CHAPTER 13

Ethics, Government Accountability, and Campaign Reform

ARTICLE 1

General Provisions

**SECTION 8‑13‑10.** Repealed by 1991 Act No. 248, Section 3, eff January 1, 1992.

Editor’s Note

Former Section 8‑13‑10 was entitled “Findings and declaration of purpose” and was derived from 1975 (59) 217].

**SECTION 8‑13‑20.** Repealed by 1991 Act No. 248, Section 3, eff January 1, 1992.

Editor’s Note

Former Section 8‑13‑20 was entitled “Definitions” and was derived from 1975 (59) 217; 1977 Act No. 150 Sections 1, 2; Am 1988 Act No. 606, Section 1.

**SECTION 8‑13‑100.** Definitions.

As used in Articles 1 through 11:

(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;

(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;

(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;

(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.

(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;

(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;

(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.

(2) “Appropriate supervisory office” means:

(a) the State Ethics Commission for all persons required to file reports under this chapter except for those members of or candidates for the office of State Senator or State Representative;

(b) the Senate Ethics Committee for members or staff, including staff elected to serve as officers of or candidates for the office of State Senator; and

(c) the House of Representatives Ethics Committee for members or staff, including staff elected to serve as officers of or candidates for the office of State Representative.

(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.

(5) “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. It also means a person on whose behalf write‑in votes are solicited if the person has knowledge of such solicitation. “Candidate” does not include a person within the meaning of Section 431(b) of the Federal Election Campaign Act of 1976.

(6) “Compensation” means money, anything of value, an in‑kind contribution or expenditure, or economic benefit conferred on or received by a person.

(7) “Confidential information” means information, whether transmitted orally or in writing, which is obtained by reason of the public position or office held and is of such nature that it is not, at the time of transmission, a matter of public record or public knowledge.

(8) “Consultant” means a person, other than a public official, public member, or public employee who contracts with the State, county, municipality, or a political subdivision thereof to:

(a) evaluate bids for public contracts, or

(b) award public contracts.

(9) “Contribution” means a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in‑kind contribution or expenditure, a deposit of money or anything of value made to a candidate or committee, as defined in Section 8‑13‑1300(6), for the purpose of influencing an election; or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge. “Contribution” does not include volunteer personal services on behalf of a candidate or committee for which the volunteer receives no compensation from any source.

(10) “Corporation” means an entity organized in the corporate form under federal law or the laws of any state.

(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.

(b) This definition 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.

(12) “Election” means:

(a) a general, special, primary, or runoff election;

(b) a convention or caucus of a political party held to nominate a candidate; or

(c) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or the Constitution of this State.

(13) “Elective office” means an office at the state, county, municipal, or political subdivision level. For the purposes of Articles 1 through 11, the term “elective office” does not include an office under the unified judicial system except that for purposes of campaign practices, campaign disclosure, and disclosure of economic interests, “elective office” includes the office of probate judge.

(14) “Expenditure” means a purchase, payment, loan, forgiveness of a loan, an advance, in‑kind contribution or expenditure, a deposit, transfer of funds, a gift of money, or anything of value for any purpose.

(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;

(b) a member of the individual’s immediate family.

(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.

(17) “Governmental entity” means the State, a county, municipality, or political subdivision thereof with which a public official, public member, or public employee is associated or employed. “Governmental entity” also means any charitable organization or foundation, but not an athletic organization or athletic foundation which is associated with a state educational institution and which is organized to raise funds for the academic, educational, research, or building programs of a college or university.

(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.

(19) “Income” means the receipt or promise of any consideration, whether or not legally enforceable.

(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.

(22) “Loan” means a transfer of money, property, guarantee, or anything of value in exchange for an obligation, conditional or not, to repay in whole or in part.

(23) “Official responsibility” means the direct administrative or operating authority, whether intermediate or final and whether exercisable personally or through subordinates, to approve, disapprove, or otherwise direct government action.

(24) “Person” means an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert.

(25) “Public employee” means a person employed by the State, a county, a municipality, or a political subdivision thereof.

(26) “Public member” means an individual appointed to a noncompensated part‑time position on a board, commission, or council. A public member does not lose this status by receiving reimbursement of expenses or a per diem payment for services.

(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.

(28) “Represent” or “representation” means making an appearance, whether gratuitous or for compensation, before a state agency, office, department, division, bureau, board, commission, or council, including the General Assembly, or before a local or regional government office, department, division, bureau, board, or commission.

(29) “Substantial monetary value” means a monetary value of five hundred dollars or more.

(30) “Official capacity” means activities which:

(a) arise because of the position held by the public official, public member, or public employee;

(b) involve matters which fall within the official responsibility of the agency, the public official, the public member, or the public employee; and

(c) are services the agency would normally provide and for which the public official, public member, or public employee would be subject to expense reimbursement by the agency with which the public official, public member, or public employee is associated.

(31) “State board, commission, or council” means an agency created by legislation which has statewide jurisdiction and which exercises some of the sovereign power of the State.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Sections 14‑17, effective upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995; 2003 Act No. 76, Section 11, eff June 26, 2003; 2008 Act No. 245, Section 1, eff May 29, 2008; 2011 Act No. 40, Section 4, eff June 7, 2011.

Editor’s Note

1991 Act No. 248, Section 1, provides that this act may be cited as the “Ethics, Government Accountability, and Campaign Reform Act of 1991.” It is codified predominately as Title 2, Chapter 17, and Title 8, Chapter 13. For a complete list of sections affected by 1991 Act No. 248, consult the Statutory Tables Volume, Part II, Table B, Allocation and Disposition of Acts.

Effect of Amendment

The 1995 amendment, by Section 14, in paragraph (5), inserted the second sentence regarding write‑in candidates; by Section 15, in paragraph (12), added item (d); by Section 16, added paragraph (30); and by Section 17, added paragraph (31).

The 2003 amendment, in paragraph (12), deleted item (d) relating to “a ballot measure” and made nonsubstantive changes.

The 2008 amendment designated paragraph (2)(c) from the last clause of paragraph (2)(b) and, in paragraphs (2)(b) and (c), added “or staff, including staff elected to serve as officers,”

The 2011 amendment, in subsection (15)(a), inserted “brother‑in‑law, sister‑in‑law,” in the definition of “Family member”.

CROSS REFERENCES

South Carolina Venture Capital Fund, directors, officers and employees, see Section 11‑45‑40.

South Carolina Venture Capital Fund, see Section 11‑45‑10 et seq.

State Ethics Commission regulations, see S.C. Code of Regulations R. 52‑100 et seq.

Federal Aspects

The definition of “candidate” in the Federal Election Campaign Act can be found at 52 U.S.C.A. Section 30101.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governmental Representation Section 4, Constitutionality of the Regulation of Lobbyists.

S.C. Jur. Public Officers and Public Employees Section 20, Nepotism.

S.C. Jur. Public Officers and Public Employees Section 69, Ethical Duties.

Ethics Commission Opinions

Town Council member does not need to recuse from discussions, votes, or other actions relating to proposed zoning modifications in a planned community in which the council member resides and owns property, where the council member does not have a greater interest than other members of the class of property owners. Op. S.C. St. Ethics Comm., SEC A02015‑003, November 19, 2015.

A planning commission member, who owns a part interest in a commercial district restaurant and owns the property where the restaurant is located, may not participate in discussions or votes regarding zoning matters in the commercial district. The same planning commission member may participate in zoning matters as a whole in the commercial district. Op. S.C. St. Ethics Comm., SEC A02014‑002, March 19, 2014.

The Coastal Carolina Board of Trustees may fund the president’s annuity from the Coastal Education Foundation’s funds. The president may fund the executive vice president’s annuity using available discretionary “14” funds. Op. S.C. St. Ethics Comm., SEC A02012‑004, May 16, 2012.

A county planning commissioner, who first served on a mining task force as a mining representative, is not required to recuse on the changes to the county zoning mining ordinance based solely on service as a mining representative. If the county planning commissioner’s employer owns a county mine subject to the zoning ordinance, then the county planning commissioner must recuse on those mining matters that come before the planning commission. Op. S.C. St. Ethics Comm., SEC A02012‑002, March 21, 2012.

City council member, whose property is connected to a boardwalk, would be required to recuse from the council’s boardwalk upgrade discussion or vote, if the connection upgrade costs $50 or more. Op. S.C. St. Ethics Comm., SEC AO2011‑002, July 21, 2010.

The question of whether a public official has an economic interest in the maintenance and repair of a city asset, which is before that public official’s government entity, must be answered on a case‑by‑case basis. Op. S.C. St. Ethics Comm., SEC AO2010‑004, May 19, 2010.

City Council member, who has an economic interest in a city asset, a municipal boardwalk, and is a member of a large class of 56 property owners with an assumed economic interest in the repair and maintenance of the boardwalk, may participate in discussions and votes related to the boardwalk. Op. S.C. St. Ethics Comm., SEC AO2010‑004, May 19, 2010.

A Trustee of Coastal Carolina University, i.e. a public member, is required to recuse from all Board of Trustee discussions, deliberations, votes and any other matters related to the economic interest of a foundation on which the Trustee also serves. Op. S.C. St. Ethics Comm., SEC AO2009‑004, Jan. 21, 2009.

A public institution of higher learning is not a business, as defined by Section 8‑13‑100, with which three members of the Horry County Board of Education are associated due to their employment or a spouse’s employment with the institution. Op. S.C. St. Ethics Comm., SEC AO2009‑002, July 16, 2008.

A coroner may not order autopsies to be performed by a business with which the coroner is associated due to off‑duty employment with the business. Op. S.C. St. Ethics Comm., SEC AO2008‑006, March 19, 2008.

Town council member, who owns four of nineteen commercially zoned lots in the town commercial district, may not participate in the selection of a consultant or the vote to retain a consultant to develop a master plan for the commercial district. The council member may not vote or participate in drafting or amending ordinances that affect the commercial district. The council member may provide direction and input for the consultants in public hearings as any other member of the public would be able to. Op. S.C. St. Ethics Comm., SEC AO2008‑004, Jan. 16, 2008.

Town council member, who owns one of one hundred seventy‑one lots contiguous with town owned green space, may vote on the selection of a consultant and may vote to contract with the selected consultant regarding the management plan for the town owned green space. The council member may vote and participate in drafting or amending ordinances for the town owned green space. Op. S.C. St. Ethics Comm., SEC AO2008‑004, Jan. 16, 2008.

Property which is no longer the subject of litigation requires no recusal by the parties to the original litigation when the parties to the litigation included members of the City Council as plaintiffs and the Mayor and the City as defendants. Op. S.C. St. Ethics Comm., SEC AO2008‑003, Nov. 14, 2007.

The large class exception found in the definition of economic interest may provide an exception to the recusal requirements of Section 8‑13‑700(B) under certain circumstances. Op. S.C. St. Ethics Comm., SEC AO2008‑002, Sept. 19, 2007.

A State Health Planning Committee member who votes on a matter that affects several entities, the member’s entity to no greater extent than that which accrues to other entities, has not violated Section 8‑13‑700(B) under the large class exception. Op. S.C. St. Ethics Comm., SEC AO2008‑002, Sept. 19, 2007.

A State Health Planning Committee member who is no longer employed by the affiliated entity or no longer sits on the entity’s board does not have a conflict because of prior employment or membership on the entity board. Op. S.C. St. Ethics Comm., SEC AO2008‑002, Sept. 19, 2007.

A state university president would not be prohibited from serving on the board of a publicly‑traded company; however, see Section 8‑13‑700(B) with respect to actions affecting the economic interest of the company. Op. S.C. St. Ethics Comm., SEC AO2007‑010, May 16, 2007.

A county council member, whose spouse is clerk of court, is advised not to vote on matters relating to his spouse’s salary or other economic interests. He may vote on the county budget as a whole. He may vote on a specific matter relating only to the clerk’s office;however, he may wish to avoid even an appearance of impropriety. Op. S.C. St. Ethics Comm., SEC AO2005‑003, May 18, 2005.

The question of whether a public official has an economic interest in a zoning issue before his government entity must be answered on a case‑by‑case basis. Op. S.C. St. Ethics Comm., SEC AO2004‑001, Jan. 21, 2004.

A public official does not need to recuse himself from voting, deliberating or taking any action on the rezoning of property in the general vicinity of his own. Op. S.C. St. Ethics Comm., SEC AO2004‑001, Jan. 21, 2004.

A public member who wishes to lease property from his public entity must recuse himself from taking any official action in the negotiations of the lease or in related matters. Op. S.C. St. Ethics Comm., SEC AO2003‑004, Sept. 18, 2002.

A public employee is required to follow the procedures of Section 8‑13‑700(B) if a matter comes before her which would affect her or her spouse’s economic interests. Op. S.C. St. Ethics Comm., SEC AO2003‑002, Sept. 18, 2002.

A public official must recuse himself from voting, deliberating or taking any action on the rezoning of property adjacent to his own. Op. S.C. St. Ethics Comm., SEC AO2003‑001, July 17, 2002.

A candidate is an elective official who, in accordance with Section 8‑13‑1180(A), may not knowingly solicit, directly or through an agent, a contribution from an employee in the elective official’s area of official responsibility. Op. S.C. St. Ethics Comm., SEC AO2002‑012, May 15, 2002.

When public officials sit on boards of non‑profit corporations in their official capacity as public officials, the non‑profit corporations are not businesses with which they are associated and recusal is not required. A public official should recuse from all matters in which a business with which the public official is associated has an economic interest, including those businesses with which the council member has an on‑going client relationship. Op. S.C. St. Ethics Comm., SEC AO2002‑009, Jan. 16, 2002.

A town council member who is no longer a director or an officer of a homeowner’s association does not have a conflict of interest under Section 8‑13‑700 if matters concerning the association come before the town council. If the town council member is a named defendant in a lawsuit brought by the town council, then the council member has a conflict of interest requiring recusal from discussion, deliberations and votes conducted by the town council regarding the lawsuit. Op. S.C. St. Ethics Comm., SEC AO2002‑007, Jan. 16, 2002.

A city council member is required to follow the procedures of Section 8‑13‑700(B) if a matter would affect the economic interests of the law firm with which the council member is associated, or if a matter would affect the economic interests of co‑workers with whom the council member is associated. A law firm’s client’s matter is not in and of itself a conflict but would require additional review. Op. S.C. St. Ethics Comm., SEC AO2002‑004, Nov. 14, 2001.

The economic interest of an immediate family member, an individual with whom associated and a business with which associated is imputed to the public official, public member, and public employee for purposes of Section 8‑13‑700 et seq. Op. S.C. St. Ethics Comm., SEC AO2002‑003, Nov. 14, 2001.

The BEST Corporation is not a business with which the Greenville County School Board Members are associated through their membership on BEST’s Board of Director, because they sit on the board in their official capacity as School Board Members and BEST is an arm of the School Board. Op. S.C. St. Ethics Comm., SEC AO2001‑001, July 19, 2000.

Public officials often sit on various boards and agencies because they are public officials; however, unless they sit on council created boards in their official capacity as council members, then the boards, non‑profits, agencies, etc. are businesses with which they are associated. A public official should recuse from all matters in which a business with which they are associated has an economic interest. Op. S.C. St. Ethics Comm., SEC AO2000‑011, May 17, 2000.

The council member’s ownership of publicly traded stock, when less than the amounts defined in business with which associated, does not create an economic interest greater than the economic interest of all other members of the larger class of stockholders. The council member’s economic interest could accrue to a greater extent if the council member were to hold publicly traded stock in the company worth $100,000 or more at fair market value and that stock constituted five percent or more of the total outstanding stock. At that point the council member would follow the recusal provisions of Section 8‑13‑700(B). Op. S.C. St. Ethics Comm., SEC AO2000‑007, Jan. 19, 2000.

Because the County Administrator has had no official responsibility in the County School District’s budgeting, contracting or purchasing, then the post‑employment restrictions of Sections 8‑13‑755 and 8‑13‑760 are not applicable to the County Administrator’s post‑employment with a private business which hopes to contract with the County School District. Op. S.C. St. Ethics Comm., SEC AO2000‑005, Nov. 17, 1999.

“Compensated agent” is defined as any ongoing client relationship in which the public official, public member, or public employee, receives compensation for services rendered. Op. S.C. St. Ethics Comm., SEC AO2000‑004, July 21, 1999.

A public official’s, public member’s, or public employee’s participation in a matter involving a business with which the public official, public member or public employee is a “compensated agent”, gives rise to a rebuttable presumption that to take an action or make a decision which affects the economic interest of the business with which associated would be a violation of Section 8‑13‑700(A) and (B). Op. S.C. St. Ethics Comm., SEC AO200‑004, July 21, 1999.

A City Traffic Engineer may accept employment with the engineering firm: however, the engineer, upon leaving government employment, may not participate in the contract between the engineering firm and the City in which the engineer had direct procurement responsibilities as a city employee. This prohibition has no arbitrary expiration date; therefore, the engineer may never provide services under this specific contract. Op. S.C. St. Ethics Comm., SEC AO2000‑002, Sept. 15, 1999.

County Council members who are also school district employees may abstain from acting on a personnel matter involving a county employee who is an elected member of the Board of the same school district that employs them, but under the facts as presented, are not required to do so. The county employee who is an elected member of a school board which employs elected members of county council should disqualify himself from acting on matters pertaining to the school district employees/council members in his capacity as a school board member. Op. S.C. St. Ethics Comm., SEC AO98‑002, Nov. 19, 1997.

A council member who is a local home builder should disqualify himself from the debate on matters in which he or a business with which he is associated has an economic interest greater than that of the affected profession or occupation. Once the procedures for disqualification are implemented, the Ethics Act provides no mechanism to “re‑enter the debate”. However, as the facts change so too does the application of the disqualification procedures. Thus, there is no impediment under the Act to “re‑enter the debate”. Op. S.C. St. Ethics Comm., SEC AO96‑003, Sept. 13, 1995.

Members of the Small Employer Insurer Reinsurance Program Board are “public members” under the Ethics Reform Act of 1991 and, thus, are subject to the Act’s requirements. Op. S.C. St. Ethics Comm., SEC AO95‑008, Jan. 18, 1995.

Candidate for Office of Adjutant General is “elective official” who, in accordance with Section 8‑13‑1180(A), may not, directly or through an agent, knowingly solicit contribution from employee in Adjutant General’s area of official responsibility. Section 8‑13‑1180(A), however, does not prohibit candidates for Adjutant General from soliciting contributions from members of National Guard who are not employees of South Carolina Adjutant General’s Office. Op. S.C. St. Ethics Comm., SEC AO94‑016, April 1, 1994.

City council member is not prohibited from participating in deliberations and votes on matters affecting contract to company in which council member’s son is a principal, since council member’s son, being adult emancipated person not residing in council member’s household, is not within definition of “immediate family” within meaning of Section 8‑13‑100. Op. S.C. St. Ethics Comm., SEC AO92‑214, June 9, 1992.

“Official capacity” is not defined in Ethics Reform Act (1991 Act No. 248). For purposes of Act, Commission defines speaking engagements by public employees “in an official capacity” as those which (1) arise because of position held by employee, (2) involve matters which fall within responsibility of agency or employee, and (3) are services agency would normally provide and for which employee would be subject to expense reimbursement by public employee’s agency. Official capacity also means those duties that are attached to public office or employment by Constitution, statutes, executive order, promulgated rules and regulations, published job description, or agency directive. Op. S.C. St. Ethics Comm., SEC AO92‑057, Jan. 27, 1992. (Defined in 1995 amendment to the Act. See Section 8‑13‑100(30))

Attorney General’s Opinions

The Fort Lawn Town council member who is also a member of the Board of Directors for the Fort Lawn Community Center should refrain from voting on matters involving the Fort Lawn Community Center where an economic interest is at stake, specifically, the repair of the community center’s roof. S.C. Op.Atty.Gen. (Sept. 29, 2010) 2010 WL 3896162.

**SECTION 8‑13‑110.** Repealed by 1991 Act No. 248, Section 3, eff January 1, 1992.

Editor’s Note

Former Section 8‑13‑110 was entitled “Creation, membership, terms and compensation of members of State Ethics Commission” and was derived from 1980 Act No. 374, Sections 1, 2; 1977 Act No. 150, Sections 3, 4; 1975 (59) 217.

**SECTION 8‑13‑120.** Fee for education and training programs.

The State Ethics Commission may charge a ten dollar fee to partially offset the cost of providing ethics education and training programs, to include costs associated with travel, including, but not limited to, mileage, lodging, and meals, as well as, costs associated with handouts and other training materials.

HISTORY: 2008 Act No. 353, Section 2, Pt 22A, eff July 1, 2009.

Editor’s Note

Former Section 8‑13‑120, entitled “Duties of State Ethics Commission; manner in which investigations shall be conducted”, was repealed by 1991 Act No. 248, Section 3.

**SECTION 8‑13‑130.** Levying enforcement or administrative fees on persons in violation; use of fees and costs.

The State Ethics Commission, Senate Ethics Committee, and House of Representatives Ethics Committee may levy an enforcement or administrative fee on a person who is found in violation, or who admits to a violation, pursuant to Title 2 or Title 8. The fee must be used to reimburse the commission, the appropriate legislative Ethics Committee, or combination thereof, for costs associated with the investigation and hearing of a violation. The costs associated include:

(1) the investigator’s time;

(2) mileage, meals, and lodging;

(3) the prosecutor’s time;

(4) the hearing panel’s travel, per diem, and meals;

(5) administrative time;

(6) subpoena costs to include witness fees and mileage; and

(7) miscellaneous costs such as postage and supplies.

These fees and costs are in addition to any fines as otherwise provided by law.

HISTORY: 2008 Act No. 353, Section 2, Pt 22B, eff July 1, 2009; 2016 Act No. 282 (H.3184), Section 1, eff April 1, 2017.

Editor’s Note

Former Section 8‑13‑130, entitled “Employment of executive director and staff; location of commission’s office”, was repealed by 1991 Act No. 248, Section 3.

2016 Act No. 282, Section 17, provides as follows:

“SECTION 17. The provisions of this act are effective as of April 1, 2017 and shall apply to complaints filed on or after April 1, 2017. However, the provisions in Section 8‑13‑310 regarding the selection of the initial members to serve on the State Ethics Commission as of April 1, 2017, and the termination of terms of the members serving on the commission as of March 31, 2017, take effect after the date of the Governor’s signature for the limited purpose of having the initial members of the reconstituted State Ethics Commission begin service on April 1, 2017. The State Ethics Commission, House Ethics Committee and Senate Ethics Committee shall maintain jurisdiction over all open complaints and investigations pending in the appropriate entity on or before March 31, 2017. The reconstituted State Ethics Commission shall have jurisdiction over open complaints and investigations pending within the State Ethics Commission as of March 31, 2017.”

Effect of Amendment

2016 Act No. 282, Section 1, in the first paragraph, inserted reference to legislative ethics committees, substituted “pursuant to Title 2 or Title 8” for “of the ‘Ethics, Government Accountability and Campaign Reform Act of 1991’”; inserted “, the appropriate legislative Ethics Committee, or combination thereof,”; and in the last paragraph, substituted “These fees and costs are” for “This fee is”.

**SECTION 8‑13‑140.** Retention of funds derived from additional assessments associated with late filing fees.

The State Ethics Commission is authorized to retain any funds derived from additional assessments associated with late filing fees to offset the costs of administering and enforcing the “Ethics, Government Accountability, and Campaign Reform Act of 1991”. The commission is authorized to carry forward unexpended funds into the current fiscal year for the same purpose.

HISTORY: 2008 Act No. 353, Section 2, Pt 22C, eff July 1, 2009.

Editor’s Note

Former Section 8‑13‑140, entitled “Annual Reports”, was repealed by 1991 Act No. 248, Section 3.

**SECTION 8‑13‑150.** Carrying forward unexpended lobbyists and lobbyist’s principals registration fees.

The State Ethics Commission is authorized to carry forward unexpended lobbyists and lobbyist’s principals registration fees into the current fiscal year and to use these funds for the same purpose.

HISTORY: 2008 Act No. 353, Section 2, Pt 22D, eff July 1, 2009.

**SECTIONS 8‑13‑210 to 8‑13‑260.** Repealed by 1991 Act No. 248, Section 3, eff January 1, 1992.

Editor’s Note

Sections 8‑13‑210 through 8‑13‑260 formerly comprised Article 5 of this chapter. Article 5 now consists of Sections 8‑13‑510 through 8‑13‑560.

Former Section 8‑13‑210 was entitled “Creation and membership of House of Representatives and Senate Legislative Ethics Committees” and was derived from 1983 Act No. 61; 1979 Act No. 27; 1977 Act No. 150 Section 4A; 1975 (59) 217.

Former Section 8‑13‑220 was entitled “Duty of committees to recommend changes in law relating to ethics” and was derived from 1983 Act No. 61; 1979 Act No. 27; 1977 Act No. 150 Section 4A; 1975 (59) 217.

Former Section 8‑13‑230 was entitled “Additional powers and duties of committees” and was derived from 1983 Act No. 61; 1979 Act No. 27; 1977 Act No. 150 Section 4A; 1975 (59) 217.

Former Section 8‑13‑240 was entitled “Manner in which investigations and hearings shall be conducted; report of committees’ decisions” and was derived from 1983 Act No. 61; 1979 Act No. 27; 1977 Act No. 150 Section 4A; 1975 (59) 217.

Former Section 8‑13‑250 was entitled “Action by House or Senate on report of committee” and was derived from 1983 Act No. 61; 1979 Act No. 27; 1977 Act No. 150 Section 4A; 1975 (59) 217.

Former Section 8‑13‑260 was entitled “Disciplinary action against Senators charged with or convicted of certain offenses” and was derived from 1983 Act No. 61; 1979 Act No. 27; 1977 Act No. 150 Section 4A; 1975 (59) 217.

ARTICLE 3

State Ethics Commission

Editor’s Note

Former Article 3, which consisted of Sections 8‑13‑110 through 8‑13‑140, was repealed by 1991 Act No. 248, Section 3, effective January 1, 1992.

**SECTION 8‑13‑310.** State Ethics Commission reconstituted; appointment of members; terms of office; officers; quorum requirements; meetings; per diem, mileage, and subsistence for members; removal.

(A)(1) There is created the State Ethics Commission composed of eight members who must be appointed in the following manner:

(a) four members must be appointed by the Governor, no more than two of whom are members of the appointing Governor’s political party;

(b) two members must be selected by the Senate, one upon the recommendation of the members of the majority political party in the Senate and one upon the recommendation of the members of the largest minority political party in the Senate;

(c) two members must be selected by the House of Representatives, one upon the recommendation of the members of the majority political party in the House and one upon the recommendation of the members of the largest minority political party in the House.

Each member must be appointed with the advice and consent of the General Assembly.

(2) The terms of the members serving on the State Ethics Commission as of March 30, 2017, shall end on March 31, 2017. A member who is serving at that time and who has not completed a full five‑year term may be reappointed pursuant to this subsection. The initial appointments for service to begin on April 1, 2017, must be made as follows:

(a) two members appointed by the Governor must be appointed for a three‑year term;

(b) two members appointed by the Governor must be appointed for a five‑year term;

(c) one member appointed by the Senate upon the recommendation of the members of the majority political party in the Senate shall serve a three‑year term;

(d) one member appointed by the Senate upon the recommendation of the members of the largest minority political party of the Senate must be appointed for a five‑year term;

(e) one member appointed by the House upon the recommendation of the members of the majority political party of the House of Representatives must be appointed for a five‑year term; and

(f) one member appointed by the House upon the recommendation of the members of the largest minority political party of the House of Representatives must be appointed for a three‑year term.

The initial members who have served terms that are less than five years are eligible to be reappointed for one full five‑year term.

(B) The qualifications the appointing authorities shall consider for the appointees include, but are not limited to:

(1) constitutional qualifications;

(2) ethical fitness;

(3) character;

(4) mental stability;

(5) experience; and

(6) judicial temperament.

(C)(1) In addition to other information that may be requested, candidates for appointment must provide the following information to the appointing authority, which must be shared with the General Assembly during the confirmation process:

(a) the candidate’s membership in any civic, charitable, or social groups within the previous four years;

(b) a contribution made by the candidate to a candidate for Governor, Lieutenant Governor, or a member of the General Assembly within the previous four years; and

(c) a contribution, as defined in Section 8‑13‑1300(7), made by the candidate within the previous four years to a candidate as defined in Section 8‑13‑100(5).

(2) The appointing authorities shall make their appointments based on merit. However, in making appointments to the commission, the appointing authorities shall ensure that race, color, gender, national origin, and other demographic factors are considered to ensure the geographic and political balance of the appointments, and shall strive to assure that the membership of the commission will represent, to the greatest extent possible, all segments of the population of the State.

(3) The following are not eligible to serve on the State Ethics Commission:

(a) a member of the General Assembly;

(b) a former member of the General Assembly within eight years following the termination of his service in the General Assembly;

(c) a family member, as defined by Section 8‑13‑100(15), of a member of the General Assembly or the Governor, Lieutenant Governor, or other statewide elected official;

(d) a person who made a campaign contribution, as defined by Section 8‑13‑1300(7), within the previous four years to the Governor who appointed the person to serve on the State Ethics Commission, as well as that Governor’s Lieutenant Governor;

(e) a person who registered as a lobbyist within four years of being appointed to the State Ethics Commission;

(f) a person who is under the jurisdiction of the State Ethics Commission, House of Representatives Ethics Committee, or Senate Ethics Committee.

(D) The terms of the members are for five years. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term only. Members of the commission who serve less than a full five‑year term may be reappointed for one full five‑year term. Members of the commission who have completed a full five‑year term are not eligible for reappointment. A member shall not serve on the commission in hold‑over status after the member’s term expires. An appointee shall not serve on the commission, even in interim capacity, until he has been confirmed by the General Assembly.

(E) The commission shall elect a chairman, vice chairman, and such other officers as it considers necessary. Five members of the commission shall constitute a quorum. The commission must adopt a policy concerning the attendance of its members at commission meetings. The commission meets at the call of the chairman or a majority of its members. Members of the commission, while serving on business of the commission, receive per diem, mileage, and subsistence as provided by law for members of state boards, committees, and commissions.

(F)(1) A commission member appointed by the Governor may be removed from office by the Governor for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity pursuant to Section 1‑3‑240.

(2) A commission member appointed by the Senate may be removed for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity upon a vote of two‑thirds of the membership of the Senate.

(3) A commission member appointed by the House of Representatives may be removed for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity upon a vote of two‑thirds of the membership of the House of Representatives.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2012 Act No. 279, Section 5, eff June 26, 2012; 2016 Act No. 282 (H.3184), Section 2, eff April 1, 2017.

Code Commissioner’s Note

At the direction of the Code Commissioner in 2016, in (B), the paragraph designators were changed from (a) through (f) to (1) through (7).

Editor’s Note

2012 Act No. 279, Section 33, provides as follows:

“Due to the congressional redistricting, any person elected or appointed to serve, or serving, as a member of any board, commission, or committee to represent a congressional district, whose residency is transferred to another district by a change in the composition of the district, may serve, or continue to serve, the term of office for which he was elected or appointed; however, the appointing or electing authority shall appoint or elect an additional member on that board, commission, or committee from the district which loses a resident member as a result of the transfer to serve until the term of the transferred member expires. When a vacancy occurs in the district to which a member has been transferred, the vacancy must not be filled until the full term of the transferred member expires. Further, the inability to hold an election or to make an appointment due to judicial review of the congressional districts does not constitute a vacancy.”

2016 Act No. 282, Section 17, provides as follows:

“SECTION 17. The provisions of this act are effective as of April 1, 2017 and shall apply to complaints filed on or after April 1, 2017. However, the provisions in Section 8‑13‑310 regarding the selection of the initial members to serve on the State Ethics Commission as of April 1, 2017, and the termination of terms of the members serving on the commission as of March 31, 2017, take effect after the date of the Governor’s signature for the limited purpose of having the initial members of the reconstituted State Ethics Commission begin service on April 1, 2017. The State Ethics Commission, House Ethics Committee and Senate Ethics Committee shall maintain jurisdiction over all open complaints and investigations pending in the appropriate entity on or before March 31, 2017. The reconstituted State Ethics Commission shall have jurisdiction over open complaints and investigations pending within the State Ethics Commission as of March 31, 2017.”

Effect of Amendment

The 2012 amendment substituted “seven” for “six” and “two” for “three” in subsection (B).

2016 Act No. 282, Section 2, rewrote the section, reconstituting the state ethics commission.

CROSS REFERENCES

Restrictions of political activities of members, employees and staff of commission, see Section 8‑13‑330.

Transfer of powers concerning lobbyists and lobbying from Secretary of State to State Ethics Commission, see Section 2‑17‑5.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. General Assembly Section 48, Interpretation of the State Ethics Act by the State Ethics Commission.

LAW REVIEW AND JOURNAL COMMENTARIES

Financial disclosures and fist‑fighting: “Disorderly behavior” in the South Carolina General Assembly. Noah Glen Allen, 65 S.C. L. Rev. 769 (Summer 2014).

Attorney General’s Opinions

Under the statute governing the State Ethics Commission, former Section 8‑13‑110, et seq., Code of Laws of South Carolina, 1976, the Ethics Commission is not authorized to levy fines but can only recommend the imposition of a fine for violations of the State Ethics Act; When the Ethics Commission receives a complaint against an administrative department executive, the Commission should conduct an investigation and report its findings and recommendations to the Governor. 1976‑77 Op Atty Gen, No 77‑260, p 194.

1962 Code Section 1‑360.43 [1976 Code former Section 8‑13‑120] requires an Ethics Commission investigation and hearing for a person charged with a violation of the Ethics Act, prior to criminal prosecution therefor. 1975‑76 Op Atty Gen, No 4344, p 171.

No recess or interim appointments can be made to the newly created State Ethics Commission without the advice and consent of the General Assembly. 1974‑75 Op Atty Gen, No 4064, p 143.

A contractor who bids on state jobs from time to time may also serve as a member of the State Ethics Commission. 1974‑75 Op Atty Gen, No 4123, p 195.

Notes of Decisions

In general 1

1. In general

The House and Senate Legislative Committees are charged with the exclusive responsibility for the handling of ethics complaints involving members of the General Assembly and their staff. Ex parte Harrell v. Attorney General of State (S.C. 2014) 409 S.C. 60, 760 S.E.2d 808. States 28(1)

**SECTION 8‑13‑320.** Duties and powers of State Ethics Commission.

The State Ethics Commission has these duties and powers:

(1) to prescribe forms for statements required to be filed by this chapter and to furnish these forms to persons required to file them;

(2) to prepare and publish a manual setting forth recommended uniform methods of reporting for use by persons required to file statements required by this chapter;

(3) to accept and file information voluntarily supplied that exceeds the requirements of this chapter;

(4) to develop a filing, coding, and cross‑indexing system consonant with the purposes of this chapter;

(5) to make the notices of registration and reports filed available for public inspection and copying as soon as may be practicable after receipt of them and to permit copying of a report or statement by hand or by duplicating machine, as requested by a person, at the expense of the person;

(6) to preserve the originals or copies of notices and reports for four years from date of receipt;

(7) to ascertain whether a person has failed to comply fully and accurately with the disclosure requirements of this chapter and promptly to notify the person to file the necessary notices and reports to satisfy the requirements of this chapter or regulations promulgated by the commission under this chapter;

(8) to request the Attorney General, in the name of the commission, to initiate, prosecute, defend, or appear in a civil or criminal action for the purpose of enforcing the provisions of this chapter, including a civil proceeding for injunctive relief and presentation to a grand jury;

(9) to initiate or receive complaints and make investigations, as provided in item (10), or as provided in Section 8‑13‑540, as appropriate, of statements filed or allegedly failed to be filed under the provisions of this chapter and Chapter 17, Title 2 and, upon complaint by an individual, of an alleged violation of this chapter or Chapter 17, Title 2 by a public official, public member, or public employee. Any person charged with a violation of this chapter or Chapter 17, Title 2 is entitled to the administrative hearing process contained in this section or in Article 5 of this chapter, as appropriate.

(a) The commission may commence an investigation on the filing of a complaint by an individual or by the commission, as provided in item (10)(d), upon a majority vote of the total membership of the commission.

(b)(1) No complaint may be accepted by the commission concerning a candidate for elective office during the fifty‑day period before an election in which he is a candidate. During this fifty‑day period, any person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction, or both. Within ten days, a rule to show cause hearing must be held, and the court must either dismiss the petition or direct that a mandamus order or an injunction, or both, be issued. A violation of this chapter by a candidate during this fifty‑day period must be considered to be an irreparable injury for which no adequate remedy at law exists. The institution of an action for injunctive relief does not relieve any party to the proceeding from any penalty prescribed for violations of this chapter. The court must award reasonable attorney’s fees and costs to the nonpetitioning party if a petition for mandamus or injunctive relief is dismissed based upon a finding that the:

(i) petition is being presented for an improper purpose such as harassment or to cause delay;

(ii) claims, defenses, and other legal contentions are not warranted by existing law or are based upon a frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(iii) allegations and other factual contentions do not have evidentiary support or, if specifically so identified, are not likely to have evidentiary support after reasonable opportunity for further investigation or discovery.

(2) Action on a complaint filed against a candidate which was received more than fifty days before the election but which cannot be disposed of or dismissed by the commission at least thirty days before the election must be postponed until after the election.

(c) If an alleged violation is found to be groundless by the commission, the entire matter must be stricken from public record. If the commission finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to the Attorney General. The wilful filing of a groundless complaint is a misdemeanor and, upon conviction, a person must be fined not more than one thousand dollars or imprisoned not more than one year. In lieu of the criminal penalty provided by this item, a civil penalty of not more than one thousand dollars may be assessed against the complainant upon proof, by a preponderance of the evidence, that the filing of the complaint was wilful and without just cause or with malice. In addition to any civil or criminal penalties, the filer of the groundless complaint may be ordered to reimburse the commission for the commission’s costs associated with the investigation and disposition of the complaint.

(d) Action may not be taken on a complaint filed more than four years after the violation is alleged to have occurred unless a person, by fraud or other device, prevents discovery of the violation. The Attorney General may initiate an action to recover a fee, compensation, gift, or profit received by a person as a result of a violation of the chapter no later than one year after a determination by the commission that a violation of this chapter has occurred;

(10) to conduct its investigations, inquiries, and hearings in this manner:

(a) The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.

(b) If the commission, its executive director, or staff designated by the commission, determines that the complaint does not allege facts sufficient to constitute a violation, the commission must dismiss the complaint and notify the complainant and respondent. The entire matter must be stricken from public record unless the respondent, by written authorization to the State Ethics Commission, waives the confidentiality of the existence of the complaint and authorizes the release of information about the disposition of the complaint.

(c) If the commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation.

(d) If the commission, upon the receipt of any information, finds probable cause to believe that a violation of the chapter has occurred, it may, upon its own motion and an affirmative vote of six or more members of the commission, file a verified complaint, in writing, that states the name of the person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.

(e) If the commission determines that assistance is needed in conducting an investigation, the commission shall request the assistance of appropriate agencies.

(f) The commission may order testimony to be taken in any investigation or hearing by deposition before a person who is designated by the commission and has the power to administer oaths and, in these instances, to compel testimony. The commission may administer oaths and affirmation for the testimony of witnesses and issue subpoenas by approval of the chairman, subject to judicial enforcement, and issue subpoenas for the procurement of witnesses and materials including books, papers, records, documents, or other tangible objects relevant to the agency’s investigation by approval of the chairman, subject to judicial enforcement. A person to whom a subpoena has been issued may move before a commission panel or the commission for an order quashing a subpoena issued under this section.

(g) All investigations, inquiries, hearings, and accompanying documents are confidential and only may be released pursuant to this section.

(i) After a dismissal following a finding of probable cause, except for dismissal pursuant to item (10)(b), or a technical violation pursuant to Section 8‑13‑1170 or 8‑13‑1372, the following documents become public record: the complaint, the response by the respondent, and the notice of dismissal.

(ii) After a finding of probable cause, except for a technical violation pursuant to Section 8‑13‑1170 or 8‑13‑1372, the following documents become public record: the complaint, the response by the respondent, and the notice of hearing. If a hearing is held on the matter, the final order and all exhibits introduced at the hearing shall become public record upon issuance of the final order by the commission. Exhibits introduced must be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy. In the event a hearing is not held on a matter after a finding of probable cause, the final disposition of the matter becomes public record.

The respondent or his counsel, by written notice, may waive the confidentiality requirement. The commission shall not accept any partial waivers. The wilful release of confidential information is a misdemeanor, and a person releasing such confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year.

(h) The commission must afford a public official, public member, public employee, lobbyist, or lobbyist’s principal who is the subject of a complaint the opportunity to be heard on the alleged violation under oath, the opportunity to offer information, and the appropriate due process rights including, but not limited to, the right to counsel. The commission, in its discretion, may turn over to the Attorney General for prosecution apparent evidence of a violation of the chapter.

(i) At the conclusion of its investigation, the commission staff, in a preliminary written decision with findings of fact and conclusions of law, must make a recommendation whether probable cause exists to believe that a violation of this chapter has occurred. If the commission determines that probable cause does not exist, it shall send a written decision with findings of fact and conclusions of law to the respondent and the complainant. If the commission determines, by an affirmative vote of six or more commission members, that there is probable cause to believe that a violation has been committed, its preliminary decision may contain an order setting forth a date for a hearing before a panel of three commissioners, selected at random, to determine whether a violation of the chapter has occurred. If the commission finds probable cause, by an affirmative vote of six or more commission members, to believe that a violation of this chapter has occurred, the commission may waive further proceedings if the respondent takes action to remedy or correct the alleged violation. Probable cause is a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation of this chapter or Chapter 17, Title 2.

(j) If a hearing is to be held, the respondent must be allowed to examine and make copies of all evidence in the commission’s possession relating to the charges. The same discovery techniques which are available to the commission must be equally available to the respondent, including the right to request the commission to subpoena witnesses or materials and the right to conduct depositions as prescribed by subitem (f). A panel of three commissioners must conduct a hearing in accordance with Chapter 23, Title 1 (Administrative Procedures Act), except as otherwise expressly provided. Panel action requires the participation of the three panel members. During a commission panel hearing conducted to determine whether a violation of the chapter has occurred, the respondent must be afforded appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses. All evidence, including records the commission considers, must be offered fully and made a part of the record in the proceedings. The hearings must be open to the public.

(k) No later than sixty days after the conclusion of a hearing to determine whether a violation of the chapter has occurred, the commission panel must set forth its determination in a written decision with findings of fact and conclusions of law. The commission panel, where appropriate, shall recommend disciplinary or administrative action, or in the case of an alleged criminal violation, refer the matter to the Attorney General for appropriate action. The Attorney General may seek injunctive relief or may take other appropriate action as necessary. In the case of a public employee, the commission panel shall file a report to the administrative department executive responsible for the activities of the employee. If the complaint is filed against an administrative department executive, the commission panel shall refer the case to the Governor.

(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;

(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.

(m) Within ten days after service of an order, report, or recommendation, a respondent may apply to the commission for a full commission review of the decision made by the commission panel. The review must be made on the record established in the panel hearings. This review is the final disposition of the complaint before the commission. An appeal to the court of appeals, pursuant to Section 1‑23‑380 and as provided in the South Carolina Appellate Court Rules, stays all actions and recommendations of the commission unless otherwise determined by the court.

(n) A fine imposed by the commission, disciplinary action taken by an appropriate authority, or a determination not to take disciplinary action made by an appropriate authority is public record. This section does not limit the power of either chamber of the General Assembly to impeach a public official or limit the power of a department to discipline its own officials or employees. This section does not preclude prosecution of public officials, public members, or public employees for violation of any law of this State.

(o) All actions taken by the commission on complaints, except on alleged violations which are found to be groundless by the commission, are a matter of public record upon final disposition;

(11)(a) The commission may issue a formal advisory opinion, based on real or hypothetical sets of circumstances. In considering and formulating an advisory opinion, the commission shall consider its previous opinions as well as relevant opinions issued by either legislative ethics committee in an attempt to create uniformity among the bodies. A formal advisory opinion issued by the commission is binding on the commission, until amended or revoked, in any subsequent charges concerning the person who requested the formal opinion and any other person who acted in reliance upon it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion. A formal advisory opinion must be in writing and is considered rendered when approved by a majority of the commission members subscribing to the advisory opinion. Advisory opinions must be made available to the public unless the commission, by majority vote of the total membership of the commission, requires an opinion to remain confidential. However, the identities of the parties involved must be withheld upon request.

(b) The commission only may issue formal advisory opinions for public officials, public members, and public employees for which it has proper jurisdiction to make findings of fact and impose penalties pursuant to this chapter.

(c) The commission must consider whether a person relied in good faith upon a formal advisory opinion or written informal staff opinion when considering a determination of probable cause and when considering a finding of misconduct.

(12) to promulgate and publish rules and regulations to carry out the provisions of this chapter. Provided, that with respect to complaints, investigations, and hearings the rights of due process as expressed in the Rules Governing the Practice of Law must be followed;

(13) on and after July 1, 1993, to administer Chapter 17 of Title 2 by use of the duties and powers listed in this section;

(14) to file, in the court of common pleas of the county in which the respondent of a complaint resides, a certified copy of an order or decision of the commission, whereupon the court must render judgment in accordance with the order or decision without charge to the commission and must notify the respondent of the judgment imposed. The judgment has the same effect as though it had been rendered in a case duly heard and determined by the court.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1993 Act No. 184, Sections 146, 147, eff January 1, 1994; 1995 Act No. 6, Sections 18, 19, effective upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995; 2003 Act No. 76, Sections 12 to 14, eff June 26, 2003; 2006 Act No. 387, Section 8, eff July 1, 2006; 2008 Act No. 245, Section 2, eff May 29, 2008; 2011 Act No. 1, Section 1, eff January 19, 2011; 2016 Act No. 282 (H.3184), Sections 3‑10, eff April 1, 2017.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

2016 Act No. 282, Section 17, provides as follows:

“SECTION 17. The provisions of this act are effective as of April 1, 2017 and shall apply to complaints filed on or after April 1, 2017. However, the provisions in Section 8‑13‑310 regarding the selection of the initial members to serve on the State Ethics Commission as of April 1, 2017, and the termination of terms of the members serving on the commission as of March 31, 2017, take effect after the date of the Governor’s signature for the limited purpose of having the initial members of the reconstituted State Ethics Commission begin service on April 1, 2017. The State Ethics Commission, House Ethics Committee and Senate Ethics Committee shall maintain jurisdiction over all open complaints and investigations pending in the appropriate entity on or before March 31, 2017. The reconstituted State Ethics Commission shall have jurisdiction over open complaints and investigations pending within the State Ethics Commission as of March 31, 2017.”

Effect of Amendment

The 1993 amendment by Section 146 rewrote paragraph (c) of subsection (9), and by Section 147 rewrote paragraph (g) of subsection (10), so as to change the maximum term of imprisonment to conform to the classification established for each offense.

The 1995 amendment, by Section 18, revised the introductory paragraph of paragraph (9); and by Section 19, revised subparagraph (f) of paragraph (10).

The 2003 amendment added item (14); in item (9)(b) designated the first existing sentence as (b)(1) and the second existing sentence as (b)(2); in new (9)(b)(1) substituted “during” for “in” and added the second through fifth sentences regarding petitions, hearings, remedies at law, injunctive relief, and attorney fees; in subsection (10)(b) started a new second sentence after “respondent” and added “to the State Ethics Commission” after “authorization” in the new sentence; and made nonsubstantive changes in (9)(b)(2) and (10)(b).

The 2006 amendment, in item (10), in subparagraph (m) in the third sentence substituted “court of appeals” for “circuit court”, added “and as provided in the South Carolina Appellate Court Rules”, and deleted “circuit” preceding “court”.

The 2008 amendment, in item (9), in the introductory paragraph added “or staff, including staff elected to serve as officers,”.

The 2011 amendment in subsection (10)(g) substituted “a finding of probable cause or dismissal” for “final disposition of a matter” in the first sentence, and deleted “such” before “confidential information” in the second sentence.

2016 Act No. 282, Sections 3‑10, amended (9), (10)(b), (10)(c), (10)(d), (10)(g), (10)(i), (10)(j), and (11), citing additional legal authority authorizing the state ethics commission to initiate and receive complaints, providing that the filer of a groundless complaint may be ordered to reimburse the commission for costs associated with the investigation and disposition of the complaint, authorizing commission staff to participate in facts sufficiency determinations, revising the procedures by which the commission, upon its own motion may file a verified ethics complaint, revising the commission’s required actions and treatment of complaint information following a dismissal or a finding of probable cause, revising the procedures by which the commission determines probable cause, providing that commission hearings must be open to the public, and revising the procedures by which the commission issues formal advisory opinions.

CROSS REFERENCES

Administrative law judges bound by Code of Judicial Conduct, see Section 1‑23‑560.

Duties of commission with respect to public access to statements and reports filed with commission, see Section 8‑13‑360.

Duty of Ethics Commission to prepare ethics brochure to be given to public officials, members, and employees, see Section 8‑13‑350.

Employment and Workforce Appellate Panel, creation, purpose, powers, composition, see Section 41‑29‑300.

Filing of complaint against lobbyist failing to file required records and reports after notice, see Section 2‑17‑65.

Registration of lobbyists, notice of termination of lobbying activities, supplemental registration statements, list of lobbyists, recording keeping requirements, reregistration requirements, see Section 2‑17‑20.

Registration of lobbyist’s principal, notice of termination of lobbying authority, supplemental registration statements, list of lobbyist’s principal, recording keeping requirements, reregistration requirements, see Section 2‑17‑25.

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S.C. Jur. Public Officers and Public Employees Section 67, Ministerial and Discretionary Duties.

S.C. Jur. Public Officers and Public Employees Section 69, Ethical Duties.

S.C. Jur. South Carolina Rules of Civil Procedure Section 65.2, Discussion.

Ethics Commission Opinions

All letters, written inquiries, and other correspondence sent to the State Ethics Commission requesting an investigation of or inquiry into potential violations of the Ethics Reform Act are confidential and may not be made public. Confidentiality provisions of Section 8‑13‑320(10)(g) attach upon receipt of the letter by the Commission. The wilful release of confidential information may result in a complaint matter. Op. S.C. St. Ethics Comm., SEC AO2002‑010, March 20, 2002.

Respondents who wish to waive confidentiality, pursuant to Section 8‑13‑320(10)(b), are directed to provide written notice of such waiver to the State Ethics Commission prior to commenting. Failure to provide written notice of waiver of confidentiality may result in a complaint matter. Op. S.C. St. Ethics Comm., SEC AO2000‑06, Jan. 19, 2000.

City council member who has complaint filed against him may request council in executive session to provide legal counsel for his defense without providing details of complaint. Open session vote can then be taken without disclosing nature of complaint or of agency with which complaint was filed. Op S.C. St. Ethics Comm., SEC AO92‑130, June 9, 1992.

Attorney General’s Opinions

Discussion of conflict of interest issues related to a law firm continuing as general counsel to a statutorily created special purpose district where the spouse of the attorney representing the district has been elected a commissioner on the board of the district. S.C. Op.Atty.Gen. (December 22, 2014) 2014 WL 7505272.

A court would likely find that the State Ethics Commission cannot rule on the constitutionality of a provision of the Ethics Act. S.C. Op.Atty.Gen. (Sept. 3, 2010) 2010 WL 3896168.

NOTES OF DECISIONS

In general 1

1. In general

Letter from Governor to Executive Director of State Ethics Commission was intended to be full waiver, rather than limited waiver, of confidentiality of investigatory reports and other information about State Ethics Commission’s investigation of ethics complaint against Governor, though Executive Director had previously delineated to Governor’s counsel specific restrictions on disclosure which could be available to Governor; letter, which was signed by Governor and was written on Governor’s letterhead, stated that Governor “[i]n an effort to once again go the extra mile ... would like to waive my right to confidentiality in your upcoming ethics probe,” letter stated that it was “my decision to take the unilateral step of waiving confidentiality,” and letter did not reference the possible restrictions on disclosure that had been delineated to Governor’s counsel. Sanford v. South Carolina State Ethics Com’n (S.C. 2009) 385 S.C. 483, 685 S.E.2d 600, opinion clarified 386 S.C. 274, 688 S.E.2d 120. States 41

Evidence established that Governor knew of his right to confidentiality, as element for determining whether Governor waived confidentiality of investigatory reports and other information about State Ethics Commission’s investigation of ethics complaint against Governor; ethics complaint and initial letter from Commission, which were sent directly to Governor and not to his counsel, clearly set forth Governor’s right to confidentiality. Sanford v. South Carolina State Ethics Com’n (S.C. 2009) 385 S.C. 483, 685 S.E.2d 600, opinion clarified 386 S.C. 274, 688 S.E.2d 120. States 41

Speaker of state House of Representatives had other legal remedies, e.g., issuing subpoenas duces tecum or information request under Freedom of Information Act (FOIA), and thus, mandamus was not available to compel State Ethics Commission to issue to House of Representatives its investigatory materials regarding investigation of ethics complaint against Governor. Sanford v. South Carolina State Ethics Com’n (S.C. 2009) 385 S.C. 483, 685 S.E.2d 600, opinion clarified 386 S.C. 274, 688 S.E.2d 120. Mandamus 3(4)

Confidentiality provision of Ethics Act, stating that all investigations, inquiries, hearings, and accompanying documents must remain confidential until final disposition of a matter unless the respondent waives the right to confidentiality, did not implicate a duty to perform a ministerial act with respect to releasing investigatory materials, as would be enforceable by writ of mandamus, with respect to mandamus petition filed by Speaker of state House of Representatives, seeking to require State Ethics Commission to issue to House of Representatives its investigatory materials regarding investigation of ethics complaint against Governor. Sanford v. South Carolina State Ethics Com’n (S.C. 2009) 385 S.C. 483, 685 S.E.2d 600, opinion clarified 386 S.C. 274, 688 S.E.2d 120. Mandamus 82

Governor had other legal remedies, and thus, mandamus was not available to compel State Ethics Commission to comply with statute and regulations regarding confidentiality of Commission proceedings, which statute and regulations allegedly prohibited Commission from publicly disseminating any investigatory reports or other information about its investigation of ethics complaint against Governor; Governor had motion for injunction pending before Commission in which he sought the same relief he was seeking in the mandamus proceeding, and Commission had indicated that it would not disseminate the investigative summary or preliminary report in the matter until Governor’s motion had been heard and acted upon by Commission, and that, if Commission’s decision was adverse to Governor, dissemination would not occur until he had an opportunity to seek review of that decision. Sanford v. South Carolina State Ethics Com’n (S.C. 2009) 385 S.C. 483, 685 S.E.2d 600, opinion clarified 386 S.C. 274, 688 S.E.2d 120. Mandamus 3(9); Mandamus 4(5)

Confidentiality provision of Ethics Act, stating that all investigations, inquiries, hearings, and accompanying documents must remain confidential until final disposition of a matter unless the respondent waives the right to confidentiality, did not implicate a duty to perform a ministerial act, as would be enforceable by writ of mandamus, with respect to Governor’s mandamus petition to compel State Ethics Commission to comply with statute and regulations regarding confidentiality of Commission proceedings, which statute and regulations allegedly prohibited Commission from publicly disseminating any investigatory reports or other information about its investigation of ethics complaint against Governor. Sanford v. South Carolina State Ethics Com’n (S.C. 2009) 385 S.C. 483, 685 S.E.2d 600, opinion clarified 386 S.C. 274, 688 S.E.2d 120. Mandamus 82; Public Employment 875

Newspaper could reveal State Ethics Commission’s dismissal of citizen’s complaint, alleging that newspaper had violated the law by publishing a political advertisement without identifying who had paid for it, even without a waiver of confidentiality; once the ethics matter was finally resolved by dismissal of the complaint, a waiver of confidentiality was no longer necessary for disclosure. Gaffney Ledger v. South Carolina Ethics Com’n (S.C. 2004) 360 S.C. 107, 600 S.E.2d 540. Records 31

Under Ethics Reform Act, when an ethics matter ends by dismissal, the State Ethics Commission’s record is purged and there is no public record of a complaint having been filed, unless the respondent authorizes the release of information regarding its disposition, and this procedure prevents disclosure to a third party through discovery of the Commission’s files unless the respondent chooses to allow it. Gaffney Ledger v. South Carolina Ethics Com’n (S.C. 2004) 360 S.C. 107, 600 S.E.2d 540. Records 31

Under Ethics Reform Act, once an ethics matter is finally resolved by dismissal of the complaint, a waiver of confidentiality is no longer necessary for disclosure; there is no confidentiality requirement as to the parties once the matter has been dismissed. Gaffney Ledger v. South Carolina Ethics Com’n (S.C. 2004) 360 S.C. 107, 600 S.E.2d 540. Records 31

Regulation providing that, upon receipt of a complaint, the State Ethics Commission sends a copy of the complaint to the respondent advising that a complaint has been received and, if the Executive Director determines the facts are not sufficient, the complaint is dismissed and the matter is stricken from the public record and the existence of a complaint and dismissal remains confidential unless the respondent waives confidentiality in writing, was invalid, to the extent the regulation expanded the confidentiality requirement of Ethics Reform Act. Gaffney Ledger v. South Carolina Ethics Com’n (S.C. 2004) 360 S.C. 107, 600 S.E.2d 540. Records 31

**SECTION 8‑13‑322.** Prohibited contacts during pendency of investigation or open complaint.

It is unlawful for the Governor, a member of the General Assembly, or anyone who is the subject of a pending investigation or open complaint, to contact or attempt to contact, either directly or indirectly, a member of the commission or a legislative ethics committee to influence or attempt to influence the outcome of a pending investigation or open complaint.

HISTORY: 2016 Act No. 282 (H.3184), Section 11, eff April 1, 2017.

Editor’s Note

2016 Act No. 282, Section 17, provides as follows:

“SECTION 17. The provisions of this act are effective as of April 1, 2017 and shall apply to complaints filed on or after April 1, 2017. However, the provisions in Section 8‑13‑310 regarding the selection of the initial members to serve on the State Ethics Commission as of April 1, 2017, and the termination of terms of the members serving on the commission as of March 31, 2017, take effect after the date of the Governor’s signature for the limited purpose of having the initial members of the reconstituted State Ethics Commission begin service on April 1, 2017. The State Ethics Commission, House Ethics Committee and Senate Ethics Committee shall maintain jurisdiction over all open complaints and investigations pending in the appropriate entity on or before March 31, 2017. The reconstituted State Ethics Commission shall have jurisdiction over open complaints and investigations pending within the State Ethics Commission as of March 31, 2017.”

**SECTION 8‑13‑325.** Commission to retain fees.

In order to offset costs associated with the: (1) administration and regulation of lobbyists and lobbyist’s principals, and (2) enforcement of Chapter 17 of Title 2, the State Ethics Commission shall retain fees generated by the registration of lobbyists and lobbyists’ principals and the initial fine of one hundred dollars, as provided in Section 2‑17‑50(A)(2)(a), and the initial fine of one hundred dollars, as provided in Section 8‑13‑1510(1), for reports received by the State Ethics Commission.

HISTORY: 1995 Act No. 6, Section 20, eff upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995; 2003 Act No. 76, Section 15, eff July 1, 2003.

Effect of Amendment

The 2003 amendment rewrote this section.

CROSS REFERENCES

Registration of lobbyists and lobbyist’s principals, see Sections 2‑17‑5 et seq.

**SECTION 8‑13‑330.** Executive director of commission; restrictions on political activities of members, employees and staff of commission.

(A) The commission may employ and remove, at its pleasure, an executive director. The executive director has the responsibility for employing and terminating other personnel as may be necessary. The executive director administers the daily business of the commission and performs duties assigned by the commission.

(B) No member or employee of the commission may be a candidate, an official in a political party, or a lobbyist. Other than by virtue of membership on or employment with the State Ethics Commission, no member or employee of the commission may be a public official, public member, or public employee.

(C) No member of the commission or its staff may participate in political management or in a political campaign during the member’s or employee’s term of office or employment. No member of the commission or its staff may make a contribution to a candidate or knowingly attend a fundraiser held for the benefit of a candidate. Violation of this provision subjects the employee to immediate dismissal and the commissioner to removal by the Governor.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑340.** Annual report of commission.

The State Ethics Commission at the close of each fiscal year shall report to the General Assembly and the Governor concerning the action it has taken, the names, salaries, and duties of all persons in its employ, and the money it has disbursed and shall make other reports on matters within its jurisdiction and recommendations for further legislation as may appear desirable.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑350.** Ethics brochure to be provided to public officials, members, and employees.

When hired, filing for office, or appointed and upon assuming the duties of employment, office, or position in state government, a public official, public member, and public employee shall receive a brochure prepared by the State Ethics Commission describing the general application of this chapter.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑360.** Statements and reports filed with commission open for public inspection and copying.

Upon request, the commission shall make statements and reports filed with the commission available for public inspection and copying during regular office hours. The commission shall provide copying facilities at a cost not to exceed the actual cost. A statement may be requested by mail, and the commission shall mail a copy of the requested information to the individual making the request upon payment of appropriate postage, copying costs, and employee labor costs. The commission shall publish and make available to the public and to persons subject to this chapter explanatory information concerning this chapter, the duties imposed by this chapter, and the means for enforcing this chapter.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑365.** Electronic filing system for disclosures and reports; public accessibility.

The commission shall establish a system of electronic filing for all disclosures and reports required pursuant to Chapter 13, Title 8 and Chapter 17, Title 2 except for forms and reports required pursuant to Article 9, Chapter 13, Title 8. These disclosures and reports must be filed using an Internet‑based filing system as prescribed by the commission. The information contained in the reports and disclosure forms, with the exception of social security numbers, campaign bank account numbers, and tax ID numbers, must be publicly accessible, searchable, and transferable.

HISTORY: 2003 Act No. 76, Section 16, eff November 3, 2004; 2010 Act No. 190, Section 1, eff May 28, 2010; 2013 Act No. 61, Section 7, eff June 25, 2013.

Editor’s Note

2003 Act No. 76, Section 57, sets forth funding contingency and applicability provisions as follows:

“. . . Sections 16 [adding Section 8‑13‑365] and 44 [amending Section 8‑13‑1358] take effect November 3, 2004, if funding is appropriated by the General Assembly for this purpose, and apply to: (1) reports required to be filed with the commission after November 2, 2004, by candidates and committees for statewide offices, and (2) the forwarding of filings after November 2, 2004, to the commission by the Ethics Committees of the Senate and House of Representatives, pursuant to Section 8‑13‑365(A), and take effect January 2006 for these candidates and entities, notwithstanding the failure of the General Assembly to appropriate such funds for this purpose . . .”

2013 Act No. 61, Sections 11, 14, provide as follows:

“SECTION 11. In order to educate various parties regarding the provisions contained in this act, the following notifications must be made:

“(1) The State Election Commission must notify each county election commission of the provisions of this act.

“(2) The State Election Commission must post the provisions of this act on its website.

“(3) Each state party executive committee must notify their respective county executive parties of the provisions of this act.”

“SECTION 14. This act takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.”

The amendment by 2013 Act No. 61 became effective June 25, 2013, see South Carolina Libertarian Party v. South Carolina State Election Com’n, 407 S.C. 612, 757 S.E.2d 707 (2014).

Effect of Amendment

The 2010 amendment in subsection (A), in the first sentence, deleted reference to Article 13, added reference to Chapter 17, Title 2, and substituted “persons” for “candidates”; in the second sentence, deleted “for candidates and committees for statewide offices” before “reports”; in the fourth sentence, substituted “reports and disclosure forms” for “campaign disclosure form”; and made other nonsubstantive changes.

The 2013 amendment deleted the subsection designators, substituted “except for forms and reports required pursuant to Article 9, Chapter 13, Title 8” for “from all persons and entities subject to its jurisdiction”, deleted the former third sentence relating to Ethics Committees, and deleted former subsection (B) relating to the Ethics Commission.

CROSS REFERENCES

Economic interests statements, filing deadlines for particular candidates, see Section 8‑13‑1356.

Filing of updated statement, see Section 8‑13‑1140.

Notes of Decisions

In general 1

1. In general

Failure to allege any precleared practice that was in force and effect prior to state court decisions interpreting South Carolina statute to require non‑incumbent candidates, but not incumbent candidates, to simultaneously file a statement of economic interest (SEI) with a statement of intention of candidacy (SIC), precluded disqualified non‑incumbent candidates from establishing a likelihood of success on the merits of their claim that those decisions constituted a change in election practices requiring preclearance under Voting Rights Act, and thus, candidates were not entitled to a temporary restraining order (TRO) barring enforcement of the simultaneous filing requirements. Smith v. South Carolina State Election Com’n, 2012, 901 F.Supp.2d 639. Injunction 1345

**SECTIONS 8‑13‑410 to 8‑13‑500.** Repealed by 1991 Act No. 248, Section 3, eff January, 1, 1992.

Editor’s Note

Sections 8‑13‑410 through 8‑13‑500 formerly comprised Article 7 of this chapter. Article 7 now consists of Sections 8‑13‑700 through 8‑13‑795.

Former Section 8‑13‑410 was entitled “Use of official position or office for financial gain” and was derived from 1982 Act No. 289, Sections 1, 2; 1981 Act No. 148, Sections 2 to 4; 1980 Act No. 374, Section 3; 1978 Act No. 624; 1977 Act No. 150, Section 5; 1975 (59) 217.

Former Section 8‑13‑420 was entitled “Giving or offering compensation to influence action of public official or employee” and was derived from 1982 Act No. 289, Sections 1, 2; 1981 Act No. 148, Sections 2 to 4; 1980 Act No. 374, Section 3; 1978 Act No. 624; 1977 Act No. 150, Section 5; 1975 (59) 217.

Former Section 8‑13‑430 was entitled “Payment or receipt of additional compensation for assistance of public official or employee in course of his employment” and was derived from 1982 Act No. 289, Sections 1, 2; 1981 Act No. 148, Sections 2 to 4; 1980 Act No. 374, Section 3; 1978 Act No. 624; 1977 Act No. 150, Section 5; 1975 (59) 217.

Former Section 8‑13‑440 was entitled “Use or disclosure of confidential information for financial gain” and was derived from 1982 Act No. 289, Sections 1, 2; 1981 Act No. 148, Sections 2 to 4; 1980 Act No. 374, Section 3; 1978 Act No. 624; 1977 Act No. 150, Section 5; 1975 (59) 217.

Former Section 8‑13‑450 was entitled “Membership on or employment by regulatory commission of person associated with regulated business” and was derived from 1982 Act No. 289, Sections 1, 2; 1981 Act No. 148, Sections 2 to 4; 1980 Act No. 374, Section 3; 1978 Act No. 624; 1977 Act No. 150, Section 5; 1975 (59) 217.

Former Section 8‑13‑460 was entitled “Action to be taken by public official or employee where a decision would affect his financial interest” and was derived from 1982 Act No. 289, Sections 1, 2; 1981 Act No. 148, Sections 2 to 4; 1980 Act No. 374, Section 3; 1978 Act No. 624; 1977 Act No. 150, Section 5; 1975 (59) 217.

Former Section 8‑13‑470 was entitled “Appearance by public official or employee before certain commissions” and was derived from 1982 Act No. 289, Sections 1, 2; 1981 Act No. 148, Sections 2 to 4; 1980 Act No. 374, Section 3; 1978 Act No. 624; 1977 Act No. 150, Section 5; 1975 (59) 217.

Former Section 8‑13‑490 was entitled “Offer by person in regulated business and receipt by member or employee of regulatory commission of anything of value; limitation on former member of commission serving as lobbyist” and was derived from 1982 Act No. 289, Sections 1, 2; 1981 Act No. 148, Sections 2 to 4; 1980 Act No. 374, Section 3; 1978 Act No. 624; 1977 Act No. 150, Section 5; 1975 (59) 217.

Former Section 8‑13‑500 was entitled “Breaches of ethical standards” and was derived from 1982 Act No. 289, Sections 1, 2; 1981 Act No. 148, Sections 2 to 4; 1980 Act No. 374, Section 3; 1978 Act No. 624; 1977 Act No. 150, Section 5; 1975 (59) 217.

ARTICLE 5

Senate and House of Representatives Ethics Committees

Editor’s Note

Former Article 5, which consisted of Sections 8‑13‑210 through 8‑13‑260 was repealed by 1991 Act No. 248, Section 3, effective January 1, 1992.

**SECTION 8‑13‑510.** Creation of ethics committees; committee membership; terms; filling vacancies.

There is created a House of Representatives Legislative Ethics Committee and a Senate Legislative Ethics Committee. Each ethics committee is composed of six members. Terms are coterminous with the term for which members are elected to the House or Senate. Vacancies must be filled for the unexpired term in the manner of the original selection. The members of each ethics committee must be elected by the House or the Senate, as appropriate. One member of each ethics committee must be elected as chairman by a majority of the members of the ethics committee.

HISTORY: A former Section 8‑13‑510: [1981 Act No. 148, Section 4]; 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

Editor’s Note

Former Section 8‑13‑510 was entitled: Remedies for breaches of ethical standards; public employees or officials.

Effect of Amendment

The 1991 amendment rewrote this section.

Notes of Decisions

In general 1

1. In general

The House and Senate Legislative Committees are charged with the exclusive responsibility for the handling of ethics complaints involving members of the General Assembly and their staff. Ex parte Harrell v. Attorney General of State (S.C. 2014) 409 S.C. 60, 760 S.E.2d 808. States 28(1)

**SECTION 8‑13‑520.** Duty to recommend changes in ethics laws and rules.

Each ethics committee shall meet and recommend any changes in the law or rules relating to ethics considered proper to their respective houses. Changes recommended must be consistent with the Constitution of the State of South Carolina, the provisions of this chapter, and any other applicable law.

HISTORY: A former Section 8‑13‑520: [1981 Act No. 148, Section 4]; 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

Editor’s Note

Former Section 8‑13‑520 was entitled: Remedies for breaches of ethical standards; nonpublic employees or officials.

Effect of Amendment

The 1991 amendment rewrote this section.

**SECTION 8‑13‑530.** Additional powers and duties of committee.

Each ethics committee shall:

(1) ascertain whether a person has failed to comply fully and accurately with the disclosure requirements of this chapter, which may include, but is not limited to, an audit of filed reports and applicable campaign bank statements, and to promptly notify the person to file the necessary notices and reports to satisfy the requirements of this chapter;

(2) receive complaints filed by individuals and, upon a majority vote of the total membership of the committee, file complaints when alleged violations are identified;

(3) upon the filing of a complaint alleging a violation by a member or staff of the appropriate house, or a member or staff of a legislative caucus committee, or a candidate for the appropriate house, for a violation of this chapter or Chapter 17, Title 2, other than a violation of a rule of the appropriate house, the ethics committee shall refer the complaint to the State Ethics Commission for an investigation pursuant to Section 8‑13‑540;

(4) receive, investigate, and hear a complaint which alleges a possible violation of a breach of a privilege or a rule governing a member or staff of the appropriate house or legislative caucus committee, or candidate for the appropriate house;

(5) a complaint may not be accepted by the ethics committee concerning a member of or candidate for the appropriate house during the fifty‑day period before an election in which the member or candidate is a candidate. During this fifty‑day period, any person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction, or both. Within ten days, a rule to show cause hearing must be held, and the court must either dismiss the petition or direct that a mandamus order or an injunction, or both, be issued. A violation of this chapter by a candidate during this fifty‑day period must be considered to be an irreparable injury for which no adequate remedy at law exists. The institution of an action for injunctive relief does not relieve any party to the proceeding from any penalty prescribed for violations of this chapter. The court must award reasonable attorney’s fees and costs to the nonpetitioning party if a petition for mandamus or injunctive relief is dismissed based upon a finding that the:

(i) petition is being presented for an improper purpose such as harassment or to cause delay;

(ii) claims, defenses, and other legal contentions are not warranted by existing law or are based upon a frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(iii) allegations and other factual contentions do not have evidentiary support or, if specifically so identified, are not likely to have evidentiary support after reasonable opportunity for further investigation or discovery.

Action on a complaint filed against a member or candidate which was received more than fifty days before the election but which cannot be disposed of or dismissed by the ethics committee at least thirty days before the election must be postponed until after the election;

(6) obtain information, investigate technical violation complaints, and hear complaints as provided in Section 8‑13‑540 with respect to any complaint filed pursuant to this chapter or Chapter 17, Title 2 and to that end may compel by subpoena issued by a majority vote of the committee the attendance and testimony of witnesses and the production of pertinent books and papers;

(7) administer or recommend sanctions appropriate to a particular member, or staff of, or candidate for, the appropriate house pursuant to Section 8‑13‑540, including the recovery of the value of anything transferred or received in breach of the ethical standards, or dismiss the charges; and

(8) act as an advisory body to the General Assembly and to individual members of or candidates for the appropriate house on questions pertaining to the disclosure and filing requirements of members of or candidates for the appropriate house, and may issue, upon request from a member or staff of the appropriate house, or legislative caucus committee, or candidate for the appropriate house, and publish advisory opinions on the requirements of these chapters.

HISTORY: A former Section 8‑13‑530: [1981 Act No. 148, Section 4]; 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 17, eff June 26, 2003; 2008 Act No. 245, Section 4, eff May 29, 2008; 2016 Act No. 282 (H.3184), Section 12, eff April 1, 2017.

Editor’s Note

Former Section 8‑13‑530 was entitled: Remedies for breaches of ethical standards; recovery of value of anything transferred or received; amount of kickback recoverable.

2016 Act No. 282, Section 17, provides as follows:

“SECTION 17. The provisions of this act are effective as of April 1, 2017 and shall apply to complaints filed on or after April 1, 2017. However, the provisions in Section 8‑13‑310 regarding the selection of the initial members to serve on the State Ethics Commission as of April 1, 2017, and the termination of terms of the members serving on the commission as of March 31, 2017, take effect after the date of the Governor’s signature for the limited purpose of having the initial members of the reconstituted State Ethics Commission begin service on April 1, 2017. The State Ethics Commission, House Ethics Committee and Senate Ethics Committee shall maintain jurisdiction over all open complaints and investigations pending in the appropriate entity on or before March 31, 2017. The reconstituted State Ethics Commission shall have jurisdiction over open complaints and investigations pending within the State Ethics Commission as of March 31, 2017.”

Effect of Amendment

The 1991 amendment rewrote this section.

The 2003 amendment rewrote this section.

The 2008 amendment, in items (3), (4), and (6), added “or staff”.

2016 Act No. 282, Section 12, amended the section, revising the committees’ functions and responsibilities and requiring the legislative ethics committees to refer certain ethics complaints to the state ethics commission for investigation.

Attorney General’s Opinions

Discussion of the power or the Ethics Committee to bring a complaint against either a former candidate or former member for a violation which occurred within the four year statute of limitations. S.C. Op.Atty.Gen. (October 20, 2015) 2015 WL 6745994.

**SECTION 8‑13‑535.** Issuance of ethics advisory opinions.

(A) The committee, may issue a formal advisory opinion, based on real or hypothetical sets of circumstances. In considering and formulating an advisory opinion either legislative ethics committee shall consider its previous opinions, the relevant opinions of the other legislative ethics committee, as well as relevant opinions issued by the commission in an attempt to create uniformity among the bodies. A formal advisory opinion issued by the committee is binding on the committee, until amended or revoked, in any subsequent charges concerning the person who requested the formal opinion and any other person who acted in reliance upon it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion. A formal advisory opinion must be in writing and is considered rendered when approved by a majority of the committee members subscribing to the advisory opinion. Advisory opinions must be made available to the public unless the committee, by majority vote of the total membership of the committee, requires an opinion to remain confidential. However, the identities of the parties involved must be withheld upon request.

(B) The appropriate ethics committee only may issue formal advisory opinions for public officials, public members, and public employees for which it has proper jurisdiction to make findings of fact and impose penalties pursuant to this chapter.

(C) The appropriate ethics committee must consider whether a person relied in good faith upon a formal advisory opinion or written informal staff opinion when considering a finding of misconduct.

HISTORY: 2016 Act No. 282 (H.3184), Section 13, eff April 1, 2017.

Editor’s Note

2016 Act No. 282, Section 17, provides as follows:

“SECTION 17. The provisions of this act are effective as of April 1, 2017 and shall apply to complaints filed on or after April 1, 2017. However, the provisions in Section 8‑13‑310 regarding the selection of the initial members to serve on the State Ethics Commission as of April 1, 2017, and the termination of terms of the members serving on the commission as of March 31, 2017, take effect after the date of the Governor’s signature for the limited purpose of having the initial members of the reconstituted State Ethics Commission begin service on April 1, 2017. The State Ethics Commission, House Ethics Committee and Senate Ethics Committee shall maintain jurisdiction over all open complaints and investigations pending in the appropriate entity on or before March 31, 2017. The reconstituted State Ethics Commission shall have jurisdiction over open complaints and investigations pending within the State Ethics Commission as of March 31, 2017.”

**SECTION 8‑13‑540.** Manner in which investigations and hearings shall be conducted; findings and reports of committees.

(A)(1) A complaint alleging a member of the General Assembly, legislative caucus committees, candidates for the General Assembly, or staff of the General Assembly or legislative caucus committee has committed a violation of this chapter or Chapter 17, Title 2 must be a verified complaint in writing and state the name of the person alleged to have committed the violation and the particulars of the violation.

(2) When a complaint is filed with or by the ethics committee alleging a violation of this chapter or Chapter 17, Title 2, a copy must be sent to the person alleged to have committed the violation and to the State Ethics Commission, hereinafter referred to as “the commission” within thirty days from the date the complaint was filed, for an investigation as provided in this section. However, if the complaint only alleges a violation of a rule of the House of Representatives or of the Senate, the appropriate ethics committee must forward a copy of the complaint to the person alleged to have committed the violation, and the appropriate ethics committee shall investigate and make a determination for a complaint.

(3)(a) The commission, upon receipt of information, may initiate and file a complaint upon an affirmative vote of six or more members of the commission. The commission shall accept complaints referred by the ethics committees and verified complaints from individuals, whether personally or on behalf of an organization or governmental body.

(b) The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint. Unless the complaint was referred by an ethics committee, the commission shall send a copy of the complaint to the appropriate ethics committee.

(4) Action may not be taken on a complaint filed more than four years after the violation is alleged to have occurred unless the person alleged to have committed the violation, by fraud or other device, prevents discovery of the violation.

(B)(1) Upon receiving a complaint filed pursuant to subsection (A), the commission, its executive director, or other staff as designated by the commission, must determine whether the complaint alleges facts sufficient to constitute a violation of this chapter or Chapter 17, Title 2. If the commission, its executive director, or its other designated staff determines the complaint does not allege facts sufficient to constitute a violation of this chapter or Chapter 17, Title 2, the complaint must be dismissed. If the commission, its executive director, or its designated staff determines the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation.

(2)(a) In conducting the investigation into the allegations contained in a complaint, the commission shall request a response from the respondent to the complaint and allow for thirty days from the date of the request for the respondent to submit a response.

(b) If the commission does not find probable cause that a violation occurred, the complaint must be dismissed. The commission must notify the complainant, and respondent, and the appropriate legislative ethics committee.

(c) If the commission determines only a technical violation pursuant to Section 8‑13‑1170 or 8‑13‑1372 occurred, the complaint must be referred to the appropriate legislative ethics committee for disposition.

(d) If the commission finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to the Attorney General. The wilful filing of a groundless complaint is a misdemeanor and, upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than one year. In lieu of the criminal penalty provided by this item, a civil penalty of not more than one thousand dollars may be assessed against the complainant upon proof by a preponderance of the evidence that the filing of the complaint was wilful and without just cause or with malice. In addition to any civil or criminal penalties, the filer of the groundless complaint may be ordered to reimburse the commission for the commission’s costs associated with the investigation and disposition of the complaint.

(3) If the commission finds evidence that the person alleged to have committed the violation wilfully violated a section of this chapter or Chapter 17, Title 2 that imposes a criminal penalty, the commission, when appropriate, may forward the complaint and accompanying materials to the Attorney General or circuit solicitor.

(4) If the commission determines that it needs assistance in conducting an investigation, the commission shall request the assistance of appropriate agencies as needed, and may hire or retain auditors, investigators, or other assistance as necessary.

(5) In conducting its investigation, the commission may order testimony to be taken in any investigation or deposition before a person who is designated by the commission and has the power to administer oaths and, in these instances, to compel testimony. The commission may administer oaths and affirmation for the testimony of witnesses and issue subpoenas, by approval of the chairman and subject to judicial enforcement, for the procurement of witnesses and materials including books, papers, records, documents, or other tangible objects relevant to the agency’s investigation. A person to whom a subpoena has been issued may move before a commission panel or the commission for an order quashing a subpoena issued pursuant to this section.

(6) Upon completing its investigation, the commission must provide a report to the appropriate ethics committee with a recommendation as to whether there is probable cause to believe a violation of this chapter or of Chapter 17, Title 2 has occurred. A recommendation of probable cause requires an affirmative vote by six or more members of the commission. The report must include a copy of all relevant reports, evidence, and testimony considered by the commission.

(C)(1) All investigations, inquiries, hearings and accompanying documents are confidential and only may be released pursuant to this section.

(2)(a) Upon a recommendation of probable cause by the commission for a violation, other than a technical violation pursuant to Section 8‑13‑1170 or 8‑13‑1372, the following documents become public record: the complaint, the response by the respondent, and the commission’s recommendation of probable cause.

(b) If the appropriate committee requests further investigation after receipt of the commission’s report, documents only may be released if the commission’s second report to the committee recommends a finding of probable cause.

(D)(1) Upon receipt of the commission’s report, the appropriate ethics committee may concur or nonconcur with the commission’s recommendation, or within forty‑five days from the committee’s receipt of the report, request the commission to continue the investigation in order to review information previously received or consider additional matters not considered by the commission.

(2) If, after reviewing the commission’s recommendation and relevant evidence, the ethics committee determines that there is not competent and substantial evidence a violation of this chapter or of Chapter 17, Title 2 has occurred, the committee shall dismiss the complaint and send a written decision to the respondent and the complainant. The notice of dismissal must be made public if the commission made a recommendation that probable cause existed.

(3) If, after reviewing the commission’s recommendation and relevant evidence, the ethics committee determines that the respondent has committed only a technical violation pursuant to Section 8‑13‑1170 or 8‑13‑1372, the provisions of the appropriate section apply.

(4) If, after reviewing the commission’s recommendation and relevant evidence, the ethics committee determines that there is competent and substantial evidence that a violation of this chapter or of Chapter 17, Title 2 has occurred, except for a technical violation of Section 8‑13‑1170 or 8‑13‑1372, the committee shall, as appropriate:

(a) render an advisory opinion to the respondent and require the respondent’s compliance within a reasonable time; or

(b) convene a formal public hearing on the matter.

The ethics committee may obtain its own information, or request additional investigation by the State Ethics Commission, if it needs additional information to make a determination as to whether or not competent and substantial evidence of a violation exists. An advisory opinion to the respondent pursuant to subitem (a) must be made public.

(5) If the ethics committee convenes a formal public hearing:

(a) the investigator or attorney handling the investigation for the State Ethics Commission shall present the evidence related to the complaint to the appropriate ethics committee;

(b) it is the duty of the investigator or attorney to further investigate the subject of the complaint and any related matters under the jurisdiction and at the direction of the ethics committee, to request assistance from appropriate state agencies as needed, to request authorization from the committee for funds for the hiring of auditors, investigators, or other assistance as necessary, to prepare subpoenas, and to present evidence to the committee at any public hearing. The appropriate committee shall maintain the authority to approve subpoenas, authorize expenditures, dismiss complaints, schedule hearings, grant continuances, and any other authority as provided for by their rules;

(c) the respondent must be allowed to examine and make copies of all evidence in the ethics committee’s possession relating to the charges. At the hearing the respondent must be afforded appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses;

(d) all hearings must be open to the public.

(6)(a) After the formal public hearing, the ethics committee shall determine its findings of fact and issue its final order.

(b) If the ethics committee, based on competent and substantial evidence, finds the respondent has not violated this chapter or Chapter 17, Title 2, the committee shall dismiss the complaint and send a written decision to the respondent and the complainant.

(c) If the ethics committee, based on competent and substantial evidence, finds the respondent has violated this chapter or Chapter 17, Title 2, the committee shall:

(i) administer a public reprimand;

(ii) determine that a technical violation as provided for in Section 8‑13‑1170 or 8‑13‑1372 has occurred;

(iii) require the respondent to pay a civil penalty not to exceed two thousand dollars for each nontechnical violation that is unrelated to the late filing of a required statement or report or failure to file a required statement or report;

(iv) require the forfeiture of gifts, receipts, or profits, or the value of each, obtained in violation of Chapter 13, Title 8 or Chapter 17, Title 2;

(v) recommend expulsion of the member;

(vi) provide a copy of the complaint and accompanying materials to the Attorney General if the committee finds that there is probable cause to believe the respondent wilfully violated a section of this chapter or Chapter 17, Title 2 that imposes a criminal penalty; or

(vii) require a combination of subitems (i) through (vi) as necessary and appropriate.

(d) The ethics committee shall report its findings in writing to the Speaker of the House of Representatives or President Pro Tempore of the Senate, as appropriate. The report must be accompanied by an order of punishment or dismissal and supported and signed by a majority of the ethics committee members.

(e) Upon the issuance of the final order, the following documents become public record: exhibits introduced at the hearing, the committee’s findings, and the final order. Exhibits introduced must be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy. In addition, any documents in the commission’s report that substantiate the commission’s recommendation of probable cause that would constitute a public document and are not exempt from disclosure under the Freedom of Information Act or other state or federal law also shall become public record. These documents must be redacted, as appropriate, in compliance with state or federal law.

(E) If, after conducting a formal public hearing, the ethics committee finds the respondent has violated this chapter or Chapter 17, Title 2, the respondent has ten days from the date of receiving the committee’s order of punishment to appeal the action to the full legislative body.

(F) No ethics committee member may take part in consideration of any matter in which they are the respondent, complainant, witness, or otherwise involved.

(G) The ethics committees shall establish procedures which afford respondents appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1993 Act No. 184, Section 148, eff January 1, 1994; 2016 Act No. 282 (H.3184), Section 14, eff April 1, 2017.

Editor’s Note

2016 Act No. 282, Section 17, provides as follows:

“SECTION 17. The provisions of this act are effective as of April 1, 2017 and shall apply to complaints filed on or after April 1, 2017. However, the provisions in Section 8‑13‑310 regarding the selection of the initial members to serve on the State Ethics Commission as of April 1, 2017, and the termination of terms of the members serving on the commission as of March 31, 2017, take effect after the date of the Governor’s signature for the limited purpose of having the initial members of the reconstituted State Ethics Commission begin service on April 1, 2017. The State Ethics Commission, House Ethics Committee and Senate Ethics Committee shall maintain jurisdiction over all open complaints and investigations pending in the appropriate entity on or before March 31, 2017. The reconstituted State Ethics Commission shall have jurisdiction over open complaints and investigations pending within the State Ethics Commission as of March 31, 2017.”

Effect of Amendment

The 1993 amendment rewrote subsection (1) so as to change the maximum term of imprisonment to conform to the classification established for each offense.

2016 Act No. 282, Section 14, amended the section, establishing procedures for forwarding certain ethics complaints to the state ethics commission for disposition, and making other conforming changes.

CROSS REFERENCES

Appeal of recommendation of ethics committee, see Section 8‑13‑550.

Duties and powers of State Ethics Commission, see Section 8‑13‑320.

General duties of ethics committees with respect to investigating complaints and recommending sanctions, see Section 8‑13‑530.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 17, Criminal Prosecutions.

Attorney General’s Opinions

The Ethics Committee of the House of Representatives: may consider complaints only when referred to the Committee by a Member of the House of Representatives. 1974‑75 Op Atty Gen, No 4022, p 97.

NOTES OF DECISIONS

In general 1

1. In general

House Rule 3.12 involving suspension of House member for being indicted for crime which is felony, involves moral turpitude, carries sentence of two or more years, or violates election laws, constitutes change in standard, practice, or procedure with respect to voting, therefore requires preclearance in connection with federal Voting Rights Act. Tisdale v. Sheheen, 1991, 777 F.Supp. 1270, vacated 112 S.Ct. 366, 502 U.S. 932, 116 L.Ed.2d 317. Election Law 622

Failure to obtain necessary preclearance under Federal Voting Rights Act for House Rule 3.12 renders Rule inapplicable as it permits speaker of house to suspend representative, declare his seat vacant, or schedule special election to fill seat declared vacant pursuant to Rule. Injunction will remain in effect until state demonstrates that Rule has received preclearance. However, with respect to House member’s request for reinstatement, court allows state to seek, within 10 days, preclearance of Rule on expedited basis, and if Rule is approved, matter is ended, and only in event state fails to pursue preclearance or federal approval is not obtained may member be free to renew request for reinstatement and other relief. Tisdale v. Sheheen, 1991, 777 F.Supp. 1270, vacated 112 S.Ct. 366, 502 U.S. 932, 116 L.Ed.2d 317.

No referral from the House Ethics Committee was required, after private citizen brought complaint to House Ethics Committee alleging possible violations of the Ethics Act by the Speaker of the South Carolina House of Representatives, before Attorney General could initiate a criminal investigation into the matter. Ex parte Harrell v. Attorney General of State (S.C. 2014) 409 S.C. 60, 760 S.E.2d 808. Attorney General 7

Exercise by circuit court of subject matter jurisdiction over complaint seeking declaratory judgment that state governor had violated State Ethics Act while a member of legislature would not only contravene clear language of that statute, which generally placed investigations concerning members and staff of the legislature solely within the legislature’s purview, but would also violate separation of powers principles in state constitution. Rainey v. Haley (S.C. 2013) 404 S.C. 320, 745 S.E.2d 81. Constitutional Law 2523(1); States 28(1)

Ethics investigations concerning members and staff of the legislature are intended to be solely within the legislature’s purview, to the exclusion of the courts, except in the singular circumstance contained in provision of State Ethics Act that expressly bars an ethics committee for a house of the legislature from accepting a complaint concerning a member or candidate for the appropriate house during 51‑day period before an election in which the member or candidate is a candidate. Rainey v. Haley (S.C. 2013) 404 S.C. 320, 745 S.E.2d 81. States 28(1)

**SECTION 8‑13‑550.** Consideration of report of committee by House or Senate; action thereon.

(A) Upon receipt of a recommendation of expulsion or an appeal from an order of the ethics committee made pursuant to the provisions of Section 8‑13‑540, the presiding officer of the House or Senate shall call the House or Senate into open session at a time to be determined at his discretion or in executive session if the House or Senate chooses, as a committee of the whole, to consider the action of the ethics committee. The House or Senate shall sustain or overrule the ethics committee’s action or order other action consistent with this chapter or Chapter 17 of Title 2.

(B) Upon consideration of an ethics committee report by the House or the Senate, whether in executive or open session, the results of the consideration are a matter of public record.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2016 Act No. 282 (H.3184), Section 15, eff April 1, 2017.

Editor’s Note

2016 Act No. 282, Section 17, provides as follows:

“SECTION 17. The provisions of this act are effective as of April 1, 2017 and shall apply to complaints filed on or after April 1, 2017. However, the provisions in Section 8‑13‑310 regarding the selection of the initial members to serve on the State Ethics Commission as of April 1, 2017, and the termination of terms of the members serving on the commission as of March 31, 2017, take effect after the date of the Governor’s signature for the limited purpose of having the initial members of the reconstituted State Ethics Commission begin service on April 1, 2017. The State Ethics Commission, House Ethics Committee and Senate Ethics Committee shall maintain jurisdiction over all open complaints and investigations pending in the appropriate entity on or before March 31, 2017. The reconstituted State Ethics Commission shall have jurisdiction over open complaints and investigations pending within the State Ethics Commission as of March 31, 2017.”

Effect of Amendment

2016 Act No. 282, Section 15, amended (B), eliminating the confidentiality exception for private reprimands.

**SECTION 8‑13‑560.** Suspension of House or Senate member under indictment for particular crime; removal upon conviction; reinstatement upon acquittal.

Unless otherwise currently or hereafter provided for by House or Senate rule, as is appropriate:

(1) A member of the General Assembly who is indicted in a state court or a federal court for a crime that is a felony, a crime that involves moral turpitude, a crime that has a sentence of two or more years, or a crime that violates election laws must be suspended immediately without pay by the presiding officer of the House or Senate, as appropriate. The suspension remains in effect until the public official is acquitted, convicted, pleads guilty, or pleads nolo contendere. In the case of a conviction, the office must be declared vacant. In the event of an acquittal or dismissal of charges against the public official, he is entitled to reinstatement and back pay.

(2) If the public official is involved in an election between the time of the suspension and final conclusion of the indictment, the presiding officer of the House or Senate, or the Governor, as appropriate, shall again suspend him at the beginning of his next term. The suspended public official may not participate in the business of his public office.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

CROSS REFERENCES

Violation of a provision of this chapter not necessarily grounds for action under this section, see Section 8‑13‑1520.

Attorney General’s Opinions

Discussion of the legal status of Robert W. Harrell, as both a member and Speaker of the House following indictments of Mr. Harrell in the Court of General Sessions for Richland County. S.C. Op.Atty.Gen. (September 11, 2014) 2014 WL 4659414.

The Lieutenant Governor does not possess the authority to suspend a member of the Senate upon indictment for a crime enumerated in Section 8‑13‑560. 1994 Op Atty Gen, No. 94‑55, p. 122.

**SECTIONS 8‑13‑610 to 8‑13‑630.** Repealed by 1991 Act No. 248, Section 3, eff January 1, 1992.

Editor’s Note

Sections 8‑13‑610 through 8‑13‑630 formerly comprised Article 9 of this chapter. Article 9 now consists of Sections 8‑13‑910 through 8‑13‑930.

Former Section 8‑13‑610 was entitled “Filing of statement of economic interests” and was derived from 1980 Act No. 373, Section 1; 1977 Act No. 150 Section 6; 1976 Act No. 610; 1975 (59) 217.

Former Section 8‑13‑620 was entitled “Maintenance by candidates of records of contributions and contributors” and was derived from 1980 Act No. 373, Section 1; 1977 Act No. 150 Section 6; 1976 Act No. 610; 1975 (59) 217.

Former Section 8‑13‑630 was entitled “Amount of time after election filing requirement continues; amendment of final list” and was derived from 1980 Act No. 373, Section 1; 1977 Act No. 150 Section 6; 1976 Act No. 610; 1975 (59) 217.

ARTICLE 7

Rules of Conduct

Editor’s Note

Former Article 7, which consisted of Sections 8‑13‑410 through 8‑13‑500 was repealed by 1991 Act No. 248, Section 3, effective January 1, 1992.

**SECTION 8‑13‑700.** Use of official position or office for financial gain; disclosure of potential conflict of interest.

(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. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official’s, public member’s, or public employee’s use that does not result in additional public expense.

(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. 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;

(2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;

(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;

(5) if he is a public member, he shall furnish a copy to the presiding officer 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 shall 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 such disqualification and the reasons for it to be noted in the minutes.

(C) Where a public official, public member, or public employee or a member of his immediate family holds an economic interest in a blind trust, he is not considered to have a conflict of interest with regard to matters pertaining to that economic interest, if the existence of the blind trust has been disclosed to the appropriate supervisory office.

(D) The provisions of this section do not apply to any court in the unified judicial system.

(E) When a member of the General Assembly is required by law to appear because of his business interest as an owner or officer of the business or in his official capacity as a member of the General Assembly, this section does not apply.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2011 Act No. 40, Section 5, eff June 7, 2011.

Effect of Amendment

The 2011 amendment, in subsection (A), and in the introductory paragraph of subsection (B), substituted “family member” for “member of his immediate family”; and made other nonsubstantive changes.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 69, Ethical Duties.

Ethics Commission Opinions

Town Council member does not need to recuse from discussions, votes, or other actions relating to proposed zoning modifications in a planned community in which the council member resides and owns property, where the council member does not have a greater interest than other members of the class of property owners. Op. S.C. St. Ethics Comm., SEC A02015‑003, November 19, 2015.

A planning commission member, who owns a part interest in a commercial district restaurant and owns the property where the restaurant is located, may not participate in discussions or votes regarding zoning matters in the commercial district. The same planning commission member may participate in zoning matters as a whole in the commercial district. Op. S.C. St. Ethics Comm., SEC A02014‑002, March 19, 2014.

The Coastal Carolina Board of Trustees may fund the president’s annuity from the Coastal Education Foundation’s funds. The president may fund the executive vice president’s annuity using available discretionary “14” funds. Op. S.C. St. Ethics Comm., SEC A02012‑004, May 16, 2012.

A county planning commissioner, who first served on a mining task force as a mining representative, is not required to recuse on the changes to the county zoning mining ordinance based solely on service as a mining representative. If the county planning commissioner’s employer owns a county mine subject to the zoning ordinance, then the county planning commissioner must recuse on those mining matters that come before the planning commission. Op. S.C. St. Ethics Comm., SEC A02012‑002, March 21, 2012.

City council member, whose property is connected to a boardwalk, would be required to recuse from the council’s boardwalk upgrade discussion or vote, if the connection upgrade costs $50 or more. Op. S.C. St. Ethics Comm., SEC AO2011‑002, July 21, 2010.

Section 8‑13‑750 permits a mayor’s spouse to continue as a part‑time municipal judge. Op. S.C. St. Ethics Comm., SEC AO2011‑001, July 21, 2010.

The question of whether a public official has an economic interest in the maintenance and repair of a city asset, which is before that public official’s government entity, must be answered on a case‑by‑case basis. Op. S.C. St. Ethics Comm., SEC AO2010‑004, May 19, 2010.

City Council member, who has an economic interest in a city asset, a municipal boardwalk, and is a member of a large class of 56 property owners with an assumed economic interest in the repair and maintenance of the boardwalk, may participate in discussions and votes related to the boardwalk. Op. S.C. St. Ethics Comm., SEC AO2010‑004, May 19, 2010.

A university foundation member may bid on university building projects under the guidelines of Section 8‑13‑775, which requires the removal of the foundation member from the procurement process at the outset and recusals thereafter on matters related to the bid. Op. S.C. St. Ethics Comm., SEC AO2010‑003, March 17, 2010.

School district trustees may contract with their school district to provide construction services under the guidelines of Section 8‑13‑775, which requires the removal of the trustees from the procurement process and recusals thereafter on matters related to the contract. Such a contractual relationship would have to be disclosed on the school district trustee’s annual Statement of Economic Interests form, pursuant to Section 8‑13‑1120(A)(8). Op. S.C. St. Ethics Comm., SEC AO2009‑005, May 20, 2009.

A Trustee of Coastal Carolina University, i.e. a public member, is required to recuse from all Board of Trustee discussions, deliberations, votes and any other matters related to the economic interest of a foundation on which the Trustee also serves. Op. S.C. St. Ethics Comm., SEC AO2009‑004, Jan. 21, 2009.

The Ethics Reform Act does not prohibit a public member from serving on multiple boards, commissions or foundations. Op. S.C. St. Ethics Comm., SEC AO2009‑004, Jan. 21, 2009.

A public institution of higher learning is not a business, as defined by Section 8‑13‑100, with which three members of the Horry County Board of Education are associated due to their employment or a spouse’s employment with the institution. Op. S.C. St. Ethics Comm., SEC AO2009‑002, July 16, 2008.

The Ethics Reform Act does not prohibit family members from working or serving the same governmental entity; however, a public member and a public employee must also review the personnel policy for their governmental entity as its nepotism policy may be more restrictive than the Ethics Reform Act’s policy. Op. S.C. St. Ethics Comm., SEC AO2009‑001, July 16, 2008.

A coroner may not order autopsies to be performed by a business with which the coroner is associated due to off‑duty employment with the business. Op. S.C. St. Ethics Comm., SEC AO2008‑006, March 19, 2008.

Town council member, who owns four of nineteen commercially zoned lots in the town commercial district, may not participate in the selection of a consultant or the vote to retain a consultant to develop a master plan for the commercial district. The council member may not vote or participate in drafting or amending ordinances that affect the commercial district. The council member may provide direction and input for the consultants in public hearings as any other member of the public would be able to. Op. S.C. St. Ethics Comm., SEC AO2008‑004, Jan. 16, 2008.

Town council member, who owns one of one hundred seventy‑one lots contiguous with town owned green space, may vote on the selection of a consultant and may vote to contract with the selected consultant regarding the management plan for the town owned green space. The council member may vote and participate in drafting or amending ordinances for the town owned green space. Op. S.C. St. Ethics Comm., SEC AO2008‑004, Jan. 16, 2008.

Property which is no longer the subject of litigation requires no recusal by the parties to the original litigation when the parties to the litigation included members of the City Council as plaintiffs and the Mayor and the City as defendants. Op. S.C. St. Ethics Comm., SEC AO2008‑003, Nov. 14, 2007.

The obligation of a public body to hear a matter is outside the jurisdiction of the Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO2008‑003, Nov. 14, 2007.

A State Health Planning Committee public member is required to recuse from all Committee discussions, deliberations, votes and any other matters related to the economic interest of the public member’s affiliated entity. Op. S.C. St. Ethics Comm., SEC AO2008‑002, Sept. 19, 2007.

The large class exception found in the definition of economic interest may provide an exception to the recusal requirements of Section 8‑13‑700(B) under certain circumstances. Op. S.C. St. Ethics Comm., SEC AO2008‑002, Sept. 19, 2007.

A State Health Planning Committee member who votes on a matter that affects several entities, the member’s entity to no greater extent than that which accrues to other entities, has not violated Section 8‑13‑700(B) under the large class exception. Op. S.C. St. Ethics Comm., SEC AO2008‑002, Sept. 19, 2007.

A State Health Planning Committee member who is no longer employed by the affiliated entity or no longer sits on the entity’s board does not have a conflict because of prior employment or membership on the entity board. Op. S.C. St. Ethics Comm., SEC AO2008‑002, Sept. 19, 2007.

A committee chair is not obligated to take any action if a committee member’s vote or discussion appear to violate the Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO2008‑002, Sept. 19, 2007.

A local conservation employee is not specifically prohibited from being elected or appointed to the local conservation district board, but must follow the procedures of Section 8‑13‑700(B) when required to take actions affecting his economic interest. Op. S.C. St. Ethics Comm., SEC AO2008‑001, Sept. 19, 2007.

A state university president would not be prohibited from serving on the board of a publicly‑traded company; however, see Section 8‑13‑700(B) with respect to actions affecting the economic interest of the company. Op. S.C. St. Ethics Comm., SEC AO2007‑010, May 16, 2007.

A county council member’s firm may represent clients before county council, as long as the council member follows the recusal requirements of Section 8‑13‑700(B). Op. S.C. St. Ethics Comm., SEC AO2007‑002, Sept. 13, 2006.

A Budget and Control Board employee may start his own engineering consultation business, as long as he adheres to the off‑duty guidelines, the recusal provisions of Section 8‑13‑700(B), dual payment prohibitions of Section 8‑13‑720 and the confidentiality provisions of Section 8‑13‑725. The employee may represent a client before other state agencies, as long as he adheres to the off‑duty employment guidelines and has no official responsibility for the agency. Op. S.C. St. Ethics Comm., SEC AO2007‑001, Sept. 13, 2006.

A public employee and a public member may continue in their respective positions with the same governmental entity following their marriage without violating the nepotism prohibitions of Section 8‑13‑750. Op. S.C. St. Ethics Comm., SEC AO2006‑003, May 17, 2006.

A county council member, whose spouse is clerk of court, is advised not to vote on matters relating to his spouse’s salary or other economic interests. He may vote on the county budget as a whole. He may vote on a specific matter relating only to the clerk’s office; however, he may wish to avoid even an appearance of impropriety. Op. S.C. St. Ethics Comm., SEC AO2005‑003, May 18, 2005.

When a city council member sits on a board or commission in his official capacity, he is not precluded from voting on issues before city council which relate to the board or commission. Op. S.C. St. Ethics Comm., SEC AO2004‑003, March 17, 2004.

The question of whether a public official has an economic interest in a zoning issue before his government entity must be answered on a case‑by‑case basis. Op. S.C. St. Ethics Comm., SEC AO2004‑001, Jan. 21, 2004.

A public official does not need to recuse himself from voting, deliberating or taking any action on the rezoning of property in the general vicinity of his own. Op. S.C. St. Ethics Comm., SEC AO2004‑001, Jan. 21, 2004.

A public member who wishes to lease property from his public entity must recuse himself from taking any official action in the negotiations of the lease or in related matters. Op. S.C. St. Ethics Comm., SEC AO2003‑004, Sept. 18, 2002.

A public employee is required to follow the procedures of Section 8‑13‑700(B) if a matter comes before her which would affect her or her spouse’s economic interests. Op. S.C. St. Ethics Comm., SEC AO2003‑002, Sept. 18, 2002.

A public official must recuse himself from voting, deliberating or taking any action on the rezoning of property adjacent to his own. Op. S.C. St. Ethics Comm., SEC AO2003‑001, July 17, 2002.

When public officials sit on boards of non‑profit corporations in their official capacity as public officials, the non‑profit corporations are not businesses with which they are associated and recusal is not required. A public official should recuse from all matters in which a business with which the public official is associated has an economic interest, including those businesses with which the council member has an on‑going client relationship. Op. S.C. St. Ethics Comm., SEC AO2002‑009, Jan. 16, 2002.

A town council member who is no longer a director or an officer of a homeowner’s association does not have a conflict of interest under Section 8‑13‑700 if matters concerning the association come before the town council. If the town council member is a named defendant in a lawsuit brought by the town council, then the council member has a conflict of interest requiring recusal from discussion, deliberations and votes conducted by the town council regarding the lawsuit. Op. S.C. St. Ethics Comm., SEC AO2002‑007, Jan. 16, 2002.

A city council member is required to follow the procedures of Section 8‑13‑700(B) if a matter would affect the economic interests of the law firm with which the council member is associated, or if a matter would affect the economic interests of co‑workers with whom the council member is associated. A law firm’s client’s matter is not in and of itself a conflict but would require additional review. Op. S.C. St. Ethics Comm., SEC AO2002‑004, Nov. 14, 2001.

The economic interest of an immediate family member, an individual with whom associated and a business with which associated is imputed to the public official, public member, and public employee for purposes of Section 8‑13‑700 et seq. Op. S.C. St. Ethics Comm., SEC AO2002‑003, Nov. 14, 2001.

A Department of Transportation engineer may provide off‑duty consulting services on private development projects to local engineering design firms, as long as the engineer adheres to the off‑duty guidelines, the recusal provisions of Section 8‑13‑700(B), dual payment prohibitions of Section 8‑13‑720 and the confidentiality provisions of Section 8‑13‑725. Op. S.C. St. Ethics Comm., SEC AO2001‑005, Jan. 17, 2001.

The Board of Pharmacy part‑time inspector may engage in off‑duty employment as a pharmacist‑in‑charge as long as the inspector adheres to the guidelines for off‑duty employment and the provisions of recusal and financial disclosure set forth in Sections 8‑13‑700(B) and 8‑13‑730. The same provisions for off‑duty employment are applicable whether the temporary, part‑time inspector is a pharmacist or a pharmacist‑in‑charge. Op. S.C. St. Ethics Comm., SEC AO2001‑003, Sept. 20, 2000.

The BEST Corporation is not a business with which the Greenville County School Board Members are associated through their membership on BEST’s Board of Director, because they sit on the board in their official capacity as School Board Members and BEST is an arm of the School Board. Op. S.C. St. Ethics Comm., SEC AO2001‑001, July 19, 2000.

Public officials often sit on various boards and agencies because they are public officials; however, unless they sit on council created boards in their official capacity as council members, then the boards, non‑profits, agencies, etc. are businesses with which they are associated. A public official should recuse from all matters in which a business with which they are associated has an economic interest. Op. S.C. St. Ethics Comm., SEC AO2000‑011, May 17, 2000.

The council member’s ownership of publicly traded stock, when less than the amounts defined in business with which associated, does not create an economic interest greater than the economic interest of all other members of the larger class of stockholders. The council member’s economic interest could accrue to a greater extent if the council member were to hold publicly traded stock in the company worth $100,000 or more at fair market value and that stock constituted five percent or more of the total outstanding stock. At that point the council member would follow the recusal provisions of Section 8‑13‑700(B). Op. S.C. St. Ethics Comm., SEC AO2000‑007, Jan. 19, 2000.

“Compensated agent” is defined as any ongoing client relationship in which the public official, public member, or public employee, receives compensation for services rendered. Op. S.C. St. Ethics Comm., SEC AO2000‑004, July 21, 1999.

A public official’s, public member’s, or public employee’s participation in a matter involving a business with which the public official, public member or public employee is a “compensated agent”, gives rise to a rebuttable presumption that to take an action or make a decision which affects the economic interest of the business with which associated would be a violation of Section 8‑13‑700(A) and (B). Op. S.C. St. Ethics Comm., SEC AO2000‑004, July 21, 1999.

The State Forester must not make, participate in making, or in any way attempt to influence a governmental decision in which he has an economic interest in lands to be acquired to replace lands for Manchester State Forest. He may not disclose or use confidential information that would affect an economic interest held by himself, a member of his household, or an individual or business with whom he is associated. He is further advised to weigh the impact of the preamble to the Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO99‑002, Sept. 30, 1998.

The Chair of the Colleton County Council may submit an application for the position of County Public Works Director while continuing as Chair of the County Council provided that the abstention and disclosure provisions are followed. Op. S.C. St. Ethics Comm., SEC AO98‑012, May 20, 1998.

Colleton County Council members who are also customers and, therefore, members of Coastal Electric Cooperative Inc. do not have a conflict of interests in substance or by appearance that would preclude participation in voting upon a Colleton County initiative to purchase real property from Coastal Electric Cooperative, Inc. Op. S.C. St. Ethics Comm., SEC AO98‑011, May 20, 1998.

An agency director who serves on a committee making grant decisions affecting his agency is advised to follow the procedures of Section 8‑13‑700(B). Op. S.C. St. Ethics Comm., SEC AO98‑009, March 18, 1998.

The Ethics Reform Act does not prohibit holding more than one public office and/or employment; however, the Ethics Reform Act requires disqualification on matters affecting the economic interests of both entities and the employee/public member. Op. S.C. St. Ethics Comm., SEC AO98‑005, Nov. 19, 1997.

School District may implement and School District employees may participate in District sponsored agreement with vendor for private purchase of computer equipment. Op. S.C. St. Ethics Comm., SEC AO97‑002, Sept. 18, 1996.

A council member who is a local home builder should disqualify himself from the debate on matters in which he or a business with which he is associated has an economic interest greater than that of the affected profession or occupation. Once the procedures for disqualification are implemented, the Ethics Act provides no mechanism to “re‑enter the debate”. However, as the facts change so too does the application of the disqualification procedures. Thus, there is no impediment under the Act to “re‑enter the debate”. Op. S.C. St. Ethics Comm., SEC AO96‑003, Sept. 13, 1995.

A member of the Board of Economic Advisors is advised to follow the procedures of Section 8‑13‑700(B) if required to take action affecting his service with the S.C. Chamber of Commerce. Op. S.C. St. Ethics Comm., SEC AO96‑002, July 19, 1995.

A County Council Member should abstain from voting on matters in which he has an economic interest. When a County Council issue arises involving the member’s economic interest, the member must prepare the required report. Op. S.C. St. Ethics Comm., SEC AO95‑010, March 15, 1995.

A county councilman is advised against charging the county for staying in a personally owned residence while attending a nearby conference. Op. S.C. St. Ethics Comm., SEC AO95‑002, Sept. 21, 1994.

Textbook publishing company may furnish books and other teaching materials for trial use in classroom setting, provided the donation is not intended to influence public official’s, public member’s, or public employee’s official responsibilities. Rather than serving as actual members of textbook adoption committees, teachers who have used publisher‑donated texts should appear before these committees to present their findings and recommendations. Section 8‑13‑720 prohibits publishing companies from compensating those teachers who utilize donated texts and related materials for trial use in their classrooms. Op. S.C. St. Ethics Comm., SEC AO94‑014, Jan. 19, 1994.

County road supervisor would not be prohibited from serving on county transportation committee; however, should transportation committee be required to take action that distinctly affects his own or county’s economic interests, road supervisor may be required to comply with recusal provisions of Section 8‑13‑700(B). Op. S.C. St. Ethics Comm., SEC AO94‑010, Oct. 20, 1993.

Despite public member’s association with firm that submitted lowest bid on commission project, Ethics Reform Act does not prohibit this firm from being awarded contract, provided it is awarded in accordance with Consolidated Procurement Code and commission member complies with recusal provisions of Section 8‑13‑700(B). Op. S.C. St. Ethics Comm., SEC AO94‑008, Sept. 15, 1993.

Former DHEC employee who is currently employed by Budget and Control Board would not be prohibited from providing certain part‑time consulting and engineering services as long as such work is not part of employee’s official responsibilities and is performed in accordance with off‑duty employment guidelines. With limited exceptions, however, Section 8‑13‑740(A)(6) would preclude employee and any business with which he is associated from representing clients before other state agencies. Op. S.C. St. Ethics Comm., SEC AO94‑003, July 21, 1993.

Provided he complies with recusal provisions of Section 8‑13‑700(B) on those matters affecting his employer’s economic interests, bank employee may continue to serve as School Board Chairman even though county does business with Chairman’s employer. Pursuant to Section 8‑13‑775, Chairman may not have economic interest in contract between County and bank with which he is employed if he is authorized to perform official function relating to contract. Op. S.C. St. Ethics Comm., SEC AO94‑002, July 21, 1993.

City council member is not prohibited from participating in deliberations and votes on matters affecting contract to company in which council member’s son is a principal, since council member’s son, being adult emancipated person not residing in council member’s household, is not within definition of “immediate family” within meaning of Section 8‑13‑100. Op. S.C. St. Ethics Comm., SEC AO92‑214, June 9, 1992.

Council members who are school district employees or who are married to school district employees may participate in deliberations and votes concerning school district budget issue, since their interests are no greater than that of all other school district employees generally. However, members are advised that issues directly affecting their own economic interests to greater extent than that of other members of school district employee group would necessitate following procedures of Section 8‑13‑700(B). Op. S.C. St. Ethics Comm., SEC AO92‑201, June 9, 1992.

Director of Environmental Certification Board is not prohibited from engaging in off‑duty employment in voluntary licensing of water distribution and wastewater collection personnel, since his agency does not regulate voluntary licensees in question. Op. S.C. St. Ethics Comm., SEC AO92‑157, May 27, 1992.

Police officers may utilize uniforms, weapons, and like equipment in off‑duty security work in accordance with Section 23‑24‑10, when properly approved by law enforcement agency and governing body and when no additional public expense would be involved. Op. S.C. St. Ethics Comm., SEC AO92‑154, May 27, 1992.

County councilman who is on board of directors of company may participate in council decisions regarding which projects should be put out for bid, such participation not being prohibited by this section since all contractors would be equally affect by such contract. However, councilman’s firm is prohibited from contract with county if councilman is authorized to perform any official function on contract through writing or preparing specifications, accepting bids, awarding contract, or other action on preparation or award of such contract regardless of whether he follows provisions of Section 8‑13‑700. However, where from facts submitted it appears that county council is not authorized to perform official function, as defined in Section 8‑13‑775, with regard to contracts, such official functions being performed by County Administrator, councilman’s company would not be prohibited from bidding on contracts. Op. S.C. St. Ethics Comm., SEC AO92‑142, March 25, 1992.

Public employee is not prohibited by Ethics Reform Act from running for and holding elective office. However, employee would be advised to follow procedures of Section 8‑13‑700(B) if required to take action in one position which affects her service in the other position. Op. S.C. St. Ethics Comm., SEC AO92‑137, March 25, 1992.

Family member of school board member may continue as employee of school district without violating Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO92‑134, March 25, 1992.

School board members who have family members employed within school district may vote on general salary increases for school employees, but may not participate in salary raises for family member in question which are not general salary increases. Op. S.C. St. Ethics Comm., SEC AO92‑134, March 25, 1992.

Family member of a school board member may be hired by school district, provided member of school board does not cause employment to occur or participate in employment of family member. Op. S.C. St. Ethics Comm., SEC AO92‑134, March 25, 1992.

Architect would be prohibited from serving on design review board unless such service is authorized by statute or ordinance. If design review commissions in question specifically regulate operation of architects, Section 8‑13‑730 applies to situation, otherwise it does not. Upon determination that Section 8‑13‑730 does not preclude member of design review commission from serving, impact of Section 8‑13‑740 must be considered. Commission finding that if local county or city ordinances or regulations authorize that an architect serves on design review commission and that architect serves pursuant to such authorization, Section 8‑13‑740 would not prohibit that person or individuals or businesses with which architect is associated from representing clients before design review commission. Commission further advises that, if architect is allowed to serve in accordance with above discussion, members of his architectural firm would not be prohibited from representing clients before the commission, provided member follows procedures of Section 8‑13‑700(B). And, such member, if allowed to serve in accordance with above discussion, would not be prohibited from having jobs which require Board approval, but members advised to follow procedures of Section 8‑13‑700(B) when required to take official action or make decisions affecting those jobs. Op. S.C. St. Ethics Comm., SEC AO92‑119, March 25, 1992.

Where members of DHEC Board are health care providers, and DHEC registers health care providers for controlled substance prescriptions, monitors and takes enforcement action against violators, and health care providers register X‑ray equipment which is subject to inspections, and there are no statutory requirements that Board Members be health care providers, members of Board who are medical professionals are not prohibited by Section 8‑13‑730 from serving on Board, however they are advised to follow procedures of Section 8‑13‑700(B) on matters affecting their economic interests. Commission finds that DHEC’s regulation upon medical profession is de minimis. Since DHEC does not regulate specific way these health care professionals operate, Ethics Act does not preclude their service on DHEC Board. When conflicts of interest do arise, medical professionals serving on Board can and should follow safeguards provided in Section 8‑13‑700(b). Op. S.C. St Ethics Comm., SEC AO92‑091, March 26, 1992.

Engineer, member of County Planning Commission, who is civil engineering designer and construction coordinator for engineering firm, would not be prohibited from serving on County Planning Commission if such service is authorized by local statutes or ordinances, and, if there is such authorization, there would be no violation for engineer to serve and for members of his firm to represent clients before county agencies in order to carry out functions of their profession. If Planning Commission specifically regulates operation of engineers in county, Section 8‑13‑730 applies to situation, otherwise it is not applicable. Upon determination that Section 8‑13‑730 does not preclude member of Planning Commission from serving, impact of Section 8‑13‑740 must be considered. If engineer does not serve pursuant to statute specifically providing for service of engineer upon Planning Commission, then these provisions apply. Commission finds that if county ordinances or regulations authorize that engineer serves upon Planning commission and that engineer serves pursuant to that authorization, Section 8‑13‑740 would not prohibit such person or individuals or businesses with which he is associated from representing clients before Planning Commission. To continued service, if allowed as mentioned above, Commission advises that provisions of Section 8‑13‑700(B) would apply, and advises that, if engineer is allowed to serve in accordance with above discussion, members of his engineering firm would not be prohibited from representing clients before Planning Commission provided members follow procedures of Section 8‑13‑700(B) on all matters affecting economic interests of engineering firm. Op. S.C. St. Ethics Comm., SEC AO92‑072, March 25, 1992.

Representative of Charleston Branch Pilots’ Association would not be prohibited from serving on Commissioners of Pilotage for Port of Charleston since relationship is mandated by statute. Pilot representative would be required, however, to follow provisions of Section 8‑13‑700 on matters affecting his personal economic interest or those of Association to greater extent than those of other pilots. One‑time conflict statement is not sufficient but rather statement describing each potential conflict and its effect on representative’s economic interests would be required. Op. S.C. St. Ethics Comm., SEC AO92 092 033, Dec. 18, 1991.

Attorney General’s Opinions

Discussion of the validity of employee and supervisor incentives provided by the Horry County Budget Savings Suggestion Program. S.C. Op.Atty.Gen. (August 1, 2016) 2016 WL 4222141.

It is not a violation of South Carolina law for a Member of the General Assembly to pay for campaign services performed by a business in which the Member or a member of the Member’s family has an economic interest. S.C. Op.Atty.Gen. (December 11, 2015) 2015 WL 9406833.

It is not a violation for a South Carolina House Majority Leader to cause or influence the House Legislative Caucus to hire and pay a business in which the Majority Leader has an economic interest. S.C. Op.Atty.Gen. (December 11, 2015) 2015 WL 9406833.

A court will likely determine that an employee of a charter school receiving funds or resources from a school district where he/she sits as a board member, would violate the common law principle of the prohibition of being both master and servant in public work. S.C. Op.Atty.Gen. (February 27, 2015) 2015 WL 1093150.

Discussion of whether a person may serve on the Winthrop University Board of Trustees, where the person is the nephew of the current President of the University. S.C. Op.Atty.Gen. (May 5, 2014) 2014 WL 2120886.

With respect to the employment of the Mayor by a law firm that serves as general obligation bond counsel for the City, regardless of whether Section 5‑21‑30 has been superseded, compliance with Sections 5‑7‑130 and 8‑13‑700 is still necessary. Pursuant to section 5‑7‑130, the Mayor must disclose his/her financial interests in the law firm and refrain from participating in any matter in his capacity as Mayor which involves services the law firm provides for the City. S.C. Op.Atty.Gen. (May 30, 2012) 2012 WL 2168288.

A court may find a conflict of interest where one is simultaneously serving on the Spartanburg County Commission for Technical and Community Education and working as Director of Nursing for Fortis College. S.C. Op.Atty.Gen. (Sept. 23, 2011) 2011 WL 4592376.

Serving as both County Voter Registration/Elections Director and as a member of the GPS Commission does not constitute a dual office holding violation, but the South Carolina Ethics Commission should be consulted on whether or not a conflict of interest exists based on the specific facts of the situation. S.C. Op.Atty.Gen. (March 31, 2011) 2011 WL 1444716.

The Fort Lawn Town council member who is also a member of the Board of Directors for the Fort Lawn Community Center should refrain from voting on matters involving the Fort Lawn Community Center where an economic interest is at stake, specifically, the repair of the community center’s roof. S.C. Op.Atty.Gen. (Sept. 29, 2010) 2010 WL 3896162.

Mayor may not prohibit members of council from voting on an issue. Each member of municipal governing body is entitled to one vote each. Disqualification from voting due to potential conflicts of interest should be handled by following Section 5‑7‑130 or Section 8‑13‑460, whichever is appropriate. (Section 8‑13‑460 was repealed effective January 1, 1992; similar provisions are now found in Sections 8‑13‑700 and 8‑13‑735.) 1991 Op Atty Gen No 91‑37, p 97.

Violation of former Section 8‑13‑410, Code of Laws, 1976, prohibiting a public employee from using his official position to obtain financial gain for himself is an offense involving moral turpitude. 1980 Op Atty Gen, No 80‑13, p 36.

Violation of former Sec. 8‑13‑410 (use of official position to obtain financial gain) involves moral turpitude; governor must declare vacancy in office upon conviction of incumbent of crime involving moral turpitude even if no order of suspension issued during period of indictment, Const. Art. VI Sec. 8. 1980 Op Atty Gen, No 80‑27, p 55.

An attempt by a public officer improperly to influence an officer of a subordinate law enforcement agency to reduce a previously charged criminal offense to a lesser related or unrelated offense would constitute obstruction of justice. 1978 Op Atty Gen, No 78‑25, p 40.

A State Representative would not violate the literal language of the State Ethics Act of being employed on a part‑time basis by a federally‑funded Human Resources Commission located outside the geographical area he represents. Should the Representative be confronted with a situation in which his employment would be affected by a matter before the House, he should disclose the conflict and refrain from voting. 1976‑77 Op Atty Gen, No 77‑261, p 196.

There is no conflict of interest per se for a school teacher to serve as a member of county councils, city councils or boards of commissioners. 1976‑77 Op Atty Gen, No 77‑15, p 25.

A member of the board of DSS may not utilize that position to obtain information which he would not otherwise be able to obtain in connection with his job in the Social Security Administration. 1975‑76 Op Atty Gen, No 4327, p 149.

The 1975 Ethics Act [Chapter 13 of Title 8 of the 1976 Code] requires public officials to disclose economic interests with any political subdivision of the State. 1974‑75 Op Atty Gen, No 4133, p 201.

NOTES OF DECISIONS

In general 1

Applicability 2

1. In general

Issue regarding alleged violation of state ethics act in employee’s breach of contract action brought against employer was moot; employer’s successor was not governmental entity, such that declaration that actions taken by successor violated state ethics act would be advisory in nature, and there was no exception to mootness doctrine that would apply. Shah v. Richland Memorial Hosp. (S.C.App. 2002) 350 S.C. 139, 564 S.E.2d 681, rehearing denied, certiorari denied. Declaratory Judgment 145

The legislative intent of the 1991 Ethics Act was to amend the former Ethics Act rather than to repeal it. Pierce v. State (S.C. 2000) 338 S.C. 139, 526 S.E.2d 222. Public Employment 1053

The antibribery provision of the prior version of the Ethics Act (Section 8‑13‑490, repealed) was not implicitly repealed by enactment of the 1991 Ethics Act (Sections 8‑13‑700 et seq.), even though the 1991 Act contained no savings clause with regard to the antibribery provision of the “old” Act, and the 1992 supplement to South Carolina Code Annotated contained the Code Commissioner’s notation that provisions of the prior Act were repealed by the 1991 Act, since (1) the legislative intent was to amend the “old” Act rather than repeal it, (2) the 1991 Act did not specifically repeal the antibribery provision, although it expressly repealed other provisions of the “old” Act, and (3) the 1991 Act did not decriminalize bribery, but rather set out more stringent and focused provisions regarding what constitutes criminal conduct. State v. Thrift (S.C. 1994) 312 S.C. 282, 440 S.E.2d 341. Bribery 2

The Ethics Act (Section 8‑13‑490, repealed) which was in effect prior to the enactment of the 1991 Ethics Act (Sections 8‑13‑700 et seq.), and which required the Ethics Commission to refer complaints to the Attorney General for criminal prosecution, did not violate SC Const Art V Section 24, which provides that the Attorney General is the chief prosecuting officer of the state with authority to supervise prosecution of all criminal cases, since Section 8‑13‑490 merely allowed for evaluation by the commission as to a possible civil Ethics Act complaint, prior to any criminal referral. State v. Thrift (S.C. 1994) 312 S.C. 282, 440 S.E.2d 341. Constitutional Law 2390; Public Employment 1053

Criminal prosecution of Highway Department officials for a violation of the antibribery provision of the Ethics Act (Section 8‑13‑490, repealed), which was in effect prior to enactment of the 1991 Ethics Act (Sections 8‑13‑700 et seq.), was not barred by the 3‑year statute of limitations under the “old” Act, since the statute of limitations applies only to civil complaints before the Ethics Commission (which may be referred to the Attorney General for criminal prosecution), and the absence of a complaint to the commission does not operate as a limitation on the state’s independent right to initiate a criminal prosecution. State v. Thrift (S.C. 1994) 312 S.C. 282, 440 S.E.2d 341. Criminal Law 147

2. Applicability

Because 1991 Ethics Act was amendment of former Ethics Act, and did not repeal it, indictment and pending prosecution of state trooper under former statute for using his official position or office for financial gain, in connection with acts he allegedly committed prior to 1991 Act, remained valid after passage of 1991 Act. Pierce v. State (S.C. 2000) 338 S.C. 139, 526 S.E.2d 222. Public Employment 1063

**SECTION 8‑13‑705.** Offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official, or to influence testimony of witness; exceptions; penalty for violation.

(A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

(1) influence the discharge of a public official’s, public member’s, or public employee’s official responsibilities;

(2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or

(3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official’s, public member’s, or public employee’s official responsibilities.

(B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being:

(1) influenced in the discharge of his official responsibilities;

(2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or

(3) induced to perform or fail to perform an act in violation of his official responsibilities.

(C) A person may not, directly or indirectly, give, offer, or promise to give anything of value to another person with intent to influence testimony under oath or affirmation in a trial or other proceeding before:

(1) a court;

(2) a committee of either house or both houses of the General Assembly; or

(3) an agency, commission, or officer authorized to hear evidence or take testimony or with intent to influence a witness to fail to appear.

(D) A person may not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value in return for influencing testimony under oath or affirmation in a trial or other proceeding before:

(1) a court;

(2) a committee of either house or both houses of the General Assembly; or

(3) an agency, commission, or officer authorized to hear evidence or take testimony, or with intent to influence a witness to fail to appear.

(E) Subsections (C) and (D) of this section do not prohibit the payment or receipt of witness fees provided by law or the payment by the party on whose behalf a witness is called and receipt by a witness of the reasonable costs of travel and subsistence at trial, hearing, or proceeding, or, in the case of an expert witness, of the reasonable fee for time spent in the preparation of the opinion and in appearing or testifying.

(F) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than ten years and a fine of not more than ten thousand dollars and is permanently disqualified from being a public official or a public member. A public official, public member, or public employee who violates the provisions of this section forfeits his public office, membership, or employment.

(G) This section does not apply to political contributions unless the contributions are conditioned upon the performance of specific actions of the person accepting the contributions nor does it prohibit a parent, grandparent, or other close relative from making a gift to a child, grandchild, or other close relative for love and affection except as otherwise provided.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 13, Use of a Deadly Weapon.

S.C. Jur. Burglary Section 17, of Another.

S.C. Jur. Homicide Section 14, Definition of Murder.

S.C. Jur. Homicide Section 22, The Felony Murder Rule.

S.C. Jur. Sports Law Section 43, South Carolina Legislation.

Ethics Commission Opinions

Coastal Carolina University’s Professional Golf Management instructors may accept a limited amount of complimentary PGA merchandise to assist them in the University’s golf management program as long as the acceptance of the merchandise does not influence the instructors in the discharge of their official duties in violation of Section 8‑13‑705(8). Op. S.C. St. Ethics Comm., SEC AO2013‑001, May 15, 2013.

Public Service Commission officials and employees are governed by both the Ethics Reform Act and the Judicial Code of Conduct. Op. S.C. St. Ethics Comm., SEC AO2005‑002, Jan. 19, 2005.

A private donor’s promise to provide gratuitous funeral services that will inure to family survivors and/or the estate of those designated public employees, officials, and members is permissible under the Ethics Reform Act and advisory opinions, provided that (1) there is no intent to influence the performance of official duties; (2) the gift is not an honorarium for services performed or to be performed by individual public employees in the ordinary course of their employment; and (3) no government resources will be involved, either in the announcements, decisions, or communication of this offer. Op. S.C. St. Ethics Comm., SEC AO99‑001, July 15, 1998.

A public official/employee who is a member of an association which is also a lobbyist’s principal may not accept things of value from that association unless other members of that association are provided the same opportunity to benefit from the things of value offered or given to its members and relevant factors are assessed to conform with the purview of the Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO98‑013, June 18, 1998.

The Ethics Reform Act does not prohibit a County government from selling the services of a county employee to the private sector. Op. S.C. St. Ethics Comm., SEC AO98‑003, Nov. 19, 1997.

County Council members are advised to refrain from accepting meals and accommodations provided by vendors or other entities which have or are seeking to enter into contracts requiring approval of the Council. Op. S.C. St. Ethics Comm., SEC AO96‑007, March 20, 1996.

The State Ethics Commission would advise that complimentary tickets to a football game given to Sheriff’s Deputies in appreciation for previous work provided are prohibited only if given to influence the officers in the conduct of their official responsibilities. Op. S.C. St. Ethics Comm., SEC AO95‑011, March 15, 1995.

A public employee whose duties involve economic development may not accept anything of value if there are matters requiring action by the employee’s office or requiring the employee’s advice or recommendations which involve the economic interest of a potential corporate resident. Op. S.C. St. Ethics Comm., SEC AO95‑009, March 15, 1995.

Textbook publishing company may furnish books and other teaching materials for trial use in classroom setting, provided the donation is not intended to influence public official’s, public member’s, or public employee’s official responsibilities. Rather than serving as actual members of textbook adoption committees, teachers who have used publisher‑donated texts should appear before these committees to present their findings and recommendations. Section 8‑13‑720 prohibits publishing companies from compensating those teachers who utilize donated texts and related materials for trial use in their classrooms. Op. S.C. St. Ethics Comm., SEC AO94‑014, Jan. 19, 1994.

The Ethics Reform Act does not prohibit local businesses from establishing committee to solicit contributions from the private sector with which to purchase bulletproof vests and other equipment for Richland County Sheriff’s Department. Op. S.C. St. Ethics Comm., SEC AO94‑001, July 21, 1993.

Travel expenses for librarians to travel to book distribution warehouse may be reimbursed to librarian’s agency by vendor. Larger discount may be provided to agency without violating Ethics Reform Act. Based on facts in particular case it does not appear that purchase of such books is accomplished through RFP since purchases are made directly while at warehouse. Commission had advised against one‑party payment of travel expenses, particularly in sole source‑type procurement, therefore, Commission advises against direct payment to individuals of travel expenses for personnel to visit warehouse. Company’s extending of additional percentage discount to public entity on purchased books achieves cost saving to agency without jeopardizing ethical integrity of library personnel in accepting of value from vendor. Op. S.C. St. Ethics Comm., SEC AO92‑197, May 27, 1992.

Where in past Association had accepted contributions from vendors in support of conferences to include company‑sponsored breaks, luncheons or dinners, reduction of general conference expenses, or for booth space to display products and/or services, although Commission does not believe that solicitations such as described above are ipsa facto violations of Section 8‑13‑705, following guidelines are suggested: (1) solicitation be done either by separate foundation and/or employees who are not directly involved in agency activities regarding such businesses which are being solicited; (2) all interest potential sponsors be given opportunity to contribute; (3) contribution be made to separate fund or account, with no industry source supporting any particular activity or event; and (4) such industry source may be identified as conference supporter or sponsor on conference programs, billboards, etc., with no amounts being shown to participants. Op. S.C. St. Ethics Comm., SEC AO92‑172, May 27, 1992.

Vendors may assist in sponsorship of conference by contributing to general conference support fund without supporting any particular event. Vendors may pay fees for a booth space with such fees being utilized for general conference support. Op. S.C. St. Ethics Comm., SEC AO92‑172, May 27, 1992.

It is inappropriate for public employee, Highway Department Engineering Technician, to be accepting compensation from applicant for encroachment permit which employee would be responsible for inspecting. Consequently employee advised not to engage in such off‑duty work with developers or contractors, for which he would be paid, whose work he is responsible for inspecting in course of his responsibilities. Op. S.C. St. Ethics Comm., SEC AO92‑066, Feb. 26, 1992.

In light of the fact that business firms which are asked to help defray costs of event may be doing business with or seek to do business with agency or organization involved, Commission suggests following guidelines for any such solicitation: (1) solicitation be done either by separate foundation and/or by employees not directly involved in agency activities regarding such businesses; (2) all interested potential sponsors be given an opportunity to contribute; (3) contribution be made to separate fund or account, with no industry source supporting any particular activity or event; and (4) such industry source may be identified as conference supporter or sponsor on conference programs, billboards, etc. with no amounts being shown to participants. Op. S.C. St. Ethics Comm., SEC AO92‑061, Feb. 26, 1992.

State agencies may contract with other agencies to reimburse agency for travel and/or lodging costs associated with providing services. (2) State employees may not receive honoraria for giving speech. (3) State employees who serve on national councils or task forces may have travel expenses paid by such organizations. Payment of expenses for providing speeches or service to other organizations should be reimbursed to employee’s agency for reimbursement through it to employee. (4) employees attending meal or hospitality functions at conferences sponsored by vendors would not be prohibited from accepting such hospitality if it is provided to all conference participants. (5) meals provided by vendors at vendor‑sponsored shows would not be prohibited, unless given to influence. Op. S.C. St. Ethics Comm., SEC AO92‑061, Feb. 26, 1992.

Employees of state Forestry Commission may receive travel and training provided by federal government, sister states, or national association, provided such expenses incurred by employees participating in meetings are in accordance with state travel reimbursement policies. Op. S.C. St. Ethics Comm., SEC AO92‑058, Jan. 27, 1992.

Travel expenses for review team to travel to view a manufacturing facility may be paid by vendors only if required in RFP and provided that such expenses are in accordance with state travel policies and regulations; there does not appear to be any undue influence which could be generated through requirement for all potential vendors to provide travel costs involved. Op. S.C. St. Ethics Comm., SEC AO92‑046, Jan. 27, 1992.

County officials who receive anything of value from lobbyist principal are required to disclose such transaction on Statement of Economic Interests. Anything of value given by donor who would not have given it but for the recipient’s public position, or who is regulated by or who seeks contractual arrangement with recipient’s agency, is required to disclose such on Statement of Economic Interests. Whether particular thing of value is given to influence official action must be determined on case‑by‑case analysis. Op. S.C. St. Ethics Comm., SEC AO92‑031, Dec. 18, 1991.

Attorney General’s Opinions

Compliance with the requirements set forth in Section 2‑17‑90 does not necessarily immunize one from violation of Section 8‑13‑705; whether a violation has occurred depends on the specific factual circumstances of the situation at issue. S.C. Op.Atty.Gen. (March 29, 2011) 2011 WL 1444722.

A State Representative would not violate the literal language of the State Ethics Act of being employed on a part‑time basis by a federally‑funded Human Resources Commission located outside the geographical area he represents. Should the Representative be confronted with a situation in which his employment would be affected by a matter before the House, he should disclose the conflict and refrain from voting. 1976‑77 Op Atty Gen, No 77‑261, p 196.

There is no conflict of interest per se for a school teacher to serve as a member of county councils, city councils or boards of commissioners. 1976‑77 Op Atty Gen, No 77‑15, p 25.

NOTES OF DECISIONS

In general 1

1. In general

The antibribery provision of the prior version of the Ethics Act (Section 8‑13‑490, repealed) was not implicitly repealed by enactment of the 1991 Ethics Act (Sections 8‑13‑700 et seq.), even though the 1991 Act contained no savings clause with regard to the antibribery provision of the “old” Act, and the 1992 supplement to South Carolina Code Annotated contained the Code Commissioner’s notation that provisions of the prior Act were repealed by the 1991 Act, since (1) the legislative intent was to amend the “old” Act rather than repeal it, (2) the 1991 Act did not specifically repeal the antibribery provision, although it expressly repealed other provisions of the “old” Act, and (3) the 1991 Act did not decriminalize bribery, but rather set out more stringent and focused provisions regarding what constitutes criminal conduct. State v. Thrift (S.C. 1994) 312 S.C. 282, 440 S.E.2d 341. Bribery 2

The Ethics Act (Section 8‑13‑490, repealed) which was in effect prior to the enactment of the 1991 Ethics Act (Sections 8‑13‑700 et seq.), and which required the Ethics Commission to refer complaints to the Attorney General for criminal prosecution, did not violate SC Const Art V Section 24, which provides that the Attorney General is the chief prosecuting officer of the state with authority to supervise prosecution of all criminal cases, since Section 8‑13‑490 merely allowed for evaluation by the commission as to a possible civil Ethics Act complaint, prior to any criminal referral. State v. Thrift (S.C. 1994) 312 S.C. 282, 440 S.E.2d 341. Constitutional Law 2390; Public Employment 1053

**SECTION 8‑13‑710.** Reporting of particular gifts received by public employee, official, or member on statement of economic interests.

(A) Unless provided by subsection (B) and in addition to the requirements of Chapter 17 of Title 2, a public official or public employee required to file a statement of economic interests under Section 8‑13‑1110 who accepts anything of value from a lobbyist’s principal must report the value of anything received on his statement of economic interests pursuant to Section 8‑13‑1120(A)(9).

(B) A public official, public member, or public employee required 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, public member’s, or public employee’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 other immediate family member for love and affection.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

CROSS REFERENCES

Exception to reporting requirement for events to which entire legislative body invited, see Section 8‑13‑1125.

Ethics Commission Opinions

Public officials, public members and public employees who file Statements of Economic Interests are advised to disclose any gift received as a result of their public office or position. Op. S.C. St. Ethics Comm., SEC AO2002‑008, Jan. 16, 2002.

More than one lobbyist’s principal may co‑host a single function and share the expense of food, drink, entertainment, lodging, and transportation, so long as the different hosts are clearly identified and the per lobbyist principal per recipient spending caps and group invitations rules (including attendance out‑of‑state) are met. Op. S.C. St. Ethics Comm., SEC AO99‑005, March 17, 1999.

A public official/employee who is a member of an association which is also a lobbyist’s principal may not accept things of value from that association unless other members of that association are provided the same opportunity to benefit from the things of value offered or given to its members and relevant factors are assessed to conform with the purview of the Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO98‑013, June 18, 1998.

The State Ethics Commission would advise that complimentary tickets to a football game given to Sheriff’s Deputies in appreciation for previous work provided are prohibited only if given to influence the officers in the conduct of their official responsibilities. Op. S.C. St. Ethics Comm., SEC AO95‑011, March 15, 1995.

Non‑profit trade association’s ad hoc espousal of position on legislation or other official State action does not constitute lobbying, and neither association nor its board members or officers are lobbyists or lobbyist’s principals within meaning of Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO94‑005, Aug. 18, 1993.

County officials who receive anything of value from lobbyist principal are required to disclose such transaction on Statement of Economic Interests. Anything of value given by donor who would not have given it but for the recipient’s public position, or who is regulated by or who seeks contractual arrangement with recipient’s agency, is required to disclose such on Statement of Economic Interests. Whether particular thing of value is given to influence official action must be determined on case‑by‑case analysis. Op. S. C. St Ethics Comm., SEC AO92‑031, Dec. 18, 1991.

**SECTION 8‑13‑715.** Speaking engagements of public officials, members or employees; only expense reimbursement permitted; authorization for reimbursement of out‑of‑state expenses.

A public official, public member, or public employee acting in an official capacity may not receive anything of value for speaking before a public or private group. A public official, public member, or public employee is not prohibited by this section from accepting a meal provided in conjunction with a speaking engagement where all participants are entitled to the same meal and the meal is incidental to the speaking engagement. Notwithstanding the limitations of Section 2‑17‑90, a public official, public member, or public employee may receive payment or reimbursement for actual expenses incurred for a speaking engagement. The expenses must be reasonable and must be incurred in a reasonable time and manner in which to accomplish the purpose of the engagement. A public official, public member, or public employee required to file a statement of economic interests under Section 8‑13‑1110 must report on his statement of economic interests the organization which paid for or reimbursed actual expenses, the amount of such payment or reimbursement, and the purpose, date, and location of the speaking engagement. A public official, public member, or public employee who is not required to file a statement of economic interests but who is paid or reimbursed actual expenses for a speaking engagement must report this same information in writing to the chief administrative official or employee of the agency with which the public official, public member, or public employee is associated.

If the expenses are incurred out of state, the public official, public member, or public employee incurring the expenses must receive prior written approval for the payment or reimbursement from:

(1) the Governor, in the case of a public official of a state agency who is not listed in an item in this section;

(2) a statewide constitutional officer, in the case of himself;

(3) the President Pro Tempore of the Senate, in the case of a member of the Senate;

(4) the Speaker of the House, in the case of a member of the House of Representatives; or

(5) the chief executive of the governmental entity in all other cases.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Section 21, effective upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995.

Effect of Amendment

The 1995 amendment rewrote this section.

Ethics Commission Opinions

The Ethics Reform Act does not prohibit a County government from selling the services of a county employee to the private sector. Op. S.C. St. Ethics Comm., SEC AO98‑003, Nov. 19, 1997.

Non‑profit trade association’s ad hoc espousal of position on legislation or other official State action does not constitute lobbying, and neither association nor its board members or officers are lobbyists or lobbyist’s principals within meaning of Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO94‑005, Aug. 18, 1993.

Vendors may assist in sponsorship of conference by contributing to general conference support fund without supporting any particular event. Vendors may pay fees for a booth space with such fees being utilized for general conference support. Op. S.C. St. Ethics Comm., SEC AO92‑172, May 27, 1992.

It is inappropriate for public employee, Highway Department Engineering Technician, to be accepting compensation from applicant for encroachment permit which employee would be responsible for inspecting. Consequently employee advised not to engage in such off‑duty work with developers or contractors, for which he would be paid, whose work he is responsible for inspecting in course of his responsibilities. Op. S.C. St. Ethics Comm., SEC AO92‑066, Feb. 26, 1992.

State agencies may contract with other agencies to reimburse agency for travel and/or lodging costs associated with providing services. (2) State employees may not receive honoraria for giving speech. (3) State employees who serve on national councils or task forces may have travel expenses paid by such organizations. Payment of expenses for providing speeches or service to other organizations should be reimbursed to employee’s agency for reimbursement through it to employee. (4) employees attending meal or hospitality functions at conferences sponsored by vendors would not be prohibited from accepting such hospitality if it is provided to all conference participants. (5) meals provided by vendors at vendor‑sponsored shows would not be prohibited, unless given to influence. Op. S.C. St. Ethics Comm., SEC AO92‑061, Feb. 26, 1992.

Faculty members are prohibited from accepting anything of value other than meal incidental to giving of speech or presentation given “in official capacity”, where meal is provided to all other persons participating in same event. Commission notes for clarification that “speaking before public or private group” encompasses not only traditional breakfast or luncheon speech but also more extended participation as speaker at workshop, seminar, or training session or as panel participant. Group inviting public employee could contract with employee’s agency to reimburse agency for travel expenses, employee could then be reimbursed by agency in accordance with agency travel reimbursement policies and procedures. Op. S.C. St. Ethics Comm., SEC AO92‑057, Jan. 27, 1992.

Public employee would not be prohibited from accepting meal incidental to giving speech in official capacity at meal function where meal is provided to all other persons participating in same event. Agency would not be prohibited by Ethics Reform Act of 1991 from charging organization for costs associated with presentation as reimbursement to agency for program costs. Op. S.C. St. Ethics Comm., SEC AO92‑023, Jan. 27, 1992.

**SECTION 8‑13‑720.** Offering, soliciting, or receiving money for advice or assistance of public official, member or employee.

No person may offer or pay to a public official, public member, or public employee and no public official, public member, or public employee may solicit or receive money in addition to that received by the public official, public member, or public employee in his official capacity for advice or assistance given in the course of his employment as a public official, public member, or public employee.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

Ethics Commission Opinions

A Budget and Control Board employee may start his own engineering consultation business, as long as he adheres to the off‑duty guidelines, the recusal provisions of Section 8‑13‑700(B), dual payment prohibitions of Section 8‑13‑720 and the confidentiality provisions of Section 8‑13‑725. The employee may represent a client before other state agencies, as long as he adheres to the off‑duty employment guidelines and has no official responsibility for the agency. Op. S.C. St. Ethics Comm., SEC AO2007‑001, Sept. 13, 2006.

A Department of Transportation engineer may provide off‑duty consulting services on private development projects to local engineering design firms, as long as the engineer adheres to the off‑duty guidelines, the recusal provisions of Section 8‑13‑700(B), dual payment prohibitions of Section 8‑13‑720 and the confidentiality provisions of Section 8‑13‑725. Op. S.C. St. Ethics Comm., SEC AO2001‑005, Jan. 17, 2001.

A private donor’s promise to provide gratuitous funeral services that will inure to family survivors and/or the estate of those designated public employees, officials, and members is permissible under the Ethics Reform Act and advisory opinions, provided that (1) there is no intent to influence the performance of official duties; (2) the gift is not an honorarium for services performed or to be performed by individual public employees in the ordinary course of their employment; and (3) no government resources will be involved, either in the announcements, decisions, or communication of this offer. Op. S.C. St. Ethics Comm., SEC AO99‑001, July 15, 1998.

A community oriented non‑profit organization may award law enforcement officers and firefighters who are injured in the line of duty with plaques and monetary awards if the decision to do so is made by an impartial selection committee from a qualified pool of candidates. Op. S.C. St. Ethics Comm., SEC AO97‑004, Feb. 19, 1997.

The Spartanburg Children’s Shelter, Inc. is prohibited from giving $12,000.00 to an employee of the Department of Social Services in addition to that received by the employee in her official capacity for advice or assistance given in the course of employment as a public employee. Op. S.C. St. Ethics Comm., SEC AO96‑004, Nov. 15, 1995.

Textbook publishing company may furnish books and other teaching materials for trial use in classroom setting, provided the donation is not intended to influence public official’s, public member’s, or public employee’s official responsibilities. Rather than serving as actual members of textbook adoption committees, teachers who have used publisher‑donated texts should appear before these committees to present their findings and recommendations. Section 8‑13‑720 prohibits publishing companies from compensating those teachers who utilize donated texts and related materials for trial use in their classrooms. Op. S.C. St. Ethics Comm., SEC AO94‑014, Jan. 19, 1994.

Former DHEC employee who is currently employed by Budget and Control Board would not be prohibited from providing certain part‑time consulting and engineering services as long as such work is not part of employee’s official responsibilities and is performed in accordance with off‑duty employment guidelines. With limited exceptions, however, Section 8‑13‑740(A)(6) would preclude employee and any business with which he is associated from representing clients before other state agencies. Op. S.C. St. Ethics Comm., SEC AO94‑003, July 21, 1993.

Law enforcement agency would not be prohibited from accepting rewards from military installations for apprehending deserters from installations, there being no reason why such reward could not be accepted by office to assist office in carrying out its mandated responsibilities since no employee receives any personal benefit. Op. S.C. St. Ethics Comm., SEC AO92‑122, March 25, 1992.

**SECTION 8‑13‑725.** Use or disclosure of confidential information by public official, member, or employee for financial gain; examination of private records; penalties.

(A) A public official, public member, or public employee may not use or disclose confidential information gained in the course of or by reason of his official responsibilities in a way that would affect an economic interest held by him, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

(B)(1) A public official, public member, or public employee may not wilfully examine, or aid and abet in the wilful examination of, a tax return of a taxpayer, a worker’s compensation record, a record in connection with health or medical treatment, social services records, or other 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.

(2) A person convicted of violating this subsection must be fined not more than five thousand dollars, or imprisoned not more than five years, or both, and shall reimburse the costs of prosecution. Upon conviction, the person also must be discharged immediately from his public capacity as an official, member, or employee.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1997 Act No. 114, Section 3, eff June 13, 1997.

Effect of Amendment

The 1997 amendment rewrote this section.

Ethics Commission Opinions

A university foundation member may bid on university building projects under the guidelines of Section 8‑13‑775, which requires the removal of the foundation member from the procurement process at the outset and recusals thereafter on matters related to the bid. Op. S.C. St. Ethics Comm., SEC AO2010‑003, March 17, 2010.

A Budget and Control Board employee may start his own engineering consultation business, as long as he adheres to the off‑duty guidelines, the recusal provisions of Section 8‑13‑700(B), dual payment prohibitions of Section 8‑13‑720 and the confidentiality provisions of Section 8‑13‑725. The employee may represent a client before other state agencies, as long as he adheres to the off‑duty employment guidelines and has no official responsibility for the agency. Op. S.C. St. Ethics Comm., SEC AO2007‑001, Sept. 13, 2006.

The economic interest of an immediate family member, an individual with whom associated and a business with which associated is imputed to the public official, public member, and public employee for purposes of Section 8‑13‑700 et seq. Op. S.C. St. Ethics Comm., SEC AO2002‑003, Nov. 14, 2001.

A Department of Transportation engineer may provide off‑duty consulting services on private development projects to local engineering design firms, as long as the engineer adheres to the off‑duty guidelines, the recusal provisions of Section 8‑13‑700(B), dual payment prohibitions of Section 8‑13‑720 and the confidentiality provisions of Section 8‑13‑725. Op. S.C. St. Ethics Comm., SEC AO2001‑005, Jan. 17, 2001.

A former public employee may not take employment with a contractor until one year has expired from the time that the contractor had procurement activity with the former employer in a matter in which he “directly and substantially participated.” Op. S.C. St. Ethics Comm., SEC AO99‑003, Sept. 30,1998.

A former public employee is prohibited from lobbying the agency or representing clients before the agency on a matter in which he “directly and substantially participated” for a period of twelve months from leaving employment. Op. S.C. St. Ethics Comm., SEC AO99‑003, Sept. 30,1998.

The State Forester must not make, participate in making, or in any way attempt to influence a governmental decision in which he has an economic interest in lands to be acquired to replace lands for Manchester State Forest. He may not disclose or use confidential information that would affect an economic interest held by himself, a member of his household, or an individual or business with whom he is associated. He is further advised to weigh the impact of the preamble to the Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO99‑002, Sept. 30, 1998.

Employee of Public Service Commission may do off‑duty work with regulated freight mover, since her position does not create conflict; however, she is required to file Statement of Economic Interests. Public employee may engage in outside employment consistent with established guidelines that no public materials or equipment be utilized, with some exceptions; that such work be engaged in on employee’s own time; that work does not interfere with needs of agency; and that public position is not utilized to obtain or continue employment. Op. S.C. St. Ethics Comm., SEC AO92‑093, Feb. 26, 1992.

**SECTION 8‑13‑730.** Membership on or employment by regulatory agency of person associated with regulated business.

Unless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated. An employee of the regulatory agency which regulates a business with which he is associated annually shall file a statement of economic interests notwithstanding the provisions of Section 8‑13‑1110. No person may be an employee of the regulatory agency which regulates a business with which he is associated if this relationship creates a continuing or frequent conflict with the performance of his official responsibilities.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

Ethics Commission Opinions

The Board of Pharmacy part‑time inspector may engage in off‑duty employment as a pharmacist‑in‑charge as long as the inspector adheres to the guidelines for off‑duty employment and the provisions of recusal and financial disclosure set forth in Sections 8‑13‑700(B) and 8‑13‑730. The same provisions for off‑duty employment are applicable whether the temporary, part‑time inspector is a pharmacist or a pharmacist‑in‑charge. Op. S.C. St. Ethics Comm., SEC AO2001‑003, Sept. 20, 2000.

The Ethics Reform Act does not prohibit holding more than one public office and/or employment; however, the Ethics Reform Act requires disqualification on matters affecting the economic interests of both entities and the employee/public member. Op. S.C. St. Ethics Comm., SEC AO98‑005, Nov. 19, 1997.

Director of Environmental Certification Board is not prohibited from engaging in off‑duty employment in voluntary licensing of water distribution and wastewater collection personnel, since his agency does not regulate voluntary licensees in question. Op. S.C. St. Ethics Comm., SEC AO92‑157, May 27, 1992.

Architect would be prohibited from serving on design review board unless such service is authorized by statute or ordinance. If design review commissions in question specifically regulate operation of architects, Section 8‑13‑730 applies to situation, otherwise it does not. Upon determination that Section 8‑13‑730 does not preclude member of design review commission from serving, impact of Section 8‑13‑740 must be considered. Commission finding that if local county or city ordinances or regulations authorize that an architect serves on design review commission and that architect serves pursuant to such authorization, Section 8‑13‑740 would not prohibit that person or individuals or businesses with which architect is associated from representing clients before design review commission. Commission further advises that, if architect is allowed to serve in accordance with above discussion, members of his architectural firm would not be prohibited from representing clients before the commission, provided member follows procedures of Section 8‑13‑700(B). And, such member, if allowed to serve in accordance with above discussion, would not be prohibited from having jobs which require Board approval, but members advised to follow procedures of Section 8‑13‑700(B) when required to take official action or make decisions affecting those jobs. Op. S.C. St. Ethics Comm., SEC AO92‑119, March 25, 1992.

Employee of Public Service Commission may do off‑duty work with regulated freight mover, since her position does not create conflict; however, she is required to file Statement of Economic Interests. Public employee may engage in outside employment consistent with established guidelines that no public materials or equipment be utilized, with some exceptions; that such work be engaged in on employee’s own time; that work does not interfere with needs of agency; and that public position is not utilized to obtain or continue employment. Op. S.C. St. Ethics Comm., SEC AO92‑093, Feb. 26, 1992.

Where members of DHEC Board are health care providers, and DHEC registers health care providers for controlled substance prescriptions, monitors and takes enforcement action against violators, and health care providers register X‑ray equipment which is subject to inspections, and there are no statutory requirements that Board Members be health care providers, members of Board who are medical professionals are not prohibited by Section 8‑13‑730 from serving on Board, however they are advised to follow procedures of Section 8‑13‑700(B) on matters affecting their economic interests. Commission finds that DHEC’s regulation upon medical profession is de minimis. Since DHEC does not regulate specific way these health care professionals operate, Ethics Act does not preclude their service on DHEC Board. When conflicts of interest do arise, medical professionals serving on Board can and should follow safeguards provided in Section 8‑13‑700(b). Op. S.C. St. Ethics Comm., SEC AO92‑091, March 26, 1992.

Engineer, member of County Planning Commission, who is civil engineering designer and construction coordinator for engineering firm, would not be prohibited from serving on County Planning Commission if such service is authorized by local statutes or ordinances, and, if there is such authorization, there would be no violation for engineer to serve and for members of his firm to represent clients before county agencies in order to carry out functions of their profession. If Planning Commission specifically regulates operation of engineers in county, Section 8‑13‑730 applies to situation, otherwise it is not applicable. Upon determination that Section 8‑13‑730 does not preclude member of Planning Commission from serving, impact of Section 8‑13‑740 must be considered. If engineer does not serve pursuant to statute specifically providing for service of engineer upon Planning Commission, then these provisions apply. Commission finds that if county ordinances or regulations authorize that engineer serves upon Planning commission and that engineer serves pursuant to that authorization, Section 8‑13‑740 would not prohibit such person or individuals or businesses with which he is associated from representing clients before Planning Commission. To continued service, if allowed as mentioned above, Commission advises that provisions of Section 8‑13‑700(B) would apply, and advises that, if engineer is allowed to serve in accordance with above discussion, members of his engineering firm would not be prohibited from representing clients before Planning Commission provided members follow procedures of Section 8‑13‑700(B) on all matters affecting economic interests of engineering firm. Op. S.C. St. Ethics Comm., SEC AO92‑072, March 25, 1992.

Representative of Charleston Branch Pilots’ Association would not be prohibited from serving on Commissioners of Pilotage for Port of Charleston since relationship is mandated by statute. Pilot representative would be required, however, to follow provisions of Section 8‑13‑700 on matters affecting his personal economic interest or those of Association to greater extent than those of other pilots. One‑time conflict statement is not sufficient but rather statement describing each potential conflict and its effect on representative’s economic interests would be required. Op. S.C. St. Ethics Comm., SEC AO92‑033, Dec. 18, 1991.

Attorney General’s Opinions

There is no conflict of interest per se for a school teacher to serve as a member of county councils, city councils or boards of commissioners. 1976‑77 Op Atty Gen, No 77‑15, p 25.

An owner or employee of a day‑care center or a spouse of one who is an owner or employee of a day‑care center may not serve as a member of the South Carolina Board of Social Services, as this would be prohibited under the State Ethics Law. 1976‑77 Op Atty Gen, No 77‑182, p 140.

A State Representative would not violate the literal language of the State Ethics Act of being employed on a part‑time basis by a federally‑funded Human Resources Commission located outside the geographical area he represents. Should the Representative be confronted with a situation in which his employment would be affected by a matter before the House, he should disclose the conflict and refrain from voting. 1976‑77 Op Atty Gen, No 77‑261, p 196.

The Commission on Consumer Affairs is a regulatory commission so as to come within the proscriptions of former Section 8‑13‑450, Code of Laws of S.C., 1976, which provides that, unless otherwise provided by law, no person shall serve as a member or an employee of a governmental regulatory commission that regulates any business with which that person is associated. 1976‑77 Op Atty Gen, No 77‑300, p 227.

Former Section 8‑13‑450 would prevent the president of a finance company under the supervision of the South Carolina Department of Consumer Affairs from serving as a member of the Commission on Consumer Affairs. 1976‑77 Op Atty Gen, No 77‑387, p 319.

NOTES OF DECISIONS

Under former law 1

1. Under former law

Members of the Coastal Council were not subject to Section 8‑13‑450 of the State Ethics Law, which bars from membership individuals who are associated with businesses affected by the council, since the council did not regulate the operation of such business, but rather regulated the “critical area” environment; in those instances in which a conflict of interest does arise, the State Ethics Act provides adequate safeguards to protect against a member’s involvement in a case in which he has an interest. South Carolina Coastal Council v. South Carolina State Ethics Com’n (S.C. 1991) 306 S.C. 41, 410 S.E.2d 245.

**SECTION 8‑13‑735.** Participation in decision affecting personal economic interests by one employed by and serving on governing body of governmental entity.

(A) Except as provided in subsection (B), no person who serves at the same time:

(1) on the governing body of a state, county, municipal, or political subdivision board or commission; and

(2) as an employee of the same board or commission or in a position subject to the control of that board or commission may make or participate in making a decision that affects his economic interests.

(B) No person shall serve at the same time as:

(1) a nonappointed member of the governing body of the board or commission for a water or sewer district or a nonprofit water or sewer corporation or company organized pursuant to the provisions of state law; and

(2)(a) an employee of the same board, commission, corporation, or company; or

(b) in a position subject to the control of that board, commission, corporation, or company; or

(c) in a decision‑making position concerning the operation and functions of that board, commission, corporation, or company.

(C)(1) Any person violating the provisions of subsection (B) may be assessed a civil penalty of fifty dollars per day to be remitted to the general fund of the board, commission, corporation, or company.

(2) If a lawsuit is brought to force the person to vacate either his position held pursuant to subsection (B)(1) or subsection (B)(2), and the person is found in circuit court to have violated subsection (B), the person must pay the civil penalty in subsection (C)(1) plus court costs, attorney’s fees, and any damages required by the court.

(3) Any individual or entity served by the board, commission, corporation, or company has standing to bring a lawsuit in the circuit court pursuant to this subsection.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2011 Act No. 11, Section 1, eff April 7, 2011.

Effect of Amendment

The 2011 amendment rewrote this section.

Ethics Commission Opinions

A local conservation employee is not specifically prohibited from being elected or appointed to the local conservation district board, but must follow the procedures of Section 8‑13‑700(B) when required to take actions affecting his economic interest. Op. S.C. St. Ethics Comm., SEC AO2008‑001, Sept. 19, 2007.

Public employee is not prohibited by Ethics Reform Act from running for and holding elective office. However, employee would be advised to follow procedures of Section 8‑13‑700(B) if required to take action in one position which affects her service in the other position. Op. S.C. St. Ethics Comm., SEC AO92‑137, March 25, 1992.

Attorney General’s Opinions

An indictment for a violation of section 8‑13‑735 (participation in decision affecting personal economic interests by one employed by and serving on governing body of governmental entity) is not a crime of moral turpitude and would not authorize the Governor to suspend the individual and declare the office vacant. S.C. Op.Atty.Gen. (July 17, 2012) 2012 WL 3057450.

Mayor may not prohibit members of council from voting on an issue. Each member of municipal governing body is entitled to one vote each. Disqualification from voting due to potential conflicts of interest should be handled by following Section 5‑7‑130 or Section 8‑13‑460, whichever is appropriate. (Section 8‑13‑460 was repealed effective January 1, 1992; similar provisions are now found in Sections 8‑13‑700 and 8‑13‑735.) 1991 Op Atty Gen No 91‑37, p 97.

A member of a county council should be excused from voting or deliberating on financial issues that affect his immediate family. 1983 Op Atty Gen, No. 83‑25, p. 42.

Aside from former Section 8‑13‑460, there are no provisions that would restrict a teacher or a spouse of a teacher who is a member of a county council, from voting on education matters. 1983 Op Atty Gen, No. 83‑24, p. 41.

A position of employment with the State is not incompatible with the holding of a position of public office with the S. C. General Assembly; a public official or public employee is prohibited from using his official position or office to obtain financial gain for himself; membership on the Committee on Mental Health and Mental Retardation is not an office within the constitutional proscriptions on dual office holding. 1978 Op Atty Gen, No 78‑142, p 174.

A State Representative would not violate the literal language of the State Ethics Act of being employed on a part‑time basis by a federally‑funded Human Resources Commission located outside the geographical area he represents. Should the Representative be confronted with a situation in which his employment would be affected by a matter before the House, he should disclose the conflict and refrain from voting. 1976‑77 Op Atty Gen, No 77‑261, p 196.

There is no conflict of interest per se for a school teacher to serve as a member of county councils, city councils or boards of commissioners. 1976‑77 Op Atty Gen, No 77‑15, p 25.

**SECTION 8‑13‑740.** Representation of another by a public official, member, or employee before a governmental entity.

(A)(1) A public official occupying statewide office, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before a governmental entity, except as otherwise required by law.

(2) A member of the General Assembly, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before a governmental entity, except:

(a) as required by law;

(b) before a court under the unified judicial system; or

(c) in a contested case, as defined in Section 1‑23‑310, excluding a contested case for a rate or price fixing matter before the South Carolina Public Service Commission or South Carolina Department of Insurance, or in an agency’s consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing.

(3) A public member occupying statewide office, an individual with whom he is associated, or a business with which he is associated may not knowingly represent another person before the same unit or division of the governmental entity for which the public member has official responsibility, except as otherwise required by law.

(4) 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:

(a) as required by law; or

(b) before a court under the unified judicial system.

(5) A public official, public member, or public employee of a municipality may not knowingly represent a person before any agency, unit, or subunit of that municipality for which the public official, public member, or public employee has official responsibility except as required by law.

(6) A public employee, other than those specified in items (4) and (5) of this subsection, receiving compensation other than reimbursement or per diem payments for his official duties, an individual with whom he is associated, or a business with which he is associated may not knowingly represent a person before an entity on the same level of government for which the public official, public member, or public employee has official responsibility except:

(a) as required by law;

(b) before a court under the unified judicial system; or

(c) in a contested case, as defined in Section 1‑23‑310, excluding a contested case for a rate or price fixing matter before the South Carolina Public Service Commission or the South Carolina Department of Insurance, or in an agency’s consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing.

(7) The restrictions set forth in items (1) through (6) of this subsection do not apply to:

(a) purely ministerial matters which do not require discretion on the part of the governmental entity before which the public official, public member, or public employee is appearing;

(b) representation by a public official, public member, or public employee in the course of the public official’s, public member’s, or public employee’s official duties;

(c) representation by the public official, public member, or public employee in matters relating to the public official’s, public member’s or public employee’s personal affairs or the personal affairs of the public official’s, public member’s, or public employee’s immediate family.

(8) A state, county, or municipal public official, public member, or public employee, including a person serving on an agency, unit, or subunit of a governmental entity shall not be required to resign or otherwise vacate his seat or position due to a conflict of interest that arises under this section as long as notice of the possible conflict of interest is given and he complies with the recusal requirements of Section 8‑13‑700(B). A governmental entity includes, but is not limited to, a planning board or zoning commission.

(9) Notwithstanding another provision of law, a governmental entity shall not prohibit a state, county, or municipal public official, public member, or public employee, including a person serving on an agency, unit, or subunit of a governmental entity from service in office or employment based solely on race, color, national origin, religion, sex, disability, or occupation.

(B) A member of the General Assembly, when he, an individual with whom he is associated, or a business with which he is associated represents a client for compensation as permitted by subsection (A)(2)(c), must file within his annual statement of economic interests a listing of fees earned, services rendered, names of persons represented, and the nature of contacts made with the governmental entities.

(C) A member of the General Assembly may not vote on the section of that year’s general appropriation bill relating to a particular agency or commission if the member, an individual with whom he is associated, or a business with which he is associated has represented any client before that agency or commission as permitted by subsection (A)(2)(c) within one year prior to such vote. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1993 Act No 181, Sections 70, 71, eff July 1, 1995; 1995 Act No. 6, Sections 22, 23, effective upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995; 1995 Act No. 6, Section 24, eff July 1, 1995 (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995; 2007 Act No. 10, Sections 1 to 3, eff April 12, 2007.

Effect of Amendment

The 1993 amendment by Section 70, in subparagraph (c) of paragraph (2) of subsection (A), and by Section 71, in subparagraph (c) of paragraph (6) of subsection (A), substituted “Department of Insurance” for “Insurance Commission”.

The 1995 amendment, by Section 22, revised paragraphs (4) and (5) of subsection (A); by Section 23, revised paragraph (6) of subsection (A); and by Section 24, revised paragraph (6) of subsection (A) effective July 1, 1995.

The 2007 amendment, in subsection (A), in subparagraphs (4) and (5) deleted “, an individual with whom the public official, public member, or public employee is associated, or a business with which the public official, public member, or public employee is associated” and added subparagraphs (8) and (9).

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 69, Ethical Duties.

Ethics Commission Opinions

A municipal public official is prohibited from owning a bail bonding business which conducts business in the court system for that municipality. Op. S.C. St. Ethics Comm., SEC AO2017‑003, March 15, 2017.

A County Council member’s business associate may submit land development plans to the County Planning Department for its consideration and approval/rejection. Decisions at staff level are per se ministerial and non‑discretionary and therefore are subject to the exception in Section 8‑13‑740(A)(7)(a). Op. S.C. St. Ethics Comm., SEC AO2007‑006, Jan. 17, 2007.

The Planning Department is an agency, unit or subunit of Horry County government. Op. S.C. St. Ethics Comm., SEC AO2007‑006, Jan. 17, 2007.

A county council member’s firm may represent clients before county council, as long as the council member follows the recusal requirements of Section 8‑13‑700(B). Op. S.C. St. Ethics Comm., SEC AO2007‑002, Sept. 13, 2006.

A Budget and Control Board employee may start his own engineering consultation business, as long as he adheres to the off‑duty guidelines, the recusal provisions of Section 8‑13‑700(B), dual payment prohibitions of Section 8‑13‑720 and the confidentiality provisions of Section 8‑13‑725. The employee may represent a client before other state agencies, as long as he adheres to the off‑duty employment guidelines and has no official responsibility for the agency. Op. S.C. St. Ethics Comm., SEC AO2007‑001, Sept. 13, 2006.

A city council member’s firm may not appear before various city approval and permitting boards. Op. S.C. St. Ethics Comm., SEC AO2006‑002, Jan. 18, 2006. (Overturned by 2007 amendment to the Act. See Section 8‑13‑740(A)(4) and (5)).

A City Council member’s firm may appear before various city approval and permitting boards as required by appropriate statutes. The firm may conduct engineering services to the Commission of Public Works provided the council member performs no official function regarding such contracts. Op. S.C. St. Ethics Comm., SEC AO98‑006, Jan. 21, 1998.

Members of the Charleston County Board of Assessment Appeals, individuals with whom they are associated, and businesses with which they are associated are prohibited from appearing before the Board as witnesses offering opinion testimony on behalf of taxpayer appellants. Op. S.C. St. Ethics Comm., SEC AO95‑006, Nov. 16, 1994.

Former DHEC employee who is currently employed by Budget and Control Board would not be prohibited from providing certain part‑time consulting and engineering services as long as such work is not part of employee’s official responsibilities and is performed in accordance with off‑duty employment guidelines. With limited exceptions, however, Section 8‑13‑740(A)(6) would preclude employee and any business with which he is associated from representing clients before other state agencies. Op. S.C. St. Ethics Comm., SEC AO94‑003, July 21, 1993.

County Attorney is advised against representation of clients on matters in which sheriff’s office is arresting agency. He is also advised against representing clients in magistrate’s court when he has advised magistrate’s office on legal matters. Op. S.C. St. Ethics Comm., SEC AO92‑169, May 27, 1992.

Architect would be prohibited from serving on design review board unless such service is authorized by statute or ordinance. If design review commissions in question specifically regulate operation of architects, Section 8‑13‑730 applies to situation, otherwise it does not. Upon determination that Section 8‑13‑730 does not preclude member of design review commission from serving, impact of Section 8‑13‑740 must be considered. Commission finding that if local county or city ordinances or regulations authorize that an architect serves on design review commission and that architect serves pursuant to such authorization, Section 8‑13‑740 would not prohibit that person or individuals or businesses with which architect is associated from representing clients before design review commission. Commission further advises that, if architect is allowed to serve in accordance with above discussion, members of his architectural firm would not be prohibited from representing clients before the commission, provided member follows procedures of Section 8‑13‑700(B). And, such member, if allowed to serve in accordance with above discussion, would not be prohibited from having jobs which require Board approval, but members advised to follow procedures of Section 8‑13‑700(B) when required to take official action or make decisions affecting those jobs. Op. S.C. St. Ethics Comm., SEC AO92‑119, March 25, 1992.

Engineer, member of County Planning Commission, who is civil engineering designer and construction coordinator for engineering firm, would not be prohibited from serving on County Planning Commission if such service is authorized by local statutes or ordinances, and, if there is such authorization, there would be no violation for engineer to serve and for members of his firm to represent clients before county agencies in order to carry out functions of their profession. If Planning Commission specifically regulates operation of engineers in county, Section 8‑13‑730 applies to situation, otherwise it is not applicable. Upon determination that Section 8‑13‑730 does not preclude member of Planning Commission from serving, impact of Section 8‑13‑740 must be considered. If engineer does not serve pursuant to statute specifically providing for service of engineer upon Planning Commission, then these provisions apply. Commission finds that if county ordinances or regulations authorize that engineer serves upon Planning commission and that engineer serves pursuant to that authorization, Section 8‑13‑740 would not prohibit such person or individuals or businesses with which he is associated from representing clients before Planning Commission. To continued service, if allowed as mentioned above, Commission advises that provisions of Section 8‑13‑700(B) would apply, and advises that, if engineer is allowed to serve in accordance with above discussion, members of his engineering firm would not be prohibited from representing clients before Planning Commission provided members follow procedures of Section 8‑13‑700(B) on all matters affecting economic interests of engineering firm. Op. S.C. St. Ethics Comm., SEC AO92‑072, Mar 25, 1992.

**SECTION 8‑13‑745.** Paid representation of clients and contracting by member of General Assembly or associate in particular situations.

(A) No member of the General Assembly or an individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case, as defined in Section 1‑23‑310, before an agency, a commission, board, department, or other entity if the member of the General Assembly has voted in the election, appointment, recommendation, or confirmation of a member of the governing body of the agency, board, department, or other entity within the twelve preceding months.

(B) Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or any individual with whom he is associated or business with which he is associated may represent a client for a fee in a contested case, as defined in Section 1‑23‑310, before an agency, a commission, board, department, or other entity elected, appointed, recommended, or confirmed by the House, the Senate, or the General Assembly if that member has voted on the section of that year’s general appropriation bill or supplemental appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the general appropriation bill or from voting on the general appropriation bill as a whole.

(C) Notwithstanding any other provision of law, after the effective date of this section, no member of the General Assembly or an individual with whom he is associated in partnership or a business, company, corporation, or partnership where his interest is greater than five percent may enter into any contract for goods or services with an agency, a commission, board, department, or other entity funded with general funds or other funds if the member has voted on the section of that year’s appropriation bill relating to that agency, commission, board, department, or other entity within one year from the date of the vote. This subsection does not prohibit a member from voting on other sections of the appropriation bill or from voting on the general appropriation bill as a whole.

(D) The provisions of this section do not apply to any court in the unified judicial system.

(E) When a member of the General Assembly is required by law to appear because of his business interest as an owner or officer of the business or in his official capacity as a member of the General Assembly, this section does not apply.

(F) The provisions of subsections (A), (B), and (C) do not apply in the case of any vote or action taken by a member of the General Assembly prior to January 1, 1992.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑750.** Employment, promotion, advancement, or discipline of family member of public official, member, or employee.

(A) 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.

(B) 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.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

Ethics Commission Opinions

Section 8‑13‑750 permits a mayor’s spouse to continue as a part‑time municipal judge. Op. S.C. St. Ethics Comm., SEC AO2011‑001, July 21, 2010.

A public employee and a public member may continue in their respective positions with the same governmental entity following their marriage without violating the nepotism prohibitions of Section 8‑13‑750. Op. S.C. St. Ethics Comm., SEC AO2006‑003, May 17, 2006.

Spouse of director of technical education center would not be prohibited from being hired, provided director took no action regarding the hiring and had no supervisory or management authority over spouse. Furthermore, director is advised to follow provisions of Section 8‑13‑700(D) items (1) and (3). Op. S.C. St. Ethics Comm., SEC AO92‑190, June 9, 1992.

Family member of school board member may continue as employee of school district without violating Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO92‑134, March 25, 1992.

School board members who have family members employed within school district may vote on general salary increases for school employees, but may not participate in salary raises for family member in question which are not general salary increases. Op. S.C. St. Ethics Comm., SEC AO92‑134, March 25, 1992.

Family member of a school board member may be hired by school district, provided member of school board does not cause employment to occur or participate in employment of family member. Op. S.C. St. Ethics Comm., SEC AO92‑134, March 25, 1992.

Attorney General’s Opinions

Discussion of whether a person may serve on the Winthrop University Board of Trustees, where the person is the nephew of the current President of the University. S.C. Op.Atty.Gen. (May 5, 2014) 2014 WL 2120886.

Former Section 8‑5‑10 applied to a County Treasurer and because of such, the treasurer is precluded from employing persons related within the sixth degree. 1989 Op Atty Gen, No. 89‑33, p 89.

Sheriff has absolute authority regarding employment and discharge of personnel within his department; such personnel are subject to “general personnel system policies and procedures” of county; county anti‑nepotism ordinance would be inapplicable to any employment decisions made by sheriff; applications for employment should be handled by county and not sheriff. 1985 Op Atty Gen, No. 85‑7, p 40.

NOTES OF DECISIONS

In general 1

1. In general

A complaint adequately alleged a violation of former Section 8‑5‑10, as well as a violation of a county ordinance prohibiting nepotism, and a demurrer to the complaint should have been overruled, where the plaintiff alleged that she was a staff licensed practical nurse at a county nursing home, that one of the respondents was the de facto administrator for the nursing home, and that the administrator’s wife was employed by the nursing home as Assistant Director of Nurses. Blandon v. Coleman (S.C. 1985) 285 S.C. 472, 330 S.E.2d 298.

**SECTION 8‑13‑755.** Restrictions on former public official, member, or employee serving as lobbyist or accepting employment in field of former service.

A former public official, former public member, or former public employee holding public office, membership, or employment on or after January 1, 1992, may not for a period of one year after terminating his public service or employment:

(1) serve as a lobbyist or represent clients before the agency or department on which he formerly served in a matter which he directly and substantially participated during his public service or employment; or

(2) accept employment if the employment:

(a) is from a person who is regulated by the agency or department on which the former public official, former public member, or former public employee served or was employed; and

(b) involves a matter in which the former public official, former public member, or former public employee directly and substantially participated during his public service or public employment.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

Ethics Commission Opinions

A state employee would be prohibited from seeking employment with a vendor which was recently awarded a contract, in which the employee participated in the procurement of the contract as a public employee and would continue to oversee the contract if he or she were to remain in the public position. Op. S.C. St. Ethics Comm., SEC AO2008‑007, March 19, 2008.

Greenville Housing Authority employees are not prohibited from submitting a bid on a contract with the housing authority, as long as they have had no involvement in the procurement process and, in the event of being awarded the contract, of providing management services under the contract after their termination. Op. S.C. St. Ethics Comm., SEC AO2008‑005, Jan. 16, 2008.

Because the County Administrator has had no official responsibility in the County School District’s budgeting, contracting or purchasing, then the post‑employment restrictions of Sections 8‑13‑755 and 8‑13‑760 are not applicable to the County Administrator’s post‑employment with a private business which hopes to contract with the County School District. Op. S.C. St. Ethics Comm., SEC AO2000‑005, Nov. 17, 1999.

A City Traffic Engineer may accept employment with the engineering firm: however, the engineer, upon leaving government employment, may not participate in the contract between the engineering firm and the City in which the engineer had direct procurement responsibilities as a city employee. This prohibition has no arbitrary expiration date; therefore, the engineer may never provide services under this specific contract. Op. S.C. St. Ethics Comm., SEC AO2000‑002, Sept. 15, 1999.

A former public employee may not take employment with a contractor until one year has expired from the time that the contractor had procurement activity with the former employer in a matter in which he “directly and substantially participated.” Op. S.C. St. Ethics Comm., SEC AO99‑003, Sept. 30, 1998.

A former public employee is prohibited from lobbying the agency or representing clients before the agency on a matter in which he “directly and substantially participated” for a period of twelve months from leaving employment. Op. S.C. St. Ethics Comm., SEC AO99‑003, Sept. 30,1998.

A public employee is not prohibited by the Ethics Reform Act from running for public office. Nor are there any requirements in the Ethics Reform Act which requires a public employee to resign their public position in order to run for public office. Agencies may have restrictions or prohibitions concerning an employee’s candidacy, however, no such restriction or prohibition exists in the Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO98‑008, Jan. 21, 1998.

Employee of regulatory agency who has no regulatory jurisdiction over federal installation would not be prohibited from accepting employment with that installation. Subsection (2) of Section 8‑13‑755 was intended to prohibit “revolving door” whereby regulatory leaves public service and begins work with regulated person on matters in which he has participated as regulator, but absent responsibilities on those specific matters, there would be no prohibition against such employment. Op. S.C. St. Ethics Comm., SEC AO92‑111, May 27, 1992.

Former employee is prohibited from obtaining employment for one year from contractor on contracts for which he was responsible for letting or supervising. Prohibition concerns any employee who was employed by public agency within South Carolina on or after January 1, 1992, and includes prohibition against serving as lobbyist before former agency or representing clients before that agency for a period of one year on matters on which employee directly and substantially participated. However, former employee would not be prohibited from being employed as consultant with firm over which he had no official responsibility. Op. S.C. St. Ethics Comm., SEC AO92‑101, Feb. 26, 1992.

Public agency attorney is prohibited by Section 8‑13‑755(1) from representing clients before that agency for period of one year on any specific matter in which he was directly and substantially involved. Op. S.C. St. Ethics Comm., SEC AO92‑008, Nov. 20, 1991.

**SECTION 8‑13‑760.** Employment by government contractor of former public official, member, or employee who was engaged in procurement.

Except as is permitted by regulations of the State Ethics Commission, it is a breach of ethical standards for a public official, public member, or public employee who is participating directly in procurement, as defined in Section 11‑35‑310(22), to resign and accept employment with a person contracting with the governmental body if the contract falls or would fall under the public official’s, public member’s, or public employee’s official responsibilities.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

Ethics Commission Opinions

A state employee would be prohibited from seeking employment with a vendor which was recently awarded a contract, in which the employee participated in the procurement of the contract as a public employee and would continue to oversee the contract if he or she were to remain in the public position. Op. S.C. St. Ethics Comm., SEC AO2008‑007, March 19, 2008.

Greenville Housing Authority employees are not prohibited from submitting a bid on a contract with the housing authority, as long as they have had no involvement in the procurement process and, in the event of being awarded the contract, of providing management services under the contract after their termination. Op. S.C. St. Ethics Comm., SEC AO2008‑005, Jan. 16, 2008.

Because the County Administrator has had no official responsibility in the County School District’s budgeting, contracting or purchasing, then the post‑employment restrictions of Sections 8‑13‑755 and 8‑13‑760 are not applicable to the County Administrator’s post‑employment with a private business which hopes to contract with the County School District. Op. S.C. St. Ethics Comm., SEC AO2000‑005, Nov. 17, 1999.

A City Traffic Engineer may accept employment with the engineering firm: however, the engineer, upon leaving government employment, may not participate in the contract between the engineering firm and the City in which the engineer had direct procurement responsibilities as a city employee. This prohibition has no arbitrary expiration date; therefore, the engineer may never provide services under this specific contract. Op. S.C. St. Ethics Comm., SEC AO2000‑002, Sept. 15, 1999.

A former public employee may not take employment with a contractor until one year has expired from the time that the contractor had procurement activity with the former employer in a matter in which he “directly and substantially participated.” Op. S.C. St. Ethics Comm., SEC AO99‑003, Sept. 30,1998.

A former public employee is prohibited from lobbying the agency or representing clients before the agency on a matter in which he “directly and substantially participated” for a period of twelve months from leaving employment. Op. S.C. St. Ethics Comm., SEC AO99‑003, Sept. 30,1998.

Former employee is prohibited from obtaining employment for one year from contractor on contracts for which he was responsible for letting or supervising. Prohibition concerns any employee who was employed by public agency within South Carolina on or after January 1, 1992, and includes prohibition against serving as lobbyist before former agency or representing clients before that agency for a period of one year on matters on which employee directly and substantially participated. However, former employee would not be prohibited from being employed as consultant with firm over which he had no official responsibility. Op. S.C. St. Ethics Comm., SEC AO92‑101, Feb. 26, 1992.

**SECTION 8‑13‑765.** Use of government personnel or facilities for campaign purposes; government personnel permitted to work on campaigns on own time.

(A) No person may use government personnel, equipment, materials, or an office building in an election campaign. The provisions of this subsection do not apply to a public official’s use of an official residence.

(B) A government, however, may rent or provide public facilities for political meetings and other campaign‑related purposes if they are available on similar terms to all candidates and committees, as defined in Section 8‑13‑1300(6).

(C) This section does not prohibit government personnel, where not otherwise prohibited, from participating in election campaigns on their own time and on nongovernment premises.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

Ethics Commission Opinions

In the determination of whether a campaign sign placed on public property violates Section 8‑13‑1346, the Ethics Commission will review the predominant purpose of that property at the time. Questions regarding the placement of campaign signs should be addressed to the State Ethics Commission before placement. Op. S.C. St. Ethics Comm., SEC AO2006‑001, July 20, 2005.

Public Service Commission officials and employees are governed by both the Ethics Reform Act and the Judicial Code of Conduct. Op. S.C. St. Ethics Comm., SEC AO2005‑002, Jan. 19, 2005.

The Ethics Commission will defer to the local governmental entity’s policies and procedures regarding the use of public buildings in a campaign in interpreting the restrictions of Section 8‑13‑765. When no policy is in place the Commission will look to the predominant purpose of the use of the public building. Op. S.C. St. Ethics Comm., SEC AO2004‑002, May 19, 2004.

A person knowingly sending an e‑mail which contains campaign material to a public employee on his government computer is in violation of the Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO2003‑003, Sept. 18, 2002.

Public employee cannot use their employment, including office materials, equipment and personnel, to influence the outcome of an election. Fellow employees may participate in the election activities on their own time. Public employees are not required to take unpaid leave in order to run for office. Op. S.C. St. Ethics Comm., SEC AO2002‑006, Jan. 16, 2002.

If a government office building is available to all candidates on equal terms as required by Section 8‑13‑765(B), then candidates may use the office building in their election campaign. Op. S.C. St. Ethics Comm., SEC AO2001‑004, Nov. 15, 2000.

The constitutional officer cannot use his office, to include his office materials, equipment and personnel, to influence the outcome of an election. Members of his staff may participate in the constitutional officer’s election activities on their own time. Op. S.C. St. Ethics Comm., SEC AO2000‑008, Jan. 19, 2000.

Public facilities may be utilized for political meetings or campaign‑related activities if they are rented or made available on similar terms to all candidates or committees. Op. S.C. St. Ethics Comm., SEC AO92‑140, March 25, 1992.

**SECTION 8‑13‑770.** Members of General Assembly prohibited from serving on state boards and commissions; exceptions.

A member of the General Assembly may not serve in any capacity as a member of a state board or commission, except for the State Fiscal Accountability Authority, the Advisory Commission on Intergovernmental Relations, the Legislative Audit Council, the Legislative Council, the Legislative Services Agency, the Judicial Council, the Commission on Prosecution Coordination, the South Carolina Tobacco Community Development Board, the Tobacco Settlement Revenue Management Authority, the South Carolina Transportation Infrastructure Bank, the Commission on Indigent Defense, the South Carolina Research Authority, and the joint legislative committees.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1998 Act No. 419, Part II, Section 35D, eff July 1, 1998; 1999 Act No. 77, Section 3, eff June 11, 1999; 2000 Act No. 387, Part II, Section 69A.4, eff June 30, 2000; 2003 Act No. 76, Section 18, eff June 26, 2003; 2005 Act No. 103, Section 1, eff July 1, 2005; 2012 Act No. 209, Section 5, eff June 7, 2012.

Code Commissioner’s Note

At the direction of the Code Commissioner, reference to “Legislative Information Systems” was changed to “Legislative Services Agency” pursuant to 2013 Act No. 31.

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Editor’s Note

2000 Act No. 387, Part II, Section 69A.6, provides as follows:

“If a provision of this subsection, including the provisions of Chapter 49, Title 11 of the 1976 Code as added by it, or the application of a provision to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subsection or the chapter added by it which may be given effect without the invalid provision or application. To this end, the provisions of this subsection and the chapter added by it are severable.”

Effect of Amendment

The 1998 amendment deleted “the Reorganization Commission” from the list of exceptions.

The 1999 amendment inserted “the South Carolina Tobacco Community Development Board,”.

The 2000 amendment added “the Tobacco Settlement Revenue Management Authority,”.

The 2003 amendment added “the South Carolina Transportation Infrastructure Bank,” after “the Tobacco Settlement Revenue Management Authority”.

The 2005 amendment deleted “the Sentencing Guidelines Commission,” and added “the Commission on Indigent Defense,”.

The 2012 amendment inserted “The South Carolina Research Authority,”.

CROSS REFERENCES

Code Commissioner directed to delete all references to legislative members on state boards or commissions except as provided in this section, see Section 2‑13‑65.

South Carolina Rural Infrastructure Act, board of directors, see Section 11‑50‑50.

Ethics Commission Opinions

As to legislators no longer being able to serve on state commission in ex officio capacity, Section 6 of Ethics Reform Act (1991 Act No. 248) provides that Code Commissioner is directed to delete all references to legislative members serving in any capacity as member of state board or commission, except as allowed by Section 8‑13‑770, and Commission notes that responsibility for deleting such references rests with Commissioner, who should be contacted concerning applicability of this provision. Op. S.C. St. Ethics Comm., SEC AO92‑023, Jan. 27, 1992.

Attorney General’s Opinions

A State Representative would not violate the literal language of the State Ethics Act of being employed on a part‑time basis by a federally‑funded Human Resources Commission located outside the geographical area he represents. Should the Representative be confronted with a situation in which his employment would be affected by a matter before the House, he should disclose the conflict and refrain from voting. 1976‑77 Op Atty Gen, No 77‑261, p 196.

**SECTION 8‑13‑775.** Public official, member, or employee with official function related to contracts not permitted to have economic interest in contracts.

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 relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of the contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State nor does it prohibit the award of contracts awarded through a process of public notice and competitive bids if the public official, public member, or public employee has not performed an official function regarding the contract.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Section 25, eff upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995.

Effect of Amendment

The 1995 amendment, at the end of the third sentence, inserted “nor does it prohibit the award of contracts awarded through a process of public notice and competitive bids in the public official, public member, or public employee has not performed an official function regarding the contract”.

Ethics Commission Opinions

A university foundation member may bid on university building projects under the guidelines of Section 8‑13‑775, which requires the removal of the foundation member from the procurement process at the outset and recusals thereafter on matters related to the bid. Op. S.C. St. Ethics Comm., SEC AO2010‑003, March 17, 2010.

School district trustees may contract with their school district to provide construction services under the guidelines of Section 8‑13‑775, which requires the removal of the trustees from the procurement process and recusals thereafter on matters related to the contract. Such a contractual relationship would have to be disclosed on the school district trustee’s annual Statement of Economic Interests form, pursuant to Section 8‑13‑1120(A)(8). Op. S.C. St. Ethics Comm., SEC AO2009‑005, May 20, 2009.

Greenville Housing Authority employees are not prohibited from submitting a bid on a contract with the housing authority, as long as they have had no involvement in the procurement process and, in the event of being awarded the contract, of providing management services under the contract after their termination. Op. S.C. St. Ethics Comm., SEC AO2008‑005, Jan. 16, 2008.

A Mayor is advised against entering a purchase contract with the town since he participated in decisions affecting the sale of the property. Op. S.C. St. Ethics Comm., SEC AO98‑010, March 18, 1998.

A City Council member’s firm may appear before various city approval and permitting boards as required by appropriate statutes. The firm may conduct engineering services to the Commission of Public Works provided the council member performs no official function regarding such contracts. Op. S.C. St. Ethics Comm., SEC AO98‑006, Jan. 21, 1998.

Despite public member’s association with firm that submitted lowest bid on commission project, Ethics Reform Act does not prohibit this firm from being awarded contract, provided it is awarded in accordance with Consolidated Procurement Code and commission member complies with recusal provisions of Section 8‑13‑700(B). Op. S.C. St. Ethics Comm., SEC AO94‑008, Sept. 15, 1993.

Provided he complies with recusal provisions of Section 8‑13‑700(B) on those matters affecting his employer’s economic interests, bank employee may continue to serve as School Board Chairman even though county does business with Chairman’s employer. Pursuant to Section 8‑13‑775, Chairman may not have economic interest in contract between County and bank with which he is employed if he is authorized to perform official function relating to contract. Op. S.C. St. Ethics Comm., SEC AO94‑002, July 21, 1993.

County councilman who is on board of directors of company may participate in council decisions regarding which projects should be put out for bid, such participation not being prohibited by this section since all contractors would be equally affect by such contract. However, councilman’s firm is prohibited from contract with county if councilman is authorized to perform any official function on contract through writing or preparing specifications, accepting bids, awarding contract, or other action on preparation or award of such contract regardless of whether he follows provisions of Section 8‑13‑700. However, where from facts submitted it appears that county council is not authorized to perform official function, as defined in Section 8‑13‑775, with regard to contracts, such official functions being performed by County Administrator, councilman’s company would not be prohibited from bidding on contracts. Op. S.C. St. Ethics Comm., SEC AO92‑142, March 25, 1992.

NOTES OF DECISIONS

In general 1

1. In general

Issue regarding alleged violation of state ethics act in employee’s breach of contract action brought against employer was moot; employer’s successor was not governmental entity, such that declaration that actions taken by successor violated state ethics act would be advisory in nature, and there was no exception to mootness doctrine that would apply. Shah v. Richland Memorial Hosp. (S.C.App. 2002) 350 S.C. 139, 564 S.E.2d 681, rehearing denied, certiorari denied. Declaratory Judgment 145

**SECTION 8‑13‑780.** Remedies for breaches of ethical standards by public officials, members, or employees.

(A) The provisions of this section are in addition to all other civil and administrative remedies against public officials, public members, or public employees which are provided by law.

(B) In addition to existing remedies for breach of the ethical standards of this chapter or regulations promulgated hereunder, the State Ethics Commission may impose an oral or written warning or reprimand.

(C) The value of anything received by a public official, public member, or public employee in breach of the ethical standards of this chapter or regulations promulgated hereunder is recoverable by the State or other governmental entity in an action by the Attorney General against a person benefitting from the violations.

(D) Before a public employee’s employment or a public official’s or public member’s association with the governmental entity is terminated for a violation of the provisions of this chapter, notice and an opportunity for a hearing must be provided to the public official, public member, or public employee.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑785.** Communication by elected official with state board or commission on behalf of constituent.

Nothing in Chapter 13 of Title 8 prevents an elected official from communicating with a board or commission member or employee, on behalf of a constituent relating to delays in obtaining a hearing, discourteous treatment, scheduling, or other matters not affecting the outcome of pending matters, provided that the elected official, an individual with whom the elected official is associated, or a business with which the elected official is associated is not representing the constituent for compensation.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Section 26, effective upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995.

Effect of Amendment

The 1995 amendment deleted the designator (A) from the first paragraph; deleted “, in writing,” in that paragraph; and deleted former paragraph (B) pertaining to particular contacts between public officials as not prohibited.

Ethics Commission Opinions

Despite public member’s association with firm that submitted lowest bid on commission project, Ethics Reform Act does not prohibit this firm from being awarded contract, provided it is awarded in accordance with Consolidated Procurement Code and commission member complies with recusal provisions of Section 8‑13‑700(B). Op. S.C. St. Ethics Comm., SEC AO94‑008, Sept. 15, 1993.

Attorney General’s Opinions

There is no conflict of interest per se for a school teacher to serve as a member of county councils, city councils or boards of commissioners. 1976‑77 Op Atty Gen, No 77‑15, p 25.

A member of the Legislative Audit Council is prohibited by the State Ethics Act from appearing before the Public Service Commission, the Insurance Commission or the Dairy Commission. 1976‑77 Op Atty Gen, No 77‑163, p 133.

A State Representative would not violate the literal language of the State Ethics Act of being employed on a part‑time basis by a federally‑funded Human Resources Commission located outside the geographical area he represents. Should the Representative be confronted with a situation in which his employment would be affected by a matter before the House, he should disclose the conflict and refrain from voting. 1976‑77 Op Atty Gen, No 77‑261, p 196.

Former Section 8‑13‑470 (State Ethics Law), is interpreted to allow State Legislators to appear before various State commissions only when their appearances are because of their personal business interests. 1976‑77 Op Atty Gen, No 77‑394, p 322.

Section 18, Act No. 191, Acts of 1975 [Code 1976 former Section 8‑13‑470], does not bar the Attorney General and his assistants from appearing before the Public Service Commission in rate or price fixing matters in behalf of the people of the State and/or as legal counsel to the Commission. 1974‑75 Op Atty Gen, No 4110, p 185.

**SECTION 8‑13‑790.** Recovery of amounts received by official or employee in breach of ethical standards; recovery of kickbacks.

(A) The value of anything transferred or received in breach of the ethical standards of Articles 1 through 11 of this chapter or regulations promulgated under it by a public employee, public official, or a nonpublic employee or official may be recovered from the public employee, public official, or nonpublic employee or official.

(B) Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order under it, it is conclusively presumed that the amount of the kickback was included in the price of the subcontract or order and ultimately borne by the State or governmental entity and is recoverable hereunder from the subcontractor making the kickback. Recovery from one offending party does not preclude recovery from other offending parties.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑795.** Receipt of award, grant, or scholarship by public official or family member.

Nothing in Chapter 13 of Title 8 prevents a public official or a member of his immediate family from being awarded an award, a grant, or scholarship, or negatively reflects on a public official because of an award, a grant, or scholarship awarded to the public official or to a member of his immediate family on a competitive, objective basis if the public official has not wilfully contacted any person involved in the selection of the recipient, on behalf of the recipient, before the award.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 69, Ethical Duties.

Ethics Commission Opinions

The Spartanburg Children’s Shelter, Inc. is prohibited from giving $12,000.00 to an employee of the Department of Social Services in addition to that received by the employee in her official capacity for advice or assistance given in the course of employment as a public employee. Op. S.C. St. Ethics Comm., SEC AO96‑004, Nov. 15, 1995.

**SECTIONS 8‑13‑810 to 8‑13‑850.** Repealed by 1991 Act No. 248, Section 3, eff January 1, 1992.

Editor’s Note

Sections 8‑13‑810 through 8‑13‑850 formerly comprised Article 11 of this chapter. Article 11 now consists of Sections 8‑13‑1110 through 8‑13‑1180.

Former Section 8‑13‑810 was entitled “Persons required to file statement of economic interest before taking oath or commencing employment” and was derived from 1980 Act No. 374, Section 4; 1977 Act No. 150, Sections 7, 8; 1976 Act No. 741; 1976 Act No. 740, Section 2; 1975 (59) 217.

Former Section 8‑13‑820 was entitled “Contents of statement of economic interests” and was derived from 1980 Act No. 374, Section 4; 1977 Act No. 150, Sections 7, 8; 1976 Act No. 741; 1976 Act No. 740, Section 2; 1975 (59) 217.

Former Section 8‑13‑830 was entitled “Report on names of, purchases by and gifts from lobbyists” and was derived from 1980 Act No. 374, Section 4; 1977 Act No. 150, Sections 7, 8; 1976 Act No. 741; 1976 Act No. 740, Section 2; 1975 (59) 217.

Former Section 8‑13‑840 was entitled “Filing of updating statement” and was derived from 1980 Act No. 374, Section 4; 1977 Act No. 150, Sections 7, 8; 1976 Act No. 741; 1976 Act No. 740, Section 2; 1975 (59) 217.

Former Section 8‑13‑850 was entitled “Filing of statement of economic interest by member of judiciary” and was derived from 1980 Act No. 374, Section 4; 1977 Act No. 150, Sections 7, 8; 1976 Act No. 741; 1976 Act No. 740, Section 2; 1975 (59) 217.

ARTICLE 9

Forms and Reports by Candidates for Election by the General Assembly

Editor’s Note

Former Article 9, which consisted of Sections 8‑13‑610 through 8‑13‑630, was repealed by 1991 Act No. 248, Section 3, effective January 1, 1992.

CROSS REFERENCES

Electronic filing system for disclosures and reports, public accessibility, see Section 8‑13‑365.

**SECTION 8‑13‑910.** Candidates elected or consented to by General Assembly to file statements of economic interests; authority with whom to file.

(A) No person who is a candidate for public office which is filled by election by the General Assembly may be voted upon by the General Assembly until at least ten days following the date on which the candidate files a statement of economic interests as defined in this chapter with the Chairman of the Senate Ethics Committee and the Chairman of the House of Representatives Ethics Committee.

(B) No person who is appointed to an office which is filled with the advice and consent of the Senate or the General Assembly may be confirmed unless the appointment, when received by the Senate and/or the House, is accompanied by a current original copy of a statement of economic interests which has been filed with the appointing authority and is transmitted with the appointment and until at least ten days following the date on which the appointment, with the attached original economic interest statement, has been received by the Senate and/or the House.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1993 Act No. 183 Section 3, eff June 21, 1993; 1993 Act No. 181 Section 72, eff July 1, 1993.

Effect of Amendment

The 1993 amendments, by both Act No. 181 and Act No. 183, designated the existing text as subsection (A); in (A) deleted “or with the advice and consent of the Senate or the General Assembly; and added subsection (B).

**SECTION 8‑13‑920.** Report of campaign expenditures.

A person running for an office elected by the General Assembly must file a report with the Chairman of the Senate Ethics Committee and the Chairman of the House of Representatives Ethics Committee of money in excess of one hundred dollars spent by him or in his behalf in seeking the office. The report must include the period beginning with the time he first announces his intent to seek the office. The report must not include travel expenses or room and board while campaigning. Contributions made to members of the General Assembly during the period from announcement of intent to election date must be included. The report must be updated quarterly with an additional report filed five days before the election and the final report filed thirty days after the election. Persons soliciting votes on behalf of candidates must submit expenses in excess of one hundred dollars to the candidate which must be included on the candidate’s report. A copy of all reports received by the Senate Ethics Committee and the House of Representatives Ethics Committee must be forwarded to the State Ethics Commission within two business days of receipt.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment—Supreme Court cases. 108 L Ed 2d 1017.

**SECTION 8‑13‑930.** Seeking or offering pledges of votes for candidates.

No candidate for an office elected by the General Assembly may seek directly the pledge of a member of the General Assembly’s vote until the qualifications of all candidates for that office have been determined by the appropriate joint committee to review candidates for that office. No member of the General Assembly may offer a pledge until the qualifications of all candidates for that office have been determined by the appropriate joint committee to review candidates for that office.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑935.** Public Service Commission election requirements; violations and penalties.

(A) No candidate for or person intending to become a candidate for the Public Service Commission may seek, directly or indirectly, the pledge of a member of the General Assembly’s vote or contact, directly or indirectly, a member of the General Assembly regarding screening for the Public Service Commission, until: (1) the qualifications of all candidates for that office have been determined by the State Regulation of Public Utilities Review Committee, and (2) the review committee has formally released its report as to the qualifications of all candidates for the office to the General Assembly. For purposes of this section, “indirectly seeking a pledge” means the candidate, or someone acting on behalf of and at the request of the candidate, requests a person to contact a member of the General Assembly on behalf of the candidate before nominations are formally made by the review committee. The prohibitions of this section do not extend to an announcement of candidacy by the candidate or statement by the candidate detailing the candidate’s qualifications.

(B) No member of the General Assembly may offer his pledge until: (1) the qualifications of all candidates for the Public Service Commission have been determined by the State Regulation of Public Utilities Review Committee, and (2) the review committee has formally released its report as to the qualifications of its nominees to the General Assembly. The formal release of the report of qualifications must occur no earlier than forty‑eight hours after the names of nominees have been initially released to members of the General Assembly.

(C) No member of the General Assembly may trade anything of value, including pledges to vote for legislation or for other candidates, in exchange for another member’s pledge to vote for a candidate for the Public Service Commission.

(D)(1) Violations of this section may be considered by the State Regulation of Public Utilities Review Committee when it considers the candidate’s qualifications.

(2) Violations of this section by members of the General Assembly must be reported by the review committee to the House or Senate Ethics Committee, as may be applicable.

(3) Violations of this section by incumbent commissioners seeking reelection must be reported by the Public Service Commission to the State Ethics Commission.

A violation of this section is a misdemeanor and, upon conviction, the violator must be fined not more than one thousand dollars or imprisoned not more than ninety days. Cases tried under this section may not be transferred from general sessions court pursuant to Section 22‑3‑545.

HISTORY: 2004 Act No. 175, Section 2, eff February 18, 2004.

**SECTION 8‑13‑1010.** Repealed by 1991 Act No. 248, Section 3, eff January 1, 1992.

Editor’s Note

Former Section 8‑13‑1010 was derived from 1975 (59) 217; 1977 Act No. 150, Section 9.

Former Section 8‑13‑1010, which prescribed the penalty for violation of this chapter, was part of former Article 13. Similar provisions may now be found in Article 15. Article 13 now consists of Sections 8‑13‑1300 through 8‑13‑1372 and governs campaign practices.

**SECTION 8‑13‑1015.** Repealed by 1991 Act No. 248, Section 3, eff January 1, 1992.

Editor’s Note

Former Section 8‑13‑1015 was derived from 1990 Act No. 330, Section 1.

Former Section 8‑13‑1015 provided a civil penalty for late filing, or failure to file, ethics statements, and specified exceptions to these provisions. For similar provisions, see Section 8‑13‑1510.

**SECTION 8‑13‑1020.** Repealed by 1991 Act No. 248, Section 3, eff January 1, 1992.

Editor’s Note

Former Section 8‑13‑1020 was derived from 1975 (59) 217.

Former Section 8‑13‑1020, which provided the effective dates for the former provisions of this chapter, was located in former Article 13. Article 13 now consists of Sections 8‑13‑1300 through 8‑13‑1372, and governs campaign practices.

ARTICLE 11

Disclosure of Economic Interests

Editor’s Note

Former Article 11, which consisted of Sections 8‑13‑810 through 8‑13‑850, was repealed by 1991 Act No. 248, Section 3, effective January 1, 1992.

**SECTION 8‑13‑1110.** Persons required to file statement of economic interests.

(A) No public official, regardless of compensation, and no public member or public employee as designated in subsection (B) may take the oath of office or enter upon his official responsibilities unless he has filed a statement of economic interests in accordance with the provisions of this chapter with the appropriate supervisory office. If a public official, public member, or public employee referred to in this section has no economic interests to disclose, he shall nevertheless file a statement of inactivity to that effect with the appropriate supervisory office. All disclosure statements are matters of public record open to inspection upon request.

(B) Each of the following public officials, public members, and public employees must file a statement of economic interests with the appropriate supervisory office, unless otherwise provided:

(1) a person appointed to fill the unexpired term of an elective office;

(2) a salaried member of a state board, commission, or agency;

(3) the chief administrative official or employee and the deputy or assistant administrative official or employee or director of a division, institution, or facility of any agency or department of state government;

(4) the city administrator, city manager, or chief municipal administrative official or employee, by whatever title;

(5) the county manager, county administrator, county supervisor, or chief county administrative official or employee, by whatever title;

(6) the chief administrative official or employee of each political subdivision including, but not limited to, school districts, libraries, regional planning councils, airport commissions, hospitals, community action agencies, water and sewer districts, and development commissions;

(7) a school district and county superintendent of education;

(8) a school district board member and a county board of education member;

(9) the chief finance official or employee and the chief purchasing official or employee of each agency, institution, or facility of state government, and of each county, municipality, or other political subdivision including, but not limited to, those named in item (6);

(10) a public official;

(11) a public member who serves on a state board, commission, or council; and

(12) Department of Transportation District Engineering Administrators.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Section 27, effective upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995; 2007 Act No. 114, Section 4, eff June 27, 2007.

Effect of Amendment

The 1995 amendment, in subsection (B), deleted former paragraph (12), which read: “a consultant”.

The 2007 amendment added paragraph (B)(12) relating to Department of Transportation District Engineering Administrators.

CROSS REFERENCES

Additional disclosure requirement of names of lobbyists and their principals who have purchased goods or services worth more than $200 from filer of statement of economic interests or his or her family, see Section 8‑13‑1130.

Filing of statement of economic interests by candidate for public office, see Section 8‑13‑1356.

Filing of statement of economic interests by consultants, see Section 8‑13‑1150.

Particular gifts to public official or employee required to be reported on statement of economic interests, see Section 8‑13‑710.

Public official or employee who is required to file statement of economic interests under Section 8‑13‑1110 and who accepts lodging, transportation, entertainment, food, meals, or beverages must report on his statement of economic interests pursuant to Section 8‑13‑1120 the value of anything received, see Section 2‑17‑90.

Required contents of statement of economic interests, see Section 8‑13‑1120.

Requirement that employee of regulatory agency which regulates business with which employee is associated file annual statement of economic interests, see Section 8‑13‑730.

Ethics Commission Opinions

A public official/employee who is a member of an association which is also a lobbyist’s principal may not accept things of value from that association unless other members of that association are provided the same opportunity to benefit from the things of value offered or given to its members and relevant factors are assessed to conform with the purview of the Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO98‑013, June 18, 1998.

Lawyer who is member of incorporated law firm is required to report, in Item 13 of Statement of Economic Interests, funds he receives from governmental entity, but is not required to disclose funds received by law firm from governmental clients. Op. S.C. St. Ethics Comm., SEC AO92‑0076, May 27, 1992.

Attorney General’s Opinions

A public official by virtue of being a member of Allendale County Council and who receives compensation from SouthernCarolina Alliance, a business who has a contract with the County Council, is required to report the amount of all income received as an employee of SouthernCarolina Alliance. S.C. Op.Atty.Gen. (Feb. 3, 2014) 2014 WL 1398598.

The 1975 Ethics Act [Chapter 13 of Title 8 of the 1976 Code] requires public officials to disclose economic interests with any political subdivision of the State. 1974‑75 Op Atty Gen, No 4133, p 201.

**SECTION 8‑13‑1120.** Contents of statement of economic interests.

(A) A statement of economic interests filed pursuant to Section 8‑13‑1110 must be on forms prescribed by the State Ethics Commission and must contain full and complete information concerning:

(1) the name, business or government address, and workplace telephone number of the filer;

(2) the source, type, and amount or value of income, not to include tax refunds, of substantial monetary value received from a governmental entity by the filer or a member of the filer’s immediate family during the reporting period;

(3)(a) the description, value, and location of all real property owned and options to purchase real property during the reporting period by a filer or a member of the filer’s immediate family if:

(i) there have been any public improvements of more than two hundred dollars on or adjacent to the real property within the reporting period and the public improvements are known to the filer; or

(ii) the interest can reasonably be expected to be the subject of a conflict of interest; or

(b) if a sale, lease, or rental of personal or real property is to a state, county, or municipal instrumentality of government, a copy of the contract, lease, or rental agreement must be attached to the statement of economic interests;

(4) the name of each organization which paid for or reimbursed actual expenses of the filer for speaking before a public or private group, the amount of such payment or reimbursement, and the purpose, date, and location of the speaking engagement;

(5) the identity of every business or entity in which the filer or a member of the filer’s immediate family held or controlled, in the aggregate, securities or interests constituting five percent or more of the total issued and outstanding securities and interests which constitute a value of one hundred thousand dollars or more;

(6)(a) a listing by name and address of each creditor to whom the filer or member of the filer’s immediate family owed a debt in excess of five hundred dollars at any time during the reporting period, if the creditor is subject to regulation by the filer or is seeking or has sought a business or financial arrangement with the filer’s agency or department other than for a credit card or retail installment contract, and the original amount of the debt and amount outstanding unless:

(i) the debt is promised or loaned by a bank, savings and loan, or other licensed financial institution which loans money 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; or

(ii) the debt is promised or loaned by an individual’s family member if the person who promises or makes the loan is not acting as the agent or intermediary for someone other than a person named in this subitem; and

(b) the rate of interest charged the filer or a member of the filer’s immediate family for a debt required to be reported in (a);

If a discharge of a debt required to be reported in (a) has been made, the date of the transaction must be shown.

(7) the name of any lobbyist, as defined in Section 2‑17‑10(13) who is:

(a) an immediate family member of the filer;

(b) an individual with whom or business with which the filer or a member of the filer’s immediate family is associated;

(8) if a public official, public member, or public employee receives compensation from an individual or business which contracts with the governmental entity with which the public official, public member, or public employee serves or is employed, the public official, public member, or public employee must report the name and address of that individual or business and the amount of compensation paid to the public official, public member, or public employee by that individual or business;

(9) the source and a brief description of any gifts, including transportation, lodging, food, or entertainment received during the preceding calendar year from:

(a) a person, if there is reason to believe the donor would not give the gift, gratuity, or favor but for the official’s or employee’s office or position; or

(b) a person, or from an officer or director of a person, if the public official or public employee has reason to believe the person:

(i) has or is seeking to obtain contractual or other business or financial relationship with the official’s or employee’s agency; or

(ii) conducts operations or activities which are regulated by the official’s or employee’s agency if the value of the gift is twenty‑five dollars or more in a day or if the value totals, in the aggregate, two hundred dollars or more in a calendar year.

(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.

(B) This article does not require the disclosure of economic interests information concerning:

(1) a spouse separated pursuant to a court order from the public official, public member, or public employee;

(2) a former spouse;

(3) a campaign contribution that is permitted and reported under Article 13 of this chapter; or

(4) matters determined to require confidentiality pursuant to Section 2‑17‑90(E).

(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.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Sections 28, 29, eff upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995; 2016 Act No. 283 (H.3186), Sections 1, 2, eff January 1, 2017.

Effect of Amendment

The 1995 amendment, in subsection (A), by Section 28, rewrote paragraphs (3) and (4), and by Section 29, in paragraph (6)(a), inserted “if the creditor is subject to regulation by the filer or is seeking or has sought a business or financial arrangement with the filer’s agency or department”.

2016 Act No. 283, Sections 1, 2, added (A)(10) and (C), requiring the disclosure of specified income information on the statement of economic interests, and defining “income” for purposes of the statement of economic interests and to enumerate exclusions.

CROSS REFERENCES

Particular gifts to public official or employee required to be reported on statement of economic interests, see Section 8‑13‑710.

Public official or employee who is required to file statement of economic interests under Section 8‑13‑1110 and who accepts lodging, transportation, entertainment, food, meals, or beverages must report on his statement of economic interests pursuant to Section 8‑13‑1120 the value of anything received, see Section 2‑17‑90.

Ethics Commission Opinions

Private flights given to public officials as campaign contributions must not exceed the contribution limits for the respective position and thus the value of the flight should be calculated as the average cost per hour to operate the aircraft times the number of hours of the flight. Op. S.C. St. Ethics Comm., SEC AO2012‑001, November 16, 2011.

School district trustees may contract with their school district to provide construction services under the guidelines of Section 8‑13‑775, which requires the removal of the trustees from the procurement process and recusals thereafter on matters related to the contract. Such a contractual relationship would have to be disclosed on the school district trustee’s annual Statement of Economic Interests form, pursuant to Section 8‑13‑1120(A)(8). Op. S.C. St. Ethics Comm., SEC AO2009‑005, May 20, 2009.

Public officials, public members and public employees who file Statements of Economic Interests are advised to disclose any gift received as a result of their public office or position. Op. S.C. St. Ethics Comm., SEC AO2002‑008, Jan. 16, 2002.

Lawyer who is member of incorporated law firm is required to report, in Item 13 of Statement of Economic Interests, funds he receives from governmental entity, but is not required to disclose funds received by law firm from governmental clients. Op. S.C. St Ethics Comm., SEC AO92‑0076, May 27, 1992.

**SECTION 8‑13‑1125.** Exception to reporting requirement for events to which entire legislative body invited.

Notwithstanding Sections 2‑17‑90(C) and 8‑13‑710, the reporting requirement of Section 8‑13‑1120(A)(9) does not apply to an event to which a member of the General Assembly is invited by a lobbyist’s principal, regardless of whether or not the member attended the event, if the invitation was extended to the entire membership of the House, Senate, or General Assembly, and the invitation was accepted by the House or Senate Invitations Committee pursuant to House or Senate rules.

HISTORY: 1995 Act No. 6, Section 30, eff upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995.

**SECTION 8‑13‑1127.** Legislative invitations committees to keep records of invitations accepted; public inspection.

The House and Senate Invitations Committees shall keep an updated list of invitations accepted by the body. The list must be available for public inspection during regular business hours.

HISTORY: 1995 Act No. 6, Section 31, eff upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995.

**SECTION 8‑13‑1130.** Report on names of, and purchases by, lobbyists.

In addition to the statement of economic interests required pursuant to Section 8‑13‑1110, a person required to file the statement shall further report to the appropriate supervisory office the name of any person he knows to be a lobbyist as defined in Section 2‑17‑10(13) or a lobbyist’s principal as defined in Section 2‑17‑10(14) and knows that the lobbyist or lobbyist’s principal has in the previous calendar year purchased from the filer, a member of the filer’s immediate family, an individual with whom the filer is associated, or a business with which the filer is associated, goods or services in an amount in excess of two hundred dollars.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑1140.** Filing of updated statement.

A person required to file a statement of economic interests under this chapter annually shall file, pursuant to Section 8‑13‑365, an updated statement for the previous calendar year, no later than noon on March thirtieth of each calendar year. If the person has filed the description by name, amount, and schedule of payments of a continuing arrangement relating to an item required to be reported under this article, an updating statement need not be filed for each payment under the continuing arrangement, but only if the arrangement is terminated or altered.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2013 Act No. 61, Section 8, eff June 25, 2013.

Editor’s Note

2013 Act No. 61, Sections 11, 14, provide as follows:

“SECTION 11. In order to educate various parties regarding the provisions contained in this act, the following notifications must be made:

“(1) The State Election Commission must notify each county election commission of the provisions of this act.

“(2) The State Election Commission must post the provisions of this act on its website.

“(3) Each state party executive committee must notify their respective county executive parties of the provisions of this act.”

“SECTION 14. This act takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.”

The amendment by 2013 Act No. 61 became effective June 25, 2013, see South Carolina Libertarian Party v. South Carolina State Election Com’n, 407 S.C. 612, 757 S.E.2d 707 (2014).

Effect of Amendment

The 2013 amendment rewrote the first sentence.

Attorney General’s Opinions

Filing one’s candidacy for an election occurs in March, and yet Section 8‑13‑1140 requires that the Statement of Economic Interest must be filed by April 15. To avoid any possible conflict between the two dates, it is most reasonable to construe the language current SEI on file, for purposes of Section 8‑13‑1356(A)’s exemption, to be the SEI filed in the previous year on or before April 15, rather than the current year when candidacy filing occurs. S.C. Op.Atty.Gen. (May 23, 2012) 2012 WL 1964396.

**SECTION 8‑13‑1150.** Filing of statement by certain consultants.

A consultant must file a statement for the previous calendar year with the appropriate supervisory office no later than twenty‑one days after entering into a contractual relationship with the State or a political subdivision of the State and must file an update within ten days from the date the consultant knows or should have known that new economic interests in an entity have arisen in which the consultant or a member of the consultant’s immediate family has economic interests:

(1) where the entity’s bid was evaluated by the consultant and who was subsequently awarded the contract by the State, county, municipality, or a political subdivision of any of these entities that contracted with the consultant; or

(2) where the entity was awarded a contract by the consultant.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Section 32, eff upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995.

Effect of Amendment

The 1995 amendment deleted “of economic interests” following “must file a statement” at the beginning of the section.

**SECTION 8‑13‑1160.** Forwarding of copies of statement to State Ethics Commission and filing person’s county of residence.

(A) The Senate Ethics Committee and the House of Representatives Ethics Committee must forward a copy of each statement filed with it to the State Ethics Commission within five business days of receipt.

(B) Within five business days of receipt, a copy of all statements of economic interests received by the State Ethics Commission must be forwarded to the clerk of court in the county of residence of the filing official or employee.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Section 33, eff upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995.

Effect of Amendment

The 1995 amendment substituted “five” for “two” preceding “business days of receipt” in two instances.

**SECTION 8‑13‑1170.** Technical violations of disclosure requirements; extensions of time for filing statements.

(A) The appropriate supervisory office may, in its discretion, determine that errors or omissions on statements of economic interests are inadvertent and unintentional and not an effort to violate a requirement of this chapter and may be handled as technical violations not subject to the provisions of this chapter pertaining to ethical violations. Technical violations must remain confidential unless requested to be made public by the public official, public member, or public employee filing the statement. In lieu of all other penalties, the appropriate supervisory office may assess a technical violations penalty not exceeding fifty dollars.

(B) The appropriate supervisory office may grant a reasonable extension of time for filing a statement of economic interests. The extension may not exceed thirty days except in cases of illness or incapacitation.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

CROSS REFERENCES

Duties and powers of State Ethics Commission, see Section 8‑13‑320.

Possible courses of action by ethics committee upon finding violation, see Section 8‑13‑540.

Senate and House of Representatives Ethics Committees, manner in which investigations and hearings shall be conducted, findings and reports of committees, see Section 8‑13‑540.

**SECTION 8‑13‑1180.** Soliciting of contributions by elective official or agent from employees; favoritism by public official or employee towards employees making contributions.

(A) An elective official or the elective official’s agent may not knowingly solicit a contribution from an employee in the elective official’s area of official responsibility.

(B) A public official or public employee may not provide an advantage or disadvantage to a public employee or applicant for public employment concerning employment, conditions of employment, or application for employment based on the employee’s or applicant’s contribution, promise to contribute, or failure to contribute to a candidate, a political party, as defined in Section 8‑13‑1300(26) or a committee, as defined in Section 8‑13‑1300(6).

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

Ethics Commission Opinions

A candidate is an elective official who, in accordance with Section 8‑13‑1180(A), may not knowingly solicit, directly or through an agent, a contribution from an employee in the elective official’s area of official responsibility. Op. S.C. St. Ethics Comm., SEC AO2002‑012, May 15, 2002.

Candidate for Office of Adjutant General is “elective official” who, in accordance with Section 8‑13‑1180(A), may not, directly or through an agent, knowingly solicit contribution from employee in Adjutant General’s area of official responsibility. Section 8‑13‑1180(A), however, does not prohibit candidates for Adjutant General from soliciting contributions from members of National Guard who are not employees of South Carolina Adjutant General’s Office. Op. S.C. St. Ethics Comm., SEC AO94‑016, April 1, 1994.

ARTICLE 13

Campaign Practices

Editor’s Note

Former Article 13, which consisted of Sections 8‑13‑1010 and 8‑13‑1020, was repealed by 1991 Act No. 248, Section 3, effective January 1, 1992.

**SECTION 8‑13‑1300.** Definitions.

As used in this article:

(1) “Appropriate supervisory office” means:

(a) the State Ethics Commission for all candidates for public office in this State except for members or staff, including staff elected to serve as officers of or candidates for the office of State Senator or State Representative;

(b) the Senate Ethics Committee for members or staff, including staff elected to serve as officers, of or candidates for the office of State Senator, and the House of Representatives Ethics Committee for members or staff, including staff elected to serve as officers, of or candidates for the office of State Representative;

(c) the State Ethics Commission for all committees, except legislative caucus committees, supporting or opposing a ballot measure or supporting or opposing a candidate;

(d) the Senate Ethics Committee for all legislative caucus committees and legislative special interest caucuses affiliated with the Senate, the House of Representatives Ethics Committee for all legislative caucus committees and legislative special interest caucuses affiliated with the House of Representatives, and both ethics committees for all legislative caucus committees and legislative special interest caucuses affiliated with both houses.

(2) “Ballot measure” means a referendum, proposition, or measure submitted to voters for their approval.

(3) “Business” means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self‑employed individual.

(4) “Candidate” means: (a) a person who seeks appointment, nomination for election, or election to a statewide or local office, or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election; (b) a person who is exploring whether or not to seek election at the state or local level; or (c) a person on whose behalf write‑in votes are solicited if the person has knowledge of such solicitation. “Candidate” does not include a candidate within the meaning of Section 431(b) of the Federal Election Campaign Act of 1976.

(5) “Charitable organization” means an organization described in Title 26, Section 170(c) of the United States Code as it currently exists or as it may be amended.

(6) “Committee” means an association, a club, an organization, or a group of persons which, to influence the outcome of an elective office, receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. It also means a person who, to influence the outcome of an elective office, makes:

(a) contributions aggregating at least twenty‑five thousand dollars during an election cycle to or at the request of a candidate or a committee, or a combination of them; or

(b) independent expenditures aggregating five hundred dollars or more during an election cycle for the election or defeat of a candidate.

“Committee” includes a party committee, a legislative caucus committee, a noncandidate committee, or a committee that is not a campaign committee for a candidate but that is organized for the purpose of influencing an election.

(7) “Contribution” means a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in‑kind contribution or expenditure, a deposit of money, or anything of value made to a candidate or committee to influence an election; or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge, whether any of the above are made or offered directly or indirectly. “Contribution” does not include (a) volunteer personal services on behalf of a candidate or committee for which the volunteer or any person acting on behalf of or instead of the volunteer receives no compensation either in cash or in‑kind, directly or indirectly, from any source; or (b) a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in‑kind contribution or expenditure, a deposit of money, or anything of value made to a committee, other than a candidate committee, and is used to pay for communications made not more than forty‑five days before the election to influence the outcome of an elective office as defined in Section 8‑13‑1300(31)(c). These funds must be deposited in an account separate from a campaign account as required in Section 8‑13‑1312.

(8) “Corporation” means an entity organized in the corporate form under federal law or the laws of any state.

(9) “Election” means:

(a) a general, special, primary, or runoff election;

(b) a convention or caucus of a political party held to nominate a candidate; or

(c) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or the Constitution of this State.

(10) “Election cycle” means the period of a term of office beginning on the day after the general election for the office, up to and including the following general election for the same office, including a primary, special primary, or special election; however, the contribution limits under Sections 8‑13‑1314 and 8‑13‑1316 apply only to elections occurring on or after January 1, 1992, and are for each primary, runoff, or special election in which a candidate has opposition and for each general election. If the candidate remains unopposed during an election cycle, one contribution limit shall apply.

(11) “Elective office” means an office at the state, county, municipal or political subdivision level. For the purposes of this article, the term ‘elective office’ does not include an office under the unified judicial system except for purposes of campaign practices, campaign disclosure, and disclosure of economic interests. “Elective office” includes the office of probate judge.

(12) “Expenditure” means a purchase, payment, loan, forgiveness of a loan, an advance, in‑kind contribution or expenditure, a deposit, transfer of funds, gift of money, or anything of value for any purpose.

(13) “Expenditures incurred” means an amount owed to a creditor for purchase of delivered goods or completed services.

(14) “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, grandparent, or grandchild; or

(b) a member of the individual’s immediate family.

(15) “Gift” means anything of value, including entertainment, food, beverage, travel, and lodging given for pay to a public official 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 article.

(16) “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.

(17) “Independent expenditure” means:

(a) an expenditure made directly or indirectly by a person to advocate the election or defeat of a clearly identified candidate or ballot measure; and

(b) when taken as a whole and in context, the expenditure made by a person to influence the outcome of an elective office or ballot measure but which is not:

(i) made to;

(ii) controlled by;

(iii) coordinated with;

(iv) requested by; or

(v) made upon consultation with a candidate or an agent of a candidate; or a committee or agent of a committee; or a ballot measure committee or an agent of a ballot measure committee.

Expenditures by party committees or expenditures by legislative caucus committees based upon party affiliation are considered to be controlled by, coordinated with, requested by, or made upon consultation with a candidate or an agent of a candidate.

(18) “Individual” means one human being.

(19) “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 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.

(20) “In‑kind contribution or expenditure” means goods or services which are provided to or by a person at no charge or for less than their fair market value.

(21) “Legislative caucus committee” means:

(a) a committee of either house of the General Assembly controlled by the caucus of a political party or a caucus based upon racial or ethnic affinity, or gender; however, each house may establish only one committee for each political, racial, ethnic, or gender‑based affinity;

(b) a party or group of either house of the General Assembly based upon racial or ethnic affinity, or gender;

(c) “legislative caucus committee” does not include a “legislative special interest caucus” as defined in Section 2‑17‑10(21).

(22) “Loan” means a transfer of money, property, guarantee, or anything of value in exchange for an obligation, conditional or not, to repay in whole or in part.

(23) “Noncandidate committee” means a committee that is not a campaign committee for a candidate but is organized to influence an election or to support or oppose a candidate or public official, which receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. “Noncandidate committee” does not include political action committees that contribute solely to federal campaigns.

(24) “Party committee” means a committee established by a political party.

(25) “Person” means an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert.

(26) “Political party” means an association, a committee, or an organization which nominates a candidate whose name appears on the election ballot as the candidate of that association, committee, or organization.

(27) “Public employee” means a person employed by the State, a county, a municipality, or a political subdivision thereof.

(28) “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. However, “public official” does not mean a member of the judiciary except for purposes of campaign financing. A probate judge is considered a public official and must meet the requirements of this article.

(29) “Statewide office” means an elective office other than a federal office eligible to be voted upon by all electors of the State.

(30) “Transfer” means the movement or exchange of funds or anything of value between committees and candidates except the disposition of surplus funds or material assets by a candidate to a party committee, as provided in this article.

(31) “Influence the outcome of an elective office” means:

(a) expressly advocating the election or defeat of a clearly identified candidate using words including or substantially similar to “vote for”, “elect”, “cast your ballot for”, “Smith for Governor”, “vote against”, “ defeat”, or “reject”;

(b) communicating campaign slogans or individual words that, taken in context, have no other reasonable meaning other than to urge the election or defeat of a clearly identified candidate including or substantially similar to slogans or words such as “Smith’s the One”, “Jones 2000”, “Smith/Jones”, “Jones!”, or “Smith‑A man for the People!”; or

(c) any communication made, not more than forty‑five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate. For purposes of this paragraph, “communication” means (i) any paid advertisement or purchased program time broadcast over television or radio; (ii) any paid message conveyed through telephone banks, direct mail, or electronic mail; or (iii) any paid advertisement that costs more than five thousand dollars that is conveyed through a communication medium other than those set forth in subsections (i) or (ii) of this paragraph. “Communication” does not include news, commentary, or editorial programming or article, or communication to an organization’s own members.

(32) “Ballot measure committee” means:

(a) an association, club, an organization, or a group of persons which, to influence the outcome of a ballot measure, receives contributions or makes expenditures in excess of two thousand five hundred dollars in the aggregate during an election cycle;

(b) a person, other than an individual, who, to influence the outcome of a ballot measure, makes contributions aggregating at least fifty thousand dollars during an election cycle to or at the request of a ballot measure committee; or

(c) a person, other than an individual, who, to influence the outcome of a ballot measure, makes independent expenditures aggregating two thousand five hundred dollars or more during an election cycle.

(33) “Coordinated with” means discussion or negotiation between a candidate or a candidate’s agent and:

(a) a person;

(b) an agent of a person;

(c) any other agent of a candidate; or

(d) any combination of these concerning, but not limited to, a political communication’s:

(1) contents, including the specific wording of print, broadcast, or telephone communications; appearance of print or broadcast communications; the message or theme of print or broadcast communications;

(2) timing, including the proximity to general or primary elections, proximity to other political communications, and proximity to other campaign events;

(3) location, including the proximity to other political communications, or geographical targeting, or both;

(4) mode, including the medium (phone, broadcast, print, etc.) of the communication;

(5) intended audience, including the demographic or political targeting, or geographical targeting; and

(6) volume, including the amount, frequency, or size of the political communication.

(34) “Operation expenses” means expenditures for salaries and/or fringe benefits for part‑time, full‑time, temporary and/or contract employees; meeting expenses, travel, utilities, communications and/or communications equipment whether leased or purchased, printing or printing services, postage, food and/or beverage, advertising, consulting services, and/or any other expenditures which are not an authorized contribution to a candidate, committee, or ballot measure committee.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Sections 34‑38, effective upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995; 2003 Act No. 76, Section 22, eff June 26, 2003; 2003 Act No. 76, Sections 19 to 21, 23 to 27, 54, eff November 3, 2004; 2006 Act No. 344, Sections 3, 4, eff May 31, 2006; 2008 Act No. 245, Section 3, eff May 29, 2008.

Effect of Amendment

The 1995 amendment, by Section 34, in paragraph (4), inserted the second sentence regarding write‑in candidates; by Section 35, in paragraph (7), deleted “or ballot measure” following “influence an election”; by Section 36, in paragraph (9), inserted item (d); by Section 37, in paragraph (17), item (a), inserted “or ballot measure”; and by Section 38, in paragraph (23), deleted “or ballot measure” following “public official,” in the first sentence.

The 2003 amendment by Act 76, Section 22 (eff June 26, 2003), in paragraph (9), deleted item (d) which read “a ballot measure” and by Sections 19, 20, 21, 23 and 54 (eff November 3, 2004), rewrote items (4), (6), (7), (17) and (21) respectively, and by Sections 24 to 27 (eff November 3, 2004) added items (31) to (34).

The 2006 amendment, in subparagraph (1)(d), added the references to legislative special interest caucuses; and added subparagraph (21)(c).

The 2008 amendment, in subitems (1)(a) and (b), added “or staff, including staff elected to serve as officers,”.

CROSS REFERENCES

Any contribution, as defined in this section, to be included in report of lobbying expenditures of lobbyist’s principal, see Section 2‑17‑35.

Lobbyist not to provide, and public official or employee not to accept, contributions, as defined in this section, see Section 2‑17‑80.

Lobbyist not to serve as treasurer for a candidate, as defined in this section, see Section 2‑17‑110.

Permissibility of renting or providing public facilities for campaign‑related purposes to candidates and committees, see Section 8‑13‑765.

Prohibition on employee favoritism by public officials or employees based on contributions to political parties or committees, see Section 8‑13‑1180.

What constitutes a contribution to a campaign committee, see Section 8‑13‑100.

Federal Aspects

The definition of “candidate” in the Federal Election Campaign Act can be found at 52 U.S.C.A. Section 30101.

RESEARCH REFERENCES

Encyclopedias

15 Am. Jur. Trials 1, Unfair Election Campaign Practices.

Ethics Commission Opinions

Candidates in a primary runoff who accept campaign contributions in the seven day period following the primary election must attribute those contributions to the primary. Contributions for the primary runoff election must not be accepted from those contributors who made maximum contributions for the primary until the eighth day after the primary. Opinion prospective only. Op. S.C. St. Ethics Comm., SEC AO2014‑004, May 21, 2014.

The Ethics Reform Act requires a candidate to disclose all contributions and expenditures related to his campaign, to include in‑kind contributions and expenditures. The Act does not require a candidate to accept mileage reimbursement for the use of his personal vehicle to attend campaign events. Related campaign travel expenses, beyond mileage, paid for by the candidate are in‑kind contributions. Op. S.C. St. Ethics Comm., SEC AO2014‑001, Sept. 18, 2013.

The State Ethics Commission declines to enforce Section 8‑13‑1322(A) contribution limits for those committees which are exclusively engaged in independent expenditures. Op. S.C. St. Ethics Comm., SEC AO2011‑004, Sept. 15, 2010.

A committee is a group of persons which to influence the outcome of an elective office receives contributions or makes expenditures in excess of $500 during an election cycle. Section 8‑13‑1300(31)(c) defines the term “influence the outcome of an elective office” to include any purchased program time broadcast over television or radio, not more than forty‑five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate. Op. S.C. St. Ethics Comm., SEC AO2006‑004, May 17, 2006.

The South Carolina Citizens for Life, a non‑profit corporation, is advised that they need not register as a committee and need not file Campaign Disclosure Reports unless they incur expenditures in the dissemination of information which clearly identifies candidates, and which expressly supports or opposes the election of the identified candidates. Op. S.C. St. Ethics Comm., SEC AO2000‑010, May 17, 2000.

The statute does not prescribe the organizational structure of a committee. Op. S.C. St. Ethics Comm., SEC AO96‑001, July 19, 1995.

Administrative law judges are “public officials” under the Ethics Reform Act of 1991 and, thus, are subject to the Act’s requirements. Op. S.C. St. Ethics Comm., SEC AO95‑007, Jan. 18, 1995.

Two separately incorporated corporations are different “persons” for the purposes of computing the contribution limitations. Since the corporations have distinct and separate business purposes, the corporations possess separate contribution limits, and each may contribute $3,500 within the same election cycle to the same candidate for statewide office. Op. S.C. St. Ethics Comm., SEC AO95‑005, Nov. 16, 1994.

Within an election cycle, a candidate for local office may accept no more than $5,000 in combined contributions from a political party through its party committees or affiliated legislative caucus committees. Political parties, through their party committees or legislative caucus committees, may make individual contributions exceeding $3,500 for statewide candidates or $1,000 for local candidates so long as the aggregate contribution limits of Section 8‑13‑1316(A) are not exceeded. Op. S.C. St. Ethics Comm., SEC AO95‑001, Sept. 21, 1994.

Within election cycle, no candidate or anyone acting on his behalf may solicit or accept from “person”, as defined in Section 8‑13‑1300(24), contribution which exceeds $3,500 in case of candidate for statewide office or $1000 in case of candidate for any other office. Moreover, one contribution limit shall apply to individual as well as all proprietorships that are owned by that individual and whose contributions are directed by that individual. Op. S.C. St. Ethics Comm., SEC AO94‑020, April 20, 1994.

Ethics Reform Act does not prohibit political party from raising money by marketing long distance telephone service plan. In accordance with earlier opinions and facts submitted, State Ethics Commission does not object to party’s decision to maintain these funds in account separate from campaign accounts and use them only for non‑campaign related expenses. Ethics Reform Act does not limit donations to political party that are neither channeled through campaign account nor used to influence outcome of elective offices or ballot measures. Op. S.C. St. Ethics Comm., SEC AO94‑019, April 20, 1994.

Since Judicial Circuit Solicitors are not statewide constitutional officers, Section 2‑17‑80 does not prohibit candidate for Solicitor from accepting campaign contributions from lobbyists, provided candidate is not otherwise serving as public official of any state agency, including SC Commission on Prosecution Coordination, that engages in covered agency actions. Op. S.C. St. Ethics Comm., SEC AO94‑018, April 20, 1994.

Candidate for Office of Adjutant General is “elective official” who, in accordance with Section 8‑13‑1180(A), may not, directly or through an agent, knowingly solicit contribution from employee in Adjutant General’s area of official responsibility. Section 8‑13‑1180(A), however, does not prohibit candidates for Adjutant General from soliciting contributions from members of National Guard who are not employees of South Carolina Adjutant General’s Office. Op. S.C. St. Ethics Comm., SEC AO94‑016, April 1, 1994.

Lobbyist and subordinate staff person who reports directly to lobbyist are both prohibited from performing functions related to PAC of lobbyist’s principal. Op. S.C. St. Ethics Comm., SEC AO94‑009, Oct. 20, 1993.

Definition of “person” in Section 8‑13‑1300, item (25), is very broad in encompassing any type of organization or group of persons. Thus, federal candidate committee or national political committee would be encompassed within definition. Op. S.C. St. Ethics Comm., SEC AO92‑013, Dec. 18, 1991.

NOTES OF DECISIONS

Collateral estoppel 3

Justiciability 2

Validity 1

1. Validity

South Carolina Ethics, Government Accountability, and Campaign Reform Act imposed numerous burdens on entities that qualified as “committees,” without requiring that entity’s major purpose be nominating or electing a candidate, thereby threatening to chill significant non‑election‑related First Amendment political speech, and thus term “committee” as defined by Act was facially unconstitutional as overbroad; Act required that each committee file recurring certified campaign reports, maintain records of contributions, contributors, and expenditures, comply with various bank account requirements, reject anonymous and cash contributions, and disclose information about contributions and expenditures, and application of limiting construction was not appropriate. South Carolinians for Responsible Government v. Krawcheck, 2012, 854 F.Supp.2d 336. Constitutional Law 1687; Constitutional Law 1695; Election Law 202(2)

Challenges to South Carolina election law alleged in action seeking declaratory relief by nonprofit corporation established to present information to the public on abortion, euthanasia, and related issues and to advocate pro‑life position on those issues were not barred by mootness, although corporation’s intended communications were pointed towards past election; case fell within exception to mootness as capable of repetition yet evading review because of length of time required for courts to resolve matter, and corporation alleged that it intended to distribute voter guides in future elections. South Carolina Citizens for Life, Inc. v. Krawcheck, 2010, 759 F.Supp.2d 708. Declaratory Judgment 212

South Carolina Ethics Act imposed numerous burdens on entities that qualified as “committees” without reference to entity’s major purpose, thereby threatening to chill significant First Amendment rights, and thus phrase “committee” as defined by Act was facially unconstitutional for overbreadth; Act required that each committee file recurring certified campaign reports, maintain records of contributions, contributors, and expenditures, comply with various bank account requirements, reject anonymous and cash contributions, and disclose information about contributions and expenditures, and application of limiting construction was not appropriate. South Carolina Citizens for Life, Inc. v. Krawcheck, 2010, 759 F.Supp.2d 708. Constitutional Law 1463; Election Law 202(2)

Action challenging the constitutionality of two provisions of the South Carolina election law under the First Amendment was ripe for decision; the issues were purely legal, the plaintiff would suffer hardship if the district court withheld consideration of the issues in that, with the statute in place, the plaintiff could not distribute its voter guide unless it undertook significant compliance measures or was willing to risk prosecution, and the threat of prosecution was sufficiently credible because the statute facially restricted the plaintiff’s expressive activities. South Carolina Citizens for Life, Inc. v. Krawcheck (C.A.4 (S.C.) 2008) 301 Fed.Appx. 218, 2008 WL 4964151, Unreported, on remand 759 F.Supp.2d 708. Constitutional Law 978

2. Justiciability

Prior decision of another District Court judge in another case, holding that the definition of “committee” in the South Carolina Ethics, Government Accountability, and Campaign Reform Act was unconstitutionally overbroad on its face, did not moot non‑profit advocacy group’s challenge in another case before another District Court judge to constitutionality of same provision of the Act, since prior Court’s determination by peer judge was not binding. South Carolinians for Responsible Government v. Krawcheck, 2012, 854 F.Supp.2d 336. Courts 96(1)

Challenges to South Carolina election law alleged in action seeking declaratory relief by nonprofit corporation established to present information to the public on abortion, euthanasia, and related issues and to advocate pro‑life position on those issues were not barred by mootness, although corporation’s intended communications were pointed towards past election; case fell within exception to mootness as capable of repetition yet evading review because of length of time required for courts to resolve matter, and corporation alleged that it intended to distribute voter guides in future elections. South Carolina Citizens for Life, Inc. v. Krawcheck, 2010, 759 F.Supp.2d 708. Declaratory Judgment 212

3. Collateral estoppel

Collateral estoppel barred relitigation of First Amendment overbreadth challenge to definition of “committee” in the South Carolina Ethics, Government Accountability, and Campaign Reform Act, where both actions involved same parties, prior case ended in final and valid judgment that the Act’s definition of “committee” was overbroad on its face, and parties had a full and fair opportunity to litigate the provision’s constitutionality in the prior case. South Carolinians for Responsible Government v. Krawcheck, 2012, 854 F.Supp.2d 336. Judgment 650; Judgment 713(1)

**SECTION 8‑13‑1301.** Joint candidates for Governor and Lieutenant Governor considered a single candidate.

For purposes of this article, candidates elected jointly as provided in Section 8, Article IV of the South Carolina Constitution, 1895, must be considered a single candidate. The gubernatorial candidate is responsible for:

(1) establishing a single candidate committee for contributions solicited and received for the Governor and Lieutenant Governor elected jointly; and

(2) complying with the requirements of Article 13, Chapter 13, Title 8 for the committee established for the joint election.

HISTORY: 2018 Act No. 142 (H.4977), Section 4, eff March 15, 2018.

**SECTION 8‑13‑1302.** Maintenance of records of contributions, contributors, and expenditures.

(A) A candidate, committee, or ballot measure committee must maintain and preserve an account of:

(1) the total amount of contributions accepted by the candidate, committee, or ballot measure committee;

(2) the name and address of each person making a contribution and the amount and date of receipt of each contribution;

(3) the total amount of expenditures made by or on behalf of the candidate, committee, or ballot measure committee;

(4) the name and address of each person to whom an expenditure is made including the date, amount, purpose, and beneficiary of the expenditure;

(5) all receipted bills, canceled checks, or other proof of payment for each expenditure; and

(6) the occupation of each person making a contribution.

(B) The candidate, committee, or ballot measure committee must maintain and preserve all receipted bills and accounts required by this article for four years.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 28, eff November 3, 2004.

Effect of Amendment

The 2003 amendment, in subsection (A)(2), inserted “the amount and” following “contribution and”; added subsection (A)(6) relating to “the occupation of each person making a contribution”; inserted “, or ballot measure committee” following “committee” throughout this section; and made other nonsubstantive changes.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

**SECTION 8‑13‑1304.** Committees receiving and spending funds to influence elections required to file statement of organization.

(A) A committee, except an out‑of‑state committee, which receives or expends more than five hundred dollars in the aggregate during an election cycle to influence the outcome of an elective office must file a statement of organization with the State Ethics Commission no later than five days after receiving the contribution or making the expenditure. An out‑of‑state committee which expends more than five hundred dollars in the aggregate during an election cycle to influence the outcome of an elective office must file a statement of organization with the State Ethics Commission no later than five days after making the expenditure.

(B) A ballot measure committee, except an out‑of‑state ballot measure committee, which receives or expends more than two thousand five hundred dollars in the aggregate during an election cycle to influence the outcome of a ballot measure must file a statement of organization with the State Ethics Commission no later than five days after receiving the contribution or making the expenditure. An out‑of‑state ballot measure committee which expends more than two thousand five hundred dollars in the aggregate during an election cycle to influence the outcome of a ballot measure must file a statement of organization with the State Ethics Commission no later than five days after making the expenditure.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 29, eff November 3, 2004.

Effect of Amendment

The 2003 amendment designated the existing paragraph as subsection (A), deleted “or ballot measure” following “elective office” twice in the existing paragraph, and added subsection (B) relating to ballot measure committees requirement to file a statement of organization when receiving and spending funds to influence elections.

CROSS REFERENCES

Requirement of filing certified campaign report, see Section 8‑13‑1308.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

Ethics Commission Opinions

A Political Action Committee (PAC) must file a Statement of Organization within five days after receiving or expending $500. A Campaign Disclosure Form must be filed within ten days after reaching the $500 threshold. Op. S.C. St. Ethics Comm., SEC AO96‑001, July 19, 1995.

Ethics Reform Act does not prohibit political party from raising money by marketing long distance telephone service plan. In accordance with earlier opinions and facts submitted, State Ethics Commission does not object to party’s decision to maintain these funds in account separate from campaign accounts and use them only for non‑campaign related expenses. Ethics Reform Act does not limit donations to political party that are neither channeled through campaign account nor used to influence outcome of elective offices or ballot measures. Op. S.C. St. Ethics Comm., SEC AO94‑019, April 20, 1994.

Committee supporting potential ballot issue is required to file Statement of Organization within 5 days after receiving or expending $500 and must filed Campaign Disclosure Form within 10 days after reaching $500 threshold. Op. S.C. St. Ethics Comm., SEC AO92‑189, June 9, 1992.

Campaign practices requirements of Sections 8‑13‑1304 and 8‑13‑1308 take effect January 1, 1992. Candidates in January 7, 1992 election will be required to register their committee within 5 days after January 1, 1992. Initial campaign disclosure will be due on or before January 10, 1992. Contribution limits apply only to those contributions received on or after January 1, 1992. Op. S.C. St Ethics Comm., SEC AO92‑004, Dec. 18, 1991.

Attorney General’s Opinions

Contributions from corporations to political parties are not in violation of any South Carolina statute. 1974‑75 Op Atty Gen, No 3986, p 56.

**SECTION 8‑13‑1306.** Contents of statement of organization.

(A) The statement of organization of a committee or a ballot measure committee must include:

(1) the full name of the committee or ballot measure committee;

(2) the complete address and telephone number of the committee or ballot measure committee;

(3) the date the committee or ballot measure committee was organized;

(4) a summary of the purpose of the committee or ballot measure committee;

(5) the name and address of a corporation or an organization that sponsors the committee or ballot measure committee or is affiliated with the committee or ballot measure committee. If the committee or ballot measure committee is not sponsored by or affiliated with a corporation or an organization, the committee or ballot measure committee must specify the trade, profession, or primary interest of contributors to the committee or ballot measure committee;

(6) the name and address of affiliated committees, as defined in Section 8‑13‑1331;

(7) the full name, address, telephone number, occupation, and principal place of business of the chairman and treasurer of the committee or ballot measure committee;

(8) the full name, address, telephone number, occupation, and principal place of business of the custodian of the books and accounts, if the custodian is not one of the designated officers;

(9) the full name and address of the depository in which the committee or ballot measure committee maintains its campaign account and the number of the account; and

(10) a certification of the statement by the chairman and the treasurer.

(B) The name of the committee or ballot measure committee designated on the statement of organization must incorporate the full name of the sponsoring entity, if any. An acronym or abbreviation may be used in other communications if the acronym or abbreviation commonly is known or clearly recognized by the general public.

(C) The chairman must notify the State Ethics Commission in writing of a change in information previously reported in a statement of organization no later than ten business days after the change.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 30, eff June 26, 2003; 2008 Act No. 245, Section 6, eff May 29, 2008.

Effect of Amendment

The 2003 amendment added “, or ballot measure committee” following “committee”, and substituted “the custodian is not one of” for “other than” in subsection (A)(7); and made nonsubstantive changes throughout this section.

The 2008 amendment added paragraph (A)(6) and redesignated paragraphs (A)(6) to (9) as paragraphs (A)(7) to (10).

Ethics Commission Opinions

A Political Action Committee (PAC) must file a Statement of Organization within five days after receiving or expending $500. A Campaign Disclosure Form must be filed within ten days after reaching the $500 threshold. Op. S.C. St. Ethics Comm., SEC AO96‑001, July 19, 1995.

**SECTION 8‑13‑1308.** Filing of certified campaign reports by candidates and committees.

(A) Upon the receipt or expenditure of campaign contributions or the making of independent expenditures totaling an accumulated aggregate of five hundred dollars or more, a candidate or committee required to file a statement of organization pursuant to Section 8‑13‑1304(A) must file an initial certified campaign report within ten days of these initial receipts or expenditures. However, a candidate who does not receive or expend campaign contributions totaling an accumulated aggregate of five hundred dollars or more must file an initial certified campaign report fifteen days before an election.

(B) Following the filing of an initial certified campaign report, additional certified campaign reports must be filed within ten days following the end of each calendar quarter in which contributions are received or expenditures are made, whether before or after an election until the campaign account undergoes final disbursement pursuant to the provisions of Section 8‑13‑1370.

(C) Campaign reports filed by a candidate must be certified by the candidate. Campaign reports filed by a committee must be certified by a duly authorized officer of the committee.

(D)(1) At least fifteen days before an election, a certified campaign report must be filed showing contributions of more than one hundred dollars and expenditures to or by the candidate or committee for the period ending twenty days before the election. The candidate or committee must maintain a current list during the period before the election commencing at the beginning of the calendar quarter of the election of all contributions of more than one hundred dollars and expenditures. The list must be open to public inspection upon request.

(2) A committee immediately shall file a campaign report listing expenditures if it makes an independent expenditure or an incurred expenditure within the calendar quarter in which the election is conducted or twenty days before the election, whichever period of time is greater, in excess of:

(a) ten thousand dollars in the case of a candidate for statewide office; or

(b) two thousand dollars in the case of a candidate for any other office.

(3) In the event of a runoff election, candidates or committees are not required to file another campaign report in addition to the reports already required under this section. However, records must remain open to public inspection upon request between the election and the runoff.

(E) Notwithstanding the provisions of subsections (B) and (D), if a pre‑election campaign report provided for in subsection (D) is required to be filed within thirty days of the end of the prior quarter, a candidate or committee must combine the quarterly report provided for in subsection (B) and the pre‑election report and file the combined report subject to the provisions of subsection (D) no later than fifteen days before the election.

(F) Certified campaign reports detailing campaign contributions and expenditures must contain:

(1) the total of contributions accepted by the candidate or committee;

(2) the name and address of each person making a contribution of more than one hundred dollars and the amount and date of receipt of each contribution;

(3) the total expenditures made by or on behalf of the candidate or committee;

(4) the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure.

(G) Notwithstanding any other reporting requirements in this chapter, a political party, legislative caucus committee, and a party committee must file a certified campaign report upon the receipt of anything of value which totals in the aggregate five hundred dollars or more. For purposes of this section, “anything of value” includes contributions received which may be used for the payment of operation expenses of a political party, legislative caucus committee, or a party committee. A political party also must comply with the reporting requirements of subsections (B), (C), and (F) of Section 8‑13‑1308 in the same manner as a candidate or committee.

(H) A committee that solicits contributions pursuant to Section 8‑13‑1331 must certify compliance with that section on a form prescribed by the State Ethics Commission.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Section 39, eff upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995; 2003 Act No. 76, Sections 31 to 34, eff November 3, 2004; 2008 Act No. 245, Section 7, eff May 29, 2008.

Effect of Amendment

The 1995 amendment added subsection (E) and redesignated former subsection (E) as (F).

The 2003 amendment, in subsection (A), in the first sentence, added “or the making of independent expenditures” after “campaign contributions” and in the second sentence, deleted “or a committee” following “candidate”; in subsection (D)(1) inserted “and expenditures” following “one hundred dollars”; in subsection (F)(2) added “amount and” preceding “date of receipt”; and added subsection (G) relating to filing a certified campaign report by a political party upon receipt of anything of value in the amount of five hundred dollars or more.

The 2008 amendment added subsection (H) relating to certification of compliance.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

Ethics Commission Opinions

A committee is a group of persons which to influence the outcome of an elective office receives contributions or makes expenditures in excess of $500 during an election cycle. Section 8‑13‑1300(31)(c) defines the term “influence the outcome of an elective office” to include any purchased program time broadcast over television or radio, not more than forty‑five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate. Op. S.C. St. Ethics Comm., SEC AO2006‑004, May 17, 2006.

Candidates may participate in joint fund‑raisers as long as they comply with the guidelines establishing a joint committee, requiring separate bank accounts, providing for the establishment of a formula for distribution of the proceeds, setting limits on contributions and providing for the distributions of proceeds within ten days. Failure to follow these guidelines may subject the candidate to a complaint for accepting an excessive contribution. Op. S.C. St. Ethics Comm., SEC AO2002‑011, March 20, 2002.

Public employee cannot use their employment, including office materials, equipment and personnel, to influence the outcome of an election. Fellow employees may participate in the election activities on their own time. Public employees are not required to take unpaid leave in order to run for office. Op. S.C. St. Ethics Comm., SEC AO2002‑006, Jan. 16, 2002.

The Ethics Reform Act permits the transfer of a candidate’s campaign funds to a candidate’s different elective office campaign account as long as the campaign for a different elective office receives written authorization from the person originally making the contribution in accordance with Section 8‑13‑1352. The campaign should report the identity of the transferring contributor, the date written authorization was given and the date on which the original contribution was made. Op. S.C. St. Ethics Comm., SEC AO2002‑002, July 18, 2001.

Ethics Reform Act does not prohibit political party from raising money by marketing long distance telephone service plan. In accordance with earlier opinions and facts submitted, State Ethics Commission does not object to party’s decision to maintain these funds in account separate from campaign accounts and use them only for non‑campaign related expenses. Ethics Reform Act does not limit donations to political party that are neither channeled through campaign account nor used to influence outcome of elective offices or ballot measures. Op. S.C. St. Ethics Comm., SEC AO94‑019, April 20, 1994.

Committee supporting potential ballot issue is required to file Statement of Organization within 5 days after receiving or expending $500 and must filed Campaign Disclosure Form within 10 days after reaching $500 threshold. Op. S.C. St. Ethics Comm., SEC AO92‑189, June 9, 1992.

Campaign practices requirements of Sections 8‑13‑1304 and 8‑13‑1308 take effect January 1, 1992. Candidates in January 7, 1992 election will be required to register their committee within 5 days after January 1, 1992. Initial campaign disclosure will be due on or before January 10, 1992. Contribution limits apply only to those contributions received on or after January 1, 1992. Op. S.C. St. Ethics Comm., SEC AO92‑004, Dec. 18, 1991.

**SECTION 8‑13‑1309.** Certified campaign reports; filing; contents.

(A) Upon the receipt or expenditure of campaign contributions or the making of independent expenditures totaling, in an accumulated aggregate, two thousand five hundred dollars or more, a ballot measure committee required to file a statement of organization pursuant to Section 8‑13‑1304(B) must file an initial certified campaign report within ten days of these initial receipts or expenditures.

(B) Following the filing of an initial certified campaign report, additional certified campaign reports must be filed within ten days following the end of each calendar quarter in which contributions are received or expenditures are made, whether before or after a ballot measure election until the campaign account undergoes final disbursement pursuant to the provisions of Section 8‑13‑1370(C).

(C) At least fifteen days before a ballot measure election, a certified campaign report must be filed showing contributions of more than one hundred dollars and expenditures to or by the ballot measure committee for the period ending twenty days before the ballot measure election. The ballot measure committee must maintain a current list during the period before the ballot measure election commencing at the beginning of the calendar quarter of the election of all contributions of more than one hundred dollars. The list must be open to public inspection upon request.

(D) Notwithstanding the provisions of subsections (B) and (C), if a pre‑election campaign report provided for in subsection (C) is required to be filed within thirty days of the end of the prior quarter, a ballot measure committee must combine the quarterly report provided for in subsection (B) and the pre‑election report and file the combined report subject to the provisions of subsection (C) no later than fifteen days before the ballot measure election.

(E) Certified campaign reports detailing campaign contributions and expenditures must contain:

(1) the total amount of contributions accepted by the ballot measure committee;

(2) the name and address of each person making a contribution of more than one hundred dollars and the amount and date of receipt of each contribution;

(3) the total amount of expenditures made by or on behalf of the ballot measure committee; and

(4) the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure.

HISTORY: 2003 Act No. 76, Section 35, eff November 3, 2004.

**SECTION 8‑13‑1310.** Recipients of certified campaign reports and copies thereof; State Ethics Commission review.

(A) All persons required to file certified campaign reports pursuant to the provisions of this article must file those reports with the appropriate supervisory office.

(B) The Ethics Committees of the Senate and the House of Representatives must forward a copy of each statement filed with them to the State Ethics Commission within five business days of receipt.

(C) Within five days of receipt, a copy of all campaign reports received by the State Ethics Commission must be forwarded to the clerk of court in the county of residence of the person required to file.

(D) As provided in Section 8‑13‑1372, the State Ethics Commission must review all statements for inadvertent and unintentional errors or omissions.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Sections 40, 41, eff upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995; 2003 Act No. 76, Section 36, eff June 26, 2003.

Effect of Amendment

The 1995 amendment, by Section 40, in subsection (B), substituted “five business days” for “two business days”; and by Section 41, in subsection (C), substituted “five days” for “two days”.

The 2003 amendment, in subsection (C), deleted “State Election Commission and the” preceding “clerk”, in subsection (D) substituted “Ethics Commission” for “Election Commission” and deleted “forwarded to it by the State Ethics Commission” after “statement”, and made nonsubstantive changes throughout.

**SECTION 8‑13‑1312.** Campaign bank accounts.

Except as is required for the separation of funds and expenditures under the provisions of Section 8‑13‑1300(7), a candidate shall not establish more than one campaign checking account and one campaign savings account for each office sought, and a committee shall not establish more than one checking account and one savings account unless federal or state law requires additional accounts. For purposes of this article, certificates of deposit or other interest bearing instruments are not considered separate accounts. A candidate’s accounts must be established in a financial institution that conducts business within the State and in an office located within the State that conducts business with the general public. The candidate or a duly authorized officer of a committee must maintain the accounts in the name of the candidate or committee. An acronym must not be used in the case of a candidate’s accounts. An acronym or abbreviation may be used in the case of a committee’s accounts if the acronym or abbreviation commonly is known or clearly recognized by the general public. Except as otherwise provided under Section 8‑13‑1348(C), expenses paid on behalf of a candidate or committee must be drawn from the campaign account and issued on a check signed by the candidate or a duly authorized officer of a committee. All contributions received by the candidate or committee, directly or indirectly, must be deposited in the campaign account by the candidate or committee within ten days after receipt. All contributions received by an agent of a candidate or committee must be forwarded to the candidate or committee not later than five days after receipt. A contribution must not be deposited until the candidate or committee receives information regarding the name and address of the contributor. If the name and address cannot be determined within seven days after receipt, the contribution must be remitted to the Children’s Trust Fund.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 37, eff November 3, 2004.

Effect of Amendment

The 2003 amendment, in the first sentence, added “Except as is required for the separation of funds and expenditures under the provisions of Section 8‑13‑1300(7),” at the beginning, substituted “shall” for “may” twice and made nonsubstantive changes, and in the last sentence substituted “seven” for “ten”.

Ethics Commission Opinions

Independent non‑candidate committees may “bundle” and deliver member contributions to a candidate. A committee may recommend and/or retain fund raisers, subject to in‑kind contribution reporting. Op. S.C. St. Ethics Comm., SEC AO99‑007, March 17, 1999.

**SECTION 8‑13‑1314.** Campaign contribution limits and restrictions.

(A) Within an election cycle, a candidate or anyone acting on his behalf shall not solicit or accept, and a person shall not give or offer to give to a candidate or person acting on the candidate’s behalf:

(1) a contribution which exceeds:

(a) three thousand five hundred dollars in the case of a candidate for statewide office; or

(b) three thousand five hundred dollars in the aggregate for statewide candidates elected jointly pursuant to Section 8, Article IV of the South Carolina Constitution, 1895; or

(c) one thousand dollars in the case of a candidate for any other office;

(2) a cash contribution from an individual unless the cash contribution does not exceed twenty‑five dollars and is accompanied by a record of the amount of the contribution and the name and address of the contributor;

(3) a contribution from, whether directly or indirectly, a registered lobbyist if that lobbyist engages in lobbying the public office or public body for which the candidate is seeking election;

(4) contributions for two elective offices simultaneously, except as provided in Section 8‑13‑1318.

(B) The restrictions on contributions in subsection (A)(1) and (2) do not apply to a candidate making a contribution to his own campaign.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 38, eff November 3, 2004; 2018 Act No. 142 (H.4977), Section 5, eff March 15, 2018.

Effect of Amendment

The 2003 amendment, in the introductory paragraph of subsection (A), added “, and no person shall give or offer to give to a candidate or person acting on the candidate’s behalf” following “accept”, and in subsection (A)(3) added “, whether directly or indirectly,” preceding “a registered lobbyist”.

2018 Act No. 142, Section 5, in (A), substituted “a candidate or anyone acting on his behalf shall not solicit or accept, and a person shall not give” for “no candidate or anyone acting on his behalf shall solicit or accept, and no person shall give”, inserted (A)(1)(b), and redesignated former (A)(1)(b) as (A)(1)(c); and in (B), substituted “subsection (A)(1) and (2)” for “subsections (A)(1) and (A)(2)”.

United States Supreme Court Annotations

Freedom of speech, electioneering communication, corporations, see Citizens United v. Federal Election Com’n, 2010, 130 S.Ct. 876, 558 U.S. 310, 175 L.Ed.2d 753.

Freedom of speech, elections, individual and party contribution limits, self‑financed candidates, elevated contribution limits for non‑self‑financed candidates, disclosure requirements, see Davis v. Federal Election Com’n, U.S.Dist.Col.2008, 128 S.Ct. 2759, 554 U.S. 724, 171 L.Ed.2d 737.

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

Ethics Commission Opinions

Candidates in a primary runoff who accept campaign contributions in the seven day period following the primary election must attribute those contributions to the primary. Contributions for the primary runoff election must not be accepted from those contributors who made maximum contributions for the primary until the eighth day after the primary. Opinion prospective only. Op. S.C. St. Ethics Comm., SEC AO2014‑004, May 21, 2014.

Private flights given to public officials as campaign contributions must not exceed the contribution limits for the respective position and thus the value of the flight should be calculated as the average cost per hour to operate the aircraft times the number of hours of the flight. Op. S.C. St. Ethics Comm., SEC AO2012‑001, Nov. 16, 2011.

A candidate’s campaign committee may accept from the candidate a promissory note, rather than a lump sum payment, in the amount of the over repayment of the candidate’s personal loan to the campaign committee. Op. S.C. St. Ethics Comm., SEC AO2009‑003, July 16, 2008.

A deceased candidate’s campaign committee is subject to the same campaign laws that apply to all candidates. A candidate committee may not make a contribution from its campaign account to the debt retirement of a deceased candidate. Op. S.C. St. Ethics Comm., SEC AO2007‑008, March 21, 2007.

Candidates may participate in joint fund‑raisers as long as they comply with the guidelines establishing a joint committee, requiring separate bank accounts, providing for the establishment of a formula for distribution of the proceeds, setting limits on contributions and providing for the distributions of proceeds within ten days. Failure to follow these guidelines may subject the candidate to a complaint for accepting an excessive contribution. Op. S.C. St. Ethics Comm., SEC AO2002‑011, March 20, 2002.

The Ethics Reform Act permits the transfer of a candidate’s campaign funds to a candidate’s different elective office campaign account as long as the campaign for a different elective office receives written authorization from the person originally making the contribution in accordance with Section 8‑13‑1352. The campaign should report the identity of the transferring contributor, the date written authorization was given and the date on which the original contribution was made. Op. S.C. St. Ethics Comm., SEC AO2002‑002, July 18, 2001.

The Ethics Reform Act permits the transfer of a federal candidate’s campaign funds to a candidate’s state campaign account as long as the state campaign receives written authorization from the person originally making the contribution in accordance with Section 8‑13‑1352. Op. S.C. St. Ethics Comm., SEC AO2002‑001, Sept. 19, 2001.

Independent non‑candidate committees may “bundle” and deliver member contributions to a candidate. A committee may recommend and/or retain fund raisers, subject to in‑kind contribution reporting. Op. S.C. St. Ethics Comm., SEC AO99‑007, March 17, 1999.

Contributions made in the first quarter of a calendar year following an election are generally attributable to the next campaign cycle. First in, first out accounting is to be used to identify contributors of unspent funds whose permission must be obtained before their contributions may be used in a new campaign. A statewide candidate who makes a good faith switch in the office sought may only accept $3,500 during an election cycle. Op. S.C. St. Ethics Comm., SEC AO99‑006, March 17, 1999.

Two separately incorporated corporations are different “persons” for the purposes of computing the contribution limitations. Since the corporations have distinct and separate business purposes, the corporations possess separate contribution limits, and each may contribute $3,500 within the same election cycle to the same candidate for statewide office. Op. S.C. St. Ethics Comm., SEC AO95‑005, Nov. 16, 1994.

Within an election cycle, a candidate for local office may accept no more than $5,000 in combined contributions from a political party through its party committees or affiliated legislative caucus committees. Political parties, through their party committees or legislative caucus committees, may make individual contributions exceeding $3,500 for statewide candidates or $1,000 for local candidates so long as the aggregate contribution limits of Section 8‑13‑1316(A) are not exceeded. Op. S.C. St. Ethics Comm., SEC AO95‑001, Sept. 21, 1994.

Within election cycle, no candidate or anyone acting on his behalf may solicit or accept from “person”, as defined in Section 8‑13‑1300(24), contribution which exceeds $3,500 in case of candidate for statewide office or $1000 in case of candidate for any other office. Moreover, one contribution limit shall apply to individual as well as all proprietorships that are owned by that individual and whose contributions are directed by that individual. Op. S.C. St. Ethics Comm., SEC AO94‑020, April 20, 1994.

Lobbyist is not prohibited from contributing to political party, provided there is no directed contribution. Thus, lobbyist is not prohibited from making contribution to political party when contribution is not solicited by or in behalf of state legislator, state‑wide constitutional officer, or official of state agency that promulgates regulations. Op S.C. St. Ethics Comm., SEC AO92‑013, Dec. 18, 1991.

Attorney General’s Opinions

Contributions from corporations to political parties are not in violation of any South Carolina statute. 1974‑75 Op Atty Gen, No 3986, p 56.

**SECTION 8‑13‑1316.** Restrictions on campaign contributions received from political parties; exception for multi‑candidate promotions.

(A) Notwithstanding Section 8‑13‑1314(A)(1), within an election cycle, a candidate may not accept or receive contributions from a political party through its party committees or legislative caucus committees, and a political party through its party committees or legislative caucus committees may not give to a candidate contributions which total in the aggregate more than:

(1) fifty thousand dollars in the case of a candidate for statewide office; or

(2) five thousand dollars in the case of a candidate for any other office.

(B) The recipient of a contribution given in violation of subsection (A) may not keep the contribution, but within seven days must remit the contribution to the Children’s Trust Fund.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 39, eff November 3, 2004.

Effect of Amendment

The 2003 amendment, in the introductory paragraph of subsection (A), added “Notwithstanding Section 8‑13‑1314(A)(1),” at the beginning, added “, and a political party through its party committees or legislative caucus committees may not give to a candidate contributions” preceding “which total”, and made a nonsubstantive change; and replaced existing subsection (B) relating to expenditures of multi‑candidate promotions with new subsection (B) relating to remittance of unauthorized contributions to the “Children’s Trust Fund”.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

Ethics Commission Opinions

Within an election cycle, a candidate for local office may accept no more than $5,000 in combined contributions from a political party through its party committees or affiliated legislative caucus committees. Political parties, through their party committees or legislative caucus committees, may make individual contributions exceeding $3,500 for statewide candidates or $1,000 for local candidates so long as the aggregate contribution limits of Section 8‑13‑1316(A) are not exceeded. Op. S.C. St. Ethics Comm., SEC AO95‑001, Sept. 21, 1994.

Notes of Decisions

Constitutional issues 1

1. Constitutional issues

Statutory aggregate limits on how much money a donor may contribute in total to all political candidates or committees violated the First Amendment; aggregate limits did little, if anything, to serve objective of combatting corruption through circumvention of the base limits, while seriously restricting participation in the democratic process. McCutcheon v. Federal Election Com’n, 2014, 134 S.Ct. 1434, 188 L.Ed.2d 468. Constitutional Law 1469; Election Law 186

**SECTION 8‑13‑1318.** Acceptance of contributions to retire campaign debt; limits; reporting requirements.

If a candidate has a debt from a campaign for an elective office, the candidate may accept contributions to retire the debt, even if the candidate accepts contributions for another elective office or the same elective office during a subsequent election cycle, as long as those contributions accepted to retire the debt are:

(1) within the contribution limits applicable to the last election in which the candidate sought the elective office for which the debt was incurred; and

(2) reported as provided in this article.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

CROSS REFERENCES

Restrictions on solicitation and acceptance of campaign contributions, generally, see Section 8‑13‑1314.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

Ethics Commission Opinions

A deceased candidate’s campaign committee is subject to the same campaign laws that apply to all candidates. A candidate committee may not make a contribution from its campaign account to the debt retirement of a deceased candidate. Op. S.C. St. Ethics Comm., SEC AO2007‑008, March 21, 2007.

Contributions made in the first quarter of a calendar year following an election are generally attributable to the next campaign cycle. First in, first out accounting is to be used to identify contributors of unspent funds whose permission must be obtained before their contributions may be used in a new campaign. A statewide candidate who makes a good faith switch in the office sought may only accept $3,500 during an election cycle. Op. S.C. St. Ethics Comm., SEC AO99‑006, March 17, 1999.

Former candidate who is retiring debt from 1990 election campaign is not restricted in amount of contribution which may be accepted, in accordance with Section 8‑13‑1318. Section provides for retirement of debts in accordance with contribution limits which applied to election for which debt was incurred, and since there are no such limits in effect for 1990 Lieutenant Governor’s election campaign, there being no limitations prescribed for contributions to retire debts for election campaigns occurring prior to January 1, 1992. Op. S.C. St. Ethics Comm., SEC AO92‑203, June 9, 1992.

**SECTION 8‑13‑1320.** Contributions within specified period after primary, special, or general election attributed to that primary or election.

For purposes of this article:

(1) A contribution made on or before the seventh day after a primary is attributed to the primary. However, in the event of a primary runoff, all contributions made after the day of the primary and continuing through the seventh day after the primary runoff are attributed to the primary runoff for the purposes of applying contribution limits.

(2) A contribution made on or before the end of the quarter immediately following a general election or special election is attributed to the general election or special election, respectively.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2016 Act No. 184 (H.3193), Section 1, eff May 25, 2016.

Effect of Amendment

2016 Act No. 184, Section 1, rewrote (1), revising the manner in which campaign contributions are attributed to a primary election and to a primary election runoff.

Ethics Commission Opinions

Candidates in a primary runoff who accept campaign contributions in the seven day period following the primary election must attribute those contributions to the primary. Contributions for the primary runoff election must not be accepted from those contributors who made maximum contributions for the primary until the eighth day after the primary. Opinion prospective only. Op. S.C. St. Ethics Comm., SEC AO2014‑004, May 21, 2014.

Contributions made in the first quarter of a calendar year following an election are generally attributable to the next campaign cycle. First in, first out accounting is to be used to identify contributors of unspent funds whose permission must be obtained before their contributions may be used in a new campaign. A statewide candidate who makes a good faith switch in the office sought may only accept $3,500 during an election cycle. Op. S.C. St. Ethics Comm., SEC AO99‑006, March 17, 1999.

**SECTION 8‑13‑1322.** Dollar limits on contributions to committees.

(A) A person may not contribute to a committee and a committee may not accept from a person contributions aggregating more than three thousand five hundred dollars in a calendar year.

(B) A person may not contribute to a committee and a committee may not accept from a person a cash contribution unless the cash contribution does not exceed twenty‑five dollars for each election and is accompanied by a record of the amount of the contribution and the name and address of the contributor.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

Ethics Commission Opinions

The State Ethics Commission declines to enforce Section 8‑13‑1322(A) contribution limits for those committees which are exclusively engaged in independent expenditures. Op. S.C. St. Ethics Comm., SEC AO2011‑004, Sept. 15, 2010.

The constitutional officer may accept unlimited contributions to his ballot measure committee. Op. S.C. St. Ethics Comm., SEC AO2000‑008, Jan. 19, 2000.

Ballot measure committees have the ability to collect unlimited contributions. Op. S.C. St. Ethics Comm., SEC AO2O00‑003, Sept. 15, 1999.

Non‑profit corporations and committees formed by non‑profit corporations, seeking to influence a ballot measure, may solicit from the general public. Op. S.C. St. Ethics Comm., SEC AO2O00‑003, Sept. 15, 1999.

Two separately incorporated corporations are different “persons” for the purposes of computing the contribution limitations. Since the corporations have distinct and separate business purposes, the corporations possess separate contribution limits, and each may contribute $3,500 within the same election cycle to the same candidate for statewide office. Op. S.C. St. Ethics Comm., SEC AO95‑005, Nov. 16, 1994.

Within election cycle, no candidate or anyone acting on his behalf may solicit or accept from “person”, as defined in Section 8‑13‑1300(24), contribution which exceeds $3,500 in case of candidate for statewide office or $1000 in case of candidate for any other office. Moreover, one contribution limit shall apply to individual as well as all proprietorships that are owned by that individual and whose contributions are directed by that individual. Op. S.C. St. Ethics Comm., SEC AO94‑020, April 20, 1994.

Ethics Reform Act does not prohibit political party from raising money by marketing long distance telephone service plan. In accordance with earlier opinions and facts submitted, State Ethics Commission does not object to party’s decision to maintain these funds in account separate from campaign accounts and use them only for non‑campaign related expenses. Ethics Reform Act does not limit donations to political party that are neither channeled through campaign account nor used to influence outcome of elective offices or ballot measures. Op. S.C. St. Ethics Comm., SEC AO94‑019, April 20, 1994.

The Ethics Reform Act does not prohibit local businesses from establishing committee to solicit contributions from the private sector with which to purchase bulletproof vests and other equipment for Richland County Sheriff’s Department. Op. S.C. St. Ethics Comm., SEC AO94‑001, July 21, 1993.

Federal candidate committee or national political committee is not prohibited from contributing more than $3,500 to political party. Contributions to political party committee are limited to $3,500. Op. S.C. St Ethics Comm., SEC AO92‑013, Dec. 18, 1991.

Notes of Decisions

Constitutional issues 1

1. Constitutional issues

Statutory aggregate limits on how much money a donor may contribute in total to all political candidates or committees violated the First Amendment; aggregate limits did little, if anything, to serve objective of combatting corruption through circumvention of the base limits, while seriously restricting participation in the democratic process. McCutcheon v. Federal Election Com’n, 2014, 134 S.Ct. 1434, 188 L.Ed.2d 468. Constitutional Law 1469; Election Law 186

**SECTION 8‑13‑1324.** Anonymous campaign contributions.

(A) A person shall not make an anonymous contribution to a candidate, committee, or ballot measure committee, and a candidate, committee, or ballot measure committee shall not accept an anonymous contribution from an individual except at a ticketed event where food or beverages are served or where political merchandise is distributed and where the price of the ticket is twenty‑five dollars or less and goes toward defraying the cost of food, beverages, or political merchandise in whole or in part.

(B) The recipient of an anonymous contribution given in violation of subsection (A) or the recipient of any other anonymous contribution shall not keep the contribution but within seven days must remit the contribution to the Children’s Trust Fund.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 40, eff June 26, 2003.

Effect of Amendment

The 2003 amendment, in subsection (A), added “, or ballot measure committee” twice after “committee” and in subsections (A) and (B) substituted “shall” for “may” and made nonsubstantive changes.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

**SECTION 8‑13‑1326.** Loans to candidates considered contributions; limitations; exceptions.

(A) A loan is considered a contribution from the maker or the guarantors of the loan and is subject to the contribution limitations of this article.

(B) A loan to a candidate must be by written agreement.

(C) The proceeds of a loan made to a candidate under the following conditions are not subject to the contribution limits of this article:

(1) by a commercial lending institution;

(2) in the regular course of business;

(3) on the same terms ordinarily available to members of the public; and

(4) secured or guaranteed upon which collection is not made.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment—Supreme Court cases. 108 L Ed 2d 1017.

**SECTION 8‑13‑1328.** Limits on repayment of loans from candidate or family members to campaign.

(A) A candidate for statewide office or the candidate’s family member must not be repaid, for a loan made to the candidate, more than twenty‑five thousand dollars in the aggregate after the election.

(B) A candidate for an elective office other than those specified in subsection (A) or a family member of a candidate for an elective office other than those specified in subsection (A) must not be repaid, for a loan made to the candidate, more than ten thousand dollars in the aggregate after the election.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

Ethics Commission Opinions

A candidate’s campaign committee may accept from the candidate a promissory note, rather than a lump sum payment, in the amount of the over repayment of the candidate’s personal loan to the campaign committee. Op. S.C. St. Ethics Comm., SEC AO2009‑003, July 16, 2008.

**SECTION 8‑13‑1330.** Contributions by spouses or parent and child.

Contributions by each spouse are considered separate contributions and are not attributable to the other spouse. Contributions by unemancipated children under eighteen years of age are considered contributions by their parents. Fifty percent of the contributions are attributed to each parent, or in the case of a single custodial parent, the total amount is attributed to the custodial parent.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑1331.** Solicitation of contributions by corporations from shareholders, executive personnel, and certain related corporate entities.

Notwithstanding Section 8‑13‑1332(3), a corporation or committee of a corporation may solicit the shareholders and executive or administrative personnel of the corporation and its subsidiaries, branches, divisions, affiliates and their families. For purposes of this section, all committees established, financed, maintained, or controlled by the same corporation, including any direct or indirect parent, subsidiary, branch, or division thereof, are affiliated. With respect to a corporation or committee of a corporation that solicits contributions pursuant to this section, contributions made or received by affiliated committees are considered to be made or received by a single committee for purposes of contribution limits in Sections 8‑13‑1314 and 8‑13‑1322. A corporation or committee of a corporation that solicits contributions pursuant to this section must certify in the manner prescribed by Section 8‑13‑1308(H) that contributions made or received by the committee and its affiliated committees, if any, have complied with contribution limits in Sections 8‑13‑1314 and 8‑13‑1322 as if the committee and its affiliated committees, if any, were a single committee.

HISTORY: 2008 Act No. 245, Section 5, eff May 29, 2008.

**SECTION 8‑13‑1332.** Unlawful contributions and expenditures.

It is unlawful for:

(1) a committee or ballot measure committee to make a contribution or expenditure by using:

(a) anything of value secured by physical force, job discrimination, financial reprisals, or threat of the same;

(b) dues, fees, or other monies required as a condition of membership in a labor organization, or as a condition of employment; or

(c) monies obtained by the committee or the ballot measure committee in a commercial transaction;

(2) a person to solicit an employee for a contribution and fail to inform the employee of the political purposes of the committee or ballot measure committee and of the employee’s right to refuse to contribute without any advantage or promise of an advantage conditioned upon making the contribution or reprisal or threat of reprisal related to the failure to make the contribution;

(3) a corporation or committee of a corporation to solicit contributions to the corporation or committee from a person other than its shareholders, directors, executive or administrative personnel, and their families, except as provided in Section 8‑13‑1333.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 41, eff June 26, 2003.

Effect of Amendment

The 2003 amendment, in paragraphs (1), (1)(c) and (2), added “or ballot measure committee” after “committee”, in paragraph (3), added “, except as provided in Section 8‑13‑1333.” at the end, and deleted paragraph (4) relating to an organization’s solicitation of contributions from others than its members being unlawful, and made nonsubstantive changes.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

Ethics Commission Opinions

Ballot measure committees have the ability to collect unlimited contributions. Op. S.C. St. Ethics Comm., SEC AO2O00‑003, Sept. 15, 1999.

Non‑profit corporations and committees formed by non‑profit corporations, seeking to influence a ballot measure, may solicit from the general public. Op. S.C. St. Ethics Comm., SEC AO2O00‑003, Sept. 15, 1999.

A political party’s proposal to raise campaign funds through the sale of products would violate Section 8‑13‑1332. Op. S.C. St. Ethics Comm., SEC AO98‑007, March 18, 1998.

Pursuant to Section 8‑13‑1332, a contribution or an expenditure may be made from money obtained in a commercial transaction as long as the committee support process is not used as a means of exchanging treasury monies for voluntary contributions. Solicitation of contributions by organizations and committees is restricted to the membership or their families. Op. S.C. St. Ethics Comm., SEC AO 96‑005, Nov. 15, 1995.

NOTES OF DECISIONS

Validity 1

1. Validity

To the extent they applied to not‑for‑profit organization seeking to influence ballot initiative distinct from the election of any candidate, South Carolina statutes establishing $3,500 limit on contributions to ballot committees and limiting those persons from whom contributions for ballot measures could be solicited violated First Amendment; state interests in avoiding corruption and appearance of corruption were not served by statutes, absent showing that nonprofit organization was conduit for contributions that otherwise would be subject to restrictions. Legacy Alliance, Inc. v. Condon, 1999, 76 F.Supp.2d 674. Constitutional Law 1712; Election Law 667

**SECTION 8‑13‑1333.** Soliciting contributions from the general public.

(A) Not‑for‑profit corporations and committees formed by not‑for‑profit corporations may solicit contributions from the general public.

(B) An organization or a committee of an organization may solicit contributions from the general public.

(C)(1) A legislative special interest caucus must not solicit contributions as defined in Section 8‑13‑100(9), however, it may solicit funds from the general public for the limited purpose of defraying mailing expenses, including cost of materials and postage, and for members of the legislative special interest caucus to attend regional and national conferences. Legislative special interest caucus members may attend a regional or national conference only if the conference is exclusively comprised of legislative special interest caucus counterparts and convenes for the purpose of interacting and exchanging ideas among caucus members and the conference is sponsored by a national organization with which the legislative special interest caucus is affiliated. Attendance at any conference is prohibited if the conference is sponsored by any lobbying group or extends an invitation to persons other than legislators. Under no circumstances may a legislative special interest caucus accept funds from a lobbyist. Each special interest caucus must submit a financial statement to the appropriate supervisory office by January first and July first of each year showing the total amount of funds received and total amount of funds paid out. It must also maintain the following records, for not less than four years, which must be available to the appropriate supervisory office for inspection:

(a) the total amount of funds received by the legislative special interest caucus;

(b) the name and address of each person or entity making a donation and the amount and date of receipt of each donation;

(c) all receipted bills, canceled checks, or other proof of payment for any expenses paid by the legislative special interest caucus.

(2) A legislative special interest caucus may not accept a gift, loan, or anything of value, except for funds permitted in subsection (C)(1) above.

HISTORY: 2003 Act No. 76, Section 42, eff June 26, 2003; 2006 Act No. 344, Section 5, eff May 31, 2006.

Effect of Amendment

The 2006 amendment added subsection (C) relating to legislative special interest caucuses.

**SECTION 8‑13‑1334.** Certain solicitation of contributions by corporations and organizations from employees not unlawful.

Notwithstanding Section 8‑13‑1332, a corporation or organization and their committees may through biannual seminars or at the time of hiring nonexecutive and nonadministrative personnel provide educational materials to such personnel explaining their organization, purposes, and operation and also may request contributions to their committees if the committees certify in their reports, as required under Section 8‑13‑1308, that the requirements of Section 8‑13‑1332 are met.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

Ethics Commission Opinions

A political party’s proposal to raise campaign funds through the sale of products would violate Section 8‑13‑1332. Op. S.C. St. Ethics Comm., SEC AO98‑007, March 18, 1998.

**SECTION 8‑13‑1336.** Accepting or soliciting contributions on State Capitol grounds or in official residence prohibited; exception for contributions by mail.

(A) No public official, candidate, public employee, or committee may accept or solicit campaign contributions on the State Capitol grounds, including the office complexes located on them, or in any building which houses the principal office of a statewide officer.

(B) No public official, candidate, public employee, or committee may accept or collect campaign contributions on the grounds of or in any building which houses the official residence of a statewide officer.

(C) Contributions delivered by mail are excluded from the provisions of this section.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑1338.** Persons prohibited from soliciting contributions.

(A) The following persons personally may not solicit, verbally or in writing, a contribution to a candidate:

(1) a law enforcement officer while in uniform;

(2) a judge or candidate for judicial office;

(3) a solicitor, an assistant solicitor, or an investigator in a solicitor’s office;

(4) the Attorney General, a deputy attorney general, an assistant attorney general, or an investigator in the Attorney General’s office.

(B) The restrictions of subsection (A) on solicitation of contributions do not apply to:

(1) a candidate soliciting a contribution to his own campaign; or

(2) a part‑time assistant solicitor.

(C) A law enforcement officer while in uniform may not solicit a contribution to any political party or candidate.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment—Supreme Court cases. 108 L Ed 2d 1017.

Ethics Commission Opinions

Public Service Commission officials and employees are governed by both the Ethics Reform Act and the Judicial Code of Conduct. Op. S.C. St. Ethics Comm., SEC AO2005‑002, Jan. 19, 2005.

**SECTION 8‑13‑1340.** Restrictions on contributions by one candidate to another; committees established, financed, maintained, or controlled by a candidate.

(A) Except as provided in subsections (B) and (E), a candidate or public official shall not make a contribution to another candidate or make an independent expenditure on behalf of another candidate or public official from the candidate’s or public official’s campaign account or through a committee, except legislative caucus committees, directly or indirectly established, financed, maintained, or controlled by the candidate or public official.

(B) This section does not prohibit a candidate from:

(1) making a contribution from the candidate’s own personal funds on behalf of the candidate’s candidacy or to another candidate for a different office; or

(2) providing the candidate’s surplus funds or material assets upon final disbursement to a legislative caucus committee or party committee in accordance with the procedures for the final disbursement of a candidate under Section 8‑13‑1370 of this article.

(C) Assets or funds which are the proceeds of a campaign contribution and which are held by or under the control of a public official or a candidate for public office on January 1, 1992, are considered to be funds held by a candidate and subject to subsection (A).

(D) A committee is considered to be directly or indirectly established, financed, maintained, or controlled by a candidate or public official if any of the following are applicable:

(1) the candidate or public official, or an agent of either, has signature authority on the committee’s checks;

(2) funds contributed or disbursed by the committee are authorized or approved by the candidate or public official;

(3) the candidate or public official is clearly identified on either the stationery or letterhead of the committee;

(4) the candidate or public official signs solicitation letters or other correspondence on behalf of the entity;

(5) the candidate, public official, or his campaign staff, office staff, or immediate family members, or any other agent of either, has the authority to approve, alter, or veto the committee’s solicitations, contributions, donations, disbursements, or contracts to make disbursements; or

(6) the committee pays for travel by the candidate or public official, his campaign staff or office staff, or any other agent of the candidate or public official, in excess of one hundred dollars per calendar year.

(E) The provisions of subsection (A) do not apply to a committee directly or indirectly established, financed, maintained, or controlled by a candidate or public official if the candidate or public official directly or indirectly establishes, finances, maintains, or controls only one committee in addition to any committee formed by the candidate or public official to solely promote his own candidacy and one legislative caucus committee.

(F) No committee operating under the provisions of Section 8‑13‑1340(E) may:

(1) solicit or accept a contribution from a registered lobbyist if that lobbyist engages in lobbying the public office or public body for which the candidate is seeking election; or

(2) transfer anything of value to any other committee except as a contribution under the limitations of Section 8‑13‑1314(A) or the dissolution provisions of Section 8‑13‑1370.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992; 2003 Act No. 76, Section 43, eff July 1, 2003.

Editor’s Note

2003 Act No. 76, Section 57, provides in part as follows:

“. . . the amendments to Section 8‑13‑1340 as contained in Section 43 (effective July 1, 2003), apply to contributions and transfers made on and after the effective date . . .”

Effect of Amendment

The 2003 amendment rewrote subsection (A), added subsection (D) relating to committees being established, financed, or controlled by a candidate, added subsection (E) relating to exceptions to subsection (A), and added (F) relating to prohibitions on committees operating under subsection (E).

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

Ethics Commission Opinions

A deceased candidate’s campaign committee is subject to the same campaign laws that apply to all candidates. A candidate committee may not make a contribution from its campaign account to the debt retirement of a deceased candidate. Op. S.C. St. Ethics Comm., SEC AO2007‑008, March 21, 2007.

The Ethics Reform Act permits an expenditure from the candidate’s campaign account for expenses related to the campaign or the office and permits campaign funds to be used to defray any ordinary expenses incurred in connection with an individual’s duties as a holder of elective office. However, charitable contributions and contributions to the political parties and their committees may only be made at final disbursement. Op. S.C. St. Ethics Comm., SEC AO2003‑006, March 19, 2003.

**SECTION 8‑13‑1342.** Restrictions on contributions by contractor to candidate who participated in awarding of contract.

No person who has been awarded a contract with the State, a county, a municipality, or a political subdivision thereof, other than contracts awarded through competitive bidding practices, may make a contribution after the awarding of the contract or invest in a financial venture in which a public official has an interest if that official was in a position to act on the contract’s award. No public official or public employee may solicit campaign contributions or investments in exchange for the prior award of a contract or the promise of a contract with the State, a county, a municipality, or a political subdivision thereof.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

**SECTION 8‑13‑1344.** Contributions by public utilities; seeking endorsement in return for contribution; discrimination by employers based on contributions; reimbursement for contributions.

(A) A public utility may not include in its operating expenses a contribution or expenditure to influence an election or to operate a political action committee.

(B) A person may not solicit from a candidate, committee, political party, or other person, money or other property as a condition or consideration for an endorsement, article, or other communication in the news media promoting or opposing a candidate, committee, or political party.

(C) An employer may not provide an advantage or disadvantage to an employee concerning the employee’s employment or conditions of employment based on the employee’s contribution, promise to contribute, or failure to contribute to a candidate, committee, or political party.

(D) A person may not, directly or indirectly, reimburse a person, except for the person’s immediate family, for a contribution to a candidate, committee, or political party.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

**SECTION 8‑13‑1346.** Use of public funds, property, or time to influence election prohibited; exceptions.

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

(B) This section does not prohibit the incidental use of time and materials for preparation of a newsletter reporting activities of the body of which a public official is a member.

(C) This section does not prohibit the expenditure of public resources by a governmental entity to prepare informational materials, conduct public meetings, or respond to news media or citizens’ inquiries concerning a ballot measure affecting that governmental entity; however, a governmental entity may not use public funds, property, or time in an attempt to influence the outcome of a ballot measure.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Section 42, eff upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995.

Effect of Amendment

The 1995 amendment rewrote this section, designating existing first and second sentences as (A) and (B), respectively, and adding subsection (C).

Ethics Commission Opinions

In the determination of whether a campaign sign placed on public property violates Section 8‑13‑1346, the Ethics Commission will review the predominant purpose of that property at the time. Questions regarding the placement of campaign signs should be addressed to the State Ethics Commission before placement. Op. S.C. St. Ethics Comm., SEC AO2006‑001, July 20, 2005.

A school district may prohibit the display of campaign signs at all times. Op. S.C. St. Ethics Comm., SEC AO2006‑001, July 20, 2005.

Public Service Commission officials and employees are governed by both the Ethics Reform Act and the Judicial Code of Conduct. Op. S.C. St. Ethics Comm., SEC AO2005‑002, Jan. 19, 2005.

A person knowingly sending an e‑mail which contains campaign material to a public employee on his government computer is in violation of the Ethics Reform Act. Op. S.C. St. Ethics Comm., SEC AO2003‑003, Sept. 18, 2002.

Public employee cannot use their employment, including office materials, equipment and personnel, to influence the outcome of an election. Fellow employees may participate in the election activities on their own time. Public employees are not required to take unpaid leave in order to run for office. Op. S.C. St. Ethics Comm., SEC AO2002‑006, Jan. 16, 2002.

The constitutional officer cannot use his office, to include his office materials, equipment and personnel, to influence the outcome of an election. Members of his staff may participate in the constitutional officer’s election activities on their own time. Op. S.C. St. Ethics Comm., SEC AO2000‑008, Jan. 19, 2000.

**SECTION 8‑13‑1348.** Use of campaign funds for personal expenses; expenditures more than twenty‑five dollars; expenditures not to exceed fair market value; petty cash funds.

(A) 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.

(B) The payment of reasonable and necessary travel expenses or for food or beverages consumed by the candidate or members of his immediate family while at, and in connection with, a political event are permitted.

(C)(1) An expenditure of more than twenty‑five dollars drawn upon a campaign account must be made by:

(a) a written instrument;

(b) debit card; or

(c) online transfers.

The campaign account must contain the name of the candidate or committee, and the expenditure must contain the name of the recipient. These expenditures must be reported pursuant to the provisions of Section 8‑13‑1308.

(2) Expenditures of twenty‑five dollars or less that are not made by a written instrument, debit card, or online transfer containing the name of the candidate or committee and the name of the recipient must be accounted for by a written receipt or written record.

(D) An expenditure may not be made that is clearly in excess of the fair market value of services, materials, facilities, or other things of value received in exchange.

(E) A candidate or a duly authorized officer of a committee may not withdraw more than one hundred dollars from the campaign account to establish or replenish a petty cash fund for the candidate or committee at any time, and at no time may the fund exceed one hundred dollars. Expenditures from the petty cash fund may be made only for office supplies, food, transportation expenses, and other necessities and may not exceed twenty‑five dollars for each expenditure.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2010 Act No. 225, Section 1, eff June 7, 2010.

Effect of Amendment

The 2010 amendment rewrote subsection (C).

CROSS REFERENCES

General requirement that expenses of candidate or committee be paid out of campaign account, see Section 8‑13‑1312.

Ethics Commission Opinions

This section has no general prohibition on a candidate paying for services to his own business, a family business, or a family member provided the services were bona fide; payment for the services provided must represent fair market value and documentation must be maintained justifying the services performed and payment made. Op. S.C. St. Ethics Comm., SEC AO2017‑002, July 20, 2016.

The prohibition on using campaign funds to defray personal expenses extends to the use of these funds to pay for expenses associated with membership at private clubs or food and beverage not specifically associated with campaign events. Op. S.C. St. Ethics Comm., SEC AO2016‑004, January 20, 2016.

The Ethics Reform Act permits an expenditure from the candidate’s campaign account for expenses related to the campaign or the office and permits campaign funds to be used to defray any ordinary expenses incurred in connection with an individual’s duties as a holder of elective office. However, charitable contributions and contributions to the political parties and their committees may only be made at final disbursement. Op. S.C. St. Ethics Comm., SEC AO2003‑006, March 19, 2003.

Attorney General’s Opinions

It is not a violation for a South Carolina House Majority Leader to cause or influence the House Legislative Caucus to hire and pay a business in which the Majority Leader has an economic interest. S.C. Op.Atty.Gen. (December 11, 2015) 2015 WL 9406833.

Discussion of the legal status of Robert W. Harrell, as both a member and Speaker of the House following indictments of Mr. Harrell in the Court of General Sessions for Richland County. S.C. Op.Atty.Gen. (September 11, 2014) 2014 WL 4659414.

**SECTION 8‑13‑1350.** Prohibition of use of funds for campaign for one office to further candidacy of same person for different office.

(A) A candidate for elective office may use or permit the use of contributions solicited for or received by the candidate for that office to further the candidacy of the individual for a different office as long as the contributions have been received on or before December 31, 1992, and have been transferred to a campaign account for the different office on or before December 31, 1992. A contribution solicited for or received on behalf of the candidate is considered solicited or received for the candidacy for which the individual is then a candidate if the funds or contributions are solicited or received before the general election for which the candidate is a nominee or is unopposed. The prohibition on the use or solicitation of funds does not limit in any way a candidate from retaining funds for use in a subsequent race for the same elective office.

(B) Any assets or funds which are:

(1) the proceeds of a campaign contribution which are held by or under the control of a public official or a candidate for public office on January 1, 1993; and

(2) which continue to be held by or under the control of a public official or a candidate for public office on January 1, 1993; are subject to the provisions of subsection (A).

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1993 and governs only transactions which take place after December 31, 1991.

CROSS REFERENCES

Exceptions to prohibition of use of funds raised for one campaign in another campaign by same candidate, see Section 8‑13‑1352.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

Ethics Commission Opinions

The Ethics Reform Act permits the transfer of a federal candidate’s campaign funds to a candidate’s state campaign account as long as the state campaign receives written authorization from the person originally making the contribution in accordance with Section 8‑13‑1352. Op. S.C. St. Ethics Comm., SEC AO2002‑001, Sept. 19, 2001.

**SECTION 8‑13‑1352.** Exception to prohibition of use of funds for campaign for one office to further candidacy of same person for different office.

Notwithstanding the provisions of Section 8‑13‑1350, a candidate may use or permit the use of contributions solicited for or received by the candidate to further the candidacy of the individual for an elective office other than the elective office for which the contributions were received if:

(1) the person originally making the contribution gives written authorization for its use to further the candidacy of the individual for a specific office which is not the office for which the contribution was originally intended; and

(2) the contribution is otherwise permitted by law.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

CROSS REFERENCES

Use of unexpended campaign funds in campaign for different elective office following election for initial office, see Section 8‑13‑1370.

Ethics Commission Opinions

The Ethics Reform Act permits the transfer of a candidate’s campaign funds to a candidate’s different elective office campaign account as long as the campaign for a different elective office receives written authorization from the person originally making the contribution in accordance with Section 8‑13‑1352. The campaign should report the identity of the transferring contributor, the date written authorization was given and the date on which the original contribution was made. Op. S.C. St. Ethics Comm., SEC AO2002‑002, July 18, 2001.

The Ethics Reform Act permits the transfer of a federal candidate’s campaign funds to a candidate’s state campaign account as long as the state campaign receives written authorization from the person originally making the contribution in accordance with Section 8‑13‑1352. Op. S.C. St. Ethics Comm., SEC AO2002‑001, Sept. 19, 2001.

Contributions made in the first quarter of a calendar year following an election are generally attributable to the next campaign cycle. First in, first out accounting is to be used to identify contributors of unspent funds whose permission must be obtained before their contributions may be used in a new campaign. A statewide candidate who makes a good faith switch in the office sought may only accept $3,500 during an election cycle. Op. S.C. St. Ethics Comm., SEC AO99‑006, March 17, 1999.

**SECTION 8‑13‑1354.** Identification of person independently paying for election‑related communication; exemptions.

A candidate, committee, or other person which makes an expenditure in the distribution, posting, or broadcasting of a communication to voters supporting or opposing a public official, a candidate, or a ballot measure must place his name and address on the printed matter or have his name spoken clearly on a broadcast so as to identify accurately the person and his address. Campaign buttons, balloons, yard signs, or similar items are exempt from this requirement.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Section 43, eff upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995.

Effect of Amendment

The 1995 amendment, at the beginning of the section, substituted “A candidate, committee, or other person which makes” for “A person who makes an independent”.

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

**SECTION 8‑13‑1356.** Economic interests statements, filing deadlines for particular candidates.

(A) A person who becomes a candidate by filing a statement of intention of candidacy seeking nomination by political party primary or political party convention must electronically file a statement of economic interests for the preceding calendar year pursuant to Section 8‑13‑365 prior to the close of filing for the particular office.

(B) A person who becomes a candidate by filing a petition for nomination must electronically file a statement of economic interests for the preceding calendar year pursuant to Section 8‑13‑365 within fifteen days of submitting the petition pursuant to Section 7‑11‑70 or 7‑11‑71.

(C) A person who becomes a write‑in candidate must electronically file a statement of economic interests for the preceding calendar year within twenty‑four hours of filing an initial campaign finance report pursuant to Section 8‑13‑1308(A) or before taking the oath of office, whichever occurs earlier.

(D) A candidate who is not a public official otherwise filing a statement has the same disclosure requirements as a public official with the exception of reporting gifts.

(E) The appropriate supervisory office shall assess a civil penalty pursuant to Section 8‑13‑1510 against a candidate who fails to timely file a statement of economic interests as required by this section.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 1995 Act No. 6, Section 44, eff upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995; 1996 Act No. 330, Section 1, eff upon approval (became law without the Governor’s signature on May 21, 1996); 2013 Act No. 61, Section 9, eff June 25, 2013.

Editor’s Note

2013 Act No. 61, Sections 11, 14, provide as follows:

“SECTION 11. In order to educate various parties regarding the provisions contained in this act, the following notifications must be made:

“(1) The State Election Commission must notify each county election commission of the provisions of this act.

“(2) The State Election Commission must post the provisions of this act on its website.

“(3) Each state party executive committee must notify their respective county executive parties of the provisions of this act.”

“SECTION 14. This act takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.”

The amendment by 2013 Act No. 61 became effective June 25, 2013, see South Carolina Libertarian Party v. South Carolina State Election Com’n, 407 S.C. 612, 757 S.E.2d 707 (2014).

Effect of Amendment

The 1995 amendment in subsection (C) substituted “after candidacy books close” for “after receiving a candidate’s statement of economic interests under subsection (B)”.

The 1996 amendment substantially revised subsection (A).

The 2013 amendment rewrote the section.

RESEARCH REFERENCES

ALR Library

104 ALR 6th 547 , Application of Equal Protection Principle Recognized in Bush v. Gore, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000), to Elections Cases.

Encyclopedias

S.C. Jur. Elections Section 43, Oath.

S.C. Jur. Elections Section 44, Election.

S.C. Jur. Elections Section 96, Federal Requirements.

LAW REVIEW AND JOURNAL COMMENTARIES

The South Carolina primary debacle: The impact of Anderson v. South Carolina State Election Commission and vague state election laws on the 2012 election. Vordman Carlisle Traywick, III, 64 S.C. L. Rev. 931 (Summer 2013).

Attorney General’s Opinions

Filing one’s candidacy for an election occurs in March, and yet Section 8‑13‑1140 requires that the Statement of Economic Interest must be filed by April 15. To avoid any possible conflict between the two dates, it is most reasonable to construe the language current SEI on file, for purposes of Section 8‑13‑1356(A)’s exemption, to be the SEI filed in the previous year on or before April 15, rather than the current year when candidacy filing occurs. S.C. Op.Atty.Gen. (May 23, 2012) 2012 WL 1964396.

There is no conflict between the disqualification of certain candidates for the primary, based upon Section 8‑13‑1356, provided by Anderson v. South Carolina Election Commission, 725 S.E.2d 704 (S.C. 2012), and those same persons’ right to seek to become petition candidates. S.C. Op.Atty.Gen. (May 16, 2012) 2012 WL 1964399.

Notes of Decisions

Construction and application 1

Construction with federal laws 1.1

Disqualification of candidates 1.9

Jurisdiction 3

Remedies 3.5

Review 4

Standing 2.1

Temporary restraining orders 3.6

Timeliness of statement 2

1. Construction and application

Candidate for the Republication nomination for a state senate seat, who was also a part‑time city prosecutor, was not exempt from statutory requirement to simultaneously file statement of economic interests (SEI) and statement of intention of candidacy (SIC), although he filed an SEI where it was not filed in relation to his position as a municipal prosecutor. Tempel v. South Carolina State Election Com’n (S.C. 2012) 400 S.C. 374, 735 S.E.2d 453. Election Law 242; Election Law 268

Candidates who had previously filed a Statement of Intention of Candidacy (SIC) with political party did not constitute “public officials” who were exempt from statutory requirement that candidates file a paper copy of Statement of Economic Interest (SEI) with party; statute required a candidate to simultaneously file a copy of an SEI with an SIC unless the candidate already held the office and had an SEI on file with the appropriate supervisory office. Florence County Democratic Party v. Florence County Republican Party (S.C. 2012) 398 S.C. 124, 727 S.E.2d 418. Public Employment 117(2)

Statute regarding requirements for appearing on a primary ballot did not alter the qualifications for one to serve as a legislator in violation of the State Constitution; instead, it merely delineated filing requirements to appear on a ballot. Anderson v. South Carolina Election Com’n (S.C. 2012) 397 S.C. 551, 725 S.E.2d 704. Election Law 233(3)

1.1. Construction with federal laws

Differing interpretations by local political parties and county election commissions as to the scope of exemption from certain filing requirements for candidates for public office did not constitute a voting change subject to preclearance under Voting Rights Act; differing interpretations was not a change in a voting practice but a possible violation of a state election law, and subject to challenge in state court. Smith v. South Carolina Election Com’n, 2012, 874 F.Supp.2d 483. Election Law 622

Failure to articulate the baseline, i.e., the precleared practice that was in force and effect prior to the decisions in state court decisions interpreting filing requirements of candidates for public office, precluded candidates from establishing a likelihood of success on the merits of their claim that those decisions constituted a change in voting procedures or practices requiring preclearance under Voting Rights Act. Smith v. South Carolina Election Com’n, 2012, 874 F.Supp.2d 483. Injunction 1345

1.9. Disqualification of candidates

Candidate who should have been decertified for failure to meet statutory requirement to simultaneously file statement of economic interests (SEI) and statement of intention of candidacy (SIC) was “disqualified,” and his candidacy was not void ab initio, and, thus, special primary election was required. Tempel v. South Carolina State Election Com’n (S.C. 2012) 400 S.C. 374, 735 S.E.2d 453. Election Law 271

Candidate for the Republication nomination for a state senate seat, who should have been decertified for failure to meet statutory requirement to simultaneously file statement of economic interests (SEI) and statement of intention of candidacy (SIC), was a “party nominee” who was subsequently disqualified, although party erroneously believed that candidate was exempt from the filing requirement. Tempel v. South Carolina State Election Com’n (S.C. 2012) 400 S.C. 374, 735 S.E.2d 453. Election Law 271

2. Timeliness of statement

The requirement that an individual who was seeking nomination by political party primary to be a candidate for office had to file a Statement of Economic Interest (SEI) at the same time and with the same official with whom the individual filed a Statement of Intention of Candidacy (SIC) could not be satisfied by filing an SEI electronically with the State Ethics Commission. Anderson v. South Carolina Election Com’n (S.C. 2012) 397 S.C. 551, 725 S.E.2d 704. Election Law 268

Individuals not exempt who were seeking nomination by political party primary to be a candidate for office had to file a Statement of Economic Interest (SEI) at the same time and with the same official with whom the individuals filed a Statement of Intention of Candidacy (SIC); any individual who failed to provide an SEI to the political party when filing an SIC did not have a timely filed SIC. Anderson v. South Carolina Election Com’n (S.C. 2012) 397 S.C. 551, 725 S.E.2d 704. Election Law 268

2.1. Standing

Non‑incumbent candidate for county council had standing to assert facial, but not an as‑applied, equal protection challenge and Voting Rights Act challenge to South Carolina statutes requiring non‑incumbent candidates, but not incumbent candidates, to simultaneously file a statement of economic interest (SEI) with a statement of intention of candidacy (SIC), where candidate was decertified and taken off the ballot for failure to file SEI and SIC simultaneously. Smith v. South Carolina State Election Com’n, 2012, 901 F.Supp.2d 639. Constitutional Law 923; Election Law 631

Persons who sought to be included as candidates on the ballot of the primary election and who had taken some action to qualify as candidates had standing to bring a claim under Voting Rights Act for alleged changes in voting practices related to qualification and certification of candidates that they alleged had not been precleared; candidates alleged that they were decertified as candidates in the primary election for failure to comply with an unprecleared change in a voting practice effected by defendants, and that those injuries would likely be redressed if court granted the relief sought. Smith v. South Carolina Election Com’n, 2012, 874 F.Supp.2d 483. Election Law 631

Of the disqualified non‑incumbent candidates, only candidate who alleged that she would have been deemed exempt, as an incumbent public official, from the more burdensome filing requirements for non‑incumbents under a more generous interpretation of South Carolina statute, but was denied the benefit of such interpretation, and candidate who alleged that her opponent was allowed to remain on the ballot under the more generous interpretation, had standing to challenge constitutionality of alleged inconsistent interpretation of statute under an equal protection and/or due process theory. Smith v. South Carolina Election Com’n, 2012, 874 F.Supp.2d 483. Constitutional Law 893; Constitutional Law 923

3. Jurisdiction

Supreme Court had subject matter jurisdiction to construe statute regarding the requirements for a candidate’s name to properly appear on a primary election ballot. Anderson v. South Carolina Election Com’n (S.C. 2012) 397 S.C. 551, 725 S.E.2d 704. Election Law 532

3.5. Remedies

Balance of the equities and public interest tipped in favor of denying disqualified non‑incumbent candidates’ motion for a temporary restraining order seeking either to have their names restored to the ballot for primary election or to postpone the election until court could resolve the issues raised in their complaint alleging constitutional and Voting Rights Act violations; candidates knew or should have known in advance that they had not complied with state law as interpreted by the state court and that they were subject to decertification. Smith v. South Carolina Election Com’n, 2012, 874 F.Supp.2d 483. Injunction 1345

Disqualified non‑incumbent candidates, who sought a temporary restraining order to either to have their names restored to the ballot for primary election or to postpone the election until court could resolve the issues raised in their complaint alleging constitutional and Voting Rights Act violations, failed to demonstrate a likelihood of success on the merits of their equal protection and due process claims based on differences in filing requirements for incumbents and non‑incumbents. Smith v. South Carolina Election Com’n, 2012, 874 F.Supp.2d 483. Injunction 1344

3.6. Temporary restraining orders

Balance of the equities and public interest tipped in favor of denying disqualified non‑incumbent candidates’ second motion for a temporary restraining order (TRO) in candidates’ equal protection challenge to differences in South Carolina’s filing requirements for incumbents and non‑incumbents; candidates waited more than three months after denial of their first TRO motion to file an amended complaint, candidates’ counsel failed to file timely status report as ordered by the court, and public had interest in ensuring state’s that state’s election was conducted pursuant to state law. Smith v. South Carolina State Election Com’n, 2012, 901 F.Supp.2d 639. Injunction 1345

Disqualified non‑incumbent candidates were not irreparably harmed based on differences in South Carolina’s filing requirements for incumbents and non‑incumbents, and thus, candidates were not entitled to temporary restraining order (TRO) in their equal protection challenge to the filing requirements, where candidates had ability to seek relief in state court. Smith v. South Carolina State Election Com’n, 2012, 901 F.Supp.2d 639. Injunction 1345

Failure to allege any precleared practice that was in force and effect prior to state court decisions interpreting South Carolina statute to require non‑incumbent candidates, but not incumbent candidates, to simultaneously file a statement of economic interest (SEI) with a statement of intention of candidacy (SIC), precluded disqualified non‑incumbent candidates from establishing a likelihood of success on the merits of their claim that those decisions constituted a change in election practices requiring preclearance under Voting Rights Act, and thus, candidates were not entitled to a temporary restraining order (TRO) barring enforcement of the simultaneous filing requirements. Smith v. South Carolina State Election Com’n, 2012, 901 F.Supp.2d 639. Injunction 1345

4. Review

Issue regarding statutory requirements for a candidate’s name to properly appear on a primary election ballot were ripe for review, even though no unqualified candidate had been elected; there existed the substantial likelihood that the respective political parties had erroneously certified candidates for inclusion on the primary ballot, by requiring compliance with the law, the Supreme Court would avoid the greater chaos and multiple challenges that would inevitably follow the party primary elections. Anderson v. South Carolina Election Com’n (S.C. 2012) 397 S.C. 551, 725 S.E.2d 704. Election Law 242

**SECTION 8‑13‑1358.** Format of certified campaign reports.

Except as provided in Section 8‑13‑365, certified campaign reports must be filed on a format specified by the State Ethics Commission. The reports filed must be typed or printed in ink on forms supplied by the commission. A report may be filed with the commission on a computerized printout if the commission approves the proposed format and style.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992; 2003 Act No. 76, Section 44, eff November 3, 2004.

Editor’s Note

2003 Act No. 76, Section 57, sets forth funding contingency and applicability provisions as follows:

“. . . Sections 16 [adding Section 8‑13‑365] and 44 [amending Section 8‑13‑1358] take effect November 3, 2004, if funding is appropriated by the General Assembly for this purpose, and apply to: (1) reports required to be filed with the commission after November 2, 2004, by candidates and committees for statewide offices, and (2) the forwarding of filings after November 2, 2004, to the commission by the Ethics Committees of the Senate and House of Representatives, pursuant to Section 8‑13‑365(A), and take effect January 2006 for these candidates and entities, notwithstanding the failure of the General Assembly to appropriate such funds for this purpose . . .”

Effect of Amendment

The 2003 amendment substituted “Except as provided in Section 8‑13‑365, certified” for “Certified”.

**SECTION 8‑13‑1360.** Contribution and expenditure reporting form; contents.

(A) The State Ethics Commission shall develop a contribution and expenditure reporting form which must include:

(1) a designation as a pre‑election or quarterly report and, if a pre‑election report, the election date;

(2) the candidate’s name and address or, in the case of a committee, the name and address of the committee;

(3) the balance of campaign accounts on hand at the beginning and at the close of the reporting period and the location of those campaign accounts;

(4) the total amount of all contributions received during the reporting period; the total amount of contributions of one hundred dollars or less in the aggregate from one source received during the reporting period; and the name and address of each person contributing more than one hundred dollars in the aggregate during the reporting period, the date and amount of the contribution, and the year‑to‑date total for each contributor. Written promises or pledges to make a contribution must be reported separately in the same manner as other monetary contributions;

(5) the total amount of all loans received during the reporting period and the total amount of loans for the year to date. The report also must include the date and amount of each loan from one source during the reporting period, the name and address of each maker or guarantor of each loan, the year‑to‑date total of each maker or guarantor, and the terms of the loan, including the interest rate, repayment terms, loan payments, and existing balances on each loan;

(6) the date and amount of any in‑kind contributions of more than one hundred dollars in the aggregate by one person during the reporting period, and the contributor’s name, address, and year‑to‑date total;

(7) the total amount of all refunds, rebates, interest, and other receipts not previously identified during the reporting period, and their year‑to‑date total; the total amount of other receipts received of one hundred dollars or less in the aggregate from one source during the reporting period; the date and amount of each refund, rebate, interest, or other receipt not previously identified of more than one hundred dollars in the aggregate from one source, the name and address and the year‑to‑date total for each source;

(8) the aggregate total of all contributions, loans, and other receipts during the reporting period and the year‑to‑date total; the amount, date, and a brief description of each expenditure made during the reporting period, the name and address of the entity to which the expenditure was made, and the year‑to‑date total of expenditures to that entity. Credit card expenses and candidate reimbursements must be itemized so that the purpose and recipient of the expenditure are identified;

(9) the total amount of all loans made during the reporting period and the year‑to‑date total. The report also must include the date and amount of each loan to one entity during the reporting period, the name and address of each recipient of the loan, and the terms of the loan, including the interest rate, repayment terms, purpose of the loan, the year‑to‑date total, and existing balances.

(B) A candidate or committee must disclose all information required on the form developed under this section.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

NOTES OF DECISIONS

In general 1

1. In general

State statute requiring every candidate for political office to disclose each contributor and recipient of campaign funds is invalid under First Amendment as applied to minor political party that historically has been object of harassment. Brown v. Socialist Workers ‘74 Campaign Committee (Ohio), 1982, 103 S.Ct. 416, 459 U.S. 87, 74 L.Ed.2d 250.

**SECTION 8‑13‑1362.** Filing of statement of inactivity by candidate or committee having no contributions or expenditures to report.

(A) If a candidate or committee has not accepted any contributions and has not made any expenditures during a reporting period, the candidate or a duly authorized officer of the committee must file a statement of inactivity.

(B) A statement of inactivity must include the candidate’s or committee’s name and address; the type of report, pre‑election or quarterly; and a statement by the candidate or a duly authorized officer of the committee verifying that no contributions were received and no expenditures were made during the reporting period. For the purpose of this report, interest earned is not a contribution.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑1364.** Sending of notice of obligation to report and forms.

The appropriate supervisory office must send a notice of obligation to report and reporting forms by first class mail no less than thirty days before the filing date for each reporting period. A candidate or committee is not relieved of reporting responsibilities if the notice or forms are not sent or if the candidate or committee does not receive a notice or forms.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991.

**SECTION 8‑13‑1366.** Public availability of certified campaign reports.

Certified campaign reports must be made available for public inspection at the office of the State Ethics Commission, the Senate Ethics Committee, the House of Representatives Ethics Committee, and the county clerk of court within two business days of receipt. The commission, ethics committees, and county clerks of court shall not require any information or identification as a condition of viewing a report or reports. The commission, ethics committees, and the county clerks of court must ensure that the reports are available for copying or purchase at a reasonable cost.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 45, eff June 26, 2003.

Effect of Amendment

The 2003 amendment deleted “the State Election Commission,” after “the State Ethics Commission” in the first sentence, substituted “shall” for “may” in the second sentence, substituted “commission” for “commissions” in the first and second sentences, and made a nonsubstantive change.

**SECTION 8‑13‑1368.** Termination of campaign filing requirements; dissolution of committees; final report.

(A) A candidate is not exempt from the campaign filing requirements as provided in this article until after an election in which the candidate is a candidate or is defeated and after the candidate no longer accepts contributions, incurs expenditures, or pays for expenditures incurred.

(B) Committees and ballot measure committees may dissolve only after no longer accepting contributions, incurring expenditures, or paying for expenditures incurred.

(C) If a committee or a ballot measure committee owes or is owed money, the committee or a ballot measure committee may dissolve, but must report the status of the debt annually on the same schedule as active committees or ballot measure committees until all debts are resolved. The method of resolution to eliminate these debts, including contributions accepted and payment for expenditures incurred, must be stated on the report.

(D) A final report may be filed at the time or before a scheduled filing is due. The form must be marked “final” and include a list of the material assets worth one hundred dollars or more and state their disposition.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 46, eff June 26, 2003.

Effect of Amendment

The 2003 amendment, in subsections (B) and (C), added references to “ballot measure committee” after “committee” and “ballot measure committees” after “committees” and made nonsubstantive changes.

**SECTION 8‑13‑1370.** Use of unexpended contributions by candidate after election; distribution of unexpended funds of committee.

(A) Contributions received by a candidate that are in excess of expenditures during an election cycle must be used by the candidate upon final disbursement:

(1) to defray ordinary and necessary expenses incurred in connection with his duties in his public office;

(2) to be contributed to an organization exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, a political party, or a committee;

(3) to be maintained in the campaign account for a subsequent race for the same elective office;

(4) to further the candidacy of the individual for a different elective office. However, after December 31, 1992, the funds must be used in a campaign for a different elective office only as provided for in Section 8‑13‑1352;

(5) to be returned pro rata to all contributors;

(6) to be contributed to the state’s general fund; or

(7) to be distributed using a combination of these options.

(B) No candidate may expend contributions for personal use.

(C) A committee required to file reports under this article which has an unexpended balance of funds upon final disbursement not otherwise obligated for expenditures incurred to further the committee’s purposes must designate how the surplus funds are to be distributed. The surplus funds must be:

(1) contributed to the state’s general fund;

(2) returned pro rata to all contributors;

(3) contributed to a political party or to another committee;

(4) contributed to an organization exempt from tax pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code; or

(5) distributed using a combination of these options.

(D) A ballot measure committee required to file reports under this article which has an unexpended balance of funds upon final disbursement not otherwise obligated for expenditures incurred to further the ballot measure committee’s purposes must designate how the surplus funds are to be distributed. The surplus funds must be:

(1) contributed to the state’s general fund;

(2) returned pro rata to all contributors;

(3) contributed to another ballot measure committee;

(4) contributed to an organization exempt from tax pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code; or

(5) distributed using a combination of these options.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Sections 47, 48, eff June 26, 2003.

Effect of Amendment

The 2003 amendment made a nonsubstantive change in subsection (C)(1), in (C)(4) deleted “of 1986” following “Code”; and added subsection (D) relating to the designation of how a ballot measure committee is to distribute surplus funds.

CROSS REFERENCES

Disbursement of surplus campaign funds to legislative caucus committee or party committee, see Section 8‑13‑1340.

Federal Aspects

Section 501(c)(3) of the Internal Revenue Code of 1986 pertaining to tax exemption, see 26 U.S.C.A. Section 501(c)(3).

United States Supreme Court Annotations

Governmental regulation of financing of political campaign as violating free speech or press clause of Federal Constitution’s First Amendment ‑ Supreme Court cases. 108 L Ed 2d 1017.

Ethics Commission Opinions

A deceased candidate’s campaign committee is subject to the same campaign laws that apply to all candidates. A candidate committee may not make a contribution from its campaign account to the debt retirement of a deceased candidate. Op. S.C. St. Ethics Comm., SEC AO2007‑008, March 21, 2007.

The Ethics Reform Act permits an expenditure from the candidate’s campaign account for expenses related to the campaign or the office and permits campaign funds to be used to defray any ordinary expenses incurred in connection with an individual’s duties as a holder of elective office. However, charitable contributions and contributions to the political parties and their committees may only be made at final disbursement. Op. S.C. St. Ethics Comm., SEC AO2003‑006, March 19, 2003.

Contributions made in the first quarter of a calendar year following an election are generally attributable to the next campaign cycle. First in, first out accounting is to be used to identify contributors of unspent funds whose permission must be obtained before their contributions may be used in a new campaign. A statewide candidate who makes a good faith switch in the office sought may only accept $3,500 during an election cycle. Op. S.C. St. Ethics Comm., SEC AO99‑006, March 17, 1999.

**SECTION 8‑13‑1371.** Use of contributions for unintended purposes by ballot measure committee; written authorization; distribution of seized funds.

(A) A ballot measure committee must not use or permit the use of contributions solicited for or received by the ballot measure committee for any purpose other than the purpose for which the ballot measure committee was originally created, unless the person making the contribution gives written authorization for a different use other than for which the contribution was originally intended.

(B) The State Ethics Commission has jurisdiction to seize all funds in a ballot measure committee’s account and distribute them in accordance with subsection (D) of this section when the ballot measure committee violates any provision of this section.

(C) Within sixty days after the election or referendum at which the ballot measure committee attempted to influence the outcome of the election or referendum, the funds remaining in the ballot measure committee’s account after the election or referendum must be distributed in accordance with subsection (D) of this section.

(D) The seized funds must be:

(1) contributed to the state’s general fund;

(2) contributed to an organization exempt from tax pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986;

(3) returned pro rata to all contributors; or

(4) distributed using a combination of these options.

HISTORY: 2003 Act No. 76, Section 49, eff November 3, 2004.

**SECTION 8‑13‑1372.** Technical violations of rules on campaign reports.

(A) The appropriate supervisory office, in its discretion, may determine that errors or omissions on campaign reports are inadvertent and unintentional and not an effort to violate a requirement of this chapter and may be handled as technical violations which are not subject to the provisions of this chapter pertaining to ethical violations. Technical violations must remain confidential unless requested to be made public by the candidate filing the report. In lieu of all other penalties, the appropriate supervisory office may assess a technical violations penalty not to exceed fifty dollars.

(B) A violation other than an inadvertent or unintentional violation must be considered by the appropriate supervisory office for appropriate action.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 50, eff June 26, 2003; 2011 Act No. 1, Section 2, eff January 19, 2011.

Effect of Amendment

The 2003 amendment substituted “Ethics Commission” for “Election Commission” twice in subsection (A) and deleted the commas surrounding “other than an inadvertent or unintentional violation” in subsection (B).

The 2011 amendment in subsection (A) substituted “appropriate supervisory office” for “State Ethics Commission” in two places; and in subsection (B) substituted “considered by” for “referred to”.

CROSS REFERENCES

Duties and powers of State Ethics Commission, see Section 8‑13‑320.

Review of certified campaign reports by State Ethics Commission and State Election Commission, see Section 8‑13‑1310.

Senate and House of Representatives Ethics Committees, manner in which investigations and hearings shall be conducted, findings and reports of committees, see Section 8‑13‑540.

**SECTION 8‑13‑1373.** Fiscal Accountability Authority to defend State after refusal by Attorney General; selection of counsel; management of litigation.

If the Attorney General, after request by the State or any of its political subdivisions, refuses to defend an action brought in a court of competent jurisdiction challenging any provision of this chapter, the State Fiscal Accountability Authority, using funds appropriated to the civil contingency fund, must defend the action brought against the State or the political subdivision. In cases where the Attorney General refuses to defend such an action, the State Fiscal Accountability Authority must consult with the President Pro Tempore of the Senate and the Speaker of the House of Representatives in the selection of counsel and in other matters relating to the management of the litigation.

HISTORY: 2003 Act No. 76, Section 51, eff June 26, 2003.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

**SECTION 8‑13‑1374.** Richland County designated as site of failure to file.

The failure to file a report or statement with the appropriate supervisory office, as required under the provisions of this chapter, is deemed to have occurred in Richland County.

HISTORY: 1995 Act No. 6, Section 45, effective upon approval (became law without the Governor’s signature January 12, 1995) and applies only to transactions occurring on or after January 1, 1995.

ARTICLE 15

Penalties

**SECTION 8‑13‑1510.** Civil and criminal penalties for late filing of or failure to file report or statement required by this chapter.

(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

(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.

(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;

(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.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 52, eff July 1, 2003; 2011 Act No. 40, Section 6, eff June 7, 2011.

Effect of Amendment

The 2003 amendment, in item (1), added “the statement or report is” following “dollars” and “or” following “chapter”; and in item (2) added “for the first ten days after notice has been given, and one hundred dollars” following “per day”, deleted “, not exceeding five hundred dollars” following “not filed”, and made a nonsubstantive change.

The 2011 amendment designated the existing text as subsection (A); in subsection (A)(1), substituted “and” for “or”; in subsection (A)(2), inserted “calendar” following “ten dollars per”, inserted “or report” following “statement”, and added “, not exceeding five thousand dollars”; and added subsection (B).

CROSS REFERENCES

Economic interests statements, filing deadlines for particular candidates, see Section 8‑13‑1356.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 79, All Officers and Public Employees.

Attorney General’s Opinions

Under the statute governing the State Ethics Commission, former Section 8‑13‑110, et seq., Code of Laws of South Carolina, 1976, the Ethics Commission is not authorized to levy fines but can only recommend the imposition of a fine for violations of the State Ethics Act; When the Ethics Commission receives a complaint against an administrative department executive, the Commission should conduct an investigation and report its findings and recommendations to the Governor. 1976‑77 Op Atty Gen, No 77‑260, p 194.

**SECTION 8‑13‑1520.** Violation of chapter constitutes misdemeanor; violation not necessarily ethical infraction.

(A) Except as otherwise specifically provided in this chapter, a person who violates any provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.

(B) A person who violates any provision of this Article 13 is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred percent of the amount of contributions or anything of value that should have been reported pursuant to the provisions of this Article 13 but not less than five thousand dollars or imprisoned for not more than one year, or both.

(C) A violation of the provisions of this chapter does not necessarily subject a public official to the provisions of Section 8‑13‑560.

HISTORY: 1991 Act No. 248, Section 3, eff January 1, 1992 and governs only transactions which take place after December 31, 1991; 2003 Act No. 76, Section 53, eff November 3, 2004.

Effect of Amendment

The 2003 amendment rewrote this section.