

**Colorado Revised Statutes: Title 18: Criminal Code:  
18-8-404. First Degree Official Misconduct.**

TITLE 18. CRIMINAL CODE. ARTICLE 8. OFFENSES - GOVERNMENTAL OPERATIONS.  
PART 4. ABUSE OF PUBLIC OFFICE.

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**(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.**

## **Case 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 (1969).

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).

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.