



# Gary Richard Herbert

## Governor EXECUTIVE ORDER

### *Establishing a Policy for Legislative Communications of Executive Branch Departments and Employees*

**WHEREAS**, Executive Branch departments and employees play a crucial role in the policy-making process by contributing information and subject-matter expertise; and

**WHEREAS**, the Executive Branch has an interest in ensuring that such information and subject-matter expertise is provided to the Legislature in the most effective and efficient manner.

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, by the authority vested in me by the Constitution and laws of this State do hereby order that the Executive Branch and all Executive Branch employees are subject to the following directions:

#### **1. Application**

- a. This order applies to all Executive Branch department employees and replaces and supersedes any prior executive order establishing a policy for legislative communications of Executive Branch department and employees. Independently elected officers may adopt this policy. This order does not apply to any employee of the Legislature or Judiciary.
- b. Each Executive Branch department shall amend its existing policy to be consistent with the directions set forth below.

#### **2. Definitions**

- a. "Department" means a department of the Executive Branch and includes an institution of higher education, State Tax Commission, National Guard, and Board of Pardons and Parole.
- b. "Deputy director" means an individual by any title appointed to act on behalf of the Executive Director in the administration of the affairs of the department and who has the charge and general supervision of the department (whether alone or in cooperation with other deputy directors) in the absence or disability of the executive director.
- c. "Division" means a division or other agency within an Executive Branch department.
- d. "Executive director" means the head of a department or an equivalent position by any title, and includes the president of an institution of higher education or the president's designee.
- e. "Legislative action" means a bill, resolution, amendment, veto override, or any other matter pending or proposed in either house of the Utah Legislature or a committee of the Utah Legislature during a General Session or Special Session of the Utah Legislature.
- f. "Legislative liaison" means an individual appointed by a department to communicate to legislators and others the positions of the department.
- g. "Legislative communications" means the attempt by an employee of the State of Utah in the capacity of an employee of the State of Utah to influence, either directly or indirectly, by communicating with a legislator, the passage or defeat of legislative action; provided, however, that "Legislative Communications" does not include (i) requests to a legislator to sponsor legislation; (ii) communications between or within a department of

the Executive Branch; (iii) testifying before a legislative body, including a legislative committee or task force; (iv) answering questions asked by a legislator; (v) communications with legislative staff; or (vi) communications required by law.

h. "State employee" means an individual employed by a department of the Executive Branch other than an executive director, deputy director, or legislative liaison.

### 3. Legislative Communications

a. **Official Positions.** Departments may represent the Governor by taking official positions on legislative action. Divisions may not take a position on legislative action that is contrary to the position of the Governor or the department.

b. **No Prohibition for Certain Individuals.**

(i) An executive director, deputy director, or legislative liaison may engage in legislative communications without restriction at any time and for any reason.

(ii) An executive director may appoint up to two legislative liaisons for any General Session or Special Session of the Legislature.

c. **Prohibition of the Giving of Gifts.** Except with the consent of the Governor, no department, division, executive director, deputy director, legislative liaison, or state employee may offer or give a gift or other form of compensation, including gifts of de minimis value, either directly or indirectly, to a legislator (e.g., admission to events and venues, promotional items, food, drink).

d. **Prohibition of Certain Legislative Communications.**

(i) Except as provided in Sections 3(d)(ii) and Section 5, no state employee may engage in legislative communications.

(ii) An executive director may authorize a state employee to engage in legislative communications for the limited purpose of (a) explaining technical concepts; or (b) providing subject-matter expertise.

**4. Prohibition of Certain Other Communications.** Except with the consent of the Governor or as provided in Section 5, no executive director, deputy director, legislative liaison, or state employee may directly contact a non-governmental entity or individual for the sole purpose of requesting that such individual or entity advocate for or against the policy positions of a department or legislator on legislative action.

**5. No Limitation of Free Speech.** Nothing in this Executive Order should be interpreted as a limitation of an individual's right to free speech on the individual's own time and with non-state resources; provided, however, that an individual acting pursuant to this Section 5 may not state or imply that he or she is representing the interests of the Governor or a department.



Attest:

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 5th day of March 2018.

Gary R. Herbert  
Governor

Spencer J. Cox  
Lieutenant Governor