

CHAPTER 2
PUBLIC OFFICERS AND EMPLOYEES

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CHAPTER 2

PUBLIC OFFICERS AND EMPLOYEES

2.1 Scope of this Chapter. This Chapter discusses the qualifications, duties, and responsibilities of public officers. It also discusses selected constitutional and statutory provisions concerning public officers' appointment and tenure in office, as well as the civil or criminal liability of public officers and employees. See *a/so* Agency Handbook Chapter 3 (Personnel).

2.2 Definition of "Public Officer." A "public officer" is "the incumbent of any office, member of any board or commission, or his deputy or assistant exercising the powers and duties of the officer, other than clerks or mere employees of the officer." A.R.S. § 38-101(3). The executive heads of all state agencies and the members of all state boards and commissions are considered "public officers." Generally, all others working for the state are "employees."

2.3 Qualifications for Public Office. Persons seeking election to public office must meet Arizona constitutional and statutory requirements. To be eligible for elective state office, a person must be a qualified elector of the political division or municipality in which he or she is seeking to be elected. Ariz. Const. art. VII, § 15. A person who is adjudicated an incapacitated person is not a qualified elector, nor is any person convicted of treason or of a felony, unless restored to civil rights. Ariz. Const. art. VII, § 2(C).

Public officers, whether elected or appointed, must be at least eighteen years old, must be United States citizens and Arizona residents, must be able to speak, write, and read the English language, and must have registered with the selective service system if required by law to do so. A.R.S. § 38-201(A)-(E); see *also Escamilla v. Cuello*, 230 Ariz. 202, 205-06, 282 P.3d 403, 406-07 (2012) (holding that A.R.S. § 38-201(C) requires that a candidate for public office "possess sufficient proficiency in the English language to conduct the duties of the office" and that this requirement does not unconstitutionally violate a non-English-speaking candidate's right to participate government). Constitutional and statutory provisions establish additional qualifications for certain public officers. See, e.g., Ariz. Const. art. V, §§ 1, 2 (age and residency requirements for the Governor, Secretary of State, State Treasurer, Attorney General, and Superintendent of Public Instruction); Ariz. Const. art. XV, § 1 (qualifications for Corporation Commissioner); Ariz. Const. art. IV, Pt. 2, § 2 (qualifications to be a member of the Arizona legislature); A.R.S. § 27-121 (qualifications for the State Mine Inspector); A.R.S. § 41-191 (the Attorney General must have been a practicing attorney for at least five years before taking office); A.R.S. § 11-402 (qualifications for county offices).

2.4 Duties and Responsibilities of Public Officers. Public officers must impartially execute all laws and rules for which they are responsible. The Arizona Supreme Court stated as follows in *Button v. Nevin*, 44 Ariz. 247, 257, 36 P.2d 568, 571 (1934):

Public officials may not violate the plain terms of a statute because in their opinion better results will be attained by doing so. They have but one duty, and that is to enforce the law as it is written, and, if the effect of their action is disastrous, the responsibility is upon the Legislature and not upon them.

Public officers must therefore familiarize themselves with the laws and rules that relate to public officers' duties and responsibilities generally as well as with those that pertain to their particular offices and agencies. Public officers are obligated to discharge the duties of their offices and may not delegate those duties to their subordinates unless they are authorized by law to do so. See Agency Handbook Section 2.12; see also Agency Handbook Chapter 13 for a discussion of state officer and employee liability, immunity, and indemnity.

2.5 Nomination and Appointment of Appointive Officers. The method for nominating and appointing appointive officers is usually set forth in the statutes that pertain to their offices. Pursuant to A.R.S. § 38-211, the Governor appoints certain public officers with the Senate's consent. Examples of such public officers include the Director of Health Services (A.R.S. § 36-102(C)), the Land Commissioner (A.R.S. § 37-131(B)), the Director of Insurance (A.R.S. § 20-141(A)), the Real Estate Commissioner (A.R.S. § 32-2106(A)), the Registrar of Contractors (A.R.S. § 32-1103), and the Racing Commissioners (A.R.S. § 5-102). The Governor may appoint other public officers with the Senate's consent, but not pursuant to A.R.S. § 38-211. The Director of the Department of Administration (A.R.S. § 41-701(C)) is an example. The Governor appoints other public officers without the Senate's approval. Examples of such officers include the members of the Board of Accountancy (A.R.S. § 32-702(B)), the Board of Barbers (A.R.S. § 32-302(A)), and the Board of Cosmetology (A.R.S. § 32-502(A)). Officers appointed by the Governor—without the Senate's consent—are entitled to receive a commission of authority from the Governor. A.R.S. § 38-221(A)(4), (B).

2.5.1 Nomination and Appointment of Officers Who Are Appointed Pursuant to A.R.S. § 38-211. When a statute provides that an "officer shall be appointed pursuant to [A.R.S. § 38-211], the [G]overnor shall nominate and with the consent of the [S]enate appoint such officer as prescribed in [that statute]." A.R.S. § 38-211(A).

2.5.1.1 Term of Office Beginning or Expiring or Office Becoming Vacant During the Legislature's Regular Session. When a "term of any state office which is appointive pursuant to [A.R.S. § 38-211] expires, begins or becomes vacant during a regular legislative session, the [G]overnor [must nominate a qualified person during that session] and . . . [must] promptly transmit the nomination to the [P]resident of the [S]enate."

A.R.S. § 38-211(B). If an incumbent who is capable of continuing to serve until the Senate has consented to a nomination is occupying the office, a nominee shall not assume the duties of the office pending Senate confirmation. *Id.* "If the incumbent is unable to continue to discharge the duties of office, the nominee shall assume and discharge the duties of the office pending [S]enate confirmation." *Id.*

"If the [S]enate consents to the nomination, the [G]overnor shall then appoint the nominee to serve for the term or, in the case of a vacancy, for the unexpired term in which the vacancy occurred." *Id.* If the Senate rejects a nomination, the Governor cannot appoint the rejected nominee and must promptly nominate another qualified person. *Id.*

If the Senate does not act on a nomination made during the regular session, the nominee may discharge the duties of the office subject to confirmation during the next legislative session. *Id.* In addition, "if a nomination other than one that is required to be sent to the [S]enate during the first week of the legislative session is not received during the session" for an office that becomes vacant or a term that begins or ends during a regular session, the Governor must appoint a nominee after the close of the legislative session to discharge the duties of the office subject to confirmation during the next legislative session. *Id.* This provision, which the Legislature added in 1989, 1989 Ariz. Sess. Laws ch. 250, § 4, seems to contradict the earlier provision in A.R.S. § 38-211(B) requiring the Governor to nominate a person during the regular session. The Arizona courts have not yet construed this amendment, however.

2.5.1.2 Term of Office Beginning or Expiring or Office Becoming Vacant While the Legislature Is Not in Regular Session. "If the term of any state office . . . expires, begins or becomes vacant . . . [when] the [L]egislature is not in regular session, the [G]overnor shall nominate a [qualified] person . . . for such office . . ." A.R.S. § 38-211(C). The nominee shall assume the duties of the office until the Senate either rejects or fails to act on the nomination. *Id.* The Governor "shall transmit the nomination to the [P]resident of the [S]enate during the first week of the next regular session." *Id.*

2.5.1.3 Tenure of Nominees and Officers. A nominee shall not "serve longer than one year after nomination without [S]enate consent." A.R.S. § 38-211(E). An incumbent who is renominated to the same office is also limited to serving one year from the date of renomination without Senate confirmation. Ariz. Att'y Gen. Op. I00-014. "Every officer who is subject to [Senate] confirmation [under A.R.S. § 38-211] and whose term is not fixed by law shall hold office at the pleasure of the appointing power." A.R.S. § 38-211(D).

2.5.2 Nomination and Appointment of Other Officers. As previously noted, a number of officers are appointed by the Governor, subject to Senate confirmation, but are not appointed pursuant to A.R.S. § 38-211. These other appointees' offices are also covered by A.R.S. § 38-211's provisions. A.R.S. § 38-295(B).

2.6 Loyalty Oath. In Arizona, the officers and employees of all government agencies must take a loyalty oath. A.R.S. § 38-231(E); see also Ariz. Att'y Gen. Op. 186-020. "[O]fficer or employee" is defined for this purpose as "any person elected, appointed or employed, either on a part-time or full-time basis, by this state or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution or any board, commission or agency of any county, city, town, municipal corporation, school district or public educational institution." A.R.S. § 38-231(F).

The loyalty oath provides as follows:

State of Arizona, County of _____ I, _____
(type or print name)
do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of _____ (name of office) _____ according to the best of my ability, so help me God (or so I do affirm).

(signature of officer or employee)

A.R.S. § 38-231(E). Any person who fails to take and execute the loyalty oath may not receive compensation, A.R.S. § 38-231(B), and is deemed to have vacated the office, A.R.S. § 38-291(9). A person who exercises the duties of public office without first taking the oath, or without giving the required bond (see A.R.S. §§ 38-256; -263(B); -268; -269(B), -361, -442), is guilty of a class 2 misdemeanor. A.R.S. § 38-442(A).

An officer or a board or commission member must take, subscribe, and file the loyalty oath "[i]f appointed, at or before commencement of the term of office" or "[i]f elected, at any time after receiving the officer's certificate of election, and at or before commencement of the term of office." A.R.S. §§ 38-232, -233(A).

The loyalty oath of an *elected* officer must be filed with the Secretary of State. A.R.S. § 38-233(A). The oaths of other state officers and employees must be filed with the office of the state board, commission, or agency to which they have been appointed or for which they work. *Id.*

2.7 Term of Office. Many public officers have terms of office specified by law, which most often run from two to five years. When the term of an appointive office has not been established by law, the officer holds the position at the appointing authority's pleasure. A.R.S. §§ 38-211(D), -295(A).

2.8 Vacancy in Office. A public office is deemed vacant if any of the following occur:

1. The public officer dies, is judicially determined to be insane, resigns and the resignation is accepted, is removed from office, ceases to be a resident of the state or locale for which he was elected, or is convicted of a felony or of an offense involving a violation of his official duties. A.R.S. § 38-291(1)-(5), (8).
2. The public officer is absent from the state without legislative permission for more than three consecutive months, ceases to discharge the duties of the office for three consecutive months, fails to file the required oath on time, or violates the restrictions that A.R.S. § 38-296 (Arizona's "resign-to-run" statute) imposes. A.R.S. § 38-291(6), (7), (9), (12).
3. No one is elected or appointed, or a competent tribunal declares the public officer's election or appointment void. A.R.S. § 38-291(10), (11).
4. For an office subject to A.R.S. § 38-211, when the Senate rejects the nomination or fails to act on the nomination within one year of its submission to the Senate. See, e.g., A.R.S. § 38-211(E).
5. A public officer fails to file the required bond. See A.R.S. §§ 38-256; -263(B); -268; -269(B), -361, -442.

The Constitution provides that the Governor shall have the power to fill a vacant public office by appointment, unless the Constitution or laws provide otherwise. Ariz. Const. art. V, § 8.

2.9 Resignation from Office. An appointive officer seeking to resign from office must deliver a written resignation to the appointing authority. A.R.S. § 38-294(7). The resignation is not effective until the appointing authority accepts it. A.R.S. § 38-291(3). If the appointing authority does not accept the resignation, the officer must continue to discharge the duties of the office until his successor is qualified. See *Cragin v. Frohmler*, 43 Ariz. 251, 256-57, 30 P.2d 247, 249 (1934); compare *Rogers v. Frohmler*, 59 Ariz. 513, 517, 130 P.2d 271, 273 (1942) (resignation and acceptance would not relieve officer from duty until his successor qualified). "The resignation of the incumbent *elective* officer duly filed in writing . . . , if not accepted within ten days, shall be deemed to have become effective as of the date of filing." A.R.S. § 38-296(C) (emphasis added). If an officer resigns and the resignation is accepted or becomes effective before the term expires, an officer who is appointed to fill the vacancy may serve only for the remainder of the unexpired term. A.R.S. § 38-295(C).

2.10 Expiration of Term. Except as provided in A.R.S. § 38-211 for an officer whose appointment is subject to Senate confirmation, an officer is required to continue to discharge the duties of the office after his or her term of office expires until a successor has qualified. A.R.S. § 38-295(B).

2.11 Impeachment of Officers. All officers are "liable to impeachment for high crimes, misdemeanors, or malfeasance in office." Ariz. Const. art. VIII, pt. 2, § 2; A.R.S. § 38-311.

2.12 Deputies and Assistants. Public officers may appoint deputies and assistants only when specifically authorized to do so by law. A.R.S. § 38-461(A). The appointment must be in writing and must be filed with the Secretary of State. A.R.S. § 38-461(C). The appointments of deputies, assistants or clerks by county officers or boards must be filed in the office of the county recorder. *Id.* "Unless otherwise provided [by law], each deputy . . . possesses the powers and may perform the duties prescribed by law for the office of the principal." A.R.S. § 38-462(A). Public officers "may appoint clerks and employees for the prompt discharge of the duties of the office." A.R.S. § 38-461(A).

2.13 Compensation and Salaries. Public officers, members of boards and commissions, deputies, and other employees are entitled to receive the salary authorized by law for their respective positions and are prohibited from receiving any salary or emolument in excess of their legally authorized salary. A.R.S. § 38-601. In addition, the compensation of a public officer serving for a fixed term of office may not be increased or decreased during the officer's term of office, except that the compensation of officers serving on boards composed of two or more officers whose terms are not coterminous may be increased or decreased. Ariz. Const. art. IV, pt. 2, § 17. When the salary of one member of such a board is adjusted legislatively at the beginning of a term, the other members' salaries are also adjusted so that those doing substantially the same work receive the same pay. *See Maricopa County v. Rodgers*, 52 Ariz. 19, 25, 78 P.2d 989, 991-92 (1938).

Generally, all officers and employees of the state and of any state agency are entitled to receive salaries within the range that the Department of Administration determines unless the Legislature modifies that determination. A.R.S. § 38-611(A). Some members of boards, commissions, councils, or advisory committees may receive compensation at a rate not to exceed \$30 for each day that they serve. A.R.S. § 38-611(C). Certain state officers and employees are exempt from the foregoing compensation provisions. *See* A.R.S. § 38-611(B).

2.14 The Sunset Law. In 1978, the Legislature enacted a "Sunset Law," which provides for the automatic termination of certain administrative agencies unless specific justification can be given for continuing their existence. A.R.S. §§ 41-2951 to -2958. The Auditor General and committees of the Legislature conduct a "sunset review" of each administrative agency scheduled for termination. A.R.S. § 41-2952(5). The sunset review includes (1) determining whether there is a need for the agency's program and (2) assessing the degree to which the program's original objectives have been achieved, expressed in terms of the program's performance, impact, or accomplishments and of the situation that the program was intended to address. *Id.* Unless specific legislation is

enacted to continue the agency or modify its structure, the agency ceases to exist on the scheduled termination date. A.R.S. § 41-2955. The scheduled termination dates for agencies may be found in A.R.S. Title 41, chapter 27, article 2. The Legislature adds a termination schedule each year.

2.15 Selected Criminal and Civil Liability Provisions. Public officers and employees should be familiar with certain criminal and civil liability provisions that may be relevant to their activities. See *generally* Agency Handbook Chapters 8 (Conflict of Interest), 13 (Litigation Against State Entities or Employees), and 14 (Detection of Criminal Violations). Selected provisions follow.

<u>OFFENSE</u>	<u>CLASSIFICATION</u>
<p>1. Obstructing governmental operations.</p> <p>Knowingly obstructing, impairing, or hindering the performance of a governmental function by threat of violence or physical force. A.R.S. § 13-2402; Agency Handbook Section 14.3.5.</p>	<p>Class 1 misdemeanor</p>
<p>2. Impersonating a public servant.</p> <p>Pretending to be a public servant with intent to induce another to submit to one's pretended official authority or to rely on one's pretended official acts. A.R.S. § 13-2406; Agency Handbook Section 14.3.5.</p>	<p>Class 1 misdemeanor</p>
<p>3. Tampering with a public record.</p> <p>Knowingly, with intent to defraud or deceive, preparing, using, or filing a false written instrument as a public record; destroying, removing, mutilating, concealing, or otherwise impairing the availability of public records; or refusing to deliver a public record after a proper request for it has been made. A.R.S. § 13-2407; Agency Handbook Section 14.3.5.</p>	<p>Class 6 felony</p>

4. Committing bribery.

Class 4 felony

Offering to confer, agreeing to confer, or conferring a benefit on a public servant with corrupt intent "to influence the public servant's . . . vote, opinion, judgment, exercise of discretion or other action in his official capacity;" or, as a public servant, soliciting, agreeing to accept, or accepting with corrupt intent any benefit with the "understanding that [one's] vote, opinion, judgment, exercise of discretion or other action . . . may thereby be influenced." A.R.S. § 13-2602; Agency Handbook Section 14.3.6.

5. Trading in public office.

Class 6 felony

Offering, conferring, or agreeing to confer with corrupt intent a benefit upon a public servant in exchange for appointment to a public office or nomination as a candidate for a public office; or, as a public servant, soliciting, agreeing to accept, or accepting with corrupt intent any benefit in exchange for appointing or nominating another to a public office. A.R.S. § 13-2603; Agency Handbook Section 14.3.6.

6. Committing perjury.

Class 4 felony

Making a false sworn statement or a false unsworn declaration, certificate, verification, or statement subscribed to be true under penalty of perjury, while believing it to be false, in regard to an issue that could affect the course or outcome of any proceeding or transaction. A.R.S. § 13-2702; *see also* A.R.S. § 13-2701(1); Agency Handbook Section 14.3.7.

7. Committing false swearing.

Class 6 felony

"[M]aking a false sworn statement, believing it to be false." A.R.S. § 13-2703; Agency Handbook Section 14.3.7.

8. Making an unsworn falsification.

Class 2 misdemeanor
(false application)

or

Class 1 misdemeanor
(false statement in connection with
official proceeding)

Knowingly making a statement [that one] believes to be false in regard to an issue that could affect the course or outcome of any proceeding or transaction "to a public servant in connection with an application for any benefit, privilege or license;" or knowingly making any statement [that one] believes to be false "in regard to a material issue to a public servant in connection with any official proceeding." A.R.S. § 13-2704; *see also* A.R.S. § 13-2701(1); Agency Handbook Section 14.3.7.

9. Tampering with a witness.

Class 6 felony

Knowingly inducing a witness (or a person who may be called as a witness) to unlawfully withhold testimony or to testify falsely in or to be absent from an official proceeding to which the witness has been legally summoned. A.R.S. § 13-2804.

10. Failing to collect fees.

Civil liability

Neglecting or failing to collect fees for licenses, permits, certificates, or other monies due a budget unit when such licenses, permits, and certificates are issued or such services are rendered. A.R.S. § 35-143.

11. Incurring unauthorized obligations.

Civil liability

Incurring, ordering, or voting for "the incurrence of any obligation against the state or for any expenditure not authorized by an appropriation and an allotment." A.R.S. § 35-154.

12. Illegally withholding or expending state monies.

Civil liability plus 20% penalty

Illegally withholding, expending, or otherwise converting any state money to an unauthorized purpose. A.R.S. § 35-196.

13. Violating the fiscal provisions.

Class 1 misdemeanor

Knowingly failing or refusing to comply with any provision contained in Title 35, Chapter 1 (relating to budgeting, accounting, and control of public finances). A.R.S. § 35-197.

14. Approving, allowing, or paying an unauthorized claim.

Civil liability plus 20% penalty, interest and attorneys' fees

Approving, auditing, allowing, or paying a claim or demand against the state that is not authorized by law. A.R.S. §§ 35-211, -212.

15. Influencing, obstructing, or impairing an audit.

Class 5 felony

With intent to defraud or deceive, improperly influencing, obstructing, or impairing an audit being conducted or about to be conducted in relation to any contract or subcontract with the state. A.R.S. § 35-215.

16. Violating the duties of a custodian of public monies.

Class 4 felony

Misappropriating public monies for loans or personal use or otherwise misusing public monies in the custodian's safekeeping. A.R.S. § 35-301; Agency Handbook Section 14.3.3.

17. Violating the loyalty oath.

Class 4 felony plus forfeiture of office or employment and of any additional compensation, emoluments, or benefits that are incident or appurtenant to it

Knowingly acting to overthrow state or local governments or advocating their overthrow by force, violence, or terrorism. A.R.S. § 38-231(C).

18. Committing usurpation of office.

Class 2 misdemeanor

Knowingly intruding "into a public office to which [one] has not been elected or appointed" or knowingly exercising "the functions of [the] office after [one's] term has expired and a successor has been elected or appointed and has qualified." A.R.S. § 38-234.

19. Withholding or destroying public records or property.

Class 4 felony

Knowingly withholding, detaining, mutilating, destroying, or taking away property of an office from the lawful successor or other person entitled to the property. A.R.S. § 38-363.

20. Charging excessive fees.

Class 5 felony

(Civil liability, four times the fee)

Demanding and receiving a higher fee than prescribed by law or any fee not established by law. A.R.S. § 38-413; Agency Handbook Section 14.3.8(2).

21. Failing to report amounts collected.

Class 2 misdemeanor
(Removal from office)

Knowingly failing to comply with a requirement of making or filing an abstract or statement of the amount of fees or other monies earned or collected by or returned to a public officer or a public officer's deputies. A.R.S. § 38-414; Agency Handbook Section 14.3.8(3).

22. Stealing, destroying, altering, or secreting public records.

Class 4 felony
(Public officers)

Stealing or knowingly and without lawful authority destroying, mutilating, defacing, altering, falsifying, removing, or secreting all or part of any public record or permitting any other person to do so. A.R.S. § 38-421; Agency Handbook Section 14.3.5.

Class 6 felony
(Persons other than public officers)

23. Making or giving a false certificate.

Class 6 felony

Making or giving as true a certificate or writing containing a statement that one knows to be false. A.R.S. § 38-423.

24. Acting as a public officer without qualifying for public office.

Class 2 misdemeanor

"[E]xercis[ing] a function of a public office without taking the oath of office, or without

giving the required bond." A.R.S. § 38-442.

25. Committing nonfeasance in public office.

Class 2 misdemeanor, unless special provision for punishment has been made

Knowingly omitting to perform any duty required of one's office by law. A.R.S. § 38-443; Agency Handbook Section 14.3.8(1).

26. Asking for or receiving an illegal gratuity or reward.

Class 6 felony

Knowingly asking for or receiving "any emolument, gratuity or reward, or any promise thereof, excepting those authorized by law, for doing any official act." A.R.S. § 38-444.

27. Violating the conflict of interest prohibition.

Class 5 felony plus permanent bar from state office

Making or having an interest in contracts, becoming a vendor or a purchaser at sales, or purchasing evidences of indebtedness when prohibited by law. A.R.S. § 38-447; see *also* Agency Handbook Sections 8.2, 8.16.1 to -.16.3.

28. Purchasing appointment to office.

Class 6 felony

"[K]nowingly giv[ing] or offer[ing] any gratuity or reward in consideration that [the offeror], or any other person, be appointed to a public office, or [be] permitted to exercise or discharge the duties [of that office]." A.R.S. § 38-465.

29. Selling appointment to office.

Class 6 felony plus forfeiture of office and permanent bar from holding state office

Appointing or permitting another to exercise or discharge any duties of the public office in exchange for a gratuity or reward. A.R.S. § 38-466.

30. Unlawfully employing relatives.

Class 2 misdemeanor

Appointing or voting to appoint a relative related by affinity or consanguinity within the third degree to any office or position in an agency of which the appointing officer is a member; or appointing, voting to appoint, or being a party to appointing a person in exchange for the appointment of one's relative within the third degree to any office or position in such an agency. A.R.S. § 38-481(A).

31. Violating the conflict of interest provisions.

Class 6 felony plus forfeiture of office or employment

Intentionally or knowingly violating the conflict of interest provisions, A.R.S. §§ 38-503 to -505. A.R.S. § 38-510(A)(1), (B); see *also* Agency Handbook Chapter 8 and Sections 3.9.2, 14.3.8(5).

Recklessly or negligently violating such provisions. A.R.S. § 38-510(A)(2).

Class 1 misdemeanor

32. Violating the financial disclosure requirements.

Class 1 misdemeanor plus civil penalty of \$50 per day of noncompliance up to \$500

Knowingly failing to file a required financial disclosure statement or knowingly filing an incomplete or a false one. A.R.S. § 38-544.

33. Paying disqualified persons.

Civil liability for twice the amount paid

"[A]llow[ing], audit[ing], or pay[ing] any warrant or other certificate of indebtedness for services performed to any person not qualified as provided in A.R.S. § 38-201." A.R.S. § 38-607.

34. Retaining a subordinate's salary.

Class 5 felony

Accepting, retaining, or diverting for one's own use or for another's use any part of the salary or fees allowed by law to be paid to one's deputy or other employees. A.R.S. § 38-609.

35. Violating the state personnel system requirements.

Civil liability plus 20% penalty, interest, and attorneys' fees

Incurring an obligation while failing to comply with state personnel system requirements concerning recruiting, selecting, or hiring state employees or separating state employees from employment. A.R.S. § 41-747; *see also* A.R.S. §§ 35-154, -212(A).

36. Using a political position or influence to affect public employment decisions.

Class 2 misdemeanor plus suspension and a five-year ban from state employment

Using with corrupt intent an elected or appointed political position or the political influence associated with such a position "to cause the firing, promotion or demotion of any public employee or the hiring of or failure to hire any applicant for public employment." A.R.S. § 41-753(F)-(H).

37. Violating the lobbying provisions.

Class 1 Misdemeanor and civil liability up to \$1,000 per violation

Knowingly violating the laws relating to lobbying, registration of public lobbyists, lobbying expenditure reports, and gifts to state officers and employees in A.R.S. §§ 41-1231 to -1239. A.R.S. § 41-1237(A); A.R.S. § 41-1237.01. See Agency Handbook Chapter 16 for a discussion of the lobbying provisions.

In addition to imposing any expressly stated statutory penalty for a public officer's neglect or violation of his or her official duty, a court has discretion to remove the official from office. A.R.S. § 38-293.

A public officer or employee convicted of a felony committed in the course of his or her employment may, like anyone else convicted of a felony, be fined up to \$150,000 for each violation, A.R.S. § 13-801(A), and may be incarcerated in the state penitentiary, A.R.S. § 13-701(A). A misdemeanor conviction may result in a fine of up to \$2,500 for each violation, A.R.S. § 13-802(A), and a jail sentence of not more than six months, A.R.S. § 13-707. The amount of any fine and the term of any imprisonment will depend on the classification of the offense, the number of violations, whether previous convictions exist, and other factors.

In addition to examining the criminal provisions discussed above, public officers and employees should carefully examine the laws and rules governing their agency's operation to determine what other conduct may be subject to civil or criminal liability.