

Sec. 3-2-5. - Code of ethics.

- (1) *Purpose.* The purpose of this code of ethics is to:
  - (a) Encourage high ethical standards in official conduct by county officials;
  - (b) Establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the interest of the county;
  - (c) Require disclosure by such officials of private financial or other interest in matters affecting the county; and
  - (d) Serve as a basis for disciplining those who refuse to abide by its terms.
- (2) *Scope.* The provisions of this code of ethics shall be applicable to all elected or appointed county officials. Notwithstanding anything herein to the contrary, state law and the Georgia Constitution shall be controlling in the event of an actual conflict with the provisions of this code of ethics. This section shall be interpreted to supplement and not replace or be in conflict with applicable provisions of state law and the Georgia Constitution.
- (3) *Definitions.* Solely for the purpose of this code of ethics:
  - (a) *County official* or *official*, unless otherwise expressly defined, does not include county employees, but does mean county commissioners, persons appointed by the board of commissioners to county authorities, commissions, committees, boards, task forces, or other bodies under the jurisdiction of the board of commissioners which can or may vote or take formal action or make official recommendations to the board of commissioners.
  - (b) *Decision* means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the county or other county board, authority or commission, as well as the discussions or deliberations of the board, authority or commission which can or may lead to a vote or formal action by that body.
  - (c) *Employee* means any person who is a full-time or part-time employee of the county.
  - (d) *Gift* means the transfer of anything of economic value, regardless of form, without adequate and lawful consideration. "Gift" shall not include a benefit received or given on terms available to the general public. All gifts of property, money or services given to the county must be accepted by resolution of the board of commissioners. "Gift" shall not include:
    1. Any nonpecuniary gift, ticket, or other thing of value, the value of which is one hundred dollars (\$100.00) or less;
    2. An award, plaque, certificate, memento or similar item publicly presented in recognition of the official's charitable, political, professional or public service;
    3. A commercially reasonable loan made in the ordinary course of the official's personal business by an institution authorized by law to engage in the making of such a loan;
    4. Food, beverages and registration at group events to which all similarly situated public officials are invited;
    5. Any ticket or other pass of admission to any recreational, musical, theatrical, or sporting event for less than the face value of such ticket or pass of admission, for an entertainment or athletic event at which the official or employee is performing an official duty, which means, for purposes of this subsection, any appearance, meeting, discussion, greeting, or introduction, the substantial purpose of which is related to the performance of an official act or action;
    6. Complimentary tickets or admission to events, meals, meetings or seminars or other gatherings where such attendance could serve the county by providing access to local, state or federal business, civic or government leaders;

7. Legitimate salary, benefits, commissions or expenses associated with an official's nonpublic business;
  8. The solicitation, acceptance or receipt of regulated political campaign contributions.
- (e) *Immediate family* means the spouse, mother, father, son or daughter of any county official related by blood, adoption or marriage.
- (f) *Incidental interest* means an interest in a person, entity or property which is not a substantial interest as defined herein and which has insignificant value.
- (g) *Remote interest* means an interest of a person or entity, including a county official or employee, that would be affected in the same way as the public generally or employees generally. For example, the interest of an official in the property tax rate, general county fees, county utility charges or a comprehensive zoning ordinance or similar matters is deemed remote to the extent that the official would be affected in common with the general public.
- (h) *Substantial interest* means any financial interest or personal interest or any other direct or indirect pecuniary or material benefit held by or accruing to a public official as a result of a contract, employment relationship, or transaction which is or may be the subject of an official act or action by or with the county. The term does not include any remote or incidental interest. For purposes of this code of ethics, the term "financial interest" means any interest which shall, directly or indirectly, yield a monetary or other material benefit to the official, or to any person employing or retaining the services of the official or to the immediate family member of the official.

An official shall be deemed to have a substantial interest in matters and transactions involving:

1. Any person in his or her immediate family who will or may receive a direct benefit not commonly shared by others who are similarly situated;
2. Any person with whom a contractual relationship (either written or implied) exists, whereby the official may receive any payment or other benefit, including any agreement for employment;
3. Any entity in which the official or member of the official's immediate family member is a director, officer or substantial shareholder;
4. Any transaction in which the official or the official's immediate family member is a creditor, debtor, or guarantor of the person or entity seeking action or approval from the county or applicable board in excess of five thousand dollars (\$5,000.00).

(4) *Prohibitions.*

- (a) No county official shall use his or her official position to secure special privileges, special considerations or exemptions for himself or herself, immediate family members, or those with whom he/she has a substantial interest, for any purpose other than official duties on behalf of the county.
- (b) No county official shall disclose or use, except as required by law, confidential information acquired by virtue of his or her position with the county for personal gain or for another person's private gain, in order to advance private, financial interests where such disclosure is not generally available to the public and would otherwise conflict with the best interests of the county.
- (c) No county official shall act as an agent or attorney for another in any matter before the county or other county body against the interests of the county; provided that nothing herein shall be interpreted as prohibiting a county official from advocating a position or pursuing a course of action on behalf of constituents or a public interest in the normal course of his/her public office.
- (d) No county official shall directly or indirectly receive, or agree to receive, any compensation, gift, reward, or gratuity in any matter or proceeding in exchange for the performance of the duties of

his or her office except as may be provided by law. This provision shall not apply to campaign contributions as regulated and allowed by state and federal law.

- (e) No county official shall use public funds for personal economic gain. All public funds shall be used for the general welfare of the people.
  - (f) No county official shall use or direct the use of county facilities, personnel, equipment or supplies for private, personal purposes, except to the extent such are lawfully available to the public at large or otherwise allowed by approved policy or procedure.
  - (g) No county official shall use his or her position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to such official or persons within the official's immediate family, or those with whom the official has business or financial ties amounting to a substantial interest.
  - (h) No county official shall advocate for or cause, directly or indirectly, the hiring, advancement, promotion, or transfer of a member of his or her immediate family to any office or position with the county or a county agency.
  - (i) No county official shall appoint or recommend the appointment of a member of his or her immediate family to any county board, commission, or authority.
- (5) *Conflict of interest.*
- (a) A county official may not participate in a vote or decision on a matter affecting the official personally, an immediate family member or any person, entity, or property in which the official has a substantial interest. In such cases, the county official must:
    - 1. Immediately publicly disclose the fact and nature of the interest on the record; and
    - 2. Refrain from any discussion or vote concerning such matter or otherwise attempting to influence the vote, discussion or decision of the county regarding such matter.
    - 3. If a question arises concerning a conflict of interest during any public session, the county attorney shall be consulted and in the absence of the county attorney, the chairman shall be consulted.
    - 4. The county clerk shall maintain a separate record of all such recusals made pursuant to this provision.
  - (b) A county official shall avoid even the appearance of a conflict of interest. An appearance of a conflict of interest exists when a reasonable person would conclude from the surrounding circumstances that the ability of the official to protect the public interest or impartially perform a public duty is compromised by financial or personal interests in the matter or transaction not generally shared by the public at large. The appearance of a conflict of interest can exist even in the absence of an actual conflict of interest. In such cases, the county official shall have the same public disclosure and recusal requirements as required in subparagraphs (a)1. and 2. above.
  - (c) Where the interest of a county official in the subject matter of a vote or decision is remote or incidental, the county official may participate in the vote or decision and need not disclose the interest. It is recognized that unnecessary recusals or abstentions from matters in which there does not exist an actual or reasonable appearance of a conflict of interest are contrary to the duties and functions of public office.
- (6) *Public contracts.* The county shall not enter into any contract involving services or property with an official or with a person or business in which the official has a substantial interest. This section shall not apply in the case of:
- (a) Contracts for goods or services with a business that employs an official or employee, or family member of an official or employee, where:
    - 1. The contract is competitively procured; and

2. The official does not participate in any aspect of the procurement or performance of the contract;
- (b) The designation of a bank or trust company as a depository for county funds;
- (c) The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest for such loan;
- (d) Contracts for services entered into with a business which is the only available source for such goods or services; and
- (e) Contracts entered into under circumstances which constitute an emergency situation, provided that a record explaining the emergency is prepared by the county manager and submitted to the board at its next regular meeting.

No official shall participate in any contract involving the county if he or she knows or should know that an interest in the contract is possessed by such official or one (1) or more members of his or her immediate family, or any business (other than a public agency) in which the official or a member of his or her immediate family serves as an officer, director, stockholder, creditor, trustee, partner, or employee.

(7) *Disclosures.*

- (a) Financial disclosures shall be governed by federal and state law and this code of ethics shall not require any additional reports to be filed other than those required by federal and state law.
- (b) All disclosures with regard to zoning applications shall be governed by federal and state law.
- (c) On an annual basis and no later than ninety (90) days following the close of every fiscal year, the board shall cause to be published on the county's official website, a list of all vendors who received payment from the county during the preceding fiscal year. The total amount of such payments shall be included in the publication.

(8) *Receipt and processing of complaints.*

- (a) Complaints alleging a violation of the provisions of this section may be filed by any public official or any member of the public. Any such complaint shall be filed with the county clerk. All complaints shall be submitted in writing, shall be signed under oath, shall be legibly drawn and shall clearly specify the facts and address matters within the scope of this section. The clerk is authorized to reject any complaint that is not signed under oath.
- (b) Upon receipt of a complaint in proper form, the county clerk or the clerk's designee shall immediately forward a copy of the complaint to:
  1. The county attorney;
  2. The county official(s) charged in the complaint; and
  3. The remaining members of the board of commissioners.
- (c) Upon receipt of a complaint in proper form and no later than thirty (30) days thereof, the county attorney shall forward the same to a duly qualified hearing officer for review. The hearing officer shall be authorized to preliminarily determine whether the complaint is facially invalid or unjustified, frivolous, patently unfounded or fails to state facts sufficient to state a violation of this section. If such a finding is determined by the hearing officer, the hearing officer shall enter written findings and transmit such findings to the board for final action. Any action taken by the board shall be taken by way of public vote.
- (d) For complaints that are not dismissed, the hearing officer shall be empowered to hold hearings, collect evidence and information concerning the complaint and add the findings and results of its investigations to the file containing such complaint. In any investigation, the complaining party must appear before the hearing officer to provide testimony under oath and provide requested information concerning the allegations in the complaint. Failure of a complainant to cooperate in the investigation in any manner will result in the automatic dismissal of the complaint.

- (e) All investigations shall be completed within a reasonable period of time. Upon conclusion of the investigation, the hearing officer shall enter written findings and transmit such findings to the board for final action.
  - (f) All hearings referenced herein shall be held within sixty (60) calendar days after filing of the complaint. Hearings shall be conducted in accordance with due process and procedures and regulations approved by the board. In all circumstances, at least one (1) hearing shall include the taking of testimony and the cross-examination of available witnesses. The county official who is the subject of inquiry shall have the right to written notice of the hearing and the allegations at least seven (7) calendar days before the first hearing, to be represented by counsel, to hear and examine the evidence and witnesses and to oppose or try to mitigate the allegations. The county official subject to the inquiry shall also have the right but not the obligation of submitting evidence and calling witnesses.
  - (g) Failure to comply with any of the time deadlines in this section of the ordinance shall not invalidate any otherwise valid complaint or in any way affect the power or jurisdiction of the board or hearing official to act upon any complaint.
  - (h) Upon receipt of the hearing official's findings, the board shall publicly vote to either:
    - 1. Dismiss the complaint for lack of evidence; or
    - 2. Take other action as is consistent with subsection (9) of this section and the evidence adduced during the investigation.
- (9) *Penalty.*
- (a) Any public official violating any provision of this section is subject to:
    - 1. Public reprimand or censure by the county; or
    - 2. Reimbursement or restitution to the county; or
    - 3. Referral of the matter to appropriate authorities for investigation and possible prosecution; or
    - 4. Any combination of the above.
  - (b) Any complainant found to have filed a frivolous complaint or who has refused to participate in an investigation following the filing of any complaint, which results in the dismissal, shall be subject to:
    - 1. Reimbursement or restitution to either the county and/or the public official for attorney's fees and/or expenses for expenses incurred in handling the complaint.
    - 2. The county attorney shall be authorized to file suit in the appropriate court in order to enforce any such award.
- (10) *Right to appeal.*
- (a) Any county official or complainant adversely affected by the findings or recommendations of the board of commissioners may obtain judicial review of such decision as provided in this subsection.
  - (b) An action for judicial review may be commenced by filing an application for a writ of certiorari in the Superior Court of Henry County within thirty (30) days after the final decision of the board. The filing of such application shall act as supersedeas and shall stay the enforcement of any penalty imposed by the board.

(Ord. No. 11-03, § 1(1—10), 5-17-11)

**Editor's note**— Ord. No. 11-03, adopted May 17, 2011, enacted new provisions to be designated as § 3-2-4. Inasmuch as there already exists a section with that designation, said provisions have been codified as § 3-2-5 to avoid duplication of numbers.