

ETHICAL CONSIDERATIONS
FOR
NEWLY ELECTED OFFICIALS

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This paper will address several ethical matters that local elected officials must often confront, such as conflicts of interest, incompatible offices, and campaign finance disclosure laws. The problems that arise with respect to these ethical issues are common and often difficult to resolve with clear, black and white rules.

Lawyers and elected officials share some analogous ethical dilemmas. As lawyers, we are trained to anticipate possible conflicts of interest among the various clients that we represent. For example, we may not use confidential information gained from a client against that client in another proceeding. We also may not place our own personal interests above those of our clients.

Local elected officials face similar concerns when an issue that could affect them financially or personally comes before their governing body. In addition, in many situations, local elected officials are prevented from holding positions that are either inconsistent or incompatible with each other, especially if each position would affect the official's ability to be impartial. Local elected officials must work for the benefit of the

county or municipality they serve, and they should not be motivated by a desire for personal gain.

I. General Prohibitions Against Conflicts of Interest

Several Georgia statutes address the issue of conflicts of interest. O.C.G.A. §36-30-6 provides that “it is improper and illegal for a member of a municipal council to vote upon any question brought before the council in which he is personally interested.” The Georgia Appellate Courts have construed the phrase “personally interested” as used in this Code Section to mean a financial interest. **Story vs. City of Macon**, 205 Ga. 590 (1949). If an elected official has a personal interest in a contract entered into by a municipality or county, that contract is null and void. **Hardy vs. Mayor of Gainesville**, 121 Ga. 327 (1904); **Montgomery vs. City of Atlanta**, 162 Ga. 534 (1926). However, the Courts have also held that if a council member or other official is the owner of land that is the subject of a public improvement, this does not automatically disqualify him from voting upon such improvement. **Story vs. City of Macon**, 205

Ga. 590 (1949). Therefore, the rule of thumb for determining whether a public official has a conflict of interest is this: there must be some measurable financial gain to be had by a public official in order for him to be considered financially interested in any vote that comes before his council. Attached as Exhibit "A" are a number of code sections which deal with specific prohibitions and conflicts of interest related to county officials. As a part of that Exhibit, please read carefully the "interested transactions prohibition," as it can result in removal of office for a violation. Also, a general code of ethics is contained in §45-10-3 of the Code. Since these are very **general prohibitions**, you should be extremely careful about all matters of conduct as it relates to county business. If you own a store or a business that has been conducting any sales to the county, you should probably get the opinion of the county attorney as to whether that process may continue under some form of "sole source rule," meaning that your company is the only source available for the goods or services provided to the county. The safe practice is to simply do no business with the county at all. You have been

distributed at this program a handbook, which contains an ethics section. It refers to several of the laws that I have attached, and other provisions that may be helpful to you in the area of ethics and general conflicts of interest for newly elected county officials.

The City of Cedartown has recently updated its Charter and included a provision concerning conflicts of interest and other ethical issues that confront its elected officials. A copy of Section 2.16 of the Cedartown Charter is attached as Exhibit "B". As you will note, Section 2.16, entitled "Prohibitions," Subsection (6), provides that no elected official of a municipality may "vote or otherwise participate in the negotiation or the making of any contract with any business or entity in which he or she has a financial interest." This Charter section is more specific than state law defining instances in which elected officials may be confronted with a potential conflict of interest. Subsection (5) of the Charter provision further prohibits any municipal official from representing any "public or private interests in any action or proceeding against the city or any portion of its government."

II. Remedies for Conflicts

Typically, there are two remedies available for any situation in which an elected official faces a conflict of interest: first, an elected official should disclose completely any interest he might have in the matter at hand; secondly, he may be disqualified from voting or otherwise participating in the matter.

An elected official's disclosure of material information concerning a financial interest in a particular matter that may be pending before the governing body is **crucial**. In most situations, disclosure of the financial interest will prevent the appearance of any impropriety. Disclosure as a remedy in itself is often more effective in the context of an elected official who may have an indirect interest in the matter pending before the governing body, rather than a direct financial interest. An example of this would be a Commission Member who resides in a community where a zoning change has been requested. The elected official stands in the same position as other individuals in the community who may be affected by

the zoning change, but there is no direct financial interest involved.

Although disclosure may be an effective remedy for potential conflicts of interest in some situations, often the more prudent course of action is to disqualify any interested member from participating in the vote altogether. This course of action again serves to increase the public's confidence in its government and removes any appearance of impropriety concerning any elected official who resides within the area subject to the zoning change. Consider the following successful example of both complete disclosure and the proper implementation of disqualification.

The City of Cedartown purchased several acres of property for use and development as an industrial park. The son of the acting Chairman of the City Commission wished to bid on a significant grading project in the industrial park. We required a full disclosure, by independent counsel, that the Commission Chairman did not have any financial or ownership interest in his son's company, nor any affiliation with the company as a stockholder, noteholder, or holder of another similar interest. Once the contract was bid, the son was the low bidder, and there was a public

outcry that this was an "insider transaction." We were able to not only eliminate the outcry, but indicate how well the Commission had dealt with the problem. There had been an initial disclosure of the relationship and an opinion of an independent attorney that the Chairman of the City Commission had no interest in his son's business. Furthermore, there was a complete disqualification of the Chairman so he was not present during the discussions and did not vote on the acceptance of his son's bid. This is a good practical example of how to handle potential conflict of interest issues.

III. Zoning Actions

O.C.G.A. §36-67A-2 requires local officials to disclose the nature and extent of any property or financial interest in any real property that they, or any business entity they are associated with, may have that will be affected by a rezoning decision. These officials must also disclose the nature and extent of any interest of a member of their family in property to be rezoned. After disclosure, the code section further requires the official

to disqualify himself from any vote on the rezoning action and to refrain from taking any other action to influence the rezoning decision. Furthermore, O.C.G.A. §36-67A-4 provides that violation of this code section shall be a misdemeanor, punishable by up to twelve months in jail, as well as a fine.

Section 2.16 of the Cedartown Charter, referred to above, has a specific subsection to address this problem. Subsection (b) of Section 2.16 requires elected officials to disclose "any conflicting public or private financial interest, directly or indirectly, in any contract or matter pending before or within a department of the city." Such disclosure shall be entered upon the minutes of any Commission meeting, and the Charter requires the elected official to disqualify and not participate in any decision or vote on such a matter. The section would apply not only to elected officials and Commissioners, but also to any employees of any agency, political entity, or department of government.

Georgia has adopted very strict conflicts of interest rules and disclosure requirements relating to both the re-development powers of

local government (O.C.G.A. §36-44-21) and urban development projects that may be accomplished through federal grant programs or the creation of an urban re-development district. (See O.C.G.A. §36-61-19). These sections require, first, disclosure of any property interest a local official may have obtained within two years prior to the development project; second, that any official who owns any property within the re-development district make a disclosure of that interest in writing to a local re-development authority and/or local government; and third, that official shall not participate in any action which may affect such project. “Non-participation” in zoning issues, re-development plans, and industrial development projects is exceedingly important to remember. As an elected official, if you **both** disclose the nature of your potential conflict, together with (if necessary) a recusal from the voting process, then no one can criticize you for your actions—or even worse, pursue an investigation that could result in criminal penalties or your being found guilty of “misconduct in office.” (e.g. 36-61-19 (c); 36-44-21 (c)).

In connection with recusal, following the appropriate procedure can

be critical. An actual case study of attempts to cause problems for the City of Cedartown's Commission members is attached hereto as Exhibit "C" beginning with subpart 3. George Anderson is the Executive Director of an organization called "Ethics in Government Group." You will note in Exhibit "C" that he accused two members of the Cedartown City Commission with ethical misconduct. He attended **several** meetings of the Commission (ironically just before municipal elections) and made several critical and volatile comments against certain activities of the Commissioners. It has been our practice in advising our governmental clients that they both disclose a potential conflict of interest and ask our opinion concerning it. If we feel there is a conflict, then they not only do not participate, but they leave the room during the discussion.

The Georgia Development Authority Law actually requires an affirmative disclosure of a conflict of interest and that the person who may not participate leave the room during the portion of the meeting in which the matter is discussed. (See Exhibit "5" to Exhibit "C" attached; also O.C.G.A. §36-62-5(e)). As the attached Exhibit "5" memorandum of

December 28, 2009 shows, disclosure plus leaving the meeting is the safe route. Obviously, if you stay and participate, you should be sure that there is no potential conflict. As I will emphasize in my discussion to you, **ALWAYS ERR ON THE SIDE OF DISCLOSURE. LET EITHER YOUR ATTORNEY, OR AN ETHICS COMMITTEE THAT IS A PART OF YOUR LOCAL GOVERNMENT PRACTICE IN SIGNIFICANT POTENTIAL CONFLICTS, PROVIDE A WRITTEN OPINION AS TO WHETHER SUCH A CONFLICT EXISTS.**

IV. Criminal Penalties

Other Georgia statutes provide criminal penalties for situations in which a public official faces a potential conflict of interest. O.C.G.A. §16-10-6 prohibits the sale of real or personal property to any political subdivision (or agency of that political subdivision) by a local officer or employee of that subdivision. This offense constitutes a felony, punishable by up to five years in prison. However, there are exceptions to

the prohibitions contained in O.C.G.A. §16-10-6. This statute does not apply to sales of personal property which are either less than \$200.00 per calendar quarter or made pursuant to "sealed competitive bids" submitted by the public official or employee on behalf of any business entity in which he is interested. The code section also does not apply to sales of real property in which disclosure has been made to the Judge of the Probate Court in the county in which the real property is located 15 days prior to the date the contract of sale becomes binding. Such disclosure must also reveal that the public official has a personal interest in the sale, as well as the nature and extent of the interest, the official's position, and any benefit the official is to receive under the sale. Although there is little case law concerning this statute, Attorney General's opinions have held that the statute does not extend to the sale of services from a public official to a public agency. The provisions of this section should be carefully consulted, especially the provisions concerning sale of real property and the disclosure that is required in this situation.

V. Model Code of Ethics

The Georgia Municipal Association in September, 1999 published a booklet prepared by a GMA Ethics Task Force, which has been disseminated to all cities in Georgia. It outlines a program through which a municipality may become a "Certified City of Ethics." This procedure is outlined as Exhibit "D" to my materials. Attached as Exhibit "E" are the ethical principles which may be adopted by a city. After adoption, these principles are normally framed and mounted in the Council room to show that the procedures being followed by that city meet the highest ethical principles and aspirational standards of the elected officials of that city. Exhibit "E" also contains a discussion of the five aspirational principles of the code of conduct that are applicable to elected officials. Exhibit "F" is a copy of Cedartown's ethics ordinance.

ACCG is considering a similar program for counties. It is important to note that ACCG has not finalized its decision on a county-wide ethics program, or the nature of the exact, final form of an ethics ordinance.

When we accomplished the city ethics ordinance program, we basically had three (3) ordinance types for small, medium, and large cities. It may be that counties will develop more than one ordinance depending on the complexity of the county government organizational structure. **Please realize that, even though there is not a county-wide program, if you feel that an ethics ordinance would be helpful to your county, I would suggest you review the attached draft ordinance and ordinances on the website of the Georgia Municipal Association concerning the Georgia certified city of ethics program.** These would be helpful to you, and your legal counsel, in drafting an ordinance for consideration and, hopefully, ultimate adoption.

VII. Campaign Finance Disclosure

The Georgia Ethics in Government Act (O.C.G.A. §21-5-1 et. seq.) was enacted in 1981 generally to govern campaign committees and contributions, expenditures on behalf of candidates for elected office, political action committees, and many other issues affecting persons who are candidates and/or elected office holders. See: O.C.G.A. §21-5-2. The

State Ethics Commission oversees the operations of the Act and a number of other functions and is composed of five appointed members. Officials must take heed of the campaign finance disclosure laws contained in the Act, which are extremely detailed and specific in their requirements. O.C.G.A. §21-5-30(a) requires candidates to organize a campaign committee for the acceptance of any campaign contributions. The remainder of the code section requires such committees to maintain records, nominate a chairperson or treasurer, and maintain any contributions received in a separate campaign depository account. All contributions committees must register with the State Ethics Commission and, as of January 10, 2011, must electronically file reports directly to the Commission. In order to begin electronically filing, officials must apply to the State Ethics Commission for a PIN to be used in this process; a copy of this application is attached as part of Exhibit "G" at the end of these materials. The Act also prohibits anonymous contributions and provides that such contributions must be reported and deposited with the State Office of the Treasury and Fiscal Services and that the State Ethics

Commission must be notified. However, if the candidate is unable to determine the name and address of an anonymous contributor through normal inquiry, the candidate does not “knowingly” violate the Act. Fortson vs. Weeks, 232 Ga. 472 (1974).

O.C.G.A. §21-5-34 requires a candidate for a municipal or county office to file reports with the Commission with detailed information concerning contributions of \$100.00 or more, including the purchase of various tickets, and the names of any contributors. Not only must a candidate disclose all contributions in any form of \$100.00 or more, aggregate multiple contributions from a single donor who may be attempting to avoid the threshold amount must be reported. Revised O.C.G.A. §21-5-41 provides that:

(a) No person, corporation, political committee, or political party shall make, and no candidate or campaign committee shall receive from any such entity, contributions to any candidate for state-wide elected office which in the aggregate for an election cycle exceed:

- (1) Five thousand dollars for a primary election;
- (2) Three thousand dollars for a primary run-off election;
- (3) Five thousand dollars for a general election; and

(4) Three thousand dollars for a general election runoff.

(b) No person, corporation, political committee, or political party shall make, and no candidate or campaign committee shall receive from any such entity, contributions to any candidate for the General Assembly or public office other than state-wide elected office which in the aggregate for an election cycle exceed:

(1) Two thousand dollars for a primary election;

(2) One thousand dollars for a primary run-off election;

(3) Two thousand dollars for a general election; and

(4) One thousand dollars for a general election runoff.

An Attorney General's opinion indicates that these limitations apply to all of a candidate's campaign committees and that gifts to these committees must be aggregated toward the limitation amount. Op. Atty. Gen. 97-8, March 13, 1997. Political action committees (PACs), independent committees, and/or any other person or entity required to file reports must do so when \$5,000.00 has been raised in an election cycle.

The Act also provides specific time deadlines within which these reports are to be filed. O.C.G.A. §21-5-34 requires that reports be filed 15

days prior to the date of the election; a final report shall be filed prior to December 31st of the year in which the election is held. However, the statute further provides the following schedule for reports:

(1) In each non-election year on June 30 and December 31;

(2) In each election year:

(A) On March 31, June 30, September 30, October 25, and December 31;

(B) Six days before any run-off primary or election in which the candidate is listed on the ballot; and

(C) During the period of time between the last report due prior to the date of any election for which the candidate is qualified and the date of such election, all contributions of \$1,000.00 or more shall be reported within two business days of receipt to the commission and also reported on the next succeeding regularly scheduled campaign contribution disclosure report;

(3) If the candidate is a candidate in a special primary or special primary runoff, 15 days prior to the special primary and six days prior to the special primary runoff; and

(4) If the candidate is a candidate in a special election or special election runoff, 15 days prior to the special election and six days prior to the special election runoff.

The Supreme Court of Georgia has also held that a candidate must report personal funds he uses in his campaign. **Kaler vs. Common Cause of Georgia**, 244 Ga. 838 (1979). “Personal funds” can, as later discussed in this paper, include in kind contributions.

Attached as Exhibit “G” are a number of documents that may be helpful to you in complying with the requirements of the Act. These include a current copy of the financial disclosure statement. We have also included sections from the Commission’s informational website that deal with important definitions, reporting requirements, contribution limits, due dates, and similar material. **It is important to realize that the due dates, after the grace period, are non-waivable. That is,**

regardless of the excuse, you must comply with the filing requirements. It may be presumed that a failure to file and a small fine is not a significant problem. However, please realize two important points in this connection:

- 1) There may be instances where you will be required to come to Atlanta, appear before the Commission and have to pay a fine for late filing;
- 2) A late filing is a violation of the Act. You do not want the headlines of your local paper to read “Elected Official Violated Ethics in Government Act!”

The most important aspect to remember is that the Commission is formed, and operates, to help all elected officials to comply with the Ethics in Government Act. Thus, if you have questions about any issues, you may contact the Commission or go online for help.

Not only are candidates required to file detailed reports within the time periods specified above, they are also required by O.C.G.A. §21-5-50 to file financial disclosure statements for the previous year no later

than July 1 of each year. This financial disclosure statement must report all fees and other honoraria, fiduciary positions held by a candidate, and any business in which the candidate has an ownership interest in excess of five percent (5%) of the total ownership thereof or where the ownership interest is worth more than \$5,000.00. The revised statute requires disclosure of **spousal and dependent** children's ownership interests as well. Candidates must also disclose every tract of real property in which the candidate has an ownership interest in excess of \$5,000.00 [including any property of the candidate's or officer's spouse], and any annual payments in excess of \$10,000.00 received from any businesses described in the Code.

VIII. Importance of Mandatory Reporting

Elected officials in Georgia **must realize** that the requirements of the Act have certain deadlines which have to be met for the filing of campaign reports, political contributions, and financial reporting. These filing requirements are mandatory and should not be ignored. Failure to

file these reports could lead to sanctions, penalties, fines, and being brought before the Commission, all of which can be avoided by simply filling out the forms completely, accurately, and with the detail required by the Commission. I have found the Commission staff to be very helpful to any elected official who has questions or problems about the forms. All you have to do is call them, and any problem with determining accurate reporting can be eliminated.

The stickier problem is often what to report. If you go to lunch with a constituent, and he pays for lunch, does this trigger a "contribution" reporting requirement? If you go to a rally and someone on their own is handing out leaflets with a biographical sketch of you, asking for voters' support, or appreciation for what you may have done as an elected official, is this an in-kind contribution?

It is my opinion that a strict interpretation of O.C.G.A. §21-5-3 would indicate that a "contribution" is any gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or **anything of value conveyed or transferred** for the purpose of influencing the

nomination for election or election of any person for office. The Attorney General issued an unofficial opinion that officials do not have to report the "value" of their attendance at an event sponsored by a public or private entity, such as public gatherings or speaking engagements, if the event was not specifically intended to bring about the election or nomination of the official. Op. Atty. Gen. 97-1, Jan. 9, 1997. Such an appearance does not constitute a "contribution" under the Act. However, the definition of contribution in the Ethics in Government Act is very broad. I submit to you that under this definition a lunch, the printing of campaign brochures for candidate, or paying for a bulletin board for a candidate or similar activities can be construed to be a "contribution" which triggers a reporting requirement under the Act.

My simple advice to you is, when in doubt, call the Commission Staff to determine if a report is necessary. Simply inquiring with the Commission if you feel disclosure could be appropriate eliminates future problems. Also, if you feel that someone has (without your consent or permission) attempted to become involved in your election or political

activities through what could potentially be in-kind contributions, do two things: first, stop them from attempting to help you without your consent if they are not a part of your organization. Remember that even very small economic help can be construed as an in-kind contribution. The days of an elected official asking all of his friends and neighbors to take out ads on his behalf, to pay for having signs printed, or to pass out brochures that they have paid for, as separate acts of some third party, are over. The Ethics in Government Act is supposed to insure that all political contributions, taking whatever character or form, are to be governed by the Act itself.

In one case before the Commission, a well intentioned constituent decided to buy a billboard for the candidate. The candidate found out about the billboard after the candidate saw the ad requesting them to vote for that candidate. The candidate should have immediately inquired as to who placed the ad and filed an amended report concerning that contribution. Further, as the contribution definition indicates, a forgiveness of a debt can be a campaign contribution. Candidates who

receive "rent free" a campaign office, use of the phone, billboards, faxes, mailing service, or anything else of value are receiving contributions. If a candidate is using his business to pay for a part of advance mailing, constituent newsletter, or anything of this nature, this should be disclosed. It should be very obvious that a candidate can never go wrong with disclosure, but a poor decision not to disclose will cause problems.

IX. Additional Changes and Legal Update

When considering the fair market value of property for disclosure purposes, to determine whether the disclosure threshold of \$5,000 has been met, the only value determination now made is the fair market value of the property. The former statute only considered equity in the property; thus the amount of debt owed on the property is now immaterial.

Changes were also made in terms of reporting by individual contributors. Contributors must also register and report their contributions to campaigns and candidates. Formerly contributors had to register and report anytime they contributed more than \$5,000.00 in a

calendar year. This amount has been raised to \$25,000.000. O.C.G.A. 21-5-34(e)(1-2).

Since the use of limited liability entities has grown exponentially in recent years, the definition of “business entity” has been expanded to include limited liability companies, limited liability partnerships, and professional corporations so that the statutory requirements apply to these entities in addition to traditional corporations and partnerships.

Since the statutory revisions in 2006, little or no judicial interpretation of the new laws has taken place, however one case did shine some light on an important detail: venue for criminal violations of the Ethics Act. In McKinney v. State, 282 Ga. 230 (2007), the Supreme Court of Georgia clarified that venue for prosecution of those charged with failure to register with the state ethics commission or failure to file disclosure reports was in the county where the State Ethics Commission is located, Fulton County. Therefore if you violate any of the campaign finance disclosure regulations you could face prosecution in Fulton County regardless of where you live or where the campaign committee or

candidate involved were located.

Another recent case showed the potential consequences of a public official engaging in what appears to be a transaction amounting to a conflict of interest. In Richardson v. Phillips, 302 Ga. App. 305 (2010), a taxpayer sought to have a county commissioner removed from office as a result of a real property transaction. The commissioner had bought property before being elected and still owed money on the original promissory note pertaining to that property; while in office, she structured a complex deal by which an intermediary would buy the property from her and lease it to the county, with the intermediary using the lease money to pay off the original loan note. When the county had paid lease money sufficient to satisfy the original promissory note, the intermediary gifted the land to the county. Even though the county paid the lease via a trust fund and used no taxpayer money, and even though the transaction was fully completed and the note paid off at the time of suit, the court ruled that removal from office could still be an appropriate remedy under O.C.G.A. § 36-1-14. Thus, if you had an improper interest in a financial

transaction, even if that interest no longer exists and even if you used no tax money in pursuing the transaction, a court could still properly find that you should be removed from office.

TITLE 36. LOCAL GOVERNMENT
PROVISIONS APPLICABLE TO COUNTIES ONLY
CHAPTER 1. GENERAL PROVISIONS

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O.C.G.A. § 36-1-13 (2010)

§ 36-1-13. Speculation in county orders by county officer

Any public officer of any county in this state who buys up at a discount or in any manner speculates in what are known as "county orders," "jury scrip," or any other order or scrip which is to be paid out of any public fund of this state or of any county in this state shall be guilty of a misdemeanor and shall be removed from office.

HISTORY: Ga. L. 1878-79, p. 79, § 1; Code 1882, § 4562g; Penal Code 1895, § 277; Penal Code 1910, § 281; Code 1933, §§ 23-9909, 23-1610.

TITLE 36. LOCAL GOVERNMENT
PROVISIONS APPLICABLE TO COUNTIES ONLY
CHAPTER 1. GENERAL PROVISIONS

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O.C.G.A. § 36-1-14 (2010)

§ 36-1-14. Interested transactions prohibited; removal from office for violation

(a) No county governing authority, any member thereof, or any other county officer authorized by law to use public or county funds for the purchase of goods or property of any kind for public or county purposes shall purchase such goods or property from any store in which such county governing authority, any member thereof, or other county officer is an employee, or in which he is directly or indirectly interested, or from any person or partnership of which he is a member or by whom he is employed, unless by sanction of the majority of the members of the county governing authority or unless it is made clearly to appear that such individual, partnership, or owner of the store offers and will sell the goods or property as cheaply as or cheaper than the same can be bought elsewhere.

(b) Any county governing authority, any member thereof, or any county officer violating subsection (a) of this Code section shall be removed from office upon proper proceedings instituted by any taxpayer in the county. Any contract made in violation of subsection (a) of this Code section shall be illegal.

HISTORY: Ga. L. 1898, p. 105, §§ 1, 2; Ga. L. 1899, p. 68, § 1; Ga. L. 1901, p. 81, § 1; Civil Code 1910, §§ 393, 394; Code 1933, §§ 23-1713, 23-1714.

TITLE 36. LOCAL GOVERNMENT
PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS
CHAPTER 62A. CONDUCT OF MEMBERS OF LOCAL AUTHORITIES
ARTICLE 1. GENERAL PROVISIONS

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O.C.G.A. § 36-62A-1 (2010)

§ 36-62A-1. Ethics; conflicts of interest

(a) (1) All directors and members of any downtown development authority created pursuant to Chapter 42 of this title, known as the "Downtown Development Authorities Law," or of any authority created by or pursuant to a local constitutional amendment, whether for the purpose of promoting the development of trade, commerce, industry, and employment opportunities or for other purposes, to the extent that the Constitution of Georgia authorizes the General Assembly by law to define further and to enlarge or restrict the powers and duties of any such authority created by or pursuant to a local constitutional amendment shall comply with the provisions of *Code Section 45-10-3*, relating to a code of ethics of members of boards, commissions, and authorities and shall not engage in any transaction with the authority.

(2) The provisions of paragraph (9) of *Code Section 45-10-3* and of paragraph (1) of this subsection shall be deemed to have been complied with and any such authority may purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any director or member or any organization or person with which any director or member of said authority is in any way interested or involved, provided (1) that any interest or involvement by such director or member is disclosed in advance to the directors or members of the authority and is recorded in the minutes of the authority, (2) that any interest or involvement by such director with a value in excess of \$200.00 per calendar quarter is published by the authority one time in the legal organ in which notices of sheriffs' sales are published in each county affected by such interest, at least 30 days in advance of consummating such transaction, (3) that no director having a substantial interest or involvement may be present at that portion of an authority meeting during which discussion of any matter is conducted involving any such organization or person, and (4) that no director having a substantial interest or involvement may participate in any decision of the authority relating to any matter involving such organization or person. As used in this subsection, a "substantial interest or involvement" means any interest or involvement which reasonably may be expected to result in a direct financial benefit to such director or member as determined by the authority, which determination shall be final and not subject to review.

(b) Nothing contained in subsection (a) of this Code section or in *Code Section 45-10-3* shall be deemed to prohibit any director who is present at any decision of the authority from providing legal services in connection with any of the undertakings of the authority or from being paid for such services.

HISTORY: Ga. L. 1982, p. 1726, § 1; Code 1981, § 36-62A-1, enacted by Ga. L. 1982, p. 1726, § 2; Ga. L. 1983, p. 1346, § 5; Ga. L. 1984, p. 22, § 36; Ga. L. 2010, p. 834, § 3/SB 456.

TITLE 45. PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 2. ELIGIBILITY AND QUALIFICATIONS FOR OFFICE
ARTICLE 1. GENERAL PROVISIONS

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O.C.G.A. 45-2-2 (2010)

§ 45-2-2. Person to hold only one county office; commissioned officer not to be deputy for another

No person shall hold, in any manner whatever, or be commissioned to hold more than one county office at one time, except by special enactment of the General Assembly; nor shall any commissioned officer be deputy for any other commissioned officer, except by such special enactment.

HISTORY: Ga. L. 1890-91, p. 102, ◆ 1; Civil Code 1895, ◆ 224; Civil Code 1910, ◆ 259; Code 1933, ◆ 89-103; Ga. L. 1990, p. 8, ◆ 45.

Title 45. Public Officers and Employees
Chapter 10. Codes of Ethics and Conflicts of Interest
Article 1. Codes of Ethics

§ 45-10-3. Code of ethics for members of boards, commissions and Authorities created by general statute

Notwithstanding any provisions of law to the contrary, each member of all boards, commissions, and authorities created by general statute shall:

- (1) Uphold the Constitution, laws, and regulations of the United States, the State of Georgia, and all governments therein and never be a party to their evasion;
- (2) Never discriminate by the dispensing of special favors or privileges to anyone, whether or not for remuneration;
- (3) Not engage in any business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties;
- (4) Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit;
- (5) Expose corruption wherever discovered;
- (6) Never solicit, accept, or agree to accept gifts, loans, gratuities, discounts, favors, hospitality, or services from any person, association, or corporation under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the performance of the member's official duties;
- (7) Never accept any economic opportunity under circumstances where he knows or should know that there is a substantial possibility that the opportunity is being afforded him with intent to influence his conduct in the performance of his official duties;
- (8) Never engage in other conduct which is unbecoming to a member or which constitutes a breach of public trust; and
- (9) Never take any official action with regard to any matter under circumstances in which he knows or should know that he has a direct or indirect monetary interest in the subject matter of such matter or in the outcome of such official action.

CREDIT(S)

Laws 1976, p. 344, § 1.

TITLE 45. PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 10. CODES OF ETHICS AND CONFLICTS OF INTEREST
ARTICLE 2. CONFLICTS OF INTEREST
PART 3. CONTRACTS OF COUNTY COMMISSIONERS WITH COUNTY

Go to the Georgia Code Archive Directory

O.C.G.A. § 45-10-60 (2010)

§ 45-10-60. Requirements for sales of real property by county commissioner to county

Notwithstanding any other provision of general or local law, a county commissioner or member of a board of county commissioners may sell real property to the county if all of the following conditions are met:

- (1) The real property which is the subject of the sale is adjacent to a landfill owned and operated by the county;
- (2) The real property which is the subject of the sale is to be used by the county in connection with the operation of the landfill;
- (3) The sale price of the real property does not exceed the lowest of three appraisals of the fair market value of the property made by three appraisers appointed by the probate judge of the county; and
- (4) Disclosure of the sale is made as required by Code Section 16-10-6.

HISTORY: Code 1981, ◆ 45-10-60, enacted by Ga. L. 1984, p. 619, ◆ 1.

TITLE 45. PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 11. MISCELLANEOUS OFFENSES CONCERNING PUBLIC OFFICERS AND
EMPLOYEES

Go to the Georgia Code Archive Directory

O.C.G.A. § 45-11-4 (2010)

§ 45-11-4. Unprofessional conduct; misdemeanor; applicability; indictment

(a) As used in this Code section, the term:

(1) "County officer" shall mean any elected county officer, including the judge of the probate court, clerk of the superior court, tax receiver, tax collector, and tax commissioner where such office has replaced the tax receiver and tax collector, and any county commissioner.

(2) "Municipal officer" shall mean any mayor or elected member of any municipal governing authority.

(3) "Public officer" shall mean a county officer, a municipal officer, and state officials as provided in Code Section 45-15-11.

(b) A public officer may be charged under this Code section for:

(1) Malpractice, misfeasance, or malfeasance in office;

(2) Using oppression or tyrannical partiality in the administration or under the color of his or her office;

(3) When required by law, willfully refusing or failing to preside in or hold his or her court at the regular terms thereof, or when it is his or her duty under the law to do so;

(4) Using any other deliberate means to delay or avoid the due course or proceeding of law; or

(5) Willfully and knowingly demanding more cost than he or she is entitled to by law in the administration and under color of his or her office.

(c) A conviction for violating subsection (b) of this Code section shall be punished as for a misdemeanor and, upon conviction in a court of competent jurisdiction, the accused shall be removed from office.

(d) This Code section shall only apply to a public officer charged under subsection (b) of this Code section. This Code section shall not apply when a public officer is charged with any other crime alleged to have occurred while such official was in the performance of an official duty.

(e) This Code section shall only apply to a public officer holding office at the time of indictment and not to former office holders.

(f) Any indictment brought pursuant to subsection (b) of this Code section shall specially set forth the merits of the complaint against the accused public officer. A copy of the proposed bill of indictment shall be served on the accused public officer at least 15 days before it is presented to the grand jury.

(g) The accused shall have the right to appear before the grand jury to make such sworn statement as he or she shall desire at the conclusion of the presentation of the state's evidence. The accused shall not be subject to examination, either direct or cross, and shall not have the right individually or through his or her counsel to examine the state's witnesses. The accused and his or her counsel shall have the right to be present during the presentation of all evidence and alleged statements of the accused on the proposed indictment, presentment, or accusation, after which the accused and his or her counsel shall retire instantaneously from the grand jury room to permit the grand jury to deliberate upon the indictment.

(h) At any time during the presentation of evidence or during deliberations, the grand jury may amend the indictment or instruct the district attorney to cause a new indictment to be drawn as in any other case. In such case, a copy of the amendment or new indictment, if it relates to the accused public official, shall be provided to the accused public official and his or her counsel.

(i) If a true bill is returned by the grand jury, the indictment shall, as in other cases, be published in open court and shall be placed on the superior court criminal docket of cases to be tried by a petit jury.

HISTORY: Laws 1833, Cobb's 1851 Digest, pp. 644, 809; Code 1863, ♦ 4391; Ga. L. 1865-66, p. 233, ♦ 1; Code 1868, ♦ 4432; Ga. L. 1873, p. 23, ♦ 1; Code 1873, ♦ 4504; Code 1882, ♦ 4504; Ga. L. 1895, p. 63, ♦ 1; Penal Code 1895, ♦♦ 291, 292; Penal Code 1910, ♦♦ 295, 296; Code 1933, ♦♦ 89-9907, 89-9908; Ga. L. 1967, p. 858, ♦ 1; Ga. L. 1975, p. 1325, ♦ 1; Ga. L. 1983, p. 884, ♦ 3-33; Ga. L. 1984, p. 22, ♦ 45; Ga. L. 1988, p. 298, ♦ 1; Ga. L. 1990, p. 1969, ♦ 1; Ga. L. 2001, p. 487, ♦ 3.

(b) Upon the suspension from office of commissioner in any manner authorized by the general laws of the State of Georgia, the commissioners remaining shall appoint a successor for the duration of the suspension. If the suspension becomes permanent, then the office shall become vacant and shall be filled as provided in subsection (c) of this section.

(c) In the event that the office of commissioner shall become vacant, the commissioners remaining shall order a special election to fill the balance of the unexpired term of such official; provided, however, if such vacancy occurs within 12 months of the expiration of the term of that office, those remaining commissioners shall appoint a successor for the remainder of the term. In all other respects, the special election shall be held and conducted in accordance with O.C.G.A. tit. 21, ch. 3, the "Georgia Municipal Election Code," [O.C.G.A. § 21-3-1 et seq.] as now or hereafter amended.

Section 2.13. Municipal primaries.

No political party shall conduct primaries for the purpose of nominating candidates for municipal elections.

Section 2.14. Election by plurality.

The candidate receiving a plurality of the votes cast for any city office shall be elected.

Section 2.15. Compensation and expenses.

Commissioners shall receive compensation and expenses for their services as provided by ordinance and in accordance with all applicable provisions of Georgia law as now or hereafter amended.

Section 2.16. Prohibitions.

(a) No elected official, appointed officer, or employee of the city or any agency or political entity thereof, to which this charter applies, shall knowingly:

- (1) Engage in any business or transaction or have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his or her official duties or which would tend to impair the independence of his or her judgment or action in the performance of his or her official duties;
- (2) Engage in or accept public or private employment or render services for other public or private interests when such employment or service is in conflict with the proper discharge of his or her official duties or would tend to impair the independence of his or her judgment or action in the performance of his or her official duties;
- (3) Disclose confidential information concerning the property, government, or affairs of the governmental body by which he or she is engaged without proper legal authorization or use such information to advance the financial or other public or private interest of himself or herself or others;

- (4) Accept any valuable gift or other gratuity, whether in the form of service, loan, object, or promise, from any person, firm, or corporation which to his or her knowledge is interested, directly or indirectly, in any manner whatsoever in business dealings with the governmental body by which he or she is engaged; provided, however, that an elected official who is a candidate for public office may accept campaign contributions and services in connection with any such campaign;
- (5) Represent other public or private interests in any action or proceeding against this city or any portion of its government; or
- (6) Vote or otherwise participate in the negotiation or in the making of any contract with any business or entity in which he or she has a financial interest.

(b) Any elected official, appointed officer, or employee who has any conflicting public or private financial interest, directly or indirectly, in any contract or matter pending before or within any department of the city shall disclose such conflicting interest to the commission. A commissioner who has a private or conflicting interest in any matter pending before the commissioners shall disclose such interest and such disclosure shall be entered on the records of the commission, and he or she shall disqualify himself or herself from participating in any decision or vote relating thereto. Any elected official, appointed officer, or employee of any agency or political entity to which this charter applies who shall have any public or private financial interest, directly or indirectly, in any contract or matter pending before or within such entity shall disclose such conflicting interest to the governing body of such entity.

(c) No elected official, appointed officer, or employee of the city or any agency or entity to which this charter applies shall use property owned by such governmental entity for personal benefit, convenience, or profit, except in accordance with policies promulgated by the commission or the governing body of such agency or entity.

(d) Any violation of this section which occurs with the knowledge, express or implied, of a party to a contract, sale, or other business transaction shall render said contract, sale, or other business transaction voidable at the option of the commission.

(e) Except as authorized by law, no commissioner shall hold any other elective or appointed city office or other city employment during the term for which he or she was elected.

Section 2.17. Removal of officers.

(a) The commissioners or other appointed officers provided for in this charter shall be removed from office for any one or more of the following causes:

- (1) Incompetence, misfeasance, or malfeasance in office;
- (2) Conviction of a crime involving moral turpitude;
- (3) Failure at any time to possess any qualifications of office as provided by this charter or by law;
- (4) Knowingly violating Section 2.16 or Section 3.23 of this charter or any other express prohibition of this charter or the code of the City of Cedartown;

- (5) Abandonment of office or neglect to perform the duties thereof; or
- (6) Failure for any other cause to perform the duties of office as required by this charter, the Cedartown code of ordinances, or by state law.

(b) For purposes of paragraph (2) of subsection (a) of this section, the term "moral turpitude" is defined as a crime involving an act which implicates the honesty and integrity of the perpetrator, and in particular shall include any crime involving theft, deceit, or fraud. Removal of any elected or appointed officer pursuant to subsection (a) of this section shall be accomplished by the vote of three commissioners after an investigative hearing. In the event an elected or appointed officer is sought to be removed by the action of the commission, such officer shall be entitled to a written notice specifying the ground or grounds for removal and to a public hearing which shall be held not less than ten days after the service of such written notice. Any such officer sought to be removed from office as provided in this section shall have the right of appeal from the decision of the commission to the Superior Court of Polk County. Such appeal shall be governed by the same rules as govern appeals to the superior court from the probate court.

ARTICLE III. ORGANIZATION OF GOVERNMENT, GENERAL AUTHORITY, AND ORDINANCES

Section 3.10. General power and authority.

Except as otherwise provided by this charter, the commission shall be vested with all the powers of government of this city as provided by Article I of this charter.

Section 3.11. Organization.

(a) The commission shall hold an organizational meeting at the first regular meeting in January following an election. Prior to the first meeting an oath shall have been administered to the newly elected members as follows:

"I do solemnly (swear) (affirm) that I will faithfully and impartially perform the duties of Commissioner of the City of Cedartown during my continuance in office, and I will discharge the duties of this office to which I have been elected to the best of my ability. I do further (swear) (affirm) that I have not, in order to influence my election to the office of commissioner, directly or indirectly expressed or implied any promise of support to any person for any office in the government of the City of Cedartown. I do further (swear) (affirm) that I will not knowingly permit my duties as a commissioner to be influenced by fear, favor or affection, or reward of hope thereof, but in all things pertaining to my office, I will be governed by my convictions as to the public good. Finally, I will support and defend the charter and ordinances of the City of Cedartown, as well as the Constitution and laws of the State of Georgia and of the United States of America."

EXHIBIT "C"

SELECTED EXAMPLES OF ACTUAL PROBLEMS

1. An Illegal Meeting?
2. 'Well, I'm guilty, I guess'
3. Ethics in Government Group
4. Ethics Complaint Dismissal
5. Excerpt from Memo

An illegal meeting?

County discusses broad topics behind closed doors

By Alan Mauldin
alan.mauldin@gafnews.com

MOULTRIE — A portion of a Thursday

Colquitt County Board budget session that was closed to the public appears to have violated the state's Open Meetings Act.

After discussing the budget for about an hour, the commission closed the meeting to discuss personnel, but the free-wheeling

session that ensued covered topics for which the law does not allow a meeting to be closed.

A reporter sitting outside the room where commissioners held the closed session overheard discussion of the need to reduce the amount of reserves funds needed to balance the budget, retirement issues, and debt obligation. One commissioner brought up dirt roads, wa-

ter pipes and growth in ditches, and referred to county employees sitting under a shade tree while on the clock. No specific names of employees were mentioned.

The state's Open Meetings Act prohibits such general discussion of employee issues, said Hollie Manheimer, an attorney and executive director of the Georgia First Amendment Foundation.

"The personnel exemption allows for closure only when discussing the hiring, firing, or other employment action concerning a specific employee," Manheimer said in an e-mail response. "Discussions about general employment policies are not a permissible topic for a closed session. General policies should be discussed in the public portion of a meeting."

"All of the issues discussed in the closed portion of the meeting pertained to the employees," Alderman said. "I want everybody in the county to know exactly what's happened," he said of the commission's work. "Anything that was discussed or you overheard had to have come from them talking about employees."

Georgia law allows governmental boards to close meetings to discuss personnel issues, but only "when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee."

Following the meeting, Please see COUNTY, Page 3A

commissioners said that the board decided during the closed session to have County Administrator Brian Shuler give a list of budget-slashing options, including employees who could be laid off to cut costs.

David Hudson, an attorney who represents the Georgia Press Association, said that the topics discussed appear to be an egregious violation of law.

"The discussion in the closed meeting which you described is clearly illegal," he said in an e-mail

response. "It is so far from being permitted, there is a strong chance that it is a willful and knowing violation of the law."

Commission Chairman Benny Alderman said during a Friday telephone interview that he does not feel commissioners violated the law.

"We were talking about if we were going to cut anybody," he said. "That's under executive session. Everything that we talked about pertained to the employees. We discussed employees and everything."

The way I remember it, that's all we talked about."

Alderman said that he would have preferred keeping the meeting open, but the commission voted to do so. As chairman Alderman does not vote on most board motions.

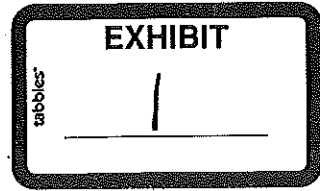
"As far as I'm concerned, I would never close a meeting," he said. "I don't like executive sessions. I never have."

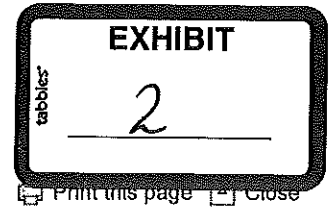
"I didn't even want to come into executive session, (Commissioner) Billy (Herndon) wanted to do

that to keep anybody from naming names or anything."

All of the issues discussed in the closed portion of the meeting pertained to the employees," Alderman said.

"I want everybody in the county to know exactly what's happened," he said of the commission's work. "Anything that was discussed or you overheard had to have come from them talking about employees."





Lawrenceville mayor admits conflict of interest

By TIM EBERLY
The Atlanta Journal-Constitution

3:20 p.m. Saturday, October 3, 2009

Lawrenceville Mayor Rex Millsaps has twice voted to give work to a local architectural and engineering firm where he is a part-time employee, city records show.

*Costantino
Conflict*

One of the votes to hire the Lawrenceville firm, Precision Planning Inc., was later wiped out after the city attorney noticed Millsaps' involvement, and the City Council voted again.

note

But the other was not flagged.

"Well, I just screwed up, I guess," Millsaps said in a recent interview. "I'm guilty, I guess."

While acknowledging that both votes were conflicts of interest, Millsaps contends they were mistakes and that he doesn't need to do anything differently.

"I don't know that I'll be more careful," he said. "I hope I'm careful enough now."

Lawrenceville's ethics code states that city officials are prohibited from "participating in the deliberation of or voting on any matter involving his financial or personal interest." If violated, the punishment is determined by the City Council, and could range from a reprimand to removal from office, City Attorney Tony Powell said.

The state has a similar law: public officials can't vote on matters in which they are "personally interested." Though the behavior is prohibited, it does not come with a punishment, said Attorney General's Office spokesman Russ Willard.

"If I'm guilty of being negligent, then send me to jail," Millsaps said. "I haven't intentionally done anything wrong. If I screwed up, I screwed up."

Millsaps, an accountant, has been on Precision Planning's payroll since 1984, he said.

He said he was the firm's financial vice president for two years before resigning in 1986. Since then, he remained with Precision as a part-time employee, serving as its accountant and reviewing the firm's financial statements each month, Millsaps said. He estimates that he gets less than 10 percent of his income from Precision.

Precision Planning, run by founder and president Randall Dixon, gets a lot of work from Lawrenceville and other governments in Gwinnett County. In 2008, the company collected \$454,000 from the city of

Lawrenceville. As of August, Lawrenceville has paid the company \$407,000 this year, county records show.

Millsaps took office in November 2006, shortly after winning the election, after the outgoing mayor died.

In August 2007, he acknowledged a connection to Precision Planning, recusing himself from a potential vote when the company was competing for a well water contract.

"I've never tried to hide the fact that I was a Precision Planning employee," Millsaps said.

Two months later, Millsaps put forth his first vote for Precision.

The City Council was considering hiring the company to design a sidewalk for an alleyway in downtown Lawrenceville, and the four council members were deadlocked at a 2-2 vote.

Millsaps, who only votes when the City Council is at an impasse, broke the tie and got Precision the work, for which it was paid \$2,250.

"This one, obviously, I didn't think about," Millsaps said.

The second vote came about a year later, in September 2008.

It was a vote to award Precision Planning an additional \$108,000 contract for a water treatment facility project that it had been working on, City Clerk Bob Baroni said.

Again, Millsaps voted to break the tie and award Precision the additional work.

"I was surprised," City Council member P.K. Martin said. "Literally, I couldn't believe it happened."

At a City Council meeting later that month, Millsaps said he had mistakenly voted because he thought the vote was to reduce Precision's contract by \$9,000.



"I thought what I was voting on was a reduction," he said. "And I didn't see how it could be perceived as being a conflict if I'm voting to reduce it."

Both the city and state laws, however, say that officials must abstain from voting on "any" matters in which the official has a person interest.

Powell, the city attorney, brought the issue to Millsaps' attention, and the City Council voted on it again without Millsaps.

Find this article at:

<http://www.ajc.com/news/gwinnett/lawrenceville-mayor-admits-conflict-153624.html>

 Print this page  Close

ETHICS IN GOVERNMENT GROUP

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Land/Fax: 706-232-3753

September 24, 2009

Subject:

Ethics Complaints to:

The Grand Jury of Polk County/District Attorney Bobby Brooks
100 Prior Street
Cedartown, Georgia 30125

City of Cedartown Board of Ethics (Members)

201 East Avenue

Cedartown, Georgia 30125

James Couey

John Callins

Becky Sweat

George Wheeler

{Complaints mailed to their home address, as well as, City of Cedartown}

Board members

Office of the Governor {pursuant to O.C.G.A. 45-10-3 & OCGA 45-10-4}
State of Georgia
203 State Capitol
Atlanta, Georgia 30334

BACKGROUND

Bond Refinancing-Industrial Park Debt was changed at a Special Call Meeting on May 11, 2009 and May 21, 2009. The members of the City Commission and members of the Cedartown Development Authority were involved. Some members abstained & other members voted. Why? The City Commission of Cedartown includes the following elected officials:

1. Larry Odom
2. Johnny Barrett { employee of First National Bank of Polk County }
3. Gary Martin
4. Scotty Tillery { member of the Cedartown Development Authority }
5. Dale Tuck

The Cedartown Development Authority includes the following First National Bank of Polk County Board members:

1. Larry Kuglar { Chairman of SouthCrest Bank AKA First National Bank of Polk County }
2. Harold Wyatt { First National Bank of Polk County }
3. Reed Freeman
4. Allen Hunt
5. George Mundy
6. Scotty Tillery { elected official of City Commission of Cedartown }
7. Lloyd Gray { FIRST POLK BANKSHARES CFO }

Michael McRae, City Attorney for City of Cedartown, legal counsel for First National Bank of Polk County, legal counsel for Cedartown Development Authority & First National Bank of Polk County Board member, provided legal advice. McRae stated "that Larry Kuglar, Harold Wyatt and John Barrett are affiliated with the First National Bank, therefore, they will not be allowed to vote and cannot approve the refinancing of the bonds".

note

Scotty Tillery voted May 11, 2009 and May 21, 2009 at both Special Called meetings in violation of the Cedartown Charter Section 2.16 (b) Prohibitions: "Any elected official, who has any conflicting public or private financial interest, directly or indirectly, in any matter pending before the Commissioners shall disclose such interest and such disclosure shall be entered on the records of the commission and he shall disqualify himself from participating in any decision or vote relating thereto". Scotty Tillery voted when he should have abstained. Tillery voted as an Authority member, as well

as, City Commission member

Put in minutes
about Abstention
from voting

Further, when the City of Cedartown Commissioners voted on May 11th and May 21st at Special Call Meetings concerning Industrial Park Debt; only Commissioners Martin & Tuck voted Aye. Commissioner Tillery voted Aye but his vote is null & void pursuant to Sec. 2.16(b). Section 3.14 Voting clearly states, "three commissioners shall constitute a quorum and shall be authorized to transact the business of the commissioners". "The affirmative vote of three commissioners shall be required for the adoption of any ordinance, resolution, or motion". Most important, "The Chairperson shall have no vote except in the event the votes of the remaining commissioners are equally divided".

Further, Commissioner Tillery has been quite prolific in calling Department employees of the City of Cedartown, sometimes speaking, over an hour. The City of Cedartown does not require a City Commissioner to be micro-managing the various Departments of the City. This action violates the City Charter Section 3.23 Commission interference with administration. "The Commission shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and the commissioners shall not give orders to any such officer or employee, either publicly or privately". EIGG { Ethics in Government Group has obtained phone records that reveal a City Commissioner, Scotty Tillery, that is a habitual violator of the Cedartown City Charter.

Ask for
all e-mail
and cell
phone
records

The issuance of \$2,480,000 on May 11th & May 21st of Series 2009 Bonds were done without a bid to other financial institutions. The Agreement allows Johnny Barrett's employer { First National Bank of Polk County } to raise the interest rate up to 11 & ¼% rate. Ed Wall, First National Bank of Polk County Board member from 1998 to 2007, did not seek any other Bank for the financing. The original Bonds had a fixed % interest rate of 7% but the May 21st % rate could go as high as 11 & ¼%.

City of Cedartown Commission member, Johnny Barrett, failed to abstain/recuse himself from the vote on January 12th, 2009, involving the 2009 TAN under Resolution 2 that was placed with, his employer, First National Bank of Polk County. Note the 2nd page of the officially signed Minutes.

Note
↓
imp!

Commissioner Barrett & Commissioner Tillery are up for re-election. Both elected officials should not run for re-election. In fact, they should resign from

Office immediately. They have violated the betrayed the public's trust.

Commissioner Tillery benefited by the refinancing being approved on the Bonds. Without the Bonds being approved, the Bonds would be in de-fault and Tillery would not be re-elected.

The May 11th Minutes stated that the Bid went to First National Bank of Polk County. The evidence proves there was no Bid process.

Jordan Hubbard, nephew of Scotty Tillery, is selling tennis lessons to citizens on public tennis courts. In particular, at Peek's Park, which is not fair to other citizens and shows favoritism to Commissioner Tillery's relative.

COMPLAINTS

Revised

City Commissioner, Johnny Barrett, has violated the City Charter, his Oath of Office, his fiduciary duty, as well as, Sec.2-193, Sec. 194, Sec. 2-196, Sec. 2-198 and OCGA 45-10-3.

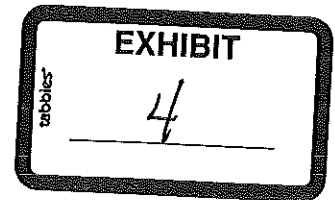
City Commissioner, Scotty Tillery, has violated the City Charter, his Oath of Office, his fiduciary duty, Sec. 2-193, Sec. 202 and OCGA 45-10-3.

The Intergovernmental Agreement between the City of Cedartown, the Cedartown Development Authority, the First National Bank of Polk County, and the brokerage firm> Stern, Agee & Leach Inc. dated May 11, 2009 and May 21, 2009 is null & void. The Agreement was done illegally and thus is invalid.

Question: Why do so many elected and appointed officials seek public office? Is the answer to serve the public? Perhaps, the answer to the posed question is to obtain personal gain from public service.

It is a sad tragedy.

EIGG formally request steps be taken to investigate this Complaint and that steps be taken to address the charges & clean-up the unethical behavior that has been allowed to transpire.



IN THE MATTER OF ETHICS COMPLAINTS
AGAINST COMMISSIONERS JOHNNY BARRETT
AND SCOTT TILLERY

FINDINGS

These complaints came before the Cedartown Ethics Committee on October 22, 2009 for a preliminary organizational meeting, called pursuant to Section 2-232 of the Cedartown Code. Present were George Anderson, the Complainant; and Robert T. Monroe, Assistant City Attorney. Prior to the meeting, both parties had submitted their respective positions to the Committee in writing. At the meeting, the Committee heard argument from both sides. Having heard such argument, the Committee makes the following findings of fact:

With respect to Commissioner Johnny Barrett, the Committee finds that the complaint filed by George Anderson is groundless and fails to invoke the disciplinary jurisdiction of the City Commission. Mr. Anderson contends that Mr. Barrett approved a city tax anticipation note to his employer, First National Bank, on January 12, 2009. However, Mr. Anderson conceded that the Minutes of that meeting may simply be incorrect, and that, based on his conversations with other unnamed citizens of the city, it is highly improbable that Mr. Barrett did in fact vote on this matter. Furthermore, Mr. Monroe indicated that the minutes of the January 12, 2009 meeting were incorrect, and that Mr. Barrett had never voted on a matter involving First National Bank. In all other matters related to the Bank and City loans, the record is clear that Mr. Barrett abstained from voting. Therefore, the Committee finds that this complaint is unfounded and said complaint is hereby DISMISSED.

*Barrett
involvement*

With respect to Commissioner Scott Tillery, Anderson claimed that by serving on the Cedartown Development Authority, Mr. Tillery violated several conflict of interest provisions in the Cedartown Ethics Code, but presented no evidence to substantiate the allegations. Mr. Monroe informed the Committee that a member of the Cedartown City Commission has been on the Cedartown Development Authority for at least the last forty (40) years or more. Furthermore, state law expressly permits a member of a city commission to also be a member of the city's Development Authority. The Committee therefore finds no merit in any allegations in the complaint regarding conflicts of interest against Mr. Tillery.

State law

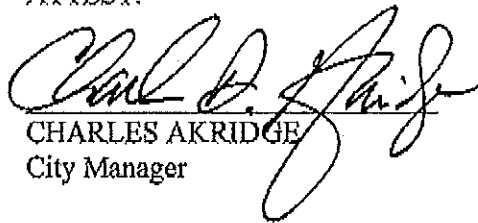
With regard to the allegations of improper telephone contact, the Committee finds that, although Anderson presented phone records showing calls from Tillery to City employees, he has failed to present any substantive evidence of the content of the calls. Mr. Anderson himself acknowledged that conversations that Mr. Tillery may have had with other City employees may have involved legitimate City business and may have been perfectly valid. Mr. Anderson presented no written statements from any City employees complaining about excessive or improper contact by Commissioner Tillery.

Therefore, the Committee finds that Mr. Anderson has failed to invoke the disciplinary jurisdiction of the City Commission, and his complaints are unfounded. Having made these findings, the Committee hereby DISMISSES the complaints, pursuant to Cedartown Code Section 2-232.

A handwritten signature in black ink, appearing to read "Tom Lowe", written over a horizontal line.

TOM LOWE
Chairman

ATTEST:

A handwritten signature in black ink, appearing to read "Charles Akridge", written over a horizontal line.
CHARLES AKRIDGE
City Manager

CHARLES C. SHAW
 MICHAEL D. MCRAE
 JO H. STEGALL, III
 JUL B. W. PEEK, JR.
 VIRGINIA B. HARMAN
 SCOTT M. SMITH
 THOMAS H. MANNING
 JACKSON B. HARRIS
 ROBERT T. MONROE
 C. ANDREW GARNER, III
 ROBERT Q. BERSKY
 JASON B. SANKER
 W. JORDAN KNIGHT
 EMBLY J. MATSON
 BRIAN R. BOJO

OF COUNSEL:
 OSCAR M. SMITH
 JAMES D. MADDOX
 1921-2009
 DANIEL M. ROPER

MCRAE, STEGALL, PEEK, HARMAN,
 SMITH & MANNING, LLP

A LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AT LAW

PLEASE REPLY TO CEDARTOWN OFFICE

Sender's E-mail: MMCRAE@MSP-LAWFIRM.COM

Sender's Direct Dial: (770) 749-6723 x 205

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 ROME, GEORGIA 30161
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 MAILING ADDRESS:
 P. O. BOX 418
 CEDARTOWN, GA 30125

DECEMBER 28, 2009

MEMORANDUM

TO: CHARLES AKRIDGE

FROM: MIKE MCRAE

RE: CONFLICTS OF INTEREST
 CITY OFFICIALS, DEVELOPMENT AUTHORITY MEMBERS

In connection with another matter, unrelated to Cedartown, I had the opportunity to review the Development Authority's law, and Georgia's general conflict of interest provisions as it relates to both City Commissioner Barrett and members of the Development Authority who are affiliated with First National Bank of Polk County (that includes me, since I serve on the Board of Directors). Interestingly, although we "got it right" with regard to the recusals, the code section goes further than I had remembered, and states that the person who has the potential conflict not even be present during the portion of the meeting where the matter is discussed. Specifically, O.C.G.A. § 36-62-5(e) requires these actions to be accomplished in connection with any potential conflict of interest:

- 1) The nature of the potential conflict of interest and involvement is disclosed in advance and recorded in the Minutes of the meeting; and
- 2) Any person with a potential conflict must leave the portion of the meeting during which the discussion of the matter is conducted; and
- 3) The person with a conflict may not "participate," (which obviously also includes voting) and any decision with regard to the issue upon which that person has the conflict.

One important point as it relates to my involvement is that subparagraph (2) of § 36-62-5(e) states that nothing prohibits a Director, or one who participates in the decision, from providing "legal services in connection with any of the undertakings of the Authority or from being paid for such services." Thus, although I need to disclose my conflict for purposes of the meeting, I am able to be present, participate, and then provide legal services in connection with any decisions that might be made about loans or other matters of which First National Bank might be involved. This is an exception in the Act.

I am providing this opinion to those I am aware of who have such a conflict of interest. If there are matters which come before the Commission in the future, in connection with such conflict, let us be sure to require those parties to leave the room while the discussions and decisions are being made. Further, I am copying Carol so that she will remember how this is to be accomplished. When Anderson brought up his totally frivolous matters at the last election, she had done an excellent job at showing that Commissioner Barrett abstained from voting. We need to follow this to the strictest letter of the law and have him leave the room during these discussions.

Charles, I am sending this to you now because I anticipate there will be a need for TANS borrowing in 2010 and I want to be sure that we handle that correctly. I hope this Memo finds you well and I wish you a very happy and prosperous 2010.

Mike

MDMc/kmh

CC: John Barrett
Harold Wyatt, Member, CDA
Larry Kuglar, Chairman, CDA
Carol Crawford, Clerk, City of Cedartown



GEORGIA
Certified
City of Ethics
Program



**GEORGIA
MUNICIPAL
ASSOCIATION**

EXHIBIT "D"

Does your city conduct the public's business in a fair and ethical manner? You may think so, but that doesn't necessarily mean your citizens do.

Although the overwhelming majority of mayors and councilmembers are honest, part-time volunteers who adhere to the highest standards of ethical conduct, surveys consistently show that the public has a different perception. A perception marked by a high degree of mistrust and cynicism.

The Georgia Municipal Association's own poll, conducted in September 1999 by a leading opinion research firm, confirmed that city officials face a major challenge to gain the confidence of their constituents. Only half of the survey respondents indicated they trust their city leaders to act in the public interest all or most of the time.

Local officials can take little consolation in knowing that the public gives state and federal officeholders even lower confidence ratings. When the misdeed of a public figure at any level of government is reported, everyone's image suffers.

City officials now have an opportunity to improve their public image and regain the trust of their constituents by participating in GMA's new "Certified City of Ethics" program. Developed by a public-private task force and approved by the GMA Board of Directors in June 1999, this program provides deserved recognition to cities and individual officials which make a tangible commitment to ethical conduct.

How to Become a Certified City of Ethics

To earn a "Certified City of Ethics" designation, a city must take two actions:

- (1) **Adopt a resolution establishing the five ethics principles for the conduct of your city's officials.** These principals are designed to guide the elected officials as individuals and as a governing body. These principals are:

- Serve others, not ourselves.
- Use resources with efficiency and economy
- Treat all people fairly
- Use the power of our position for the well being of our constituents
- Create an environment of honesty, openness and integrity

The adopted resolution must include or at least reference the definitions of these principles. A sample resolution is available from GMA. All elected officials are required to sign the resolution.

- (2) **Adopt an ethics ordinance that meets minimum standards approved by the GMA Board.** The ordinance must contain definitions, an enumeration of permissible and impermissible activities by elected officials, due process procedures for elected officials charged with a violation of the ordinance and punishment provisions for those elected officials found in violation of the ordinance.

GMA recommends that cities use the model ethics ordinance of the International Municipal Lawyers Association (IMLA) as the basis for their local ordinance. A copy of this ordinance, along with others adopted by three Georgia cities, is included in the GMA publication, "Model Code of Ethics for Georgia City Officials." Copies of this publication have been mailed to all GMA member cities, and additional copies may be obtained by contacting the GMA Legal Department.

Following their adoption, the resolution and ordinance should be mailed to:

Georgia Municipal Association
Attention: Legal Department
201 Pryor Street, SW
Atlanta, Georgia 30303

The resolution and ordinance will be forwarded to the Executive Committee of the GMA City Attorneys Section for their review. If this panel of attorneys determines that both items meet the established requirements, the city will be designated as a "Certified City of Ethics."

Recognition for Certified Cities of Ethics

Each city designated as a Certified City of Ethics will receive a plaque and a logo which can be incorporated into city stationery, road signs and other materials at the city's discretion. In addition, GMA will send press releases to the local media notifying them that the city has earned this designation.

PART I - ETHICS PRINCIPLES

AS TRUSTEES FOR THE CITIZENS OF THE CITY OF _____,
THE MAYOR AND COUNCIL PLEDGE TO GOVERN THEIR CONDUCT
BY THE FOLLOWING PRINCIPLES:

- I. *SERVE OTHERS, NOT OURSELVES*
- II. *USE RESOURCES WITH EFFICIENCY AND ECONOMY*
- III. *TREAT ALL PEOPLE FAIRLY*
- IV. *USE THE POWER OF OUR POSITION FOR THE WELL BEING OF
OUR CONSTITUENTS*
- V. *CREATE AN ENVIRONMENT OF HONESTY, OPENNESS AND
INTEGRITY*

PART II - DISCUSSION OF ETHICS PRINCIPLES

The scope of these ethics principles includes only elected officials. This does not mean that ethical conduct by employees is not a critical component of the public confidence in government. For those municipalities interested in general principles that are applicable to all persons in government service, we have included in Appendix I, the code of ethics for government service found in the Official Code of Georgia Annotated § 45-10-1.

The preceding ethical principles state goals to which elected officials should aspire. Aspirational goals differ from "regulatory" ethics ordinances. The latter usually contain a series of do's and don'ts and include penalties for violation of the ethics regulations. The International Municipal Lawyers Association model ethics ordinance, presented in Part III, is an example of a regulatory ethics ordinance.

In applying any ethical principle, however, one must realize that ethics is not the same as law. Laws declare various activities legal or illegal. It is quite possible that an activity is legal, but it still may not rise to the level of conduct that many would consider "ethical". Of course, the difficulty with any ethical guidance is that each person develops individualized moral standards to guide them in ethical situations. Thus, it is often difficult to achieve a unanimous agreement on whether a particular action is ethical or not ethical, even if the act is legal.

The five ethic principles seek to capture, in the broadest statements possible, the central concepts that should underlie the conduct of municipal elected officials. The values of prudence, justice, courage, and temperance support these ethical principles. For example, a sense of justice

coupled with courage is necessary to take appropriate action in a personnel matter if the subject of the personnel action is a very close friend of one or more of the elected officials. Prudence and temperance come into play when an official couches his or her comments in a way that sheds light rather than heat on a subject. That is, an official who avoids personal criticism or inflammatory statements directed at those with whom the elected official may disagree on a policy matter.

I. SERVE OTHERS, NOT OURSELVES

This principle is intended to capture the general principle that elected officials ought to avoid conflicts of interest or the appearance of a conflict of interest. This includes the holding of public offices or appointments that are incompatible with their offices as municipal elected officials. Georgia statutory and court decisions address the conflicts of interest and incompatible office situations. These statutes and court cases may help a city official apply this general principle to a specific factual situation.

The distinction between "legal" and "ethical" has been discussed in the introduction. The issue of sale of property to one's own government demonstrates the distinction. State statutes permit municipal officials to sell property to their own city under certain guidelines. Notwithstanding the compliance with legal standards, some persons may feel that the sale of any property to their own government is unethical.

A hard and fast application of the "no-sale" principle can result in practical difficulties. In some jurisdictions, one or more elected officials may be major landowners in the city. What if the city is in need of property for a public building or park and the ideal location happens to be owned by one of these elected officials? A rule to prohibit any sale of property to the city may actually work against the general public interest. The statutory exceptions permitting sale of property recognize that, as a matter of law, such sales should be permitted as long as specified safeguards are followed. Each individual elected official must decide whether the exceptions provided in the law also reflect how ethical principles should be applied.

On its face, an incompatible office prohibition may seem to be a less difficult restriction to apply. It, too, has practical difficulties. Suppose a controversy arises over whether a member of a governing body of a city can also participate as a member of the volunteer fire department. As a member of the volunteer fire department, an elected official would be receiving the same pay per call that any other volunteer fire fighter receives. Whether the service of an elected official serving as a volunteer fire department violates either legal or ethical principles becomes a matter of the facts.

Assume that the elected official holds an office, chief or assistant chief, in the volunteer fire department and receives more than minimal pay. The potential for legal or ethical conflict increases. The possibility for conflict is even greater to the extent that the municipality fully or substantially funds the operation of the volunteer fire department and its purchase of equipment. Will the elected official be tempted to approve greater funding of equipment for the volunteer department if he becomes a member or officer of the department?¹

The other factor in the application of ethical principles to real life can best be described as "politics". If a councilmember disagrees with an action that the mayor or majority of the remaining council is taking on an issue, it may be easy to make accusations that the action is "unethical". Hurling ethical insults, when the real issue is a bona fide disagreement on the worthiness or lack of worthiness of a particular project, does little to further the public interest.

Such accusations undermine public confidence in elected officials and generate ill will in the ongoing relationships between elected officials.

Another factor to consider in applying the first ethical principle is, when does self-interest really occur? For example, can an elected official participate in the decision to pave or repave a particular street on which the elected official resides? Elected officials are also citizens of their community. A principle should not be applied in such a manner as to prohibit an elected official from enjoying the same benefits that are available to other citizens of the city. It is not improper for the mayor or elected councilmember to participate in the vote for such a project because the public at large also benefits.

The analysis of the street improvement would be substantially different, however, if the construction or re-paving benefited only property owned by an individual councilmember or mayor. In that event, the councilmember or mayor should abstain from participation and voting during consideration of the project.

The foregoing are just a few examples of the issues that arise in applying the first principle. It is hoped that these will spur the reader to think about other situations and apply these factors in arriving at a course of action. To the extent that elected officials think about ethical implications of their actions, the public is more likely to be better served.

¹ A 1999 amendment to O. C. G. A. Section 36-20-22 makes dual service legal as long as specified conditions are met. The potential for divided loyalties between the overall needs of the general community and the needs of the fire department, however, still exists.

II. USE RESOURCES WITH EFFICIENCY AND ECONOMY

Efficiency and economy may not seem to some to be ethical principles, as the moral standards from which they evolve may not be apparent. When one thinks about putting these principles in practice, however, the ethical basis for the principles becomes more evident.

Elected officials are engaged in a large number of decisions regarding what services are to be delivered, how they are to be delivered and how they are to be funded. In reaching these decisions, they are acting on behalf of the public at large. They are expending revenues, often taxes, which are collected from the general public. Taxes are paid because the law requires it, not because the individual wants to pay them.

The involuntary nature of taxation places an additional burden upon the elected official to act as a "fiduciary". A fiduciary is someone who holds money or property of value that the fiduciary manages for the sole benefit of someone else, the beneficiary. In a government context, the citizens of the individual cities are the beneficiaries. The ethical principles applicable to fiduciaries include the requirement that the property be managed efficiently and economically for the good of the beneficiaries.

As fiduciaries, elected officials should strive to expend taxes and other revenues which they receive and deliver the services funded by those revenues in the most economical and efficient manner as possible. By doing this, elected officials will be able to provide additional services or benefits to the citizens from whom financial resources have been taken.

III. TREAT ALL PEOPLE FAIRLY

The third principle embodies the concept that every person should have equal opportunity before their municipal government. The principle also reflects the concept that service in elected office is not for the purpose of providing favors to family, friends and business associates of elected officials.

An example of the type of favoritism that affects the public perception of municipal government can arise in the context of jobs. If jobs in the municipality ("to the victor go the spoils") are directed unfairly to the friends, family members, or business associates of the elected officials, confidence of the public in their elected officials is eroded. No one suggests that elected officials should ignore the knowledge they might have about a particular person through their previous contacts in the community. That does not mean, however, that an elected official should exclude from consideration other persons who may be even more qualified to do a particular job than the "favored" friend.

Favoritism can also become an issue when an elected official helps a ticketed motorist by trying to influence the police or municipal court judge to give favorable treatment to the traffic offender. Deciding when an action is favoritism, as opposed to good service to a citizen, is not always an easy judgment.

Thinking about these matters in advance, however, should aid the official to avoid actions which undermine public confidence.

IV. USE THE POWER OF OUR POSITION FOR THE WELL BEING OF OUR CONSTITUENTS

This principle embodies the concept that municipal elected officials are to serve the common good, not a single or narrow constituency. It is an admonition against abusing the power of the office as elected officials to advance special interests instead of taking actions for the benefit of the general public.

An example of improper action could be use of the office to retaliate against an individual who might be a political opponent. It would be inappropriate for elected officials to encourage selective enforcement of delinquent property tax procedures for attachment and sale of property by singling out those persons who might be outspoken critics of city government or of an individual elected official.

Sexual harassment can also involve an abuse of power, particularly when the harassment is of the "quid pro quo" variety. This means that an elected or appointed official uses their position to seek sexual favors from subordinates. The subordinate may participate in expectation of a reward or for fear of job retaliation if they do not comply. Of course, abusing one's office via sexual harassment is not only unethical, it is also illegal.

Like the preceding ethical principles, the application of this principle by an individual elected official will be influenced by the personal code of conduct and moral beliefs of the person. One person's use of power may be viewed by others as an abuse of that power. The intent of this principle, however, is to provide a goal to address the misuse of power.

V. CREATE AN ENVIRONMENT OF HONESTY, OPENNESS AND INTEGRITY

The final ethical principle sums up the ultimate result of the application of the preceding four principles. Observance of the ethical principles can increase the confidence of citizens that approach municipal elected officials with expectations that the citizen will be treated fairly.

The local official's conduct sets the tone for the remainder of city government. Consistent appropriate conduct by elected officials can lead the appointed officers and employees of the city to act with honesty, openness and integrity as they deal with members of the public.

Honesty encapsulates the concept of truthfulness in one's dealings.

Openness means that citizens should feel free to approach their government without fear of ridicule or retaliation.

Integrity reflects that the person adheres to a code of moral or spiritual values in choosing among alternatives for action. Integrity also embodies the concept of soundness or exhibiting good judgement and sense when making decisions.

ORDINANCE NO. ____, 2000

AN ORDINANCE BY THE CITY COMMISSION OF
THE CITY OF CEDARTOWN, GEORGIA

Whereas, the City Commission of the City of Cedartown has determined it to be in the best interest of citizens of Cedartown to establish permissible and impermissible activities of elected officials and provide due process for violations; and

Whereas, the City Commission adopted Resolution 1, 2000, a subscription to ethic principles indicating their desire to be a Certified City of ethics to promote good will with its citizens.

Now, Therefore, be it ordained and established by the City Commission of the City of Cedartown and by authority of said body, hereby establishes as follows:

Section 1:

The codifiers of the City Code, in their discretion, may determine what section and chapter of the City Code this Ordinance shall be placed. Therefore, this Ordinance is generally amendatory of the Code of Ordinances of the City of Cedartown, with the actual amendment codification to be made by the codifiers of the Municipal Code.

“ Code of Ethics for City Officials and Employees

Article A.
General Provisions.

Section 1. Definitions.

(a) *Employee* shall be any person who is a full-time or part-time employee of the City of Cedartown. (b) *City official* shall be any person who is an elected official of the City of Cedartown. (c) *Government or city* shall be construed to mean the City of Cedartown, Georgia government. (d) *Immediate Family* shall mean the employee or City official, spouse and children of said parties.

Section 2. Acceptance of gifts.

With exception of campaign contributions which shall be reported in accordance with Georgia Laws, no city official shall solicit or accept directly or indirectly anything of value from any person, corporation, or group which:

(1) has, or is seeking to obtain, contractual or other business or financial relationships with the City of Cedartown; (2) in exchange for the thing of value seeks to have a city official exercise a matter of discretion in his or her favor; (3) in exchange for the thing of value seeks to have interests which may be affected by the performance or nonperformance of the official duty of the

city official, accomplished, defeated, deferred or otherwise acted upon.

Section 3. Intent.

It is the intent of this section that city officials avoid any action whether or not specifically prohibited by section 2 which might result in, or create the appearance of, the following:

- (1) using public office for private gain;
- (2) impeding government efficiency or economy; or
- (3) affecting adversely the confidence of the public in the integrity of the government; or
- (4) purposefully or intentionally violating laws involving moral turpitude as defined by Georgia law.

Section 4. Financial interests of members.

City officials may not:

- (1) have direct or indirect financial interests that conflict substantially with their responsibilities and duties as government servants; or
- (2) engage in, directly or indirectly, financial transactions as a result of, or primarily relying upon, information obtained from their office. Aside from these restrictions, city officials are free to engage in lawful financial transactions to the same extent as private citizens.

Section 5. Use of public property.

A city official shall not use city government property of any kind for other than officially approved activities, nor direct employees to use such property for the personal purposes of such official.

Section 6. Use of confidential information.

A city official shall not directly or indirectly, make use of, or permit others to make use of, for the purpose of furthering a private interest, official information not made available to the general public.

Section 7. Coercion by City Official.

A city official shall not use his position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to him or persons within his immediate family, or those with whom an official has business or financial ties.

Section 8. Voting in matters of personal interest.

A city official shall not vote on an ordinance or amendment in a meeting that would directly affect his or her private business, business interests, property; nor such interests of his immediate family.

Section 9. Unauthorized purchases.

A city official shall not order any goods and services for the City of Cedartown, nor obligate city funds for any payment, without prior official authorization for such an expenditure.

Section 10. Meetings of the Council.

Meetings of the Commission shall be conducted in accordance with the Official Code of Georgia Annotated, Title 50, Chapter 14, as amended, and Title 36, Chapter 80, Section 1. As amended, as it applies to municipalities.

Section 11. City Attorneys used for private business.

A city official shall not use the attorney or attorneys who are under retainer by the City of Cedartown for personal or private business without paying just compensation.

Section 12. Unauthorized use of public employees.

A city official shall not use his superior position to request or require an employee to :

- (1) do clerical work on behalf of his family, business, social, church or fraternal interests;
- (2) purchase goods and services to be used for personal, business, or political purposes;
- (3) work for him personally without offering just compensation; and/or
- (4) perform work allegedly for the benefit of the City without prior official authorization.

Section 13. Travel expenses.

A city official shall not draw per diem or expense monies from the City of Cedartown to attend a seminar, convention, or conference and then fail to attend the seminar, convention, or conference without refunding the pro-rata unused per diem or expense monies to the city.

Section 14. Penalties.

The code of ethics to be observed by city officials and employees are set forth herein, and any violation thereof, shall subject the offender to disciplinary action which may include censure and either public or private reprimand. Power to administer a greater punishment shall include power to administer the lesser. Further, in cases involving intentional acts, the general penalties of Section 1-13 of the Code may be used as disciplinary action for violations of this Code.

ARTICLE B.

Administration

Section 1. Ethics committee:

The ethics committee shall consist of three (3) persons appointed by the Commission. All members shall be residents of the City of Cedartown and shall serve a two (2) year term.

Section 2. Receipt of Complaints.

- (a) All complaints shall be filed with the ethics committee. The ethics committee may require that oral complaints, and complaints illegibly or informally drawn, be reduced to a memorandum of complaint in such form as may be prescribed by the Cedartown City Commission. A copy of any filed complaint shall be forwarded to the party against whom the complaint is filed.
- (b) Upon receipt of a complaint in proper form, the ethics committee shall review it to determine whether the complaint is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary jurisdiction of the Cedartown City Commission. The ethics committee shall be empowered to subpoena parties, collect evidence and information concerning any complaint and to add the findings and results of its investigations to the file containing such complaint.
- (c) Upon completion of its investigation of a complaint, the ethics committee shall be empowered to dismiss those complaints which are unjustified, frivolous, patently unfounded or which fail to state facts sufficient to invoke the disciplinary jurisdiction of the Cedartown City Commission; provided, however, that a rejection of such complaint by the ethics committee shall not deprive the complaining party of any action he might otherwise have at law or in equity against the respondent government servant.
- (d) The ethic committee shall be empowered to conduct probable cause investigations, to take evidence and hold hearings.
- (e) The ethic committee shall be empowered to adopt forms for formal complaints, subpoenas, notices, applications for reinstatement and any other written instruments necessary or desirable under these rules.
- (f) Should the committee determine after a hearing that disciplinary action is warranted, it shall make written findings and recommendations to the Cedartown City Commission.
- (g) The official against whom a complaint is filed may present evidence to the Ethics Committee and/or City Commission concerning any alleged complaints. The final disciplinary decision and/or penalties shall only be determined after hearing and opportunity to present evidence.

Section 3. Additional regulations.

This chapter shall be cumulative to any other ordinance, resolution or act now existing.

Section 4. Right to Appeal.

Any final decision by the City Commission pursuant to this code of ethics for City Commission members shall be reviewable by the Superior Court of Polk County. The review by the Superior Court shall be limited to an inquiry of whether there was any evidence before the City Commission which supported the decision of the Commission. Provided however, no action of the City Commission refusing or failing to take action pursuant to this code of ethics shall be reviewable by the Superior Court.

Section 5. Conflict of interest.

No elected official, appointed officer, or employee of the city or any agency or political entity to which this charter applies shall knowingly engage in any business or transaction or have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which would tend to impair his independence of judgment or action in the performance of his official duties.

ARTICLE C.

Conflict of Interest, Political Activities and Code of Ethics

Section 1. Acceptance of gifts, gratuities, special privileges.

(a) Employees and city officials shall not accept any gifts, loans, rewards, favors, or services that may reasonably tend to improperly influence them in the discharge of their official duties. This limitation is not intended to prohibit the acceptance of articles of negligible value which are distributed generally nor to prohibit loans from regular lending institutions. It is particularly important that employees and officials guard against relationships which might be construed as or give the appearance of favoritism, coercion, unfair advantage or collusion.

(b) Employees shall not use or attempt to use their position to secure an economic benefit or advantages, special privileges or exemptions for themselves or others including the use of knowledge obtained by or through their employment or by virtue of their position.

(c) Employees shall not accept employment or engage in any business or professional activity which they may reasonably expect would require or induce them to disclose confidential information acquired by them by reason of their official position.

(d) Employees shall not accept payment from outside sources for professional services (i.e., teaching, instructing, speaking engagements, consulting, honorariums) when such activities are done on city time or when such services pertain to the purchase or sale of city property.

Section 2. Proprietorship of creations.

All plans, designs, reports, specifications, drawings, devices, inventions, and other items produced or created by employees during working hours or through the use of city facilities or equipment or at the request of the city shall be and become the sole property of the City of Cedartown.

Section 3. Confidential information.

Employees shall not disclose confidential information gained by reason of their official position, nor shall they otherwise use such information for their personal gain or benefit.

Section 4. Conflict of Interest.

- (a) If an employee of the city is an officer, director, agent or member of, or owns any interest in an entity which is subject to the regulation of, or which has financial commitments with the city, they shall file a sworn statement to this effect with the city clerk.
- (b) Employees shall not transact any business in their official capacity with any business entity of which he or she is an officer, director, agent, member, or in which he or she owns a controlling interest, excluding civic, charitable or religious organizations.
- (c) Employees shall not have personal investment in any enterprise which will create a conflict or a perceived conflict between their private interest and the public interest.
- (d) This prohibition shall extend to employees, City officials and their immediate family.

Section 5. Political activity.

- (a) No person employed by the city shall either publicly or otherwise hold himself out as a candidate in any City of Cedartown election while holding employment with the city.
- (b) City employees shall not take part in any political management or political campaigns for elections of the City Commission for the City of Cedartown during any period of time for which he is expected to perform work or receive compensation from the city.
- (c) No employee, official or other person shall solicit, orally or by letter, or be in any other manner concerned in obtaining any assessments, contributions, or services for any political party from any employee during his hours of duty, service, or work with the city.
- (d) Employees shall not represent the city by wearing any uniform or portion thereof that is issued by the city while he is participating in any campaign at any time.
- (e) The city in no way seeks to influence employees in their choice of party affiliations or candidates, recognizing that this is a matter for each person to decide. Therefore, nothing contained herein shall be construed to restrict the right of the employee to hold membership in and support a political party, to vote as he chooses, to express opinions on political subjects or candidates, to maintain political neutrality, to attend political parties after work hours, or to campaign actively during off duty hours in all areas of political activity.
- (f) Employees shall not utilize any city equipment or vehicles in support of any political campaign.

ARTICLE D.
Outside Employment

Section 1. Limitations and approval requirement.

(a) City employment shall be considered to be the primary employment of all full-time employees. No employee may engage in outside employment which will interfere with the interests of city service. Standards by which some employment is not acceptable include, but is not limited to: (1) illegal activity; (2) employment that by virtue of association will reflect upon the reputation of the city; (3) high hazard or fatiguing work which might detract from or reduce city performance.

(b) Prior to beginning any regularly scheduled outside employment, employees will obtain specific written approval from their department head or his designee on request forms which indicate the name of the outside employer, the nature of the work, hours of work, address and telephone number where the employee can be reached. Such information will become a part of the employee's official personnel record. Employees are required to obtain approval from their department head or his designee for any change in a previously approved outside employment request.

(c) Any employee accepting or engaging in outside employment under the terms of this rule shall make arrangements with the outside employer to be available to respond immediately to any emergency call of duty whenever the city shall determine that the employee's services are necessary.

(d) Employees sustaining injuries while engaged in outside employment are normally ineligible to receive benefits under the city's Worker's Compensation program. If an employee sustains an injury while engaged in outside employment, but is performing duties, within the scope of his city responsibilities (i.e. a police arrest), he may be eligible for partial city Worker's Compensation benefits.

(e) Failure to comply with the provisions of this section will result in disciplinary action.

ADOPTED AND APPROVED by the City Commission of the City of Cedartown on the ____ day of _____, ____ at a regular meeting thereof, duly called and held, all Commissioners voting "Aye", none voting "No".

APPROVED:

By: _____
BERT WOOD, CHAIRMAN
CEDARTOWN CITY COMMISSION

ATTEST:

EMILY C. SHAW, CITY CLERK
CITY OF CEDARTOWN

SECTION I
MONETARY FEES RECEIVED
(This section to be completed by Public Officers only)

Identify each monetary fee or honorarium accepted from speaking engagements, participation in seminars, discussion panels, or other activities that directly relate to the official duties of, or to the office of the public officer, with a statement identifying the fee or honorarium and the person from whom it was accepted. (You may attach additional sheets of paper if necessary.)

I received:

- No monetary fee or honorarium.
- Monetary fee(s) or honoraria as shown below.

**Identify Fee or Honorarium
And Amount Accepted**

Identifying Information of Person from Who Accepted

SECTION II
FIDUCIARY POSITIONS

Name all fiduciary positions held by the candidate for public office or the public officer at any time during the covered year. (You may expand this section if necessary to include all positions.) A **fiduciary position** is any position imposing a duty to act primarily for another's benefit as officer, director, manager, partner, guardian, or other designations of general responsibility of a business entity. A fiduciary position may be a paid or unpaid position. A **business entity** is any corporation, sole proprietorship, partnership, limited partnership, limited liability company, limited liability partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether profit or nonprofit. (You may attach additional sheets of paper if necessary.)

I held:

- No fiduciary positions in any business entity.
- Fiduciary positions in the following business entity(ies).

IDENTIFY:

1. Title of each position.
2. Name and address of business entity.
3. Principal activity of each business entity.

Business entity #1

Business entity #2

Business entity #3

Business entity #4

**SECTION III
DIRECT OWNERSHIP INTERESTS IN BUSINESS ENTITY**

Direct ownership interest is the holding or possession of good legal or rightful title of property or the holding or enjoyment of real or beneficial use of the property by any person and includes any interest owned or held by a spouse of the person if such interest is held jointly or as tenants in common between the person and spouse.

Identify the name, address and principal activity of any business entity and the office held by and the duties of the candidate for public office or public officer within a business entity any time during the covered year in which a direct ownership interest: (A) Is more than 5 percent of the total interest in the business; or (B) Has a net fair market value of more than \$10,000. (You may attach additional sheets of paper if necessary.)

I held:

- No direct ownership interests in any business entity.
- Direct ownership interests in the following business entity(ies).

IDENTIFY:

1. Name and address of business entity.
2. Principal activity of business entity.
3. The office held by the candidate or the public officer within the business entity.
4. The duties of the candidate or the public officer within such business entity.

Business entity #1

Ownership Interests

Check One or Both If Applicable

- Ownership interest is more than 5%
- Ownership interest has a net fair market value of more than \$10,000.00

Business entity #2

- Ownership interest is more than 5%
- Ownership interest has a net fair market value of more than \$10,000.00

Business entity #3

- Ownership interest is more than 5%
- Ownership interest has a net fair market value of more than \$10,000.00

Business entity #4

- Ownership interest is more than 5%
- Ownership interest has a net fair market value of more than \$10,000.00

Business entity #5

- Ownership interest is more than 5%
- Ownership interest has a net fair market value of more than \$10,000.00

**SECTION IV
DIRECT OWNERSHIP INTERESTS IN REAL PROPERTY**

Direct ownership interest is the holding or possession of good legal or rightful title of property or the holding or enjoyment of real or beneficial use of the property by any person and includes any interest owned or held by a spouse of the person if such interest is held jointly or as tenants in common between the person and spouse.

Identify each tract of real property in which the candidate for public office or public officer has a direct ownership interest as of December 31 of the covered year when that interest has a fair market value in excess of \$10,000.00. "Fair market" value means the appraised value of the property for ad valorem tax purposes. (You may attach additional sheets of paper if necessary.) Check one box to show the applicable valuation range for each tract. (You may attach additional sheets of paper if necessary.)

I had:

- No ownership interests with a fair market value in excess of \$10,000.00
- Ownership interests with a fair market value in excess of \$10,000.00

IDENTIFY:

1. County where property is located.
2. State where property is located.
3. General description of property (give street address or location, size of tract, and nature or use of property).

Property #1

The Value of this tract is

- Between \$10,000 and \$100,000
- Between \$100,000.01 and \$200,000
- More than \$200,000

Property #2

The Value of this tract is

- Between \$10,000 and \$100,000
- Between \$100,000.01 and \$200,000
- More than \$200,000

Property #3

The Value of this tract is

- Between \$10,000 and \$100,000
- Between \$100,000.01 and \$200,000
- More than \$200,000

Property #4

The Value of this tract is

- Between \$10,000 and \$100,000
- Between \$100,000.01 and \$200,000
- More than \$200,000

Property #5

The Value of this tract is

- Between \$10,000 and \$100,000
- Between \$100,000.01 and \$200,000
- More than \$200,000

SECTION V
SPOUSE'S DIRECT OWNERSHIP INTERESTS IN REAL PROPERTY

Identify each tract of real property in which the filer's spouse has a direct ownership interest as of December 31 of the covered year when that interest has a fair market value in excess of \$10,000.00. (You may attach additional sheets of paper if necessary.) Check one box to show the applicable valuation range for each tract. (You may attach additional sheets of paper if necessary.)

My spouse had:

- No ownership interests with a fair market value in excess of \$10,000.00
- Ownership in the following tracts with a fair market value in excess of \$10,000

IDENTIFY:

1. County where property is located.
2. State where property is located.
3. General description of property (give street address or location, size of tract, and nature or use of property).

Property #1

The Value of this tract is

- Between \$10,000 and \$100,000
- Between \$100,000.01 and \$200,000
- More than \$200,000

Property #2

The Value of this tract is

- Between \$10,000 and \$100,000
- Between \$100,000.01 and \$200,000
- More than \$200,000

Property #3

The Value of this tract is

- Between \$10,000 and \$100,000
- Between \$100,000.01 and \$200,000
- More than \$200,000

Property #4

The Value of this tract is

- Between \$10,000 and \$100,000
- Between \$100,000.01 and \$200,000
- More than \$200,000

Property #5

The Value of this tract is

- Between \$10,000 and \$100,000
- Between \$100,000.01 and \$200,000
- More than \$200,000

**SECTION VI
EMPLOYMENT AND FAMILY MEMBERS**

Filer's Occupation _____
Filer's Employer _____
Employer's Address _____
Employer's Principal Activity _____

Filer's Spouse's Name _____
Spouse's Occupation _____
Spouse's Employer _____
Address of Spouse's Employer _____
Principal Activity of Spouse's Employer _____

Names of Filer's Dependent Children _____

**SECTION VII
INVESTMENT INTERESTS**

List the name of any business or subsidiary thereof or investment (do not list individual stocks and bonds that are held by mutual funds), in which the filer (either individually or with any other legal or natural person or entity) owns a direct ownership interest that:

1. Is more than 5 percent of the total interests in such business or investment, or
2. Has a net fair market value of more than \$10,000.00.

Business or Investment Entity #1
Name _____

Business or Investment Entity #2
Name _____

Business or Investment Entity #3
Name _____

Business or Investment Entity #4
Name _____

**SECTION VIII
KNOWN BUSINESS OR INVESTMENT INTERESTS OF SPOUSE AND DEPENDENT CHILDREN**

Identify any business or investment known to the filer in which the filer's spouse or dependent children have a direct ownership interest (either individually or with any other legal or natural person or entity) which interest:

1. is more than 5 percent of the total interest in the business or investment,
2. has a net fair market value exceeding \$10,000.00, or
3. is one in an entity for which the filer's spouse or a dependent child serves as an officer, director, equitable partner, or trustee.

(Do not list individual stocks and bonds that are held by mutual funds.) *

Business or Investment Entity #1
Name _____

Business or Investment Entity #2
Name _____

Business or Investment Entity #3
Name _____

Business or Investment Entity #4
Name _____

SECTION IX
ANNUAL PAYMENTS RECEIVED
FROM THE STATE OF GEORGIA
(This section to be completed by Public Officers only)

Identify all annual payments in excess of \$20,000.00 received by the public officer, or by any business entity identified in Section III above, from the State or any agency, department, commission or authority created by the State, and authorized and exempted from disclosure under O.C.G.A. § 45-10-25.

I received:

- No annual payments in excess of \$20,000.00 from any State entity.
- Annual payments in excess of \$20,000.00 from the below named State entity(ies).

IDENTIFY:

1. Name and address of State entity making the payments.
2. Amount of annual payment.
3. The general nature of the consideration rendered for the payment(s).

State entity source #1

State entity source #2

VERIFICATION BY OATH OR AFFIRMATION

State of Georgia
County of _____

I, the undersigned, being duly sworn (affirm), depose and say that the information in this statement is complete, true, and correct.

Sworn to and subscribed before me on
_____, 20_____.

Signature of Notary Public

My Commission expires _____.

Signature of Candidate or Public Officer

PENALTIES: Any person who knowingly fails to comply with or who knowingly violates any of the provisions of the Ethics in Government Act shall be guilty of a misdemeanor.

Campaign Finance and Disclosure

It is commonly perceived that campaign money buys access, which can in turn buy influence. In this respect the field of campaign finances closely resembles that of influencing legislation and lobbying, and regulations affecting both areas share many of the same objectives.

The code provisions which regulate campaign financing and disclosure in Georgia can be found in O.C.G.A. §§ 21-5-30 through 21-5-36. While violation of the campaign finance disclosure laws is punishable as a misdemeanor, candidates should also remember that even allegations of a violation of these laws can be used as an effective tool against an opponent in an election.

Campaign Finance Provisions

The first major provision of the campaign finance laws requires that all campaign contributions must be made directly to the candidate or the candidate's campaign committee.⁹⁹ Other requirements include the designation of a chairperson and treasurer for every campaign committee, separation of campaign funds in a campaign depository account, and aggregation of all separate contributions of less than \$101.00 knowingly received from a single source.¹⁰⁰ Campaign committees must register with the Secretary of State at the time the committee is formed, regardless of the amount of money to be raised or expended.¹⁰¹ These requirements seek to insure that candidates remain accountable for the funds they obtain from the populace. This is a very powerful issue, planted firmly in the public's conscience; a recent example of the prominence of these issues on the federal level was the passage and signing of the Bipartisan Campaign Reform Act in 2002.¹⁰² The Act, which embodied the most significant changes to campaign finance laws since those enacted post-Watergate, attempted to ban soft money contributions to national political parties, to increase individual hard money limits, and to restrict the ability of corporations and labor unions to run "electioneering" ads featuring names and likenesses of candidates close to an election. Although certain provisions of the Act have since been declared unconstitutional by the United States Supreme Court,¹⁰³ the bill itself exemplifies the public's desire to have campaigns that are run in an unbiased, open manner, regardless of political party.

The making and accepting of anonymous contributions are prohibited by state law, and any contributions so received are to be reported and deposited into the state treasury.¹⁰⁴ These

⁹⁹ O.C.G.A. § 21-5-30(a).

¹⁰⁰ O.C.G.A. § 21-5-30(b), (c), (d). But see State Ethics Commissioner v. Moore, 214 Ga.App. 236, 447 S.E.2d 687 (1994) (holding that candidate could not be penalized for failing to disclose contributions where disclosure report was prepared by campaign treasurer who did not know of common source and candidate did not review report).

¹⁰¹ 1985 Op. Att'y Gen. No. 85-51.

¹⁰² For the full version of this bill as originally enacted, see <http://news.findlaw.com/hdocs/docs/fec/bcra.pdf>.

¹⁰³ See McCConnell v. Federal Election Commission, 540 U.S. 93 (2003).

¹⁰⁴ O.C.G.A. § 21-5-30(c).

regulations, which result from balancing an individual's right to contribute against the public's interest in fair elections,¹⁰⁵ seek to insure that campaigns are financed openly and honestly; allowing anonymous contributions would be an invitation to fraud for the less scrupulous members of society.

The Ethics in Government Act also prohibits agencies or those acting on behalf of agencies from making any contribution to any campaign committee, political action committee, political organization or candidate.¹⁰⁶ The definition of agency as used in this section extends to counties and municipalities alike; therefore counties and municipalities are prohibited from making any campaign contributions. Furthermore, campaign committees and the like are constrained from accepting campaign contributions from any agency. Because so many uses of public facilities and equipment could be construed as "campaign contributions" in the context of an officer's bid for re-election, the code specifically states that nothing prohibits "the furnishing of office space, facilities, equipment, goods, or services to a public officer for use by the public officer in such officer's fulfillment of such office."¹⁰⁷

It is not too hard to imagine a situation where a municipal official may want to solicit monetary or other contribution from city employees on behalf of the official or another candidate. However, it is punishable as a misdemeanor for a public official to coerce, directly or indirectly, any other public official or employee to pay, lend, or contribute any sum of money or anything else of value to any person, organization, or party for political purposes.¹⁰⁸ The distinction between solicitation and coercion may not always be as clear as one would like; therefore extreme caution should be exercised in this arena. Even if the public official intends no harm in soliciting, the public employee may feel coerced to contribute out of concern for job security. Accordingly, everyone is better off if this situation is avoided entirely.

Financial Disclosure Requirements

Zoning Disclosures

The transactional disclosure and disqualification methods of avoiding conflicts of interest can also be utilized in concert with campaign finance laws. For example, both an applicant before a zoning board and opponents to any rezoning actions must disclose to the local governing authority any contributions totaling \$250.00 or more made to local officials who will act upon the application.¹⁰⁹ It has also been suggested that municipalities can go even further and disqualify any person who has made contributions to candidates for municipal office in excess of a certain amount from doing any business whatsoever with the municipality.¹¹⁰ This type of provision eliminates the appearance of contributors obtaining undue access to public officials. The key here is flexibility; the municipality does not want to unduly burden candidates from receiving unprejudiced contributions while at the same time safeguarding the public's interest in unbiased government.

¹⁰⁵ See R. Perry Sentell Jr., The Omen of "Openness" in Local Government Law, 13 Ga. L. Rev. 97, 114 (1978).

¹⁰⁶ O.C.G.A. § 21-5-30.2.

¹⁰⁷ Id.

¹⁰⁸ O.C.G.A. § 45-11-10.

¹⁰⁹ O.C.G.A. § 36-67A-3

¹¹⁰ Carpinello, "Designing Municipal Ethics Codes," Urban, State, and Local Law Newsletter, Vol. 16, No. 1, Fall 1992, p. 7.

A candidate for municipal office must file reports with the municipal clerk, or, if there is no clerk, with the chief executive officer of the municipality listing the following information:

- (A) The amount, name, and mailing address of any person making a contribution of \$101.00 or more, including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events coordinated for the purpose of raising campaign contributions;
- (B) The name and mailing address of any person to whom an expenditure of \$101.00 or more is made and the amount and general purpose of such expenditure;
- (C) The name of the lending institution or party making a loan, advance, or other extension of credit, as well as the names, addresses, occupations, and places of employment of all persons having any liability for repayment of such loan; and if any such persons shall have a fiduciary relationship to the lending institution or party making the loan, the report shall specify such relationship; and
- (D) The corporate, labor union, or other affiliation of any political action committee making a contribution of \$101.00 or more.¹¹¹

The disclosure requirements make no distinction between in-kind and monetary contributions. Therefore, it would appear that items such as food and beverages provided at a reception sponsored by a candidate's supporters should be reported as a contribution, provided the value of such items is at least equal to the \$101.00 statutory minimum. Similarly, the situation involving the donation of mailing lists would not have to be reported unless the value of such lists exceeded the statutory amount. However, the Attorney General has indicated that elected officials are not required to report the estimated value of his or her appearance at a publicly or privately sponsored event as a campaign contribution where the purpose of their appearance at that event is not designed to bring about nomination or election.¹¹² Furthermore, expenditures made independently of a candidate, including those made in support of opposition of a candidate, are not subject to the dollar limitations and reporting and registration requirements of the Ethics in Government Act.¹¹³ As of January 1, 2003, candidates seeking election to county or municipal offices must use electronic means to file their campaign contribution disclosure reports with the appropriate official upon having raised or a spent a minimum of \$10,000.00 in an election cycle.¹¹⁴ Candidates who have raised or spent less than \$10,000.00 in an election cycle are encouraged to file electronically, but not required to do so.¹¹⁵

The value of personal services performed by persons who serve with compensation from another source are to be considered as contributions, and must be disclosed accordingly.¹¹⁶

¹¹¹ O.C.G.A. § 21-5-34(b)(1).

¹¹² 1997 Op. Att'y Gen. U97-1.

¹¹³ 1995 Op. Att'y Gen. 95-67.

¹¹⁴ O.C.G.A. § 21-5-34.1.

¹¹⁵ Id.

¹¹⁶ 1983 Op. Att'y Gen. No. 83-1 (indicating that the value of any services performed by employees of a regulated public utility corporation on behalf of a campaign would constitute prohibited contributions, if those employees are performing such services on company time, while they are on duty, drawing or eligible for their salary or hourly pay). See also 2000 Op. Att'y Gen. U00-4 (indicating that any special treatment of public officials by such public utilities

However, services for which the volunteer receives no compensation, from any source, are not subject to the reporting and disclosure requirements. This distinction takes on special significance when the services are provided by public employees or employees of regulated utilities. These persons can volunteer on their own time to a political campaign, but they cannot volunteer their services to a campaign for the time when they are simultaneously receiving compensation from their employer.

A potentially troublesome situation exists where a supporter tells a candidate that he is going to contribute some money to the candidate's campaign, but rather than doing it directly he is going to give the money to two or three people and let them make the contribution to the candidate on his behalf. Expenditures made on behalf of a candidate by an individual must be aggregated and disclosed as contributions, regardless of whether those expenditures are given directly to the candidate.¹¹⁷ Accordingly, a supporter cannot do an end run around the disclosure laws by disbursing campaign contributions through multiple donors.

Campaign financing disclosure reports are to be filed by all candidates 45 days and 15 days before the primary election, 10 days after the primary election, 15 days before the general or special election, and finally, not later than December 31 of the year in which the election occurs.¹¹⁸ The responsibility to file these reports falls upon the chairman or treasurer of the campaign committee, as well as the candidate.¹¹⁹ A candidate should remember that any personal funds, whether used by the candidate himself or given to the committee, must be reported as well.¹²⁰

All public officers and candidates for public office are required to file a financial disclosure statement for the previous calendar year with the Secretary of State no later than July 1 of each year.¹²¹ This statement shall identify:

- (1) All monetary fees and honorarium of \$101.00 or less the officer has accepted, with a statement identifying the person from whom it was accepted;
- (2) All fiduciary positions held by the officer, listing the title of each position, the name and address of the business entity, and the principal activity of the business entity;
- (3) The name, address, and principal activity and office held by the public officer in any business in which the officer has a direct ownership interest in either 10% of the total ownership of such business, or if such ownership interest has a net fair market value of more than \$20,000.00;
- (4) Each tract of real property the officer has a direct ownership interest in that has a net fair market value in excess of \$20,000.00; and
- (5) All annual payments in excess of \$20,000.00 received by the public officer or any business entity described in paragraph 3 above.¹²²

may need to be disclosed under the Ethics in Government Act and failure to do so could subject the recipients to legal action).

¹¹⁷ O.C.G.A. § 21-5-31.

¹¹⁸ O.C.G.A. § 21-5-34(c).

¹¹⁹ O.C.G.A. § 21-5-30.

¹²⁰ Kaler v. Common Cause of Georgia, 244 Ga. 838, 262 S.E.2d 132 (1979).

¹²¹ O.C.G.A. § 21-5-50.

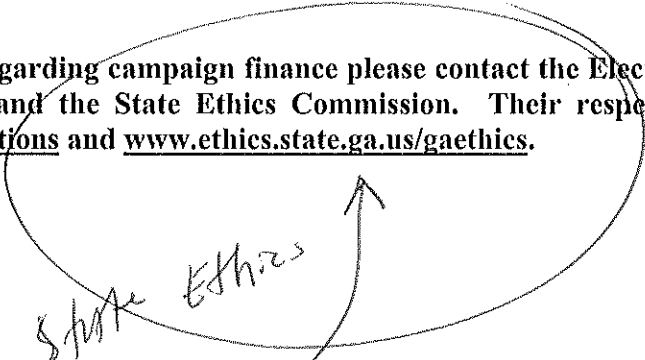
¹²² O.C.G.A. § 21-5-50(b).

Web-site

The disclosure of all sources of campaign financing is an important step in informing the public as to who may be possible sources of influence on the candidate once he or she takes office. This process is instrumental in building confidence in public officials, and candidates for public office should eagerly comply with both the spirit and the letter of all such provisions. Campaign financing is a popular topic of concern for political reformers today, and the premise behind open government depends on this information being made available to the public. The public official who displays complete candor in this area is doing a favor to both herself and to her constituency.

For additional information regarding campaign finance please contact the Elections Division of the Secretary of State and the State Ethics Commission. Their respective websites are www.sos.state.ga.us/elections and www.ethics.state.ga.us/gaethics.

Remember - State Ethics
Commission Web Site



Addenda to Exhibit "G"

Summary of 2010 Changes to the Ethics in Government Act

Summary of SB 17

Georgia Government Transparency and Campaign Finance Act of 2010

The 2010 Georgia General Assembly passed legislation which made significant changes to the Georgia Ethics law. Below is summary of the final ethics legislation (SB 17/HCSFA/AM 29 0945) adopted by the Georgia Legislature and entitled the "Georgia Government Transparency and Campaign Finance Act of 2010".

General

- The Commission has a new name: The Georgia Government Transparency and Campaign Finance Commission.
- All local filings (county and municipal) are now made with the Commission. Local filing officers will no longer be required to maintain Campaign Finance Commission filings which are made after 1/10/2011. Local filings officers will continue to maintain filings which were made previous to 1/10/2011.
- Adds the definition and duties of a Qualifying Officer; Qualifying Officer means a person who qualifies a candidate for an election; Qualifying Officers shall notify the commission in writing of the names and addresses of all candidates and offices sought in any election within ten days of the close of the qualification period. The Education and Information division will be sending out bulletins to Qualifying Officers explaining this process.

Commission Authority

- The Commission has the authority to award attorney's fees for frivolous complaints or in the situation where the complaining party fails to appear at the preliminary hearing without good cause.
- Civil penalties for a second violation of the same provision of the Act were raised from \$5,000 to \$10,000 and from \$10,000 to \$25,000 for a third violation.
- The Commission was given the discretion to waive penalties or late fees in cases of hardship.
- Requires the Commission to send late fee notices via registered mail.
- Public officers who are required to file state business transaction reports under will now file the reports with the Commission (business transaction reports were formerly filed with the Secretary of State). Link to business transaction report form and requirements will be available on the Commission website.

Email

All filers are now required to provide a current e-mail address to the Commission. If there are changes to the email address, the Commission must be notified within 10 days of the changes to the email address.

Campaign Finance

Makes electronic filing mandatory for all campaign disclosure reports by candidates and campaign committees. All candidates and/or campaign committees must file a PIN application found in the forms section of the Commissions website in order to begin filing electronically if they have not already done so.

Adds graduated late fees of \$125, \$250 and \$1,000 for failure to timely file CCDRs and prohibits campaigns from using campaign funds to pay late fees.

Personal Financial Disclosure

Removes the filing of a PFD for the director and members of boards, commissions and authorities. However, the PFD filing requirement is replaced with the filing of an annual affidavit swearing that the director or member did not take any official action from which he derived personal gain. Link to public officer affidavit will be provided on the Commission website. *[This is for state boards, commissions, and authorities; PFD requirement still applies to county and municipal officials. See OCGA 21-5-50(a)(1) and 21-5-3(22)(F, G). ~CP].*

Adds graduated late fees of \$125, \$250 and \$1,000 for failure to timely file PFD and prohibits campaigns from using campaign funds to pay late fees.

Lowers threshold for disclosing business interests and real property to \$5,000 from \$10,000.

Lowers threshold for disclosing annual payments from the State from \$20,000 to \$10,000.

Removes requirement that filers of a PFD disclose the name(s) of dependent children.

Lobbyists

For reporting purposes, adds the following to the term Expenditure, “reimbursement or payment of actual and reasonable expenses provided to a public officer for transportation (unless not arranged by the lobbyist), travel, lodging, registration, food, beverages, and other activities related to attending a meeting or conference”.

Registration fees for lobbyists are increased to \$300. Previously lobbyist fees were not charged due to a federal injunction preventing Georgia from charging lobbyist fees on a discriminatory basis. The Georgia statute was amended to remove the language which caused the policy concerns and the Commission will once again charge a lobbyist registration fee.

Prohibits a lobbyist from registering if convicted of a felony involving moral turpitude within the last 10 years and requires oath verifying no conviction exists. Oath will be contained in the lobbyist registration form. Explanation of felonies occurring more than 10 years prior must be provided.

Prohibits a lobbyist from registering if convicted of a felony involving moral turpitude within the last 10 years and requires oath verifying no conviction exists. Oath will be contained in the lobbyist registration form. Explanation of felonies occurring more than 10 years prior must be provided.

Requires all lobbyists to file disclosure reports electronically.

- Requires lobbyists involved in legislation before the General Assembly to file disclosure reports on a bimonthly basis during the Session and a monthly basis outside the Session.
- Requires lobbyists involved in local ordinances or rule making to file disclosure reports by the fifth day of May, September and January for the preceding period, excluding state employees who must file monthly for the same activities (there was no change in the reporting for these lobbyists).
- Requires lobbyists involved in influencing the selection of state vendors to file disclosure reports on a monthly basis (except for those who file bimonthly during Session).
- Adds graduated late fees of \$250, \$1,000 and \$10,000 for failure to timely file report.
- Expands definition of lobbying a “state agency” to include political subdivisions.
- Requires identification of public officers on whose behalf expenditures are made and on whose behalf the lobbyist is registered

Summary from http://www.accg.org/library/SB19_ethics_summary.pdf.

Taken From <http://www.accg.org/content.asp?contentid=1495>.

Ethics Reform Impacts County Commissioners

Beginning in January, a new ethics law will take effect in Georgia that includes some big changes for local government officials.

SB 17 modifies ethics disclosure filings for county candidates and officials, provides for increased disclosure for lobbyists and modifies conflict of interest provisions for members of the General Assembly. Specifically, local officials – county, city, and school board – must:

-Have an email address and provide that address to the State Ethics Commission. It must be different from their county email address because it will be used for campaign purposes and must be updated within 10 days if it changes.

-File financial disclosure and campaign disclosure reports directly with the State Ethics Commission. Previously, these reports were filed with the county, and then submitted to the state.

Information is being prepared for release on the State Ethics Commission's website www.ethics.ga.gov and the Commission's Education and Information Division will be distributing bulletins with instructions and information on various transition issues and filings.

Each county should ask:

Are your local officials familiar with the new law?

Do all of your officials have email addresses?

How will elections officials get the word out to candidates about the filing requirements?

New Versions of Pertinent Statutes



Personal
Financial Disclosure
Electronic Filing Access Code
State Ethics Commission

200 Piedmont Avenue
Suite 1402 - West Tower
Atlanta, GA 30334

PERSONAL IDENTIFICATION NUMBER APPLICATION
(All Fields must be completed and legible in order to process application **)**

Filer's Identification - Please Print

Application Status NEW AMENDED

Filer's Name _____

Address _____

City, State, Zip _____

Telephone (Office) _____ Telephone (Home) _____

Email Address _____

Name of Public Office Held or Sought/Authority/Board _____

I understand this confidential PIN number is assigned to the above filer and only the State Ethics Commission staff and the listed filer will have access to this confidential number.

Verification - Must Be Notarized

State of _____, County of _____.

FILER: I, the undersigned filer do hereby swear or affirm that the information in this application is complete, true, and correct to the best of my knowledge and belief. I acknowledge that any report I submit electronically in the future I shall verify as complete, true, and correct to the best of my knowledge and belief.

SIGNATURE OF FILER: _____

NOTARY PUBLIC (sign name): _____

PRINT NOTARY'S NAME: _____

My Commission expires: _____

This document was sworn to or affirmed and subscribed before me on _____, 20____

For Office Use Only

FilerID:

Approved By _____ **Date** _____

CHAPTER 189-3 DISCLOSURE REPORTS

CeDR's

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| 189-3-.05 | Reimbursement of Expenses |

189-3-.01 Campaign Contribution Disclosure Reports

(1) Contributions. Contributions of \$101.00 or more, including contributions of lesser amounts when the aggregate amount from a contributor is \$101.00 or more for the calendar year in which the report is filed, shall be listed on each report as follows:

(a) For contributions by any individual list:

1. the individual's name in alphabetical order by last name;
2. the individual's occupation;
3. the complete mailing address of the individual;
4. the amount of the contribution;
5. the date of receipt of the contribution; and
6. the individual's employer.

(b) For contributions by any corporation, labor union, political action committee, or other organization or entity list:

1. the contributor's name in alphabetical order;
2. the contributor's complete mailing address;
3. the corporate, labor union, or other affiliation of any political action committee if applicable;
4. the amount of the contribution; and
5. the date of receipt of the contribution.

include all this

Common errors

(2) Common Source Contributions of less than \$101.00

- (a) Separate contributions of less than \$101.00 which are knowingly received from a common source (members of the same family, firm, or partnership, or employees of the same company, firm, corporation or other association or group are considered a common source) must be aggregated and listed on campaign contribution disclosure reports.
- (b) The purchase of tickets for not more than \$25.00 each and for attendance at a fundraising event by members of the same family, firm, or partnership or employees of the same person shall not be considered to be contributions from a common source except to the extent that tickets are purchased as a block.

(3) Expenditures. Expenditures of \$101.00 or more, including expenditures of lesser amounts when the aggregate amount to a recipient is \$101.00 or more for the calendar year in which the report is filed, shall be listed on each report as follows:

- (a) the name of each recipient in alphabetical order by last name or by company name;
- (b) the complete mailing address of the recipient;
- (c) if recipient is an individual, list the occupation or place of employment;
- (d) the amount of the expenditure;
- (e) the general purpose of the expenditure with such detail as shows the expenditure is for a purpose lawfully authorized for campaign funds; and
- (f) the date of the expenditure

(4) Campaign Contribution Disclosure Reports by Candidates who file a Declaration of Intention to Accept Campaign Contributions but do not qualify to run for office. If a person files a declaration of intention to accept campaign contributions but does not qualify to run for office, the following campaign contribution disclosure reports are required:

- (a) Persons who would have been in a primary election must file: (1) The June 30 report, and (2) the December 31 final report of the year in which the election referred to in the declaration occurs. Any person who has excess contributions from the campaign must file a December 31 supplemental campaign contribution disclosure report each year thereafter until all contributions are expended as provided in the Act.
- (b) Persons who would have been in a general or special election must file: (1) the

October 25 and December 31 reports if the person would have been in a general election, and (2) the fifteen days before special election report and December 31 report if the person would have been in a special election.

(5) Campaign Contribution Disclosure Reports by Non-Candidate Campaign Committees

- (a) Contributions made to political parties or political action committees must be disclosed on campaign contribution disclosure reports the same as if those contributions had been made directly to candidates.
- (b) There are three instances in which a contributor is not required to file campaign contribution disclosure reports: (1) if the contributor's total contributions to all candidates for the calendar year does not exceed \$25,000 in the aggregate, or (2) if, regardless of the dollar amount involved, the contributor makes contributions to only one candidate during the calendar year, or (3) if the contributor is an individual who makes aggregate contributions of \$25,000.00 or less directly to candidates or the candidates' campaign committees in one calendar year. For purposes of making the preceding determination of amount the individual's contributions to political parties and to political action committees shall also be counted toward the \$25,000.00 aggregate annual amount.
- (c) A Recall Committee which supports or opposes a recall election files campaign contribution disclosure reports if any contributions are received or any expenditures are made.
- (d) A Committee which supports or opposes a proposed constitutional amendment or state-wide referendum files campaign contribution disclosure reports if any contributions are received or any expenditures are made.
- (e) A Committee which accepts contributions or makes expenditures to influence the vote on a local ballot questions in a county or municipality files campaign contribution disclosure reports if (1) the Committee received more than \$500.00 in contributions, or (2) if the Committee made expenditures totaling more than \$500.00.
- (f) Campaign contribution limits on contributions to candidates do not apply to independent expenditures made to influence candidate elections. An independent expenditure is an expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate but which is made independently of any candidate's campaign. However, an expenditure is "independent" only if it meets certain conditions. It must not be made with the cooperation or consent of, or in consultation with, or at the request or suggestion of any candidate or any of his or her agents or

authorized committees. An expenditure which does not meet the above criteria for independence is considered a contribution which is subject to limits.

Authority O.C.G.A., § 21-5-3, 21-5-6, 21-5-34. **History.** Original Rule entitled "Deferred Payment of Expenses" adopted. F. Aug. 5, 1988; eff. Aug. 25, 1988. **Repealed:** New Rule entitled "Campaign Contribution Disclosure Reports" adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000. **Amended:** F. July 19, 2001; eff. Aug. 8, 2001. **Amended:** F. Dec. 14, 2007; eff. Jan. 3, 2008.

189-3-.02 Expenditures on Behalf of a Candidate or Campaign Committee

When a person pays for or provides goods, services, a gift, subscription, membership, loan, forgiveness of debt, extension of credit, advance or deposit of money, or anything of value on behalf of a candidate or a campaign committee for the purpose of influencing an election, it is a "contribution" and is subject to the contribution limits (except as otherwise provided in O.C.G.A. § 21-5-41 and 21-5-42). The contribution shall be reported on the campaign contribution disclosure report for the time period in which it occurs.

Authority O.C.G.A., §§ 21-5-3, 21-5-6, 21-5-6 and 21-5-34. **History.** Original Rule entitled "Expenses Incurred Through Third Parties" adopted. F. Aug. 5, 1988; eff. Aug. 25, 1988. **Repealed:** New Rule entitled "Expenditures on Behalf of a Candidate or Campaign Committee" adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000. **Amended:** F. Dec. 14, 2007; eff. Jan. 3, 2008.

189-3-.03 Deferred Payment of Expenses

Anything of value which is received by, provided to, furnished to, or conveyed to or on behalf of a candidate or a campaign committee is required to be reported on the campaign contribution disclosure report for the time period in which the thing of value is provided. If the goods or services have not been paid for at the time the report is filed, an explanatory note so stating shall be prominently set forth on the report. All extensions or advancements of credit are subject to contribution limits except as otherwise provided in O.C.G.A. § 21-5-41 and 21-5-42.

Authority O.C.G.A., §§ 21-5-3, 21-5-6, 21-5-34. **History.** Original Rule entitled "Deferred Payment of Expenses" adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000. **Amended:** F. Dec. 14, 2007; eff. Jan. 3, 2008.

189-3-.04 Expenses Incurred Through or By Third Parties

(1) Payments by Credit Card.

- (a)** If a candidate or campaign committee pays for goods or services directly or indirectly by using a credit card merely as a conduit through which funds are paid to an end-recipient, the expenditure must be itemized and shall be shown

on the campaign contribution disclosure report in the time period it is incurred.

- (b) The campaign contribution disclosure report shall identify the name of the person to whom the credit card was issued, the name of the credit card company, as well as each end-recipient, and shall include the following:
1. name of the person to whom the credit card was issued;
 2. name of the credit card company and complete mailing address;
 3. lump sum amount paid to the credit card company;
 4. name of each end-recipient and occupation if an individual;
 5. complete mailing address of each end-recipient;
 6. amount of the payment to each end-recipient;
 7. description of the goods or services provided by each end-recipient with sufficient detail to identify it as a lawfully authorized use of campaign funds

(2) Payments Through or By a Third Party

- (a) Campaign expenditures made by a third party on behalf of a candidate or campaign committee must be itemized to identify the actual end recipient of the expenditure and shall be reported on the campaign contribution disclosure report for the time period during which the expense is incurred when the third party making the expenditure or the actual end recipient of the expenditure is under the management, direction or control of the candidate or campaign committee regarding the performance of its work.

Campaign expenditures made by third parties on behalf of a candidate or campaign committee need not be itemized to identify the actual end recipient of the expenditure but shall be reported as otherwise required when such third parties as well as the actual end recipients of the expenditure are independent contractors or otherwise not under the management, direction or control of the candidate or campaign committee. An individual or corporation shall be considered an independent contractor for the purposes of this section when it is retained by a candidate or campaign committee and, while the individual or corporation may follow the candidate's or campaign committee's desires as to results of work, the candidate or campaign committee does not manage, direct or control such individual's or corporation's performance of their work. If the third party is a consulting firm, media placement firm, or advertising agency, the disclosure shall include the name of at least one

principal in the firm. Where applicable, the principal so disclosed shall be the individual most responsible for the provision of services to the candidate or campaign committee.

- (b) The campaign contribution disclosure report shall identify the third party, as well as, each end-recipient and shall include the following:
1. name of the third party and occupation if an individual;
 2. complete mailing address of the third party;
 3. lump sum amount paid to the third party;
 4. name of each end-recipient and occupation if an individual;
 5. complete mailing address of each end-recipient;
 6. amount paid to each end-recipient;
 7. description of the goods or services provided by each end-recipient with sufficient detail to identify it as a lawfully authorized use of campaign funds

Authority O.C.G.A., §§ 21-5-3, 21-5-6, 21-5-34. **History.** Original Rule entitled "Expenses Incurred Through or By Third Parties" adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000. **Amended:** F. Aug. 28, 2002; eff. Sept. 17, 2002. **Amended:** F. Dec. 14, 2007; eff. Jan. 3, 2008.

189-3-.05 Reimbursement of Expenses

- (1) If a candidate or a campaign committee reimburses a person directly or indirectly for goods, services, or anything of value which was paid for on behalf of the candidate or campaign committee, it must be itemized and shall be reported as an expenditure on the campaign contribution disclosure report for the time period in which the reimbursement is made. All extensions or advancements of credit are subject to the contribution limits except as otherwise provided in O.C.G.A. §§ 21-5-41 and 21-5-42.
- (2) The campaign contribution disclosure report shall identify the person receiving reimbursement, as well as, each end-recipient and shall include:
 - (a) name, and occupation if an individual, of the person receiving reimbursement;
 - (b) complete mailing address;
 - (c) lump sum amount paid;
 - (d) name, and occupation if an individual, of each end-recipient;

- (e) complete mailing address of each end-recipient;
- (f) amount paid to each end-recipient;
- (g) description of the goods or services provided by each end-recipient with sufficient detail to identify it as a lawfully authorized use of campaign funds.

Authority O.C.G.A.. §§ 21-5-3, 21-5-6, 21-5-34. **History.** Original Rule entitled "Reimbursement of Expenses" adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000. **Amended:** F. Dec.14, 2007; eff. Jan. 3, 2008.

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CHAPTER 189-5 DISPOSITION OF CONTRIBUTIONS

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189-5-.01 Disposition of Contributions Without Limitation

O.C.G.A. § 21-5-33 governs the proper disposition of campaign contributions. One of the specifically permitted uses for such funds is contained in O.C.G.A. § 21-5-33(b)(1)(B), which states “except as otherwise provided in subparagraph (D) of the paragraph, for transferral without limitation to any national, state, or local committee of any political party or to any candidate.” However, contributions to any candidate or candidate’s campaign committee may not exceed contribution limits, and such contributions are subject to all other restrictions or prohibitions contained in the Ethics in Government Act or other applicable law.

Authority O.C.G.A. § 21-5-6, 21-5-33. **History.** Original Rule entitled “Disposition of Contributions Without Limitation” adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000. **Amended:** F: Feb.4, 2008; eff: Feb. 24, 2008.

189-5-.02 Contributions Remaining Unspent After the Election for Which They Were Received

At the conclusion of an election, contributions that are left over may be spent on subsequent elections in the same election cycle. If there are not remaining elections in the election cycle, or even if there are remaining elections but the candidate will not be on the ballot for any election remaining in the election cycle, all contributions left over after payment of campaign expenses must be disposed of following the law governing the appropriate use of excess contributions.

Authority O.C.G.A. § 21-5-6, 21-5-30, 21-5-33, 21-5-41, 21-5-43. **History.** Original Rule entitled “Choosing Option of Separate Accounting adopted F. July 19, 2001; eff. Aug. 8, 2001. **Repealed.** New Rule entitled “Contributions Remaining Unspent After the Election for which they were received has been held” originally adopted as 189-5-.07; filed on July 19, 2001; effective Aug. 8, 2001; **Amended.** F: Feb. 4, 2008; eff: Feb. 24, 2008.

189-5-.03 Contributions which must be Returned to Contributors

If the candidate has accepted contributions which were separately accounted for and held pending the results of a preceding election, such contributions may be disposed of following the law governing the appropriate use of excess contributions or returned in full to the original contributors thereof if either of the following are true:

- 1) the election for which the contributions were accepted will not be held, or
- 2) the candidate for whom the contributions were accepted is not on the ballot in the election for which the contributions were accepted.

Authority O.C.G.A. § 21-5-6, 21-5-30, 21-5-33, 21-5-41, 21-5-43. **History.** Original Rule entitled "Separate Bank Accounts Permitted if Separate Accounting is Chosen" adopted; filed July 19, 2001; eff. Aug. 8, 2001. **Repealed.** New Rule entitled "Contributions which must be Returned to Contributors" originally adopted as 189-5-.09; filed on July 19, 2001; effective Aug. 8, 2001. **Amended:** F: Feb. 4, 2008; eff: Feb. 24, 2008.

189-5-.04 Undeliverable Refunds

Any refund which, for any reason, cannot be delivered to the original contributor due to a lack of forwarding address shall be treated as excess funds and only expended in a manner authorized for disposition of excess funds.

Authority O.C.G.A. § 21-5-6, 21-5-30, 21-5-33, 21-5-41, 21-5-43. **History.** Original Rule entitled "If Separate Accounting is not Chosen" adopted; filed July 19, 2001; eff. Aug. 8, 2001; **Repealed.** New Rule entitled "Undeliverable Refunds" originally adopted as 189-5-.11; filed on July 19, 2001; effective Aug. 8, 2001. **Amended:** F: Feb. 4, 2008; eff: Feb. 24, 2008.

189-5-.05 Paying Off Campaign Debts

Candidates who have elected the option of separate accounting may not use contributions designated for a future election to pay debts from a prior election, unless and until the election for which the separately accounted for contributions were designated has been held, and campaign obligations remain outstanding from a prior election.

Authority O.C.G.A. § 21-5-6, 21-5-30, 21-5-33, 21-5-41, 21-5-43. **History.** Original Rule entitled "Contributions Allowed for the Current Election Cycle" adopted; filed July 19, 2001; eff. Aug. 8, 2001; **Repealed.** New Rule entitled "Paying Off Campaign Debts" originally adopted as 189-5-.12; filed on July 19, 2001; effective Aug. 8, 2001. **Amended:** F: Feb. 4, 2008; eff: Feb. 24, 2008.

CHAPTER 189-6

CAMPAIGN CONTRIBUTIONS

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189-6-.01 Receiving Contributions to Retire Debt

If following a candidate's last election in an election cycle, the candidate's funds are insufficient to pay all campaign obligations incurred prior to the election, the candidate may accept contributions which will be aggregated with contributions previously received for the last election for purposes of the contribution limits set forth in the Act. However, contributions received to retire campaign debt may not be accepted in excess of the amount necessary to retire the campaign debt remaining from such last election.

Authority O.C.G.A. § 21-5-6, 21-5-30, 21-5-33, 21-5-41, 21-5-43. **History.** Original Rule entitled "Receiving Contributions to Retire Debt" adopted; filed on July 19, 2001; effective Aug. 8, 2001. **Amended:** F: Feb. 4, 2008; eff. Feb. 24, 2008.

189-6-.02 Contributions for Candidates without Primaries

Any person who will be on the general election ballot as a candidate in an election preceded by a primary election may accept contributions designated for such primary election even though such candidate does not appear on the primary ballot.

Authority O.C.G.A. § 21-5-6, 21-5-30, 21-5-33, 21-5-41, 21-5-43. **History.** Original Rule entitled "Contributions for Candidates without Primaries" adopted; filed on July 19, 2001; effective Aug. 8, 2001. **Amended:** F: Feb. 4, 2008; eff. Feb. 24, 2008.

189-6-.03 Maximum Allowable Contribution by Corporation

No corporation shall make, for any election, contributions to any candidate which, when aggregated with contributions to the same candidate for the same election from any affiliated corporations, exceed the per election contribution limits for such candidate as set forth in O.C.G.A. § 21-5-41.

Authority O.C.G.A. § 21-5-6, 21-5-30, 21-5-33, 21-5-41, 21-5-43. **History.** Original Rule entitled "Maximum Allowable Contribution by Corporation" adopted; filed on July 19, 2001; effective Aug. 8, 2001. **Amended:** F: Feb. 4, 2008; eff: Feb. 24, 2008.

189-6-.04 Maximum Allowable Contribution by Political Committees

No political committee shall make, for any election, contributions to any candidate which, when aggregated with contributions to the same candidate for the same election from any affiliated political committees, exceed the per election contribution limits for such candidate as set forth in O.C.G.A. § 21-5-41.

Authority O.C.G.A. § 21-5-6, 21-5-30, 21-5-33, 21-5-41, 21-5-43. **History.** Original Rule entitled "Maximum Allowable Contribution by Political Committees" adopted; filed on July 19, 2001; effective Aug. 8, 2001. **Amended:** F: Feb. 4, 2008; eff: Feb. 24, 2008.

189-6-.05 Specifying the Election for which a Contribution is Accepted

Recipients of campaign contributions must specify on their campaign contribution disclosure reports which election for which a contribution has been accepted. If no election is specified or if the recipient has not chosen the option of separately accounting for contributions, any such contribution shall be presumed to have been accepted for the election on or first following the date of the contribution.

Authority O.C.G.A. § 21-5-6, 21-5-30, 21-5-33, 21-5-41, 21-5-43. **History.** Original Rule entitled "Specifying the Election for which a Contribution is Accepted" adopted; filed on July 19, 2001; effective Aug. 8, 2001. **Amended:** F: Feb. 4, 2008; eff: Feb. 24, 2008.

189-6-.06 Contributions Received for an Election which does not Occur or for which a Candidate does not Qualify

Contributions received for an election beyond the candidate's next upcoming election, may be placed in a separate campaign depository account and may not be spent or encumbered until the preceding election has been held and it is determined that the candidate will be on the ballot for the election for which the separately accounted for contributions were received.

Authority O.C.G.A. § 21-5-6, 21-5-30, 21-5-33, 21-5-41, 21-5-43. **History.** Original Rule entitled "Contributions Received for an Election which does not Occur or for which a Candidate does not Qualify" adopted; filed on July 19, 2001; eff. Aug. 8, 2001. **Amended:** F: Feb. 4, 2008; eff: Feb. 24, 2008.

189-6-.07 In-Kind Contributions

- (1) An in-kind contribution is deemed a 'contribution' for purposes of the Act, and refers to any item of value other than money received by a candidate or any committee.
- (2) The aggregate of monetary and in-kind contributions from the same contributor shall not exceed the maximum contribution limits authorized by the Act.
- (3) In-kind contributions shall only be used during the election period for which they are designated.

Authority O.C.G.A. § 21-5-34. **History.** Original Rule entitled "In-Kind Contributions" adopted. F. Feb. 4, 2008; eff. Feb.24, 2008.

189-6-.08 Reporting of Investments

Any investment made with campaign contributions and held outside a candidate's or committee's official depository account shall be reported during each reporting period for which the investment is still held or a transaction is made. The reporting must identify any account numbers, the name and address of the institution or person which holds the account, interest, dividends, profit or loss from the sale of such investment, and any information identifying persons involved in any transaction of the investment during said reporting period. Proceeds earned on such investment shall only be used in the same manner as allowed by law for contributions.

Authority O.C.G.A. § 21-5-34. **History.** Original Rule entitled "Reporting of Investments" adopted. F. Feb.4, 2008; eff. Feb. 24, 2008.

189-6-.09 Reporting of Indebtedness

Candidates and committees shall report all indebtedness held during the period covered by each Campaign Contribution Disclosure Report.

Authority O.C.G.A. § 21-5-34. **History.** Original Rule entitled "Reporting of Indebtedness" adopted. F. Feb. 4, 2008; eff. Feb.24, 2008.