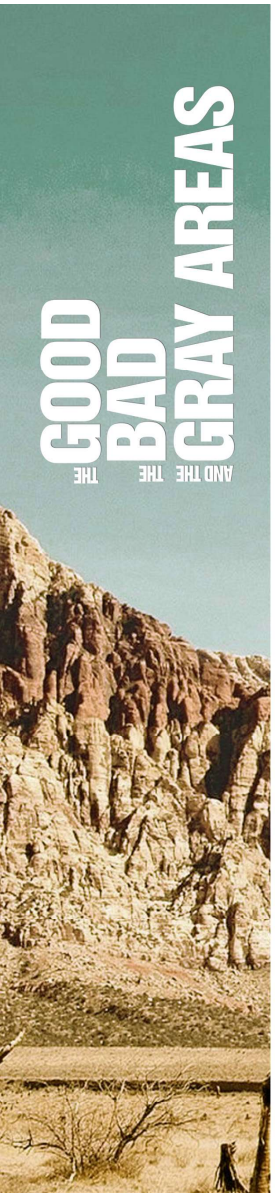
THE GOOD THE BAD AND THE GRAY AREAS

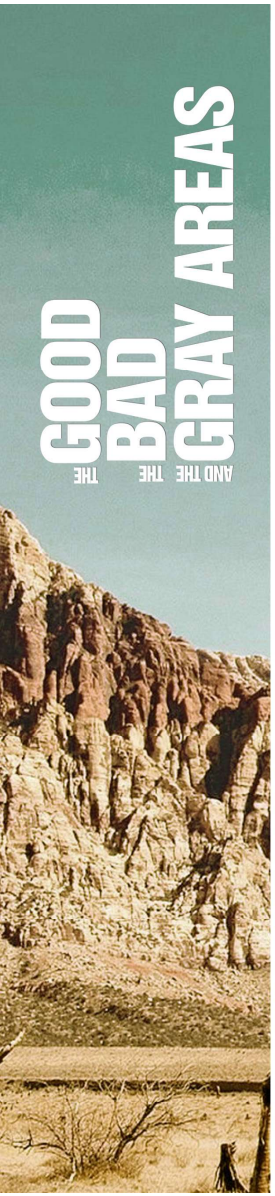
Where are you on ethics?

Tara McCall, Esq., SCSBA Staff Attorney



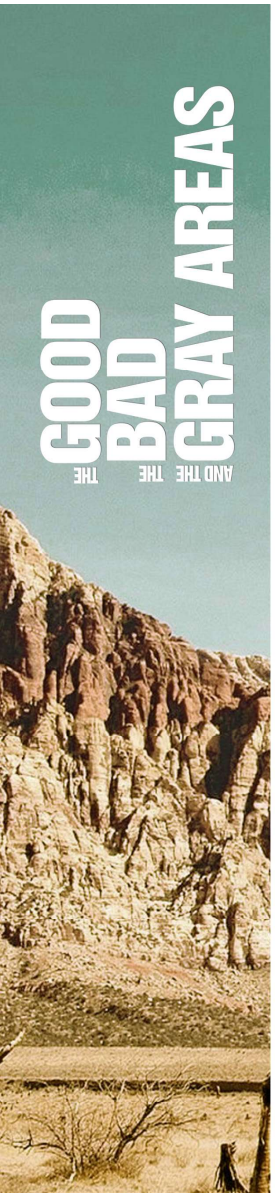
South Carolina Ethics: The Wild West?

- South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991
- Applies to public officials, public members, and public employees
- South Carolina Ethics Commission
  - 8 members: 2 appointed by Senate, 2 appointed by House, 4 appointed by Governor
  - 5-year terms
- Advisory Opinions
  - Formal v. Informal



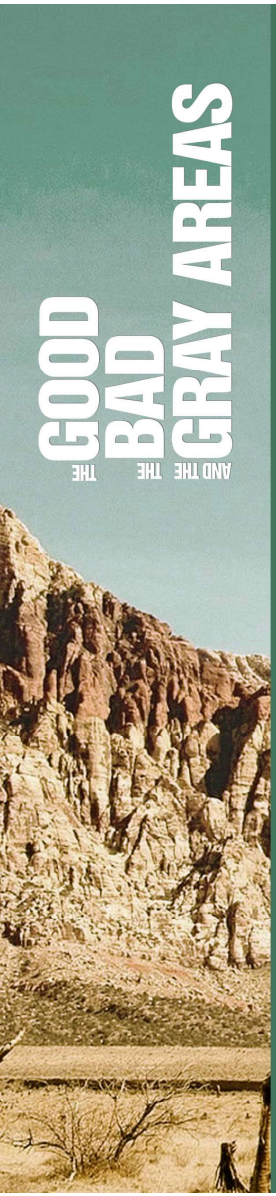
Complaints & Investigations

- Anyone can file an ethics complaint
  - Anonymous complaints can't be filed, but information therein can be investigated
  - Groundless complaints
  - 4-year statute of limitations unless discovery deliberately prevented
- Verified complaint; within 10 days a copy is sent to respondent
- Illegal to contact any member of the Commission during pendency of a complaint; can communicate with Commission staff
- At the conclusion of the investigation, a recommendation is made as to whether probable cause exists to believe a violation has occurred
  - Probable cause – allegations in the complaint are more likely than not to have occurred and constitute a violation
- Commission may waive further proceedings if respondent takes action to remedy or correct the alleged violation

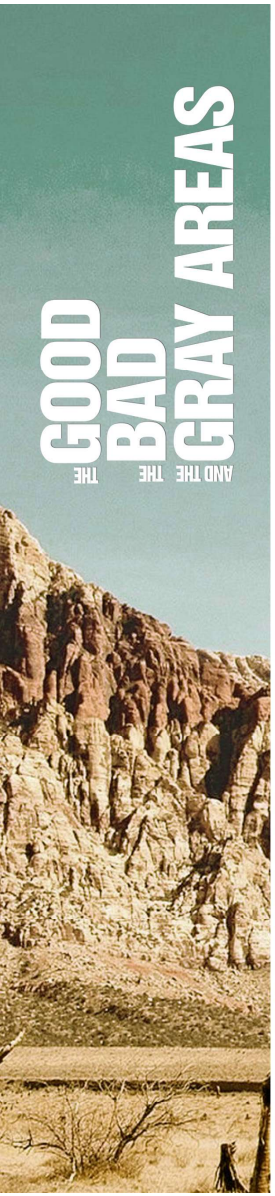


What disciplinary actions can be taken?

- If found guilty of an alleged violation, the Commission may:
  - Recommend administrative action or disciplinary action
  - Issue a public warning or reprimand
  - Order restitution
  - Levy a civil penalty of not more than $2,000 per violation
- Any criminal activity is subject to prosecution by the Attorney General's Office:
  - If found guilty of a violation, the respondent is guilty of a misdemeanor and subject to a fine of up to $5,000, imprisonment for not more than 1 year, or both
  - Bribery is a felony and carries the penalty of a $10,000 fine, 10 years in prison, or both



Let’s see how much you know!



Campaigning at O.K. Corral

Board member Wyatt Earp arrives at O.K. Corral Elementary School to pick up his son. While in the office, he gets the school secretary to fax his campaign flyer over to Office Depot so he can get copies made.

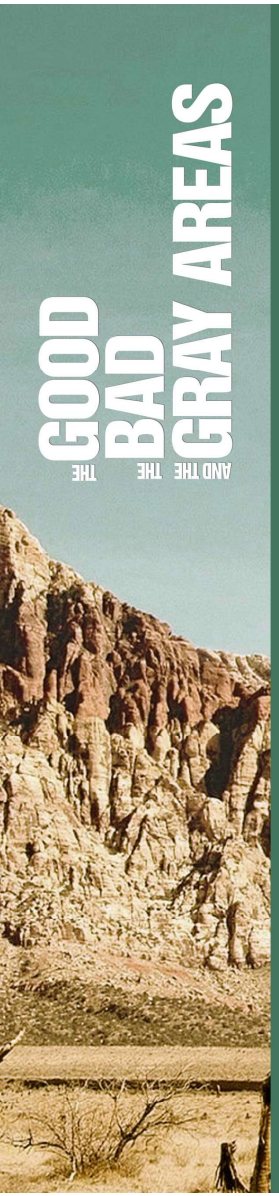
Earp also requests that the secretary place a stack of informational flyers in the office about an upcoming candidate forum taking place at O.K. Corral Community Center.

Finally, Earp asks to use the administrative conference room for a campaign committee meeting.

Has Earp violated the Ethics Act?

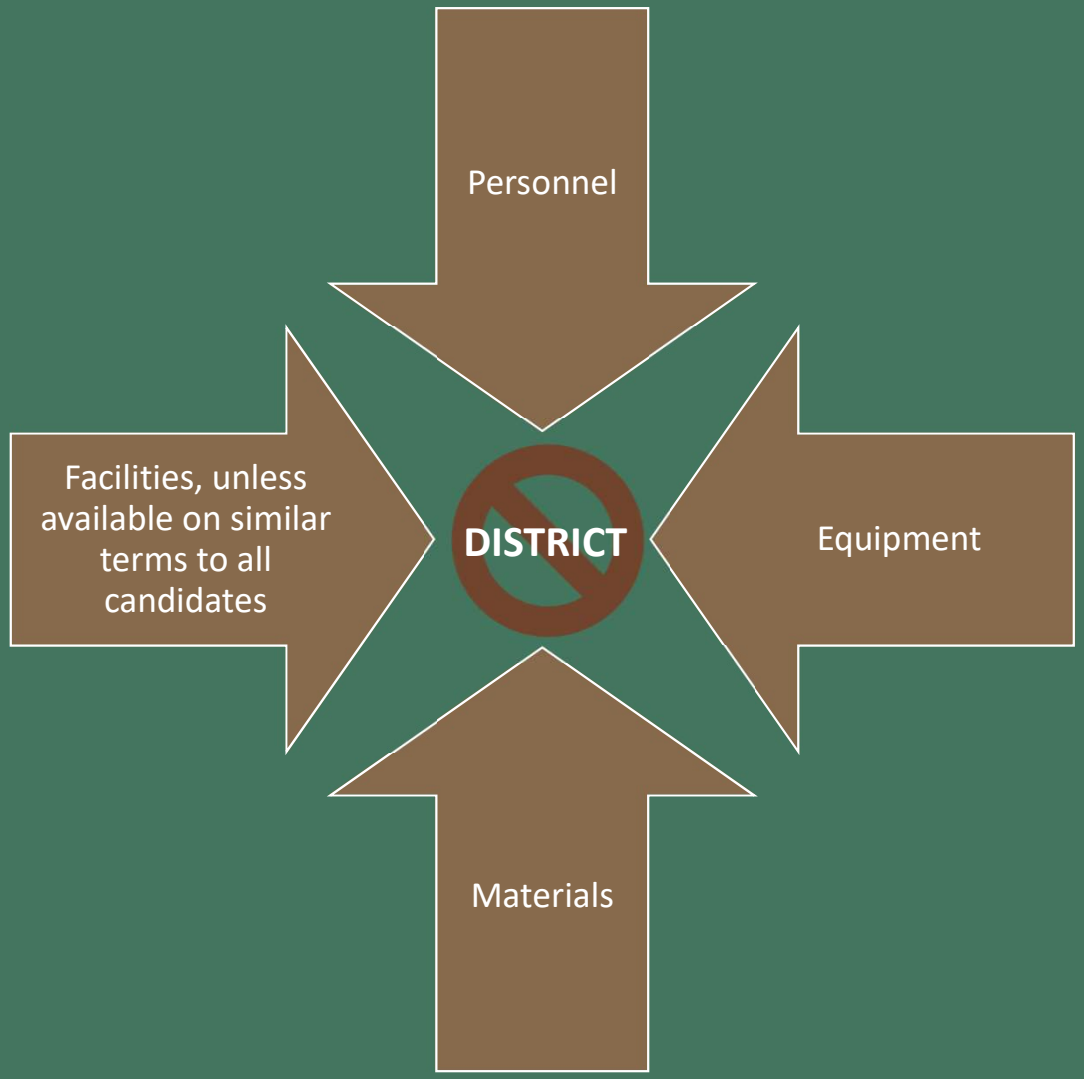
A teacher at O.K. Corral Elementary is a volunteer with board member Earp's campaign for reelection to the school board. She uses her Gmail account to send a campaign flyer to some of her coworkers on their district email accounts. These coworkers have attended campaign events and are registered as campaign volunteers for board member Earp. She knows they support him in the upcoming election.

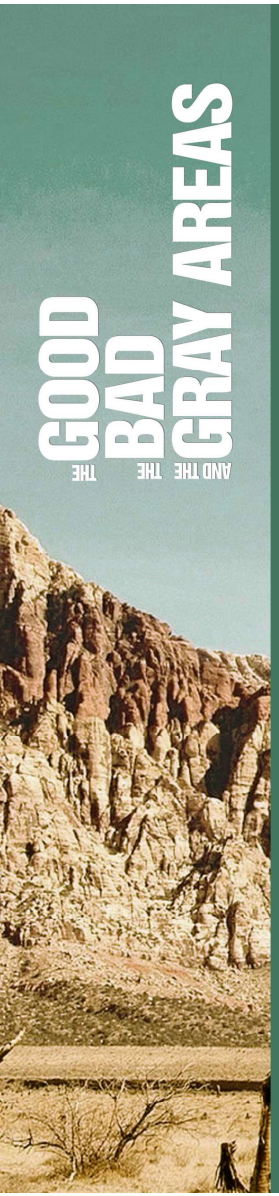
Is this a violation of the Ethics Act?



In an election campaign, board members may not use:

S.C. Code Ann. § 8-13-765

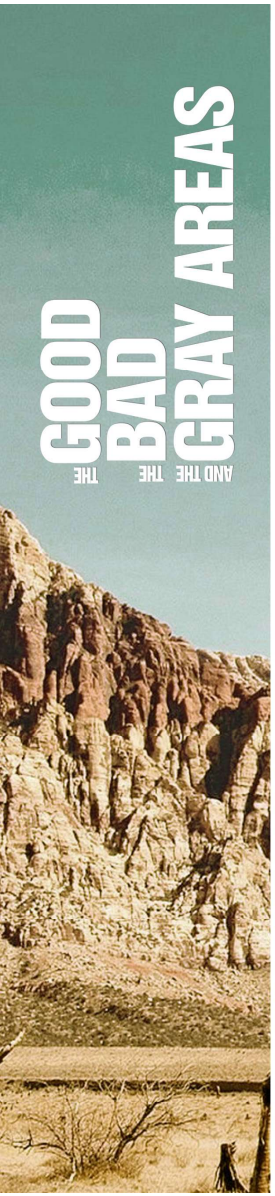




SC Ethics Advisory Opinion

2003-003

"A person knowingly sending an e-mail which contains campaign material to a public employee on his government computer is in violation of the Ethics Reform Act."



Prospecting for Pecos

Board Member Doc Holliday is a huge supporter of S.C. Senate Candidate Pecos Bill. He has several different "Vote for Pecos" stickers on the personal vehicle he drives to board meetings and district events.

Is this a violation of the Ethics Act?

Holliday decides his campaign stickers aren't getting enough attention, so he gets his entire vehicle "wrapped" with "Vote for Pecos" messaging.

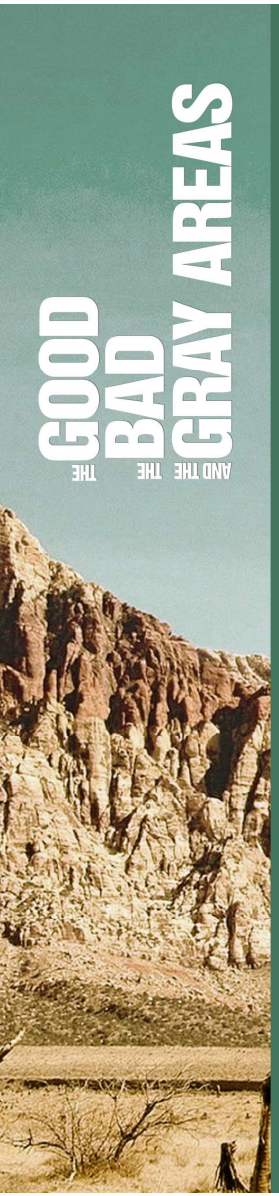
Is this a violation of the Ethics Act?

Holliday tells Candidate Pecos he is allowed to pass out campaign materials during a theatre class production at 7 p.m. at the high school auditorium.

Is this a violation of the Ethics Act?

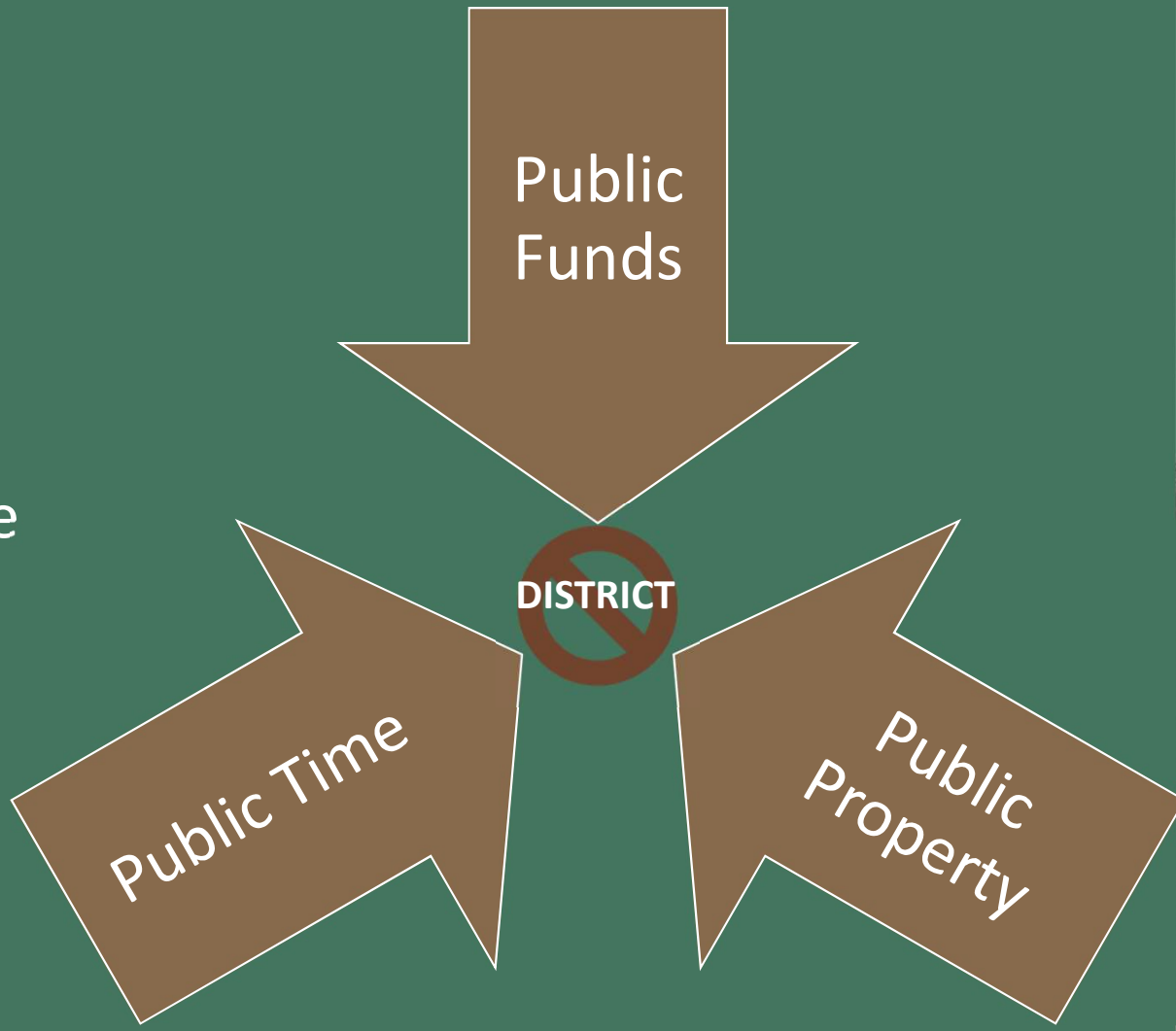
Holliday invites Candidate Pecos and his opponent to come speak at a district assembly. Pecos agrees to come, but his opponent declines to attend.

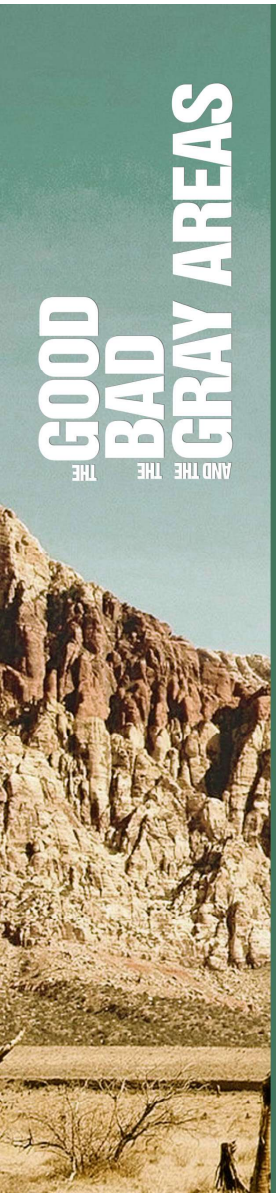
Can the assembly be held?



For purposes of influencing the outcome of an election, no person may use or authorize the use of:

S.C. Code Ann. § 8-13-1346





SC Ethics Advisory Opinion 2006-001

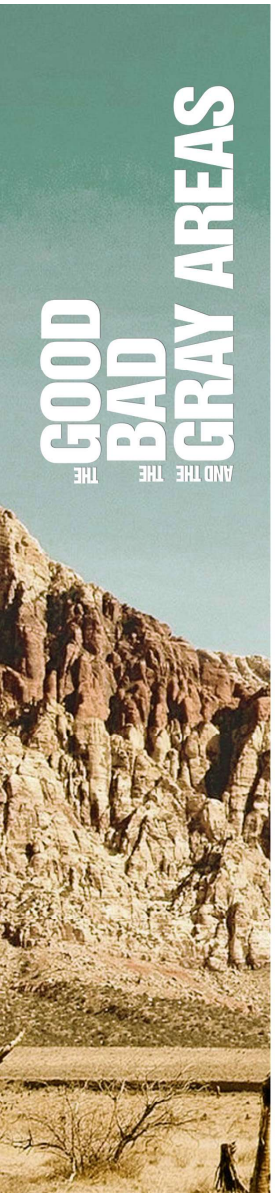
PREDOMINANT PURPOSE TEST

Educational
(i.e. school day)

Predominant purpose of public school property during the school day is public education of children

Entertainment
(i.e. football game)

General public is invited and predominant purpose is to provide entertainment



Corralling Campaign Accounts

Board member Annie Oakley is traveling to a campaign event and uses her campaign account to purchase gasoline.

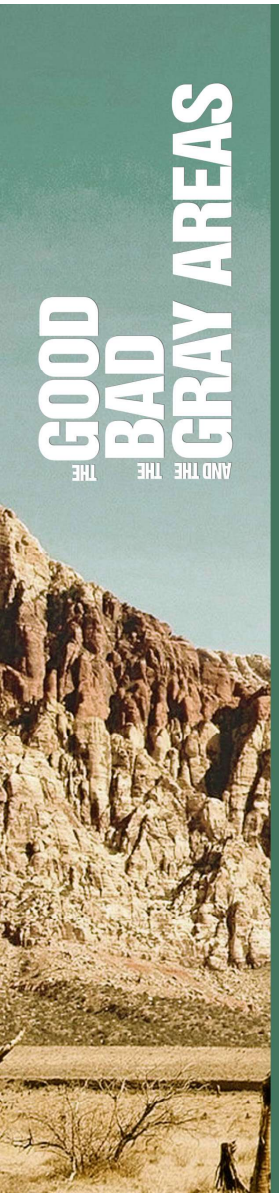
Is this a violation of the Ethics Act?

Board member Buffalo Bill is relieved he hasn't had any campaign spending since the election last November. In fact, he only has twelve cents in his account. He filed his pre-election campaign disclosure, and he hasn't filed any additional reports since.

Has Buffalo Bill violated the Ethics Act?

Board member Frank Butler is up for reelection and is unsure how to file his pre-election campaign disclosure report. The board secretary helps him complete this required filing.

What implications does this have for the district?



Campaign Funds

Campaign Spending

All expenditures must come from your campaign account!

S.C. Code Ann. § 8-13-1348 has more detail on receipts, petty cash, etc.

Personal Funds

You can **loan** your campaign money, but it must be paid back BEFORE the election!

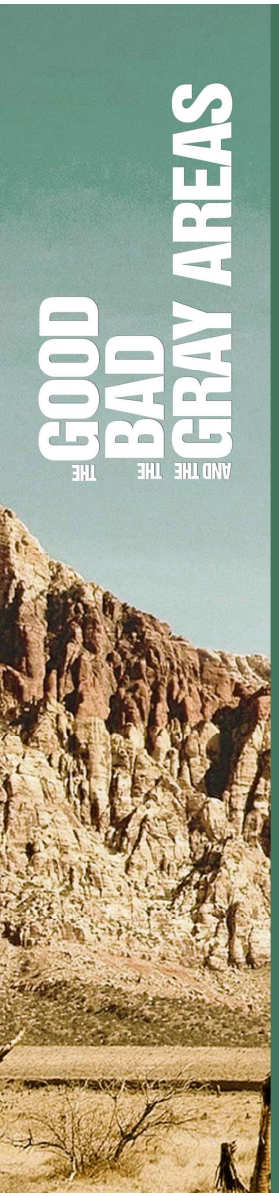
Personal **contributions** can't be returned.

Other Offices

You can only use campaign funds to run for another office if you write a letter to ALL donors and get their WRITTEN permission!

Fines

Campaign funds CANNOT be used to pay fines to the Ethics Commission! March 2019 Advisory Opinion



Filing Candidate Campaign Disclosures

Initial Report
within 10 days after spending or receiving the first $500 of campaign funds, including your personal funds

Pre-Election Report
No later than 15 days prior to each election; filed whether there has been financial campaign activity or not

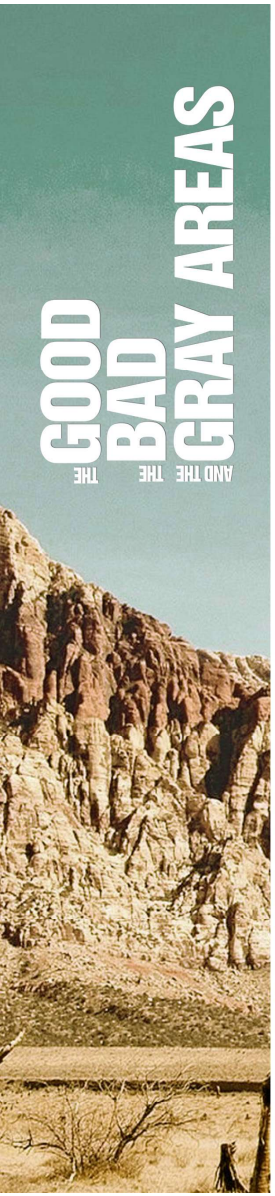
Quarterly Reports
January 10
- Oct 1 – Dec 31

April 10
- Jan 1 – March 31

July 10
- April 1 – June 30

October 10
- July 1 – Sept 30

Final Report
After the campaign account is closed; must be a ZERO balance and no outstanding debts



SEI Stampede

New board member Wild Bill was elected in November and sworn in thereafter. He files his first Statement of Economic Interests on March 28th.

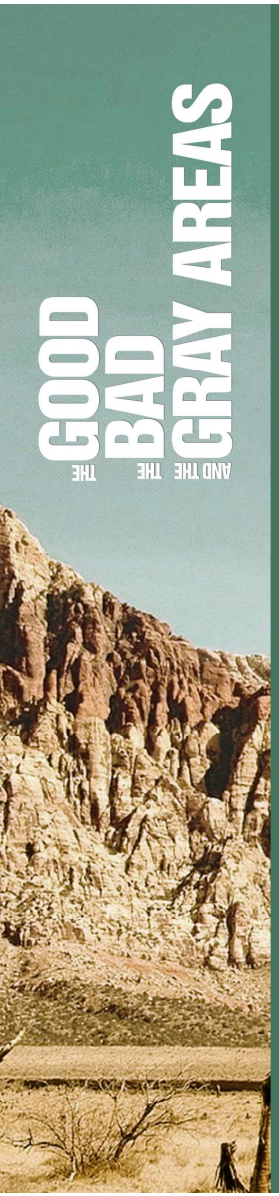
Has Wild Bill violated the Ethics Act?

Board member Jesse James has filed his Statement of Economic Interests. He works full-time for Wild Bunch Construction, so he includes this as his main source of income. Since he only makes $500 a month as a board member, he doesn't list that on his SEI.

Is this a violation of the Ethics Act?

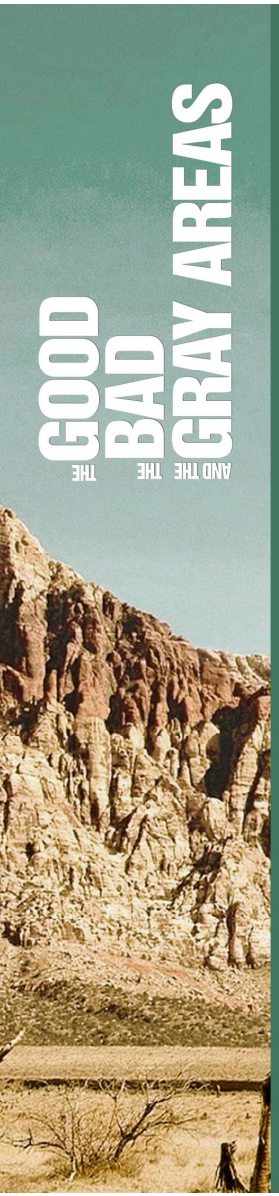
At the annual SCSBA conference, a local law firm takes the board to dinner. Board member Lone Ranger adds this item to his SEI. Board member Hoss Cartwright thinks that it should not be included.

Who is correct?



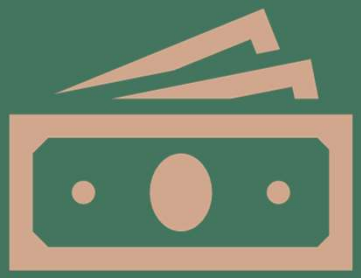
"Gift" Includes:

S.C. Code Ann. § 8-13-100(16)

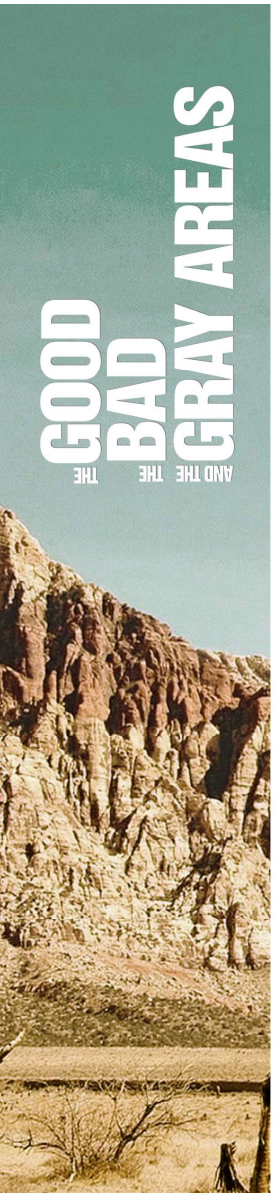


What must be included on your SEI?

- Governmental income of the board member or his/her immediate family of substantial value (> $500 in a year)
- Private source and type of any income received by the board member or his/her immediate family
- Real property owned by the board member or his/her immediate family with $200 of public improvements, adjacent to public land with such improvements, or reasonably expected to be subject of a conflict of interest
- Organizations which paid for or reimbursed actual expenses of the board member for speaking before a public or private group
- Source and a brief description of any gifts, including transportation, lodging, food, or entertainment received if there is reason to believe they would not have been given the item but for the individual's position as a board member OR it is from a person or business who has or is seeking to obtain a contractual relationship with the district or board
- Identity of every business or entity which the board member or his/her immediate family holds or controls securities or interests constituting 5% or more of the total issued and outstanding securities and interests which equal >$100,000
- Creditor to whom the board member or his/her immediate family owed a debt >$500 if the creditor is seeking/has sought a business or financial arrangement with the board



- Lobbyist who is an immediate family member of the board member or lobbyist who is an individual with whom/business with which the board member or his/her immediate family is associated
- Individual or business which contracts with the board or district and also provides compensation to board member



Treacherous Trophies and Travel

The Gallop Around Group plans to bestow its annual Community Caregiver award to Board member Highstep in recognition of her service to the education community. The award includes a banquet reception where she will be a featured speaker. A fancy meal will be served, and she will be given a beautiful crystal trophy valued at $145.

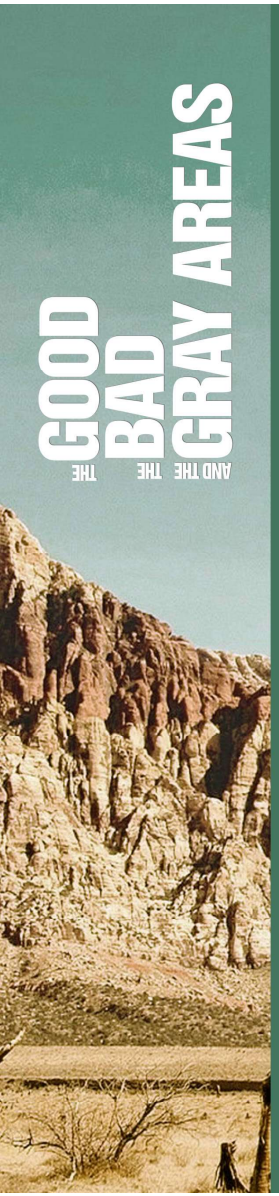
Is accepting this award a violation of the Ethics Act?

Board member Highstep is also a highly sought after speaker on educational issues facing school districts. A school board in North Carolina has asked her to come speak to their district staff. They have offered to pay her travel costs and lodging and to provide her with an additional $250/day per diem.

Is accepting this speaking engagement a violation of the Ethics Act?

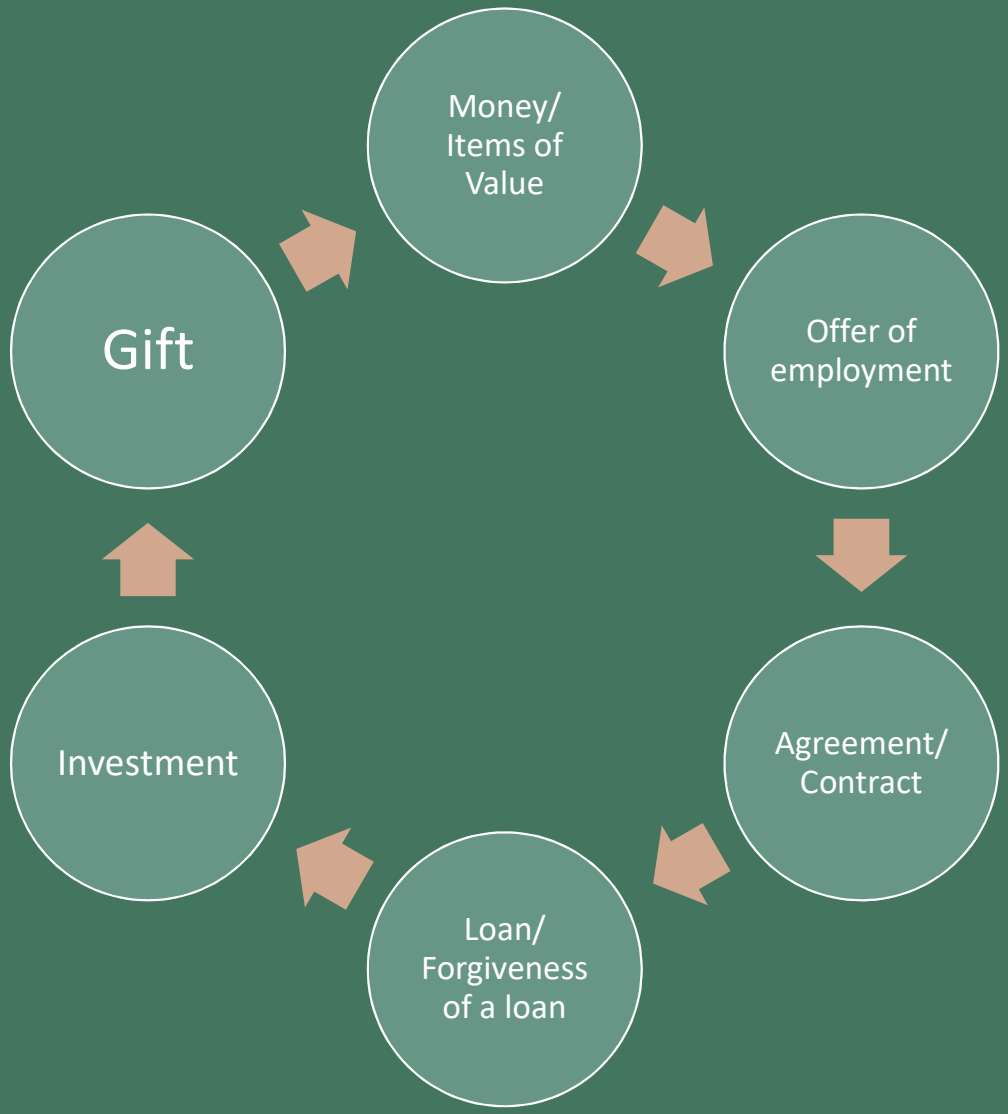
Board member Highstep has another speaking engagement in Greenville that takes place on a Friday afternoon, which coincides with the community's Azalea Festival. Her hosts have told her they will pay for her to keep her hotel room for the duration of the weekend so she can enjoy the festival.

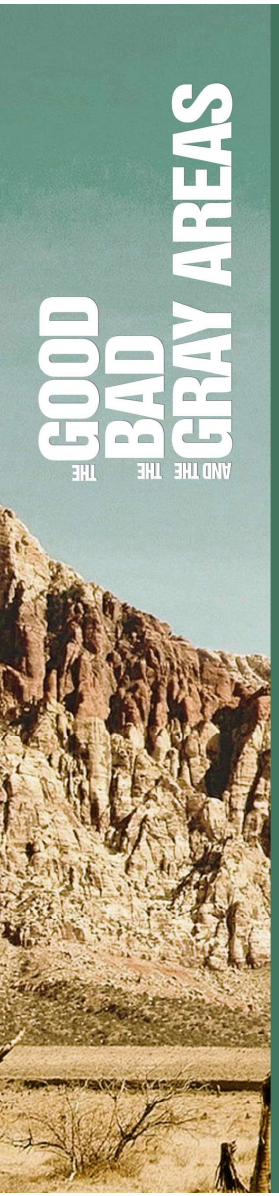
Is accepting this speaking engagement a violation of the Ethics Act?



"Anything of Value"

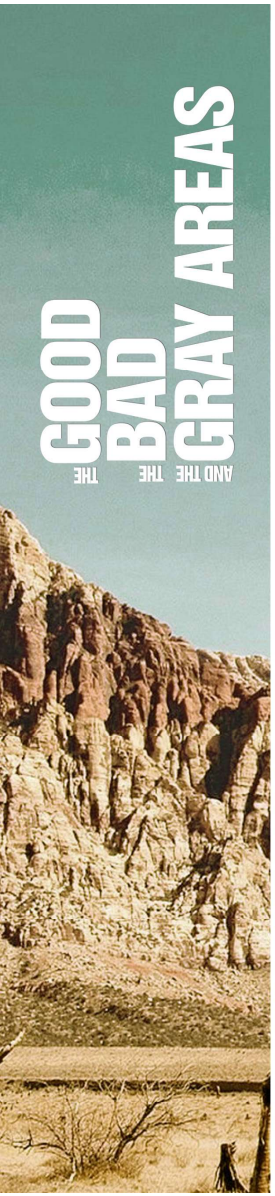
S.C. Code Ann.
§ 8-13-100(1)(a)





"Anything of Value" does not include:

- Printed or promotional material <$10 OR available similarly to the public
- Plaque or trophy <$150
- Honorary degrees
- Campaign contributions made in accordance with the SC Ethics Act



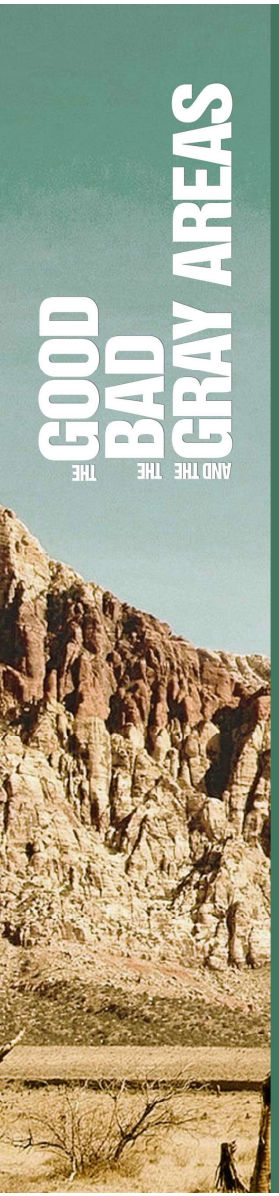
Catering Cahoots

Board member Butch Cassidy's cousin Roy owns a one-man catering company in the district. Roy's Catering is willing to give the board a 50% discount when catering special meetings and work sessions. Board member Cassidy tells the board about this amazing deal. It turns out this is the cheapest catering available to the board by far, and the board contracts with the company.

Is this a violation of the Ethics Act?

Roy's seventeen-year-old daughter, Kitty Cassidy, automatically gets 25% of all profits from Roy's Catering. Kitty came to live with board member Cassidy in January of 2018, and he provides all of her care. Board member Cassidy will be claiming Kitty as a dependent on his 2018 tax return.

Does this change your answer?

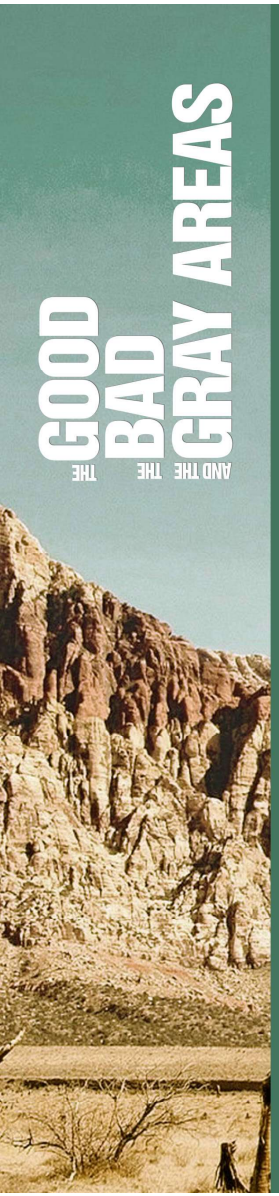


A board member cannot knowingly:

Use his office to obtain an economic interest for himself, a family member, or an individual or business with which he is associated

S.C. Code Ann.
§ 8-13-700

Influence a governmental decision in which he, a family member, or an individual or business with which he is associated has an economic interest



"Business"

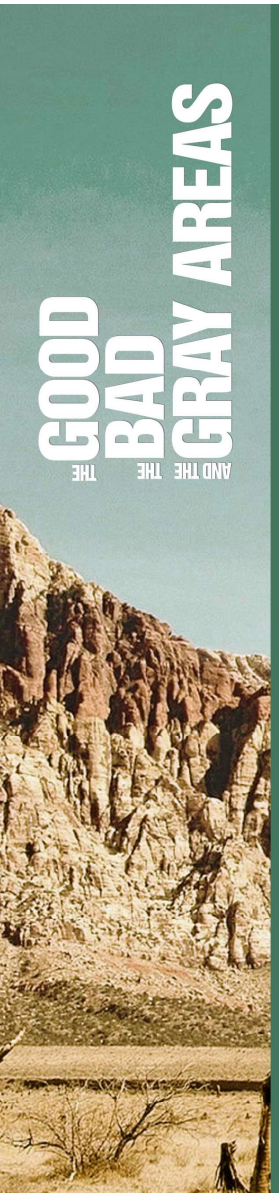
Corporation → Non-Profit → Self-Employed Individual

"Business with which he is associated"

Board Member or Immediate Family Member

Director/ Officer → Owner/ Employee → Stockholder

S.C. Code Ann.
§ 8-13-100(3)-(4)

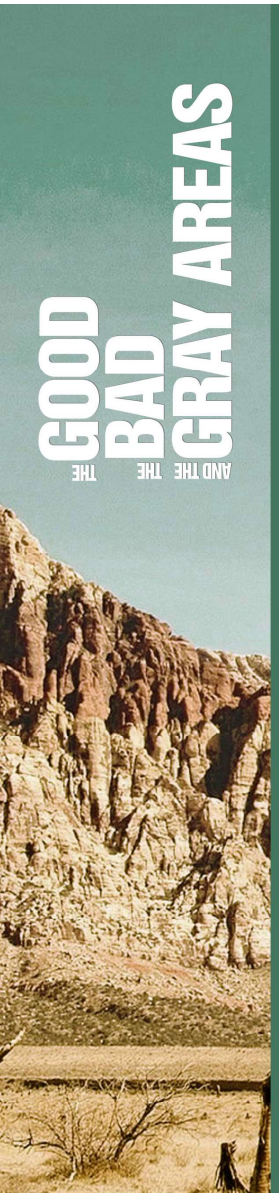


FAMILY MEMBER

- Spouse
- Parent, Grandparent
- Brother/Sister
- Child, Grandchild
- Father-, son-, daughter-, brother-, or sister-in-law
- Member of immediate family

IMMEDIATE FAMILY MEMBER

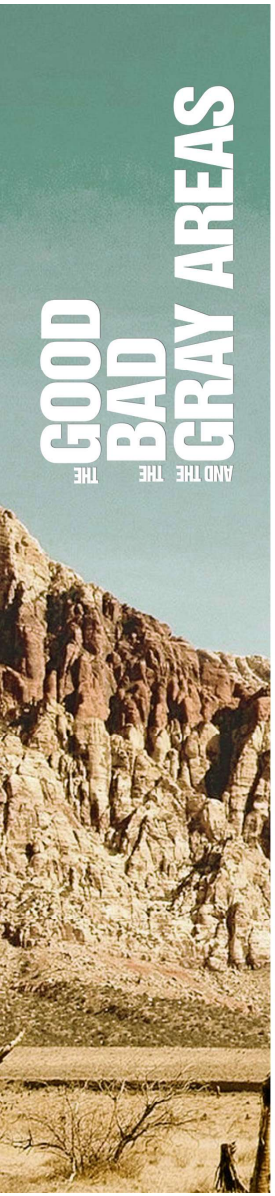
- Child residing in board member's household
- Spouse of the board member
- Individual claimed by the board member OR his/her spouse as a dependent for income taxes



Recusal Procedure

- When there is advance notice, prepare a **<u>written statement</u>** describing the matter requiring action and the nature of the potential conflict
- Give a copy to the presiding officer who will have the statement printed in the minutes
- During the meeting, the presiding officer will require the member to be excused from any VOTES, DELIBERATIONS, or OTHER ACTIONS on the matter
- Presiding officer will ensure the disqualification and the cause are noted in the minutes

S.C. Code Ann.
§ 8-13-700(B)(1),(4)



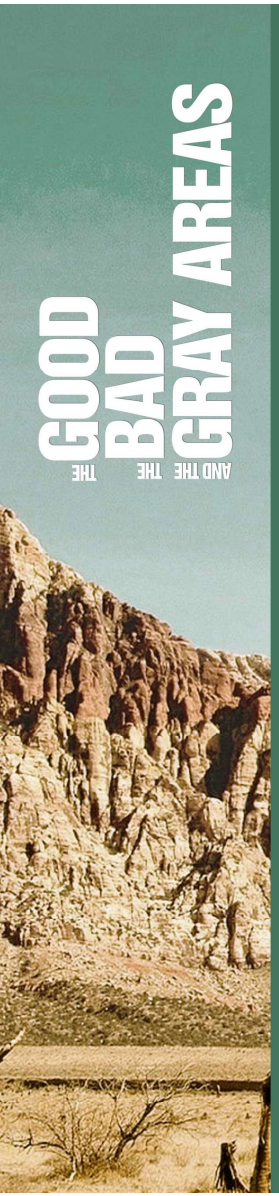
Oversharing Outlaw

Board member Outlaw has requested to view the complete application file of the superintendent's choice for the district's new human resources director. His wife is a HR director in a neighboring district, and he is curious as to what qualifications the applicants hold that are warranting the massive salary increase the superintendent is requesting.

Is this a violation of the Ethics Act?

Board member Outlaw's sister-in-law is starting an alternative charter school for students who have been removed from the local school district for behavioral issues. Outlaw knows how important it is that at-risk students continue their education, so he sends his sister-in-law a list of the students he can recall from memory that have been expelled this school year hoping they may enroll.

Is this a violation of the Ethics Act?

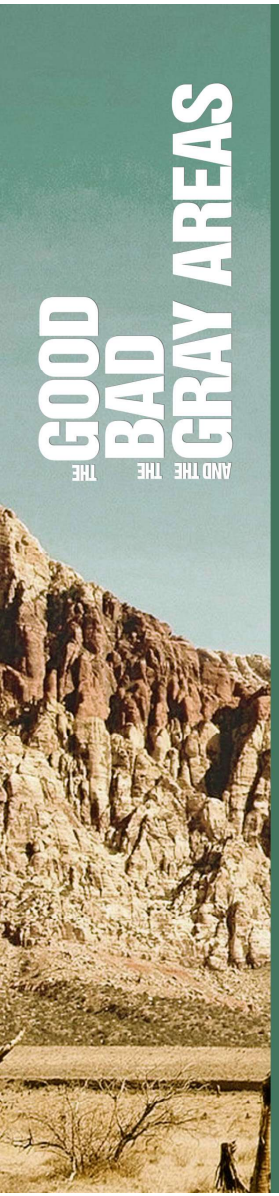


Confidentiality Restrictions

S.C. Code Ann. § 8-13-725

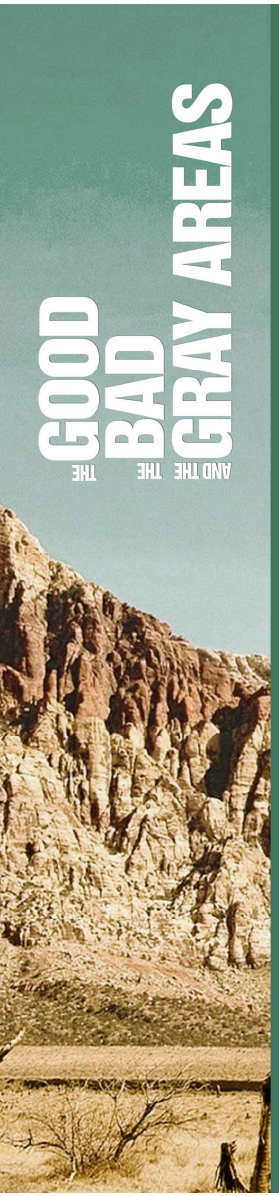
A board member may not use or disclose confidential information gained in the course of or by reason of his official responsibilities in a way that would affect an economic interest held by him, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

A board member may not willfully examine, or aid and abet in the willful examination of, records of an individual in possession of within the access of the district is the purpose of the examination is improper or unlawful.



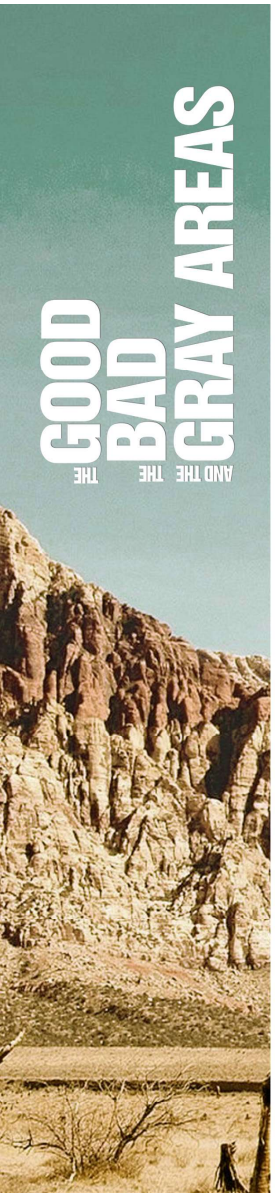
"Official Responsibility" means:

- Direct administrative or operating authority whether intermediate or final, and whether exercisable personally or through subordinates, to approve, disapprove, or otherwise direct government action



"Official Capacity" includes activities which:

- Arise because of the board member's position
- Involve matters which fall within the official responsibility of the board member
- Services for which the district would normally reimburse the board member



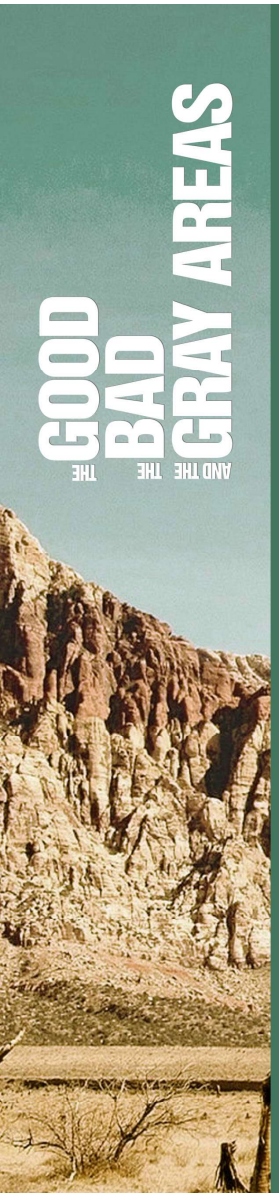
Bond Referendum in Dodge City

Board member Lucas McCain wants to make sure the parents of his district are knowledgeable about an upcoming school bond referendum and drafts a neutral, informational Facebook post about the measure and shares it on his public page. He also changes his profile picture to a “Vote Yes” logo.

Is this a violation of the Ethics Act?

Board member McCain tells Superintendent Kid to require district staff to offer students extra credit if they pass out “Vote Yes” stickers to their relatives.

Is this a violation of the Ethics Act?

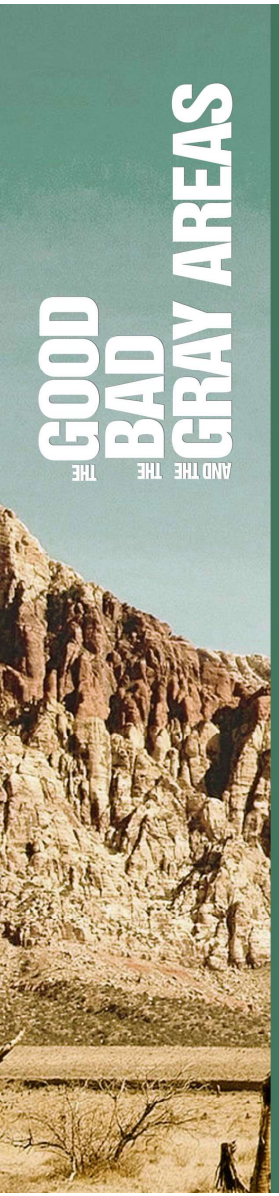


Ballot Measure

Questions or issues on which VOTERS can cast a vote

Non-Ballot Measure

Questions or issues on which only members of the GENERAL ASSEMBLY can vote

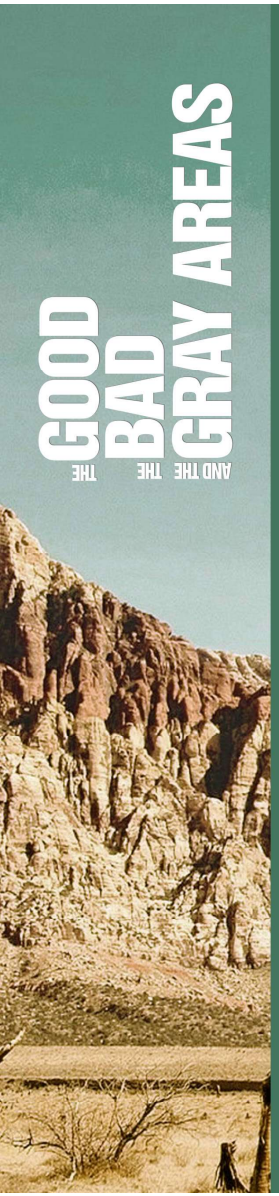


Board Members Can

- -Describe
- -Explain rationale
- -Answer questions
- -Develop and distribute facts
- -Remind public to vote

Board Members Cannot

- -Have staff promote or advocate during “the school day”
- -Have staff display signs or materials
- -Use district resources to print, copy, email, or mail materials advocating for a position
- -Hold rallies on district property
- -Use students to advocate



QUESTIONS?

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