

Ala. Code 1975, § 13A-10-63

Trading in Public Office

The defendant is charged with trading in public office.

A person commits the crime of trading in public office if he/she offers, confers or agrees to confer any pecuniary benefit upon a public servant or party officer upon an agreement or understanding that he/she will or may be appointed to a public office or public employment or designated or nominated as a candidate for public office.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The defendant offered, conferred or agreed to confer a pecuniary benefit upon a public servant or party officer **[describe]**;
- (2) The defendant did so upon an agreement or understanding that he/she would or may be appointed to a public office or public employment or designated or nominated as a candidate for public office **[describe]**; **(AND)**
- (3) The defendant acted **[insert appropriate mens rea element - See Use Notes]**.

A *pecuniary benefit* is a benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain. Expenses associated with social occasions afforded public servants and party officers shall not be deemed a pecuniary benefit. [13A-10-60(2)]

A *benefit* is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary. [13A-10-60(1)]

A *public servant* is any officer or employee of government, including legislators and judges and any person or agency participating as an adviser, consultant, or otherwise in performing a governmental function. This includes persons who presently occupy the position of a public servant, or have been elected, appointed or designated to become a public servant although not yet occupying that position. [13A-10-60(b)(3) & 13A-10-1(7)]

A *party officer* is a person who holds any position or office in a political party, whether by election, appointment or otherwise. [13A-10-60(4)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of trading in public office, then you shall find the defendant guilty of trading in public office.

If you find that the State has failed to prove any one or more of the elements of trading in public office, then you cannot find the defendant guilty of trading in public office.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

This section does not apply to contributions to political campaign funds or other political contributions. [13A-10-63(b)]

The statute does not state a specific mens rea element.

Insert the appropriate mens rea element considering the indictment and the evidence before the court. There are few, if any, strict liability offenses in the Code. See Commentary for 13A-2-3 and 13A-2-4(b). There are four mens rea elements in the Alabama Code: intentionally, knowingly, recklessly and with criminal negligence. See 13A-2-2.

- (1) A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]
- (2) A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]
- (3) A person acts *recklessly* with respect to a result or to a circumstance when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]
- (4) A person acts with *criminal negligence* with respect to a result or to a circumstance when he/she fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. [13A-2-2(4)]

[Approved 6-17-16.]