

**State Employee
Code of Conduct Task Force**

**Executive Order 2014-23
Final Report**

August 7, 2014

Holly G. Pisarik, Task Force Chair
Patrick Maley, State Inspector General
Sam Wilkins, Director of the Division of Human Resources
Herb Hayden, Executive Director of the State Ethics Commission
Swati Patel, Chief Legal Counsel to the Governor
Ralph Young, Vice President of Human Resources for FN Manufacturing
Jim Harrison, Code Commissioner and Director of Legislative Council
Ashley Cuttino, Esquire, Ogletree, Deakins, Nash, Smoak, Stewart



South Carolina
Department of Labor, Licensing and Regulation



Nikki R. Haley
Governor

Office of the Director

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Holly G. Pisarik
Director

August 7, 2014

The Honorable Nikki R. Haley
Office of the Governor
1205 Pendleton Street
Columbia, SC 29201

Dear Governor Haley:

I am writing on behalf of the State Employee Code of Conduct Task Force, created pursuant to Executive Order 2014-23, attached hereto as an exhibit. The Executive Order instructed the Task Force members to make recommendations for a Code of Conduct for state employees and for the manner in which employees should receive initial and subsequent training on standards of official conduct. Our Task Force consisted of Patrick Maley, State Inspector General, Sam Wilkins, the Director of the Division of Human Resources, Herb Hayden, the Executive Director of the State Ethics Commission, Swati Patel, Chief Legal Counsel to the Governor, Ralph Young, Vice President of Human Resources for FN Manufacturing, Jim Harrison, Code Commissioner and Director of Legislative Council, Ashley Cuttino, a labor and employment attorney with Ogletree, Deakins, Nash, Smoak, Stewart, and myself.

Since the signing of the Order, the Task Force has done extensive work. We have met on three occasions and held one public hearing. To ensure that the voices of all interested state employees and public interest groups were heard, the Task Force received testimony in a public hearing, sent a letter under your signature to all state employees and the Association of Counties, and set up a dedicated e-mail address to receive feedback. In addition, the Task Force reached out to all Cabinet directors for feedback, many of whom conducted agency surveys, set up focus groups, and encouraged participation in the public hearing and the submission of written comments. Finally, the Task Force obtained copies of and reviewed Codes of Conduct from over 60 state agencies, departments, and colleges and universities, other states, and several private sector employers. In total, the Task Force received comments and feedback from over 1,500 state employees and public interest group members.

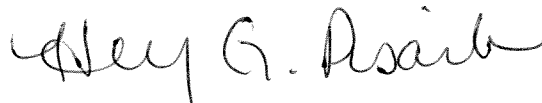
The Task Force's work has culminated in the enclosed recommended Model Code of Conduct for state employees, including several proposed legislative amendments. As you will see, in some instances, the recommended Code merely restates in simple terms the provisions of

the Ethics Act. In other instances, the Task Force recommends standards that are more stringent than those in the Ethics Act to create a higher level of accountability. The Task Force believes that this Code will provide clear, easy to understand guidance to state employees and will help provide the public with greater trust and confidence in state government.

As you will also see, the newly created Department of Administration is integral to the administration and enforcement of the recommended Code, such as the creation of an initial training program by the Department and written permission for variances from the Code from the Department. For this reason, it is recommended that you allow the Human Resources Division of the Department of Administration to become operational prior to the adoption of a Model Code of Conduct for state employees.

The Task Force believes that your efforts will make a positive impact on state government for many years to come and thanks you for the opportunity to participate in this important endeavor.

Sincerely,



Holly G. Pisarik, Chair
State Employee Code of Conduct Task Force

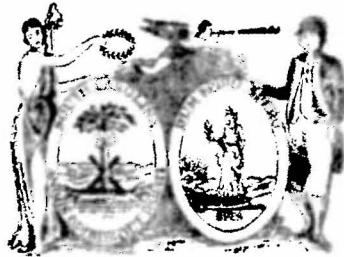
cc: Marcia Adams, Executive Director, S.C. Budget and Control Board
Patrick Maley, State Inspector General
Herb Hayden, Executive Director, S.C. Ethics Commission
Senator Luke A. Rankin, Chairman, Senate Ethics Committee
Representative, Kenneth A. Bingham, Chairman, House Ethics Committee

State of South Carolina
Executive Department

FILED

APR 09 2014

Mark Hammond
SECRETARY OF STATE



Office of the Governor

EXECUTIVE ORDER NO.

2014-23

WHEREAS, the establishment and enforcement of the highest standards of official conduct serves both to support a culture of good government for the State of South Carolina and also to provide the public with greater confidence that their government is serving them responsibly and effectively; and

WHEREAS, the "Rules of Conduct" found in Article 7, Chapter 13 of Title 8 of the South Carolina Code of Laws prohibit the most egregious forms of misconduct, but being decades old, do not provide current state employees with sufficiently clear or robust guidance relating to the public's contemporary expectations for their official conduct; and

WHEREAS, although the General Assembly continues to debate a meaningful ethics reform package, that legislation's primary focus is on the responsibilities of elected officials, as opposed to the senior-level appointees and other state employees who handle sensitive information and make countless key decisions everyday; and

WHEREAS, this year's passage of legislation to establish a Department of Administration expanded whistleblower protections and created a more effective and responsive organizational structure that can be used to develop more stringent and uniform standards of official conduct for state employees, along with a centralized process for developing and distributing related training to new and existing employees; and

WHEREAS, this Administration has led many efforts and supported others to promote accountability and integrity in the provision of public services.

NOW, THEREFORE, pursuant to the powers conferred upon me by the Constitution and Statutes of the State of South Carolina, I hereby establish the State Employee Code of Conduct Task Force, which shall be constituted and shall execute its duties and responsibilities as follows:

1. **Mission:** To develop recommendations for a Code of Conduct for state employees and for the manner in which public servants should receive initial and subsequent training on standards of official conduct.

2. **Membership**: The State Employee Code of Conduct Task Force ("Task Force") shall consist of at least seven members including the State Inspector General, the Director of the Division of Human Resources, the Executive Director of the State Ethics Commission, the Chief Legal Counsel to the Governor, and at least three additional members with experience in management, human resources or employment law or policy, investigations or law enforcement, or public interest advocacy. Each of these additional members shall be appointed by the Governor, one of whom the Governor shall designate as Chair.

3. **Duties and Responsibilities**:

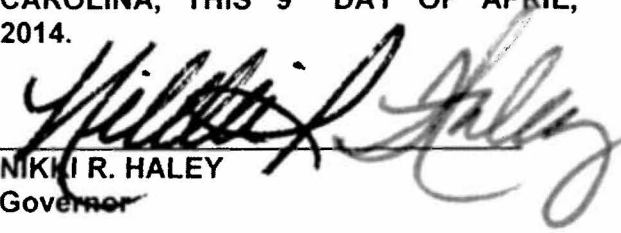
- a. The Task Force shall develop recommendations for the general content of a State Employee Code of Conduct, addressing any appropriate topics that include but are not limited to:
 - i. Acceptance and reporting of gifts
 - ii. Financial disclosures and/or prohibited transactions for individuals in senior-level positions and/or those with access to sensitive information
 - iii. Appropriate use of state resources and equipment, including information technology
 - iv. Assurance of a safe, nondiscriminatory work environment
 - v. Whistleblower protections and mandatory reporting obligations
 - vi. Post-employment reporting requirements and/or restrictions on representing non-state interests before state agencies
 - vii. Other conflicts of interest or conduct-related subjects
- b. The Task Force shall also make recommendations for developing and maintaining an effective program for training new employees and periodically retraining existing employees on their rights and responsibilities under the proposed Code of Conduct. These recommendations shall address, at a minimum:
 - i. Delineation of central vs. agency roles
 - ii. Responsibilities of employees, supervisors, and central and agency human resources staff
 - iii. Use of online training
 - iv. Variations in training content by level and/or type of position
- c. The Task Force shall request and evaluate written recommendations from the public interest groups; state and local government agencies, officials, and employees; the State Ethics Commission; and the legislative ethics committees.
- d. The Task Force shall conduct a minimum of two public hearings and may conduct more as necessary.
- e. In making final recommendations, the Task Force must evaluate and consider all public testimony and written submissions.
- f. Staff and legal support for the Task Force shall be supplied by the Division of Human Resources.

4. **Recommendations:** Final written recommendations must be submitted to the Governor and the other members of the Budget and Control Board, the State Inspector General, the Chairman of the State Ethics Commission, and the Chairmen of the House and Senate Ethics Committees no later than July 1, 2014.

This Order shall take effect immediately.



GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 9th DAY OF APRIL, 2014.


NIKKI R. HALEY
Governor

ATTEST:


MARK HAMMOND
Secretary of State

RECOMMENDATIONS FOR A STATE EMPLOYEE CODE OF CONDUCT



South Carolinians deserve good government, which includes, in part, citizens having the highest degree of confidence in the conduct of state officials and employees. Over 66,000 state employees serve in 98 state agencies with responsibilities ranging from purchasing goods and services for agencies and their clients to building roads and keeping the public safe, all of which affect South Carolinians on a daily basis. Citizens depend on state officials and employees to make lawful, ethical decisions and expect them to serve the interests of the people, not their own, which is demonstrated by employees remaining free from favoritism, undue influence, and all forms of impropriety, real or perceived.

All state officials and employees are bound by the State Ethics Act ("Ethics Act"); however, this law fails to provide clear guidance in many instances. Further, although the express language of the Ethics Act makes it applicable to all state employees, the preamble is clear that the Act's focus is on the responsibility of elected officials. Beyond the Ethics Act, many agency employees are bound by agency policy; however, these policies are inconsistent, incomplete, or non-existent across different agencies. Currently, out of 98 state agencies, only 35 state agencies have a code of conduct, and those codes are not consistent.

Most state employees want to do the right thing, but in the absence of clear or consistent guidance, the right thing is not always readily apparent. This Code of Conduct ("Code") is intended to provide clear guidance, setting forth stringent and uniform standards of official conduct. Much of this Code merely restates in simple terms the rules that currently exist in the Ethics Act. Strengthening public confidence and trust in government requires the highest standard of conduct; therefore, some rules go beyond the Ethics Act to create a higher level of accountability.

Recommended General Policy

Each Cabinet agency must adopt a Code of Conduct. The Code of Conduct recommended in this report must be used as a model by each Cabinet agency when developing its Code. However, any variances from this recommended Code must be justified, in writing, by the agency and approved by the Department of Administration. State law may require certain state agencies to have additional or more stringent requirements than those imposed by this Code. Further, each agency shall appoint an ethics officer who is a licensed attorney responsible for assisting employees with

questions concerning ethical conduct. In all cases of uncertainty, employees must seek guidance from the agency's ethics officer. Once adopted, all Governor's Office and Cabinet agency employees will be bound by their agency's Code and continue to be bound by all federal and state laws, including the Ethics Act. This recommended Code of Conduct should also guide other state entities outside of the Governor's Office and Cabinet.

Five ethical principles are central to all of the rules contained in the Code:

Honesty – Employees should be truthful and sincere in all interactions with the public and with each other.

Fairness – Employees should seek to make impartial, just, and equitable decisions.

Integrity – Employees should always act in a manner that instills public confidence and should avoid participating in any matter where a real or perceived conflict of interest exists.

Respect – Employees should demonstrate respect to others at all times.

Loyalty – Employees should remain loyal to the State and the citizens they serve and should not engage in any conduct that calls into question this loyalty.

Employees should be guided, first and foremost, by these ethical principles while performing their individual job duties and responsibilities. The following more specific rules are intended to be an application of these principles.

Eight Recommended Standards of Conduct

1. Gifts and Other Things of Value

Most state employees work hard, and it is understandable that citizens and businesses may want to show gratitude for quality customer service, a good working relationship, or a job well done. Acceptance of these gifts by state employees, however, has the potential to create real or perceived favoritism toward particular customers, vendors, or businesses, undue influence, or a real or perceived conflict of interest. Thus, the best practice is to avoid this situation.

Rule 1 – *Except as provided below, you may not accept a gift or anything of value for yourself from a person or entity given as a result of your employment with the State.*

Clarifications:

Gifts given because of a relationship that existed before your employment with the State or for reasons other than your employment with the State are not prohibited.

Gifts given by your employer and co-workers are not prohibited.

Promotional, informational, or educational items, such as calendars, pamphlets, or pens, given to you as a result of your state employment with a value of less than \$10 are not prohibited by this rule. These items, however, shall at no time be prominently displayed in the agency to create an appearance of favoritism or endorsement of a particular product, vendor, or business.

Acceptance of a personalized trophy or plaque with a value of less than \$150 is not prohibited by this rule.

Items given to an employee, department, or agency, not otherwise excluded from this rule, not easily returned may be donated to a charity or placed in a common area for the enjoyment of all agency employees. These items may not be retained for the benefit of any one employee or particular group of employees. Any items donated or retained by the agency for the benefit of all employees must be approved by the agency director, and the agency must retain a file documenting all of these items.

Employees may not receive compensation for speaking; however, they may accept a meal provided in conjunction with the speaking engagement where all participants are entitled to the same meal. In addition, employees may accept or be reimbursed for actual and reasonable travel and lodging expenses related to the speaking engagement.

Gifts that include travel, lodging and/or meal expenses paid for on behalf of an employee to participate in a work-related event, that could otherwise have been paid for by the agency employing the employee, is a gift to the agency, not the individual employee, and is not prohibited with the following two exceptions: (1) a state agency may never receive any gift from a lobbyist; and (2) a state agency may receive a gift from a lobbyist's principal up to the amounts prescribed by the State Ethics Commission.

2. Conflicts of Interest

State employees have a duty of loyalty to the State as their employer. Certain dealings outside of work, both personal and financial, have the potential to create an actual or perceived conflict in fulfilling this duty to the State. Employees should avoid these situations by limiting certain dealings outside of their employment or removing themselves from particular matters.

Rule 2 – *You may not make, participate in, or influence a governmental decision in which you, a family member, an individual with whom you are associated, or a business with which you are associated has an economic interest.*

You may not have outside employment which creates a real or perceived conflict of interest or is incompatible with the duties and expectations of state employees. Outside employment must be approved in advance, in writing, by the agency

director. An agency director must receive written approval from the Governor before engaging in outside employment. If the agency director seeks to be employed by another state agency or institution of higher education, he still must obtain the approvals as required by S.C. Code Ann. § 8-11-170.

You may not have an economic interest in a contract with the State or its political subdivisions if you are authorized to perform an official function relating to the contract.

Recusal: You must report, in writing, any actual or perceived conflicts to your agency's ethics officer, who will review and determine whether a conflict exists. If the ethics officer determines no conflict exists, he must document, in writing, the basis for the determination. If it is determined that a conflict exists, you must immediately remove yourself from the decision, vote, or process. The ethics officer must keep written documentation of all recusals.

Definitions:

For purposes of this rule, a “*family member*” includes a spouse, parent, sibling, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, and an individual claimed by you as a dependant for income tax purposes.

For purposes of this rule, an “*individual with whom you are associated*” means an individual with whom you or a member of your immediate family mutually has an interest in any business of which you or a member of your immediate family is a director, officer, owner, employee, compensated agent, or holder of stock worth \$100,000 or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

For purposes of this rule, a “*business with which you are associated*” means a business of which you or a member of your immediate family is a director, officer, owner, employee, compensated agent, or holder of stock worth \$100,000 or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

For purposes of this rule, “*official function*” means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of the contract.

3. Financial Disclosures

Employees that affect the daily decisions of the State are more accountable through financial disclosure to the public.

Rule 3 – *State employees who are (1) agency heads; (2) chief, deputy, or assistant administrative officials or directors of a division, institution, facility, or*

department; (3) chief finance employees; and (4) chief purchasing employees are required by statute to annually file a Statement of Economic Interests with the State Ethics Commission pursuant to Section 8-13-1110 of the South Carolina Code of Laws.

The Department of Administration must examine each agency's organizational structure to determine if additional employees, because of their positions in their agencies, should file a Statement of Economic Interests. Upon a determination that additional employees should file, the Department of Administration must notify, in writing, the agency director and the employee of the filing requirement. Such employee, if not already required to file with the State Ethics Commission, must file a Statement of Economic Interests with the Department of Administration.

Legislative Amendment Recommended:

The current law expressly requires the first and second levels of an agency to file a disclosure report, which could be limited to an agency head and a chief of staff, if that position exists. Additional employees that serve in important decision-making positions should also be required to file a disclosure report.

Amend Section 8-13-1110 of the South Carolina Code of Laws to require additional employees to file a disclosure report:

(A) No public official, regardless of compensation, and no public member or public employee as designated in subsection (B) may take the oath of office or enter upon his official responsibilities unless he has filed a statement of economic interests in accordance with the provisions of this chapter with the appropriate supervisory office. If a public official, public member, or public employee referred to in this section has no economic interests to disclose, he shall nevertheless file a statement of inactivity to that effect with the appropriate supervisory office. All disclosure statements are matters of public record open to inspection upon request.

(B) Each of the following public officials, public members, and public employees must file a statement of economic interests with the appropriate supervisory office, unless otherwise provided: [...]

(3) (i) the chief administrative official or employee; (ii) the deputy or assistant administrative official or employee; ~~or~~ and (iii) the director of a division, institution, or facility of any agency or department of state government; [...]

4. Use of State Resources

State resources are limited, and the public must trust state officials and employees to be good stewards of these resources. The public should have confidence that state resources are being used for the benefit of all citizens, the owners of the property, and not as personal property of state employees.

Rule 4 – *You may only use state resources and/or property for conducting official business, except that incidental use of state property is permitted as long as it does not result in additional public expense. Incidental use is infrequent and minimal.*

You may never use state resources for private business and/or financial gain.

You shall not permit others to access or use any assigned equipment, including state cars, laptops, cell phones, or other electronic devices, except as authorized by the agency.

You may never use state personnel, equipment, materials, or facilities for political campaigns.

Unless specifically required by the agency to perform a job function, you may not use social media, including but not limited to Facebook, Instagram, and Twitter, while on duty or through the use of state resources or equipment.

5. Confidentiality

Many times the State requires its citizens and businesses to file personal information. The State has a duty to protect this information. The public must be able to trust that employees with access to this information will protect its confidentiality and not use the information for personal or financial gain.

Rule 5 – *You must not disclose restricted or confidential information acquired through your employment to any unauthorized person or entity.*

Agencies must only provide to employees access to data required to perform their job duties and must regularly re-examine employee access levels to ensure that they remain aligned with job duties.

You must only access, review, or examine data as necessary to perform your job function and not for any unlawful or improper purpose, including personal curiosity.

You must only use information gained through your employment in furtherance of official business.

You must protect the integrity of agency data and strive to diligently protect all restricted and confidential information from unauthorized disclosure.

Each agency must designate, in writing, information that is deemed restricted or confidential for purposes of this rule and must notify employees of such designation.

6. Nondiscriminatory Work Environment

Rule 6 – *You must promote a nondiscriminatory work environment that provides equal employment opportunities to all employees and applicants without regard to race, color, religion, sex, gender, genetic information, national origin, age, veteran status, disability, or any other status protected by federal or state law.*

7. Post-Employment Restrictions

Employees gain many valuable skills and connections while employed by the State. It is understandable that these employees may one day want to use these skills and connections outside of state employment. Citizens must have confidence, however, that while employed with the State, employees are working solely for the benefit of the State and not to use their position to create opportunities for themselves upon their departure that could result in a conflict of interest. The following post-employment rules are found in current state law and are not intended to limit employment opportunities of state employees; instead, they prohibit individuals from engaging in certain activities on behalf of persons or entities with state government.

Rule 7 – *For one year following your departure from state government, you may not represent another person or entity before your former agency in a matter you directly and substantially participated in during employment. [Section 8-13-755]*
You may not participate directly in the procurement of a contract and then depart the state agency and accept employment with a person contracting with the governmental body if the contracts falls or would fall under your official responsibilities. [Section 8-13-760]

Legislative Amendment Recommended:

Current law (Section 8-13-755(2)) should be strengthened to create a permanent ban, rather than a one-year cooling off period, on a former employee's ability to represent another person or entity for compensation before the employee's former agency in the same matter or project, to include, but not be limited to, a legal case, economic development project, permit application, or

eligibility determination, that he/she directly, personally and substantially participated in during his/her public service.

8. Reporting Requirements and Whistleblower Protections

At times, employees are aware that others are committing wrongdoing within an agency but for various reasons choose not to report the misconduct. This may create the perception that this type of behavior is condoned by the agency. Citizens must be able to trust that state employees are doing all they can to prevent wrongdoing and at all times are protecting the interests and property of the State.

Rule 8 – *You must report an intentional violation of this Code of Conduct or any federal or state law or regulation by any agency employee, whether temporary or full-time, including a co-worker, subordinate, supervisor, senior manager, or any other employee.*

You must report any action by your employing agency, board, or commission that results in substantial abuse, misuse, destruction, or loss of substantial public funds or resources.

Reporting Requirements:

Each agency must designate a process for such reports to be made to the appropriate authority. Depending on the facts of each case, the appropriate authority may be the agency legal office, human resources division, agency head, Department of Administration, State Ethics Commission, or Inspector General.

These reports must be made verbally or in writing as specified by the agency as soon as possible after the employee first learns of the wrongdoing but no later than 180 days of the date the reporting employee first learns of the wrongdoing. This report must include the date of disclosure, the name of the employee making the report, the nature of the wrongdoing, and the date or date range of when the conduct occurred. If the report is oral, the agency designee, Department of Administration employee, or other state official to whom the report is made must reduce the report to writing.

Good Faith Requirement:

All reports of wrongdoing must be made in good faith. An employee may be disciplined or terminated for making a report that he or she knows or reasonably should know is false.

Whistleblower Protections:

An employee who files a report within the specified time frame, to the appropriate authority, and in good faith is considered a whistleblower. Whistleblowers may not be demoted, lose compensation, or be dismissed or suspended from employment as a result of filing a report of wrongdoing.

Nothing prevents an agency from disciplining or terminating a whistleblower for causes independent of the filing of a report of wrongdoing.

Recommended Code of Conduct Training

The Department of Administration must develop a web-based and/or video training on the requirements of this Code, including specific examples and hypothetical situations to provide concrete guidance to employees. Agencies are allowed to add or make modifications, as approved by the Department of Administration, to the training to make it specific to their Code and agency. Each agency may develop an initial training and annual follow up training, but the training protocols must be approved by the Department of Administration.

Once adopted, every employee must receive initial training on this Code and certify in writing their understanding of this Code. Thereafter, all employees must receive annual refresher training on the Code and re-certify their understanding. All new employees must receive training on the Code within one week of employment and certify their understanding of its requirements.

Submitted to the Governor, Budget & Control Board, State Inspector General, Chairman of the State Ethics Commission, and Chairmen of the House and Senate Ethics Committees by the State Employee Code of Conduct Task Force on the 7th of August 2014, pursuant to Governor Nikki R. Haley's Executive Order 2014-23:

Holly Pisarik, Director of Department of Labor, Licensing and Regulation, Chair

Ashley Cuttino, Esquire, Ogletree Deakins, Nash, Smoak & Stewart, P.C.

Herb Hayden, Executive Director of the State Ethics Commission

Jim Harrison, Code Commissioner and Director Legislative Council

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