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C.R.S. 18-8-404



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Statutes current through Chapter 307 of the 2021 Regular Session and effective as of June 23, 2021. The inclusion of the 2021 legislation is not final. It will be final later in 2021 after reconciliation with the official statutes, produced by the Colorado Office of Legislative Legal Services.

[Colorado Revised Statutes Annotated](#) [Title 18. Criminal Code \(Arts. 1 – 26\)](#) [Article 8. Offenses - Governmental Operations \(Pts. 1 – 8\)](#) [Part 4. Abuse of Public Office \(§§ 18-8-401 – 18-8-410\)](#)

Notice

 This section has more than one version with varying effective dates.

18-8-404. First degree official misconduct

(1) A public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another or maliciously to cause harm to another, he or she knowingly:

(a) Commits an act relating to his office but constituting an unauthorized exercise of his official function; or

(b) Refrains from performing a duty imposed upon him by law; or

(c) Violates any statute or lawfully adopted rule or regulation relating to his office.

(2) First degree official misconduct is a class 2 misdemeanor.

History

Source: L. 71: R&RE, p. 462, § 1. **C.R.S. 1963:** § 40-8-404. **L. 83:** (1)(b) amended, p. 710, § 1, effective June 10. **L. 2000:** IP(1) amended, p. 709, § 41, effective July 1.

▼ Annotations

State Notes

ANNOTATION

Annotator's note. Since § 18-8-404 is similar to former § 40-7-46, C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Purpose of section. The remedy for corrupt discharge of a district attorney's duties is in the criminal statutes. *McDonald v. Lakewood Country Club*, 170 Colo. 355, 461 P.2d 437.

Section violated by district attorney's failure to prosecute personal friend for possession of marijuana. *People v. Larsen*, 808 P.2d 1265 (Colo. 1991).

Section applicable although term of office had expired when indictment was filed. Provisions of former section relating to malfeasance in office were applicable to an official violating the terms thereof, although his term of office had expired when the indictment was filed against him. *Whalen v. People*, 74 Colo. 417, 222 P. 398 (1924).

Section violated when an official uses opportunities presented by his or her office to engage in improper conduct. A sheriff's deputy, while in his patrol car and in uniform, approached a person to inquire about purchasing their firearms that were stored at the sheriff's office. The only reason the deputy had access to the firearms was because they were in the evidence locker. Furthermore, the sheriff's deputy assured the person that the transaction was legal based on his status as a sheriff's deputy. *People v. Berry*, 2020 CO 14, 457 P.3d 597.

Definitions. Malfeasance consists of the doing of an act which is wholly wrongful and unlawful; it involves an act which the officer has no authority to do and it is readily distinguished from misfeasance or nonfeasance. *People v. Schneider*, 133 Colo. 173, 292 P.2d 982 (1956).

Elements of offense. Malfeasance in office cannot be charged except for breach of a positive statutory duty or for the performance of a discretionary act with an improper or corrupt motive. *People v. Schneider*, 133 Colo. 173, 292 P.2d 982 (1956).

Mere ownership of land by a county commissioner, which land was later subdivided,

would not constitute malfeasance. *People v. Schneider*, 133 Colo. 173, 292 P.2d 982 (1956).

Intent may be inferred. Intent to commit embezzlement of public property, official misconduct, and theft may be inferred from the defendants' conduct and the circumstances of the case. *People v. Luttrell*, 636 P.2d 712 (Colo. 1981).

There must be some direct allegation of facts which constitute malfeasance. To charge malfeasance without more is to state a conclusion which does not afford the defendant an opportunity to know the nature of or to meet the charge against him. *People v. Schneider*, 133 Colo. 173, 292 P.2d 982 (1956).

Applied in

People v. Enlow, 135 Colo. 249, 310 P.2d 539 (1957); *People v. Dilger*, 196 Colo. 414, 585 P.2d 918 (1978); *People v. Montera*, 198 Colo. 156, 596 P.2d 1198 (1979); *People ex rel. Losavio v. Gentry*, 199 Colo. 153, 606 P.2d 57 (1980); *Colo. Ethics Watch v. Coffman*, Indep. Ethics Comm'n 08-01.

Colorado Revised Statutes Annotated

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