
 <b>DEPARTMENTAL POLICY</b> <b>State of Tennessee</b> <b>Department of Transportation</b>	<b>Policy Number: 101-02</b>
	<b>Effective Date:</b> <b>April 1, 2009</b>
<b>Approved By:</b> 	<b>Supersedes:</b> <b>December 1, 2006</b>
<b>SUBJECT: Ethics, Conflicts of Interest, and Acceptance of Gifts</b>	

**RESPONSIBLE OFFICE:** Commissioner's Office.

**AUTHORITY:** Executive Orders 1, 2 and 3 (February 2003), TCA 2-10-126.3-6-305, and 4-3-2303. If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

**PURPOSE:** To maintain high standards of honesty, integrity, impartiality, and conduct by TDOT employees; to ensure the proper performance of departmental business and to maintain the confidence of citizens; and to avoid misconduct and conflicts of interest on the part of TDOT employees.

**APPLICATION:** Employees of the Tennessee Department of Transportation shall abide by the following:

1. This policy – all TDOT Employees.
2. Executive Orders 2 and 3 – Commissioner and Assistant Commissioners.
3. Executive Order 3 – all Executive Service employees.

**DEFINITIONS:**

- A. Ethics Committee – the committee appointed by the Governor as outlined in Executive Order 1 as signed in February 2003.
- B. Compliance Officer – the departmental employee appointed by the Commissioner with the following duties and responsibilities:
  1. Coordinate overall departmental compliance of this policy and Executive Orders 2 and 3.
  2. Maintain records documenting compliance and non-compliance.
  3. Report to the Commissioner any potential material violation of this policy and Executive Orders 2 and 3.
  4. Refer material violations of Executive Orders 2 and 3 to the Ethics Committee and perform the following as needed:
    - i. provide additional information to the Ethics Committee,
    - ii. appear before the Ethics Committee, and

- iii. as necessary, make recommendations to the Ethics Committee.
  5. Inform the Commissioner and Assistant Commissioners of the requirements of Executive Order 2 and all Executive Service employees of Executive Order 3.
  6. Distribute or cause to be distributed a copy of Executive Orders 2 and 3 to each affected Executive Service employee and a copy of this policy to all employees.
  7. Obtain or cause to be obtained from each employee a signed statement certifying that the employee has received a copy of the appropriate Executive Order(s) and of this policy, that the employee has either read the policy or that the policy has been read to them, and that the employee agrees to abide by the terms of this policy and appropriate Executive Order as a condition of continued employment.
  8. Annually (on or before January 31 of each year) prepare a written statement from the Commissioner to the Governor with a copy to the Commissioner of the Department of Finance and Administration certifying that all material violations of Executive Orders 2 and 3, known to the Commissioner or the Compliance Officer, have been reported to the Ethics Committee.
  9. Advise employees in response to questions regarding interpretation of this policy and Executive Orders 2 and 3.
  10. Pursuant to Executive Order 2 (paragraph 1), coordinate the gathering of the required disclosure of information and file the disclosed information with the Commissioner of Finance and Administration.
  11. Pursuant to Executive Order 2 (paragraph 2 and 4), receive the required statement concerning the avoidance of any conflict of interest as provided in Executive Order 3 (paragraph 2, items i. through vi.) and any subsequent notice of any substantial change in circumstances which might result in or create the appearance of a conflict of interest under Executive Order 3 (paragraph 2, sections i. through vi.).
  12. Pursuant to Executive Order 3 (paragraph 4, section vi.), receive and forward required statement to the Commissioner of the Department of Finance and Administration.
  13. Administer paragraph 3, section v. and vi. of this policy.
- C. Consulting Services – to advise or assist, for any form of compensation (does not include an employee’s official State salary), a person or entity in influencing state legislative or administrative action as defined in TCA 3-6-301, including, but not limited to, the promulgation of a rule or other action of a quasi-legislature nature, or to advise or assist a person or entity in maintaining, applying for, soliciting or entering into a contract with the State.
- D. Lobbyist – any person who receives compensation to lobby, as defined in TCA 3-6-301, which includes communicating, directly or indirectly, with any official in the legislative or executive branch for the purpose of influencing any legislative branch or administrative action, as defined in TCA 3-6-301.

**POLICY:** As a condition of employment, all TDOT employees shall abide by this policy.

1. **Employee Responsibilities.** Each employee shall avoid any action, whether or not specifically prohibited by statute, regulation, or this policy, which might result in or create the appearance of:
  - i. Using public office for private gain;
  - ii. Giving preferential treatment to any person;
  - iii. Impeding government efficiency or economy;

- iv. Losing complete independence or impartiality;
  - v. Making a government decision outside of official channels;
  - vi. Affecting adversely the confidence of the public in the integrity of the government.
2. **Gifts.** No employee shall solicit or accept, directly or indirectly, on behalf of himself or herself or any member of the employee's household, any gift, including but not limited to any gratuity, service, favor, food, entertainment, lodging, transportation, loan, loan guarantee or any other thing of monetary value, from any person or entity that:
- i. Has, or is seeking to obtain, contractual or other business or financial relations with TDOT; or
  - ii. Conducts operations or activities that are regulated by TDOT; or
  - iii. Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.
3. **Exceptions.** The prohibition on accepting gifts (paragraph 2 **Gifts**) does not apply to:
- i. A gift given by a member of the employee's immediate family or by an individual if the gift is given for a non-business purpose and is motivated by a close personal friendship and not by the position of the employee. In determining whether a gift falls within this subsection, factors similar to those contained in the Tennessee Ethics Commission, "Guidelines for Applying T.C.A. 3-6-305(b)(3) Relative to Gifts between Close Personal Friends." shall apply. These factors include:
    - Whether the giver is paying for the gift out of his or her personal funds and not at the expense of the giver's employer;
    - Whether there is a prior history of gift giving between the giver and the employee or the employee's family that is unrelated to the employee's position;
    - Whether the employee or the employee's family has previously reciprocated with gifts of similar value to the giver;
    - Whether the giver provides similar gifts to other employees who are not also close personal friends; and
    - Whether the timing of the gift occurs at a time when the giver has a matter that is or soon will be before the employee to make or recommend an official decision;
  - ii. Informational materials in the form of books, articles, periodicals, other written materials, audio tapes, videotapes, or other forms of communication. To be acceptable under this exception, the informational materials should relate to the giver's business or potential business with TDOT and should not include items that can be readily converted to cash;
  - iii. Sample merchandise, promotional items, and appreciation tokens, if they are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business and provided that:
    - Sample merchandise or promotional items will ordinarily bear the name and/or logo of the giver's company;
    - The total value of any sample merchandise, promotional item or token of appreciation given to an individual employee should not exceed \$10.00;
    - Gift certificates are not acceptable; and

- Gifts of food or similar items given as a token of appreciation to be distributed to an entire division, section, office, rather than to an individual employee, are acceptable so long as the value of the gift does not exceed \$50.00.
- iv. Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento and similar items; provided, that any such item shall not be in a form which can be readily converted to cash;
- v. Food, refreshments, foodstuffs, entertainment, or beverages provided as part of a meal or reception at a scheduled company event, industry conference, professional association meeting, or similar event in which employees of the Department are invited to participate, or at an event which an employee attends as the guest of the employee's spouse or immediate family member, are acceptable if the total value of such items does not exceed fifty dollars (\$50.00) per occasion; provided further, that:
- The value of a gift made pursuant to this subsection may not be reduced below the monetary limit by dividing the cost of the gift among two or more persons or entities identified in paragraph 2 **Gifts**;
  - Gifts of food, meals, beverages, or the like are not acceptable if offered to an employee, or to a member of the employee's household, on any occasion other than in connection with a scheduled event as described above or in accordance with some other exception under this paragraph;
  - If at anytime an employee accepts a gift under this provision, the employee must disclose to the Compliance Officer a description of the gift, the name of the person who provided the gift, the name of the person's employer, and the value of the gift, if known, or its estimated value, if unknown.
  - The employee shall also verify that the person providing the gift is not a lobbyist or representative of a company that employs a lobbyist. If the person providing the gift is a lobbyist or represents an employer of a lobbyist, the employee will be required to explain how the gift complies under an exception provided in TCA 3-6-305, or the employee will be required to return or reimburse the value of the gift within ten (10) days;
  - Disclosure must be in writing (e-mail is preferred) and be made within seven (7) calendar days of the acceptance of the gift. A standard format for reporting gifts under this exception is attached as an appendix to this policy;
  - When it is in the best interest of the Department, the Commissioner may at any time restrict an employee(s) from accepting additional gifts under this provision.
- vi. There may be circumstances where refusal or reimbursement of a gift (such as a lunch or dinner) may be awkward and contrary to the larger interests of the State. In such circumstances, the employee is to use his or her best judgment, and disclose the gift, including a description, estimated value, the person or entity providing the gift, and any explanation necessary within seven (7) calendar days to the Compliance Officer. The standard format for reporting gifts should be used for this purpose. Any employee in the Executive Service is also required to disclose the gift to the Commissioner of Finance and Administration as provided in Executive Order 3 (paragraph 4, section vi.);

- vii. Food, refreshments, meals, foodstuffs, entertainment, beverages or intrastate travel expenses that are provided in connection with an event where the employee is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization which has regular meetings; provided that the employee shall use the standard format to report the gift to the Compliance Officer, with an explanation of the event and the employee's role, within seven (7) calendar days; and
- viii. Loans from established financial institutions made in the ordinary course of business on usual and customary terms, so long as there are no guarantees or collateral provided by any person described in paragraph 2 **Gifts**.

4. **Financial Interests**.

- i. No employee shall enter into or derive any benefit, directly or indirectly, from any contractual arrangement with the State or any of its agencies. In recognition of the fact that many husbands and wives have separate careers, the normal employment compensation of a spouse whose regular, ongoing employer or business has a contractual arrangement with the State shall not be considered a "benefit" to the employee, provided the contract with the State was procured without any participation, assistance or influence by the employee.
- ii. No employee shall have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her government duties or responsibilities. "Indirect financial interest" in this case includes a substantial interest on the part of a parent, spouse, or minor child of the employee. This subsection shall not apply to interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests. This subsection also shall not apply to ownership of publicly traded stocks or bonds where such ownership constitutes less than two percent (2%) of the total outstanding amount of the stocks or bonds of the issuing entity. If, at the time the employee begins employment with the State or at any subsequent time during State employment, the employee possesses such direct or indirect financial interests prohibited by subsections (i) or (ii), the employee shall divest such interest within a reasonable time.

5. **Use of Information**. No employee shall, directly or indirectly:

- i. Use, disclose, or allow the use of official information which was obtained through or in connection with his or her government employment and which has not been made available to the general public (meaning records which are confidential under the law or information which an employee has a duty not to disclose) for the purpose of furthering the private interest or personal profit of any person, including the employee; or
- ii. Engage in a financial transaction as a result of, or primarily relying upon, information obtained through his or her government employment.

6. **Use of Government Property.** No employee shall make use of the facilities, equipment, personnel, or supplies of the State or its agencies for private use or gain except, to the extent that the use is incidental or minimal or are lawfully available to the general public.
7. **Disclosure of Consulting Services.** Section 2-10-126 of the Tennessee Code requires that any employee of an executive department or agency who contracts with another person or entity (other than the State, a county or municipality) to receive a fee, commission or other form of compensation for “consulting services” as defined above shall disclose the details of any such consulting arrangement with the Tennessee Ethics Commission. The disclosure form is available at [www.tennessee.gov/sos/tec/forms/ss-8006.pdf](http://www.tennessee.gov/sos/tec/forms/ss-8006.pdf).
8. **Prohibition on Accepting Gifts from Lobbyists or Employers of Lobbyists.** Section 3-6-305 of the Tennessee Code generally prohibits any employee of an executive department or agency, or the immediate family member of such employee, from soliciting or accepting, directly or indirectly, a gift from a lobbyist or employer of a lobbyist. If the employee believes that acceptance of a gift from a lobbyist or employer of a lobbyist complies with an exception to the rule, as provided in TCA 3-6-305(b), the employer shall disclose the gift, as provided in paragraph 3, section v., of this policy and explain how the gift complies with the exception, or the employee will be required to return or reimburse the value of the gift within ten (10) days.
9. **Violation of Policy.**
  - i. Career Service employees who violate this policy may be subject to disciplinary action under the authority of TCA 8-30-202, 830-203 and 8-30-326 and as described in the Rules of the Tennessee Department of Human Resources 1120-10-06, Examples of Disciplinary Offenses.
  - ii. Otherwise, this policy does not create any right to administrative or judicial review, or any other right or benefit, substantive or procedural, enforceable at law or equity by a party against the State of Tennessee, its agencies or instrumentalities, its officers or employees, or any other person.
  - iii. Violations of Executive Orders 2 and 3 are to be reported to the Ethics Committee.

**PROCESS:**

1. All persons employed by TDOT at the time this policy goes into effect must sign an Employee Acknowledgement Statement (see below) stating that they have received a copy of this policy, that they have either read the policy or have had it read to them, and that they agree to abide by the terms as a condition of employment. In addition, Executive Service employees may be required to complete an Acknowledgement Statement issued by the Department of Finance and Administration.
2. All new employees must sign an Employee Acknowledgement Statement stating that they have received a copy of this policy, that they have either read the policy or listened to an audio tape reading of the policy, and that they will abide by the terms of this policy as a condition of employment. Failure to sign this document will result in TDOT's job offer being withdrawn.
3. The New Employee Orientation will include "Ethics Policy" training.
4. Each employee will be given a copy of his or her signed Employee Acknowledgement Statement.
5. The original signed Employee Acknowledgement Statement will be placed in the employee's official personnel file maintained by the Department's Office of Human Resources.
6. Quarterly, an "Ethics Policy" reminder will be emailed to all employees with Groupwise. A copy of the Department's Ethics Policy will be attached.
7. Supervisors are responsible for posting a copy of the Department's "Ethics Policy" in the work place for employees who are not on GroupWise.
8. The Department will provide annual ethics training for managers.
9. Directors, Managers and Supervisors are responsible for maintaining the proper performance level, conduct and discipline of employees under their supervision. When corrective action is necessary resulting from violation of policy, the violation must be reported to the Compliance Officer, and if necessary, appropriate disciplinary action procedure administered.

## TDOT ETHICS, CONFLICTS OF INTEREST AND ACCEPTANCE OF GIFTS POLICY

### EMPLOYEE ACKNOWLEDGEMENT STATEMENT

I, (print full name) \_\_\_\_\_, an employee of the Tennessee Department of Transportation, hereby certify that I have received a copy of the policy “Ethics, Conflicts of Interest and Acceptance of Gifts”, that I have read or had the policy read to me, and that I agree to abide by the terms of the policy as a condition of employment.

Check the following:

- Received a copy of the policy \_\_\_\_\_
- Read the policy \_\_\_\_\_ OR had the policy read to me \_\_\_\_\_

As a condition of employment, I agree to abide by the terms of this policy, which may also be found on TDOT’s intranet web site under “Departmental Information”.

From time to time, this policy may change. When a change occurs, employees will be notified. I understand that when this policy is revised, it is my responsibility to read or have someone read to me this policy so that I can abide by the terms of the policy, which is a condition of employment.

Sign and complete the following:

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Employee ID

\_\_\_\_\_  
Date

### **FORMAT FOR REPORTING GIFTS**

Your full name;  
Date of Gift;  
Name of person receiving gift;  
Name of company representative providing the gift;  
I hereby confirm that this person is not a lobbyist;\*  
Name of company the person giving the gift represents;  
I hereby confirm that this company does not employ a lobbyist;\*  
Type of gift;  
Gift amount or estimate value;  
Unit number for reporting gift;  
Director's name of TDOT employee reporting gift;

- \* **Note:** In general, if the person or entity offering the gift is a lobbyist or employer of a lobbyist, you are not allowed to accept the gift. (Check with the Compliance Officer for any exceptions to this rule under TCA 3-6-305(b).

If you accept a gift and later discover that the gift came from a lobbyist or from an employer of a lobbyist, you are required to return the gift or the value of the gift. If the Department becomes aware that you accepted a gift from a lobbyist or employer of a lobbyist and did not return the gift, you will be subject to disciplinary action.

- \* **Note:** Go to <http://www.tennessee.gov/sos/tec/searches.htm> and click on "Lobbyists & Employer of Lobbyists Information" to determine whether the person or entity giving the gift is a lobbyist or employer of a lobbyist.