

Professional Conduct and Montana's Code of Ethics

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Outcomes

- Understand MT Code of Ethics
- Understand ethical framework that will influence decision making
- Future actions are consistent with MT's Code of Ethics
- Brief Assessment
- Handout

Ethics Resource Center

2007 Government Ethics Survey

- Random sample:
 - Federal, state, and local
 - 774 gov't employees, age 18+, working 20+ hours/week, margin of error +/- 3.5%
- www.ethics.org

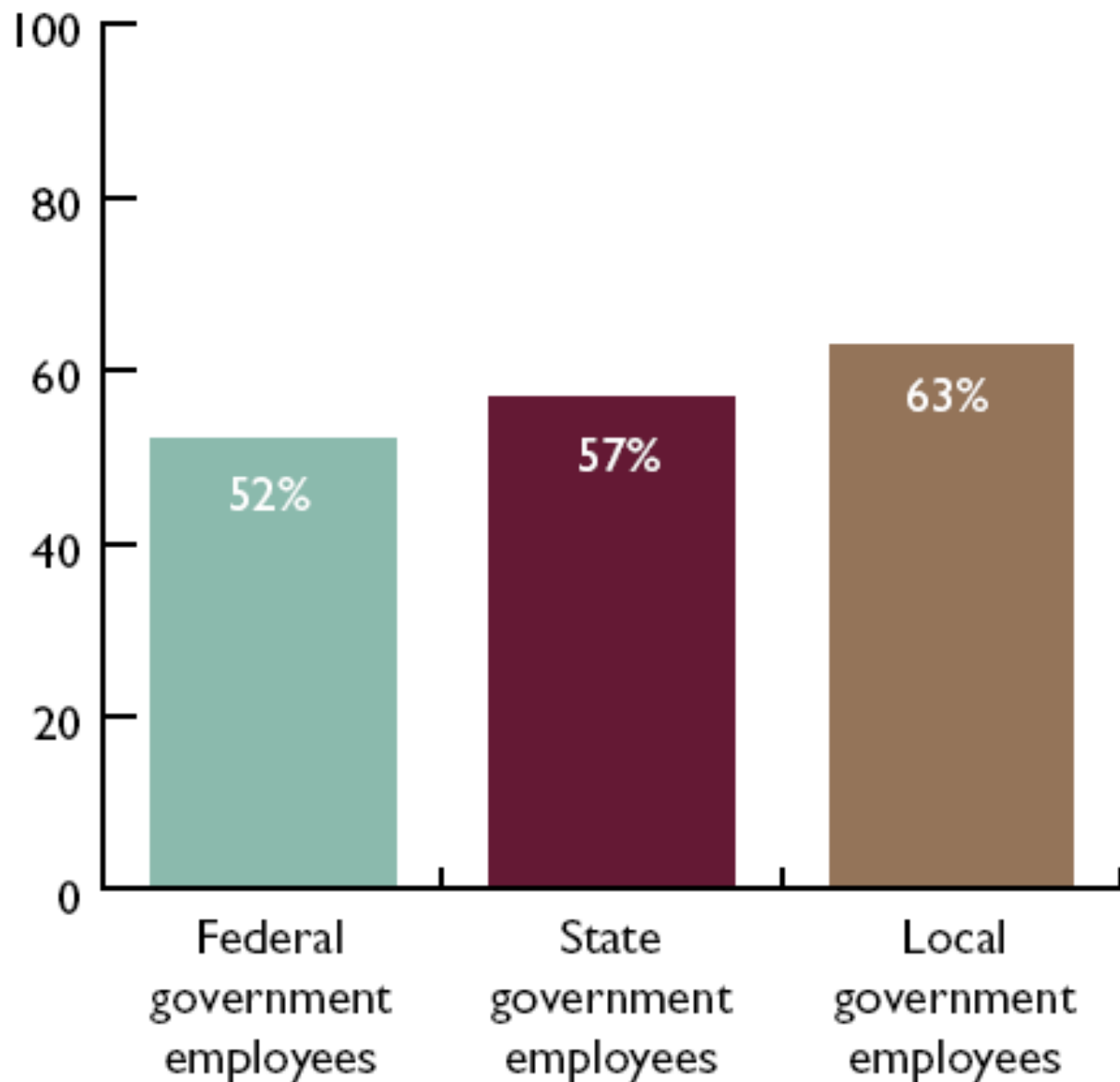
Government Ethics Survey

- % of local gov't employees who believe:
 - Strong ethics program in workplace?
 - **14%**
 - Strong ethical culture in workplace?
 - **9%**

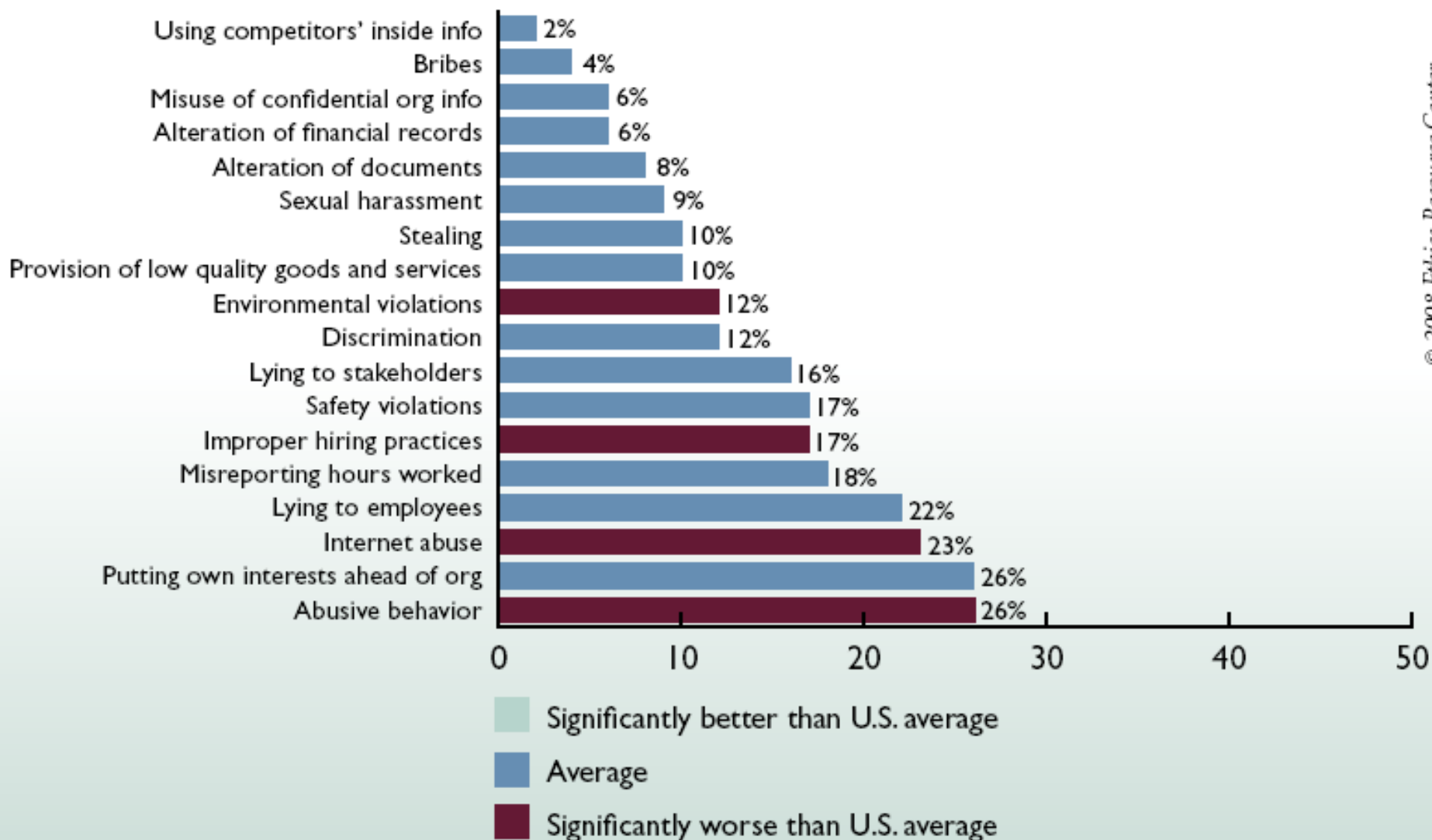
Government Ethics Survey

- % of local gov't employees who:
 - Observed misconduct in the last year
 - **63%**
 - Experienced retaliation for reporting misconduct
 - **20%**
 - Did not report it
 - **34%**

More State and Local Government Employees Observe Misconduct



Among Local Government Employees, All Forms of Misconduct Are at or Above National Average



Government Ethics Survey

- 48% of gov't employees say that they encounter situations that invite misconduct
- Fraud takes place in government as much as it does in the private sector



Take Home Message:

“There is a strong risk of losing the public trust that is essential for any government to maintain. ...eroded trust hinders government's effectiveness.” *ERC President Dr. Patricia Harned*

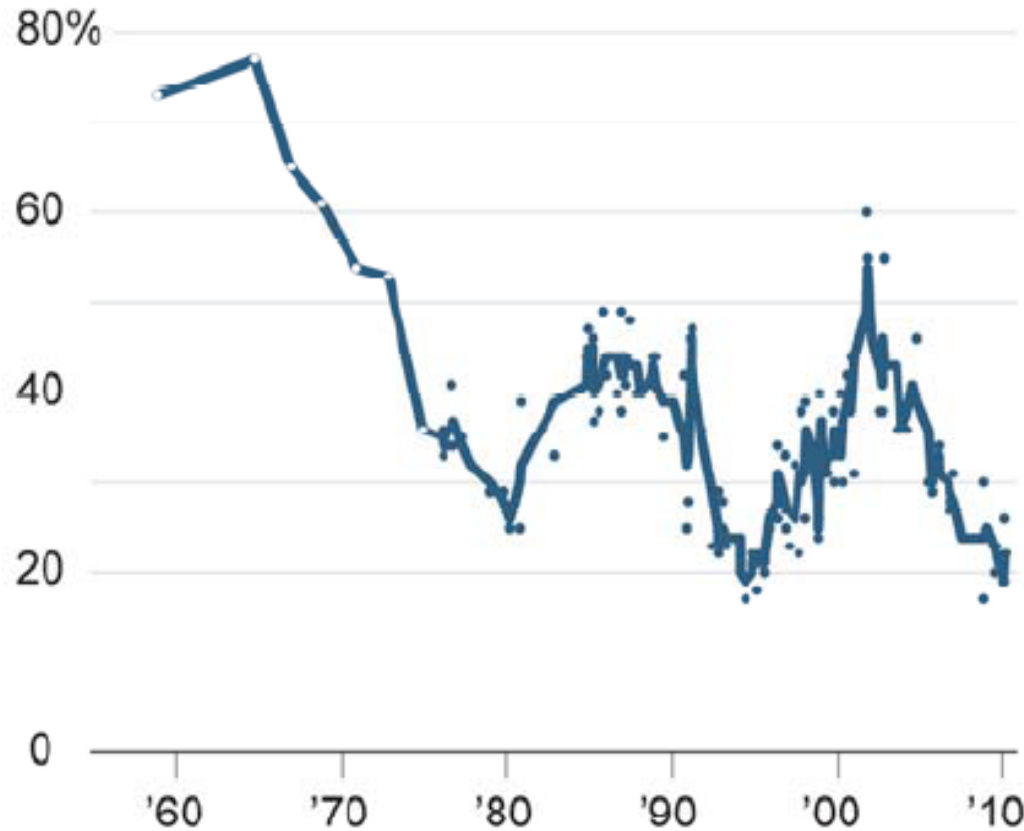
PERSPECTIVE

Public VS Private
Issues VS Interests

TRUST

Public Trust in Government: 1958-2010

Trust government just about always or most of the time

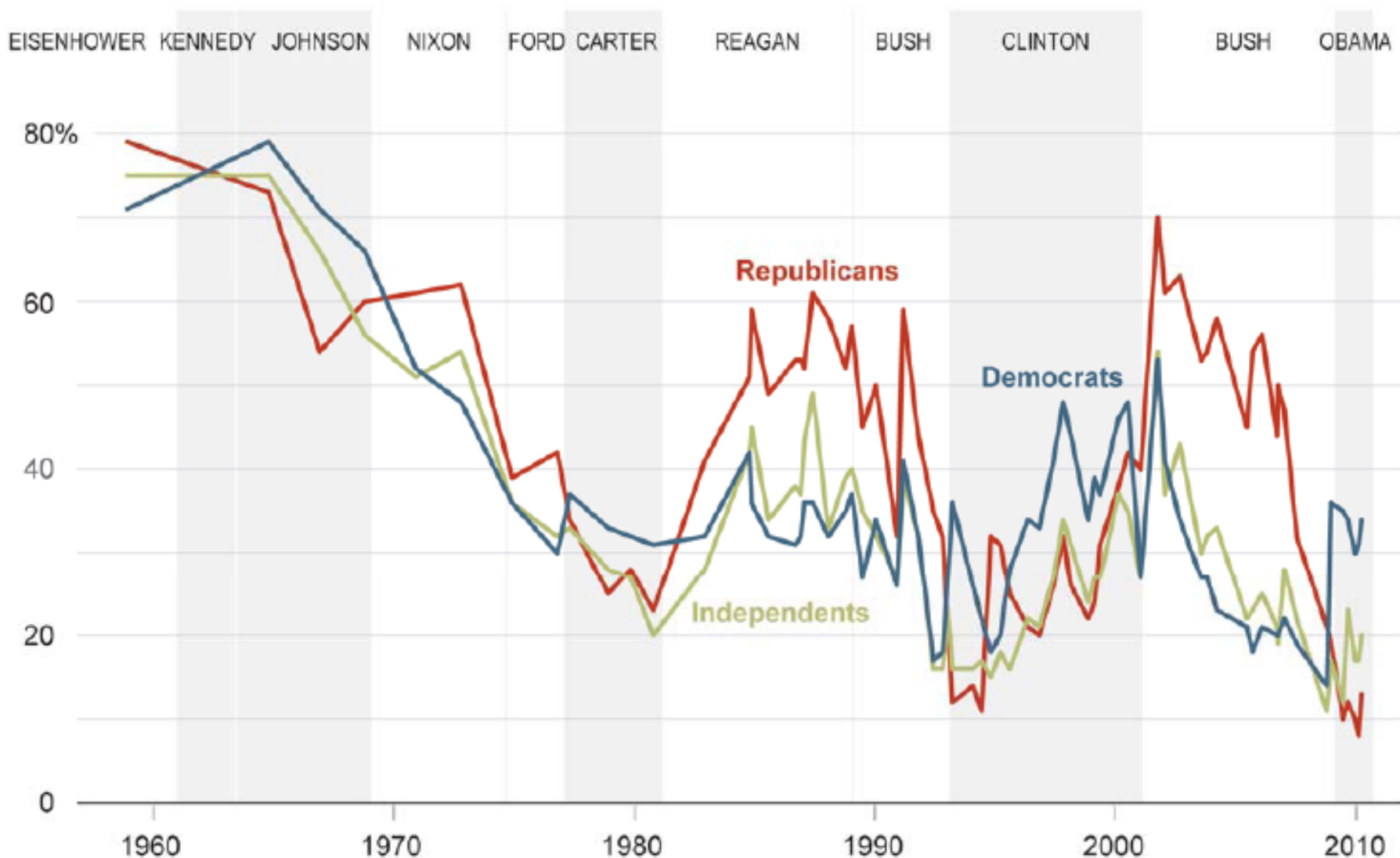


Pew Research Center March 11-21 Q21.

Trend sources: Pew Research Center, National Election Studies, Gallup, ABC/Washington Post, CBS/New York Times, and CNN Polls. From 1976-2010 the trend line represents a three-survey moving average with individual data points shown.

Source: Pew Research Center for the People & the Press, *The People and Their Government: Distrust, Discontent, Anger, and Partisan Rancor*. April, 2010, <http://people-press.org/report/606/trust-in-government>

Trust in Government by Party: 1958-2010



Pew Research Center March 11-21 Q21. Percent trusting government to do what is right always or most of the time.
Trend sources: Pew Research Center, National Election Studies and selected Gallup, ABC/Washington Post, CBS/New York Times and CNN polls obtained from searches of the iPOLL Databank provided by the Roper Center for Public Opinion Research, University of Connecticut.

What is trust?

Why is it important for a to be trustworthy?

Trust is . . .

- Trust is an efficient means for **lowering transaction costs** in any social, economic and political **relationship**.
- A trusting person, group or institution will be freed from worry and the need to monitor the other party's behavior, partially or entirely.

Definitions

Ethics are:

- Good and bad
- Moral duty and obligation
- Standards of right and wrong
- Principles of conduct
- Fairness and equity

Definition

- Ethics investigates the questions:
 - “What is the best way for people to live?”
 - “What actions are right or wrong in particular circumstances?”

- Conflict of interest?
 - Public duty conflicts with private interests
- Appearance of impropriety?
 - a situation which to a layperson without knowledge of the specific circumstances might seem to raise ethics questions

How would it pass the:

“Front Page” test?

“Hair on the back of your neck” test?

“Stink” test?



The Golden Rule of Open Government

The business of
government is the
people...

Government is not
designed to be efficient,
it's designed to be fair.

As public servants

- We treat all citizens with courtesy, impartiality, fairness & equality, and
- avoid both actual and potential conflicts between his/her private self-interest & the public duty.

Constitution to Action

- 1972 Constitutional Convention
- Legislative Sessions
- Local Policies and Rules of Procedure
- Attorney General Opinions
- Supreme Court Decision

Montana Constitution

ARTICLE XIII Section 4

- **Code of ethics.** 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.

Montana Standards of Conduct

- MCA Title 2, Chapter 2: Standards of Conduct
 - Part 1: Code of Ethics
 - Part 3: Nepotism

Part 1: Code of Ethics

- Prohibits conflict between public duty and private interest **2-2-101 MCA**
- Sets forth rules of conduct and ethical principles **2-2-101 MCA**

Public Trust - Public Duty 2-2-103 MCA

- The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers. . . . and employees. A public officer. . . or employee shall carry out the individual's duties for the benefit of the people of the state.
- Transgression - violation of public duty
- Personally liable – subject to penalties

Definitions 2-2-102MCA

- **“Business”** - includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.
- **“Compensation”** - means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.
- **“Gift of substantial value”** - \$50 or more
 - Does NOT include **2-3-102(3)(b) MCA**
 - Return or give to charity
 - Food and beverages
 - Educational materials
 - Public award recognizing public service
 - Educational activity – no obligation, not lavish or extravagant and serves a public good

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Definitions 2-2-102 MCA

- **"Local government"** - means a county, a consolidated government, an incorporated city or town, a school district, or a special district.
- **"Official act" or "official action"** - means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

Definitions 2-2-102 MCA

- **"Public employee"** means:
 - (a) any temporary or permanent employee of the state;
 - (b) any temporary or permanent employee of a local government;
 - (c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and
 - (d) a person under contract to the state.
- **"Public officer"** - includes any state officer and any elected officer of a local government.
 - *Elected City Council Member -- Public Officer:* The definition of "public officer" in this section includes an elected member of a City Council. 38 A.G. Op. 103 (1980).

Rules of Conduct 2-2-104

- Disclose or use confidential information to further your own interests **2-2-104(1)(a) MCA**

Rules of Conduct 2-2-104

- Accept a gift of:
 - substantial value (\$50 or more) or
 - a substantial economic benefit tantamount to a gift **2-2-104(1)(b) MCA & 2-706(c) BCO**
- (i) That would tend to improperly influence a reasonable person to depart from their duties
- (ii) That a reasonable person knows is primarily for the purpose of rewarding you.

Rules of Conduct 2-2-104

Economic benefit:

- Loans at a substantially lower rate
- Compensation at a substantially higher rate 2-2-104(2) MCA

Rules of Conduct 2-2-104

- A public officer, . . . or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated.
 - Reimburses the public entity
 - Salary from one employer is reduced by the amount of salary received from the other public employer
 - Use of accrued leave or compensatory time during the period of overlapping employment
- Compliance - disclose the amounts received from the two separate public employment positions to the commissioner of political practices.

Rules of Conduct 2-2-104

- *County Superintendent Serving as Substitute -- No Additional Compensation:* A County Superintendent, who is serving as a substitute superintendent is not allowed to charge hourly fees in addition to the regular salary paid by the county in which the County Superintendent is elected since serving as a substitute is part of the statutory job responsibilities. **54 A.G. Op. 1 (2011).**

Ethical Requirements 2-2-105

- Acquire interest in a business that could benefit from official actions **2-2-105(2) MCA**
- Perform an official act directly and negatively affecting a competing business. **2-2-105(5) MCA.**

Rules of Conduct 2-2-121

- Use public time, facilities, equipment, supplies, personnel, or funds for private business purposes
2-2-121(2)(a) MCA
- ... Solicit support for or opposition to any election or ballot issue 2-2-121(3) MCA



Rules of Conduct 2-2-121

- Assist any person for a fee in obtaining a contract, claim, license, or economic benefit 2-2-121(2)(c)-(d)
MCA
- Engage in substantial financial transactions with someone you supervise or inspect 2-2-121(2)(b)
MCA

Rules of Conduct 2-2-121

- Solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

Rules of Conduct 2-2-121

- 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.

Attorney General Opinion

- *Right of Public Officer or Employee to Support or Oppose Political Candidate or Ballot Issue:* Although this section sets forth rules of conduct for public officers and employees, it is not personal political speech that is prohibited, but rather the use of public time or resources in the presentation or furtherance of political speech. Thus, a public officer or employee may engage in political speech, including the support or opposition of a candidate or ballot issue, as long as the political speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds. 51 A.G. Op. 1 (2005).

Disclosure 2-2-131

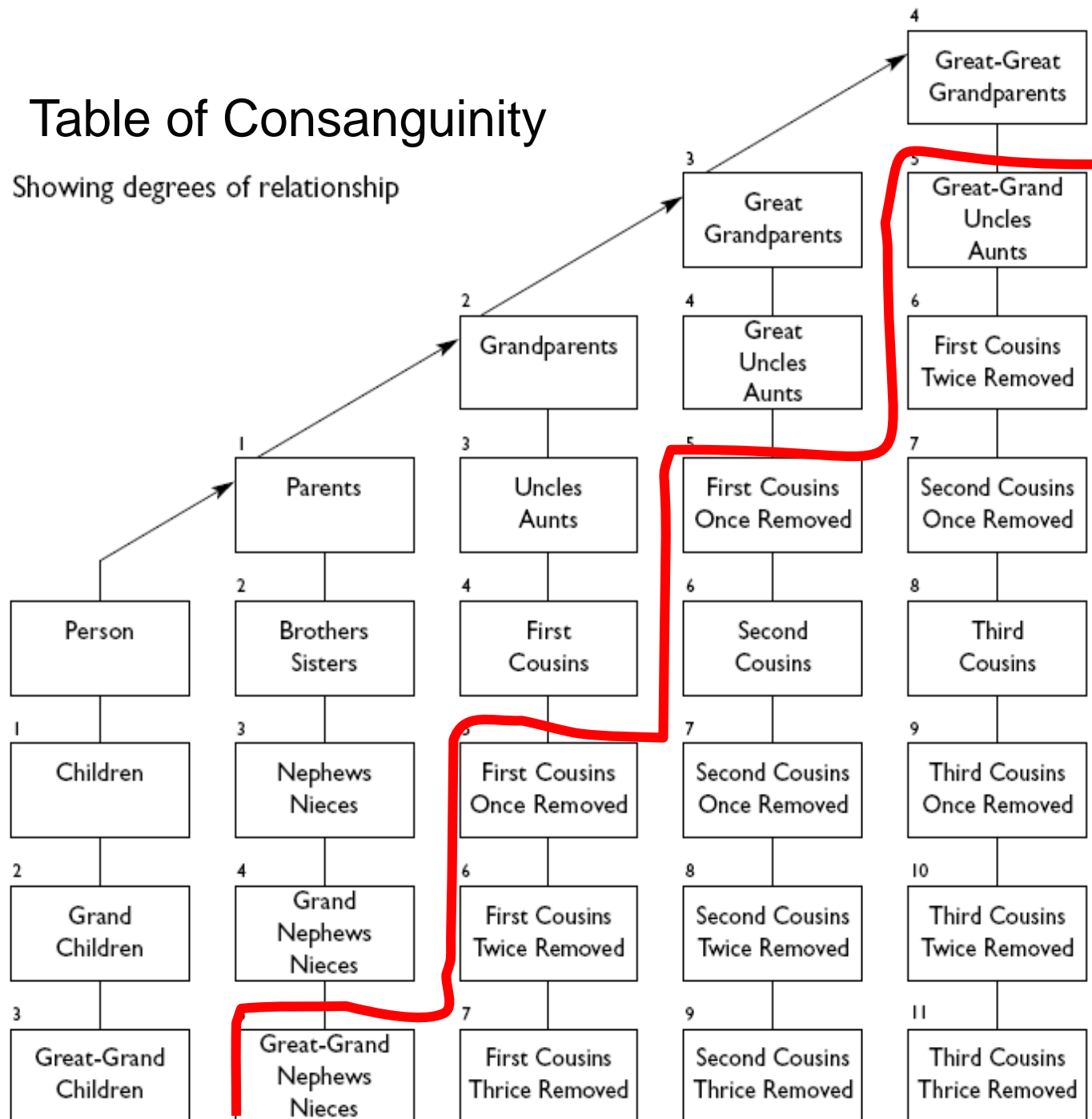
- Public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict.

Part 3: Nepotism

- Bestowal of political patronage by reason of relationship rather than of merit (**2-2-301 MCA**).
- Appoint any person related by:
 - Consanguinity within the 4th degree
or
 - Affinity within the 2nd degree (**2-2-302 and 303 MCA**)

Table of Consanguinity

Showing degrees of relationship



Part 3: Nepotism

- Penalty = misdemeanor **2-2-304 MCA**
- \$50 - \$1,000 fine and/or jail for 6 months
- Exceptions **2-2-302(2) MCA**

THANK YOU!!

Please contact us with any questions:

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