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ETHICAL CONFLICTS AND RECUSALS

2022 Annual Meeting

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Ethics, Government Accountability, and Campaign Reform Act

S.C. Code Sections 8-13-100 through 8-13-1510

- Statements of Economic Interest
- Campaign Practices
- Influencing the Outcome of an Election
- Representing a Person Before the Body
- Self-Dealing and Influence



Rules of Conduct: Applicability

- “Public official, public member, or public employee.”
- “Public official” means an elected or appointed official of a municipality, including candidates for the office. It does not include the judiciary, except for probate judges for campaign and SEO purposes.
- “Public member” means an individual appointed to a non-compensated part-time position on a board, commission, or council. Reimbursement of expenses or a per diem payment does not mean the position is compensated.
- “Public employee” means a person employed by the State, a county, a municipality, or a political subdivision thereof.



Section 700 Violations

Section 8-13-700(A), Self-Dealing

“No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated.”

Exception for incidental use not resulting in additional public expense.



Section 700 Violations

Section 8-13-700(B), Influence

“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.”



Section 775 Violations

Section 8-13-775, Contracts with Public Bodies

“A public official may not have an economic interest in a contract with the State or its political subdivisions if the public official is authorized to perform an official function relating to the contract. This section is not intended to ... prohibit the award of contracts awarded through a process of public notice and competitive bids if the public official has not performed an official function regarding the contract.”



Section 700 Definitions

- “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; or (b) a member of the individual’s immediate family.
- Dictionary defines brother-in-law as (a) the husband of one’s sibling; or (b) the husband of one’s spouse’s sibling.
- “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 the person may gain an economic benefit of \$50 or more.



Section 700 Definitions

- “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 \$100,000 or more and which constitutes 5% or more of the total outstanding stock of any class.
- “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 \$100,000 or more and which constitutes 5% or more of the total outstanding stock of any class.



Section 700 Examples

- Hiring, promoting, or determining the salary of family members. May recuse yourself from line items in the budget, or may rely on across-the-board increases for departments.
- Providing special accommodations, goods, or services to a family member or a company with which the family member is employed or associated.
- Using office equipment or time to work on a second business.



Section 700 Examples

- AO2011-002: “A city is considering an upgrade to a city boardwalk. City regulation requires that connections to the boardwalk must also be upgraded with the same materials and design as the boardwalk upgrade.... Although there are 56 property owners along the boardwalk, only 22 property owners have connections to the boardwalk and would be required to make the upgrade to their connections.” Would a city council member, whose property is connected to the boardwalk, have a conflict of interest?
- “This is not an issue of speculating on whether the city council member receives some value from the upgrade, but whether there is an expense to the member in the upgrade. A city council member has an economic interest when an upgrade would require an expenditure of \$50 or more to upgrade the council member’s connections to the boardwalk.”



Section 700 Examples

- AO94-08: Government commission bids out a project to build a project on the government’s property. The low bid was submitted by a contracting business that is owned in part by a commission member.
- The commission member did not participate in the preparation of the bid package, nor was he privileged to any information regarding the bid that was not also available to all other bidders. The actual preparation of the bid package was done by an architectural firm.
- “The State Ethics Commission advises that despite the commission member’s association with the firm that submitted the lowest bid, the Ethics Reform Act does not prohibit this firm from being awarded the contract, provided it is awarded in accordance with the [procurement code] and the commission member complies with the recusal provisions of Section 8-13-700(B).”



Section 700 Examples

- AO2018-001: Town officials live in a planned development, are active participants in the neighborhood homeowner’s association, and are members of the golf and tennis club. Must they recuse themselves from zoning decisions that affect the neighborhood?
- Section 8-13-100(11)(b): “This definition does not prohibit a [covered person] from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit ... accrues to the [person] 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.”



Section 700 Examples

- A city has November elections in odd-numbered years. Because of the delay in 2020 Census data, the city will not be able to complete redistricting before the 2021 election. The city proposes to delay the election pending redistricting.
- Are there ethical issues involved?



Analysis of Conflicts

- Primary question: With respect to any situation or act, is there an economic interest to you, a family member, a person with whom you are associated, or a business with which you are associated?
- Keep the definitions handy, they are in Section 8-13-100.
- If such an economic interest exists, you have a conflict of interest under the Ethics Act!



Recusal

- If you have a conflict of interest under the Ethics Act, then you must recuse yourself.
- Prepare a written statement describing the action / decision item and your potential conflict of interest.
- Public Employees: Furnish a copy to your superior who then must assign the matter to another employee who does not have a potential conflict. If you don't have a superior, call the State Ethics Commission.
- Public Officials: Furnish a copy to the presiding officer of the body on which you serve. Statement shall be recorded in the meeting minutes and you shall be excused from discussion and action on the matter in question.



Recusal

- Do you have to leave the room? Well
- What about the quorum?
- “[A] member disqualified due to a conflict of interest may not be counted for purposes of a quorum. Here, a majority of the seven-member Council requires four members to constitute a quorum. After removing the disqualified votes, however, only three of the Council members could count towards the quorum. As such, a quorum did not exist.” *Anderson Cnty. v. Preston*, 427 S.C. 529, 542, 831 S.E.2d 911, 917 (2019)



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