

**TSBA Model Code of Ethics &
Ethical Standards Requirements for Local Boards of Education
[Public Chapter 898]**

During the 2008 legislative session, the General Assembly amended the “Comprehensive Governmental Ethics Reform Act of 2006,” which is codified in T.C.A. § 8-17-101 *et seq.* As you are probably aware, the original law required local governments to adopt ethical standards related to the acceptance of gifts and disclosure of conflicts of interest. With the exception of special school districts, boards of education and their employees fell under the standards adopted by their respective county or city legislative bodies. The General Assembly, with TSBA’s support, amended the law this year with SB 3024/HB 2544 (Public Chapter 898) to recognize local boards of education as separate government entities for the purpose of adopting their own ethical standards.

Here are some important points you should know about the law:

1. Local ethical standards must be adopted by each board of education.
2. The standards are required to cover two things: 1) disclosure and/or limits on gifts, and 2) disclosure of conflicts of interest.
3. The standards apply broadly to all officials and employees of the school district.
4. TSBA is required to draft and distribute a model code of ethics to school districts to provide guidance and direction. A school district may choose to adopt the model or draft standards of its own.
5. The standards must be filed with the Tennessee Ethics Commission. If the school district adopts the TSBA model, however, it must simply notify the Ethics Commission in writing that the district has adopted the TSBA model standards. The address of the Ethics Commission is: Tennessee Ethics Commission, SunTrust Bank Bldg., 201 4th Ave N., Suite 1820, Nashville, TN 37243.
6. Enforcement remains as provided under current law.
7. A failure or refusal to adopt standards by a school district subjects its members to ouster.
8. Public Chapter 898 went into effect upon becoming law – May 12, 2008. Therefore, boards should take action as soon as possible. Obviously, the state will have to provide some time for school districts to formulate and adopt ethical standards; however, it is not clear how much time will be given for this purpose.

Overview of the TSBA Model Code of Ethics

Section 1. This section defines terms used in the code. The Ethics Reform Act, as amended, requires school districts to provide for disclosure of “personal interests that impact or appear to impact” the discretion of officials and employees. Under the model code, a “personal interest” that must be disclosed publicly is defined as a financial interest of the official or employee or a financial interest of a spouse or child who lives in the same household with the official or employee. A school district may choose to define “personal interest” in another way that meets the requirements of the act.

Section 2. This section deals with the disclosure of personal interests by persons whose duty it is to vote on school district matters. The Ethics Reform Act requires school districts to provide for “reasonable and systematic disclosure” of “personal interests that impact or appear to impact” the discretion of officials and employees. A school district may choose to develop language different from the TSBA model code to meet these requirements.

Section 3. This section deals with matters where a vote is not involved but which require the exercise of discretion. Officials and employees must publicly disclose any personal interest that affects or would lead a reasonable person to believe it affects the person’s exercise or discretion. The disclosure is to be made on a disclosure form that is attached to the model code, and the form is to be filed with the district’s central office.

The Ethics Reform Act requires counties to provide for “reasonable and systematic disclosure” of “personal interests that impact or appear to impact” the discretion of officials and employees. This section of the TSBA model code is one way to meet these requirements.

Section 4. This section prohibits official and employees from accepting gifts under certain circumstances. The Ethics Reform Act requires school districts to provide “limits on and/or reasonable and systematic disclosure of gifts or other things of value received by official and employees that impact or appear to impact their discretion.” This model code is one option to meet this requirement; however, a school district may choose another method.

Section 5. This section provides that the school board may create a School District Ethics Committee. The Ethics Reform Act does not contain any provisions regarding enforcement of the ethical standards or specific penalties, but instead provides that violations of ethical standards are to be enforced under existing law. While it is not required under the Ethics Reform Act, the model code sets up a mechanism for filing complaints of violations of the code. The formation of an ethics committee is at the complete discretion of the school district, however, as the Ethics Reform Act does not mandate its creation or the designation of any other local office to receive complaints.

Appendix. This section lists and briefly summarizes most of the state laws currently in effect governing ethics in school districts. While the Ethics Reform Act does not require that these laws be included in your adopted ethical standards, officials and employees need to be made aware of these laws. It is also important to note that these state laws operate regardless of the code of ethics a school district adopts.

Adoption of ethical standards

Adoption of the TSBA Model Code of Ethics is not required. You are free to adopt your own policy, but if you adopt something other than the model you must file the entire code with the Tennessee Ethics Commission. If you adopt the TSBA model with no changes, you may simply notify the Ethics Commission in writing that you have adopted the model code. **Please note that all filing is with the Tennessee Ethics Commission, not TSBA.**

After your ethical standards have been filed, any amendments or modifications must be filed with the Ethics Commission as soon as possible.

Where to file your local ethical standards

Each school district must file with the Tennessee Ethics Commission a copy of the ethical standards adopted by the board of education. If the school board adopts the TSBA model, a written statement to that effect may be filed instead of the entire code. The commission's mailing address and telephone number are:

Tennessee Ethics Commission
SunTrust Bank Bldg.
201 4th Ave N., Suite 1820
Nashville, TN 37243
Phone: 615-253-8634
Fax: (615) 253-8704
ethics.counsel@state.tn.us

If you have further questions or need assistance with the adoption of your ethical standards, please contact your local attorney or the TSBA Policy Department.

Note: Portions of the TSBA Model Code of Ethics, its overview and instructions were developed or reproduced with the guidance of the County Technical Assistance Service Model Ethics Policy. Special thanks to the University of Tennessee for its assistance in this matter.

CODE OF ETHICS

_____ SCHOOL DISTRICT

Section 1. Definitions.

- (1) “School district” means _____ School District, which was duly created by a public or private act of the General Assembly; and which includes all boards, committees, commissions, authorities, corporations or other instrumentalities appointed or created by the school district or an official of the school district.
- (2) “Officials and employees” means and includes any official, whether elected or appointed, officer, employee or servant, or any member of any board, agency, commission, authority or corporation (whether compensated or not), or any officer, employee or servant thereof, of the school district.
- (3) “Personal interest” means, for the purpose of disclosure of personal interests in accordance with this Code of Ethics, a financial interest of the official or employee, or a financial interest of the official’s or employee’s spouse or child living in the same household, in the matter to be voted upon, regulated, supervised, or otherwise acted upon in an official capacity.

Section 2. Disclosure of personal interest in voting matters. An official or employee with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and to be included in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official’s or employee’s vote on the measure. In addition, the official or employee may, to the extent allowed by law, recuse himself or herself from voting on the measure.

Section 3. Disclosure of personal interest in non-voting matters. An official or employee who must exercise discretion relative to any matter other than casting a vote and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on the attached disclosure form and file the disclosure form with the school district’s central office. In addition, the official or employee may, to the extent allowed by law, recuse himself or herself from the exercise of discretion in the matter.

Section 4. Acceptance of gifts and other things of value. An official or employee, or an official’s or employee’s spouse or child living in the same household, may not accept, directly or indirectly, any gift, money, gratuity, or other consideration or favor of any kind from anyone other than the school district that a reasonable person would

understand was intended to influence the vote, official action or judgment of the official or employee in executing decision-making authority affecting the school district.

It shall not be considered a violation of this policy for an official or employee to receive entertainment, food, refreshments, meals, health screenings, amenities, foodstuffs, or beverages that are provided in connection with a conference sponsored by an established or recognized statewide association of school board officials or by an umbrella or affiliate organization of such statewide association of school board officials.

Section 5. Ethics Complaints. The school district may create a School District Ethics Committee (the “Ethics Committee”) consisting of three members who will be appointed to one-year terms by the Chairman of the Board of Education with confirmation by the board of education. At least two members of the committee shall be members of the board of education. The Ethics Committee shall convene as soon as practicable after its appointment and elect a chair and a secretary. The records of the Ethics Committee shall be maintained by the secretary and shall be filed in the office of the director of schools, where they shall be open to public inspection.

Questions and complaints regarding violations of this Code of Ethics or of any violation of state law governing ethical conduct should be directed to the chair of the Ethics Committee. Complaints shall be in writing and signed by the person making the complaint, and shall set forth in reasonable detail the facts upon which the complaint is based.

The School District Ethics Committee may investigate any credible complaint against an official or employee charging any violation of this Code of Ethics, or may undertake an investigation on its own initiative when it acquires information indicating a possible violation, and make recommendations for action to end or seek retribution for any activity that, in the Committee’s judgment, constitutes a violation of this Code of Ethics. If a member of the Committee is the subject of a complaint, such member shall recuse himself or herself from all proceedings involving such complaint.

The Committee may:

- (1) refer the matter to the Board Attorney for a legal opinion and/or recommendations for action;
- (2) in the case of an official, refer the matter to the school board body for possible public censure if the board body finds such action warranted;
- (3) in the case of an employee, refer the matter to the official responsible for supervision of the employee for possible disciplinary action if the official finds discipline warranted;
- (4) in a case involving possible violation of state statutes, refer the matter to the district attorney for possible ouster or criminal prosecution;

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The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this Code of Ethics. When a violation of this Code of Ethics also constitutes a violation of a personnel policy or a civil service policy, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this Code of Ethics.

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CONFLICT OF INTEREST DISCLOSURE STATEMENT

Instructions: This form is for reporting personal interests required to be disclosed under Section 3 of the Code of Ethics of this school district. Officials and employees are required to disclose personal interests in matters that affect or would lead a reasonable person to infer that it would affect the exercise of discretion of an official or employee.

1. Date of disclosure: _____

2. Name of official or employee: _____

3. Office and position: _____

4. Description of personal interest (describe below in detail):

Signature of official or employee

Witness Signature

Printed name of witness

Appendix – Applicable State Laws

In addition to the ethical principles set out in this Code of Ethics, state laws also provide a framework for the ethical behavior of elected officials and employees in the performance of their duties. Officials and employees should familiarize themselves with the state laws applicable to their office or position and the performance of their duties. To the extent that an issue is addressed by state law (law of general application, public law of local application, local option law, or private act), the provisions of that state law, to the extent they are more restrictive, shall control. Following is a brief summary of selected state laws concerning ethics in local government. **This summary is not intended to be an exhaustive listing of all existing applicable State laws.** For the full text of these statutes, see the Tennessee Code Annotated (T.C.A.) sections indicated.

Campaign finance—T.C.A. Title 2, Chapter 10. Part One (campaign financial disclosure) requires candidates for public office to disclose contributions and contributors to their campaigns. Part Three (campaign contribution limits) limits the total amount of campaign contributions a candidate may receive from an individual and sets limits on the amount a candidate may receive in cash.

Conflict of interest—T.C.A. § 12-4-101 is the general conflict of interest statute that applies in all counties. It prohibits anyone who votes for, lets out, or in any manner supervises any work or contract from having a direct financial interest in that contract, purchase or work, and it requires disclosure of indirect financial interests by public acknowledgment.

Conflict of interest—T.C.A. § 49-6-2003 applies to the department of education in all counties and prohibits direct and indirect conflicts of interest in the sale of supplies for use in public schools.

Conflict of interest—T.C.A. § 5-1-125 applies in all counties and prohibits officials and employees from purchasing surplus school system property except where it is sold by public bid.

Conflict of interest—T.C.A. § 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from having any financial or other personal beneficial interest in any contract or purchase of goods or services for any department or agency of the county.

Conflict of interest—T.C.A. § 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits all county officials and employees from having any financial or other personal beneficial interest in the purchase of any supplies, materials or equipment for the county.

Conflict of interest—T.C.A. §§ 5-5-102 and 12-4-101 govern disclosures and abstentions from voting due to conflicts of interest of members of county legislative bodies.

Conflict of interest disclosure statements—T.C.A. § 8-50-501 and the following sections require candidates and appointees to local public offices to file a disclosure statement with the state ethics commission listing major sources of income, investments, lobbying activities,

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professional services provided, bankruptcies, certain loans, and other information, and to keep these statements up to date.

Gifts—T.C.A. § 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from receiving anything of value, directly or indirectly, from anyone who may have or obtain a contract or purchase order with the county.

Gifts—T.C.A. § 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits the finance director, purchasing agent, and employees in those departments from accepting anything of value, directly or indirectly, from anyone who furnishes supplies, materials or equipment to the county.

Honoraria—T.C.A. § 2-10-116 prohibits elected officials from accepting an honorarium (including money or anything of value, but not including reimbursement for actual expenses) for an appearance, speech, or article in their official capacity.

Fee statutes—T.C.A. §§ 8-21-101, 8-21-102, and 8-21-103 set out circumstances where fees are authorized, prohibit officials from requiring payment of fees in advance of performance of services except where specifically authorized, and set penalties for charging excessive or unauthorized fees.

Consulting fee prohibition for elected county officials—T.C.A. §§ 2-10-122 and 2-10-124 prohibit officials from receiving compensation for advising or assisting a person or entity in influencing county legislative or administrative action.

Crimes involving public officials—T.C.A. § 39-16-101 and the following sections prohibit bribery, soliciting unlawful compensation, and buying and selling in regard to offices.

Official misconduct—T.C.A. § 39-16-402 applies to public servants and candidates for office and prohibits unauthorized exercise of official power, acting in an official capacity exceeding the servant's power, refusal to perform a duty imposed by law, violating a law relating to the servant's office or employment, and receiving a benefit not provided by law.

Official oppression—T.C.A. § 39-16-403 prohibits abuse of power by a public servant.

Bribery for votes—T.C.A. §§ 2-19-121, 2-19-126, and 2-19-127 prohibit bribery of voters in elections.

Misuse of official information—T.C.A. § 39-16-404 prohibits a public servant from attaining a benefit or aiding another person in attaining a benefit from information which was obtained in an official capacity and is not available to the public.

Ouster law—T.C.A. § 8-47-101 sets out conduct that is punishable by ouster from office, including misconduct in office and neglect of duty.