legislators that try to do right for the people of Montana."

## **VII. Conflict of Interest Rules for Other Constitutional Officers?**

- None outside of The Montana Code, Title 2, Chapter 2.

## **VIII. Public Perception/Recent Coverage**

- The Center for Public Integrity gave Montana a D+ in its 2012 state integrity investigation, citing in part that its "relatively strong ethics laws but weak disclosure and enforcement make it difficult to assess the ethical conduct of state officials and employees."
- Corey Stapleton, the current Secretary of State, sent out a press release announcing that he is running for governor in 2020 on official Secretary of State office letterhead. The COPP fined Stapleton \$4000 for violating state ethics laws.
- Stapleton was questioned for granting a \$265,000 printing contract to fix errors in a state voter pamphlet. The contract was later found to not be the lowest bid and was awarded to a Stapleton political ally and GOP consultant, Jake Eaton. Stapleton at the hearing said he chose the least expensive and quickest option considering the situation.
- Stapleton was criticized for creating a video which instructed Montana absentee voters to sign their ballots, a move that would lead their ballot to be rejected under MCA 13-15-201. (See video [here](#)).
- In 2017, Stapleton asserted, without much evidence, that voter fraud was an issue in Montana's May 2017 Special Congressional elections. County officials, the media, and Montana's Legislature asked for proof, all of which was seemingly ignored.

## Secretary of State Reports: Nebraska

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Elected Secretary of State
- The Secretary of State serves as Nebraska’s chief election officer. Working with election officials in the state’s counties, the Elections Division of the Secretary of State’s Office oversees election law, the conduct of elections in the state, election tabulation equipment and the state voter registration system. The Secretary of State is empowered to enforce the Election Act and make interpretations of the Election Act in conjunction with the Attorney General. *See* Neb. Rev. Stat. § 32-202.

#### **II. Source of Conflict of Interest Laws**

- Statutory
  - Neb. Rev. Stat. § 49-1499.02 – Conflicts of Interest Law
    - Applies to all public officials including the Secretary of State. Applies when a public official would be required take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her. Requires the official to submit a written statement (form link) to the Nebraska Accountability and Disclosure Commission and to his or her immediate superior describing the conflict of interest and the matter requiring action or decision.
    - The conflicts of interest law does not prevent an official from making or participating in the making of a governmental decision to the extent that the individual’s participation is legally required for the action or decision to be made, but the official still must report the occurrence to the commission.
  - Neb. Rev. Stat. § 49-14,101.02 – Use of Public Resources

- A public official may not use public resources (personnel, property, resources, or funds under the official care and control of a public official or public employee) for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.
- A court will consider the intent behind the expenditure of public resources. See *Nebraska Account. & Disclosure Comm. v. Skinner*, 853 N.W.2d 1 (Neb. 2014). Public resources are used “for the purpose of campaigning” when their use is intended to influence public support for or against a particular political candidate, ticket, or measure. *Id.*
- Neb. Rev. Stat. § 49-1499.05 – Abuse of Official Position
  - An official or employee shall not abuse his or her official position. Abuse of an official position includes, **but is not limited to**, employing an immediate family member (1) who is not qualified for and able to perform the duties of the position, (2) for any unreasonably high salary, or (3) who is not required to perform the duties of the position. (emphasis added).
- Regulatory – The Nebraska Accountability and Disclosure Commission has authority to pursue enforcement actions and issue advisory opinions (Link).
  - The Nebraska Accountability and Disclosure Commission administers and enforces Nebraska’s campaign finance laws, its lobbying laws, and its conflict of interest laws. The Commission has nine members, one of whom is the Secretary of State.
  - Four members of the Commission are appointed by the Governor, and four members of the Commission are appointed by the Secretary of State. The Governor appoints two Commissioners from lists of names provided by the legislature and two Commissioners from the citizenry at large. The Secretary of State appoints one Commissioner from a list of names provided by the

state Democratic Party chairperson and one Commissioner from a list of names provided by the state Republican party chairperson. The Secretary of State also appoints two Commissioners from the citizenry at large. No more than four of the eight appointed Commissioners may be from the same political party, and one Commissioner must be a registered independent. Commissioners serve staggered six year terms. Appointments of Commissioners are subject to approval by the legislature.

- If the Commission finds a violation, it may issue an order requiring the violator to do one or more of the following: (1) Cease and desist from the violation; (2) File any report, statement, or other information as required; (3) Pay a civil penalty of not more than two thousand dollars for each violation of the act, rule, or regulation; or (4) Pay the costs of the hearing in a contested case if the violator did not appear at the hearing personally or by counsel.
- At any time after the commencement of a preliminary investigation, the commission may refer the matter of a possible criminal violation of the Nebraska Political Accountability and Disclosure Act to the Attorney General for consideration of criminal prosecution. The Attorney General decides whether to bring criminal charges.
- Citizen Complaint: An individual who believes there has been a violation of the Nebraska Political Accountability and Disclosure Act may file a formal complaint with the Commission. Anonymous complaints are not accepted.
- Current Disclosures – Nebraska Secretary of State Bob Evnen has submitted various disclosures to the Nebraska Accountability and Disclosure Commission.
  - Statements of Financial Interest submitted by Bob Evnen ([Link](#)).
  - Campaign Finance Statements submitted by Bob Evnen's campaign for Secretary of State ([Link](#)).
  - Potential Conflict of Interest Statement submitted by Bob Evnen when he was a Member of the State Board of Education ([Link](#)).

- Case Law – No case law appears to bear directly on the state conflict of interest laws in their application to the Secretary of State.

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. See Neb. Rev. Stat. § 49-1436. (definition of a covered public officer).
  - Executive branch officials are subject to the conflicts of interest provisions of the Nebraska Political Accountability and Disclosure Act. Executive branch official means an official holding a state executive office as provided in Article IV, Constitution of Nebraska, including the Secretary of State.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Yes, there is a duty to abstain in some circumstances, even when a conflict is disclosed. See Neb. Rev. Stat. § 49-1499.02.
  - A public official must take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:
    - (a) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; **and**
    - (b) Deliver a copy of the statement to the commission and to his or her immediate superior, if any, who shall assign the matter to another.
  - If the immediate superior does not assign the matter to another **or** if there is no immediate superior, the official or employee shall take such action as the commission shall advise or prescribe to remove himself or herself from influence over the action or decision on the matter.

### **V. Specific Election Officer Conflict of Interest Rules?**

- No evidence of rules directly applicable to the Secretary of State.

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of rules specific to other officers. Same general rules relating to conflicts of interest.

## VII. Public Perception/Recent Coverage

- Kipper, John, “Voter ID laws in spotlight in Secretary of State race,” 3 News Now, October 22, 2018. (Link).
- Hansen, Matthew, “In one Nebraska county, everybody voted by mail. Turnout skyrocketed,” Omaha World-Herald, October 21, 2018. (Link).
- Liewer, Steve, “Two candidates for Secretary of State offer sharply different views of voter ID,” Omaha World-Herald, September 3, 2018. (Link).
- Nitcher, Emily, “Fremont mayor fined \$2,250 for not disclosing financial interests in city contracts,” Omaha World-Herald, June 2, 2018. (Link).
- Thompson, Pamela, “Nebraska Secretary of State Counts Election Security as Highest Priority,” NET, April 17, 2018. (Link).
- Knapp, Fred, “Nebraska elections head: confidence lost in Trump voting commission,” NET, January 4, 2018. (Link).
- Duggan, Joe, “Seven counties in Nebraska, 28 in Iowa have 'bloated voter rolls,' group says,” Omaha World-Herald, September 28, 2017. (Link).
- Jordan, Joe, “State’s Own Numbers Find Nebraska Vote Fraud Rare,” Sandhills Express, July 5, 2017. (Link).
- Duggan, Joe, “Lincoln attorney Bob Evnen to run for Nebraska secretary of state, says he’d push for voter ID law,” Omaha World-Herald, April 18, 2017. (Link).
- Hammel, Paul, “Nebraska secretary of state probes state Democratic Party's inclusion of voter registration info in refugee packages,” Omaha World-Herald, March 29, 2017. (Link).
- Gould, Jack, “Kintner case shows a broader need for ethics reform,” Omaha World-Herald, August 18, 2016. (Link).
- Smith, Mitch, “Nebraska Legislature Rejects Winner-Take-All Electoral Vote System,” New York Times, April 12, 2016. (Link).
- Moser, Dan, “Nebraska Gets D+ Grade in 2015 State Integrity Investigation,” The Center for Public Integrity, November 9, 2015. (Link).
- Kelly, Bill, “History shows Nebraska ballot campaigns have big passion, low success,” NET, August 27, 2015. (Link).

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- Pluhacek, Zach, “Ruling opens door for more petition drives in Nebraska,” Lincoln Journal Star, November 10, 2014. (Link).
- Pluhacek, Zach, “Voter turnout: Gale 'hopeful' it will reach 50 percent, still lower than '06,” Lincoln Journal Star, October 29, 2014. (Link).
- Ristau, Reece, “Nebraska sees increase in voter registration,” The Daily Nebraskan, September 11, 2014. (Link).
- O’Hanlon, Kevin, “Voter ID bill is dead for this year,” Lincoln Journal Star, March 28, 2012. (Link).
- O’Hanlon, Kevin, “Opponents assail voter ID bill,” Lincoln Journal Star, February 21, 2012. (Link).

## Secretary of State Reports: Nevada

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Secretary of State, elected. Mandated by Nevada Constitution.
- Supervises state and local elections. Certifies statewide candidates and ballot questions. Certifies election results. The Secretary is responsible for deciding which candidates qualify for the ballot and tabulating signatures collected for ballot access initiatives. See Nevada Revised Statutes (“NRS”) Ch. 293 (“Elections” (Link)).

#### **II. Source of Conflict of Interest Laws**

- *Statutory* – Nevada has a codified statute of provision governing ethics in government. NRS Ch. 281A (“Ethics in Government” (Link)). The statute creates a Commission on Ethics and sets out a code of ethical standards.
  - None of the conflict of interest provisions specifically apply to the Secretary of State or implicate election oversight authority.
- *Regulatory* – The Nevada Ethics Commission has the authority to promulgate regulations and issue advisory opinions, and may “has jurisdiction to investigate and take appropriate action regarding an alleged violation of this chapter by a public officer or employee or former public officer or employee in any proceeding commenced by an ethics complaint.” NRS §281A.280(1). (Link).
  - In 2002, the Commission released an opinion a complaint that an incumbent secretary of state “impeded the success” of a challenger to that office by “making a false statement of fact” in violation of a Nevada law making it illegal to make false statements of fact about a political candidate in an election. See *In re: Heller*, Nev. Comm. Ethics, Op. No. 02-19 (2002) (Link). The Commission ruled that no law had been violated, and its analysis focused on the specific Nevada law at issue.
- *Case law* – Nevada courts have previously addressed the conflict of interest standards applicable to the state’s attorney general, but do not

appear to have addressed the question in the context of the secretary of state. See, e.g., *Whitehead v. Nevada Comm'n on Judicial Discipline*, 878 P.2d 913, 919 (Nev. 1994) (examining whether “the involvement of the Attorney General in the [judicial] disciplinary process creates hopeless conflicts of interest and roles and that such involvement creates an untoward and undesirable opportunity for undue influence upon the judicial”].

### III. Conflict of Interest Applicability to Elections Officer

- Yes. See NRS 281A.160(1) (definition of a covered public officer).

“Public officer” means a person who is:

(a) Elected or appointed to a position which:

(1) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; .

..

### IV. Duty to Abstain, Regardless of Disclosure?

- Yes, there is a limited duty to abstain in some circumstances, even when a conflict is disclosed. See NRS 281A.420(3):

Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer’s situation would be materially affected by:

(a) The public officer’s acceptance of a gift or loan;

(b) The public officer’s significant pecuniary interest; or

(c) The public officer’s commitment in a private capacity to the interests of another person.

- *See also* Nevada Commission on Ethics, *Ethics in Government Manual for Nevada Public Officers and Public Employees* 18 (July 2014):

In addition to disclosure, a public officer must abstain from voting on or advocating the passage or failure of a matter with respect to which the

independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

- (a) the public officer's acceptance of a gift or loan;
- (b) the public officer's significant pecuniary interest; or
- (c) the public officer's commitment in a private capacity to the interests of another person.

**V. Specific Election Officer Conflict of Interest Rules?**

- No evidence of such a rule.

**VI. Historical Allegations of Partisan Interference by Election Officer in Election Administration?**

- No additional evidence of historical allegations of interference, beyond the aforementioned 2002 episode.

**VII. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of such a rule. Searched for rules applicable to state treasurer and state controller. There are some rules narrowly applicable to the kinds of investments the treasurer can authorize, but none that govern general conduct in office or election administration.

**VIII. Public Perception/Recent Coverage**

- Editorial, "*Conflict of interest laws poorly designed in Nevada: Our view*," Reno Gazette Journal, Apr. 24, 2017 ([Link](#)) (editorial advocating for more stringent conflict of interest rules for state legislators).

## Secretary of State Reports: New Mexico

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- The Secretary of State is the chief election officer of New Mexico. NM St. § 1-2-1. The secretary is a member of the executive branch and is elected to a 4-year term. NM Const. Art. V, Sec. 1.
- General duties. NM Stat. § 1-2-2.
  - Supervise all elections. Canvass the results of the elections (along with governor and chief justice) and declare winners.
  - Report potential violations of election code to attorney general or a district attorney
  - Conduct investigations of election law violations in conjunction with attorney general or district attorneys
  - Advise county clerks, boards of county commissioners and boards of registration on how to perform their duties
  - Adjudicate complaints alleging violations of the provisions of Title III of the federal Help America Vote Act of 2002. *See* N.M. Administrative Code 1.10.18 for more information on how complaints alleging a HAVA violation are initiated and investigated by the secretary of state.

#### **II. Source of Conflict of Interest Laws**

- *Statutory*
  - The Secretary of State is a “public officer” under NM Stat. § 10-16-2(I). (Chapter 10, Art. 16 of NM Code is also known as the Government Conduct Act.)
  - NM Stat. § 10-16-3 is the state’s conflict of interest law governing public officials and state legislators
    - It provides that a legislator or public officer or employee shall treat government position as a “public trust” and may use his or her powers only to advance the public interest and not to obtain personal benefits or pursue private interests. NM Stat. § 10-16-3(A).

- It also states that “full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct.” It further states that at all times, “reasonable efforts” shall be made to avoid undue influence and abuse of office in public service. NM Stat. § 10-16-3(C).
- It also provides that no legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise that is conditioned upon an official act. Any person who knowingly and willfully does so is guilty of a fourth degree felony and will be sentenced pursuant to the guidelines in NM Stat. § 31-18-15.
- NM Stat. § 10-16-4 also prohibits any “official act” undertaken “for the primary purpose of directly enhancing the public officer’s . . . financial interest or financial position.”
- A 2011 amendment permitted public officers to engage in official acts if the financial benefit is “proportionally less than the benefit to the general public.” NM Stat. § 10-16-4(B).
- *Regulatory*
  - New Mexico voters approved New Mexico Constitutional Amendment 2, a ballot initiative, on November 6, 2018. The Amendment created a seven-member state ethics commission tasked with investigating alleged violations of ethical conduct by state officials, executive and legislative employees, candidates, lobbyists, government contractors, and others as provided by law. Before its passage, New Mexico was one of only 7 states without a state ethics commission. The commission’s creation is codified at Article V, Section 17 of New Mexico Constitution and in S.B. 668.
  - The commission, which will begin its work on January 1, 2020, is empowered to subpoena witnesses and individuals for evidence and issue advisory opinions on ethical issues and violations.
  - The governor appoints one commissioner; one commissioner each is appointed by the senate majority leader, senate minority leader, speaker of the house, and minority leader in the house. The remaining two commissioners are appointed by the 4 legislatively appointed commissioners, and must be of different parties.
  - The State Ethics Commission is also tasked with:
    - developing and promulgating the rules necessary to implement the provisions of the State Ethics Commission Act

- Initiating complaints (on its own) alleging ethics violations on part of public officials
- Receiving and deciding to investigate complaints alleging ethics violations on part of public officials
- It can levy fines and penalties for civil violations of the laws over which it has jurisdiction and refer criminal matters to the Attorney General.
- Public Perception – since the Ethics Commission does not begin work until January 2020, it is perhaps too early to measure the public’s view on the Commission. However, the Constitutional Amendment creating the Commission passed 75% to 25% and was hailed by both New Mexico Ethics Watch and Common Cause—two activist groups that have lobbied for the creation of an ethics commission over the years—as fulfilling a promise to voters.
- *Case Law*
  - No case law appears to bear directly on the state conflict of interest laws in their application to the Secretary of State.

### **III. Conflict of Interest Applicability to Elections Officer**

- New Mexico’s general conflict of interest law and financial conflict of interest law both apply to the Secretary of State.
  - The Secretary of State is a “public officer” under NM Stat. § 10-16-2(l).
  - NM Stat. § 10-16-3 applies to all “legislator[s] and public officer[s].”
  - NM Stat. § 10-16-4 applies to “public officer[s] or employee[s].”

### **IV. Duty to Abstain, Regardless of Disclosure?**

- There does not appear to be a duty to abstain. NM Stat. § 10-16-3 provides that “full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct,” but nowhere does it mention abstaining.
- The current New Mexico Secretary of State, Maggie Toulouse Olivier, has refused calls for her to step down from her position as she runs for United States Senate.
- The New Mexico Attorney General has determined that any public officer or public employee must disclose his or her employment outside their government work. *Re: Opinion Request - Applicability of the Governmental Conduct Act to New Mexico School Districts*, 2014 WL 4953191 (N.M.A.G. June 24, 2014).

## **V. Specific Election Officer Conflict of Interest Rules?**

- No evidence of an Election Officer-specific conflict of interest rule. Again, NM Stat. § 10-16-3 appears to be the catch-all rule governing public officials' conflicts of interest.
- The New Mexico State Auditor maintains a list of conflicts of interest issues that would amount to an ethics violation and that it has authority to investigate.

## **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of specific other rules. NM Stat. § 10-16-3 applies to “any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary,” so it would apply to other Constitutional Officers like the governor, state auditor, and state treasurer.

## **VII. Public Perception/Recent Coverage**

- In news reports, New Mexico is generally regarded as having a history of weak ethics laws and government oversight. The Center for Public Integrity (CPI) gave New Mexico a D-minus in 2015 for ethics and accountability, ranking in the middle of the states.
- The State Ethics Commission was formed in response to a string of ethical violations among New Mexico government officials
  - In 2015, New Mexico Secretary of State, Dianna Duran, resigned from her position after she was charged by the New Mexico attorney general with fraud, money laundering, embezzlement and various other violations related to misuse of campaign money. It was alleged she had embezzled campaign funds to fund her gambling addiction and then doctored her campaign finance reports to cover up the theft.
  - In 2010, the New Mexico Attorney General's office (and reportedly the FBI) investigated allegations that Mary Herrera, then the Secretary of State, solicited “donations from companies that contract[ed] with her office and ordered some of her employees to gather signatures on petitions for her re-election campaign.” Herrera was never charged with a crime and was voted out of office in 2010.
  - A recent scandal in 2015 involving a state senator who pushed a piece of legislation that would have earned him \$50,000 reportedly helped spur the Ethics Commission. The state senator is serving prison time.
  - In 2009, after leaving office in 2006, former secretary of state Rebecca Vigil-Giron (who served in the position from 1986-1990 and 1998-2006) was

indicted by a state grand jury on charges related to the alleged embezzlement of federal grant money meant for voter education. A state court judge dismissed the case in 2012 due to unreasonable delay in the prosecution which the New Mexico Appeals Court later affirmed.

- In April of 2019, as mentioned above, current New Mexico Secretary of State, Maggie Toulouse Olivier, has refused calls for her to step down from her position as she runs for the United States Senate.

## Secretary of State Reports: North Dakota

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Elected Secretary of State.
- The Secretary of State controls all rules for administering elections. *See* N.D. Stat. §16.1-01-01. The Office of Secretary of State supervises the conduct of elections, including the power to examine any ballot or other material to determine compliance with the law, develop training programs for all election officials, certify statewide elections, establish standards for voting precincts and polling places, numbering precincts, precinct maps. *See* N.D. Stat. §16.1-01-01. The Secretary may also, as they deem necessary, adopt rules consistent with the Help America Vote act of 2002 to assure uniform voting opportunities. *See* N.D. Stat. §16.1-01-01.
- The Secretary of State also establishes the uniform state-based administrative complaint procedure to remedy grievances according to §402 of the Help America Vote Act of 2002. *See* N.D. Stat. §16.1-01-16.

#### **II. Source of Conflict of Interest Laws**

- *Statutory*
  - North Dakota Code §44-04-22 – Conflicts of Interest Law
    - A 44-04-22. Conflict of interest law. A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.
  - North Dakota Code §44-08-21 – Grounds for Recall of an Elected State Official

- An elected official of a political subdivision, except an official subject to recall under section 10 of article III of the Constitution of North Dakota, is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the official sought to be recalled was on the ballot, not including other recall elections. An official who was appointed to fill a vacancy is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the office of the official sought to be recalled was on the ballot, not including other recall elections. The provisions of section 16.1-01-09.1, as they relate to signing and circulating recall petitions, apply to petitions under this section.
- *Regulatory*
  - North Dakota currently has no regulatory board for elections, but recently passed “Measure 1 – Ethics Commission, Foreign Political Contribution Ban, and Conflicts of Interest Initiative.” The bill provides for a study which would include “a review of existing laws and laws enacted to implement article XIV and consideration of whether the civil and criminal sanctions for violations of the constitutional provisions and the statutes are appropriate; whether legislative action regarding article XIV is necessary or desirable; and an effective means to educate public officials, lobbyists, and the public on the requirements of Article XIV and other laws regarding government ethics” and would report its findings to the legislature during the 2021-2022.
  - Measure 1 would amend the North Dakota constitution to enact the following provisions:
    - Establish a five-member ethics commission with members selected through agreement by the governor, the leader of the majority party in the state Senate, and the leader of the minority party in the state Senate;
    - Ban political contributions from foreign government entities, foreign individuals, and foreign corporations;

- create restrictions on lobbyists;
- Create provisions designed to prevent conflicts of interest for government officials; and
- Require campaign finance information to be publicly accessible.

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. See North Dakota Code §44-04-22 above.
  - Rather than say that the conflict of interest laws apply to “public officials” or “election officer” and then define those terms, §44-04-22 states that the conflict of interest laws apply to any “acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body.”

### **IV. Duty to Abstain, Regardless of Disclosure?**

- No mention of a duty to abstain in the current statutes.

### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- None.

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of such a rule. The general conflicts of interest statute applies to all officers.

### **VII. Public Perception/Recent Coverage**

- Tran, Tu-Uyen, “North Dakota Gets D- Grade in 2015 State Integrity Investigation,” The Center for Public Integrity, November 9, 2015. (Link)
- 2018 Native American Voter ID law
  - Alvin Jaegar, the Secretary of State, passed a 2018 voter ID law designed to narrow what would be considered acceptable ID to vote. A group of Native

Americans sued, arguing that the law effectively disenfranchises thousands of Native Americans.

- Hayoun, Massoud, “Native Americans Are Suing North Dakota Over Voter Suppression” Pacific Standard, October 31, 2018. ([Link](#))
- Mark Joseph Stern, “North Dakota Is Entering “No Longer a Democracy” Territory With Its Latest Efforts to Disenfranchise Native Americans,” October 31, 2018. ([Link](#))
- Kenrya Rankin, “What You Need to Know About the Voter ID Law SCOTUS Refused to End,” October 10, 2018. ([Link](#))

## Secretary of State Reports: Ohio

### Election Reformers Network

#### I. Election Officer – Background and Responsibilities

- Elected Secretary of State.
- The Secretary of State is responsible for the administration of state and local elections. He/she prepares rules and instructions for the conduct of elections and prescribes the forms and wording of ballots, including candidates' names and statements of any proposed law or amendment. The Secretary of State is also responsible for investigating the administration of election laws, frauds, and irregularities in elections in any county. *See* Ohio Rev. Code Ann. § 3501.05.
  - Ohio law prohibits anyone from “serv[ing] as a member, director, deputy director, or employee of the board of elections who is a candidate for any office to be filled at an election.” Ohio Rev. Code Ann. § 3501.15. However, the Secretary of State is not a member, director, deputy director, or employee of the board of elections; instead, he/she appoints the members of the board of elections.
  - Notably, Ohio law forbids secretaries of state from holding partisan positions but does not prohibit secretaries of state from running for office. *See* Ohio Rev. Code Ann. § 3501.052(A) (“the secretary of state shall not serve as campaign treasurer or in any other official capacity for any campaign committee for any state or local office *other than an office to which the secretary of state is seeking election.*”).

#### II. Source of Conflict of Interest Laws

- *Statutory* – Ohio has a codified statute governing ethics for public officials. The Ohio General Assembly created the Ohio Ethics Law, codified at Ohio Rev. Code Ann. §§ 102.01 et seq.; 2921.42; 2921.43. This statute also creates an Ethics Commission.
  - The Ohio Ethics Law mainly addresses financial disclosures, confidentiality, bribery, and nepotism.
- *Regulatory*
  - The appropriate ethic commission for matters relating to the Secretary of State is the Ohio Ethics Commission. Ohio Rev. Code Ann. § 102.01(F)(3).
  - The Ohio Ethics Commission receives, initiates, and investigates complaints against public officials, and sets out a code of ethical standards. Ohio Rev.

Code Ann. § 102.06. The Ethics Commission also has the authority to issue advisory opinions, conduct educational programs, and recommend legislation. Ohio Rev. Code Ann. § 102.08.

- Note that the Ohio Ethics Commission does not have any jurisdiction over election laws or rules in Ohio. For guidance on these types of questions, the Commission suggests contacting the Ohio Secretary of State's Office or the Ohio Elections Commission. However, this does not apply to wrongdoing as set forth in §102.03. *See* Advisory Opinion No. 2002-03.

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. *See* Ohio Rev. Code Ann. § 102.01(B).
  - "Public official or employee" means any person who is elected or appointed to an office or is an employee of any public agency.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Yes. The Ohio Ethics Law requires public officers to complete financial disclosure statements each year, including information such as sources of income and gifts, companies in which they have investments, and sources of travel expenses or meals. Ohio Rev. Code Ann. § 102.02(A).
- However, under §102.03(D), public officials or employees are prohibited "from using or authorizing the use of his or her public position to get a benefit for the official" or anyone close to the official. *See* Ohio Rev. Code Ann. § 102.03(D).

### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463 (6th Cir. 2008).
  - Voters brought an action against Secretary of State Brunner alleging Ohio's election system impaired voting rights. The voters alleged that the voting system in Ohio suffers from "non-uniform standards, processes, and rules" and employs "untrained or improperly trained personnel" and has "wholly inadequate systems, procedures, and funding." Plaintiffs also alleged that the problems with Ohio's voting system date back to at least 1971 and are "pervasive, severe, chronic, and persistent." The court held that the League of Women Voters of Ohio sufficiently stated

a state equal protection claim and a state substantive due process claim.

- *Beacon Journal Publishing Co. v. Blackwell*, 389 F.3d 683 (6th Cir. 2004).
  - A newspaper publisher and editor brought an action under § 1983 against Secretary of State Blackwell, alleging that the manner in which he intended to enforce election law by prohibiting loitering at polling places abridged voters' First Amendment rights. The Sixth Circuit found that Plaintiffs presented a strong likelihood of success on the merits of their challenge to Blackwell's directive, and, therefore, allowed Plaintiffs to have reasonable access to any polling place for the purpose of news-gathering and reporting.
- *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 869 (6th Cir. 2004).
  - Political parties and labor unions brought an action against Secretary of State Blackwell to challenge his directive requiring a voter's residence in a precinct to be determined on the spot by a poll worker and empowering poll workers to deny a voter a provisional ballot if the voter's residence in the correct precinct could not be confirmed. The court held that Blackwell's directive violated the Help America Vote Act.
- *American Broadcasting Co. v. Blackwell*, 479 F. Supp. 2d 719 (S.D. Ohio 2006).
  - Media outlets sued Secretary of State Blackwell seeking to bar enforcement of his restrictions on exit polling. The court held that Blackwell could not prohibit exit polling conducted within 100 feet of polling place without violating the First Amendment rights of poll takers. However, Blackwell's directive allowing for the enforcement of loitering statutes against exit pollsters operating less than 100 feet from polling places was not in violation of the First Amendment.
- *In re Protest of Initiative Petitions Proposing Ohio Sales Tax Reduction Act*, 2004-Ohio-4290, 2004 WL 1812840, ¶¶ 11-13 (Ohio Ct. App. August 9, 2004).

- An individual filed a protest with the Harrison County Board of Elections against certain part-petitions, and the Secretary of State moved to intervene in his official capacity and requested the trial court transfer the case. The protestor argued the Secretary could not intervene because of ethical considerations and conflicts of interest. The Court of Appeals of Ohio held that the trial court “should not prevent the Secretary from discharging his official duties by intervening in a civil action merely because doing so may create a conflict of interest.”
- *State ex rel. Ruehlmann v. Luken*, 65 Ohio St. 3d 1 (Ohio 1992) (internal quotations omitted).
  - “[T]he Secretary of State’s decisions, otherwise final, may be reviewed for fraud, corruption, abuse of discretion or a clear disregard of statutes or court determinations.”

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of such a rule.

### **VII. Public Perception/Recent Coverage**

- *Ohio’s Secretary of State says he’s not endorsing anyone in 2020* (June 18, 2019) (discussing Secretary of State’s view that “the people of Ohio need to know that their chief elections officer is . . . running fair elections.”). [Link](#).
- *Secretary of State Frank LaRose, lawmakers to seek automated voter registration, other election reforms* (April 24, 2019) (discussing Secretary of State’s push for automated voter registration to counteract previous controversial “purge” of voters by predecessor secretary). [Link](#).
- *U.S. Supreme Court upholds Ohio’s process for updating voter registration rolls* (June 11, 2018) (discussing Secretary of State Husted’s implementation of automatic removal of voters who have not cast ballots in previous two years from registration; the policy was seen as “disproportionately disenfranchis[ing] low-income voters and voters of color” because they will have to re-register). [Link](#).
- *It’s Not Just Kobach: Three Vote-Suppressing Secretaries of State Are Overseeing Their Own Elections* (August 11, 2018) (discussing mainly the election for Kansas governor, but mentions Ohio Secretary of State John Husted “is running for lieutenant governor in November. He has purged more than 2 million people from the state’s voter rolls since taking office in 2011” and “it is possible that those purged voters could have made the difference.”). [Link](#).

- *Say Hello to the Ohio Official Who Might Pick the Next President* (October 29, 2012) (discussing Husted's power to tilt the 2012 election). [Link](#).
- *Playing With the Election Rules* (September 30, 2004) (discussing two directives issued by Secretary of State Blackwell before the 2004 presidential election that "could prevent thousands of eligible Americans from voting). [Link](#).
- *Ken Blackwell's Disgraceful Election Machinations* (December 8, 2004) (discussing and delineating how every decision Blackwell made regarding the 2004 presidential election benefitted Bush). [Link](#).
- *Shocking Diebold conflict of interest revelations from Secretary of State further taint Ohio's electoral credibility* (April 6, 2006) (discussing the fact that Secretary of State Blackwell owned Diebold stock when he made his decision to go paperless in elections and use Diebold machines). [Link](#).
- *Voting Machine Controversy* (August 28, 2003) (discussing Blackwell's decision to qualify Diebold as one of three firms eligible to sell electronic voting machines to Ohio for the 2004 election). [Link](#).
- *The Coming Ballot Meltdown* (June 28, 2006) (discussing Secretary of State Blackwell's run for Governor of Ohio). [Link](#).
- *Ohio Officials Sued Today for Violating Federal Registration Law; Sec. Ken Blackwell Named as Defendant* (September 21, 2006) (discussing a case that was filed against Blackwell and alleged violations of the rights of low-income Ohioans by failing to provide voter registration opportunities in public assistance offices). [Link](#).
- *Blackwell defends campaign donations; Governor hopeful: Firms got no favors* (April 16, 2006) (discussing how Blackwell accepted more than \$1 million in contributions from employees of firms seeking business with statewide offices Blackwell has held along with other questionable contributions). [Link](#).

## Secretary of State Reports: Oregon

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Secretary of State, elected. Controls and supervises the Division of Elections. County Clerks conduct elections.
  - Responsibilities of the Secretary of State:
    - The Secretary of State prepares and distributes detailed and comprehensive written directives for County Clerks, who conduct elections. The Secretary of State may adopt rules he or she considers necessary to facilitate and assist and achieving correctness, impartiality, and efficiency in election
    - Statutes
      - ORS 246.110 – Secretary of State as Chief Elections Officer
        - The Secretary of State is the chief elections officer of this state, and it is the secretary's responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws
      - ORS 246.120 – Directives, Instructions and Assistance to County Clerks
        - Carrying out the responsibility under ORS 246.110, the Secretary of State shall prepare and distribute to each county clerk detailed and comprehensive written directives, and shall assist, advise and instruct each county clerk, on registration of electors and election procedures which are under the direction and control of the county clerk. The directives and instructions shall include relevant sample forms of ballots, documents, records and other materials and supplies required by the election laws. A county clerk affected thereby shall comply with the directives or instructions.
      - ORS 246.150 – Rules
        - The Secretary of State may adopt rules the secretary considers necessary to facilitate and assist in achieving and maintaining a maximum degree of correctness, impartiality and efficiency in administration of the election laws.
  - Responsibilities of County Clerks

- County Clerks conduct elections and supervise local elections officials.
- Statutes
  - ORS 246.200 – County clerk to conduct elections; exceptions
    - (1) Except as otherwise provided by law, the county clerk is the only elections officer who may conduct an election in this state. For purposes of this section, the conduct of an election includes, but is not limited to, establishing precincts, preparing ballots and sample ballots, and receiving and processing votes.
  - ORS 246.210 County clerk to supervise local elections officials.
    - (1) Subject to the directives and instructions prepared and distributed or given by the Secretary of State under ORS 246.120 or 246.140, a county clerk may exercise general supervision of administration of election laws by each local elections official in the county for the purpose of achieving and maintaining a maximum degree of correctness, impartiality, efficiency and uniformity in the administration by local elections officials. In this regard the county clerk may assist local elections officials in answering questions concerning the proper administration of election laws.

## II. Source of Conflict of Interest Laws

- *Statutory* – Oregon has codified statutes defining/governing conflicts of interest, as well as statutory procedures for complaints of election law violations against the Secretary of State.
  - Conflicts of Interest:
    - See ORS 244.020(1) – “Actual conflict of interest” definition.
    - See ORS 244.020(13) – “Potential conflict of interest” definition.
    - See ORS 244.120 – Methods of Handling Conflicts.
  - Election Law Violation Complaints Against Secretary of State:
    - See ORS 260.345 – Complaints or other information regarding violations; action by Secretary of State and Attorney General.
    - A complaint alleging a violation involving the Secretary of State, a candidate for the office of Secretary of State, or any political committee or person supporting the Secretary of State or a candidate

for the office of Secretary of State may be filed with the Attorney General.

- The Secretary of State by rule shall prescribe the procedure for processing a complaint filed with any person other than the Secretary of State. If the complaint concerns the Secretary of State, any candidate for the office of the Secretary of State, or any political committee or person supporting the candidacy of the Secretary of State or of another person for the office of Secretary of State, the complaint and any additional information relating to the complaint shall be sent to the Attorney General.
- *Regulatory – Ethics Violations*
  - The Oregon Government Ethics Commission “impartially and effectively administers and enforces Oregon’s government ethics laws.” The Commission issues Advisory and Staff Opinions on ethics issues. There did not appear to be any such opinions specifically relating to election officers/the Secretary of State and election integrity.
  - Complaint & Adjudicatory Process: *See* ORS 244.260:
    - Any person may file with the Commission a signed written complaint alleging that there has been a violation of any provision of Chapter 244 or of any rule adopted by the commission under Chapter 244.
    - After receiving a complaint or deciding to proceed on its own motion, the executive director of the Commission shall undertake action in the Preliminary Review Phase to determine whether there is cause for an investigation.
    - If there is cause for an investigation, the Commission begins the Investigatory Phase, where the commission may seek any additional information administer oaths, take depositions and issue subpoenas.
    - At the end of the Investigatory Phase, the Commission may include dismissal, continuation of the investigation for a period, moving to a contested case proceeding, entering into a negotiated settlement, or taking other appropriate action if justified by the findings.
- *Case Law – No case law appears to bear directly on the state conflict of interest laws in their application to Election Officials.*
  - *See* ORS 246.910: A person adversely affected by any act or failure to act by the Secretary of State, a county clerk, a city elections officer or any other county, city or district official under any election law, or by any order, rule, directive or instruction made by the Secretary of State, a county clerk, a city

elections officer or any other county, city or district official under any election law, may appeal to the circuit court for the county in which the act or failure to act occurred or in which the order, rule, directive or instruction was made.

### III. Conflict of Interest Applicability to Elections Officer

- The relevant conflict of interest statutes apply to the Secretary of State as an elected public official.
- *See* ORS 244.020: “Public official” means the First Partner and any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 (“Public body” defined) as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

### IV. Duty to Abstain, Regardless of Disclosure?

- There is a limited duty to abstain regardless of disclosure. After a public official discloses a conflict, the official’s appointing authority must either designate an alternate to dispose of the matter, or must direct the official to dispose of the matter in a manner specified by the appointing authority. Elected public officials other than a member of the Legislative Assembly also must refrain from participating as a public official in any discussion or debate on the issue out of which any actual conflict of interest arises.
- *See* ORS 244.120 – Methods of Handling Conflicts
  - (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:
    - (c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.
  - (2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:
    - (a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

- (b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:
  - (A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.
  - (B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

### **V. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of such a rule. Same general rules relating to conflicts of interest apply.

### **VI. Public Perception/Recent Coverage**

- Report, "*Oregon Gets F Grade in 2015 State Integrity Investigation*," The Center for Public Integrity, Nov. 20, 2015 ([Link](#)) (comprehensive assessment of state government accountability and transparency. Includes a comprehensive overview of Oregon's electoral oversight, for which it received an F grade).
- Article, "*Former Oregon Secretary of State Files Elections Complaint Against Current Secretary of State Dennis Richardson*," Willamette Week, Dec. 1, 2017 ([Link](#)) (article discussing former Secretary of State Jeanne Atkins' elections complaint against then-Secretary of State Dennis Richardson alleging that Richardson violated a state law that prohibits public employees from using state time or resources to influence an election).
- Article, "*Democrats File Election Complaint Against Dennis Richardson*," The Oregonian, Dec. 1, 2017 ([Link](#)).

## Secretary of State Reports: Rhode Island

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Elected Secretary of State. R.I. Gen. Laws § 17-6-1.3. The Secretary of State serves as the Chief Elections Officer of Rhode Island under section 10 of the National Voter Registration Act and oversees the election process throughout the state along with maintaining a central register of all persons registered to vote. § 17-6-1.
- The Rhode Island Board of Elections is made up of seven members appointed by the governor and approved by the Senate for 14-year terms. Board members may not hold any other public office or be employees of persons who hold statewide office. § 17-7-2.
  - The state election board supervises the administration of election law by local boards, oversees all state inspectors of elections, holds hearings related to recounts or protests of election results, and maintains any books and records of votes cast. § 17-7-5.
  - The state board also has the power to make any rules, regulations, and directives it deems necessary to carry out the objects and purposes of state election laws and has jurisdiction over all election matters on appeal from any local board. § 17-7-5.

#### **II. Source of Conflict of Interest Laws**

- *Constitutional:*
  - “The people of the State of Rhode Island believe that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety and not use their position for private gain or advantage. Such persons shall hold their positions during good behavior.” Art. III § VII.
  - “The general assembly shall establish an independent non-partisan ethics commission which shall adopt a code of ethics including, but not limited to, provisions on conflicts of interest,

confidential information, use of position, contracts with government agencies and financial disclosure.” Art. III § VIII.

- *Statutory:*

- R.I. Gen. Laws § 36-14 – State Code of Ethics for Public Officers and Employees

- “It is the policy of the state of Rhode Island that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable, responsive, avoid the appearance of impropriety, and not use their position for private gain or advantage.” § 36-14-1.
    - The code of ethics applies to: State and municipal elected officials, state and municipal appointed officials, and all employees of state and local government, boards, commissions, and agencies. § 36-14-4.
    - “No person subject to this code of ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction, or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities as prescribed in the laws of this state.” § 36-14-5.

- Board of Elections Oath of Office – § 17-7-4

- Each state board member must swear an oath or affirm that he or she will “faithfully and impartially [] administer the duties of his or her office without regard to partisan or political considerations.”

- *Regulatory:*

- The Rhode Island Ethics Commission is a constitutionally mandated body empowered to adopt, enforce, and administer the Code of Ethics.

- The commission handles the filing and viewing of financial disclosure statements.
- The commission also maintains a list of advisory opinions interpreting the Rhode Island Code of ethics pursuant to R.I. Gen. Laws § 36-14-11 and Commission Regulation 1024.
- *Case Law:*
  - *In re Advisory Opinion to the Governor*, 612 A.2d 1, 16 (R.I. 1992)
    - The Rhode Island Supreme Court recognized the Ethics Commission's constitutional authority, and held that the General Assembly also has authority to adopt provisions of the Code of Ethics so long as they are not inconsistent with those adopted by the Ethics Commission.
    - The end result is the establishment of concurrent authority between the Ethics Commission and the General Assembly in the area of ethics. The complete Code of Ethics, compiling both regulations from the commission and statutes from the assembly, can be found on the Ethics Commission website.

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. The Secretary of State and members of the Rhode Island Board of Elections are subject to the state code of ethics. R.I. Gen. Laws § 36-14-4.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Yes. "No person subject to this Code of Ethics shall represent him or herself before any state or municipal agency of which he or she is a member or by which he or she is employed." § 36-14-5.
  - A hardship exception may be granted by the Ethics Commission upon application by the official.

### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- Each state board of elections member must swear an oath or affirm that he or she will “faithfully and impartially [] administer the duties of his or her office without regard to partisan or political considerations.” § 17-7-4.

### **VI. Conflict of Interest Rules for Other General Officers?**

- No evidence of separate rule for General Officers. Same rules relating to conflicts of interest apply to all state General Officers.
- Municipal employees may not hold a municipal elected office in the city or town in which he or she is employed unless the city or town expressly permits it by charter or ordinance. § 17-1-5.1.

### **VII. Public Perception/Recent Coverage**

- *“Ethics Commission to Probe GOP Ethics Complain vs. Raimondo, IGT,”* Providence Journal, August 20, 2019 (Link) (Rhode Island ethics commission voted to investigate whether former IGT Chairman Donald Sweitzer and Governor Gina Raimondo’s roles with the Democratic Governors Association give them a “common financial objective”).
- *“Rhode Island Get a D+ Grade in 2015 State Integrity Investigation,”* The Center for Public Integrity, Nov. 12, 2015 (Link) (Rhode Island’s grade ranked 5<sup>th</sup> among all states with the top grade among states for the Ethics Enforcement Agencies category).

## Secretary of State Reports: South Dakota

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Elected Secretary of State; serves as chairperson for South Dakota Board of Elections
- The Secretary of State serves as chairperson for the state's Board of Elections. The Board of Elections administers elections and voter registration, and regulates campaign finance. *See* SDCL 12-1-9. The Board has the rule-making authority to promulgate administrative rules dealing with many aspects of election conduct. Should there be a need for change within the election laws, the Board must recommend these changes to the Secretary of State. SDCL 12-1-10. Any election related issues, specifically those dealing with the HAVA, shall be resolved by the board. SDCL 12-1-21.
- However, the Office of Secretary of State does not conduct investigations or sanction offenders. Rather, general election issues are dealt with through the Office of Administrative Hearings, which hears complaints of violations, and issues rulings in a judicial-style administrative proceeding.

#### **II. Source of Conflict of Interest Laws**

- *Statutory*
  - A conflict of interest may exist if a public officer has an interest in or derives a direct benefit from any contract **1)** with the state agency to which the public officer is attached for reporting or oversight purposes that requires the expenditure of government funds; **2)** with the state that requires the approval of the authority, board, or commission and the expenditure of government funds; or **3)** with a political subdivision of the state if the political subdivision approves the contract and is under the regulatory oversight of the authority, board, or commission, or the agency to which the authority, board, or commission is attached for reporting or oversight purposes. [SDCL 3-23-1](#).
  - SDCL 3-23 – Conflict of Interest Law
    - State authority, board, and commission members prohibited from having interest in or deriving direct benefit

from contract. No elected or appointed member of a state authority, board, or commission may have an interest in or derive a direct benefit from any contract:

- (1) With the state agency to which the authority, board, or commission is attached for reporting or oversight purposes that requires the expenditure of government funds;
  - (2) With the state that requires the approval of the authority, board, or commission and the expenditure of government funds; or
  - (3) With a political subdivision of the state if the political subdivision approves the contract and is under the regulatory oversight of the authority, board, or commission, or the agency to which the authority, board, or commission is attached for reporting or oversight purposes.
- No elected or appointed member of a state authority, board, or commission may derive a direct benefit from any contract as provided under this section for one year after the end of the member's term on the authority, board, or commission, except as provided in § 3-23-3 or 3-23-4.
- SDCL 6-1-17 – Official prohibited from discussing or voting on issue if conflict of interest exists--Legal remedy.
    - No county, municipal, or school official may participate in discussing or vote on any issue in which the official has a conflict of interest. Each official shall decide if any potential conflict of interest requires such official to be disqualified from participating in discussion or voting. However, no such official may participate in discussing or vote on an issue if the following circumstances apply:
      - (1) The official has a direct pecuniary interest in the matter before the governing body; or

- (2) At least two-thirds of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter. If an official with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.
- SDCL 6-1-18 – Officer may consider relevant information from any source--Reliance on experience.
  - An elected or appointed municipal, county, or township officer may receive and consider relevant information from any source to perform the duties of office. An elected or appointed municipal, county, or township officer may rely on his or her own experience and background on any official matters, subject to the applicable law and rule concerning recusal and disqualification of a public officer.
- SDCL 9-14-37 – Neglect of duty or misconduct by municipal officer as misdemeanor-- Removal from office.
  - It is a Class 2 misdemeanor for any member of the governing body or other municipal officer to commit a palpable omission of duty or to intentionally commit oppression, misconduct, or malfeasance in the discharge of the duties of his office. Upon conviction of a violation of this section, the court in which such conviction is had may in its discretion enter an order removing the member of the governing body or other officer so convicted from his office.
- *Regulatory* – The State Government Accountability Board is essentially the ethics commission for South Dakota. Its power is through SDCL 3-24-3.
  - SDCL 3-24-3 – Review any investigation or allegations of misconduct.

- The State Government Accountability Board may review and investigate any person holding a statewide office, as defined in § 12-27-1, and employees of the executive branch of the state regarding:
  - (1) Allegations of impropriety related to any contract, grant, or loan with any public entity that provides the authority to any other entity to expend public funds;
  - (2) Documents filed under chapter 3-23 or alleged violations relating to conflicts of interest;
  - (3) Allegations of a direct or indirect interest in a contract in violation of the constitution or law;
  - (4) Allegations of malfeasance;
  - (5) Allegations of misappropriation of public funds;
  - (6) Allegations of use of false instruments to obtain public funds;
  - (7) Allegations of theft or embezzlement of public funds;
  - (8) Allegations of bribery; or
  - (9) Allegations of use of public money not authorized by law or in violation of the constitution.
- The board may establish its own procedures, issue subpoenas, administer oaths, and take sworn testimony.
- *Case Law* – No case law appears to bear directly on the state conflict of interest laws in their application to the Secretary of State.

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. See SDCL 3-23-1. (explaining whom conflicts of interest laws apply to).
  - State authority, board, and commission members prohibited from having interest in or deriving direct benefit from contract. No

elected or appointed member of a state authority, board, or commission may have an interest in or derive a direct benefit from any contract.

#### **IV. Duty to Abstain, Regardless of Disclosure?**

- No evidence of such a rule.

#### **V. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of such a rule. Same general rules relating to conflicts of interest are applicable.

#### **VI. Public Perception/Recent Coverage**

- In 2018, South Dakota proposed the South Dakota State Campaign Finance and Lobbying Laws, Government Accountability Board, and Initiative Process Amendment (Constitutional Amendment W). The proposition was defeated.
  - A "yes" vote was a vote in favor of amending the state constitution to revise campaign finance and lobbying laws, create a government accountability board, and establish new laws governing the initiative and referendum process.
  - A "no" vote was a vote against amending the state constitution to revise campaign finance and lobbying laws, create a government accountability board, and establish new laws governing the initiative and referendum process.
  - The initiative would have replaced the existing ethics and accountability commission with a seven-member accountability board with new provisions determining board member selection and expanded duties and authorities of the board—including authority over members of the legislature. The initiative would have also established campaign finance and lobbying restrictions, required voter approval for any substantive changes to a voter-approved initiative or referendum, required voter approval to make alterations to the state's initiative and referendum process, and constitutionalized the simple majority requirement for the approval of initiatives and referendums at the ballot.
- South Dakota's own Chief Election Officer, current Secretary of State Steve Barnett, has mentioned elections and voter rights are not his top priorities.

## Secretary of State Reports: Utah

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Elected Lieutenant Governor.
- The Lieutenant Governor oversees all voter registration activities and ensures compliance with both state and federal laws. Utah Code Ann. § 20A-2-300.6.

#### **II. Source of Conflict of Interest Laws**

- *Statutory:*
  - A conflict of interest, “means an action taken by an officeholder which he or she reasonably believes may cause direct financial benefit or detriment to the officeholder, a member of their immediate family, or an individual or entity the officeholder is required to disclose, if that benefit is distinguishable from the effect of that action on the public or on the officeholder’s profession, occupation or association generally.” Utah Code Ann. §20A-11-1602.
  - Section 20A-11-1604 of the Utah Election Code requires constitutional officers such as the Lieutenant Governor to disclose “conflicts of interest” before taking any official act, so long as the officer has actual knowledge of a conflict that he or she has not already disclosed:

(1) (a) Before or during the execution of any order, settlement, declaration, contract, or any other official act of office in which a state constitutional officer has actual knowledge that the state constitutional officer has a conflict of interest that is not stated in the conflict of interest disclosure, the state constitutional officer shall publicly declare that the state constitutional officer may have a conflict of interest and what that conflict of interest is.

- Under Utah Code Ann. §67-16, the Utah Public Officers and Employees Act, public officials may not, among other things:
    - (b) disclose or improperly use controlled, private, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;
    - (c) use or attempt to use his official position to:
      - (i) further substantially the officer's or employee's personal economic interest; or
      - (ii) secure special privileges or exemptions for himself or others[.]
  - *Regulatory:*
    - The Independent Executive Branch Ethics Commission ([link](#)) responds to and investigates allegations of unethical conduct by executive branch officials, which includes the Lieutenant Governor. If the Commission finds misconduct, their findings will be made public and forwarded to the legislature for further action.
      - From its creation in 2013 to 2016, the Executive Commission had not taken any action on a complaint. No evidence of any action taken since that time.
    - If a complaint is filed that the commission later finds to be without merit, the respondent may request payment of reasonable attorney fees, to be appropriated by the legislature. Utah Code Ann. §63A-14.
  - *Case Law:* No case law appears to bear directly on the state conflict of interest laws in their application to the Lieutenant Governor specifically.
- III. Conflict of Interest Applicability to Elections Officer**
- Yes.

- Utah's conflict of interest law applies to all public officials, including the Lieutenant Governor. Utah Code Ann. §20A-9-201.

## **IV. Duty to Abstain, Regardless of Disclosure?**

- No, there is not duty to abstain, even if a candidate's conflict of interest disclosure form lists a conflict. Utah Code Ann. §20-A-11-1603.

## **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- *Maxfield v. Gary Herbert*, 284 P. 3d 647 (Utah 2012).
  - Third place candidate for lieutenant governor brought an election contest action (as per Utah Code Ann. §20-A-1-404) seeking disqualification of the winning candidate for governor and runner up for allegedly violating the election code's financial reporting requirements. The Supreme Court of Utah held that "eligible for office" under §20A-4-402(1)(b) is, "best interpreted as referring only to constitutional eligibility, an election contest is not the proper forum for a voter to raise allegations of campaign finance disclosure violations." When the election code refers to eligibility for office, it refers to general prerequisites to serve in office, not individualized grounds for qualification or disqualification to appear on the ballot." The Court affirmed the district court's dismissal of the election-contest petition.

## **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of separate rule. Same general rules relating to conflicts of interest apply to all state constitutional officers.

## **VII. Public Perception/Recent Coverage**

- Article, "*Jury returns not guilty verdict on all counts against former AG John Swallow*," KUTV, March 2, 2017 (Link) (former AG Swallow was acquitted of multiple felonies and misdemeanors, including one count of failure to disclose a conflict of interest).
- Article, "*Keep My Voice files lawsuit to stop a Utah initiative allowing signature gathering to get on the primary ballot*," The Salt Lake Tribune, May 25, 2018 (Link) (lawsuit against Lt. Gov. Spencer Cox, accusing him of having a personal and partisan conflict of interest and improperly advocating for a new primary candidate initiative).

- The complaint primarily sought to enjoin a signature gathering initiative from appearing on the primary ballot. Senate Bill 54, passed in 2014, introduced an alternative method for candidates and other proposals to appear on the primary election ballot. In addition to nomination by the political party convention system, SB 54 allows candidates to appear on the primary ballot by gathering petition signatures. Count my Vote (CMV) sponsored a ballot initiative to ratify SB 54 through a public vote. Keep my Voice (KMY), an opposition group, successfully convinced enough voters to remove their signatures from the ballot initiative to prevent its appearance on the ballot. CMV subsequently appealed to have their initiative returned to the ballot.
- In August 2018, the Utah Supreme Court blocked the CMV initiative from appearing on the primary ballot. The Court said it would issue a formal opinion, but as of 7/1/2019 it is still under advisement.
- Article, “*Spencer Cox’s podcast partnership with local news outlet blurs the line between news and campaign*,” Utah Policy.com, June 19, 2019 (Link) (current Lt. Gov. Cox will continue to host a podcast through a local news radio station into his 2020 gubernatorial bid and will openly discuss his campaign, prompting questions of an improper partnership between the station and Cox).
- Article, “*Bob Bernick’s notebook: When is an endorsement not an endorsement?*,” UtahPolicy.com, June 20, 2019 (Link) (current Lt. Gov. Cox believes the local radio station that hosts his podcast is not an in-kind contributor that needs to be reported on his campaign finance filing; Cox reported former Lt. Gov. Gayle McKeachnie will be a “third party arbiter” for any election issues regarding the 2020 UT governor’s race).

## Secretary of State Reports: Vermont

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- The Presiding Officer is the Chief Election Official at each polling place. The Town Clerk is the default Presiding Officer unless the town has voted otherwise, the clerk is unavailable, or there is more than one polling place in town. The Town Clerk sits on the Board of Civil Authority, which exists within the Election Division.
- The Secretary of State formed the Board of Civil Authority (the authoritative body of the Election Division) to guide the administration of Vermont's elections, protect the integrity of the democratic process, assist in the registration of voters, oversee campaign finance reporting, and implement Vermont's lobbyist disclosure laws.

#### **II. Source of Conflict of Interest Laws**

- *Constitutional*
  - Vt. Const. c. 1, Art. 7 – Duty to Constituents
    - The Vermont Constitution applies to every public office. It declares all local (as well as state) officials, the trustees and servants of the people, and holds them, at all times, in a legal way, accountable to the people.
  - Vt. Const. c. 1, Art. 8 – Elections to be Free
    - Declares that all elections “ought to be free and without corruption” and further states that all voters “have a right to elect officers, and be elected into office. . . .”
- *Statutory*
  - 13 V.S.A. § 2537 – Embezzlement in an Official Capacity
    - A local official who embezzles or fraudulently converts money or other property belonging to the municipality shall be guilty of larceny and shall be imprisoned not more than ten years or fined not more than \$1,000.00 or both.
  - 24 V.S.A. § 963 – Designation of Replacement Official in the Event of Removal

- In the event that an official is suspended from office, the legislative body of the municipality may designate a person to perform the duties of the office.
- 24 V.S.A. § 1984 – Adoption and Enforcement of Ordinances and Rules
  - Details methods by which each town, city, or village can adopt a conflict of interest prohibition. Conflict of interest laws exist at a municipal level in Vermont.
  - Conflict of Interest defined as “a direct personal or pecuniary interest of a public official, or the official's spouse, household member, business associate, employer, or employee, in the outcome of a cause, proceeding, application, or any other matter pending before the official or before the agency or public body in which the official holds office or is employed.”
- *Regulatory*
  - 3 V.S.A. § 1221 – State Ethics Commission
    - The Commission is responsible for accepting, reviewing, and tracking complaints of governmental conduct. If a complaint alleges a violation of governmental conduct regulated by law, of the Department of Human Resources Code of Ethics, or of the State’s campaign finance law set forth in 17 V.S.A. § 61, the Commission will refer the complaint to the appropriate state agency, but has no enforcement power on its own.
  - 3 V.S.A. § 1222 – Defining Conflict of Interest for Commission Members
    - “‘Conflict of interest’ means an interest of a member that is in conflict with the proper discharge of his or her official duties due to a significant personal or financial interest of the member, of a person within the member’s immediate family, or of the member’s business associate. ‘Conflict of interest’ does not include any interest that is not greater than that of any other persons generally affected by the outcome of a matter.”
- *Case Law*
  - *Davenport v. Town of Johnson*, 49 Vt. 403, 407 (1877)
    - In 1877, the Vermont Supreme Court ruled that select board members who acquire a “a pecuniary interest in any claim allowed, whereby they reaped a profit to themselves, the town would be entitled to the benefit of such profit, upon the familiar doctrine that applies to agents, trustees, administrators, and all other persons who stand in fiduciary relations to others, that such persons shall make no profit to themselves against those for whom they act.”

### **III. Conflict of Interest Applicability to Elections Officer**

- 24 V.S.A. § 1984 – Adoption and Enforcement of Ordinances and Rules
  - Details methods by which each town, city, or village can adopt a conflict of interest prohibition. Conflict of interest laws exist at a municipal level in Vermont. The municipality is required to adopt a definition of ‘conflict of interest’; a list of officials covered by such prohibition; a method to determine when conflict exists; actions that must be taken if a conflict exists; a method of enforcement against individuals violating such prohibition.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Pursuant to 24 V.S.A. § 1984, the municipality selects actions that the official must take in the presence of conflict.

### **V. Specific Election Officer Conflict of Interest Rules/Cases**

- *Advisory Opinions*, STATE OF VERMONT ETHICS COMMITTEE, <https://ethicscommission.vermont.gov/advisory-opinions>.
  - Opinion 18-01: “Principle 1 of the State Code of Ethics states, a public official shall not have a conflict of interest or engage in any business, employment, transaction or professional activity, or incur any obligation that is in conflict with the performance of their duty as a public official.”

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- Pursuant to 24 V.S.A. § 1984, the municipality determines which officers are covered under the conflict of interest prohibition.

### **VII. Public Perception/Recent Coverage**

- John Walters, *Ethical Charades: No Consequences for Scott’s Conflict*, SEVENDAYS (June 13, 2018), <https://www.sevendaysvt.com/vermont/ethical-charades-no-consequences-for-scotts-conflict/Content?oid=16883981>.
- Mark Johnson, *Lawmakers seek to reinforce Ethics Commission Procedures after Scott ruling*, VTDIGGER (Mar. 14, 2019), <https://vtdigger.org/2019/03/14/lawmakers-seek-to-modify-ethics-commission-procedures-after-scott-ruling/>.
- Neal Goswami, *Does Vermont’s ethics commission lack teeth?*, WCAX3 (Oct. 9, 2018), <https://www.wcax.com/content/news/Does-Vermonts-ethics-commission-lack-teeth-496332071.html>.

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- Ken Picard, *WTF: Can Vermont's Justices of the Peace Serve as Judges?*, SEVENDAYS (June 19, 2019), <https://www.sevendaysvt.com/vermont/wtf-can-vermonts-justices-of-the-peace-serve-as-judges/Content?oid=27768864>.

## Secretary of State Reports: Washington

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- In Washington the Chief Election Officer is an elected Secretary of State.
- The secretary of state is required to by state law to establish and supervise a division of elections. The division is ran by a state director of elections who is appointed by and serves at the pleasure of the secretary of state. *See* RCW 43.07.033.
- Washington additionally has an election administration and certification board whose membership consists of the following: (a) the secretary of state; (b) the state director of elections; (c) four county auditors appointed by the Washington state association of county auditors; (d) one member from each of the two largest political party caucuses of the house of representatives designated by the legislative leader of the respective caucus; (e) one member from each of the two largest political party caucuses of the senate designated by and serving at the pleasure of the respective caucus; and (f) one representative from each major political party designated by and serving at the pleasure of the chair of the party's state central committee. The board elects a chair from these parties, though the secretary of state and state director elections may not serve as the chair. *See* RCW 29A.04.510.
- Under RCW 29A.04.550 a petitioner may appeal the secretary of state's decision to deny certification under RCW 29A.04.530. The petitioner must first appeal to the secretary of state to reconsider the decision and grant certification. Within twenty days of the decision, the petitioner may appeal the secretary of state's decision to the election administration and certification board. In its assessment, the board is limited to the record established when the matter was before the secretary of state. If the board rejects the denial of certification, the petitioner is entitled to judicial review as prescribed under RCW 34.05.
- Notably, there is no provision in RCW 29A.04.510-590 that prohibits the secretary of state from serving on the board while running for office or from participating in matters where the secretary of state has endorsed the candidate or served on the candidate's campaign.

#### **II. Source of Conflict of Interest Laws**

- Statutory
  - RCW 42.52 – Conflict of Interest Law, state officials.

- The state conflict of interest laws apply too all state officials, including university officials. Among other prohibitions, RCW 42.52.020 specifically forbids state officers or employees from having an interest that conflicts with the proper discharge of their duties. Additionally, RCW 45.52.160 prohibits state officers or state employees from using persons, money or property at their control for personal gain.
  - *See also* RCW § 42.52.180 (“No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose ***of assisting a campaign for election of a person to an office***... Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.”).
- RCW 29.56 – Grounds for Recall of an Elected State Official
  - The Washington Constitution guarantees citizens the right to remove elected officials from office through a recall election. Washington Const. art. I, §§ 33-34. This process is codified in RCW 29.56, and provides that Washington State Superior Courts determine the legal and factual sufficiency of the charges. RCW 29.56.110. For a claim to be considered legally sufficient the elected official must have engaged in misfeasance, malfeasance, or violation of the oath of office, without justification. See RCW 29.56.110(1)-(2). A claim is factually sufficient if specifies the time, place, and conduct in accordance with RCW 29.82.010.
- Regulatory – The Washington Public Disclosure Commission & State Attorney General may pursue enforcement actions relating to violations of campaign disclosure and contribution laws. The PDC may additionally adopt rules relating to campaign disclosure and contribution laws. See WAC 390.
  - The Washington Public Disclosure Commission and State Attorney General are jointly charged with enforcing Washington’s campaign disclosure and contribution laws. See RCW 42.17A. The commission consists of five members appointed by the governor with the

consent of the senate who serve five years terms. Additionally, citizens are entitled to bring a private action in the name of the state where the notification requirements set forth under RCW 42.17.775 are met.

- Case Law – there is no Washington case law involving a claim against a secretary of state under the state’s conflict of interest laws or campaign disclosure and contribution laws.

### **III. Conflict of Interest Applicability to Chief Elections Officer**

- Yes. See RCW 42.52.010
  - "'State officer' means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. 'State officer' includes ... holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions... For the purposes of this chapter, 'state officer' also includes any person exercising or undertaking to exercise the powers or functions of a state officer."

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Yes. See RCW 42.52.020
  - In Washington there is seemingly a duty to abstain even if the conflict is disclosed. The Washington conflict of interest statute provides that "No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties."

### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- None identified.

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- No specific laws found. All state employees are bound by RCW 42.52.

## VII. Public Perception/Recent Coverage

- Rosenberg, Tina, “The End of the Polling Booth: States are making voting more accessible by allowing citizens to vote at home,” *N.Y. Times*, June 11, 2019. (Link)
- Morgan, Glen, “Governor Jay Inslee signed ‘Stop Glen Morgan’ campaign finance bill, but will it really change anything?” *WetheGoverned.com*, April 18, 2018. (Link)
- Washington State Office of the Attorney General, “AG: Secretary of State Kim Wyman to Pay \$10,115 over Campaign Finance Violations,” January 20, 2017. (Link)
- Gutman, David, “‘Rigged’ Vote: ‘Wrong,’ says King County elections official,” *Seattle Times*, October 22, 2016. (Link)
- Guttman, David, “AG’s office files election-finance complaint against Kim Wyman” *Seattle Times*, October 4, 2016. (Link)
- Song, Kyung M., “Washington Gets D+ Grade in 2015 State Integrity Investigation” Center for Public Integrity, November 9, 2015. (Link)

## Secretary of State Reports: West Virginia

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Elected Secretary of State. W. Va. § 3-1A-6. The Secretary of State serves as the Chief Elections Officer of West Virginia and oversees the election process throughout the state along with the recording of official campaign financial records and candidate filings. W. Va. §3-2-3.
- The state election commission serves as and advises and reviews the work of the Secretary of State. W. Va. Code § 3-1A-5.

#### **II. Source of Conflict of Interest Laws**

- *Statutory:* West Virginia's Ethics Act, codified at Section 6B-1-1(a) of the code, states that "The decisions and actions of public officials and public employees must be made free from undue influence, favoritism or threat, at every level of government."
  - W. Va. Code § 6B-2-5(b)(1) establishes that "[a] public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person ... The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain."
  - W. Va. Code Chapter 3 governs election conduct. Candidates for election to any state, county or municipal office, county school board, and district school board must file a financial disclosure statement with the Ethics Commission. W. Va. Code § 3-1A-7.
    - The content of the financial statement includes the amount the balance of cash on hand, all contribution, all loan information (including the outstanding balance), and total expenditures of the candidate, amongst other items. W. Va. Code § 3-8-5.

- All public officials, including the Secretary of State, must also file a financial disclosure statement annually. W. Va. Code § 6B-2-6. The content of the financial disclosure statement includes every source of income, name of all persons the candidate owes money and all the persons who owe money to the candidate, the source of all gifts, and the name of each for-profit business. W. Va. Code § 6B-2-7.
- The Ethics Commission maintains completed financial disclosure forms online.
  - In order to be eligible to serve as an election official, a person may not be a candidate on the ballot or an official write-in candidate in any election, except for district, county, or state political party executive committee. W. Va. Code § 3-1-28.
- All elected officials, including the Secretary of State, must file a financial disclosure statement with the Ethics Commission. The Ethics Commission publishes all financial disclosure statements online. W. Va. Code § 6B-2-6. The failure to file a financial disclosure form will result in a criminal charge and fines upon conviction. W. Va. Code §6B-2-10.
- The State Election Commission (SAE) is composed of the Secretary of State and four other individuals appointed by the Governor. W. Va. Code § 3-1A-1.
- *Regulatory:*
  - The West Virginia Ethics Commission investigates alleged violations by a public official or public employee. W. Va. Code §6B-2-2.
  - West Virginia Ethics Commission Advisory Opinion 2010-08
    - In 2010, the Ethics Commission ruled in an advisory opinion that incumbent city council members were prohibited from voting on an proposal that would have extended their own terms of service for one year because and thus provide them with additional compensation because such a vote “would constitute use of public office for private gain.”

- *Case Law:* No case law appears to bear directly on the state conflict of interest laws in their application to the Secretary of State specifically.

### **III. Conflict of Interest Applicability to Elections Officer**

- No appointed member can be a candidate for or hold any public office during their tenure on the SAE. W. Va. Code § 3-1A-2.
- No public official may knowingly and intentionally use his or her office or the prestige of the office for his or her own private gain. W. Va. Code §6B-2-5.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- No, there is not duty to abstain, even if a candidate's conflict of interest disclosure form lists a conflict.

### **V. Specific Election Officer Conflict of Interest Rules/Cases?**

- No.

### **VI. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of separate rule. Same general rules relating to conflicts of interest apply to all state constitutional officers.

### **VII. Public Perception/Recent Coverage**

- “*WV fine-tunes campaign law*,” AP News, May 28, 2019 ([Link](#)) (WV election commissioners adopted legislative rules to increase campaign contribution limits and increase disclosure requirements for political action committees and independent expenditure groups).
- “*The West Virginia Speaker of the House has conflicts of Interest with the Natural Gas Industry*,” Pacific Standard, Dec. 6, 2018 ([Link](#)) (Roger Hanshaw, a Republican lawyer from Clay County, represents natural gas companies and gas industry lobby groups in his private legal practice while voting on measures that directly affect their businesses).

## Secretary of State Reports: Wyoming

### Election Reformers Network

#### **I. Election Officer – Background and Responsibilities**

- Secretary of State, elected. Mandated by the Wyoming Constitution. Wyo. Const. art. 4 § 11.
  - Supervises state elections, while county clerks serve as chief election officers for counties. Wyo. Stat. Ann. § 22-2-103, Wyo. Const. art. 3 § 52. Certifies applications for initiatives and referendums.
  - Maintains uniformity in the applications and operations of the election laws of the state. § 22-2-103.
  - Certifies which officers, other than county and precinct officers, are to be nominated or elected. § 22-2-108.
  - Prepares written directives and instructions relating to and based on election laws. § 22-2-121.
  - Promulgates rule as necessary to maintain uniform voting and vote counting procedures and orderly voting. § 22-2-121.
  - Has authority to issue directives to county election officers necessary to insure proper conduct of elections. § 22-2-121.

#### **II. Source of Conflict of Interest Laws**

- *Statutory* – Wyoming has a set of ethical rules in its Ethics and Disclosure Act. Wyo. Stat. Ann. §§ 9-13-101-109. The statute sets out a code of ethical standards, including the rules for conflicts of interest. § 9-13-106. The statute also requires that elected officials file financial disclosure forms with the Secretary of State. § 9-13-108.
  - The conflict of interest provisions specifically apply to all public officials, public members, and public employees. The Secretary of State, along with the other four elected officials and members of the Wyoming legislature, must also file financial disclosure forms.

- “Anything of value” is defined very broadly. § 9-13-102. But the statute expressly exempts campaign contributions if “properly received and reported.”
- *Regulatory* – Wyoming is one of five states with no ethics commission to enforce its ethics statutes. See *State Ethics Commissions: Jurisdiction*, National Conference of State Legislatures (May 5, 2019).
  - The Secretary of State’s Election Division “ensures uniformity in the application and operations of Wyoming’s elections.” *Duties of the Office of Secretary of State*, Wyoming Secretary of State (last visited June 6, 2019). (Link).
- *Case Law* – No case law appears to bear directly on the state conflict of interest laws in their application to the Secretary of State.

### **III. Conflict of Interest Applicability to Elections Officer**

- Yes. See Wyo. Stat. Ann. § 9-13-102 (definition of a public official).

“Public official” means an individual elected to a state or local office, or an individual who is appointed to fill a vacancy in a state or local office, whether or not the individual has yet assumed the office.

### **IV. Duty to Abstain, Regardless of Disclosure?**

- Yes, there is a limited duty to abstain in some circumstances, even when a conflict is disclosed. See Wyo. Stat. Ann. § 9-13-106:
  - (a) A public official, public member or public employee shall not make an official decision or vote on an official decision if the public official, public member or public employee has a personal or private interest in the matter. In determining whether he has a personal or private interest in a matter the public official shall recognize the importance of his right to represent his constituency and shall abstain from voting only in clear cases of a personal or private interest as defined in this subsection. A public official or public member shall not vote to give money or any direct financial benefit to himself except for tax reductions affecting the general public. For the purposes of this section, a personal or private interest:

(i) Is, with respect to the public official, public employee or public member, an interest which is direct and immediate as opposed to speculative and remote; and

(ii) Is an interest that provides the public official, public employee or public member, a greater benefit or a lesser detriment than it does for a large or substantial group or class of persons who are similarly situated.

(b) A public official, public member or public employee described by subsection (a) of this section shall abstain from voting on the decision and from making any official decision in the matter. The public official's, public member's or public employee's abstention from voting must be recorded in the governmental entity's official records.

- *See also* Wyoming legislative Service Office, Ethics Guide for Legislators, 7 (Nov. 2016):

Question 6: How do I determine whether I have a personal or private interest in a matter which prohibits me from voting on the matter?

Answer: The act prohibits a public official from making an official decision or vote on an official decision if the official has a personal or private interest in the matter. The act defines personal or private interest as an interest which is direct and immediate as opposed to speculative and remote, and is an interest that provides the official a greater benefit or a lesser detriment than it does for a large or substantial group or class of persons who are similarly situated. The statute also states that in determining whether the legislator has a personal or private interest in a matter, the legislator shall recognize the importance of his right to represent his constituency and shall abstain from voting only in clear cases of a personal or private interest.

In the case of an issue which affects many persons including the legislator such as a driver's license issue, or a sales tax issue, the legislator should not have a conflict since the legislator is in a large class of persons similarly situated and will be affected by the law in the same manner as the large class of driver's license-holders or sales taxpayers.

- Note that this legislature's guide describes § 9-13-106, which is also applicable to the Secretary of State.

### **V. Specific Election Officer Conflict of Interest Rules?**

- No evidence of conflict of interest rules written expressly for the Secretary of State.

### **VI. Historical Allegations of Partisan Interference by Election Officer in Election Administration?**

- No evidence of historical allegations of interference by a Secretary of State.

### **VII. Conflict of Interest Rules for Other Constitutional Officers?**

- No evidence of such a rule. Same general rules relating to conflicts of interest.

### **VIII. Public Perception/Recent Coverage**

- Editorial, Kerry Drake, *When Is a Conflict of Interest a Conflict? Almost Never*, WyoFile (Mar. 13, 2018) (Link) (editorial criticizing the conflict of interest laws as toothless because the legislature decides for itself what constitutes a conflict of interest).
- Andrew Graham, *Could Your Elected Official Have a Conflict of Interest?*, WyoFile (Mar. 28, 2017) (Link) (Article compiling corporate ties of different elected officials, including the Secretary of State, Ed Murray, criticizing how little the mandated financial disclosure forms actually disclose).
- Tom Morton, *Update: Secretary of State Responds to Allegations of Possible Voter Suppression*, K2 Radio (last visited June 17, 2019) (Link) (Article reporting on Secretary of State Ed Murray's potential denial of the right to vote to certain citizens without proof citizenship).