

# **ABUSE OF OFFICE, CONFLICTS OF INTEREST, AND ETHICAL STANDARDS**

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## INTRODUCTION

The Georgia Constitution (Constitution) states, “All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are *trustees* and *servants* of the people and are at all times amenable to them.”<sup>1</sup>

As elected officials, county commissioners are trustees of the people. They have been entrusted with county property and are legally obligated to manage that property for the benefit of their citizens. Commissioners must never forget that the county property over which they have control is not their own. They are subject to every limitation imposed generally by law upon trustees.<sup>2</sup> County commissioners have a fiduciary responsibility that demands they carry out their duties with the sole intent and purpose of benefiting the citizens of their community and Georgia.

As public servants, commissioners are charged with the duty of tending to the business of their citizens and owe an obligation of loyalty to the public as they perform their duties. They are required to exercise their discretion and judgment free from the taint of self-interest, bias, and undisclosed conflicts of interest. Commissioners must always be mindful of their citizens and the State of Georgia.<sup>3</sup>

The Constitution certainly provides lofty goals and aspirations for all public officials, as well as corresponding, very real repercussions for failing to uphold the trust of the people. Elected officials are held to a higher standard than their unelected constituents in many regards. Yet, elected officials — at any level — are just people themselves. Mistakes are bound to be made, intentionally or unintentionally, and some cross the line into illegal activity and breaking the law.

This chapter addresses three broad subject areas that apply to all county commissioners and must be understood in order to avoid potential legal ramifications:

1. Abuse of office.
2. Conflicts of interest.
3. Ethical standards.

An offense constituting an abuse of office could send a commissioner to prison. A conflict of interest may invalidate a decision or transaction in which a commissioner participated and could possibly result in removal from office. Ethical standards guide commissioners in doing “the right thing in the right way.” Some ethical rules are established by law and have legal consequences if they are not followed, while others are aspirational, or “best practices,” for those committed to professionalism and integrity.

The purpose of this chapter is to provide a clear understanding of:

- Acts that constitute a criminal abuse of office and the legal ramifications.
- Federal criminal statutes applicable to county commissioners.
- Actions that constitute a breach of confidentiality and why it matters.
- Conflicts of interest and legal implications for not disclosing such conflicts.
- Laws regarding ethics and ethical conduct while in office.
- Ethical ways to deal with conflict if there are no clear rules.

## **ABUSE OF OFFICE**

Criminal offenses, conduct beyond one’s legal power or authority (*ultra vires* acts), refusal to abide by a majority vote, and breach of confidentiality are all abuses of power. This section provides details of each, along with federal and state statutes, case law, and local examples of how such actions are addressed when involving county commissioners.

### **Criminal Offenses**

Some conduct by public officials is so damaging to the public welfare that it has been made a crime, punishable by fine or imprisonment. Our society has determined that the following acts simply cannot be tolerated by elected officials at any level in a free and open democracy. County commissioners, like all elected officials, must understand above all else that these rules must not be broken:

- Bribery.
- Selling of influence.
- Embezzlement.
- Extortion.
- Political campaign coercion.
- Conspiracy to defraud.
- Deriving proceeds from public works contracts.
- “Unprofessional” conduct in office.
- Offenses involving public records (including electronically stored records).
- Violations of the Open Meetings Law.
- Violation of the oath of office.
- Certain federal criminal statutes.

### **Bribery**

A public official commits bribery when he or she, directly or indirectly, solicits, receives, or agrees to receive a “thing of value” while inducing a reasonable belief that doing so

will influence his or her performance (or non-performance) of some official action.<sup>4</sup> Upon the trial of a bribery case, a jury determines if the commissioner's words or actions would have led an average person to believe a thing of value was required to obtain the official action and as such, constitutes "reasonable belief" that influence has occurred.

Bribery is a felony offense; a conviction can result in imprisonment for a sentence of one to twenty years.<sup>5</sup> A bribe or payoff given to a public official under the guise of a "campaign contribution" is still considered a bribe and adjudicated as such.<sup>6</sup> The mere fact that the payment is reported on a campaign disclosure form does not change its character as a bribe.<sup>7</sup>

For commissioners, a simple motto is worth repeating: "My vote is not for sale."<sup>8</sup> However, the law does provide that a public official may accept certain promotional, honorary, and other token benefits without committing the offense of bribery. Items deemed not to be "a thing of value" under the bribery statute — and therefore legal to accept — include:

- Food or beverage consumed at a single meal or event.
- Legitimate salary, benefits, fees, commissions, or expenses associated with a public official's nonpublic business.
- An award, plaque, certificate, memento, or similar item given in recognition of the official's public service.
- Food, beverages, and registration at group events to which all members of the governing authority are invited.
- Actual and reasonable expenses for food, beverages, travel, lodging, and meeting registration, paid so that the public official may participate or speak at the meeting.
- A commercially reasonable loan made in the ordinary course of business.
- Any gift with a value of less than \$100.
- Promotional items typically distributed to the general public.
- A gift from a member of the public official's immediate family.
- Food, beverages, and expenses provided to an immediate family member of the public official or others that are associated with normal and customary business or social functions or activities.<sup>9</sup>

#### Selling of Influence

State law defines two types of bribery specifically covering county government officials. These statutes make it a criminal offense for any county commissioner to ask for or receive something of value in return for:

1. Procuring, or attempting to procure, the passage or defeat of an ordinance, resolution, or other county legislation.<sup>10</sup>
2. Influencing the official action of another public officer or employee of the county.<sup>11</sup>

For example, it is a violation of O.C.G.A. § 16-10-5 for a county commissioner to accept a thing of value in return for instructing a building official to “pass” an inspection or to issue a permit if the building or facility does not meet the code’s requirements.

#### Embezzlement

The embezzlement of public funds or property is described in the state criminal code as “theft by conversion.”<sup>12</sup> Conversion takes place when monies or property that are under ownership of the public are wrongfully used, taken, or ‘converted’ for personal use — in this scenario, by an elected official. In other words, it is a criminal offense when a person having lawful custody of funds or property of another converts the funds or property to his or her own use in violation of the agreement or legal obligation existing between the parties.<sup>13</sup>

The difference between embezzlement and larceny is that the embezzler has the lawful right to possess the property; in larceny, possession is unlawfully obtained.<sup>14</sup> A public official may have lawful possession or access to county property or funds, but the act of converting it to personal use — with no legal authority to do so — is a theft. For example, a county official may have the lawful authority to receive taxes, fines, or other fees paid to the county in the ordinary course of business, but if the official converts those funds to his or her personal use, the official has committed the crime of theft by conversion.

#### Extortion

The crime of extortion occurs when a public official under color of office takes money or anything of value from another that is either not due or more than what is due to him or her.<sup>15</sup> The crime consists of an oppressive exaction or demand, usually for money, and is a misuse of official power.<sup>16</sup> Upon conviction, a public official is guilty of a misdemeanor “and shall be dismissed from office.”<sup>17</sup>

For example, a commissioner would commit a crime of extortion if he or she required or demanded a payoff from a business owner, or other related parties, in exchange for approving an alcohol license of a private business.

#### Political Campaign Coercion

Similar to extortion, political campaign coercion is also considered a crime. Georgia law specifically states that any officer of the county may not coerce, attempt to coerce, or command (directly or indirectly) any other officer or employee of the county to pay, lend or contribute any part of his or her salary — or kick back any sum of money or anything else of value — to any party, committee, organization, agency, or person for political

purposes.<sup>18</sup> A commissioner, for example, cannot require a county employee to make a payment to the commissioner's political campaign fund in order to retain employment.

#### Conspiracy to Defraud

Conspiracy to defraud the county occurs when an individual conspires or agrees with another person to commit theft of any property that belongs to the state, county, or any public agency.<sup>19</sup> According to the law, the crime is considered "complete" when the conspiracy or agreement is made and an overt act to further the agreement has been committed, regardless of whether the theft actually occurs.<sup>20</sup> This statute makes the act of conspiracy itself a felony. As long as an overt act to carry out the scheme occurs when a county commissioner conspires with a county employee (such as the county clerk) to divert county funds for any unlawful use, it is immaterial that the potential theft is discovered and stopped before the funds are diverted.<sup>21</sup>

#### Deriving Proceeds from Public Works Contracts

By law, public works construction contracts are governed by statute to protect the public from illegal business activity and the potential for corruption among elected leaders. Where competitive bids are required, if any member of a governmental entity takes or agrees to receive (either directly or indirectly) any part of the public payment or profit arising out of any such contract, he or she shall be guilty of a misdemeanor.<sup>22</sup>

State law requires that public works construction contracts be put out for competitive bid if the value of the contract equals or exceeds \$100,000.00. For road construction projects, competitive bids are required for projects over \$200,000. At least two estimates must be obtained for road projects valued between \$20,000 and \$200,000.<sup>23</sup>

#### "Unprofessional" Conduct in Office

O.C.G.A. § 45-11-4 addresses unprofessional conduct by elected officials and applies to the conduct of county commissioners while holding elected office. The acts described in this statute also bear emphasis here as illegal activities and abuse of office. It is important to note that this statute only applies when no criminal charges of a more specific nature have been filed.<sup>24</sup>

This section of the law makes the following activities or actions by commissioners a misdemeanor, requiring removal from office if convicted:

- Using "oppression or tyrannical partiality" in conducting the county's business.
- Using deliberate means to delay or avoid the due course or proceeding of law.
- Demanding more than the official is due in administering his or her office.
- Any act of malpractice, misfeasance, and malfeasance while in office.<sup>25</sup>

Despite challenges that the language is vague, the statute has been upheld in multiple court decisions.<sup>26</sup>

Unprofessional conduct within the definition of this statute does not cover general behaviors of a commissioner. For example, “rudeness” — short of unlawful oppression — does not violate the state law.<sup>27</sup> However, the statute does apply to a commissioner wrongfully or unjustly performing an act that he or she has no right to do. Similarly, the failure of a commissioner to act or do his or her legally defined duty with evil intent, motive, or due to culpable neglect is also considered illegal and unprofessional conduct.<sup>28</sup>

#### Offenses Involving Public Records

Public records, such as meeting minutes, service contracts, etc., are the official documents of record for county business. It is a felony criminal offense for a county commissioner (or any public official) to alter, deface, destroy, steal, or falsify any document that is part of the official public record of a county. This includes records that are maintained in an electronic or digital format.<sup>29</sup>

Given the breadth of Georgia’s Open Records Law<sup>30</sup> (see more in the Open Meetings and Open Records Chapter), commissioners should never intentionally destroy public documents or delete records from county computer files, including emails or any related attachments. It is important to note that a records retention schedule must be maintained and it is a criminal offense to destroy records in violation of an adopted retention schedule.<sup>31</sup> The county attorney should be consulted for further legal guidance before any records are destroyed or deleted.<sup>32</sup>

#### Violations of the Open Meetings Law

As with public records, Georgia law includes provisions regarding meetings of the county governing authority. Georgia’s Open Meetings Law mandates that all meetings of the county commissioners (including committee meetings and work sessions) be open and available to the public and notice be made in advance.<sup>33</sup> There is only one exception: commissioners (and other governing bodies) are allowed to go into closed session to discuss specific matters related to pending or potential litigation, personnel issues, the sale or acquisition of land, review of documents that are exempt from public disclosure, and certain tax matters. These closed discussions are typically referred to as executive sessions.

If a county commissioner knowingly and willfully participates in a meeting that is not conducted in compliance with the Open Meetings Law, such conduct can be prosecuted as a misdemeanor offense.<sup>34</sup> Offenses include a failure to adhere to the rules for executive session discussions. Offenses also include any unofficial meeting of the county governing authority — where a quorum is present and county business is discussed —

that is not a regularly scheduled or called meeting with notification given to the public in advance.<sup>35</sup> Upon conviction for a first offense, the fine can be up to \$1,000.00 and increases to a maximum of \$2,500.00 for all subsequent offenses committed within 12 months of the original offense.<sup>36</sup> Further details regarding the Open Meetings Law and its requirements can be found in the Open Meetings and Open Records Chapter, as well as in the Association County Commissioners of Georgia (ACCG) [Open Meetings and Open Records Guide](#).

#### Violation of Oath of Office

Every county commissioner in the State of Georgia must take an oath of office upon being sworn in, affirming that he or she

- meets the qualifications of office;
- does not hold any funds that are unaccounted for, and which may be due to the state or any other political subdivision thereof;
- does not hold any other office or position that renders him or her ineligible to serve in the position of county commissioner; and
- will uphold the Constitution of the United States and the State of Georgia.<sup>37</sup>

O.C.G.A. § 16-10-1 makes it a felony for a commissioner to willfully and intentionally violate his or her oath of office.

#### Federal Criminal Statutes Applicable to County Commissioners

Federal law maintains its own set of provisions for commissioners who commit acts of a criminal nature. This section offers an overview of federal statutes that define criminal law. A thorough review of federal criminal statutes that can be used to prosecute local government corruption can be found in a publication by the Columbia Law School's Center for the Advancement of Public Integrity, [A Guide to Commonly Used Federal Statutes in Public Corruption Cases, A Practitioner Toolkit](#).

#### *Hobbs Act*

Named after Alabama Congressman Sam Hobbs, the *Hobbs Act* is a federal statute that criminalizes the act of extortion by local officials, including county commissioners.<sup>38</sup> Passed in 1946, the law was originally enacted to address acts of racketeering in labor-management disputes. However, it is frequently used in cases where elected officials at the local level are involved in acts of corruption that involve the obstruction, delay, or other impacts to commerce through robbery or extortion.

According to the Hobbs Act, if a transaction affects interstate commerce (which is broadly interpreted), any county official who wrongfully uses or threatens to use the powers of his or her office to obtain the property of another commits the federal offense

of “interference with commerce by threats or violence.” The penalty for such an act allows for a commissioner to be imprisoned up to 20 years.<sup>39</sup>

The statute has been interpreted to apply to bribes received by a Georgia county commissioner in order to influence his vote on a rezoning request.<sup>40</sup> While there was no evidence of the commissioner demanding payments, the fact that he accepted them knowing that they were made to influence his vote was enough to support the conviction.

*Federal Statutes Related to Bribery, Gratuities, and Theft*

Similarly, federal law also defines specific violations regarding commissioners or other local officials who bribe or attempt to bribe, a federal official or employee.<sup>41</sup> If an offer or promise to provide “anything of value” is made by an elected official for the purpose of unlawfully influencing an official act before the act occurs, this action can be a violation of the Federal Bribery Statute.<sup>42</sup> If such a payment is made after the official act has taken place, a commissioner is in violation of the Federal Gratuities Statute.<sup>43</sup> Gratuities, which may take the form of compensation or gifts paid or given to federal officials to influence their action or inaction, are considered illegal. As such, paying a federal official or employee to neglect or not perform his or her lawful duties constitute a violation of both federal statutes.

The Federal Program Bribery and Theft Statute applies to officials of local governments that receive over \$10,000 in federal funds in a given year.<sup>44</sup> Federal funding to meet this threshold may include grants, contracts, subsidies, loans, guarantees, insurance, or other forms of federal assistance.<sup>45</sup> It is a federal offense to steal, embezzle or defraud the federal government of \$5,000 or more in federal funds.<sup>46</sup>

In order to satisfy the \$5,000 valuation requirement, prosecutors may combine a series of transactions so long as they are part of a single plan and fall within the one-year period.<sup>47</sup> The statute may also be used to prosecute a county official who accepts a bribe in excess of \$5,000, provided the county receives in excess of \$10,000 in federal funds in a year. For example, in *Salinas v. United States*,<sup>48</sup> a deputy sheriff was convicted of violating this statute as the result of accepting a bribe from a federal inmate housed at the county jail. In this case, the federal government paid the county in excess of \$10,000 under a contract to house federal prisoners.<sup>49</sup>

Should a theft of federal funds fail to meet the Federal Program Bribery and Theft Statute thresholds, a criminal charge for theft of United States government property may be filed under 18 U.S.C. § 641, which covers theft by taking or knowingly receiving stolen federal funds or property. If a commissioner or other public official is convicted of stealing money or property that exceeds \$1,000, the offense is considered a felony. For

amounts of \$1,000 or less, the penalty for conviction is up to one year of imprisonment.<sup>50</sup>

*Federal Wire and Mail Fraud Statutes and the Federal Travel Act*

County commissioners and other public officials may be prosecuted and convicted for acts of corruption through the Federal Wire and Mail Fraud Statutes.<sup>51</sup> As written, these laws define email and text messages as an “interstate wire,” so long as they are routed through servers located outside of the state from which the text or e-mail was originally sent.<sup>52</sup> In today’s technological age, if a text or email is used as a way to communicate or help complete a bribe or kickback, the likelihood of using an interstate wire to execute or further the crime is almost guaranteed.

Under the Federal Wire and Mail Fraud Statutes, the misappropriation of federal funds is not a requirement for conviction. The statutes may be used to prosecute any state or local official who has committed an act, or acts, of bribery or any other type of kickback scheme that deprives the public of “honest services”<sup>53</sup> if an interstate wire or mail service is used in furtherance of the schemes.

A similar law, the Federal Travel Act, can be used to prosecute commissioners and local officials who violate *state* bribery and/or extortion laws, provided that in doing so they either travel interstate to accomplish the crime or use a “facility” of interstate commerce to commit the crime.<sup>54</sup> As with the Federal Wire and Mail Fraud Statutes, any phone call, email, text message, mail, or wire transmission constitutes the use of a facility of interstate commerce — even if the communication does not cross state lines.<sup>55</sup>

*Federal False Statements Statute*

According to the Federal False Statements Statute, it is illegal for a county commissioner or any other public official to make a false statement, a fraudulent misrepresentation, or to conceal a material fact “in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States.”<sup>56</sup>

In cases of public corruption at the local government level, offenders can be prosecuted for making false statements in documents required to be submitted to a federal department or agency, or for lying to federal law enforcement officers or regulators during an investigation into a matter of federal concern.<sup>57</sup>

*Racketeer Influenced and Corrupt Organizations Statute*

Local public officials, including county commissioners, can be prosecuted at the federal level for engaging in illegal or corrupt enterprises that participate in racketeering activities. Conspiring with an enterprise to commit racketeering activities can also constitute a federal crime.

Based on the Racketeer Influenced and Corrupt Organizations Statute (RICO),<sup>58</sup> racketeering activity includes bribes, extortion, mail and wire fraud, among other actions.<sup>59</sup> In order to be charged with a RICO violation, a commissioner must have engaged in racketeering activities having an established pattern. A “pattern” requires proof of at least two similar acts of racketeering within a ten-year period.<sup>60</sup> As such, it is possible for a commissioner who commits a series of bribery offenses to be charged with a RICO violation. In the scenario in which a commissioner has engaged in this type of illegal activity, he or she can also be tried jointly with all members of the enterprise as co-conspirators.

Additionally, any public official who engages in two or more acts of corruption in obtaining government contracts over a ten-year period can be convicted of violating the RICO statute.

### Racketeer Influenced and Corrupt Organizations Statute (RICO): An Application of the Law

#### ***United States v. Warner and Ryan***<sup>61</sup>

In this 2007 case, former Secretary of State and Governor of Illinois George Ryan was convicted under RICO after he steered an \$850,000 four-year lease to Warner (Ryan’s close associate) for property Warner had recently purchased for just \$200,000. Ryan took regular Jamaican vacations paid for by a currency-exchange owner to whom Ryan later steered a \$500,000, six-year Secretary of State’s office lease. Ryan took a Mexican vacation paid for by an individual to whom Ryan later steered another Secretary of State’s office lease and a lobbying contract worth nearly \$200,000 for virtually no work. Warner received more than \$800,000 for helping a company land a major Secretary of State’s office contract without registering as a lobbyist and added another of Ryan’s friends into the arrangement, at Ryan’s request, before the contract was awarded. Finally, despite evidence showing that they were enjoying a very nice lifestyle, Ryan’s and his wife’s total withdrawals from their bank accounts averaged less than \$700 per year for 10 years.

#### **Suspension of Office Upon Indictment**

Commissioners must also understand the impacts to their office should they be indicted by a grand jury on felony charges. Georgia law provides a procedure by which a commissioner may be suspended from office by the governor upon the recommendation of a review commission.<sup>62</sup> Appointed by the governor, the review commission is composed of the attorney general and two other persons holding the same office as the indicted official. The review commission will determine if the indictment relates to and adversely affects the administration of the indicted official’s office, whether the charges adversely affect the public’s interests, and whether suspension from office is recommended.<sup>63</sup> The review commission must make a final report and written

recommendations to the governor within 14 days. If suspension is recommended, the findings will then be subject to further gubernatorial review. If the governor ultimately suspends the county commissioner, the governor will then appoint a temporary replacement official unless the applicable enabling act for the county provides for other means of filling temporary vacancies.<sup>64</sup>

Upon suspension, a commissioner is not entitled to receive his or her county salary prior to trial.<sup>65</sup> If the indicted commissioner is acquitted or if the charges are dismissed, he or she is to be immediately reinstated to office and receive all compensation withheld during the suspension.<sup>66</sup> However, if the commissioner is indeed convicted, he or she will be immediately — and without further notice — removed from office. The vacated seat on the board of commissioners will be filled according to local or general law applicable to the county.<sup>67</sup>

### ***Ultra Vires* Acts (Conduct beyond one’s legal power or authority)**

Beyond criminal activity and offenses, county commissioners are restricted by state law regarding the powers, authority, and actions that they may engage in on behalf of their local citizens. As discussed at length in the County Commissioners: Roles and Responsibilities Chapter, commissioners only have powers that have been expressly granted to them by law.<sup>68</sup> A commissioner should not assume he or she has the legal authority to act on a matter unless there is a law that prohibits such action. Rather, commissioners should assume the opposite — unless there is a law that authorizes an act, it is beyond the authority of a commissioner.<sup>69</sup>

An elected official acting beyond one’s legal authority is known as an *ultra vires* act and can be ruled illegal or unlawful by the court system. It is important for commissioners to always first determine if a law exists that allows a county governing authority and/or its elected officials to act in the capacity under consideration. For example, before the board of commissioners adopts any ordinance or resolution, enters into any contract or agreement, or commits the county’s funds to any endeavor, it is always a best practice for commissioners to ask, “Is there a law that says the county can do this?” Such laws include its enabling legislation or local Act that originally established its form of government, Georgia laws with statewide application (can be found in the Official Code of Georgia Annotated, or “O.C.G.A”), and occasionally court decisions that interpret these legal provisions. In addition to ruling an *ultra vires* act unlawful, courts may also set aside the transaction itself.

## *Ultra Vires* Examples in Georgia: An Application of the Law

### ***Warner Robins v. Rushing***<sup>70</sup>

In this 1989 case, the City of Warner Robins adopted an ordinance to establish new water rates for its customers. Several commercial customers sought the mayor's assistance regarding the rate they were being asked to pay; the mayor agreed to lower rates specifically for those customers.<sup>71</sup> The city council was unaware of the mayor's actions and learned what he had done a year later, ultimately stopping such practices. As a result, the city sued the commercial customers who received the lower rates for the difference between the rates paid and the rates established by ordinance.

The court ruled that the mayor's act of lowering the water rates was done without any legal authority to do so and, therefore, was an *ultra vires* act. The fact the customers *assumed* the mayor had the power to do so was not a valid defense, and they were ultimately required to pay the rates as had been established by the ordinance.<sup>72</sup>

### ***Marlowe v. Colquitt County***<sup>73</sup>

In this 2006 case, the county entered into a multi-year employment contract with its county administrator. The court ruled the county had no authority to enter into such a contract, due to the enabling legislation which specifically states that the administrator is to be appointed in January of each year for a 12-month term.<sup>74</sup> As such, the contract was ruled unenforceable; the administrator did not recover the full amount set forth in the "buy out" clause of the agreement as had been sought.<sup>75</sup>

### Unauthorized Interactions with County Personnel

As discussed in the Types of County Government Chapter, county commissioners may be authorized to supervise the daily activities and performance of county employees, depending on their respective form of government. Counties that have a sole commissioner form of government or those with an elected chief executive officer are more likely to operate in this capacity. However, even in those circumstances, a commissioner should carefully review the enabling legislation of his or her county to understand the parameters of his or her granted authority when dealing with county employees.

When the governing authority of a county is a board of commissioners, commissioners are advised to be very mindful of their interactions with county personnel. If a county administrator or county manager is authorized to provide direct supervision of employee and staff operations on a day-to-day basis, commissioners must be even more careful in how and when they engage with personnel.

A majority vote of the board of commissioners can, in many circumstances, require county personnel to adhere to the board's wishes. For example, Georgia law allows for a majority vote to establish or adopt personnel policies that govern which employees

report directly to the board.<sup>76</sup> Similarly, the board — again by majority vote — can establish priorities for road projects and require county personnel to adhere to those priorities when scheduling work.<sup>77</sup>

However, commissioners must be mindful that a single commissioner — acting independently and without approval of a majority vote of the board properly recorded in the minutes — generally has no authority to supervise the day-to-day activities of county personnel. Where there is a county administrator or county manager, it is typically that official's responsibility to oversee the work of county personnel.<sup>78</sup> Even in the absence of a professional manager, individual commissioners cannot assume the role of a manager or supervisor unless such authority has been expressly granted to them by law or a majority vote of the full board. As stated above, if the power has not been expressly given, it is presumed to not exist.

Many commissioners mistakenly assume that since they hold an elected board position, they inherently serve as the employer (or “boss”) of all county employees. Therefore, those employees must abide by their instructions. In most cases, this is an incorrect assumption. A commissioner who attempts to direct the performance of county employees runs the risk of committing an *ultra vires* act, as seen in the previous example, *Warner Robins v. Rushing*.

Additionally, many counties have adopted personnel policies with grievance or appeal procedures. It is likely a grievable or appealable offense for a commissioner to attempt to direct an employee's conduct if such instructions conflict with those given by the employee's designated supervisors. The rationale for this is simple — employees should not have to answer to multiple supervisors who may give conflicting instructions. A formal chain of command between employees and supervisors likely exists and should always be followed in order to avoid conflicts of interest and inappropriate interaction between commissioners and personnel. If a commissioner has a request for a certain need or activity, he or she should give the request to the proper management official who maintains supervisory authority over those who will carry out the task. Again, commissioners should not place employees in the position to determine how to appease more than one boss with possibly conflicting priorities.

Commissioners typically serve a policy function, not an administrative or executive role. Many unnecessary conflicts and disruptions are easily avoided — and morale and productivity can be improved — if commissioners remember their primary role is policymaker, not manager. Both the Types of County Government Chapter and the County Commissioners: Roles and Responsibilities Chapter provide explicit details regarding these roles. Commissioners establish policy and priorities, while managers (county administrators, county managers, and/or department heads) see to it that those policies and priorities are implemented. If a commissioner has an issue with the way the

county's work is being performed (or not performed), any concerns should be brought to the attention of the full board and discussed. The appropriate chain of command among managers and employees should then be followed when implementing any corrective action.

### **Refusal to Abide by Majority Vote**

In those counties with a board of commissioners form of government, a board's majority vote to approve or adopt a motion, when recorded in the minutes, constitutes the official act of the governing authority of the county. While commissioners have the right to vote against a motion and to have their dissenting vote appear in the minutes, they do not have the right to refuse to follow the majority's decision — or, to refuse to sign documents necessary to carry out the majority vote.

## Lessons from a Real World Example: An Application of the Law

### ***Krieger v. Walton County Board of Commissioners*<sup>79</sup>**

In this extreme but instructive case example, motions were presented with a majority support of the board of commissioners, but the chair attempted to talk over and “gavel down” the presentation. A majority then voted to remove the chair as the presiding officer, but he refused to yield the chair. A majority then voted the chair out of order and directed that he leave the room. When the chair refused to comply, he was physically removed by a deputy sheriff.<sup>80</sup> The remaining commissioners then continued the meeting without him and adopted several ordinances. Following that event, the Supreme Court of Georgia ruled the board of commissioners' majority votes were proper and lawfully made, and as such, the chair had no legal grounds to object to them.<sup>81</sup>

### **Breach of Confidentiality**

Although Georgia's Open Meetings and Open Records Statutes favor open and transparent government, there are certain matters exempted from these statutes, as public policy requires that some things be kept confidential. In general, county commissioners are authorized to keep matters that are discussed in executive session confidential. Sensitive personnel issues and related records also require that commissioners act with discretion and maintain confidentiality to protect employee rights. This section discusses how commissioners should ensure confidentiality is maintained.

#### Executive Session

When commissioners properly go into executive or closed session, they are legally authorized to discuss certain matters confidentially. As such, each commissioner has a corresponding duty and responsibility to maintain the confidentiality of these discussions. In general, commissioners may only go into executive session to discuss five areas:

1. Pending or potential litigation against the county.
2. Personnel issues involving county employees.
3. The county's sale, purchase, or acquisition of real estate.
4. Certain tax-related matters.
5. Contents of confidential records exempt under the Open Records Law.

For example, Georgia law provides that the board of commissioners may go into executive session to obtain legal advice regarding pending litigation, which might include a candid discussion of the strengths and weaknesses of the county's position and the advisability of entering into settlement discussions.<sup>82</sup> Similarly, the board may go into executive session when the county is considering a real estate acquisition and the commissioners wish to discuss the terms of any offers or counteroffers. These discussions must be kept confidential for obvious reasons. It would harm the county's position in litigation and in any real estate transaction if the party negotiating with the county knew the upper limit of how much the county is willing to pay in either instance. In other words, the taxpayers of the county could wind up paying more than necessary because the information was not kept confidential.

The board also may go into executive session when commissioners discuss the performance of all county personnel.<sup>83</sup> It would be difficult to hire and retain quality employees if every comment about their perceived competency or work ethic was made available for public consumption. Additionally, such disclosures could expose the county to liability for defamation.

If a commissioner is unwilling to maintain absolute confidentiality, he or she should withdraw or recuse himself from the executive session and not be exposed to the confidential discussion. However, if a commissioner hears the discussion and then willfully divulges information that the law allows to be kept confidential and that a majority of commissioners want to keep confidential, a serious crisis exists. Court action may be authorized, which could include a court-issued injunction requiring that confidentiality be honored and subjecting any offending commissioner to contempt sanctions if the injunction is violated. In addition, it is possible that the offending commissioner would not be entitled to legal representation paid by the county, have to pay his or her own legal fees, and possibly have to pay the county's legal fees, as well.

For further details on executive sessions, see the ACCG guide [Georgia's Open Meetings and Open Records Law](#).

#### *Meetings with Other Authorities and Persons*

There may be occasions when commissioners are asked or want to meet with other parties in executive session. The law does not prohibit third parties from being present with commissioners in an executive session discussion,<sup>84</sup> but the subject of the

discussion must still fall within one of the authorized exceptions. The executive session exemption is limited to the discussion of pending or potential lawsuits, claims, administrative proceedings, or judicial actions. Commissioners should exercise caution and seek legal guidance before inviting third parties into an executive session. The following are examples of situations that may arise and must be carefully analyzed.

### Executive Sessions with Third Parties: Situational Examples

#### **Scenario One – Economic Development Authority and Incentives**

The local development authority wishes to inform the commissioners of a prospect and inquire about incentives the county would be willing to offer.

*Analysis:* This may not fall within the “real estate” exemption for an executive session if no property owned by the county (as opposed to the development authority) is under consideration for sale, purchase, or acquisition. Potential tax abatements, payments in lieu of taxes (PILOTS), waiver of fees, streamlined permitting procedures, etc., do not seem to fall within any of the exceptions for an executive session.

#### **Scenario Two – Hospital Authority and Financial Stability**

The local hospital authority wishes to inform the commissioners of its financial challenges, its efforts to sell or lease its property, or to enter into a management agreement with a private entity.

*Analysis:* Again, this situation may not fall within the “real estate” exemption for an executive session if no county-owned property is under consideration for sale, purchase, or acquisition. Ownership of the property being discussed is critical — property owned by the authority is not county property (even where the county has made financial commitments to sustain the authority’s property). A hospital authority’s plea for additional financial assistance from the county, and the consequences if no assistance is provided, are clearly not within any exemption.

**Scenario Three – Sheriff and Request for Resources for Ongoing Investigation**

The sheriff wishes to meet with the commissioners in executive session to discuss the need for more resources in order to combat a specific criminal threat. The sheriff does not wish to discuss the issue publicly for fear of tipping off the offenders.

*Analysis:* While the sheriff is being prudent in not wanting to divulge details of an ongoing investigation, as a rule, it is not appropriate to meet with a constitutional officer or department head in executive session to discuss budgetary needs. The need for more resources (i.e. additional personnel) does not meet the personnel exemption because the performance of an existing employee is not the primary subject of the discussion. Although it may be appropriate for the commissioners to meet with the sheriff in executive session to discuss the contents of a record exempt under the Open Records Law (e.g., the contents of a courthouse security plan), this would not justify additional discussions in executive session about budgetary needs and allocation of resources.

**Scenario Four – Commissioners and Meeting with Bond Counsel**

The commissioners are considering a SPLOST referendum and have retained bond counsel to assist the county attorney in preparing intergovernmental agreements and financing documents. The commissioners wish to go into executive session to meet with bond counsel to discuss the projected costs of county projects under consideration and the terms of the proposed intergovernmental agreements.

*Analysis:* Although the bond lawyer is serving as additional legal counsel for the county, an executive session is not permitted simply because the commissioners want legal advice. The executive session exemption is limited to the discussion of pending or potential lawsuits, claims, administrative proceedings, or judicial actions. A discussion of the projected costs of county projects under consideration and the terms of proposed intergovernmental agreements does not meet any of those criteria.

Personnel Records

In their capacity as employers, county commissioners are likely to be privy to confidential records that are not subject to public scrutiny. For example, when considering personnel matters, a commissioner may have access to an employee’s criminal history, the results of drug tests, medical evaluations, and/or other reports. Commissioners must not disclose any such information to the general public. If asked to divulge personnel information (e.g., by news media), commissioners must always consult with the county’s legal counsel. State and federal laws exist to protect this information and restrict the county’s ability, or a commissioner’s ability, to disclose it.

**CONFLICTS OF INTEREST**

While the abuse of office may result in legal and even criminal charges against a commissioner, conflicts of interest also could result in legal action if not properly

handled or disclosed. County commissioners are restricted by law not to undertake specific actions that may impact the county or negatively affect the public welfare, including a conflict of interest or perception of a conflict of interest by the public.

This section provides details for the types of potential conflicts of interest that county commissioners may encounter and laws that guide a commissioner's actions in such situations.

### **Business Transactions with the County**

Public officials should not derive a personal or financial profit from their public position. For this reason, county commissioners may not do business with the county they serve. As early as 1850, the Supreme Court of Georgia ruled a sheriff could not purchase anything from his own sheriff's sale, whether for himself or for someone else.<sup>85</sup>

Similarly, Georgia law makes it a criminal offense for a county commissioner to sell any land or goods to the county.<sup>86</sup> Courts have invalidated efforts by elected officials to lease property to the governing authorities of which they were elected to serve.<sup>87</sup> This law **cannot be sidestepped** by having a corporation transact or conduct business with the county on behalf of the commissioner if the commissioner manages the corporation's affairs or otherwise conspires with its owners.<sup>88</sup>

In addition to the criminal statute, Georgia law provides that a commissioner may be removed from office in an action brought by any county taxpayer who can demonstrate that the commissioner used county funds to purchase goods or property from a business entity in which the commissioner has an interest — unless sanctioned by the majority of other board members or unless clearly shown that the goods or property are being sold “as cheaply as or cheaper than the same can be bought elsewhere.”<sup>89</sup> For example, a 1982 case resulted in the removal of a commissioner from office for selling two dump trucks to the county through his business entity. At the time of the sale, the county commissioner's interest in the trucks had not been disclosed to the board of commissioners. It was later determined that the trucks were not worth the amount the county agreed to pay for them; therefore, the commissioner was removed from his elected position.<sup>90</sup>

There are limited exceptions to the rule against selling property to the county. Under O.C.G.A. §16-10-6(c), it is not unlawful for a commissioner to sell less than \$800 of personal property to the county in any calendar quarter.<sup>91</sup> A commissioner may also sell personal property of unspecified value to the county if such sales are the result of “sealed competitive bids.”<sup>92</sup> With respect to the sale of land, there is a procedure whereby a county commissioner can sell real property (or receive a commission on the sale of real property) to the county. A disclosure of the commissioner's interest in the sale must be made to the judge of the probate court at least 15 days in advance of the

date the contract of sale will become final, and the disclosure must identify the purchase price and the location of the property.<sup>93</sup>

### Conflicts Related to Business Transactions with the County:

#### An Application of the Law

##### ***Board of Commissioners of Miller County v. Callan***<sup>94</sup>

In this 2012 case, the court upheld a local home rule amendment that authorized the county to transact business with a commissioner. The board of commissioners, upon a majority vote, determined that the goods, services, or property could not be obtained for less and that the taxpayers' best interests would be served through the transaction. As such, the court ruled this local provision did not impair O.C.G.A. § 16-10-6 and, in fact, provided more protection against conflicts of interest.<sup>95</sup>

### Having a Financial Interest in Matters Coming Before the Board

A conflict of interest can also arise if a commissioner stands to realize a financial gain from a transaction between the county and other entities. For instance, this scenario may occur when the county awards contracts for goods and services. The courts have also ruled that conflicts of interest can exist if a commissioner stands to suffer a financial loss.

### Potential Personal Financial Gain in Matters Coming before the Board:

#### An Application of the Law

##### ***Montgomery v. Atlanta***<sup>96</sup>

A city councilmember was also a large stockholder in a paving company that was awarded a contract by the City of Atlanta. Ultimately, the contract was ruled to be contrary to public policy and therefore illegal, even though (1) the councilmember in question did not participate in the vote to award the contract and (2) the councilmember resigned from council and the remaining councilmembers voted again to ratify the contract after his departure.<sup>97</sup> Self-recusal from a vote does not remove the conflict of interest where financial matters and personal gain are involved.

The courts have also invalidated paving contracts and related land acquisitions where the general contractor used a subcontractor owned in part by the city council president. Again, the fact the president abstained from the vote to award the contract was insufficient to eliminate the conflict of interest.<sup>98</sup> County commissioners must bear in mind that the courts will invalidate such transactions even if no monetary loss to the public is demonstrated, based on the very existence of the conflict of interest.<sup>99</sup>

## Potential Personal Financial Loss in Matters Coming before the Board: An Application of the Law

### ***Vickers v. Coffee County***<sup>100</sup>

In this case, three tracts of property were under consideration for purchase as a landfill site. A commissioner owned property near two of the sites, which he intended to develop as a subdivision. The commissioner voted to acquire property for the landfill at the third location, which was not located near the properties he owned. The court ruled this was an impermissible conflict of interest because a landfill potentially would have decreased the value of the properties the commissioner owned and planned to develop.<sup>101</sup>

### **Zoning Decisions and Conflicts of Interest**

Georgia law provides specific restrictions regarding conflicts of interest related to public officials and zoning decisions made within the county. O.C.G.A. § 36-67A-2 requires county commissioners to disclose in writing any property or financial interests that they or their family members have in any property that comes before the board for a rezoning decision. They must also abstain from any vote on the rezoning request and refrain from taking any action to influence the outcome of the rezoning decision.<sup>102</sup> For purposes of this statute, “family member” means a spouse, mother, father, brother, sister, son, or daughter of the commissioner.<sup>103</sup>

Additionally, if any person or entity requesting a rezoning has contributed \$250 or more to a commissioner’s election campaign, this contribution must be disclosed by the applicant within 10 days after the rezoning application is filed.<sup>104</sup> The county commissioner who received the contribution (but otherwise has no financial interest in the property) is not barred from voting on the rezoning request unless a local ordinance provides additional restrictions.<sup>105</sup> The law also provides that a commissioner who knowingly violates these zoning rules can be convicted of a misdemeanor.<sup>106</sup>

### **Holding Conflicting Offices or Positions**

Holding one or more offices or positions within county government has the potential to result in a conflict of interest. Known as having divided loyalties, public policy seeks to prevent this scenario from happening as much as possible when related to elected officials.

As a conflict of interest, divided loyalty may take many forms. For example, if one position is subordinate to the other, the same individual cannot be expected to supervise himself or herself with the same objectivity and neutrality that occurs when the positions are held by different people. For this reason, a county commissioner cannot simultaneously serve as the county’s road superintendent,<sup>107</sup> county clerk,<sup>108</sup> or on a water board where the board of commissioners control the appointees to said board.<sup>109</sup>

This rule also appears to prohibit a commissioner from simultaneously serving in any position that is supervised by the board of commissioners, such as an elected commissioner also serving as county manager or county administrator.

Even if the positions are not within the same chain of command, a conflict may still exist if the official prefers one job over the other. Personal preferences may cause the official to devote more time and effort to the preferred position at the detriment of the other.<sup>110</sup> Again, public policy requires commissioners and other elected officials to give full and faithful attention to their duties.

Under state law, no county commissioner, or any other elected county official, may hold more than one county “office” at one time<sup>111</sup> — nor can an elected county official be a “deputy” for any other commissioned officer.<sup>112</sup> Therefore, a county commissioner may not simultaneously serve as both commissioner and sheriff, tax commissioner, clerk of the superior court, or probate judge. Additionally, a county commissioner may not serve as the deputy of another county elected official, such as the sheriff.<sup>113</sup>

### **Holding Positions with Other Governmental Entities**

County commissioners typically serve in their elected capacity as a part-time position. With that in mind, it is not unusual for a commissioner to have a full-time job working for another governmental agency, such as a state or municipal level position. Georgia law does not prohibit a commissioner from serving as an employee of a different governmental entity.

It is not a violation of O.C.G.A. § 45-2-2 for a commissioner to be a state employee, as a state position clearly is not a county office. According to an attorney general’s opinion, the position of school principal or teacher is not a “county office”<sup>114</sup> and therefore, a principal or teacher (or other school system employee) is not disqualified from also serving as a county commissioner. The attorney general’s office has also opined that a commissioner may simultaneously serve as a volunteer firefighter, since the position of firefighter is not an elected office.<sup>115</sup>

It is also permissible for an employee of a municipality within the county to hold elected office as a county commissioner. Although there is no statutory disqualification, there may be instances when a commissioner who also works for a city within the county must abstain from considering matters coming before the board of commissioners that pertain to his or her municipal employer.<sup>116</sup>

### **Nepotism**

Nepotism, by its very definition, has the potential to create a conflict of interest for a county commissioner. Georgia law prohibits county commissioners and constitutional officers from employing or advocating for the employment or promotion of their spouses and dependent children in government positions that pay an annual salary of

\$10,000 or more.<sup>117</sup> In addition to this state law, each county's local Act should be consulted, as some address instances of nepotism.

### Nepotism: An Application of the Law

#### ***Bradford v. Hammond***<sup>118</sup>

This case upheld a local act prohibiting any person related by blood or marriage within the fourth degree to any member of a board of commissioners from being eligible for employment by the county. The local act also made it illegal for any person related to a commissioner by blood or marriage within the fourth degree to buy from or sell anything to the county.

When there is no prohibition of nepotism in a county's local Act, it remains a best practice to address the matter in the county's personnel policies to avoid conflicts of interest before they arise and become personal. Counties are granted the authority to adopt personnel policies,<sup>119</sup> and these policies should address nepotism.

A county commissioner's family member who is related less closely than a spouse or dependent child may be entirely capable of performing the duties of a county position. However, there are strong reasons not to permit this practice:

- Employing relatives can cause morale problems among other county personnel.
- Employing relatives of elected officials can create the perception of a conflict of interest in the public's eye, even if one does not exist.
- Co-workers may feel the commissioner's relative is not subject to the same rules as everyone else.
- Other county employees may perceive a conflict in the chain of command, where the relative is seen as a de facto supervisor due to his or her access to the commissioner.
- From a public perspective, the hiring of family members can send a message that the county is not interested in hiring the most qualified employees, but prefers to hire based on "who you know" or "who you are related to."
- Nepotism and its related negative perceptions, whether valid or not, can be a deterrent to economic growth and development in the community.

#### **Lobbying Activities**

County commissioners have the ability to lobby state and federal officials as needed, based on issues and priorities before the county. State law grants commissioners the ability to lobby, provided that they are doing so within the official capacity of his or her public office or position.<sup>120</sup> Georgia law defines a "lobbyist" as anyone who receives more

than \$250 per year or spends more than \$1,000 per year to promote or oppose the passage of any legislation by the General Assembly, or anyone who is compensated for or spends more than \$1000 per year to promote or oppose the passage of a county ordinance or resolution.<sup>121</sup> Lobbyists are required to register with the Georgia Government Transparency and Campaign Finance Commission.<sup>122</sup>

County commissioners can advocate for or against legislation without having to register as a lobbyist, provided their advocacy is related to their public office or the welfare of the county they serve. Commissioners should be aware that persons who advocate before the county governing authority in support of or in opposition to local ordinances, and who are compensated to do so, must register as lobbyists.<sup>123</sup>

## **ETHICS**

A quick search in the dictionary will define the word ‘ethics’ as meaning “a set of moral principles...of conduct governing an individual or group.”<sup>124</sup> However, ethics is closely associated with the word ‘morals’ and therefore some interpret ethics and ethical behavior to be a matter of subjective opinion. However, in terms of elected and appointed officials, public policy, and governance, Georgia law and many local ordinances do set forth clear cut rules that define ethical behavior and must be followed in order to avoid sanctions. In other areas, being an “ethical” county commissioner is not as clearly defined and legal consequences do not exist for a commissioner making decisions that some may view as unethical.

This section addresses a range of issues, actions, and best practices regarding ethics, including:

- Legally required ethical conduct.
- Ethical ways to deal with conflict where the law does not provide clear rules.
- Ethics related to employment and other personnel issues.
- Unauthorized investigations by county commissioners.
- Reporting illegal activity.

### **Legally Required Ethical Conduct**

Both state statutes and local ordinances frequently define and prescribe what constitutes ethical conduct by Georgia’s local elected officials. It is important for county commissioners to be familiar with these areas of the law to avoid getting into circumstances or making decisions that may call their conduct into question, and ultimately result in legal action.

Commissioners should be well versed in state’s Georgia Government Transparency and Campaign Finance Act (Act)<sup>125</sup> and the Code of Ethics for Government Service.<sup>126</sup> In

addition, county commissioners should have a strong understanding of any local ordinances that may provide guidance for certain behavior and actions allowed, or not allowed, according to their own public policy.

#### State Law

Because the office of county commissioner is an elected position, all of Georgia's county commissioners are required to abide by the state's Act. This section focuses on the Act's requirements regarding campaign financial disclosure reports. For further information, visit the [Georgia Government Transparency and Campaign Finance Commission website](#).

Through the Act, the General Assembly has declared the policy and intent of the law is to "protect the integrity of the democratic process and to ensure fair elections."<sup>127</sup> In order to achieve this, the public must have access not only to campaign finance information, but also to personal information regarding a candidate's private interests. These laws require elected officials and those seeking to hold elected office to provide such information so that the public can determine if undue influence has affected, or may affect, the official's performance in office.<sup>128</sup> These statutes and the provisions within are legally enforceable standards of ethical behavior.

Accordingly, county commissioners must file reports disclosing campaign contributions in excess of \$100, including the names and addresses of contributors who provided those funds, as well as any and all expenditures of \$100 or more.<sup>129</sup> The law also provides restrictions regarding how campaign funds may be spent.<sup>130</sup> Additionally, the Act mandates that county commissioners — or those seeking public office — file Personal Financial Disclosure Statements (PFDS) within 15 days of qualifying for the position. PFDS are public records and therefore are accessible to the media and general public.<sup>131</sup>

A great deal of information about personal finances must be disclosed, including but not limited to:

- Names of all business entities in which the filer has an ownership interest of more than 5%.
- All real property owned by the filer with a value of \$5,000 or more.
- Occupation and employer of the filer and of the person's spouse.<sup>132</sup>

Enforcement of these laws is under the jurisdiction of the [Georgia Government Transparency and Campaign Finance Commission](#) (formerly known as the State Ethics Commission).<sup>133</sup> The commission has the legal authority to investigate suspected violations of the statutes, to conduct hearings, to issue orders requiring corrective action, and to assess civil penalties of up to \$1,000 for each violation.<sup>134</sup> The commission

may also refer violations to law enforcement officials, as a person who knowingly violates the law is guilty of a misdemeanor.<sup>135</sup>

Every county commissioner and county official is subject to the Georgia Code of Ethics for Government Service, which has ten “commandments.”<sup>136</sup>

1. Put loyalty to the highest moral principles and country above loyalty to persons, party, or government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.
3. Give a full day’s labor for a full day’s pay and give to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept for himself or herself, or his or her family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his or her governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
7. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his or her governmental duties.
8. Never use any information coming to him or her in the performance of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

This Code of Ethics does not have provisions that set forth penalties for violation; therefore, some view it as being merely advisory or aspirational in nature. However, the Georgia Court of Appeals has ruled that a violation of Rule Number 8, regarding the use of public information or knowledge for private profit or gain, is admissible evidence in a civil action to support a recovery of money damages against a county official for fraud.

## Code of Ethics for Government Service Violations: An Application of the Law

### ***Pope v. Propst***<sup>137</sup>

In this 1986 case, a county building inspector was held liable for fraud when he pressured a homeowner to sell her home to him at less than its fair market value. Using his position with the county, the inspector threatened the homeowner with eviction if she did not make expensive repairs, but fraudulently failed to inform her of available options that would allow her to stay in her home while the repairs were made.<sup>138</sup> As such, the court ruled this was a violation of the Code of Ethics rule, which prohibits a county official from making a private profit based upon information coming to him or her in the performance of his or her official duties. The court, in turn, upheld an award of compensatory and punitive damages, as well as attorney's fees.

A violation of the Code of Ethics can also provide grounds for the recall of a county commissioner by the voters. A recall occurs when the voters determine an elected official should be removed from office prior to the expiration of his or her term. The procedures for a recall election are set forth in O.C.G.A. § 21-4-1 et seq. One of the grounds authorizing a recall is "misconduct in office," which means "an unlawful act committed willfully by an elected public official or a willful violation of the Code of Ethics for Government Service contained in O.C.G.A. § 45-10-1."<sup>139</sup>

As seen in the above examples, the Code of Ethics can have significant legal consequences if the rules are knowingly and willfully violated.

### Local Ethics Ordinances

In addition to the guidance and statutes within Georgia law that guide ethical conduct and behavior, many counties have gone another step in adopting their own ethics ordinances. In some cases, these local ordinances impose penalties or sanctions that effectively make the rules mandatory.

Many times, local ethics ordinances address specific conduct and situations, direct the prescribed manner of conduct, and provide for penalties if the ordinance is violated. For example, one county ordinance provides strict guidance for county commissioners during all meetings of the board of commissioners; such that a commissioner

- shall not speak until recognized by the chair,
- shall not interrupt anyone who has the floor,
- shall limit comments to the motion being discussed,
- shall not use profanity,

- shall not attack the character or make derogatory remarks about county employees or other commissioners, and
- shall not use their cell phones or electronic devices for email, chatting, or posting on social media during the meeting.

As provided for by this local ordinance, any commissioner who violates these tenants may be removed from the meeting at the direction of the chair.<sup>140</sup>

In another county, a commissioner who violates similar provisions of that county's code of conduct ordinance can be fined by the other members of the board of commissioners up to \$500 per offense.<sup>141</sup>

Local codes of conduct and ethics ordinances are not unusual. Counties around the state have enacted a variety of ordinances that restrict the actions of commissioners, particularly in terms of disclosure and transparency. Examples from different counties include requirements such as:

- A commissioner must abstain from voting on a matter coming before the board if the commissioner has received compensation, income, or services above a specified amount from any person or entity requesting the action from the board of commissioners.<sup>142</sup>
- Similar to the Zoning Procedures Act, any person bidding on a county contract and who has made a campaign contribution of \$250 or more to a commissioner in that county must disclose the contribution within the bid or proposal package.<sup>143</sup>
- Commissioners may not intentionally provide misleading information or withhold necessary information from the full board of commissioners, as all commissioners must have equal access to the same information. "Secret communication" of necessary information between less than all of the commissioners is expressly prohibited.<sup>144</sup>

As these ordinances demonstrate, commissioners are free to develop and adopt their own ethics and code of conduct ordinances to govern themselves beyond what is written into state law. As a best practice, many local ordinances also contain rules related to nepotism when entering into contracts for services and prohibit commissioners from divulging confidential information, as discussed earlier in this chapter.

### **Ethical Ways to Deal with Conflict Where the Law Does Not Provide Clear Rules**

Invariably, commissioners will not always agree, and votes will not always be unanimous. Often, occasions will arise where one or more commissioners believe the majority is ill-advised, misguided, or just plain wrong. Indeed, those on the losing end of a vote may sometimes believe or suspect the majority has acted illegally or is covering

up wrongdoing. In such instances, a commissioner may naturally want to voice his or her concerns. Do commissioners have the right under the First Amendment to criticize the government they serve? What about Code of Ethics Rule No. 9, which states commissioners are to expose corruption wherever discovered? Does this rule not mandate action on behalf of a commissioner to voice those concerns?

The law does not give guidance to commissioners in this area and does not provide protocols spelling out exactly how they are to conduct themselves. County commissioners seeking to respond professionally and with respect for the institutions they serve should consider the following methods to deal with such conflicts:<sup>145</sup>

- *State any concern(s) concisely and professionally.*

During a meeting at which a subject is on the floor for discussion, every commissioner should feel free to request permission from the chair to speak. When recognized by the chair, the commissioner should state his or her position on the subject clearly and forcefully if necessary, but always remain mindful of proper decorum. People should not be insulted and their motives should not be called into question based on nothing more than speculation. In other words, stick to the facts, not the personalities.

Every commissioner's comments should be summarized in the minutes, as this is the official record of each commissioner's position. Meeting minutes are kept in perpetuity — the record will be there to prove the commissioner's point later if needed. If a commissioner feels he or she has been unfairly cut off or limited by the chair, the commissioner has the right to say so. However, the commissioner must remember to make such a statement with no more words than necessary, and he or she must stop talking when the chair so instructs.<sup>146</sup> Again, this exchange will be recorded in the minutes.

- *Remember the majority decision is the county's official position, act accordingly.*

Once a vote is taken, a commissioner in the minority should respect the fact that a decision has been made. As a member of the minority opinion or dissenting vote, a commissioner may never agree it was the right decision, but that does not authorize him or her to refuse to sign any documents necessary to carry out the majority's vote. A commissioner's signature does not mean he or she has changed their vote or position.

Commissioners must treat the majority's decision like an order from a superior officer. Because the majority vote is the official action of the governing authority of the county, it is in fact superior to the authority of any one commissioner. The commissioner is signing in his or her official capacity

in order to carry out the majority's decision, notwithstanding the fact that the commissioner voted against it.<sup>147</sup>

- *Be mindful of the implications of public comment.*

Once a commissioner leaves the meeting, is he or she free to criticize the majority's decision at the coffee shop, in the news media, on Facebook or other social media? What if a commissioner has someone else share their personal opinions as a proxy or surrogate — is that permissible? Technically, a commissioner can do any of these things, but there are important considerations regarding the impact of public comment and how to best go about it.

First and foremost, a commissioner is still a citizen and has the right under the First Amendment to criticize the government which he or she serves. However, other commissioners also have the right to respond to such criticism with their own “free speech,” which may include a public rebuke or censure.<sup>148</sup>

A commissioner who started a war of words would likely have no claim for unlawful retaliation because the law requires public officials to tolerate more significant criticism than ordinary citizens.<sup>149</sup> Accordingly, before embarking on a public rant about the decision of their fellow board members, county commissioners would be wise to keep the following points in mind:

- All members of the board of commissioners have a right to respond in public in order to discredit and undermine a dissenting commissioner.
- Commissioners must think and act strategically in their interactions with their fellow commissioners. A dissenting commissioner may have difficulty ever achieving consensus with their fellow board members on future measures of importance to their constituents if they have mishandled things publicly.
- A commissioner's ineffectiveness in producing results important to his or her constituents may lead to their choosing a different official to represent them in the future.

Once again, if a county commissioner feels compelled to state his or her arguments publicly, it is best to stick to facts and not personalities. A reasoned and well-presented argument on the merits of a dispute will likely garner respect. Conversely, mudslinging and attempts at character assassination may grab a headline or some “likes” on social media, but such tactics quickly slip into a downward spiral where all participants in the end lose their honor and respect in the community.<sup>150</sup>

### **Ethics Related to Employment and Other Personnel Issues**

County commissioners also encounter potential ethical challenges when faced with employment and other personnel issues. Certain employment decisions made by the county may be controversial or even lead to litigation against the county. How should a county commissioner act or engage if he or she believes the county made the wrong decision regarding employees? Is it permissible for a commissioner to state — publicly or privately — that a person terminated, demoted, not hired, or otherwise adversely affected was treated unfairly or as the result of a discriminatory reason?

Commissioners should always keep in mind that whatever he or she says can be used against the county in a legal proceeding. Commissioners must remember that in today's litigious environment, any comments or actions may be recorded. If legal action has been threatened or is likely, the best course is to have "no comment" on such matters and refer all inquiries to the county attorney.

However, should a commissioner feel compelled to comment on a matter, he or she should make it clear that they are speaking individually and not on behalf of the board of commissioners — both as a body and as individuals. The commissioner should also express that he or she has not been authorized to make a statement on behalf of the county. Commissioners should limit any statements to the facts as he or she understands them, not speculate about another person's knowledge, motives, or intent. Commissioners should also refrain from comparing the qualifications — or lack of qualifications — of other persons involved in the employment action, as such comments could lead to claims of libel or slander.

### **Unauthorized Investigations by County Commissioners**

County commissioners may conduct "investigations" into matters concerning the county, including the conduct of fellow commissioners, if such an investigation has been properly voted upon and approved by the board. Serious problems arise when a commissioner undertakes an investigation without authority granted by the other commissioners.<sup>151</sup> When proper authority has not been granted, these problems can include a commissioner interrupting normal county staff functions, demanding that employees stop what they are doing and provide requested documents and records, and interrogating county employees to the point they feel threatened or harassed.

Additional problems also occur when a single commissioner acting independently tries to bring the county attorney into such an investigation. When the majority of the board of commissioners has not taken official action and has not approved the county attorney's involvement, the attorney should refuse to participate. The investigation has not been properly authorized by his or her client, which is the county — not an individual commissioner.

In order to prevent unauthorized investigations, a county has the option of adopting various rules and policies. The following actions may prevent commissioners from overstepping the powers of their office in an attempt to undertake such an investigation:

- A county may adopt a policy providing that if a commissioner seeks county records or documents, he or she must submit an Open Records Law request and be subject to the same procedures as the general public.
- A county may adopt a policy that prohibits commissioners from making direct contact with county staff and gives county staff the right to refuse to answer questions they deem inappropriate.<sup>152</sup>
- The county attorney may be instructed to not undertake any legal work at the request of a single commissioner.

These are extreme measures. In a county where commissioners understand their roles and their individual limitations, these actions should not be necessary.

### **Reporting Illegal Activity**

If a county commissioner sincerely believes that criminal conduct has taken place within the county's government, there are appropriate ways to report that activity. Any commissioner may report a suspected crime to the sheriff or to the police chief of the municipality that serves as the county seat.

A county commissioner may also request to meet with the district attorney for the judicial circuit in which the county is located to share any concerns. Under state law, the Georgia Bureau of Investigation (GBI) is authorized to consider a request for an investigation if made by the sheriff, a judge of the superior court, or by the chief law enforcement officer of any municipality.<sup>153</sup>

## **CONCLUSION**

Georgia law and federal statutes have established boundaries for ethical behavior by county commissioners and other public officials. Abuse of office and conflicts of interest are also governed by state and federal law with restrictions that instruct the behavior and actions of elected officials. The lines provided within these laws, if crossed, can and will result in sanctions, removal from office, and possibly imprisonment.

However, ethical behavior — particularly for elected officials — means more than staying out of jail. Georgia's county commissioners should aspire to be ethical leaders in their communities. What does ethical leadership look like? Bill Gates, the co-founder of Microsoft, has stated that "leaders are those who empower others." His observations are apt guidelines for effective and principled leadership:<sup>154</sup>

1. *Leadership is not about titles or positional authority.*

Having a position in the hierarchy of an organization, allowing one to “lord it over” others does not in and of itself make one a leader, only a boss.

2. *Leadership is not about personality traits.*

Being charismatic, abundantly confident, and having a larger-than-life personality may result in ascending to power more quickly than others, but from Gates’ experience, these traits alone rarely enable a person to lead effectively long-term.

3. *Leadership is not management.*

Managers maintain the work; leaders lead the managers.

4. *Leadership is not about you.*

True leadership requires egos to be humbled and personal agendas to be surrendered. It’s not about you, it’s about the pursuit of excellence by your organization.

5. *Great leaders allow people to experiment and fail.*

Without trying something new and failing, it is virtually impossible to innovate and grow.

6. *Great leaders create opportunities for people to thrive.*

People within the organization have strengths and gifts of which you are not aware. Leaders give their people space to develop those talents and create an environment where employees see their initiatives become important to the success of the organization.

7. *Great leaders embrace respectful disagreement.*

Great leaders encourage divergent thinking, allowing people to challenge the status quo and examine all alternatives before making well-informed decisions. A great leader makes sure people feel safe expressing dissent. Be worried if you are surrounded by “yes men.”

8. *Great leaders share leadership.*

The old saying “There is no limit to what you can accomplish if you don’t mind who gets the credit” has been proven true. If you are still on your autocratic leadership high horse, it may be time to get off and stop dictating. A great leader knows this is not a sign of weakness so long as he or she has earned the respect of the people.

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<sup>1</sup> Ga. Const. art. I, § II, para. I.

<sup>2</sup> *Malcom v. Webb*, 211 Ga. 449, 459 (1955). Under Georgia law, trustees have a legal duty to administer the trust prudently, to provide accounts and reports, to distribute income, to avoid conflicts of interest, and to be impartial. Official Code of Georgia Annotated (O.C.G.A.) § 53-12-240 et seq.

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- <sup>3</sup> Id.
- <sup>4</sup> O.C.G.A. § 16-10-2(a).
- <sup>5</sup> O.C.G.A. § 16-10-2(b).
- <sup>6</sup> *State v. Agan*, 259 Ga. 541 (1989).
- <sup>7</sup> Id.
- <sup>8</sup> Stated more fully by former Chief Justice Charles L. Weltner of the Supreme Court of Georgia: “Public power—not for sale; Buy it or sell it—go to jail.” Charles L. Weltner. “Freeing Government from Corruption,” *Georgia County Government Magazine* 41, No. 8 (January 1990), 17.
- <sup>9</sup> O.C.G.A. § 16-10-2(a)(2)(A-J).
- <sup>10</sup> O.C.G.A. § 16-10-4(b).
- <sup>11</sup> O.C.G.A. § 16-10-5(b).
- <sup>12</sup> O.C.G.A. § 16-8-4.
- <sup>13</sup> Id.
- <sup>14</sup> *Simmons v. State*, 79 Ga. App. 390 (1949).
- <sup>15</sup> O.C.G.A. § 45-11-5.
- <sup>16</sup> *Holt v. State*, 11 Ga. App. 34 (1912).
- <sup>17</sup> O.C.G.A. § 45-11-5(b).
- <sup>18</sup> O.C.G.A. § 45-11-10.
- <sup>19</sup> O.C.G.A. § 16-10-21.
- <sup>20</sup> Id.
- <sup>21</sup> Id.
- <sup>22</sup> O.C.G.A. § 36-91-21(g).
- <sup>23</sup> O.C.G.A. § 36-91-20 et seq.; O.C.G.A. § 32-4-63.
- <sup>24</sup> O.C.G.A. § 45-11-4(d).
- <sup>25</sup> O.C.G.A. § 45-11-4.
- <sup>26</sup> *Steele v. State*, 227 Ga. 653 (1971); *Mapp v. State*, 204 Ga. App. 647 (1992).
- <sup>27</sup> *Lancaster v. Hill*, 136 Ga. 405 (1911).
- <sup>28</sup> *Phillips v. State*, 127 Ga. App. 499 (1972).
- <sup>29</sup> O.C.G.A. § 45-11-1(a).
- <sup>30</sup> O.C.G.A. § 50-18-70 et seq.
- <sup>31</sup> O.C.G.A. § 50-18-99.
- <sup>32</sup> O.C.G.A. § 50-18-102 (criminal offense to destroy records in violation of an adopted retention schedule).
- <sup>33</sup> See, generally, O.C.G.A. § 50-14-1 et seq.
- <sup>34</sup> O.C.G.A. § 50-14-6.
- <sup>35</sup> O.C.G.A. § 50-14-1.
- <sup>36</sup> O.C.G.A. § 50-14-6.
- <sup>37</sup> O.C.G.A. § 45-3-1.
- <sup>38</sup> 18 United States Code Annotated (U.S.C.) § 1951.
- <sup>39</sup> Id.
- <sup>40</sup> *Evans v. United States*, 504 U.S. 255 (1992).
- <sup>41</sup> 18 U.S.C. § 201.
- <sup>42</sup> 18 U.S.C. § 201(b).
- <sup>43</sup> 18 U.S.C. § 201(c).
- <sup>44</sup> 18 U.S.C. § 666.
- <sup>45</sup> Id. at § 666 (b).
- <sup>46</sup> Id. at § 666 (a)(1)(A).

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<sup>47</sup> *United States v. Hines*, 541 F.3d 833 (8<sup>th</sup> Cir. 2008).

<sup>48</sup> *Salinas v. United States*, 522 U.S. 52 (1997).

<sup>49</sup> *Id.*

<sup>50</sup> 18 U.S.C. § 641.

<sup>51</sup> 18 U.S.C. §§ 1341, 1343, and 1346.

<sup>52</sup> *Colony at Holbrook, Inc. v. Strata G.C., Inc.*, 928 F. Supp. 1224 (E.D.N.Y. 1996).

<sup>53</sup> 18 U.S.C. § 1346; see also *Skilling v. United States*, 561 U.S. 358 (2010).

<sup>54</sup> 18 U.S.C. § 1952.

<sup>55</sup> *United States v. Herrera*, 584 F.2d 1137 (2d Cir. 1978).

<sup>56</sup> 18 U.S.C. § 1001.

<sup>57</sup> *Id.*

<sup>58</sup> 18 U.S.C. § 1961 et seq.

<sup>59</sup> 18 U.S.C. § 1961(1).

<sup>60</sup> 18 U.S.C. § 1961(5).

<sup>61</sup> *United States v. Warner and Ryan*, 498 F.3d 666, 675 (7<sup>th</sup> Cir. 2007).

<sup>62</sup> O.C.G.A. § 45-5-6.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*, O.C.G.A. § 45-5-6(d)(1). However, if the indicted official is not tried at the next regular or special term of court (except for continuances granted at the official's request), then the official is entitled to be reinstated pending trial. O.C.G.A. § 45-5-6(i).

<sup>65</sup> *Id.*, O.C.G.A. § 45-5-6(c). This statute was amended by SB 337 during the 2022 Legislative Session so as to provide that a county commissioner suspended from office pursuant to this process shall not receive compensation from his or her office while suspended. If the commissioner is later reinstated to office, he or she is entitled to receive all compensation withheld under the provisions of this Code section.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*, O.C.G.A. § 45-5-6(d)(2).

<sup>68</sup> *Beazley v. DeKalb County*, 210 Ga. 41, 43 (1953).

<sup>69</sup> *Id.* (“If there is a reasonable doubt of the existence of a particular power, the doubt is to be resolved in the negative.”).

<sup>70</sup> *Warner Robins v. Rushing*, 259 Ga. 348 (1989). Although the case involved a city and the actions of its mayor, the same legal principles apply to county commissioners.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* See also O.C.G.A. § 45-6-5 (“Powers of all public officers are defined by law and all persons must take notice thereof. The public may not be stopped by the acts of any officer done in the exercise of an unconferrred power.”)

<sup>73</sup> *Marlowe v. Colquitt County*, 278 Ga. App. 184 (2006).

<sup>74</sup> *Id.* at 186-187. The Court stated: “Neither the counties of this state nor their officers can do any act, make any contract, nor incur any liability not authorized by some legislative act applicable thereto. If there is reasonable doubt of the existence of a particular power, the doubt is to be resolved in the negative. Powers of county commissioners are strictly limited by law, and they can do nothing except under authority of law.”

<sup>75</sup> *Id.*

<sup>76</sup> O.C.G.A. § 36-1-21.

<sup>77</sup> O.C.G.A. §§ 32-4-42(5) and (10).

<sup>78</sup> Again, the best way to determine the extent of the county administrator or county manager's authority over county personnel is to consult the local Acts, statutes, and ordinances that create or define the duties of that position. Such provisions typically (but not always) vest the authority to *supervise* employees in the county administrator/manager. However, many counties vary as to whether the administrator/manager has the authority to *hire and fire*, and if so, at what work force levels (e.g., some administrators/managers have that authority below

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the department head level, others extend to department heads, while some require board approval for all hiring and firing decisions). There is no “one size fits all” rule in this area; each county’s specific laws must be consulted.

<sup>79</sup> *Krieger v. Walton County Board of Commissioners*, 271 Ga. 791 (1999).

<sup>80</sup> *Id.* at 792.

<sup>81</sup> *Id.* at 794.

<sup>82</sup> O.C.G.A. §§ 50-14-3(b)(1)(A) and 50-14-2(1).

<sup>83</sup> O.C.G.A. §§ 50-14-3(b)(1) (real estate) and 50-14-3(b)(2) (personnel).

<sup>84</sup> One important caveat, however: If the commissioners are meeting with the county attorney in executive session to discuss pending or potential litigation, the presence of a third-party in the room could result in a waiver of the attorney-client privilege. This waiver could possibly require the disclosure of statements that were intended to be confidential. Such a situation may also call into question the lawfulness of having the executive session, as this exemption is primarily designed to protect the attorney-client privilege.

<sup>85</sup> *Harrison v. McHenry*, 9 Ga. 164, 167 (1850).

<sup>86</sup> O.C.G.A. § 16-10-6. The statute does provide limited exceptions, which are discussed in this chapter.

<sup>87</sup> *Mayor and Council of the City of Macon v. Huff*, 60 Ga. 221 (1878). See also 1976 Op. Att’y Gen. U76-55.

<sup>88</sup> *Young v. State*, 205 Ga. App. 357 (1992) (although county employee was not an officer of the corporation doing business with the county, the evidence was sufficient to support a conviction where the county employee effectively ran the corporation).

<sup>89</sup> O.C.G.A. § 36-1-14.

<sup>90</sup> *Palmer v. Wilkins*, 163 Ga. App. 104 (1982). There was also evidence that the commissioner had purchased a bush hog mower at an auction for \$6,300, and then sold it to the county (through his nephew) for \$18,000.

<sup>91</sup> O.C.G.A. § 16-10-6(c)(1). Although sales of less than \$800 per calendar quarter do not constitute an unlawful conflict of interest, the county’s purchasing policies and competitive bid procedures should still be followed.

<sup>92</sup> O.C.G.A. § 16-10-6(c)(2). Despite this statutory exception, there may be legitimate concerns about the commissioner judging his own company’s performance of a contract to supply the goods. See 1983 Op. Att’y Gen. U83-8.

<sup>93</sup> O.C.G.A. § 16-10-6(c)(3). Georgia law also provides a mechanism for a director of a county development authority to conduct business with the authority on which he or she serves. O.C.G.A. §36-62-5(e)(1)(B). The financial interest must be disclosed, and if it has a value in excess of \$200 per quarter it must be published in the county’s legal organ prior to the transaction being consummated. The Georgia Government Transparency and Campaign Finance Committee has the authority to investigate any alleged violations of this statute.

<sup>94</sup> *Board of Commissioners of Miller County v. Callan*, 290 Ga. 327 (2012).

<sup>95</sup> *Id.* at 333. The Court also ruled the local home rule amendment did not conflict with O.C.G.A. § 36-1-14.

<sup>96</sup> *Montgomery v. Atlanta*, 162 Ga. 534, 546 (1926).

<sup>97</sup> *Id.*

<sup>98</sup> *Department of Transportation v. Brooks*, 254 Ga. 303 (1985).

<sup>99</sup> *Id.* at 317.

<sup>100</sup> *Vickers v. Coffee County*, 255 Ga. 659 (1986).

<sup>101</sup> *Id.* at 660.

<sup>102</sup> O.C.G.A. § 36-67A-2.

<sup>103</sup> O.C.G.A. § 36-67A-1(6).

<sup>104</sup> O.C.G.A. § 36-67A-3. The same disclosure rule applies to persons who wish to be heard in opposition, except that disclosure must be made at least five days before the hearing on the rezoning request.

<sup>105</sup> *Dick v. Williams*, 215 Ga. App. 629, 631 (1994) (counties may adopt conflict of interest rules more stringent than those established by statutes of state-wide application).

<sup>106</sup> O.C.G.A. § 36-67A-4.

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<sup>107</sup> *Bowen v. Griffith*, 258 Ga. 162, 166 (1988). The Court said: “The reason is too plain and palpable for serious dispute. The man becomes a judge in his own case. He agrees to perform work himself, and yet is to judge whether or not it is well done. It matters not how fair the contract may be; public policy will not uphold it. This principle is iterated and reiterated everywhere in the books.” *Id.*, citing *Mayor of Macon v. Huff*, 60 Ga. 221 (1878).

<sup>108</sup> 2004 Op. Att’y Gen. U04-02.

<sup>109</sup> *Columbus v. Board of Water Commissioners of Columbus*, 261 Ga. 219 (1991). By extension, a commissioner may not simultaneously serve on the board of assessors.

<sup>110</sup> For example, in some counties the 9-1-1 Director also serves as the Emergency Management Director. While this does not violate any specific law, experience has shown that some officials who “wore both hats” chose to spend more time and effort on one position than the other, resulting in a lapse of supervision in the department less favored.

<sup>111</sup> O.C.G.A. § 45-2-2. The statute does make an exception where dual offices are allowed “by special enactment of the General Assembly,” presumably a local act specific to the county. Additionally, O.C.G.A. § 36-62-5(a) allows no more than one county commissioner to serve as a director on the county’s development authority.

<sup>112</sup> *Id.*

<sup>113</sup> See, e.g., *Carter v. Veal*, 42 Ga. App. 88 (1930) (coroner cannot be legally commissioned as a deputy sheriff); *Black v. Catoosa County School District*, 213 Ga. App. 534 (1994) (deputy sheriff cannot serve as a member of the county board of education); 1945-1947 Op. Att’y Gen. 147 (county commissioner cannot serve as school superintendent).

<sup>114</sup> 1954-1956 Op. Att’y Gen. 77.

<sup>115</sup> 1998 Op. Att’y Gen. U98-8.

<sup>116</sup> This is true with respect to every commissioner who has a full-time employer — a commissioner should abstain from considering or voting upon any matter in which his employer has an interest, as the public could perceive a conflict of interest. This is discussed in more detail in the section of this chapter entitled “Ethics.”

<sup>117</sup> O.C.G.A. § 45-10-80, which incorporates definitions set forth in O.C.G.A. §§ 21-5-3(22)(A) - (E) and 45-1-4(a)(3). This prohibition is not limited to employment by the county that the commissioner or constitutional officer serves but appears to apply to a position of government employment anywhere. There is also a nepotism statute with respect to local boards of education. O.C.G.A. § 20-2-51(c)(4)(A).

<sup>118</sup> *Bradford v. Hammond*, 179 Ga. 40 (1934).

<sup>119</sup> O.C.G.A. § 36-1-21(a). This authority does not extend to employees of county elected officials unless specific requirements within the statute are met.

<sup>120</sup> O.C.G.A. § 21-5-71(i)(6).

<sup>121</sup> O.C.G.A. § 21-5-70(5).

<sup>122</sup> O.C.G.A. § 21-5-71.

<sup>123</sup> This registration requirement does not apply to attorneys who are paid to appear before the governing authority on behalf of a client. O.C.G.A. § 21-5-71(i)(4).

<sup>124</sup> Merriam-Webster Online Dictionary. Retrieved October 29, 2020 from <https://merriam-webster.com/dictionary/ethic>.

<sup>125</sup> O.C.G.A. § 21-5-1 et seq.

<sup>126</sup> O.C.G.A. § 45-10-1.

<sup>127</sup> O.C.G.A. § 21-5-2.

<sup>128</sup> *Id.*

<sup>129</sup> O.C.G.A. § 21-5-34(b)(1).

<sup>130</sup> O.C.G.A. § 21-5-33.

<sup>131</sup> O.C.G.A. §§ 21-5-50 through 51.

<sup>132</sup> O.C.G.A. § 21-5-50(b).

<sup>133</sup> O.C.G.A. § 21-5-4.

<sup>134</sup> O.C.G.A. § 21-5-6(b).

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<sup>135</sup> O.C.G.A. § 21-5-9.

<sup>136</sup> O.C.G.A. § 45-10-1.

<sup>137</sup> *Pope v. Propst*, 179 Ga. App. 211 (1986).

<sup>138</sup> *Id.* at 213.

<sup>139</sup> [Scheuer, J. "County Commissioners: Recall Memorandum." February 21, 2020.](#)

<sup>140</sup> Wayne County Ordinance to Provide for the Proper Organization of Meetings of the County Commissioners and Public Access to Such Meetings; Wayne County Code of Ordinances, Sec. 2-25(o).

<sup>141</sup> Butts County Ordinance Establishing a Code of Conduct for Members of the Butts County Board of Commissioners; Butts County Code of Ordinances, Sec. 2-66c.

<sup>142</sup> The threshold is \$500 per year in Cobb and Bulloch County, and \$5,000 per year in Paulding County. See Cobb County Code of Ordinances Article II, Division 2, Code of Ethics, §2-47; Bulloch County Code of Ordinances Article IIA, County Ethics Code, § 2-35; Paulding County Code of Ordinances, Art. 1, Division 2, Code of Ethics, § 2-12(7)(b), § 2-13(b).

<sup>143</sup> Forsyth County Code of Ordinances, Chapter 2, Article III, Ethical Standards, § 2-86.

<sup>144</sup> Columbia County Code of Ordinances, Article V, Code of Ethics, § 2-296.

<sup>145</sup> The suggestions that follow are offered by the author working in conjunction with Ken Jarrard, Esq. of the law firm of Jarrard & Davis.

<sup>146</sup> Under Robert's Rules of Order, if the chair stops a member who has the floor from continuing to speak, the proper way to object is to raise a "point of order," as the speaker generally has the right to hold the floor until he or she has finished (subject to any time limitations on debate that may apply in a particular jurisdiction). If the chair insists that the member stop speaking, the speaker may appeal the ruling of the chair, which if seconded allows a majority of the board to determine if the speaker may continue.

<sup>147</sup> Forsyth County inserts the following language below the signature lines on its resolutions: "For an Approved Resolution of the Board of Commissioners, all Board Members execute the Resolution irrespective of whether a particular member was in attendance for the vote or whether that particular member voted against the action." This language could be added to address the concerns of those in the minority.

<sup>148</sup> *Phelan v. Laramie*, 235 F.3d 1243 (10<sup>th</sup> Cir. 2000); *Zilich v. Longo*, 34 F.3d 359, 363-64 (6<sup>th</sup> Cir. 1994); *Blair v. Bethel School Dist.*, 608 F.3d 540 (9<sup>th</sup> Cir. 2010).

<sup>149</sup> *Perkins v. Township of Clayton*, 411 F. App'x 810 (6<sup>th</sup> Cir. 2011).

<sup>150</sup> Some people believe they must tear down what they perceive to be broken before anything good can be established (and sometimes want the glory for righting a wrong). Other people focus on the things that are working well and strive to make them better (and sometimes fail to see broken systems or injustice around them). It is like the glass half full/half empty definition of an optimist and pessimist. County commissioners come in both flavors. Leaders focus equally on the good and the bad, with no need to be either a savior or a martyr. Leaders create a path forward, and they recruit others to join them, usually by positive rather than negative reinforcement.

<sup>151</sup> These investigations have been facilitated by a commissioner's (1) access to records, (2) influence over department heads and staff, (3) perceived power, and (4) opportunity, i.e., spending an inordinate amount of time in the administration building.

<sup>152</sup> Commissioners may naturally believe they have the right to go into any county office, at any time, in order to conduct an inspection or investigation. In the case of part-time commissioners and those who do not serve as the chief executive officer of the county, this practice could become disruptive to the point that it must be stopped. Commissioners would be well-advised not to abuse their access to county departments and employees, for to do so could result in measures that severely limit a commissioner's effectiveness.

<sup>153</sup> O.C.G.A. § 35-3-8.1. The police chief of a county police department in counties having a population of more than 100,000 may also request a GBI investigation. The statute provides that the governing authority of a municipality may request a GBI investigation. It is not clear if the term "municipality" would include a county governing authority, but if it does, this language suggests the request must come from a majority of the board, not simply one commissioner.

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<sup>154</sup> Marcel Schwantes. "Bill Gates Says this One Simple Habit Separates Successful Leaders from Everyone Else," *Inc. Magazine*, September 23, 2019.