



SOUTH CAROLINA

State Ethics Commission

South Carolina Association of Counties

Institute for Government Officials

July 30, 2021

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• SC Ethics, Government Accountability and Campaign Reform Act, 1991

- Individuals Covered:

- Public officials (includes members of General Assembly per 2016 Act. No. 282)
- Public members
- Public employees
- ~~Lobbyists/Lobbyist's Principals~~

- Subjects Covered:

- Rules of Conduct (8-13-700→8-13-795)
- Financial Disclosures (8-13-1110→8-13-1180)
- Campaign Practices (8-13-1300→8-13-1374)
- ~~Lobbying (2-17-10, et seq)~~



TOP 10

Ethics Violations

Use of Office for Financial Gain

8-13-700(A)

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- No public servant may knowingly use his official position 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.
 - Family Member (8-13-100(15)) → spouse, parent (in laws), sibling (in laws), child, grandparent, grandchild
 - Business with which he is associated (8-13-100(4)) → business with which public servant/*immediate family* is a director, officer, owner, employee, compensated agent, or holder of certain amount of stock.
 - Includes non-profits, eleemosynary, and other charitable organizations.



Use of Office for Financial Gain

8-13-700(A)

- Individual with whom he is associated (8-13-100(21)) → person with whom the public servant/*immediate family* shares a business interest if the business is one with which the public servant is associated
 - Immediate family = child in household, spouse, or anyone claimed as a dependent by public servant or spouse.
- Economic Interest (8-13-100(11)) → an interest distinct from that of the general public in which a public servant may gain an economic benefit of > \$50.

Use of Office for Financial Gain

8-13-700(A)

- Incidental Use. “This prohibition does not extend to incidental use of public materials, personnel, or equipment, subject to or available for the public servant’s use that does not result in additional public expense.”
 - Incidental not defined.
 - Examples—telephone use, copier use with reimbursement, etc.
- Large Class Exception. There is no economic interest if the only reasonably foreseeable benefit that may accrue is incidental or accrues to the public servant as a member of a profession, occupation, or large class to no greater extent than . . . to all other members of the profession, occupation, or large class.
 - Budgets, salary increases
 - Zoning/Property Issues

Use of Office for Financial Gain

8-13-700(A)

- Examples
 - Using a government car and claiming mileage reimbursement
 - Receiving daily meal reimbursement for money not spent
 - Voting (or taking any action) to hire a business/individual with whom associated
 - Participating in matters re: litigation wherein you/family/individual business with whom associated is a party
 - Voting in a zoning issue where property is/could be uniquely impacted
 - Scheduling extra meetings for no reasonable purpose (when paid per meeting)
 - Working a second job at your government employment

Additional Compensation

§ 8-13-720

- No person may offer to pay to a public servant and no public servant may solicit or receive money in addition to that received in their official capacity for advice or assistance given in the course of his employment.
 - Cash or cash equivalent
 - Appreciation gifts



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Failure to Disqualify/Recuse

8-13-700(B)

- No public servant may make, participate in making, or in any way attempt to use his position to influence a governmental decision in which he, a family member, or an individual/business with whom he is associated has an economic interest.



Disqualification/Recusal

8-13-700(B)

- When confronted with an action or decision in the discharge of official duties that would affect the economic interest of himself, a family member, or an individual/business with whom associated, the public servant shall:
 - Prepare a *written* statement describing conflict of interest;
 - Provide the statement to the presiding officer of the public body, who is to print the statement in the minutes;
 - Excuse himself from any votes, deliberations, and ***any other actions*** on matters where the conflict exists.
 - Provide statement at *each* meeting and publish in *all* applicable minutes.
- Public employees should provide recusal statements to superiors, who must assign the matter to another employee.

Disqualification/Recusal

8-13-700(B)

STATEMENT OF RECUSAL

In accordance with Section 8-13-700(B), I hereby abstain from all votes, deliberations and other action on the following matter(s):

REASONS FOR DISQUALIFICATION:

Signature

Date



Disqualification/Recusal

8-13-700(B)

“Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often, these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.”

-Preamble to the Ethics Act

Nepotism

8-13-750

- No public servant may cause the employment, appointment, promotion, transfer, or advancement of a family member to a state or local office or position the public servant supervises or manages.
 - Direct supervision or management.
 - Intervening links in chain of command.
- Public servant may not participate in an action relating to the discipline of the public servant's family member.
- Recusal provisions of § 8-13-700(B) apply. Report to appropriate supervisor if a public employee.



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Post-Employment

8-13-755

- Former public servant may not, for a period of one year after terminating service/employment:
 - Lobby or represent clients before the government entity in a matter in which he *directly and substantially participated*; or
 - Accept employment:
 - From a person *regulated* by the entity; and
 - Involving a *matter* in which he *directly and substantially* participated.

Post-Employment--Procurement

8-13-760

- Public servant participating directly in procurement may not resign and accept employment:
 - with a person contracting with the governmental body
 - if the contract falls or would fall under the public servant's official responsibilities.

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, IT, or construction and all functions related thereto, including description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration. Section 11-35-310(24).

Improper Use of Confidential Information

8-13-725

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- May not use or disclose confidential information gained in the course of or by reason of official responsibilities in a way that would affect an economic interest.
- May not willfully examine records of an individual in the possession of or within the access of a public department or agency if the purpose of the examination is improper or unlawful.

Improper Representation

8-13-740(A)(4)

- A public servant of a County may not knowingly represent a person before an agency, unit, or subunit of that County for which the public servant has official responsibility except:
 - as required by law; or
 - before a court under the unified judicial system.
- This prohibition does not apply to:
 - ministerial matters that do not require discretion by gov't entity;
 - representation in the course of the public servant's official duties; or
 - representation on matters relating to personal affairs of the public servant/immediate family.

Receiving Payments for Speaking Engagements

8-13-715

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- May not receive anything of value for speaking before a public or private group in an official capacity.
- May accept a meal in conjunction with the event if provided to all participants.
- May accept *reasonable* reimbursement for actual expenses.
- Must report any speaking engagement and reimbursement for actual expenses on SEI.

Using Public Resources for Campaign Purposes

8-13-765

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- No person may use gov't personnel, equipment, materials, or an office building in an election campaign. (excludes public official's use of an official residence).
- A government may rent or provide public facilities for political meetings or other campaign related purposes if provided to all equally.
- Gov't personnel, where not otherwise prohibited, are not prohibited from participating in election campaigns on their own time.

Using Public Resources to Influence Elections/Ballot Measures

8-13-1346

- A person may not use or authorize the use of public funds, property, or time to influence the outcome of an election.
 - SEC AO2018-003; 2018-004. Factors to determine “influence the outcome of an election/ballot measure”
- Gov’t entity affected by ballot measure may prepare *informational materials*, conduct public meetings, or respond to news media or citizens’ inquiries; however, a gov’t entity may not use public funds, property, or time in an attempt to influence the outcome of a ballot measure.
 - SEC AO2018-003; 2018-004. Discusses what constitutes “informational materials.”

STYLE TENOR TIMING

Statements of Economic Interests

8-13-1110, et seq

- Filed by all public officials, certain public members, and certain public employees
- Due annually by March 30
- Required to disclose specified information
 - **NEW(ish). Must report private sources of income as of January 1, 2017.
- Make sure you actually file, not just save, your SEI (check public site)



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Campaign Finance

8-13-1300, et seq

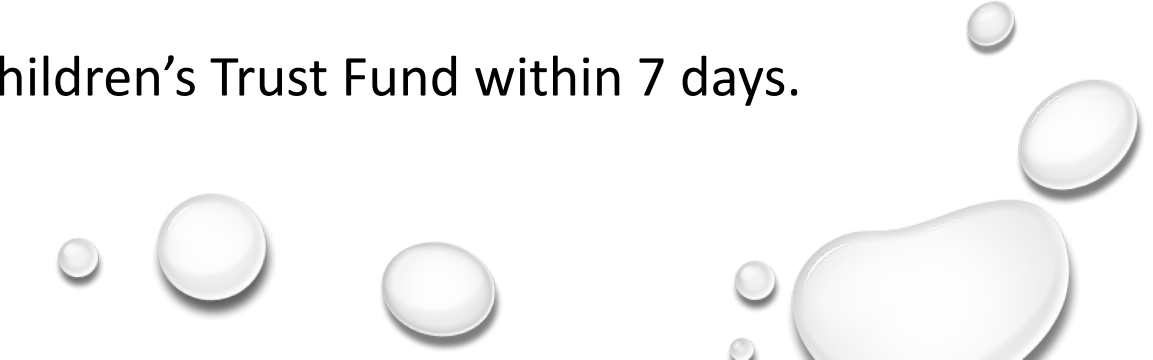
- Campaign Bank Accounts. All campaign expenses must be drawn from a campaign account. Limited to one checking and one savings. Must include candidate's name.
- Duty to File. Triggered by receipt or expenditure of \$500 or more. If a candidate does not raise or expend \$500, he must file campaign disclosure 15 days prior to election.
 - Pre-Election Campaign Disclosure Reports are filed by everyone.
- Quarterly Disclosures. Due January 10, April 10, July 10, and October 10 *until final disbursement*.





Campaign Finance

8-13-1300, et seq

- Individual Contribution Limits.
 - \$3500 for statewide candidates.
 - \$1000 for local candidates.
 - Personal contributions to own campaign unlimited.
 - Political Party Contribution Limits. \$50K for statewide. \$5K for local.
 - Anonymous contributions prohibited. Send to Children's Trust Fund within 7 days.
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Complaint Process

- How are complaints generated?
 - Individual: files a verified complaint;
 - Organization/governmental body: verified complaint filed on behalf of org./govt'l body
 - Commission: staff learns of potential misconduct and initiates a P.I.
- Determination as to Facts Sufficient: must set forth particulars of violation.
 - If no FS, matter is dismissed and stricken from public record unless confidentiality waived
 - If yes, investigation opened, parties notified (remains confidential unless or until PC found).

Complaint Process

- Investigation completed, presented to Commission in executive session with a recommendation as to Probable Cause (6 votes required).
 - If yes, NOH. Complaint, response, and NOH become public.
 - If no, Order of Dismissal issued. Remains confidential.
- Hearing scheduled if PC is found.



Penalties


8-13-1550

- Late Filing Penalties for SEI and Campaign Disclosures
 - \$100 if not filed within five days of deadline
 - Once Commission provides notice by certified mail:
 - \$10 for 10 days, then
 - \$100 a day until the filer comes into compliance or \$5,000 accrues, whichever comes first






Additional Penalties

- Oral or written warning or reprimand;
 - Civil penalty of no more than \$2,000 for each violation;
 - Forfeiture of gifts, receipts, or profits, or the value thereof, obtained in violation of the Act; and
 - Administrative Fees/Costs.
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Advisory Opinions



- Informal. A non-binding opinion of Commission staff. Reg. 52-203; 52-302. 
- Formal. Written binding opinion of the Commission. Reg. 52-203; 52-303.
- Confidential. Formal or informal.

Advisory Opinions

- May be requested by any person to whom the Act could reasonably be expected to apply. Reg. 52-301(A).
 - Commission will not issue AO to a third party about the conduct of another without authorization from the affected party. Reg. 52-301(B).
- Must be in writing and relate prospectively to a real or hypothetical set of facts or circumstances. Reg. 52-301(A).
 - An opinion request requiring consideration of past conduct may be referred to the appropriate supervisory office and an investigation of any potential violation may be conducted. Reg. 52-301(C).

QUESTIONS?

