

# Ethical Issues for School Business Officials

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Presented by:  
Francenia B. Heizer, Esquire  
(803) 799-9800 (Office)  
(803) 331-9415 (Cell)  
[fheizer@burr.com](mailto:fheizer@burr.com)

# Topics to be Covered

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- Information from State Ethics Commission Brochure and Portion of State Ethics Reform Act
- Update on Referendum Do's and Don'ts
- New Proposed Legislation
- Practical Applications

# A Little Extra Cash

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- As a public employee, you may not:
  - › - Solicit or receive money, in addition to that received in your official capacity, for advice or assistance given during your public employment.
  - › - Use confidential information obtained over the course of your employment in order to obtain an economic benefit for you, your family or a business/person with whom you are associated.
  - › - Solicit or receive anything of value to influence your decision making in the discharge of your duties or responsibilities.

# Getting Policial

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- You may not use government time, equipment, resources or property to influence the outcome of an election. Do not print campaign materials, make campaign calls or send campaign related emails using any government issued equipment.

# Your Time Versus the People's Time

- As a public employee, your workday is dedicated to the people you serve. Over the course of your public employment you may not:
  - › - Use government equipment, personnel, materials or time to work on a second business.
  - › - Receive anything of value in an attempt to influence your actions.
  - › - Receive money other than your salary for advice or assistance given as a part of your official duties.

# All in the Family

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- Nepotism (favoritism based on kinship) is strictly forbidden by the State Ethics Reform Act. Over the course of your public employment you may not:
  - › - Cause the employment, appointment, promotion or transfer of a family member to a position you supervise or manage.
  - › - Participate in the discipline of a family member.
  - › - Family members: spouse, parent, brothers, sister, child, in-laws, grandparent or grandchild.

# Leaving the Public Sector

- Under certain circumstances your future employment may have restrictions:
  - › If you were directly involved in procurement, you may not accept a new job in which your new employer is contracting with your former employer if the contract would fall under your official duties while you were a public employee.
  - › You may not serve as a lobbyist or represent clients on a matter in which you directly or substantially participated.

# Leaving the Public Sector

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- › You may not accept employment if the employment is from a person/entity regulated by your former employer and involves a matter in which you directly and substantially participated.



# Statement of Economic Interests

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- Certain public employees are required to file a Statement of Economic Interests (SEI) form every year. Those employees include, but are not limited to:
  - › - Chief administrative official, deputy administrative official or director of a division, institution or facility of any agency or department of state government.
  - › - Chief financial official and chief purchasing official of each agency, institution or facility of state government.

# Statement of Economic Interest

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- A Statement of Economic Interests should contain the following information:
  - › - Source, type and value of income received from a governmental entity.
  - › - Listing of any private source of income received by you or a family member.

# Statement of Economic Interests

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- When is a Statement of Economic Interests due?
  - › Forms must be filed by noon on March 30th of each calendar year;
  - › When registering as a candidate with a political party for public office;
  - › Upon entering the official responsibilities; and
  - › Prior to taking oath of office.

# Statement of Economic Interests

- What if you do not file?
  - › A person required to file a report or statement who files a late statement or report or fails to file a required statement or report must be assessed a civil penalty as follows:
    - A fine of one hundred dollars if the statement or report is not filed within five days after the established deadline; and
    - 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.
  - › Fine is for each report.

# Statement of Economic Interests

- › After the maximum civil penalty has been levied and the required statement or report has not been filed, the person is:
  - 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;
  - 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; and
  - 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.

# Statement of Economic Interests

- Non-Compliance
  - › As of January 3, 2019, according to the State Ethics Commission website, there are no School Administrators or Business Officials on the Debtors List.
  - › There are 21 people identified as school board trustees (current and former) with fines outstanding totaling \$219,226.84 for years ranging from 2003 through 2017.
  - › No criminal cases yet.

# Statement of Economic Interests

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- › Raises questions about authority and legitimacy.
- › In a 2008 State Attorney General's Opinion, the Attorney General took the position that the State Ethics Commission could not remove a school board member from office.
  - Failure to file a statement of economic interests creates a question as to whether a board member properly enters into his or her position.
  - There are no legal cases addressing that question.

# Update to Referendum Do's and Don'ts

- Based on two State Ethics Commission opinions from 2018, regarding the use of public resources to influence the outcome of a ballot measure:
  - › Before the adoption of an ordinance or resolution to put a referendum on the ballot for consideration by the voters, the restrictions of Sections 8-13-765 and 8-13-1346 do not apply to the debate on the ordinance or resolution.
  - › An elected official's expression of personal opinion on a ballot measure during a board meeting constitutes use of public resources. If the opinion expressed is more than informational, it would be in violation of Section 8-13-1346.



# Update to Referendum Do's and Don'ts

- › What is informational material?
  - Informational is not defined in the State Ethics Act;
  - Informational material must not favor one side of a controversy over another;
  - Whether materials are informational will be determined by looking to factors such as the style, tenor and timing of the publication;

# Update to Referendum Do's and Don'ts

- › Informational material provided must not be an attempt to convince voters to take a particular action; and
- › It must be a balanced presentation of the facts which takes into account all of the consequences of a particular proposal.

# Proposed New Legislation

- South Carolina Career Opportunity and Access for All
  - › Part 7 Local School Board Accountability
    - The purpose is to enhance local school governance by promoting the highest standards of ethical behavior and to provide an automatic procedure for addressing instances of deficient local school governance impacting the success of a school district.
    - Before July 1, 2020, the State Board of Education shall adopt a model Code of Ethics for local school board members.
    - Local school boards shall adopt a local Code of Ethics within three months of the model Code and the local Code must include at a minimum the model Code of Ethics.

# Proposed New Legislation

- › A local school board shall adopt policies regarding nepotism which at a minimum must include the provisions of Section 59-19-740.
- › A person who has a family member serving on a local school board... as the district superintendent ... as a principal or an assistant principal... or as a member of the district administrative staff, said person is not eligible to serve on the Board if the family member's employment begins after December 31, 2020.

# Proposed New Legislation

- › The above provision does not affect the employment of a person:
  - employed before June 30, 2020, or
  - who is employed by the district when his family member becomes a member of that school board.
- › For a district of a full-time enrollment of fewer than 3,000 students, the State Board of Education may give a waiver of the provisions outlined above.

# Proposed New Legislation

- › To avoid a conflict of interest, a local school board member or school official may not:
  - Use or attempt to use his official position to secure unwarranted privileges, advantages, or employment for himself, family members, or any others;
  - Act in any capacity in any matter where economic interests would impair objectivity or independence of judgement;
  - Disclose or discuss any information which is subject to attorney/client privilege except to appropriate district personnel unless the privilege has been waived by a 2/3 vote of the membership of the Board then serving; or
  - Serve also as an officer of any organization that sells goods or services to the district, excluding not-for-profit organizations.

# Proposed New Legislation

- To enable local school superintendents and administrators to effectively perform their duties without undue influence from school board members, a school board member shall:
  - › recognize that the authority of the board only rests with the board as a whole and not with individual board members, and act accordingly;
  - › support the delegation of authority for day-to-day administration of the school system to the local superintendent, and act accordingly;
  - › honor the chain of command and refer problems or complaints consistent with the chain of command;

# Proposed New Legislation

- › recognize that the local superintendent shall serve as secretary, ex officio to the board, and should be present at all meetings of the board except when his contract, salary, or performance is under consideration;
- › not undermine the authority of the local school superintendent or intrude into responsibilities that properly belong to the local superintendent or school administration, including such functions as hiring, transferring, or dismissing employees; and
- › use reasonable efforts to keep the local superintendent informed of concerns or specific recommendations that any member of the board may bring to the board.



# Practical Applications

- Most ethical problems and public corruption are the result of intentional acts.
- In the early 1990's a superintendent and school board chair were indicted for "fixing" bids in the purchase of computers "thereby damaging the integrity of the school district and the bidding process." Allegedly, they "did receive and accept gratuities of travel and lodging from favored vendors in violation of the State Ethics Act, all being against the peace and dignity of the State of South Carolina and the Common Law."
- We all know about the recent unpleasantness in The School District of Berkeley County.

# Practical Applications

- But what about mistakes?
  - › The problem with mistakes is the attempt to “fix” them or cover them up.
  - › No matter how consequential the mistake (missing deadlines, not recording information properly, omitting information unintentionally), it is always best to confront the problem and deal with it as soon as possible.

# Additional Information

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For more information, see:

State Ethics Commission Public Employee Brochure

<https://ethics.sc.gov/sites/default/files/Documents/Brochures/EMPLOYEEBROCHUREFINAL.February%202019.PDF>

State Ethics Commission Opinion 2008-003 dated May 25, 2018

<https://ethics.sc.gov/sites/default/files/Documents/Advisory%20Opinions/Advisory%20Opinion%20Topics/2018/AO2018-003.pdf>

State Ethics Commission Opinion 2018-004 dated July 19, 2018

<https://ethics.sc.gov/sites/default/files/Documents/Advisory%20Opinions/Advisory%20Opinion%20Topics/2018/AO%202018-004.pdf>

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If you would like an electronic copy of this presentation, please e-mail Laura Foster at [lfoster@burr.com](mailto:lfoster@burr.com).

Thanks.

# Questions?

## Columbia Office Address

1221 Main Street  
Suite 1800  
Columbia, SC 29201

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Francenia B. Heizer, Esquire  
(803) 799-9800 (office)  
(803) 331-9415 (cell)  
[fheizer@burr.com](mailto:fheizer@burr.com)

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