

The Ethics, Government Accountability, and Campaign Reform Act of 1991

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The South Carolina Ethics Act

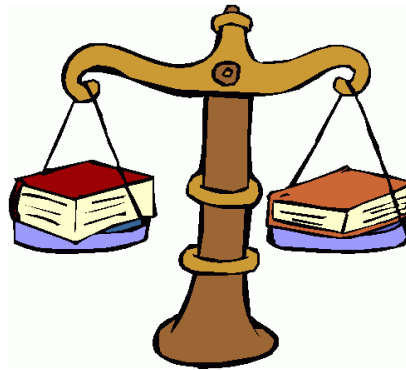
Jurisdiction

- Lobbyist/Lobbyist's Principal
- Public Officials/Candidates
- Public Employees
- Public Members



The Act as it relates to:

- Rules of Conduct
- Financial Disclosure
- Campaign Practices
- Penalties



Financial Disclosure

- ❖ **No public official may take an oath of office or enter upon his official duties unless he has filed a Statement of Economic Interest (SEI)**
- All disclosure statements are matters of public record and open to inspection upon request
- SEI must be filed on or before March 30th, by noon, of each year of service.



The South Carolina Ethics Act

- ❖ The State Ethics Act applies to all public officials, public employees, and public members of the State and political subdivisions, with the exception of members of the judiciary. Probate judges, candidates for public office, and committees or groups working on behalf of candidates and ballot measures are also covered by the law.
- ❖ The Act establishes standards of conduct, disclosure requirements, and enforcement mechanisms relating to public officials and others whose actions inevitably affect public faith in government such as school board members.

South Carolina Ethics Commission

- ❖ The State Ethics Commission is responsible for enforcing the State's ethics laws.
- ❖ The Commission is vested with responsibilities for financial disclosure, campaign disclosure, and ethical rules of conduct.

South Carolina Ethics Commission

- ❖ The State Ethics Commission has the power to:
 - initiate or receive complaints and make investigations of purported violations of the State Ethics Act;
 - conduct hearings in all matters under investigation;
 - refer matters to the Attorney General's office for prosecution, in the name of the Commission;
 - ascertain compliance with the State Ethics Act's disclosure requirements;
 - issue informal (non-binding) and formal (binding) advisory opinions to a real or hypothetical set of facts or circumstances.

Public Officials

- A. Public Official means an “elected or appointed official of the State, a county, a municipality, or a political subdivision”
 - includes candidates for office

- B. Public employee means a person employed by the State, a county, a municipality, or a political subdivision.

- A. Public member means an individual appointed to a non-compensated, part-time position on a board, commission, or council.

Rules of Conduct

❖ Section 8-13-100 Definitions

1. (a) 'Anything of value' or 'thing of value' means
(b) 'Anything of value' or 'thing of value' does not mean
2. 'Business'
3. 'Business with which he is associated'
11. 'Economic Interest'
15. 'Family member'
16. 'Gift'
18. 'Immediate family'
19. 'Individual'
20. 'Individual with whom he is associated with'



Rules of Conduct

❖ **May not “knowingly” use official office/position for financial gain. May not use public materials, personnel or equipment for private purpose. §8-13-700(A).**

- Economic interest means an interest distinct from that of the public which official may gain an economic benefit of \$50 or more
- May not use office to obtain benefit for:
 - (a) family member (e.g. spouse, parent, sibling, in-law, etc,)
 - (b) individual with whom official is associated with (a person with whom the official or family member has an interest in business, or
 - (c) a business with which official is associated with (a business of which the official or family member is a owner, director, officer, employee, stock holder)
- Public funds, personnel, equipment, materials must be used for public purposes
- Incidental use is not prohibited provided that it does not result in additional public expense
 - What is incidental use???

Rules of Conduct

- ❖ **May not participate in making, or use office to influence, a decision which affects an economic interest for himself, a family member, individual with whom he is associated with, or a business with which he is associated with. §8-13-700(B).**
 - Conflict of interest
 - Must disclose conflict and recuse himself from decision-making process

Rules of Conduct

- ❖ **May not receive, give, or promise anything of value with intent to influence the discharge of a public official's responsibilities; influence a public official . . . to commit a fraud on a governmental entity; or induce a public official . . . to perform or fail to perform an act in violation of the public official's official responsibilities. (Anti-Bribery Statute). §8-13-705.**
 - Directly or indirectly
 - “anything of value” or “thing of value” means: money, contract, gift, loan, forgiveness of debt, work of art, collectible, property, promise or offer of employment, honorarium/compensation for services
 - Does not include: plaque or trophy under \$50, honorary degree, campaign contribution properly received and reported, etc.

Rules of Conduct

- Public officials cannot accept any gift from any source that influences or rewards official conduct; or the official knows or should know is being offered with the intent to influence official conduct
- Cannot accept gifts from anyone doing business or seeking to do business with the governmental entity; or registered lobbyists
- Persons who violate this provision is guilty of a felony, and upon conviction, must be punished by may be imprisonment for not more than 10 years and fined not more than \$10,000 and is permanently disqualified as a public official and forfeits public office, membership, and employment.

Rules of Conduct

- ❖ **May not accept an honorarium for speaking engagements in one's official capacity. May accept payment for actual expenses. §8-13-715.**
- ❖ **May not accept additional money for assistance given while performing one's duty. §8-13-720.**
- ❖ **May not use confidential information gained through employment for personal gain. §8-13-725.**
- ❖ **Representation prohibitions. §8-13-740.**

Rules of Conduct

- ❖ **May not cause the employment, promotion, or transfer of a family member to a position in which one supervises or manages. May not participate in an action related to the discipline of a family member. §8-13-750.**
 - Includes any type of favoritism shown on the basis of family relationship
 - Recusal from action

- ❖ **Post employment restrictions. §8-13-755.**
 - Includes any type of favoritism shown on the basis of family relationship
 - Recusal from action

Rules of Conduct

- ❖ **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.**

- ❖ **May not use government personnel/materials in an election campaign. §8-13-765.**
 - Can utilize public facilities for political meetings or other campaign purposes if available on similar terms to all candidates
 - Cannot pressure any employee or fellow official to participate in any political campaign

- ❖ **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.**
 - Official function means actions in preparation or award of contract (e.g. drafting specifications, accepting bids)

Financial Disclosure

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 - SEI must be filed on or before March 30th, by noon, of each year of service.



Financial Disclosure

- Contents of SEI
 - Must utilize forms prescribed by Commission
 - Income received from a governmental entity
 - Description, location, and value of all real property and property
 - Name of organizations that paid or reimbursed actual expenses for speaking engagement, to include the amount, purpose, date, and location of engagement
 - Compensation from individual or person which contracts with the government with which official is serves or is employed
 - Any gifts received during the previous calendar from any person if the gift was believed to be given because of the filer's position or if the gift is given in hopes of seeking a contractual, business, or financial relationship with the filer's agency.
 - (1) the source (company/business) and (2) the type (salary, wages, etc.), but **not** the amount of any private income received in the previous year by the official or a member of the his immediate family



Financial Disclosure

- ❖ An official may receive a reasonable extension of time to file SEI, but the extension may not exceed 30 days except in cases of illness or incapacitation.

- ❖ Technical Violations of Disclosure Requirements
 - Inadvertent and unintentional errors or omissions from SEI, not conduct that demonstrates an effort to violate reporting requirements
 - May not constitute ethical violation
 - Confidential unless made public by official
 - May assess penalty not exceeding \$50



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
- An elective official or candidate is prohibited from knowingly soliciting contributions from employees in the elective official's area of official responsibility. § 8-13-1180(A)
- A public official or public employee may not provide an advantage or disadvantage to a public employee or applicant related to employment based on the person's contributions to a candidate. § 8-13-1180(B)



Statutes 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)

- Exception: the official tried to conceal the violation by fraud or other means

❖ The Attorney General may initiate an action to recover a fee, compensation, gift, or profit received by a person as a result of the violation no later than 1 year after a decision by the Commission that a violation has occurred.

Penalties

❖ After an investigation and a finding that a violation has occurred the Commission may set forth an order:

- (i) requiring the public official to pay a civil penalty of not more than \$2,000 for each violation;
- (ii) requiring the forfeiture of gifts, receipts, or profits, or the value thereof, obtained in violation of the chapter, voiding non-legislative state action obtained in violation of the chapter; or
- (iii) requiring a combination of the above, as necessary and appropriate.

Penalties

❖ Public Reprimand

❖ Late filing penalties §8-13-1510

- Provides in part for increasing late filing penalties, up to \$5,000 per form
- After reach \$5,000 threshold, official may be subject to criminal prosecution in magistrate's court

❖ Ethical Violations §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.



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State Ethics Commission

- Electronic Filing and Public Reporting.
- Advisory Opinions
- Website: <http://ethics.sc.gov>



THANK YOU!