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South Carolina Ethics Reform Act

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South Carolina Ethics Reform Act

What is the Ethics Reform Act?

- South Carolina Ethics Reform Act. (Title 8, Chapter 13)
 - Originally Passed in 1991
 - Was amended in 1995, 2003, 2008, and 2011.
- For elected officials, the three most important sections are:
 - Article 7 – Code of Conduct
 - Article 11 – Disclosure of Economic Interests
 - Article 13 – Campaign Practices

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Who does the Ethics Act apply to?

- S.C. Code Ann. § 8-13-100
 - "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.
 - Does not include a members of the judiciary with the exception of probate judges.
 - "Candidate" means a person who seeks appointment, nomination for election, or election to a state or local office, or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election.

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Article 7 - Rules of Conduct

- Ethics Reform Act provides general rules of conduct for public officials.
- These rules largely relate to preventing officials from making financial gains by virtue of their positions, but it also covers:
 - the use of confidential information
 - representation in front of governmental entities
 - promotions
 - taking employment after service as public official
 - volunteering for campaigns

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Article 7 - Rules of Conduct

- Examples of Specific Rules:
 - If an official makes a decision or takes an action that could result in the official or someone associated with the official gaining an economic interest, the official must take specific steps to disclose the interest.
 - An official, acting in an official capacity, may not receive anything of value for speaking before a group, other than meals and actual expenses incurred.
 - An official of a municipality may not knowingly represent a person before any agency, unit, or subunit of that municipality for which the official has official responsibility.

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Article 7 - Rules of Conduct

- Ethics Act provides penalties for breach of the Act, along with other civil or administrative remedies provided by law.
 - Any financial gain received in breach of these rules is recoverable by the State.
 - Official may be terminated following a hearing determining culpability.
 - State Ethics Committee may issue reprimand.

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Article 11 - Disclosure of Economic Interests

- No public official may take the oath of office unless he has filed a statement of economic interests with appropriate office.
 - Applies to a whole host of additional government employees including:
 - City administrators/managers
 - County managers/administrators/supervisors
 - School district superintendents/school board members
 - Chief administrative official of each political subdivision including libraries, regional planning councils, airport commissions, hospitals, community action agencies, water and sewer districts, and development commissions
- These Statements of Economic Interest must be updated annually.

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Article 11 - Disclosure of Economic Interests

- Statement of economic interests contains the following information:
 - Source, type, and amount or value of income of substantial monetary value received from a governmental entity by the filer or a member of the filer's immediate family;
 - Organization's name which paid expenses of the filer for speaking before a group; the amount of the payment or reimbursement; and, the purpose, date, and location of the speaking engagement;
 - Identity of every business or entity in which the filer or a member of the filer's immediate family held or controlled five percent or more of business
 - Source and brief description of any gifts, including transportation, lodging, food, or entertainment received

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Article 13 - Campaign Finances

- The Ethics Reform Act does not provide a specific use of acceptable or prohibited expenditures made from campaign funds.
- Section 8-13-1348(A) of the South Carolina Code states:
 - "No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office."
 - See also State Ethics Commission Advisory Opinion 2003-006.

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Article 13 - Campaign Finances

- Accordingly, there are two major categories upon which you can spend campaign funds:
 - (1) Directly towards your campaign
 - (2) To defray any ordinary expenses incurred in connection with your duties as a holder of elective office

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House Ethics Committee "Laundry List" Memo of 1996

- The State Ethics Commission has not issued a regulation or provided a specific list of approved and prohibited uses for campaign funds.
- Acceptable uses must be cobbled together from opinions.
- The commission's staff has relied upon a House Ethics Committee Memorandum to provide guidance to candidates and public officials guidance after the fact.
- This memorandum is often referred to as the "Laundry List" Memo.
 - See S.C. House Legislative Ethics Committee Memorandum, March 27, 1996.

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House Ethics Committee "Laundry List" Memorandum of 1996

- Uses of Campaign Funds that are Not Permitted as Described in 1996 Opinion
 - Gifts, Flowers, etc. for constituent weddings, high school and college graduations
 - Gifts or bonuses for office staff
 - Fines and penalties received as a result of office
 - Members buying gifts for other members
 - Buying flags for individuals
 - Personal living expenses
 - Contributions to charitable organizations, including churches.
 - Donations made from campaign funds to schools, so that student organizations make take a school trip.

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House Ethics Committee "Laundry List" Memorandum

- Permitted Uses for Campaign Funds as of 1996
 - Food or meals for functions that are directly related to the office
 - i.e. to discuss legislation or legislative issues
 - Flags for nonprofit organizations, such as schools and fire stations
 - Computers and other office equipment or supplies used solely for the purpose of the elected position
 - Expenses to national political convention (Comptroller General Eckstrom opinion)
 - Dues to a political organization
 - Pictures of representatives and frames for resolutions
 - Paying for a championship team's travel expenses while being recognized at the Statehouse.
 - Reimbursement for mileage incurred while campaigning
 - Tickets to a political event

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Recent Examples of Ethics Issues

- Investigation into Speaker Bobby Harrell
 - Related to use of campaign funds
 - Citizen Complaint led to investigation
 - Legal jurisdiction of House Ethics Committee vs. Attorney General/State grand jury investigation
 - Supreme Court held Attorney General/state grand jury had authority to conduct investigations of potential crimes.
 - Violation of Ethics Act is a misdemeanor.
 - Harrell was indicted for misconduct, false report, and campaign finance violations

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Recent Examples of Ethics Issues

- State Ethics Commission recently addressed whether Mayor Steve Benjamin needed to disclose the value of a December 2010 trip to Florida under § 8-13-1120 (A)(9)(a).
 - § 8-13-1120 (A)(9)(a) requires that a public official disclose the source and a brief description of any gifts, including transportation, lodging, food, or entertainment from a person, **if there is reason to believe the donor would not give the gift, but for the official's position.**
 - Issue was whether the trip was provided to Mayor Benjamin because of his position as Mayor and the opportunity for a potential vendor to conduct business with the city? Trip was organized by another businessman with whom Mayor had a longstanding business relationship.
- State Ethics Commission determined that Mayor Benjamin did not need to disclose the trip given prior relationship with businessman.

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Recent Examples of Ethics Issues

- In 2012, a candidate for Charleston City Counsel was fined \$2000 and assessed a \$5000 late fee for failing to file a pre-election campaign disclosure form.
- In 2013, the Mayor of Andrews was fined \$2000 and assessed \$5500 in fees for failing to file his 2012 annual Statement of Economic Interests.

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Potential 2015 Legislative Amendments

- Acting Speaker Jay Lucas appointed special committee to review potential Ethics Act amendments.
- Committee has held several hearings with testimony from Attorney General, League of Women voters, and Common Cause.
- Unclear as to whether large bill or piecemeal legislation.
- Potential areas to address:
 - **Definition of "Committee"**. 2010 Federal court case held definition of "committee" is unconstitutional. Treatment of "committee" as a PAC vs. committee advocating issues is the rub.
 - Amend definition of "**Business with which he is associated**." Add dollar amount to the business definition. (Potentially \$100,000)
 - **Income Disclosure**. Develop rules/guidelines for certain types of income to be disclosed.

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