

ARTICLE II. CODE OF ETHICS¹

Section 1. Findings of fact; purpose of ethical standards.

- (a) It is essential to the proper administration and operation of the Cherokee County government that public officials be, and give the appearance of being, independent and impartial; that public office not be used for private gain; and that there be public confidence in the integrity of the Cherokee County public officials. Because the attainment of one or more of these ends is impaired whenever there exists in fact, or appears to exist, a conflict between the private interests and public responsibilities of the Cherokee County public officials, the public interest requires that the General Assembly protect against such conflicts of interest by establishing by law appropriate ethical standards with respect to the conduct of such public officials in situations where a conflict may exist.
- (b) The General Assembly recognizes that an appropriate and effective code of ethics for employees of Cherokee County is also essential for the proper administration and operation of the Cherokee County government. The General Assembly, therefore, urges and expects the commission to provide by ordinance for a code of ethics substantially the same as the one provided by this Act for such employees.

Section 2. Definitions.

As used in this Act, the term:

- (1) "Business" means a corporation, a partnership, a sole proprietor, or any other person or organization carrying on an enterprise for profit.
- (2) "Confidential information" means any information which by law or practice is not available to the public.
- (3) "Consultant" means any person not a member of the governing authority who is retained, designated, or specially employed to render personal services of a technical or professional nature, whether paid or unpaid, and who has other personal or private employment. The term "consultant" includes, but is not limited to, attorneys, architects, engineers, surveyors, accountants, brokers, financial advisors, and title abstractors.
- (4) "Contract" means any claim or demand against or any lease, account, or agreement with any person, whether express or implied, executed or executory, verbal or in writing.
- (5) "Emergency situation" means any circumstance or condition giving rise to an immediate necessity for the execution of a contract by and between Cherokee County or a local authority and a public official or between Cherokee County or a local authority and a business in which a public official has an interest and where, to the satisfaction of the head of the affected county office, it is shown that there

¹Editor's note(s)—Printed herein is 1991 Ga. Laws, page 411, which created a board of ethics for the county. Amendments to the original act are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original act. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Section catchlines have been supplied by the editor. Any other additions made for clarity are indicated by brackets.

is no one other than such persons with whom the contract could have been made and that the necessity was not brought about by such persons' own fault or neglect.

- (6) "Immediate family" means an individual and the individual's spouse and their parents, children, brothers, and sisters.
- (7) "Interest" means any direct or indirect pecuniary or material benefit held by or accruing to a public official or to a member of the board of ethics as a result of a contract or transaction which is or may be the subject of an official act or action by or with Cherokee County or a local authority. Unless otherwise provided in this section, the term "interest" does not include any remote interest. A public official or a member of the board of ethics shall be deemed to have an interest in transactions involving:
 - (A) Any person in the member's immediate family;
 - (B) Any person with whom a contractual relationship exists whereby the member may receive any payment or other benefit;
 - (C) Any business in which the member is a director, officer, employee, prospective employee, or shareholder; or
 - (D) Any person of whom the member is a creditor, whether secured or unsecured.
- (8) "Local authority" means an authority described in paragraph (14) of this section.
- (9) "Official act or action" means any legislative, administrative, appointive, or discretionary act of a public official.
- (10) "Paid" means the receipt of, or right to receive, a salary, commission, or percentage, brokerage, or contingent fee.
- (11) "Participate" means to take part in official acts, actions, or proceedings personally as a member of the governing authority through approval, disapproval, decision, recommendation, investigation, the rendering of advice, or the failure to act or perform a duty.
- (12) "Person" means any individual, business, labor organization, representative, fiduciary, trust, or association, whether paid or unpaid, and includes any public official.
- (13) "Property" means any property, whether real or personal, or tangible or intangible, and includes currency and commercial paper.
- (14) "Public official" means the members of the board of commissioners and their appointees to all boards, commissions and authorities, including, but not limited to the following boards, commissions and authorities: the county manager of Cherokee County; the chairman and every member of the Cherokee County Airport Authority; the chairman and every member of the Cherokee County Development Authority; the chairman and every member of the Development Authority of Cherokee County, the chairman and every member of the Cherokee County Animal Control Advisory Board; the chairman and every member of the Cherokee County Board of Health; the chairman and every member of the Cherokee County Board of Tax Assessors; the chairman and every member of the Cherokee County Cemetery Preservation Committee; the chairman and every member of the Cherokee County Board of Family and Children Services; the chairman and every member of the Cherokee County Recreation and Parks Advisory Board; the chairman and every member of the Cherokee County Construction Board of Appeals; the chairman and every member of the Cherokee County Fire Code Appeals Board; the chairman and every member of the Cherokee County Impact Fee Appeals Board; the chairman and every member of the Cherokee County Planning Commission; the chairman and every member of the Cherokee County Region 1 EMS Advisory Board; the chairman and every member of the Cherokee County Wrecker Service Advisory and Appeals Board; the chairman and every member of the Cherokee

County RRDA Resource and Recovery Development Authority; and the chairman and every member of the Cherokee County Zoning Board of Appeals.

Public Official means any member of a board or authority appointed by the board of commissioners, the county manager or any other appointed officer or official of the county. For the purposes of this ordinance, the term shall not apply to any other county elected or state elected official unless that elected official or officials agree that he or she will be subject to coverage under this ordinance in writing. Such coverage may also apply to the employees of such other county or state elected officials when so agreed in writing. Further, for the purposes of this ordinance, the term shall not apply to the ethics board.

(Res. No. 2015-R-013, § 1)

- (15) "Remote interest" means the interest of:
- (A) A nonsalaried director, officer, or employee of a nonprofit corporation;
 - (B) A holder of less than 5 percent of the legal or beneficial ownership of the total shares of a business;
 - (C) Any person in a representative capacity, such as a receiver, trustee, or administrator; or
 - (D) Any person who, by determinations of the board of ethics, is deemed to have such an interest.
- (16) "Transaction" means the conduct of any activity that results in or may result in an official act or action of a public official.

Section 3. Conflict of interest.

No public official shall:

- (1) By his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official acts or actions or that he is affected unduly by the rank or position of or kinship or association with any person;
- (2) (A) Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, or thing of value for himself or another person if:
 - (i) It tends to influence him in the discharge of his official duties; or
 - (ii) He recently has been, is now, or in the near future may be involved in any official act or action directly affecting the donor or lender.
- (B) Subparagraph (A) of this paragraph shall not apply in the case of:
 - (i) An occasional nonpecuniary gift of insignificant value;
 - (ii) An award publicly presented in recognition of public service; or
 - (iii) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of Georgia to engage in the making of such a loan;
- (3) Disclose or otherwise use confidential information acquired by virtue of his position for his or another person's private gain;
- (4) Appear on his own personal behalf, or represent, advise, or appear on the personal behalf of, whether paid or unpaid, any person before any court or before any legislative, administrative, or quasi-judicial board, agency, commission, or committee of the state or of any county or municipality concerning any

contract or transaction which is or may be the subject of an official act or action of Cherokee County or a local authority or otherwise use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or other persons;

- (5) Engage in, accept employment with, or render services for any private business or professional activity when such employment or rendering of services is adverse to and incompatible with the proper discharge of his official duties. For the purposes of this paragraph, the employment of a consultant by any business involving matters unrelated to any contract or transaction by or with Cherokee County or a local authority shall not be deemed incompatible with such consultant's official duties;
- (6) Acquire an interest in any contract or transaction at a time when he believes or has reason to believe that such an interest will be affected directly or indirectly by his official act or actions or by the official acts or actions of Cherokee County or a local authority; or
- (7) Engage in any activity or transaction that is prohibited by law now existing or hereafter enacted which is applicable to him by virtue of his being a public official.

Section 4. Disclosure of interest.

A public official who has an interest that he has reason to believe may be affected by his official acts or actions or by the official acts or actions of Cherokee County or a local authority shall disclose the precise nature and value of such interest by sworn written statement to the board of ethics and ask for its opinion as to the propriety of said interest. Every public official who knowingly has any interest, direct or indirect, in any contract to which Cherokee County or a local authority is or is about to become a party, or in any other business with Cherokee County or a local authority, shall make full disclosure of such interest to Cherokee County or the local authority, as applicable, and to the board of ethics. The information disclosed by such sworn statements, except for the valuation attributed to the disclosed interest, shall be made a matter of public record by the board of ethics.

Section 5. Disqualification from participation in official action.

A public official shall disqualify himself from participating in any official act or action of Cherokee County or a local authority directly affecting a business or activity in which he has any interest, whether or not a remote interest.

Section 6. Contracts with member of governing body or with business in which member of governing body has interest.

Neither Cherokee County nor a local authority shall enter into any contract involving services or property with a member of its governing body or with a business in which a member of its governing body has an interest. This section shall not apply in the case of:

- (1) The designation of a bank or trust company as a depository for county funds;
- (2) The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest for such loan;
- (3) Contracts entered into with a business which employs a consultant, provided that the consultant's employment with the business is not incompatible with the consultant's official duties under paragraph (3) of Section 2 of this Act;
- (4) Contracts for services entered into with a business which is the only available source for such goods or services; and

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- (5) Contracts entered into under circumstances which constitute an emergency situation, provided that a record explaining the emergency is prepared by the public official and submitted to the board of ethics at its next regular meeting and thereafter kept on file.

Section 7. Contracts with or acts favorably affecting former members of governing body.

Neither Cherokee County nor a local authority shall enter into any contract with, or take any official act or action favorably affecting, any person, or business represented by such person, who has been within the preceding 12-month period a member of its governing body.

Section 8. Interpretation; severability.

- (a) This section [Act] shall be construed liberally to effectuate its purposes and policies and to supplement such existing laws as may relate to the conduct of a public official.
- (b) The propriety of any official act or action taken by or transaction involving a public official immediately prior to the time this Act shall take effect shall not be affected by the enactment of this Act.
- (c) The provisions of this Act are severable, and if any of its provisions shall be held unconstitutional or invalid by a court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining provisions.

Section 9. Board created; membership; organization, staff and budget; powers and duties.

- (a) There is created the Board of Ethics of Cherokee County to be composed of seven citizens of Cherokee County to be appointed as provided in subsection (b) of this section. Each member of the board of ethics shall have been a resident of Cherokee County for at least one year immediately preceding the date of taking office and shall remain a resident of the county while serving as a member of the board of ethics. No person shall serve as a member of the board of ethics if the person has, or has had within the immediately preceding two-year period, any interest in any contract, transaction, or official action of Cherokee County.
- (b) Two members of the board of ethics shall be appointed by the chairman of the board of commissioners of Cherokee County and five members shall be appointed by a majority vote of the full membership of the board of commissioners of Cherokee County. At a minimum, two members shall be members of the Republican Party and two members shall be members of the Democratic Party. The initial members of the board of ethics shall be those members appointed pursuant to an Act approved March 28, 1990 (1990 Ga. Laws, page 4745), and each such member shall serve until the expiration of the initial term to which such member was appointed and until such member's successor is appointed and qualified under this Act. Successors to the first members of the board of ethics and future successors shall be appointed by the respective appointing authorities for terms of seven years upon the expiration of the respective terms of office. All members of the board of ethics shall serve until their successors are appointed and qualified.
- (c) If a member of the board of ethics ceases to be a resident of Cherokee County, that member's position on the board, by operation of law, shall become vacant upon the establishment of the fact of such nonresidency, if contested, by a court of competent jurisdiction. A vacancy in the board of ethics shall exist by reason of death, resignation, or loss of residency as described in this subsection. A member of the board of ethics may be removed from office during a term only if the member becomes ineligible to hold civil office within the meaning of O.C.G.A. § 45-2-1 and that ineligibility is established by decision of a court of competent jurisdiction which declares the office vacant because of such ineligibility. A vacancy shall be filled for the unexpired term by the respective appointing authority.
- (d) The members of the board of ethics shall serve without compensation and shall elect from their own membership a chairman and otherwise provide for their own internal organization. The governing authority

of Cherokee County shall provide adequate office and meeting space for the board of ethics. Subject to budgetary procedures and requirements and Cherokee County merit system regulations, the board of ethics shall be authorized to employ its own staff and clerical personnel. The governing authority of Cherokee County shall also provide the board of ethics with such supplies and equipment as may be reasonably necessary for it to carry out its duties and responsibilities. The board of ethics shall be a department of the county government and shall be subject to budgetary procedures and requirements in the same manner as are other departments of the county government; provided, however, in exercising its powers and duties under this section, the board of ethics shall be completely independent and shall not be subject to control or supervision by the chairman of the commission, the county manager, the commission, or any other officer, department, or agency of the county government.

- (e) The board of ethics shall have the following duties:
- (1) To establish procedures, rules, and regulations governing its internal organization and the conduct of its affairs;
 - (2) To render advisory opinions with respect to the interpretation and application of this Act to all persons who seek advice as to whether a particular course of conduct would constitute a violation of the standards imposed in this section. Such opinions shall be binding on the board of ethics in any subsequent complaint concerning the person who sought the opinion and acted in good faith, unless material facts were omitted or misstated in the request for the advisory opinion;
 - (3) To prescribe forms for the disclosures required in this section and to make available to the public the information disclosed as provided in this Act;
 - (4) To receive and hear complaints of violations of the standards required by this Act;
 - (5) To make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provisions of this Act; and
 - (6) To hold such hearings and make such inquiries as it deems necessary for it to carry out properly its functions and powers.
- (f) [Enforcement powers; conduct of hearings.]
- (1) Any public official who knowingly violates any provision of the code of ethics provided for in this Act shall forfeit his office and may be removed from office after notice and hearing by the affirmative vote of five members of the board of ethics. The board of ethics by its own motion or as a result of a complaint filed with the board of ethics by any citizen or by a group of citizens of Cherokee County may make such investigation as it deems proper to carry out its duties under this subsection. For the purposes of this subsection, the board of ethics may hold and conduct hearings, issue subpoenas, examine witnesses, and administer oaths. The board of ethics shall apply to the Superior Court of Cherokee County for the enforcement of any subpoena issued by the board.
 - (2) At any hearing held under paragraph (1) of this subsection, the public official who is adversely affected shall have the right to be represented by counsel, to hear and examine the evidence and witnesses against the member of the governing authority, and to present evidence and witnesses in opposition or in extenuation.
- (g) [Judicial review of decisions.]
- (1) Any public official adversely affected by any final decision of the board of ethics under subsection (f) of this section may obtain judicial review of such decision as provided in this subsection.
 - (2) An action for judicial review may be commenced in the Superior Court of Cherokee County within 30 days after the decision of the board of ethics becomes final.

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- (3) The effective date of the final decision of the board of ethics shall be postponed pending judicial review [as] provided for in this subsection.
 - (4) The record on review, unless otherwise stipulated by the parties, shall include the original or certified copies of all pleadings, testimony, evidence, exhibits, and other papers presented to or considered by the board of ethics and the findings and decisions of the board of ethics. As to alleged procedural irregularities, evidence may be taken independently by the court.
 - (5) If the court finds no error, it shall affirm the decision of the board of ethics. If it finds that such action was:
 - (A) Arbitrary or capricious;
 - (B) A denial of a statutory right;
 - (C) Contrary to constitutional right, power, privilege, or immunity;
 - (D) In excess of statutory jurisdiction, authority, purposes, or limitation;
 - (E) Not in accord with the procedures or procedural limitations of this section or as otherwise required by law;
 - (F) An abuse or clearly unwarranted exercise of discretion, unsupported by substantial evidence when the record is considered as a whole; or
 - (G) Otherwise contrary to law,then the court shall hold unlawful and set aside the decision of the board of ethics removing the public official from office.
 - (6) The decision of the trial court shall be subject to appellate review in the same manner and with the same effect as in appeals from a final judgment or decree in any other civil action.

Section 10. Limitation of liability.

No member of the board of ethics, or any person acting on behalf of the board of ethics, shall be liable to any person for any damages arising out of the enforcement or operation of this ordinance, except in the case of willful or wanton conduct. This limitation of liability shall apply to the members of the Cherokee County Board of Ethics, the employees of said Board of Ethics, and any person acting under the direction of the Board of Ethics.

(Res. No. 2015-R-013, § 2)