

9 GCA CRIMES AND CORRECTIONS
CH. 49 GOVERNMENTAL BRIBERY, OTHER UNLAWFUL
INFLUENCE & RELATED OFFENSES

CHAPTER 49
GOVERNMENTAL BRIBERY, OTHER UNLAWFUL INFLUENCE
AND RELATED OFFENSES

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- § 49.80. Use of Information for Private Gain; Defined & Punished.
- § 49.90. Official Misconduct; Defined & Punished.

COMMENT: Chapter 49 provides general sanctions for the offenses of bribery and other unlawful influences on public officers and employees. This Chapter will have no counterpart to former §§ 40-58 of the Penal Code. These matters are better dealt with under the Election Law, and are found therein.

Sections 49.20 and 49.30 are complementary, treating the offense of giving and receiving bribes. Each is a felony of the third degree and, contrary to the Penal Code, do not differentiate between the nature of the offices held by the public officials. Thus, "public servant" (Section 49.10(b) embraces a wide range of persons and officers, including legislators, and officers and employees of such agencies as the Guam Power Authority, PUAG, GMH and the Guam Telephone Authority.

It should be noted that the purpose of §§ 49.20 and 49.30 is the suppression of improper influence upon public officials. Generally, these influences will have monetary significance; however, neither Section is so limited as the benefits can be of any type.

Section 49.40 is addressed to the problem of the solicitation of benefits by one who is not a public servant for the ostensible purpose of improperly influencing a public servant in the performance of his official function. Compare Penal Code § 53(b). It is aimed at the person who holds himself out as able to corrupt the governmental process through improper influence. Much of the conduct proscribed here also are proscribed by § 13.20 - Solicitation - and might also be under the theft by deception statute -§ 43.35. This latter conduct would include one who knows he cannot influence a public official, but who seeks to claim such ability and receives money on this representation.

Section 49.50 deals specifically with threatening public officials on the same basis as extortion (§ 43.40).

Section 49.60 and § 49.70 are new, proscribing gifts to public officers, not as an inducement, but as reward for official conduct already performed. Note that these Sections proscribe the receiving of "pecuniary benefits". Thus, testimonial dinners and small gifts which have no pecuniary value to the recipient are excluded from the

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coverage of these Sections. (See California Joint Legislative Committee for the Revision of the Penal Code, Penal Code Revision Project 23-24 (tent. draft No. 3, 1969).

Section 49.80 is the new Section which generally prohibits any public official from benefiting himself or others by the use of official information which is not public. It is immaterial whether the defendant, may, or may not, have any influence on this governmental action. Those persons who are in office, and those who are out of office, are covered by this Section. It could be very useful on Guam.

Section 49.90 is intended to consolidate the law as to malfeasance and non-feasance by public officials. The kind of culpability required by this Section is stated alternatively. The first alternative covers situations where the servant's intent is to obtain a gain or advantage for himself or another. The second alternative is designed to cover cases where the public servant's intent is to injure some person or to deprive some person of a gain or advantage. A person may be deprived of a gain or advantage, for example, by being denied or impeded in the exercise of some right or privilege.

§ 49.10. Definitions.

As used in this Chapter:

(a) *benefit* means any gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested other than the beneficiary's lawful compensation.

(b) *official function* means the decision, opinion, recommendation, vote or other exercise of discretion or performance of duty of a public servant in a lawful or unlawful manner.

(c) *pecuniary benefit* means benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(d) *public servant* means any officer, member, or employee of the legislative, executive, or judicial branches of the Territory or of any governmental instrumentality within the Territory, any juror, any persons exercising the functions of any such position, or any referee, arbitrator, hearing officer, or other person authorized by law to hear or determine any question or controversy. It includes a person who has been elected, appointed or designated to become a public servant, and, in the case of a juror, a person who has been drawn, empaneled, or designated to attend as a prospective grand or petit juror.

SOURCE: See G.P.C. § 77; M.P.C. § 240.0; *Cal § 1000(T.D.3, 1969) Cal. § 1100 (1971); Mass. ch. 263, § 3; Chapter 268A § 1; N.J. § 2C:27-1.

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§ 49.20. Giving of Bribes; Defined & Punished.

A person is guilty of a felony of the third degree if he offers, confers upon, or agrees to confer upon a public servant any benefit as consideration for his performance of an official function.

SOURCE: G.P.C. §§ 67, 67a, 73, 92, 165. M.P.C. 240.1; *Cal. § 1010 (T.D. 3, 1969); Cal. § 1110 (1971); Mass. ch. 268A, § 2, 3; N.J. § 2C:27-2.

CROSS-REFERENCES: § 82.15 - Forfeiture of Office.

§ 49.30. Receiving and Giving Bribes; Defined & Punished; Building Inspectors.

A public servant is guilty of a felony of the third degree if he solicits, accepts or agrees to accept any benefit from another person as consideration for his performance of an official function; provided, however, that if such public servant is a building inspector, performing in his capacity as a building inspector, under the Building Law of Guam, he is guilty of a felony of the first degree. A person is guilty of a felony of the first degree if he offers or agrees to offer any benefit to a public servant as consideration for such public servant's performance of an official function.

SOURCE: G.P.C. §§ 68, 70, 74, 77, 93, 94, 96, 165; M.P.C. § 240.1; *Cal. § 1011 (T.D. 3, 1969); Cal. § 1111 (1971); Mass. ch. 268A, § 2, 3; N.J. § 2C:27-2. Amended by P.L. 22-83:4 (3/3/94).

CROSS-REFERENCES: See § 49.20.

§ 49.40. Unlawful Influence; Defined & Punished.

A person is guilty of a felony of the third degree if:

(a) he offers, confers upon, or agrees to confer upon, another person any benefit as consideration for improperly influencing or attempting to influence a public servant in the performance of an official function.

(b) he solicits, accepts or agrees to accept any benefit from another person as consideration for improperly influencing or attempting to influence a public servant in the performance of an official function.

SOURCE: See G.P.C. § 653(b); M.P.C. § 240.7(2) (3); *Cal. § 1012 (T.D. 3, 1969); Cal. § 1112 (1971); N.J. § 2C:27-8(b) (c).

CROSS-REFERENCES: § 13.20 - Solicitation; § 43.35 - Theft by deception.

§ 49.50. Unlawful Influence by Extortion; Defined & Punished.

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A person is guilty of a felony of the third degree if he influences or attempts to influence the performance of an official function by a public servant by any threat which would constitute a means of committing the offense of theft by extortion under this Code if such threat were employed to obtain property.

SOURCE: G.P.C. § 69; M.P.C. § 240.2; *Cal. § 1015 (T.D. 3, 1969); Cal. § 1113 (1971); N.J. § 2C:27-3.

CROSS-REFERENCES: § 43.40 Extortion.

§ 49.60. Giving Gratuities for Past Services; Defined & Punished.

A person is guilty of a misdemeanor if he offers, confers upon, or agrees to confer upon, a public servant any pecuniary benefit for having performed an official function in a manner favorable to him, or for having violated his duty.

SOURCE: M.P.C. § 240.3; Cal. § 1020 (T.D. 3, 1969); Cal. § 1114 (1971); N.J. § 2C:27-4.

§ 49.70. Accepting Gratuities for Past Services; Defined & Punished.

A public servant is guilty of a misdemeanor if he solicits, accepts or agrees to accept any pecuniary benefit for having performed an official function in a manner favorable to another person, or for having violated his duty.

SOURCE: M.P.C. § 240.3; *Cal. § 1021, (T.D. 3, 1969); Cal. § 1115 (1971); N.J. § 2C:27-4.

CROSS-REFERENCES: See § 49.60.

§ 49.80. Use of Information for Private Gain; Defined & Punished.

A public servant commits a misdemeanor if, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information to which he has or has had access in his official capacity and which has not been made public he:

(a) acquires or divests himself of a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action;

(b) speculates or wagers on the basis of such information or official action; or

(c) aids another to do any of the foregoing, while in office or after leaving office with the intent of using such information.

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SOURCE: See G.P.C. § 95; *M.P.C. § 243.2; Mass. ch. 268A, § 268A, § 26; N.J. § 2C:30-3.

§ 49.90. Official Misconduct; Defined & Punished.

A public servant commits a misdemeanor if, with intent to benefit himself or another person or to harm another person or to deprive another person of a benefit;

(a) he commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

(b) he knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

SOURCE: See G.P.C. §§ 65, 176, cf. §§ 230, 475-427; Mass ch. 268A, § 25; N.J. 2C:30-2.

CROSS-REFERENCES: New York Penal Law, § 195.00.
