

AVOIDING THE \$10,000 FINE: *WHAT YOU NEED TO KNOW ABOUT THE SOUTH CAROLINA ETHICS ACT.*

SCSBA NEW BOARD MEMBER ORIENTATION
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TOP FIVE LEGAL TIPS FROM A SCHOOL LAWYER

1. **If you receive a *subpoena***, tell your Board's attorney as soon as possible.
2. **Learn FOIA**
3. **Read and get to know your Board Policy:**
<https://scsba.org/policy-services/policies-online/>
 - Know your power, authority, and duties
 - Don't like something? Change it.
4. **Home Rule > Whataboutisms**
5. **File SEI**

ETHICS — WHY SHOULD YOU CARE?

- **Morals?**
- **Justice?**
- **Legal?**
- **Integrity?**
- **What are we seeking?**
 - Ability to represent constituents ahead of ourselves.
- **Can we regulate ethics?**



WHOSE INTEREST IS IT ANYWAY?

ETHICS

Ethics is difficult to define in a precise way. In a general sense, ethics is the code of moral principles and values that governs the behaviors of a person or group with respect to what is right or wrong. Ethics sets standards as to what is good or bad in conduct and decision making.

Ethics are the rules that help us tell the **difference between right and wrong and encourage us to do the right thing and to avoid wrong thing**. They can help people decide on the best course of action in situations where they aren't sure what to do.



OPERATION LOST TRUST

Nation IN BRIEF : SOUTH CAROLINA : Statehouse Sting Formally Closed

L.A. TIMES ARCHIVES

AUG. 29, 1991 12 AM PT

FROM TIMES STAFF AND WIRE REPORTS

The undercover operation aimed at corruption in the South Carolina Statehouse was formally closed after netting 28 people on vote selling or drug charges. "While two cases await trial and numerous defendants await sentencing, there will be no further indictments," U.S. Atty. Bart Daniel said. The FBI sting nicknamed Operation Lost Trust began in Columbia nearly three years ago, using a lobbyist and former legislator as an informant and operative. The sting focused on a bill in the 1990 legislative session to let voters decide whether to legalize gambling on dog and horse racing. Bribes were offered in exchange for legislative support.

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CODIFYING ETHICS

- Board Policy
- Legal
- Professional
- SCSBA
- Codes
- Non-Codified

South Carolina School Boards Association

School Board Member Code of Ethics

Adopted by the 1986 SCSBA Delegate Assembly

As a school board member in South Carolina, I pledge my efforts to improve public education in my community and will solemnly try:

- to represent the interests of the entire district when making decisions and to rely on available facts and on my judgment rather than on individuals or special interest groups;
- to understand the proper role of the board to set policies governing the district and to hire the chief administrative officer to carry out these policies;
- to encourage an open exchange of ideas by all board members during the decision-making process;
- to seek regular communications between the board and students, staff and all segments of the community;
- to attend all board meetings, to study issues facing the board and to enact policies and official actions only after full discussion at such meetings;
- to work with other board members in a conscientious and courteous manner befitting the public trust placed in the position of school board trustee;
- to communicate concerns and public reaction to board policies and school programs to the superintendent and other board members in a professional manner;
- to support employment of the persons best qualified for staff positions and to ensure a regular and impartial evaluation of all staff;
- to avoid conflicts of interest and to refrain from using my board position for personal or partisan gain;
- to encourage recognition of the achievements of students and staff and of the involvement of community residents;
- to support legislation and funding which will improve the educational opportunities and environment for students and staff;
- to take no individual action which would compromise the integrity of the board or administration and to respect the confidentiality of information that is privileged under the Freedom of Information Act;
- to study current educational issues and to participate in training programs such as those offered through the South Carolina School Boards Association and the National School Boards Association; and
- to make the educational setting in our district the best possible to encourage all students to achieve and to love learning.



TAKEAWAYS FOR TODAY

1. SC Ethics Reform Act (Generally)
 2. Conflicts of Interest and Confidentiality
 3. Campaigning
 4. Statement of Economic Interest
- *This presentation is meant to be used as a reference guide for you as a new Board member.*

ETHICS, GOVERNMENT ACCOUNTABILITY, AND CAMPAIGN REFORM ACT OF 1991

- **Applies To:**

- Public Officials

- (27) "Public official" means an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office. "Public official" does not mean a member of the judiciary except that for the purposes of campaign practices, campaign disclosure, and disclosure of economic interests, a probate judge is considered a public official and must meet the requirements of this chapter

- Public members

- Public employees

- **Enforced By:**

- The South Carolina Ethics Commission

- <https://ethics.sc.gov/>

ETHICS, GOVERNMENT ACCOUNTABILITY, AND CAMPAIGN REFORM ACT OF 1991

- The purpose of the SC Ethics Reform Act is to make public servants more accountable to the citizens they serve to restore the public's trust in government institutions and the political and governmental processes.
- The SC Ethics Commission enforces these rules and further serves to provide guidance regarding the rules
- <https://ethics.sc.gov/>

RULES OF INTEREST TO SCHOOL BOARD MEMBERS

USE OF OFFICE FOR FINANCIAL GAIN

- 700 - A public official, public member, or public employee may not knowingly use his official office, membership, or employment to influence a government decision to obtain an economic interest for ***himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.***
- Four Big Situations to Look for: You, Family*, Associate*, Business

RECIPE FOR FINANCIAL GAIN

- 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 a certain amount of stock.
 - Includes non-profits, eleemosynary, and other charitable organizations.
- 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.

EXCEPTIONS. . .

- 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
- Incidental use of public materials, personnel, or equipment that does not result in additional expense.

- **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
- Scheduling extra meetings for no reasonable purpose (when paid per meeting)

VIOLATIONS



RULES OF INTEREST TO SCHOOL BOARD MEMBERS

- 705 - A person may not directly or indirectly give, offer, or promise anything of value to a public official, public member, or public employee with **intent to influence the public official's, public member's,** or public employee's official responsibilities, ***nor is the public official, public member, or public employee to ask, demand, solicit, or accept anything of value for himself or for another person in return for fulfilling his official responsibilities or duties.***

RULES OF INTEREST TO SCHOOL BOARD MEMBERS

- 8-13-725 - No public official, public member, or public employee may ***disclose confidential information*** gained as a result of his responsibility as a public official, public member, or public employee that would affect an economic interest held by himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.
- Note: A board member 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.

RULES OF INTEREST TO SCHOOL BOARD MEMBERS — NEPOTISM

- 750 - No public official, public member, or public employee *may cause the employment, appointment, promotion, transfer, or advancement* of a ***family member*** to a state or local office or position in which the public official, public member, or public employee supervises or manages. A public official, public member, or public employee may not participate in *an action relating to the discipline* of the public official's, public member's, or public employee's family member.
- Note: Intervening Links in Chain of Command and Direct Supervision

RULES OF INTEREST TO SCHOOL BOARD MEMBERS

- 765 - *No person may use government personnel, equipment, materials, or an office building in an election campaign.* A person may use public facilities for campaign purposes if they are available on similar terms to all candidates and committees. Likewise, government personnel may participate in election campaign on their own time and on non-government premises.
- Bond Referenda:
 - 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.

RULES OF INTEREST TO SCHOOL BOARD MEMBERS--Contracts

- 775 - A public official, public member, or public employee may not have an economic interest in a contract with the state or its political subdivisions if the public official, public member, or public employee is ***authorized to perform an official function*** (including writing or preparing the contract, accepting bids, and awarding of the contracts) relating to the contract.

Gifts

- **S.C. Code Ann. § 8-13-100 (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.**

Gift > \$25=Reporting Requirement Triggered

- S.C. Code Ann. § 8-13-710. (A) [Anything from a Lobbyist Principal]
- (B) A public official. . . to file a statement of economic interests under Section 8-13-1110 who **receives**, accepts, or takes, directly or indirectly, from a person, anything of value **worth twenty-five dollars or more in a day** and anything of value **worth two hundred dollars or more in the aggregate** in a calendar year must report on his statement of economic interests pursuant to Section 8-13-1120 the thing of value from:
 - (1) a person, if there is reason to believe the donor would not give the thing of value but for the public official's public member's, or public employee's office or position;
 - (2) a person, or from an officer or director of a person, if the public official, public member, or public employee has reason to believe the person:
 - (a) **has or is seeking to obtain contractual or other business or financial relationships** with the public official's . . . governmental entity;
 - (b) conducts operations or activities which are regulated by the public official's, public member's, or public employee's governmental entity.
- (C) Nothing in this section requires a public official, public member, or public employee to report a gift from a parent, grandparent, or relative to a child, grandchild, or another immediate family member for love and affection.

Check Your Gift List

- TO: Public Official req'd to File SEI
- Gift=anything of value
- Reporting Requirement triggered→: Gift > \$25/day or \$200 aggregate/year
- Receive, accepts, takes, directly or indirectly,
- Received “but for” governmental position
- From person with business/contract before the entity or is seeking to do business with entity
- From person operating in area Official regulates



WHEN YOU FIND YOURSELF IN A *POTENTIAL* ETHICAL DILEMMA . . . DON'T ACT — THINK.

1. Is there an economic interest to you, a family member, a person OR a business with whom you are associated? [Family/Associate/Business + Interest *Distinct* from that of the public for purchase, sale, lease, service for \$50 or more]
 - A. Family or Immediate Family
 - B. Business Association?
 - Are you or a family member an Officer, Stockholder (>\$100k or 5%), Director in that business?
 - C. Person with whom you are associated?
 - Do you or a family member have a mutual interest in a business?

IF YES→YOU HAVE A CONFLICT OF INTEREST AND MUST RECUSE YOURSELF.

CONFLICT → *RECUSAL* TO THE RESCUE

8-13-700(B)

1. Prepare a written statement describing the matter requiring action or decision and the nature of your potential conflict.
 - Note: Look to your Board Policy for additional requirements
 - Have a discussion with your Board Chair prior to the meeting
2. Provide a copy to the Board Chair who shall include the statement in the minutes and shall require you excused from votes, deliberation, and other actions regarding the matter.
3. Actually stay out or away from the matter.
 1. Note: I have yet to see a negative response from the public, media, or anyone else if a public official recuses. In fact, the reaction is usually positive. However, you are there to represent your constituents.

A NOTE ON RECUSAL V. ABSTENTION

- If you have a Conflict of Interest, “abstaining” from a vote *could* still implicate a violation of the ethics act.
- Abstaining is simply not voting
- Recusal is not participating in any aspect of the process
- Quorum will not be impacted in most cases
- Appearance of a conflict and failure to recuse

MISCELLANEOUS VIOLATIONS

- **Post Employment** — Must wait a year before accepting employment, lobbying, or representing clients before the body (if participated). Employment from a person who is regulated by entity and substantial participation.
- ***Procurement*** — Resign and accept employment with person contracting with the government if the contract falls or would fall within official responsibilities.
- **Speaking Fees** — Cannot receive anything of value before public or private group in official capacity (meals if w/ event—ok; expenses ok)

CYCLE OF COMPLAINTS

1. Complaint Filed-Verified, Sent to Respondent within 10 days
2. Finding of Sufficient Facts-Made by Commission staff, Include a Violation of the Ethics Act
3. Investigation-Confidential, Members of Commission cannot be contacted
4. Probable Cause Found-Becomes public record
5. Hearing-May be settled prior to hearing, Outcome determined by Commission

FOUND GUILTY

Commission Can:

- Issue a public warning
- Order restitution
- Recommend
 - Alternative action
 - Disciplinary Action
- Levy civil penalty

Criminal Action:

Criminal Activity subjected to prosecution by the Attorney General's office.

If found guilty of a violation , respondent is:

- guilty of a misdemeanor
- Subjected to a fine of \$5000;
- imprisonment for not more than a year;
- or both

COSTS OF VIOLATION

- Not Covered by insurance
- Typically, Defense costs are attributed to an individual. On occasion the Board will cover costs—don't depend on it.
- Embarrassment
- Most violations are extremely easy to avoid

CAMPAIGNING 101

CAMPAIGN FILING

1. Initial Report-Within 10 days of spending/receiving first \$500 of campaign funds
2. Pre-Election Report-File within 15 days prior to election
3. Quarterly Reports-January 10 (Oct.1-Dec 31), April 10 (Jan 1. –Mar 31), July 10 (Apr. 1-Jun 30), October 10 (Jul 1-Sept 30)
4. Final Report-Have zero balance & no debt after account is closed

*May not accept or spend any funds after campaign

*See S.C Code ANN. § 8-13-1510 for filing penalties

CAMPAIGNING RULES

S.C Code ANN. § 8-13-765

In an election, campaign board members may not use District:

- Personnel
- Equipment
- Materials
- Facilities

S.C Code ANN. § 8-13-1346

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

*note SC Ethics Opinion 2003-003:

"A person knowingly sending an e-mail which contains material to a public employee on his government computer is a violation of Ethics Reform Act "

STATEMENT OF ECONOMIC INTEREST (SEI)

<https://ethics.sc.gov/statement-economic-interests>

WHAT IS IT?

Who Files:

- School District Board Members
- Superintendents of Education
- Others, i.e. CFO

Due:

- March 30th each calendar year
- When registering as a candidate
- Upon entering official responsibilities

Penalties:

- Initial \$100 → \$10.00/day after Notice →
After 10 days, \$100.00/day → Up to
\$5,000.00

Information Disclosed:

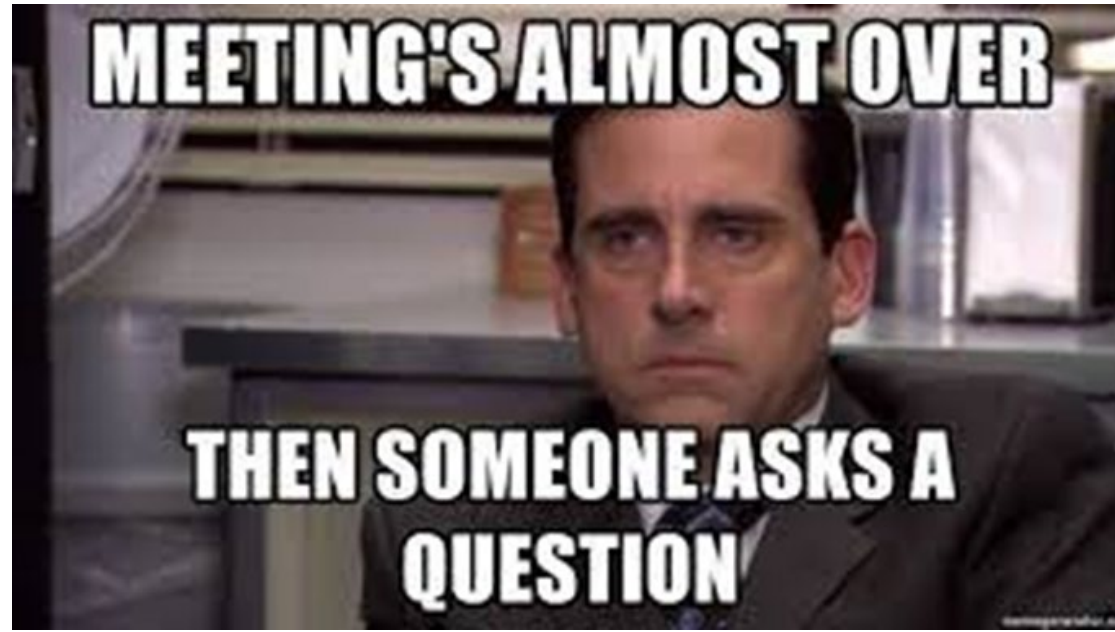
- Name, address, phone number
- Source, type, and amount, or value of income received from a governmental entity
- Description, value, and location of any real property owned
- Name of organization that paid for expenses
- Any Gifts Received
- Name of Any lobbyist family

SEI Filing:

*Note: SC Ethics Advisory Opinion: Disclose any gift received as a result of public office – without reference to a dollar value – on SEI

BOARD MEMBERS SHOULD AVOID. . .

- **Having staff promote your campaign during the school day.**
- **Having staff display signs or materials during an election.**
- **Using District resources for campaigning purposes, i.e. printing or emailing.**
- **Holding rallies on district properties.**
- **Forgetting or neglecting to file your SEI.**
- **Forgetting to recuse yourself when necessary.**
- **When in doubt, call the State Ethics Commission or seek guidance from the Board Attorney.**



THANK YOU!

