

Ala. Code 1975, § 13A-10-62

Failing to Disclose a Conflict of Interest

The defendant is charged with failing to disclose a conflict of interest.

A person commits the crime of failing to disclose a conflict of interest if he/she is a public servant and he/she exercises any substantial discretionary function in connection with a government contract, purchase, payment or other pecuniary transaction without advance public disclosure of a known potential conflicting interest in the transaction.

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

- (1) The defendant was a public servant **[describe]**;
- (2) The defendant exercised a substantial discretionary function **[describe]**, in connection with a government contract, purchase, payment or other pecuniary transaction **[describe]**, without advance public disclosure of a known potential conflicting interest in the transaction; **(AND)**
- (3) The defendant did so knowingly.

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)]

At the time when a person is acting as a public servant, the person must have been in a position to exercise a substantial discretionary function; such as, approval of a contract or negotiating the terms of a contract, and he/she must have been aware of the potential conflicting interest. Although the term *substantial discretionary function* is not susceptible to precise definition, it can be described as follows: Substantial may be defined as of real worth and importance, something worthwhile as distinguished from something without value or merely nominal. It can also be described as synonymous with material. Discretionary acts are those characterized by a substantial degree of discretion and judgment involved in weighing alternatives and making choices with respect to public policy and planning. Stated another way, discretionary functions can be described as those acts to which there is no hard and fast rule as to the course of conduct, and one requiring an exercise in judgment and choice and involving what is just and proper under the circumstances. [*Vaughn v. State*, 880 So. 2d 1178, 1198 (Ala. Crim. App. 2003)]

Pecuniary transaction is a transaction in the form of money, property, commercial interests or anything else the primary significance of which relates to economic gain.

Public disclosure includes public announcement or notification to a superior officer or the Attorney General. [13A-10-62(c)]

A *potential conflicting interest* exists, but is not limited to, when the public servant is a director, president, general manager or similar executive officer, or owns directly or indirectly a substantial portion of any nongovernmental entity participating in the transaction. [13A-10-62(b)]

A person acts *knowingly* with respect to conduct or to a circumstance when he or she is aware that his or her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of failing to disclose a conflict of interest, then you shall find the defendant guilty of failing to disclose a conflict of interest.

If you find that the State has failed to prove any one or more of the elements of failing to disclose a conflict of interest, then you cannot find the defendant guilty of failing to disclose a conflict of interest.

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

[Approved 6-17-16.]