



Ethics Commission and the Ethics Act: Law, Procedure, and Enforcement

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Ethics Act of 1991

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Subject Matter

- Rules of Conduct, S.C. Code Ann. § 8-13-700, et. seq.
- Campaign Practices, S.C. Code Ann. § 8-13-1300, et. seq.
- Financial Disclosure, S.C. Code Ann. 8-13-1100, et. seq.
- Lobbyists and Lobbying, S.C. Code Ann. § 2-17-10, et. seq.

Ethics Act of 1991

Enforcement Entities

- House Ethics Committee
 - House members, candidates, staff.
- Senate Ethics Committee
 - Senate members, candidates, staff.
- S.C. State Ethics Commission
 - Basically everyone else.

What does the S.C. State Ethics Commission do?

- Investigate and “prosecute” allegations of Ethics Act violations.
 - Work with the Attorney General, SLED, or other local prosecutors or law enforcement on criminal Ethics Act matters.
- Provide advisory opinions to affected people on compliance with the Ethics Act.
- Education on Ethics Act compliance.
- Help people file reports and the like.

Act 282 of 2016

The Ethics Commission is reconstituted

- 9 members to 8
- No holding over in office
- General Assembly appointment power for the first time
- New enforcement process for Members of the General Assembly
- Legislative Ethics Committees retain sole authority to discipline Members of the General Assembly.
- Ethics Commission can only recommend probable cause.
- Ethics Commission must apply Legislative Ethics Committee advisory opinions.
- Supermajority of 6 required for probable cause (applies to everyone).

Ethics Commission Regulations

- Regulations last promulgated June 27, 1997.
- Act 282 of 2016 reconstituting the Ethics Commission and provided for no holdover appointments at least arguably rendered all Ethics Commission regulations null and void.
- 1980 S.C. Op. Attorney Gen. 105 (1980)
 - “The enactment of Bill No. H. 3529 would bring about the repeal of the statutory authority...for the Dairy Commission's existing regulations and their enforcement, the enactment into law of this bill would effectively repeal this body of regulations.”

Jurisdiction of Circuit Courts in Civil Matters

Rainey v. Haley, 404 S.C. 320, 325, 745 S.E.2d 81, 84 (2013)

- Citizen cannot allege Ethics Act violations against the Governor in circuit court because, with limited exceptions, exclusive authority over Ethics Act complaints lies with the relevant enforcement agency.
- Exception: action for injunctive relief to enjoin campaign finance violations could be filed in the circuit court within the 50-day window before the election.

Harpootlian v. SC Senate Republican Caucus, C/A, 2018CP4005370.

- During the 50-day window, Senate candidate filed action against the Senate Republican Caucus to enjoin alleged violations of the Ethics Act.
- Candidate tried to further pursue action after the election and circuit court judge ordered the caucus to provide certain discovery.
- The Supreme Court eventually granted a Writ of Prohibition, prohibiting the circuit court from exercising further jurisdiction because the 50-day window was no longer applicable and candidate had to go through the usual Ethics Commission complaint process.

Due Process Issues

Individual Complaints

- S.C. Code Ann. § 8-13-320 provides that the State Ethics Commission has these duties and powers: (10) to conduct its investigations, inquiries, and hearings in this manner:
 - The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.

Confidentiality of complaints

S.C. Code Ann. § 8-13-320 provides that the State Ethics Commission has these duties and powers:

- (10) to conduct its investigations, inquiries, and hearings in this manner:
- (g) All investigations, inquiries, hearings, and accompanying documents are confidential and only may be released pursuant to this section.

SEC Advisory Opinion AO2022-001 (March 21, 2022)

- Section 8-13-320(10)(g) “limits only what information the Commission itself may disclose and at what stage in the complaint process such disclosure may occur. The plain language of the statute does not implicate a private citizen’s speech, but rather applies only to the Commission.”

Rules of Conduct

Use of Position to Affect Economic Interest

Section 8-13-700(A)

- “No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated.”
- Exception for incidental use not resulting in additional public expense.

Use of Position to Affect Economic Interest

Section 8-13-700(B)

- “No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest.”
- 8-13-700(B) recognizes that conflicts happen from time to time, but requires recusal.

Rules of Conduct - Definitions

“Economic interest” (Section 8-13-100(11))

- Interest distinct from that of the general public.
- Large class exception. If the only economic interest realized is that which would be realized as a member of a “profession, occupation, or large class,” then the public official, public member, or public employee may participate in the decision.

“Family member” (Section 8-13-100(15))

- Includes a member of the person’s immediate family, also: spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild.
- Amended in 2011 to include in-laws.

Rules of Conduct - Definitions (continued)

“Individual with whom he is associated.” (Section 8-13-100(21))

- “Individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.”

“Business with which he is associated.” Section 8-13-100(4)

- “Business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.”
- If you or your spouse is employed by a company, that is a business with which you are associated.

- 15 • “Governmental entity” not a business.

Recusal provision of 700(B)

Section 8-13-700(B)(continued)

- A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
 - prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
 - if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;
 - if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

Prohibition on representation

“Section 8-13-700(B)(continued)

- "A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
 - prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
 - if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;
 - if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

Anti-bribery statute

Section 8-13-705

- Basically an anti-bribery provision. This is a felony.
- May not receive or give anything of value with intent to influence.
- “Anything of value is defined in Section 8-13-100(1) (laundry list)
- "Anything of value" or "thing of value" does not mean certain things
 - e.g., printed informational or promotional material, not to exceed ten dollars in monetary value
 - educational material of a nominal value directly related to the public official's, public member's, or public employee's official responsibilities

8-13-710 Reporting of certain gifts

- Section 8-13-705 can be difficult to square with the fact that the Ethics Act does not explicitly prohibit gifts.
- Section 8-13-710(A) states that a person required to file an SEI who accepts anything of value from a lobbyist's principal must report the value of anything received on his SEI.
- Section 8-13-710(B) states that a required filer **must report** certain gifts over \$25 even if they are explicitly provided because of the person's position, e.g, if the gift-giver has or is seeking to obtain contractual or other business or financial relationships with the public official's, public member's, or public employee's governmental entity.
 - You can ignore the \$25 because Section 8-13-1120(A)(9) states that a required filer must report on SEI “the source and a brief description of any gifts”

Use of government resources for political purposes

Section 8-13-765

- (A) No person may use government personnel, equipment, materials, or an office building in an election campaign.
- (C) This section does not prohibit government personnel, where not otherwise prohibited, from participating in election campaigns on their own time and on nongovernment premises.

Section 8-13-1346

- (A) A person may not use or authorize the use of public funds, property, or time to influence the outcome of an election.

Other miscellaneous Rules of Conduct provisions

Section 8-13-715

- May not accept an honorarium for speaking engagements in one's official capacity. May accept payment for actual expenses.

Section 8-13-720

- May not accept additional money for assistance given while performing one's duty.

Section 8-13-725

- May not use confidential information gained through employment for personal gain.

Other Rules of Conduct provisions

Section 8-13-740

- Representation by another person before one's governmental body

Section 8-13-750

- May not cause the employment, promotion, or transfer of a family member to a position in which one supervises. Prohibits discipline of one's family member.

Section 8-13-755 and 760

- Post employment restrictions

Section 8-13-775

- If you have official function related to contracts, not permitted to have economic interest in contracts.

Speaker Bio



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Michael is an experienced litigator who has represented individuals and businesses before the state and federal courts of South Carolina and administrative tribunals. He also has a diverse background, which includes experience in the areas of government ethics, political campaign finance law, lobbying compliance, election law, and health care.

As former General Counsel for the South Carolina State Ethics Commission, Michael prosecuted enforcement matters alleging violations of the South Carolina Ethics Act, provided advisory opinions to individuals and entities subject to the Ethics Act, and served as legal counsel to the Commission itself. Previous to that position, Michael served as an Assistant Attorney General for the South Carolina Attorney General's Office, prosecuting health care fraud. Since leaving government service for the private sector, Michael has focused much of his practice on representation of governmental entities, candidates for elective office, political committees, and other individuals or entities in enforcement actions under the Ethics Act and providing compliance advice to those seeking to avoid an enforcement action. Michael's experience also includes advising governmental entities on investigations and audits and representing candidates for office in both election protests and litigation.

Questions
