



State of South Carolina Office of the Inspector General

November 7, 2013

Senator Luke Rankin
205 Gressette Building
Columbia, SC 29201

Re: Ethics Reform

Dear Senator Rankin,

I thank you for affording me an opportunity to share my ideas regarding improvements to the State's Ethics Laws "Rules of Conduct" with the Senate Ethics Reform Committee on November 6, 2013. At the current time, I can think of no more important government endeavor than reforming South Carolina's ethics laws. I commend the General Assembly and Governor Haley for tackling this challenging issue in 2013, and the bills generated demonstrate real progress. I have no doubt the legislature's commitment to this issue as demonstrated by establishing the State Inspector General's (SIG) Office. Providing statutory authority and complete independence to four retired FBI Agents with full access to all state Executive Branch records, subpoena power, and a confidential tip hotline shows commitment. The SIG hopefully serves as an immediate deterrent to unethical behavior, and, over time, those with corruption information will find the SIG or we will find them.

Right now, government at all levels are facing increasing public skepticism and eroding trust of the people we serve. Ironically, during my 30 year FBI career I observed improvement in government integrity and transparency. The media's increased capabilities and bandwidth to report on corruption, both real and perceived, has greatly assisted curbing corruption, but its 24/7 news cycle also seems to paint a picture for the public of government integrity regressing rather than improving. I urge your committee's reform recommendations to have an increased emphasis on raising integrity standards to **eliminate situations creating even a perception of acting in violation of our public trust.**

This increased ethical standard will require employees to affirmatively shift their behavior to think beyond the scope of their own perceptions and motives, and be accountable to consider how their actions may be perceived by the public. This heightened standard will increase state employees' sensitivity to public expectations leading to a reduction in the number of "false positives" of inaccurately suspected corruption or technical compliance with current ethics laws yet still falling short of the public's high expectations for state employees. These "false positives" repeatedly broadcast to the public erodes trust in their government. It will also serve as a deterrent for those with concealed self-interest motives to use the cloud cover of this grey area to operate inasmuch as their behavior will be assessed by the public's perspective (reasonable man standard) and not on their self-reported motives.

I am asking this ethics reform committee to consider a heightened focus on the “Rules of Conduct” in the ethics laws inasmuch as it sets the overarching foundation for the other process and procedural aspects of the ethics laws. Employees will do what is asked of them, as long as the expectations are clear. The Rules of Conduct component of the ethics laws has the most impact on the 58,000 state government employees, most of whom reside in the Executive Branch.

The current “Rules of Conduct” cover 12 areas. My concern is the “Rules of Conduct” require further restrictions in the areas of gifts and conflicts of interest, as well as adding a rule to affirmatively report ethics violations. These additions will truly set high integrity standards. Equally important, these increased standards will clearly establish government leadership’s “tone at the top” and leadership by example, which are the most crucial components of a high integrity environment.

First, I suggest the current Rules of Conduct further restrict the current conflict of interest rule to also include **not knowingly create a perception of a conflict of interest or acting in a way that might reasonably be expected to create an impression or suspicion among the public that you are engaged in conduct violating the public’s trust.** Perceptions of violating the public trust can do as much damage to the public’s trust in government as actual violations. An analysis of actual fraud and corruption investigations on state employees shows very little activity as illustrated by:

- During FY 2012-2013, The Federal United States Attorney’s Office had one fraud conviction of a state employee at a Technical College in a scheme to falsify admission test results;
- During FY 2012-2013, the State Attorney General reported two fraud/corruption investigations on state employees and no convictions.
- During FY 2012-2013, State agencies’ annual report to the Comptroller’s Office identified four state employee frauds/embezzlements totaling \$19,196. The SLED and FBI’s cases also show nominal cases and losses.
- During the most recent FY 2011-2012 Ethics Commission Accountability Report, there was one adjudicated finding of a state employee abusing their position for self-interest (\$4000 personal use of a state credit card).

So, where is the problem? No doubt, the March 2012 criminal conviction of a former Lieutenant Governor certainly impacted public confidence. However, the problem driving ethics reform is the perception of corruption driven by a pattern of state employees or officials reported in the South Carolina 24/7 news cycle since 2012 often alleging abuses of their positions involving an aspect of self-interest, yet these cases have, in the main, not resulted in adjudicated ethics or criminal charges. In the best possible light, these cases are only perceptions of conflicts of interests or violations of trust in the eyes of the public, because the behavior seems to be authorized, or at least not precluded, in the ethics laws. In short, these cases seem to be in the “grey area” gap of technically compliant with ethics laws, yet their appearances fall short of the public’s high expectations for a public servant. By raising Rules of Conduct standards to avoid the appearance of conflict of interest or violating the public’s trust, it

closes this gap eroding the public's trust. The most important product of ethics laws is not putting people in jail, but maintaining the confidence of citizens in their government.

As an example to implement "appearance" ethics laws, Massachusetts developed procedures where state employees disclose via Internet forms to the state's Ethics Commission transactions/decision that could create the appearance they are violating an ethical standard. The standard used to assess the violation is determined from the perspective of a reasonable person having knowledge of the relevant circumstances. Disclosure immunizes the state employee from any ethical violation, and more importantly, prevents a "perception" problem from entering the public domain along with its corresponding damage to the public trust. Allegations sustained involving only misjudgments generate an Ethics Commission educational letter as feedback, along with the state employee filing the late disclosure. Willful intent or repeat offender situations have incrementally higher civil penalties. Ben Franklin's "an ounce of prevention is worth a pound of cure" applies to supporting "appearance" ethics laws.

Second, I suggest restricting the current liberal gift rules to **prohibit any gifts**, and only allow nominal exceptions such as a meal in conjunction with a speaking engagement, nominal unsolicited workplace refreshments (i.e., water, coffee, donut), or nominal plaques of appreciation or for retirement. This sets, again, a clear tone at the top, avoids appearance issues to the public, and avoids the slippery slope of gifts incrementally impacting a state employee's objectivity in arm's length transactions. Based on my personal experience, as well as social science, entertainment, gifts, and the like can serve as the entre and lubricant to develop relationships which then allows, whether intentional or not, influence and bias to seep into decision making of a public servant. Last year, it was refreshing to see a young reporter decline my offer to pay for his \$10 lunch due to his newspaper's ethics rules to avoid even appearance issues.

Third, I suggest **every employee have an affirmative duty to report an ethical violation**. Until we all feel like one team with 58,000 sets of eyes keeping each other accountable, as well as having a positive chilling effect on questionable behavior in the presence of peers, it can be easy to slide down the slippery slope of incremental encroachment on integrity standards.

Based on my experience, no person wakes up one morning and decides to commit fraud, corruption, or substantial ethical misconduct. This is an incremental process of an absence or stretching of boundaries without consequences, which incrementally leads to an unethical or criminal place a perpetrator would never have initially thought was possible. There is only an upside to having the highest ethical standards for state employees by adopting these three enhancements to the Rules of Conduct; why would we want less than the highest standards? To those skeptical of higher standards impact on them individually, they should consider the wisdom from Thomas Jefferson, "when a man assumes a public trust he should consider himself a public property." Public servants should serve only one master and should never place themselves in a position where they could even be tempted to prefer their own interests or the interests of another over the interests of the public they have sworn to serve.

To illustrate my suggestions, I have attached: 1) my office's rules of conduct which synthesizes current state law and adds more restrictive rules based on my expectations due to the public nature of our work; 2) New York States' "Plain Language" Ethics Code; and 3) Massachusetts' appearance of conflict law along with its corresponding disclosure form. Expectations are much easier implemented and understood by 58,000 employees if set forth in two pages rather than 20 pages.

Given clear leadership and expectations, I have faith in state employees, as well as human nature. With high standards, there will be little ambiguity for those violators to conceal their actions. Most importantly, citizens may start giving state government the benefit of the doubt when they don't fully understand something, rather than the current tendency to assume the worst and act on a likely misperception with another trust withdrawal.

With input from every direction and constituency, I am honored you have taken the time to read my input. If you have any questions, comments, or concerns, please contact me at (803) 896-4729.

Sincerely,

A handwritten signature in black ink that reads "Patrick J. Maley". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Patrick J. Maley
State Inspector General

cc: Chairman Kenneth A. Bingham, House Ethics Committee

Attachments to SIG Letter to Senator
Rankin, Dated 11/6/2013

- SIG Memo to Staff, Dated 9/9/2013
(3 pages)
- New York State Ethics – A Plain Language
Version (3 pages)
- Massachusetts' Appearance of Conflict Law
& Disclosure Form (3 pages)



State of South Carolina Office of the Inspector General

September 9, 2013

To: State Inspector General Staff

From: Inspector General Patrick Maley

Re: "Plain Language" Code of Conduct for the Office of the State Inspector General

The purpose of this memo is to set forth a "plain language" code of conduct for the Office of the State Inspector General (SIG). It is designed to synopsise the State Ethics Statutes into a more digestible format to facilitate SIG employees understanding ethics laws impact on state employees, as well as add additional expectations on SIG employees established by Inspector General Maley due to the nature of the work of the SIG. This synopsis of the State Ethics Statutes serves as just that—a synopsis—with the actual statute cites annotated in brackets for an employee to review further as needed. The State Ethics "Rules of Conduct" are found in Title 8, Section 13, 700 series (8-13-700 to 795).

The synopsized State Ethics Laws applicable to SIG/state employees will be set forth first, followed by Inspector General Maley's additional code of conduct policies in **bold print** which have a more restrictive quality:

1) Conflict of Interest

- Conflict of Interest [8-13-700A]: You may not knowingly use your employment to obtain an economic interest or benefit for yourself, family, associate, or associated business.
- Conflict of Interest [8-13-700B]: You may not participate or influence a governmental decision involving a situation where yourself, family, associate, or associated business has an economic interest. In the rare case your duties require you to make such a decision, procedures are set forth to provide written notification to facilitate recusal.
- Conflict of Interest at a Regulatory Agency [8-13-730]: No person may serve as a member of regulatory agency if an associated business is regulated by that agency; employees of a regulatory agency have the same requirement with an exception being only a disclosure on statement of economic interests if the issue is non-recurring.
- Conflict of Interest Involving Contracts [8-13-775]: You may not have an economic interest in a contract where you are authorized to perform an official function relating to the contract.

SIG Policy to Further Restrict: You may not have an interest, business, transaction, activity, or personal/family relationship which is a real (substantial) conflict or could be perceived (reasonable man standard) by the public to conflict with the proper discharge of your public duties. All real or perceived conflicts will be provided to the Inspector General in writing, upon which the Inspector General will either require recusal or the Inspector General will document in writing the rationale to mitigate a perceived conflict.

- 2) Bribe [8-13-705]: You may not, directly or indirectly, knowingly ask or receive anything of value that influences the discharge of your duties.
- 3) Accepting Gifts [8-13-710]: If you receive a gift (anything of value), directly or indirectly, worth \$25 or more in a day or \$200 or more in the aggregate in a calendar year reasonably based on your position from the same person, you are required to file a statement of economic interests.

SIG Policy to Further Restrict: You may not accept any gift with the exception of 1) incidental meal in conjunction with a speaking engagement; 2) nominal unsolicited workplace refreshments (i.e., water, coffee, donut); and 3) nominal plaques of appreciation or for retirement.

- 4) Speaking Engagements [8-13-715]: You may not receive anything of value for a speaking engagement, with the exception of an incidental meal in conjunction with the speaking engagement and reimbursement for reasonable travel expenses. Disclosure of costs will be placed on the statement of economic interests for annual filers and in a letter to the Agency Head for non-annual filers; out of state travel requires Agency Head prior approval.
- 5) Compensation for Advice [8-13-720]: You may not solicit or accept any compensation for providing advice or assistance given in the ordinary course of discharging your employment duties.
- 6) Disclosure of Confidential Information [8-13-725]: You may not disclose confidential information for financial gain for yourself, family, associates, or associated business. Additionally, you may not disclose information that is unlawful or improper, such as tax records, health records, and other personal identifying information.

SIG Policy to Further Restrict: All pending SIG investigations are confidential and disclosure is prohibited except in the normally accepted conduct of an investigation or review, or at the direction of the Inspector General.

- 7) Representation of Another before a Governmental Entity [8-13-740]: You, an associate, or associated business may not knowingly represent another party before an entity in which you have official responsibility.
- 8) Nepotism [8-13-750]: You may not cause the employment, promotion, or transfer of a family member within your supervisory or management area of responsibility, nor participate in a discipline action of a family member.
- 9) Post-Employment One Year Ban [8-13-755]: You may not serve as a lobbyist or represent clients for one year before your agency in a matter in which you directly participated in as a State employee. You may not accept employment from a person for one year who is regulated by your agency and involves a matter in which you directly participated in as a State employee.

- 10) State Resources for Campaigns [8-13-765]: You may not use state personnel, facilities, or resources for campaigns.
- 11) Receipt of Award, Grant, or Scholarship by Public Official [8-13-795]: A public official or family member may receive awards, grants, or scholarships on a competitive basis if the public official has not contacted any involved in the selection.
- 12) Persons Required to File Statement of Economic Interests [8-13-1110]: If you are a designated State official or employee, such as an elected official, appointed official, agency deputies, chief procurement officers, and others designated, you must file an annual Statement of Economic Interest.

SIG Policy to Further Restrict: All SIG employees will annually complete a Statement of Economic Interest which will be retained by the SIG and reviewed by the Inspector General to ensure the investigators are free from any real or perceived conflicts of interests to ensure SIG investigations have the highest level of independence and objectivity. Additionally, the Inspector General, based on being an appointed position, will also file an annual Statement of Economic Interest with the Ethics Commission.

- 13) **SIG Policy-Appearance of Impropriety [not in State Statute]**: You may not do anything that would give the public a reasonable basis to think that anyone can improperly influence you in your official duties by reason of kinship, rank, position, or influence.
- 14) **SIG Policy-Outside Employment [not in State Statute]**: You may not have an outside employment which creates a conflict of interest, any appearance of a conflict of interest, or is incompatible with the duties and expectations of SIG employees. Outside employment must be approved in advance by the Inspector General.
- 15) **SIG Policy-Duty to Report [not in State Statute]**: You have an affirmative duty to report any violation of the SIG's Code of Conduct.

New York State Ethics - A Plain Language Version

The Ethics in Government Act was passed and signed into law to restore the public's trust and confidence in government through the prevention of corruption, favoritism, undue influence and abuses of official position. As part of the Act, the ethics law was amended to establish standards of conduct for state officers and employees. It restricts certain business and professional activities, both while in state service and after separation. The governing provisions are set forth in §73, §73-a and §74 of the Public Officers Law. To increase officers' and employees' knowledge of the State's ethics laws, this plain language version of the NYS Ethics Law has been prepared and incorporates changes made by the Public Employee Ethics Reform Act of 2007.

- **Gifts.** You may not receive a gift of more than nominal value if it could reasonably be assumed that the gift was meant to influence you in performing your public duties, for example, a gift of more than nominal value from someone whose public business comes before you. POL §74(2)
- **Matters Before State Agencies.** Except in your official duties, in a ministerial matter, or for a union, you may not be paid for any appearance or services in a matter before a State agency in connection with: (a) the purchase, sale, rental or lease of real property, goods or services or a contract; (b) rate-making; (c) the adoption or repeal of a regulation; (d) loans or grants; (e) licensing; or (f) public utility franchises. POL §73(7)
- **Communications With State Agencies.** If your private association, firm or company is appearing or rendering services before a State agency in connection with: (a) the purchase, sale, rental or lease of real property, goods or services or a contract; (b) rate-making; (c) the adoption or repeal of a regulation; (d) loans or grants; (e) licensing; or (f) public utility franchises, then you may not orally communicate about the merits of the matter with anyone at the agency concerned with the matter. POL §73(12)
- **Sales to State Agencies.** Neither you, your firm, nor a corporation of which you control at least 10% of the stock, may sell goods or services to a State agency unless it is pursuant to a contract or award let after public notice and competitive bidding. POL §73(4)
- **Sales to Regulated Entities.** Neither you, your firm nor a corporation controlled by you may sell goods or services to any person, firm or company which is licensed by or whose rates are fixed by your agency. POL §74(3)(i)
- **Conflicts of Interest.** You may not have any interest or engage in any business or transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of your public duties. POL §74(2)
- **Confidential Information.** You may not disclose confidential State information or use it for your personal interests. POL §74(3)(b)(c)

- **Misuse of Office.** You may not use your official position to secure unwarranted privileges or exemptions for yourself or others. POL §74(3)(d)
- **Appearance of Impropriety.** You may not do anything that would give the public a reasonable basis to think that anyone can improperly influence you in your official duties by reason of kinship, rank, position or influence. POL §74(3)(f)
- **Violation of Trust.** You must not raise public suspicion that you are acting in violation of your public trust. POL §74(3)(h)
- **Dealing With Yourself or Your Company.** You may not engage in any transaction as an agent for the State with any business entity in which you have a financial interest that might tend to conflict with the proper discharge of your official duties. Instead you should excuse yourself and ask someone else to do the State task. POL §74(3)(e)
- **Investments.** You may not make personal investments in enterprises which might be directly involved in decisions to be made by you. POL §74(3)(g)
- **Moonlighting.** You should not take a job which would impair your official independence, for example, with a vendor seeking a contract which you must review, or a company seeking a permit on which you must make a recommendation. POL §74(3)(a)
- **Honoraria and Travel Reimbursement.** You may not accept honoraria or official travel reimbursement without prior approval by your agency or the Commission on Public Integrity. If the donor does business with your agency, you probably cannot accept such payments. 19 NYCRR §930
- **Outside Activities.** If you are a paid policymaker, you may not engage in any outside activity for more than \$1,000 per year without prior agency approval, or for more than \$4,000 per year without prior Commission on Public Integrity approval. 19 NYCRR §932.3
- **Political Activities.** If you are a policymaker, you may not serve as an officer of any political party or organization, or as a member of any political party committee. 19 NYCRR §932.2
- **Contingent Fees.** You may not be paid for services where your fee is dependent or contingent on State agency action. POL §73(2)
- **Court of Claims.** You may not be paid for services in or out of court against the State's interest in the Court of Claims. POL §73(3)
- **Post-Employment Two-Year Ban.** For two years after you leave public employment, you may not appear before your former State agency or receive pay for services in a matter pending before it. Your former agency may have stricter rules. POL §73(8)(a)(i)
- **Post-Employment Lifetime Ban.** After you leave public employment, you may not appear before any State agency or receive pay for services in a matter on which you

personally worked for the State. Your former agency may have stricter rules. POL §73(8)(a)(ii)

- **Financial Disclosure.** If your agency has designated you as a policymaker, or if you earn over \$82,389 per year and have not received an exemption, then you must file an annual financial disclosure statement with the Commission on Public Integrity by May 15. If you begin public employment after May 15 of any year and must file, you must do so within thirty days of joining State service. POL §73-a(2)

If you have any questions about the requirements and restrictions of the ethics law, or if you wish to receive an advisory opinion as to the effects of the law, visit the [NYS Joint Commission on Public Ethics Web site](#) or call them at (518) 408-3676.

Massachusetts General Law chapter 268A:

Appearance of conflict. Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited. (See Section 23(b) (3))

A state employee may not act in a manner that would cause a reasonable person to think that she would show favor toward someone, or that she can be improperly influenced. Section 23(b)(3) requires a state employee to consider whether her relationships and affiliations could prevent her from acting fairly and objectively when she performs her duties for the state. If she cannot be fair and objective because of a relationship or affiliation, she should not perform her duties. However, a state employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts. An appointed employee must make the disclosure in writing to his appointing official.

Example where there is no violation: A state agency employee is engaged to be married to the owner of a business. The business owner submits a response to a request for proposals from the agency. A reasonable person could conclude that the employee might favor her fiancé's response. The employee files a written disclosure with her appointing authority explaining her relationship with her fiancé prior to the meeting at which responses to the RFP will be considered. There is no violation of Section 23(b)(3).

Example where there is no violation: The State House of Representatives is considering legislation which will create a general law that sets a maximum limit on insurance premiums paid by obstetricians. A State Representative is married to an obstetrician who will be affected by the proposed legislation. The Representative can participate in the matter but files a disclosure of his wife's interest to eliminate any appearance of a conflict. There is no violation.

**DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)**

PUBLIC EMPLOYEE INFORMATION	
Name of public employee:	
Title or Position:	
Agency/Department:	
Agency address:	
Office Phone:	
Office E-mail:	
	<p>In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of kinship, rank, position or undue influence of a party or person.</p> <p>I am filing this disclosure to disclose the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.</p>
APPEARANCE OF FAVORITISM OR INFLUENCE	
Describe the issue that is coming before you for action or decision.	
What responsibility do you have for taking action or making a decision?	
Explain your relationship or affiliation to the person or organization.	
How do your official actions or decision matter to the person or organization?	

Optional: Additional facts – e.g., why there is a low risk of undue favoritism or improper influence.	
If you cannot confirm this statement, you should recuse yourself.	WRITE AN X TO CONFIRM THE STATEMENT BELOW. <input type="checkbox"/> Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.
Employee signature:	
Date:	

Attach additional pages if necessary.

Not elected to your public position – file with your appointing authority.

Elected state or county employees – file with the State Ethics Commission.

Members of the General Court – file with the House or Senate clerk or the State Ethics Commission.

Elected municipal employee – file with the City Clerk or Town Clerk.

Elected regional school committee member – file with the clerk or secretary of the committee.

Form revised July, 2012