

Public Service Ethics: Understanding the Law and Beyond

SCAC Webcast

Thursday, March 22, 2012



AGENDA

9:00 a.m. - 9:45 a.m. *Overview of South Carolina State Ethics Reform Act*

*Speaker: Cathy Hazelwood, Deputy Director and General Counsel,
South Carolina State Ethics Commission*

9:45 a.m. - 10:15 a.m. *Ethics Beyond the Law*

Speaker: Ed Thomas, Ed Thomas/Leadership, LLC

10:15 a.m. - 10:25 a.m. *Break*

10:25 a.m. - 11:25 a.m. *Ethics Beyond the Law - Continued*

Speaker: Ed Thomas, Ed Thomas/Leadership, LLC

11:25 a.m. - 11:35 a.m. *Break*

11:35 a.m. - 12:15 p.m. *Ethics Beyond the Law - Continued*

Speaker: Ed Thomas, Ed Thomas/Leadership, LLC

12:15 p.m. - 12:30 p.m. *Question and Answer Period*



**South Carolina
Association of Counties**

**Public Service Ethics:
Understanding the
Law and Beyond**



**Webcast Training
March 22, 2012 • Columbia, SC**

"Building Stronger Counties for Tomorrow"

**Overview of the South Carolina State
Ethics Reform Act**

*Cathy Hazelwood
Deputy Director and General Counsel
South Carolina State Ethics Commission*



**South Carolina
Association of Counties**

The Act as It Relates to

- Rules of Conduct
- Financial Disclosure
- Campaign practices

Rules of Conduct

A. Section 8-13-100 various definitions

- (1) (a) **'Anything of value' or 'thing of value'** means:
- (i) a pecuniary item, including money, a bank bill, or a bank note;
 - (ii) a promissory note, bill of exchange, an order, a draft, warrant, check, or bond given for the payment of money;
 - (iii) a contract, agreement, promise, or other obligation for an advance, a conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;

Rules of Conduct

A. Section 8-13-100 various definitions

- (1) (a) (iv) a stock, bond, note, or other investment interest in an entity;
- (v) a receipt given for the payment of money or other property;
- (vi) a chose-in-action;
- (vii) a gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;

Rules of Conduct

A. Section 8-13-100 various definitions

- (1) (a) (viii) a loan or forgiveness of indebtedness;
- (ix) a work of art, an antique, or a collectible;
- (x) an automobile or other means of personal transportation;
- (xi) real property or an interest in real property, including title to realty, a fee simple or partial interest in realty including present, future, contingent, or vested interests in realty, a leasehold interest, or other beneficial interest in realty;

Rules of Conduct

A. Section 8-13-100 various definitions

- (1) (a) (xii) an honorarium or compensation for services;
- (xiii) a promise or offer of employment
- (xiv) any other item that is of pecuniary or compensatory worth to a person

Rules of Conduct

A. Section 8-13-100 various definitions

- (1) (b) "Anything of value" or "thing of value" does not mean:
 - (i) printed informational or promotional material, not to exceed ten dollars in monetary value;
 - (ii) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;
 - (iii) a personalized plaque or trophy with a value that does not exceed one hundred fifty dollars;

Rules of Conduct

A. Section 8-13-100 various definitions

- (1) (b) (iv) educational material of a nominal value directly related to the public official's, public member's, or public employee's official responsibilities;
- (v) an honorary degree bestowed upon a public official, public member, or public employee by a public or private university or college;

Rules of Conduct

A. Section 8-13-100 various definitions

- (1) (b) (vi) promotional or marketing items offered to the general public on the same terms and conditions without regard to status as a public official or public employee; or
- (vii) a campaign contribution properly received and reported under the provisions of this chapter.

Rules of Conduct

A. Section 8-13-100 various definitions

- (3) '**Business**' means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual.

- (4) '**Business with which he is associated**' means a 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

Rules of Conduct

A. Section 8-13-100 various definitions

- (11) (a) '**Economic interest**' means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

Rules of Conduct

A. Section 8-13-100 various definitions

- (11) (b) This definition of '**economic interest**' does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Rules of Conduct

A. Section 8-13-100 various definitions

- (15) '**Family member**' means an individual who is:
- (a) the 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; or
 - (b) a member of the individual's immediate family.

Rules of Conduct

A. Section 8-13-100 various definitions

(16) **'Gift'** means anything of value, including entertainment, food, beverage, travel, and lodging given or paid to a public official, public member, or public employee to the extent that consideration of equal or greater value is not received. A gift includes a rebate or discount on the price of anything of value unless it is made in the ordinary course of business without regard to that person's status. A gift does not include campaign contributions accepted pursuant to this chapter.

Rules of Conduct

A. Section 8-13-100 various definitions

(18) **'Immediate family'** means:

- (a) a child residing in a candidate's, public official's, public member's, or public employee's household;
- (b) a spouse of a candidate, public official, public member, or public employee; or
- (c) an individual claimed by the candidate, public official, public member, or public employee or the candidate's, public official's, public member's, or public employee's spouse as a dependent for income tax purposes.

Rules of Conduct

A. Section 8-13-100 various definitions

- (20) '**Individual**' means one human being.
- (21) '**Individual with whom he is associated**' means an 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.

Rules of Conduct

B. Section 8-13-700, et al. rules of conduct

- 1. May not use official office/position for financial gain - knowingly. §8-13-700(A).**
- 2. Recusal provisions for conflicts. §8-13-700(B).**
3. May not receive or give anything of value with intent to influence (Anti-Bribery Statute). §8-13-705.
4. May not accept an honorarium for speaking engagements in one's official capacity. May accept payment for actual expenses. §8-13-715.

Rules of Conduct

B. Section 8-13-700, et al. rules of conduct

5. May not accept additional money for assistance given while performing one's duty. §8-13-720.
6. May not use confidential information gained through employment for personal gain. §8-13-725.
7. Representation prohibitions. §8-13-740.
8. 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. §8-13-750.

Rules of Conduct

B. Section 8-13-700, et al. rules of conduct

9. Post employment restrictions. §8-13-755. (Government lawyers see Rule 407 of Appellate Court Rules, Rule 1.11 Successive Government & Private Employment).
10. Breach of ethical standards for an employee participating in procurement to resign and accept employment with a person contracting with the governmental body. §8-13-760.

Rules of Conduct

B. Section 8-13-700, et al. rules of conduct

11. May not use government personnel/materials in an election campaign. §8-13-765
12. A public official/employee may not have an economic interest in a contract with the State or a political subdivision if the public official/employee is authorized to perform an official function relating to the contract. §8-13-775.

Campaign Practices

- A person may not use/authorize public funds to influence the outcome of an election. A governmental entity may not use public funds, property, or time in an attempt to influence the outcome of a ballot measure. §8-13-1346.
- All printed matter to influence the outcome of an election must contain name and address of the purchaser. §8-13-1354.

Penalties

A. Section 8-13-320 (10)

- (l) The written decision as provided for in subitem (k) may set forth an order:
 - (i) requiring the public official, public member, or public employee to pay a civil penalty of not more than two thousand dollars for each violation;

Penalties

A. Section 8-13-320 (10)

- (l) (ii) requiring the forfeiture of gifts, receipts, or profits, or the value thereof, obtained in violation of the chapter, voiding nonlegislative state action obtained in violation of the chapter; or
 - (iii) requiring a combination of subitems (i) and (ii) above, as necessary and appropriate.

Penalties

B. Section 8-13-705

(F) provides for imprisonment of not more than 10 years and fined not more than \$10,000 and that the person is permanently disqualified as public official or forfeits public employment.

Penalties

C. Section 8-13-1510

(A) Except as otherwise specifically provided in this chapter, a person required to file a report or statement under this chapter who files a late statement or report or fails to file a required statement or report must be assessed a civil penalty as follows:

(1) a fine of one hundred dollars if the statement or report is not filed within five days after the established deadline provided by law in this chapter; and

Penalties

C. Section 8-13-1510

- (A) (2) after notice has been given by certified or registered mail that a required statement or report has not been filed, a fine of ten dollars per calendar day for the first ten days after notice has been given, and one hundred dollars for each additional calendar day in which the required statement or report is not filed, not exceeding five thousand dollars.

Penalties

C. Section 8-13-1510:

- (B) After the maximum civil penalty has been levied and the required statement or report has not been filed, the person is:
- (1) for a first offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days;

Penalties

C. Section 8-13-1510:

- (B) (2) for a second offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not less than two thousand five hundred dollars nor more than five thousand dollars or imprisoned not less than a mandatory minimum of thirty days;
- (3) for a third or subsequent offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.

Penalties

D. Section 8-13-1520 provides that a violation of the Rules of Conduct is a misdemeanor and on conviction one may be fined not more than \$5,000 or be imprisoned not more than 1 year or both. A person guilty of violating the campaign reporting provisions is guilty of a misdemeanor, and must be fined a minimum of \$5000 and a maximum 500% of the amounts that should have been reported, and may be sentenced to up to one year in prison.

E. Section 8-13-780 provides that the Commission may issue a public reprimand.

Statute of Limitations

Action cannot be taken on a complaint filed more than 4 years after the violation is alleged to have occurred.

§8-13-320(9)(d).

State Ethics Commission

Commission's website is <http://ethics.sc.gov>

- Electronic filing and public reporting
- The Ethics Reform Act
- All advisory opinions

Ethics Beyond the Law

Ed Thomas
Ed Thomas/Leadership, LLC



What is Ethics?

The study of standards of conduct and moral judgment...

The system or code of morals of a particular person, religion, group, profession, etc.

To be ethical means conforming to the standards of conduct of a given profession or group.

Webster's New World Dictionary

Ethics refers to standards of conduct, standards that indicate how one should behave based on moral duties and virtues, which themselves are derived from principles of right and wrong. As a practical matter, ethics is about how we meet the challenge of doing the right thing when that will cost more than we want to pay.

There are two aspects of ethics: The first involves the ability to discern right from wrong, good from evil, and propriety from impropriety. The second involves the commitment to do what is right, good, and proper. Ethics entails action.

Making Ethical Decisions, by Michael Josephson.
Josephson Institute of Ethics, www.josephsoninstitute.org

Ethics involves thinking more systematically about the values that are imbedded in the choices we otherwise would make on practical or political grounds alone.

Terry Cooper. *The Responsible Administrator: An Approach to Ethics for the Administrative Role*. (p.6.), 1990.

Ethics and the Law Are Two Different Things...

One can be dishonest, unprincipled, untrustworthy, unfair, and uncaring without breaking the law.

Ethical persons measure their conduct by basic ethical principles rather than by laws and rules; they do not walk the line of propriety; they do more than they have to and less than they are allowed to.

- Michael Josephson

Why This Matters

- “Nothing is more devastating to individual departments and our entire profession than uncovered scandals or discovered acts of officer misconduct and unethical behavior...”
- Subjects the agency to civil litigation
- Negative publicity – a single incident of unethical behavior can take you from one of the most admired agencies to one of the least respected
- Impact on careers

IACP Survey, Ethics Training in Law Enforcement, 1979

The behavior of those who deliver public services is an important factor for citizens' trust, support, and participation in government.

Citizens expect public servants to pursue the public interest. They also expect them to manage public resources for the common good. Failure to live up to those expectations affects public trust and support for public service.

Donald Menzel. *Ethics Moments in Government: Cases and Controversies*. ASPA/CRC Press, (p.xv), 2010.

The Ethics Environment

- External – Public Perceptions, Societal Expectations
- Internal – Organizational Culture

The External Environment

All day long around here, we - the press vs. the government, one party or political faction vs. the other, one interested contender vs. the next - go around implying that the other fellow is lying, trimming, gouging, feathering his nest, murdering the innocent and otherwise violating everything that upright people hold dear. The effect of this constant play is that we lose the ability to recognize a genuine moral dereliction when we see one.

- Meg Greenfield

Headlines...



The Internal Environment: Organizational Culture



National Government Ethics Survey[®]

- Misconduct across government as a whole is high – nearly six in ten government employees saw at least one form of misconduct in the past twelve months (higher in state and local government than federal government)
- One in four government employees works in an environment conducive to misconduct. In these situations, 90% are likely to observe misconduct
- The strength of ethical culture in government workplaces is declining, while pressure to commit misconduct is growing
- At present, 30% of misconduct goes unreported to management

National Government Ethics Survey[®]

The following types of misconduct were found in this year's survey:

- Employees putting their own interests above the organization's (conflict of interest)
- Lying to employees
- Abusive or intimidating behavior
- Internet abuse
- Misreporting hours
- Improper hiring practices
- Lying to stakeholders
- Safety violations
- Discrimination
- Misuse of confidential information
- Sexual harassment
- Provision of low quality goods and services
- Environmental violations

Ethical Dilemmas

Confronting conflicting responsibilities is the most typical way public administrators experience ethical dilemmas.

- Terry Cooper

What Are Your Responsibilities?

- To the public
- To the stakeholders
- To the organization
- To your profession
- To your colleagues
- To yourself

Some Ethical Dilemmas

- Telling the truth
- Taking a life
- Assisted suicide
- “The City Manager’s Wife”

What is the Right Thing to Do? How Do We Know?



Standards, Expectations, Guidelines
and the Role of Organizational Culture

What Shapes Our Ethical Decisions?

- **Societal Expectations**
 - Public participation
 - Public trust
 - The media
 - Laws
- **Individual attributes**
 - Ethical decision making skill
 - Mental attitude
 - Personal values
 - Professional values
 - Education
 - Experience
 - Courage

What Shapes Our Ethical Decisions?

- **Organizational Culture**
 - Codes of conduct
 - Norms for conduct
 - Role Models
 - Symbols
 - Accountability
 - Policies and Procedures
 - Organizational design and structure
 - Informal organizational structure
 - Training
 - Ethical leadership

National Government Ethics Survey[®]

- Under half of government agencies have comprehensive ethics programs in place
- Where present, government ethics and compliance programs contain more avoidance-oriented program resources, emphasizing what employees must not do rather than teaching what employees should do.
- Well implemented ethics and compliance programs double reporting and lower the rate of misconduct

Source: Ethics Resource Center at www.ethics.org

National Government Ethics Survey[®]

- A strong agency-wide ethical culture also increases reporting and cuts misconduct in half
- Coupling a strong ethical culture with a strong ethics and compliance program is the path to the greatest reduction in ethics risk

Source: Ethics Resource Center at www.ethics.org

National Government Ethics Survey[®]

In a well implemented program, employees:

- Are willing to seek ethics advice
- Receive positive feedback for ethical conduct
- Feel prepared to handle situations that invite misconduct
- Feel they can question the decisions of management without fear of reprisal
- Are rewarded for following ethical standards

National Government Ethics Survey[®]

In a well implemented program, employees:

- Are not rewarded for achieving success through questionable means
- Feel positive about the organization's efforts to encourage ethical conduct
- Feel that their organization is an ethical workplace

ASPA Code of Ethics

- Serve the Public Interest
- Respect the Constitution and the Law
- Demonstrate Personal Integrity
- Promote Ethical Organizations
- Strive for Professional Excellence

Source: The American Society for Public Administration.
<http://www.aspanet.org/>

From the AICP Code of Ethics

www.planning.org/ethics

- **Planner's Responsibility to the Public:**
While the definition of the public interest is formulated through continuous debate, a planner owes allegiance to a conscientiously attained concept of the public interest.
- **Planner's Responsibility to the Employer:**
A planner owes diligent, creative, independent and competent performance of work in pursuit of the employer's interest. Such performance should be consistent with the planner's faithful service to the public interest.

From the AICP Code of Ethics

- **Planner's Responsibility to the Profession:**
A planner should contribute to the development of the profession by improving knowledge and techniques, making work relevant to solutions of problems, and increasing public understanding of planning activities. A planner should treat fairly the professional views of qualified colleagues and members of other professions.
- **Planner's Self-Responsibility:**
A planner should strive for high standards of professional integrity, proficiency and knowledge.

Principles of Public Service Ethics

- 1. A public office is a public trust.** Public servants should treat their office as a public trust, only using the powers and resources of public office to advance public interests, and not to attain personal benefits or pursue any other private interest incompatible with the public good.
- 2. Principle of independent objective judgment.** Public servants should employ independent objective judgment in performing their duties, deciding all matters on the merits, free from conflicts of interest and both real and apparent improper influences.

Principles of Public Service Ethics

- 3. Principle of accountability.** Public servants should assure that government is conducted openly, effectively, equitably and honorably in a manner that permits the citizenry to make informed judgments and hold government officials accountable.
- 4. Principle of democratic leadership.** Public servants should honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules.

Principles of Public Service Ethics

5. Principle of respectability and fitness for office.

Public servants should conduct their professional and personal lives so as to reveal character traits, attitudes, and judgments that are worthy of honor and respect and demonstrate fitness for office

- Michael Josephson

On the Importance of Organizational Values: ConnPoll Survey Results

Percent who said it was always wrong:

- ✓ Married person having sex with someone other than their spouse (78%)
- ✓ Hooking up to cable TV without paying (90%)
- ✓ Keeping money you see someone drop on the street (65%)
- ✓ Making personal toll calls on work phone (92%)
- ✓ Padding expense account (70%)
- ✓ Not reporting income from part-time job on income tax (65%)

Public Service Values

- 1. Honesty.** This is the most basic level of ethics. Everyone has the responsibility to be truthful, straightforward and sincere in their dealings with others.
- 2. Integrity.** Integrity requires the courage to act on one's values, beliefs and convictions, and to do what is right rather than what is expedient.
- 3. Keeping promises.** The ethical public official must live up to the spirit as well as the letter of agreements and commitments that have been made.

Public Service Values

- 4. Fidelity.** The trustworthy public official is loyal to the organization and the principles of public service.
- 5. Fairness.** Because the public official is in a position to exercise discretion, it is imperative that the decision making process be fair. There must be a commitment to justice, equal treatment, and tolerance. The public official must be open-minded and willing to consider diverse opinions.

Public Service Values

- 6. Caring.** The ethical public official manifests an attitude of concern for the well being of others and conducts the affairs of the organization with compassion and kindness.
- 7. Respect.** It is imperative that public officials demonstrate respect for human dignity and privacy

Public Service Values

- 8. Citizenship.** Public officials have the responsibility to serve as role models for others to encourage participation in and respect for the democratic process of decision making.
- 9. Excellence.** Public officials must be well informed and prepared to carry out their responsibilities. They must be diligent, reliable and committed. They must insist that the organization strive for excellence in carrying out its activities.

Public Service Values

10. Accountability. The public official has a special obligation to be accountable for his or her actions, and the actions of the organization.

11. Avoidance of the Appearance of Impropriety. Because the public official is responsible to safeguard the public trust, what they do must not only be right, it must look right.

- Michael Josephson

Making Ethical Decisions



Resolving an Ethical Dilemma

STEP 1: ANALYZE THE CONSEQUENCES

Assume you have a variety of options. Consider the range of both positive and negative consequences connected with each one.

Who will be helped by what you do?

Who will be hurt?

What kind of benefits and harms are we talking about

How does all of this look over the long run as well as the short run

Resolving an Ethical Dilemma

STEP 2: ANALYZE THE ACTIONS

Now consider all of your options from a completely different perspective. Don't think about the consequences. Concentrate instead strictly on the actions. How do they measure up against ethical principles and values ?

What you're looking for is the option whose actions are least problematic.

STEP 3: MAKE A DECISION

And now, take both parts of your analysis into account and make a decision.

This strategy should give you at least some basic steps you can follow.

Source: Loyola Marymount University, Center for Ethics and Business

Ethical Decision Making Process

- Define the problem (PLUS)
- Identify alternatives
- Evaluate the alternatives (PLUS)
- Make the decision
- Implement the decision
- Evaluate the decision (PLUS)

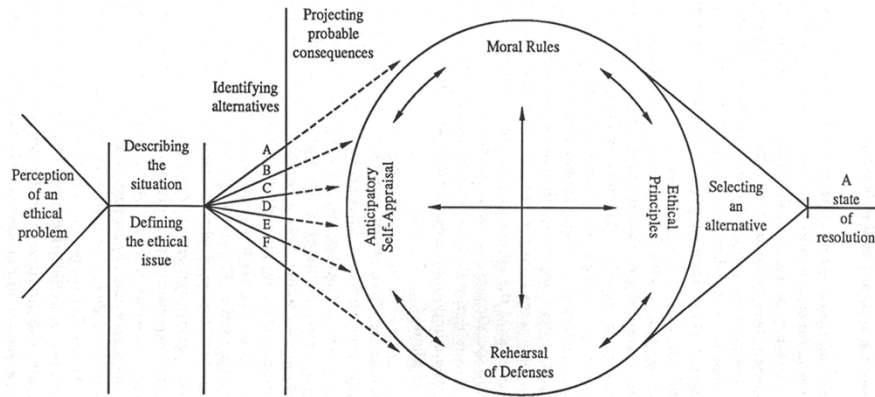
Source: Ethics Resource Center (www.ethics.org)

Ethics Filters

- **Policies** – is it consistent with the organization's policies, procedures and guidelines?
- **Legal** – is it acceptable under the laws and regulations?
- **Universal** – does it conform to the universal principles and values my organization has adopted?
- **Self** – does it satisfy my personal definition of right, good and fair?

Source: Ethics Resource Center (www.ethics.org)

Ethical Decision Making Model



Source: Terry L. Cooper. *The Responsible Administrator*
Jossey-Bass, 1990. p.18.



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