

# State Ethics Act Webinar for SCAC

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## The Ethics Act

## The Ethics Act

- Jurisdiction limited to enforcement of the Ethics, Government Accountability, and Campaign Reform Act of 1991.
  - Passed in 1991 in the wake of Operation Lost Trust.
  - Amended in 1995, 2003, 2008, 2011, and 2016.
  - Regulations went into effect in 1997.
- Areas for jurisdiction
  - Rules of Conduct (§ 8-13-700 through 8-13-795)
  - Financial Disclosure (§ 8-13-1110 through 8-13-1180)
  - Campaign practices (§ 8-13-1300 through 8-13-1374)
  - Lobbyist/Lobbyist's Principals (§ 2-17-5 through 2-17-150)

## Recent Legislation

## 2016 Act No. 282

- Key provisions:
  - Ethics Commission now investigates allegations of misconduct against members of the General Assembly
    - Ethics Commission makes probable cause. The House or Senate Ethics Committees can still reject the findings.
  - The Commission is reconstituted as of April 1, 2017.
    - Current Commission makeup: 9 members, all appointed by the Governor.
    - New Commission: 8 members, 4 by the Governor, 2 by the House (majority and minority), 2 by the Senate (majority and minority).

## 2016 Act No. 283

- **Contents of statement of economic interests**
- SECTION 1. Section [8-13-1120](#)(A) of the 1976 Code, as last amended by Act 6 of 1995, is further amended by adding:
  - "(10) a listing of the private source and type of any income received in the previous year by the filer or a member of his immediate family. This item does not include income received pursuant to:
    - (a) a court order;
    - (b) a savings, checking, or brokerage account with a bank, savings and loan, or other licensed financial institution which offers savings, checking, or brokerage accounts in the ordinary course of its business and on terms and interest rates generally available to a member of the general public without regard to status as a public official, public member, or public employee;
    - (c) a mutual fund or similar fund in which an investment company invests its shareholders' money in a diversified selection of securities."
- **Income defined, exclusions**
- SECTION 2. Section [8-13-1120](#) of the 1976 Code, as last amended by Act 6 of 1995, is further amended by adding:
  - "(C) For purposes of this section, income means anything of value received, which must be reported on a form used by the Internal Revenue Service for the reporting or disclosure of income received by an individual or a business. Income does not include retirement, annuity, pension, IRA, disability, or deferred compensation payments received by the filer or filer's immediate family member."

## Common Ethics Violations for County Officials

### Non-compliance

- 1. **Noncompliance with filing obligations**
  - (a) Statements of Economic Interest ("SEI")
    - Covers information for the previous year
    - Due upon assumption of official duties and then by March 30.
  - (b) Campaign Disclosure Reports ("CDR")
    - Initial CDR due upon receipt or expenditure of \$500.
    - Quarterly CDRs every quarter following initial until final disbursement of campaign account.
    - Pre-election CDR 15 days before election (regardless of campaign activity).
  - (c) Penalties
    - Initial \$100 penalty.
    - After certified letter delivered, \$10 a day after 10 days, then \$100 a day until max \$5,000
    - Complaint can be filed, which would lead to additional fines and administrative fees.

## 700 violations

### • 2. Violation of 8-13-700

- (a) 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.
- (b) 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.”
- (c) Penalties
  - Maximum \$2,000 fine per violation
  - Complaint can be filed, which would lead to additional administrative fees.

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## 700 violations (continued)

- **“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.
- **“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.
  - “Governmental entity” not a business.

## 700 violations - recusal

- 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:
    - (1) 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;
    - ...
    - (3) 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;
    - (4) 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;

## 740 violations

- **3. Violation of 8-13-740 (illegal representation)**
- (a) "A public official, public member, or public employee of a county may not knowingly represent a person before an agency, unit, or subunit of that county for which the public official, public member, or public employee has official responsibility except:
  - as required by law; or
  - before a court under the unified judicial system."
- (b) Exceptions
  - (a) Ministerial matters
  - (b) Representation in the course of that person's official duties;
  - (c) Representation "relating to the [person's] personal affairs or the personal affairs of [his or her] immediate family."
- (c) Penalties
  - Maximum \$2,000 fine per violation
  - Complaint can be filed, which would lead to additional administrative fees.

## Misuse of campaign money

- 4. **Violation of 8-13-1348 (use of campaign funds for personal expenses)**
  - (a) “No candidate...may use campaign funds to defray personal expenses which are unrelated to the campaign or the office.
  - (b) Examples of personal expenses
    - (a) Meals
    - (b) Fuel
    - (c) Club membership
  - (c) Penalties
    - Maximum \$2,000 fine per violation
    - Complaint can be filed, which would lead to additional administrative fees.

## Election-related activity

- 5. **Election-related activity on public time or using public resources**
  - (a) Section 8-13-765: “No person may use government personnel, equipment, materials, or an office building in an election campaign.”
  - (b) Section 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.”
  - (c) Penalties
    - Maximum \$2,000 fine per violation
    - Complaint can be filed, which would lead to additional administrative fees.

## Advisory Opinions

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## Advisory Opinions

- Anyone subject to the Act may request the opinion
- Can be formal (issued by Commission) or informal (issued by staff)
- If you have any doubt as to whether a course of conduct will be a problem, you may seek an advisory opinion from the Commission.
- Email: [mburchstead@ethics.sc.gov](mailto:mburchstead@ethics.sc.gov)