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Senate Bill _____
By

House No. HB1133
By Buck

AN ACT to amend Tennessee Code Annotated, Title 2, Title 3 and Title 8, to enact the Tennessee Legislative Ethics Act of 1995 relating to the establishment of a legislative ethics commission and standards of ethical conduct for legislators, legislative employees, former legislators and legislative employees, lobbyists.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Legislative Ethics Act of 1995 (TLEA)".

SECTION 2. The purpose of this act is:

(a) To assure the integrity of representative government and to sustain the confidence and trust of the people of Tennessee in their representatives, the legislature as a whole, and the legislative process.

(b) To provide a comprehensive and unified statement of the ethical principles, considerations and obligations inherent in the public trust theory of government service and establish specific standards of conduct to assure that those entrusted with public authority avoid conduct that might undermine the people's respect for the legislature.

(c) To establish a positive, effective and comprehensive ethical program which is clear, practical and fair.

SECTION 3.

(a) The provisions of this act specifically replace, supersede and where necessary repeal provisions of the common law relating to legislative conflict of interest, and all other laws that are inconsistent or incompatible with any provision herein.

(b) Nothing in this act shall exempt any person from applicable provisions of any other laws unless such laws are explicitly superseded or incompatibly inconsistent with specific provisions of this act.

SECTION 4.

(a) Unless otherwise specifically stated, the provisions of this act apply to legislators and legislative employees as defined in Section 10(13) and (14).

(b) Only as specified, certain provisions apply to former members of the legislature, candidates for the legislature, former legislative employees, and persons who have transactions with a legislator or legislative employee.

GUIDELINES AND COMMENTARY

(i) Most of the provisions of this act apply to all employees involved in some substantive way with the legislative process, regardless of salary or duties. As public employees their time is a state resource which should only be used for proper public purposes. Moreover, virtually all legislative employees expend state funds and have access to confidential information. The most serious restrictions and disclosure requirements, however, only apply to legislative employees who exercise, or are perceived to exercise, discretion and judgment with respect to legislative, administrative or political actions. These individuals are referred to as legislative assistants.

(ii) The purposes of the act should not be circumvented by legalistic arrangements which change the category of a person who otherwise would, and should, be subject to its

provisions. Thus, the controlling factors are related to the function employees or agents perform and the amount of discretionary authority they possess, rather than their salary or technical status as full-time or part-time employee, independent contractor or consultant.

SECTION 5. It is declared that:

(a) High moral and ethical standards among public servants in the legislative branch of government are essential to the conduct of fair, open and responsive representative government.

(b) The people of Tennessee need and deserve a legislature led by outstanding public servants whose devotion and commitment to pursuing the public interest through established democratic processes outweigh any competing personal or political considerations.

(c) Tennessee government relies heavily on part-time citizen public servants. It is, therefore, essential to attract talented and principled people willing to provide their time and energy to the state, often with substantial personal and financial sacrifices.

(d) The best way to attract such people is to ensure that the government is respected for its honesty and integrity and that the rules governing their conduct during and after leaving public service are as clear, fair and complete as possible. Such rules, however, should not impose unreasonable or unnecessary burdens which will discourage citizens from entering or staying in government service.

(e) The political culture of Tennessee is the product of a unique blend of history, geography, climate, population and ethnic influences which must be taken into account in the development of rules and standards regulating the conduct of legislators, legislative employees and those who work regularly with the legislature.

(f) Tennessee's commitment to the notion of a citizen legislature requires that legislators be drawn from all parts of society. They cannot and should not be without personal and financial interests in the decisions and policies of government, and they are expected and permitted to earn outside income.

(g) As a result of Tennessee's small population and close sense of community, most legislators and legislative employees have a network of relationships in and outside the legislature which create potential conflicts of interest.

(h) Tennessee's size requires frequent travel, often by air, and this size increases the expense and burden of public service.

(i) Tennessee's cultural diversity is reflected in gift-giving and hospitality customs that may clash with standards prohibiting acceptance of gratuities.

(j) It is important to preserve the vitality of Tennessee culture and citizen involvement by assuring that standards of conduct acknowledge real and practical needs of individual legislators and legislative employees without compromising vital universal notions of public service ethics, including the principle that public office is a public trust.

(k) Upon taking the oath of office, legislators enter into a sacred trust with the people of Tennessee involving extraordinary powers and equally extraordinary legal and moral obligations. One aspect of these obligations requires that those entrusted with public authority unflinchingly demonstrate that they are worthy of the public's respect and devoted to maintaining the absolute integrity of government.

(l) Effective democratic government depends upon the willingness of the people to exercise responsible citizenship by voluntary compliance with laws and by active participation in the democratic process. When the public's trust in and respect for government is high, citizens are more likely to fully participate by voting, becoming better informed, and by becoming more active in public debate and discourse in a way that engenders civic pride and makes government more representative, more responsive and more effective.

(m) Unethical or illegal behavior by any legislator or legislative employee tends to diminish the stature of the legislature and produce cynicism that erodes public confidence in government. Thus, all who serve the legislature have a solemn responsibility to avoid improper conduct and prevent such behavior by colleagues and subordinates.

(n) The principles of public service ethics pervading this act view the ethical obligations of public servants in a positive way. High standards of conduct and specific regulations to enforce them are not driven by negative assumptions about the character of those who serve government, but as expressions of the need for clarity and uniformity about the higher duties of public service and the noble dimension of democracy.

(o) No code of conduct, however comprehensive, can anticipate all situations in which the principles and standards apply, nor can it prescribe behaviors that are appropriate to such situations. In addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption or eliminate bad judgment.

(p) Legislators and legislative employees who are committed to the ethical principles embodied in the public trust concept of government must exercise considerable discretion and judgment so as to adhere to the spirit of the rules and laws. In exercising this judgment it is essential to recognize that an act is not ethical simply because it is legal and that conduct is not proper simply because it is permissible.

(q) Legislative decisions must be made in a context of clashing interests. The growing impact of state laws and regulations create incentives for competing special interests to seek to influence the election and policy-making processes through organized advocacy and through the use of campaign contributions.

(r) The cost of running for office has risen dramatically in recent years. As a result, many public officials, including legislators, spend an increasing amount of time negotiating with special interests in a way that may unduly enlarge the voice and power of those interests.

(s) Therefore, the state needs a comprehensive ethics program which responds to the challenges of the contemporary political climate, preserves and protects the integrity of the legislative process and respects the needs of those who serve the legislature.

SECTION 6. This act has three (3) major components:

(a) A comprehensive declaration of the ethical principles inherent in legislative activities along the specific standards of conduct and rules of disclosure expressed in the form of legislative rules, civil laws and criminal offenses which make these obligations binding and enforceable. Many of the standards are accompanied by extensive guidelines and commentary which explain, expand, and illustrate the general principles and specific rules and apply them to common issues faced by legislators and legislative employees. The provisions and interpretative directives of the guidelines and commentary are an intrinsic part of this law.

(b) This act establishes a Legislative Ethics Commission (LEC) to be a credible, efficient mechanism for implementing its provisions by issuing informal advice letters and formal written advisory opinions; considering exemption requests in extraordinary cases; investigating and adjudicating complaints; recommending sanctions; and providing regular ethics training and educational programs for legislators, legislative employees and lobbyists.

(c) Provisions for an affirmative educational program for legislators, legislative staff and lobbyists to assure that the legal requirements and ethical expectations embodied in it, as well as the principles and values that underlie them, are known, understood, and reinforced.

SECTION 7. The statement of ethical principles, standards of conduct and guidelines contain three (3) types of provisions:

(a) The overarching principles and some specific provisions establish internal rules and directives for behavior, the violation of which may subject the violator to administrative sanctions imposed by the legislature through the processes established. These rules and directives establish obligations which could appropriately be the basis of a formal complaint. In addition, they also establish the basis of parallel civil laws and criminal offenses.

(b) Some provisions establish legal obligations that give rise to civil liability and court-ordered sanctions. For example, the prohibitions on certain income-producing activities violate legislative rules but they also give rise to a civil action in the Tennessee courts. As

provided herein, such actions may be brought by the attorney general's office or by a private citizen.

(c) Some provisions establish criminal offenses enforceable as other criminal laws in Tennessee.

SECTION 8. Legislators and legislative employees shall be held strictly to the provisions and spirit of this act and, except in extraordinary circumstances, shall not be permitted to assert a lack of knowledge or understanding as a defense to a charge of misconduct.

GUIDELINES AND COMMENTARY

(i) While some of the provisions of this code are detailed and complex, it is essential that each legislator and legislative employee meets a personal obligation to know and understand its requirements. Extensive educational and training opportunities are provided through the legislative ethics commission to assist them. It is not only unseemly, it is publicly unacceptable when those who are intimately involved in the lawmaking process claim ignorance of the law or assert that violations were mere "technicalities" or mistakes.

(ii) The presumption that those covered by this code know and understand its provisions is a strong one, but it may be rebutted in exceptional circumstances where the person charged demonstrates that it would be unreasonable to hold him or her to strict knowledge. For example, changes in the law, errors in officially published educational materials or other special circumstances may justify a defense based on a mistake or asserted ignorance of law.

SECTION 9.

(a) Each provision may be enforced in accordance with its terms and commentary by the legislative ethics commission as a civil matter according to the procedures set forth herein.

(1) Unless otherwise noted in the provision at issue, the commission may recommend, and the legislative chamber from which the charged person comes may order appropriate sanctions designed to fit the offense and assure both fair treatment of the offender and deterrence to others who might consider similar acts.

- (2) The sanctions available include, but are not limited to:
- (A) Civil penalties of not more than five thousand dollars (\$5,000) for each offense, or equal to twice the amount improperly gained by the misconduct, whichever is greater;
 - (B) Divestiture of specified assets or withdrawal from specified relationships;
 - (C) Detailed disclosure, with or without additional periodic reporting requirements;
 - (D) Suspension from legislative service with or without pay;
 - (E) Restitution or reimbursement;
 - (F) Suspension of pay until orders are complied with;
 - (G) Forfeiture of pension benefits;
 - (H) Written reprimand;
 - (I) Voiding any legislation or other action resulting from conduct in violation of the act;
 - (J) Censure (a legislator censured shall not serve as a chair or a co-chair on any legislative committee for the remainder of the legislator's pending term in office);
 - (K) Expulsion of a legislator or dismissal of a legislative employee;
 - (L) Payment of costs related to the investigation and adjudication of the charge; and
 - (M) Any other sanction fashioned to achieve the purposes of this act.
- (3) Each of the above penalties may be ordered separately or in combination.

(b) Each of the provisions also gives rise to a separate civil action which may be brought by the attorney general or, upon failure of the attorney general to bring an action within sixty (60) days of a written request to do so, by any citizen.

(1) The right to proceed in a separate civil suit is independent of any proceeding conducted by the legislative ethics commission, but to the extent that a civil fine is ordered for

any offense, no person shall be fined more than five thousand dollars (\$5,000) for each offense, or twice the amount of the benefit received from the conduct providing the basis of the charge, whichever is the greater.

(2) If it does not jeopardize an action before the commission, cause unfair prejudice to the person charged or violate a legal obligation of confidentiality, information acquired by the commission shall be made available, on request, to litigants in the civil action.

(c)(1) Any conduct which is criminal under the specific provisions of this act or any other state law may be separately prosecuted without regard to the resolution or pendency of a charge before the commission or a civil court.

(2) If it does not jeopardize an action before the commission, cause unfair prejudice to the person charged or violate a legal obligation of confidentiality, information acquired by the commission shall be made available, on request, to the defendant and prosecutor in the criminal action.

SECTION 10. The following definitions apply in this act, unless the context requires otherwise:

(1) "Administrative action" means all conduct related to the development, drafting, consideration, enactment, defeat, application or interpretation of any rule, regulation, policy or other action in a regulatory proceeding or a proceeding involving a license, permit, franchise, or entitlement for use.

(2) "Anything of value" is essentially synonymous with "benefit"; both are intended to be interpreted broadly to include all matters, whether tangible or intangible, which could reasonably be considered to be an advantage, of worth, use or service to the person to whom it is conferred. The term encompasses all matters which the recipient might find sufficiently desirable to do something in exchange for. It includes, but is not limited to:

- (A) money;
- (B) products or merchandise;

- (C) works of art or collectibles;
- (D) stocks, bonds, notes or options;
- (E) an interest in real property;
- (F) contracts or a promise of a future interest in a contract;
- (G) an interest, or a promise of a future interest in a business;
- (H) meals, beverages or lodging;
- (I) transportation;
- (J) services, including loaned employees;
- (K) loans, loan guarantees, co-signing;
- (L) forgiveness of a debt;
- (M) discounts or rebates not extended to the public generally;
- (N) preferential treatment;
- (O) tickets or admissions;
- (P) free or discounted use of office facilities;
- (Q) loan of office equipment;
- (R) radio or television time;
- (S) promise or offer of present or future employment;
- (T) use of autos, boats, apartments or other recreational or lodging facilities;
- (U) intangible rights, such as a cause of action;
- (V) licenses, patents, copyrights or an interest therein; or
- (W) any other item, tangible or intangible, having economic value.

Anything of value, for purposes of this act, does NOT include:

- (A) unsolicited tokens or awards with a value of less than one hundred fifty dollars (\$150) in the form of a plaque, trophy, clock, desk or wall memento or decoration or similar item;
- (B) unsolicited advertising items such as calendars, key chains, pens or samples of merchandise with a value of less than fifty dollars (\$50.00);

(C) unsolicited publications with a market value of less than fifty dollars (\$50.00) on an annual basis;

(D) discounts afforded to the general public or specified groups or occupations under normal business conditions except that such discounts may not be based on the fact of legislative service unless it is a discount program approved by the LEC;

(E) campaign contributions, pledges, political endorsements, support in a political campaign or a promise of such endorsement or support; or

(F) contributions to any cause or organization, including a bona fide charity, made in response to a direct solicitation from a legislator or any person acting at his or her direction.

(3) "Benefit" means anything of value defined above.

(4) "Close economic association" means a financial relationship between two (2) or more persons or between a person and an entity which creates economic interests in a legislator or legislative employee that either:

(A) conflicts with public duties and the obligation to exercise objective independent judgment; or

(B) creates the appearance that such person may have undue access to confidential information or otherwise receive favored treatment regarding public actions. Close economic association includes, but is not limited to, relationships involving compensation as an employee, agent, representative, counselor, adviser or consultant (including professional services as between a lawyer and client or a financial planner and a client); a financial interest resulting from an investment, business enterprise or interest; real property as a partner, investor, associate or major stockholder; a landlord and tenant or co-tenants sharing housing expenses; a debt, loan or loan guarantee; or any other relationship in which a legislator or legislative employee has a substantial economic involvement with another.

(5) "Close personal relationship" is a special relationship between a legislator or legislative employee and another person which creates strong bonds of loyalty, friendship

and/or love that could potentially conflict with public duties and the obligation to exercise objective independent judgment or create the appearance that such person may have undue access to confidential information or otherwise receive favored treatment regarding public actions. It includes, but is not limited to, immediate family, long-term personal friends or former business associates and persons with whom the legislator or legislative employee has a significant and continuous romantic relationship.

(6) "Confidential information" means any information made confidential by law or which is conveyed or accepted with the understanding that it will only be used for official purposes.

(7) "Financial conflict of interest" exists when a person or a member of that person's immediate family has substantial financial interests which may be materially affected by any official action or decision they might make. The interest must be so substantial and the potential affect on that interest must be so material that a reasonable, objective person is likely to believe that the ability of that person with the financial interest to make an objective, fair, and impartial professional judgment will be impeded by self-interest. It is not a conflict of interest as to a specific matter if:

(A) the person's economic interest is not substantial;

(B) the person's authority in relation to the interest is such that an action or decision is not likely to materially affect the financial interest; or

(C) the economic effect an official action or decision might have on a person's private financial interests is no greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region.

(8) "Immediate family" means a spouse, parents, grandparents, child (including stepchildren and children by adoption), grandchildren, brothers, sisters and parents (including in-laws).

(9) "Informal representation" means uncompensated representation, including requests for information made with a state or local government entity, an official or employee of such entity, on behalf of any person including clients, constituents and political contributors.

(10) "Intent to influence" means any person having the intent to influence legislative, administrative or political action if they do any act, including offering or conferring a thing of value to a public official, with the purpose of inducing the official to do an act he or she would otherwise not have done or refrain from doing something he or she would otherwise have done.

(11) "Knows", "knowing" or "knowingly" means any person knowing a fact or having actual knowledge of it when they are aware of its existence with practical certainty. Knowledge may be inferred from circumstances.

(12) "Legislative action" means all conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of any law, amendment, resolution, report, nomination or other matter affected by legislative action or inaction.

(13) "Legislative employee" includes any person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor or consultant. It includes members and staff of the legislative ethics commission. It does not include individuals who perform functions which are purely incidental to legislative functions such as security, messengers, maintenance and print shop employees. For purposes of this definition, "regular or substantial" includes any person who is either expected to work or has in fact worked, at least: (A) four hundred (400) hours in a calendar year; or (B) three hundred (300) hours during a legislative session.

(14) "Legislative assistant" means a legislative employee whose assigned duties involve the exercise of substantial judgment. It does not include employees who perform purely

clerical or ministerial functions. The LEC shall develop guidelines for interpreting this section for Tennessee legislative employees.

(15) "Nonpublic information" means information that is not available to the general public, the use or disclosure of which results in an unwarranted benefit or advantage.

(16) "Oath" includes affirming, swearing, verifying or certifying the truth of something under penalty of perjury.

(17) "Political action" means all conduct in which public officials, including legislators or legislative employees, use their official position or political contacts to exercise informal influence on state and local government employees or entities. It includes, but is not limited to, intervening on behalf of constituents with any government agency, endorsing and pledging support or actively supporting a legislative matter, a nominee or a candidate for public office.

(18) "Professional representation" means representation for compensation.

(19) "Reasonably should know" means that persons reasonably should know a fact when, under the circumstances, persons of reasonable prudence and competence would ascertain or know the fact. One cannot willfully blind themselves to facts and inferences in the desire not to know.

(20) "Representation" means actions taken on behalf of another, whether for compensation or not, including, but not limited to, telephone calls and meetings and appearances at proceedings or meetings. When compensation is paid, it is professional representation.

(21) "Substantial interest in legislative, administrative or political action" means persons and organizations that have a substantial interest in legislative, administrative or political action if they:

(A) are regulated by the legislature;

(B) provide goods or services to the legislature for compensation or profit;

(C) seek employment in the legislative branch or any government agency or in a private organization in which a legislator or legislative employee is likely to have, or reasonably appears to have, the ability to influence an employment decision;

(D) will be directly and substantially affected, either financially or personally, by any contemplated legislative, administrative or political action;

(E) have or seek contracts for goods or services with any agency of state government;

(F) are registered lobbyists; or

(G) represent, with or without compensation, a person or organization described in (A) through (F) above.

(22) "Unofficial compensation" means any payment for legislative or administrative services made to a legislator or legislative employee by any source other than the state of Tennessee in the form of legislative compensation or per diem payments.

(23) "Unwarranted benefit" means any benefit not earned, deserved or attained strictly on the merits or according to normal procedures, but attained as the result of improper use of public office.

STATEMENT OF ETHICAL PRINCIPLES

(Preamble) Sections 11 through 18 state the overarching ethical principles of legislative ethics. They are, by nature, broader and more philosophical than the standards of conduct and, therefore, somewhat less amenable to strict enforcement. Their primary purpose is not to provide additional bases of punishment, but to establish the theoretical and moral foundation for the standards of conduct and to provide explicit guidance and direction for those who wish to follow the ethical high road, not simply out of fear of punishment, but out of commitment and conscience. These principles also establish criteria for interpretation and enforcement of the principles themselves and the standards of conduct that follow. The principles shall be regarded as an integral part of this act.

SECTION 11. Each provision of this act shall be construed and implemented with sincerity, integrity and a good faith commitment to advance rather than evade the purpose and spirit of the provisions.

GUIDELINES AND COMMENTARY

These standards of conduct, like any other written regulations, are vulnerable to an endless array of evasion strategies. Unduly narrow or legalistic constructions of specific provisions, strained and insincere interpretation of acts and willful blindness to the real motives behind an act undermine the clear purpose of an ethics code and denigrate the spirit of this act. Under this provision, deliberate bad faith circumvention of these standards is itself a violation of the ethical obligations of public service and may be the basis for administrative sanction.

SECTION 12. All actions, decisions and votes on matters relating to this act shall be made purely on their merits. Decisions shall be made objectively and independently, and without party, regional or ideological partisanship.

GUIDELINES AND COMMENTARY

(i) The highest duty of legislators and legislative employees is to uphold the integrity of the legislature, regardless of narrow political considerations. Though partisan politics based on party, region and ideology are an integral and often constructive part of the American political structure, it is essential that the ethical responsibilities arising from these standards of conduct, including consideration of a complaint, imposition of sanctions, appointment of members of the legislative ethics commission and appropriation of the commission's budget, be unfailingly treated as nonpartisan, public interest issues of great importance.

(ii) The ethical quality of democracy and the integrity and stature of the legislature are inherently nonpartisan issues. Playing politics with ethics issues creates two (2) very significant harms. First, it undermines the effectiveness and moral authority of the ethical rules themselves. Second, the elevation of politics over ethics is invariably perceived by the public

and the press in a way that dramatically increases public cynicism and disrespect for the legislature, the very things these standards are designed to prevent.

(iii) Unfortunately, it is often difficult to maintain a nonpolitical, nonpartisan perspective in the context of competitive politics. The disposition of ethics-based charges may have profound political implications, not only on the careers of the persons directly involved, but often for political parties and other individuals vying for power. Ethics issues are often raised for political motives and it takes great restraint and a powerful long-term public perspective to separate the motives of a charge from the merits of it. While the political dimension of legislative actions regarding matters of ethics may never be entirely removed, with discipline and commitment to principle, it can be consciously subordinated to a broader view of the legislator's role and of the public interest.

SECTION 13.

(a) Legislators and legislative employees shall act so as to ensure the reality and perception that the legislature is conducted according to the highest principles of representative democracy and is worthy of public respect, trust and support.

(b) Legislators and legislative employees shall not engage in any conduct which they know or reasonably should know is likely to create in the minds of reasonable, objective, fair-minded observers the perception that they have used their public position improperly or otherwise have not conducted themselves in accord with the ethical principles and standards of conduct of this code.

GUIDELINES AND COMMENTARY

(i) There are two (2) dimensions to the obligation to ensure public trust: (1) avoiding actual wrongdoing - violating laws, legislative rules or doing any other act which involves dishonesty, a lack of integrity, or disregard for ethical standards; and (2) avoiding the appearance of wrongdoing - engaging in conduct which is likely to generate cynical attitudes and suspicions about government and the people who administer it.

(ii) The concept of trust is as much a creature of perceptions and beliefs as it is of reality. Thus, conduct which creates in the minds of reasonable observers the perception that government office has been or may be used improperly violates the obligation to safeguard public trust even if the conduct does not actually misuse public office.

(iii) The standard to determine whether something is improper is not set by the most suspicious and cynical members of society who are predisposed to assume bad faith or corrupt motive. The standard is whether reasonable, objective and fair-minded citizens find the conduct improper. Still, it is important to remember that such citizens will make their judgments with no special knowledge of the facts or private intentions of the parties.

(iv) It is not always right to avoid an act simply because it will look wrong. The ethical obligation to avoid the appearance of impropriety shall not be used as an excuse for inaction where, on balance, the action is proper. Excess timidity in the face of possible criticism is no more justifiable than callous disregard for improper appearances. In some cases, legislators should be willing to confront criticisms and endure unfair denunciations, choosing to explain and justify their behavior rather than alter their conduct to suit the cynical perceptions of a misinformed press or public.

(v) A balance must be found between the need to preserve public confidence and the responsibility to make sound decisions on the merits. The requirement that legislators avoid even the appearance of impropriety can sometimes undermine the public interest and cause bad decisions. For example, it may lead to discrimination against friends of political supporters simply because a transaction may look bad to the public. Sensitivity, thoughtful discrimination and restraint is important in this area. But if a friend or political supporter is clearly the best qualified person available to perform a needed public task, it is unfair and unwise to automatically and invariably disqualify them.

(vi) Occasionally, a conscientious legislator or legislative employee will decide to override the appearance of impropriety test in order to do what he or she thinks is "right" under

the circumstances. In such cases, there is a responsibility to reduce the harm to public trust by taking affirmative steps to assure that all facts relevant to the choice are made public and that the process of decision making is open to and can withstand close scrutiny.

SECTION 14.

(a) Legislators and legislative employees shall treat their government positions as a public trust, using the powers and resources of public office only to advance public interests, and not to attain personal benefits or pursue any other private interest incompatible with the public good.

(b) In pursuing the public interest, legislators and legislative employees shall scrupulously observe and abide by the United States and Tennessee Constitutions, all applicable laws and democratic processes.

(c) In pursuing the public interest, legislators and legislative employees should:

(1) Put loyalty to democratic principles and to their conscientious convictions about the overall public good above loyalty to political party, narrow constituency and individual interests which are inconsistent with the general public interest;

(2) Allocate public funds and formulate general public policies only after evaluating information objectively and deciding what is best for the public as a whole, not just for a narrow constituency; and

(3) Take whatever steps are necessary to safeguard and protect the reputation of state government and the integrity and efficiency of their office, subordinating the interests of superiors, colleagues and friends to the interests of the state.

GUIDELINES AND COMMENTARY

(i) Section 14(a) establishes one of the most fundamental principles of public service ethics - pursuit of public interest. The purpose of state government is to advance the public interest by assuring justice, providing educational opportunities, protecting health and the environment, securing public safety, creating economic stability and development, and

safeguarding the liberties and rights of the people, among other things. Legislative office and authority should be used only to pursue these and similar public interests. The duty to only use public office in pursuit of the overall public interest is a positive one. Although it precludes using government position for private gain, it also precludes use of public resources, power or prestige for any nonpublic purpose, even if the actor does not personally benefit.

(ii) Section 14(b) precludes unlawful conduct or improper use of office to achieve a "greater good" on the theory that the end justifies the means. In a democracy, the primacy of state and federal constitutions require that each public servant's vision of the public interest be pursued only through lawful processes which acknowledge and respect the separation of powers among government branches and the role of other public officials in the formation and implementation of public policy.

(iii) Section 14(c) is designed to provide guidance to legislators and legislative employees who must often unravel conflicting loyalties and duties. It uses the term "should" rather than "shall" because the principles stated in this provision are not amenable to uniform interpretation of enforcement. Still, the principles and rationales stated in this provision and the following commentary are deeply rooted in democratic political philosophy, and they are important. Legislators are accountable to a complex network of competing loyalty obligations - to country, state, community, constituency groups, political supporters, colleagues, subordinates, family and self. In many political situations, these loyalties conflict. What is best for the country or state may not be good for a particular community, what is good for an individual constituent or interest group may not be in the best interest of other constituents or interest groups; and the highest public interest may conflict with personal career ambitions. Inevitably, legislators must resolve conflicting interests by ranking their loyalty obligations. Though decisions have to be made on a case-by-case basis, the principle of public service generally requires elected officials to peruse the greatest long-term good for the greatest

number by placing larger, broader interests over smaller, narrower ones, country over state, state over community, community over individuals, and principle over party.

(iv) A major duty of state legislators is to pursue laws and policies which improve the social and economic conditions of their districts. They are also expected to represent the views and advocate the interests of their constituents and, as an aspect of this responsibility, they often perform an ombudsman function by assisting constituents in their relationships with government to assure that they are treated fairly and efficiently. In addition to these representative responsibilities, however, all elected officials have policy and law-making obligations which impose a duty to use independent objective judgment to pursue the overall public good. In exercising these responsibilities - allocating public funds and formulating public policies relating to pressing social issues such as the environment, education, health and safety - they should transcend their role as advocates of narrow constituent interests. They should perform a role closer to that of a neutral administrator or judge, evaluating information objectively and deciding what is best for the public as a whole.

(v) Representation of specific constituent interests usually raises no substantial conflict with public interests. But when it does, the dilemma generally should be resolved in favor of the wider public interest in spite of political risks. For example, the public interest may require taxes that individuals do not want to pay, especially for programs with low constituency support but high public importance (e.g., correctional facilities, waste disposal sites, providing aid to homeless or otherwise impoverished but politically powerless groups). Similarly, the public interest may require budget cuts and the elimination of government facilities, public works projects or jobs though the cost of such measures will be felt disproportionately in the districts most directly affected. When decisions about programs and expenditures are controlled by the desire to steer money and jobs to particular districts, the quality and efficiency of government programs inevitably are compromised. This type of decision-making is especially dangerous when public health or safety are involved. It also contributes to the cynical impression that

political decision makers are more concerned about their political careers than the public good. It is said that a politician thinks of the next election, a statesman thinks of the next generation. Politicians who consider staying in office a moral imperative will be unwilling or unable to take such risks. Those who view their role more broadly, however, will see it as their obligation to do so.

(vi) A common loyalty conflict arises where the interests of an organization are inconsistent with those of individuals within the organization. The problem gets even more complicated when loyalty to a particular person within the organization conflicts with loyalty obligations to others. Under the principles of public interest, the responsibility of office generally demands the placing of institutional interests above individual loyalties though decisions which advance the institution at the cost of individuals should be made and executed with compassion, sensitivity and respect.

SECTION 15. Legislators and legislative employees shall assure that government is conducted openly, efficiently, equitably and honorably in a manner that permits the citizenry to make informed judgments and hold government officials accountable.

SECTION 16. Legislators and legislative employees should honor and respect the principle and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules.

SECTION 17. Legislators and legislative employees shall safeguard public confidence in the integrity of government by engaging in no conduct which demonstrates they are not fit for public office, prevents them from carrying out their public duties or which unreasonably casts discredit on the legislature.

GUIDELINES AND COMMENTARY

(i) Legislators and legislative employees properly are held to high standards of personal probity, and acts which demean or discredit government or demonstrate defects in their character and judgment are improper. They should conduct their professional and personal

lives so as to reveal character traits, attitudes, and judgments that are worthy of honor and respect and demonstrate fitness for public office. Thus, conduct which violates this rule is independently sanctionable.

(ii) Legislators should be scrupulously honest, avoiding any form of lying, deception, deviousness, hypocrisy and cheating in their professional and personal lives. Dishonesty by a legislator is wrong in itself but it also violates principles of public service ethics by seriously undermining the credibility of government. Technical or literal truthfulness is not all that is required; honesty precludes any deliberate deception, including the raising of false inferences. Legislators and legislative employees should also reflect personal integrity in all matters, placing principle over expediency and demonstrating courage of convictions. Although it is necessary and proper for elected officials to represent the views of their constituencies, it is also necessary that they have pronounced and strong personal convictions - things they stand for. Legislators should offer principled leadership.

(iii) Activities which are illegal but not directly related to legislative service (e.g., drunk driving, drug use, tax evasion, assault, hiring prostitutes) still discredit the individual and the legislature itself. Similarly, private conduct, even if legal, discredits the body if it reveals dishonesty, deviousness, or hypocrisy. All such acts by legislators or legislative employees tend to undermine public respect and confidence and, therefore, they violate the principle of respectability.

(iv) The most difficult area of private conduct concerns legal behaviors that subject the actor and the legislature to criticism or ridicule because it violates the moral sensibilities of a significant portion of the public. The obligation of public servants to lead exemplary lives for the sake of the reputation of government in general must be balanced against a real and important right to a private life which may involve choices and behaviors that raise moral issues. Acts of adultery, homosexuality, promiscuity ("womanizing" or "man-izing"), for example, concern personal matters that should not be the basis of any charge or sanction under these rules

unless it is clear that the behavior bears on the fitness to serve or the ability to carry out duties. Whether or not lawful private acts which do not bear in any direct way on the responsibilities of public office are proper subjects of press disclosure and public scrutiny, they are not appropriate concerns under this act. No separate sanction for private conduct in the "moral arena" is contemplated. Such matters should be left to the electorate.

SECTION 18. Legislators and legislative employees shall employ independent objective judgment in performing their duties, deciding all matters on the merits, free from conflicts of interest and both real and apparent improper influences.

GUIDELINES AND COMMENTARY

The most heavily regulated area of government ethics relates to conflicts of interest, especially financial conflicts. This provision overarches the individual conflict of interest provisions in this act and states clearly the nature of the ethical obligation. Essentially, a conflict of interest exists whenever a person has personal interests which are inconsistent with professional obligations. In the case of public service, the primary obligation is to exercise independent objective judgment in the public interest and scrupulously avoid interests that are likely to impede the ability to make such judgments.

STANDARDS OF CONDUCT

SECTION 19. Inherent in the concept that public office is a public trust is the principle that persons refrain from using or attempting to use their government position to attain: (1) personal financial gain, other than official legislative compensation; (2) undue personal benefits, advantages or privileges not available to the public at large, either for themselves or members of their immediate families; (3) undue private benefit for social or business associates, political contributors, corporations or other organizations with which the public servant is involved; or (4) narrow political advantages where the use of office is inconsistent with the obligation to use public office only to advance the public interest.

GUIDELINES AND COMMENTARY

The obligation to use public office only in the public interest and not for private gain underlies many of the specific provisions of this code. It is impossible, however, to envision and specify all the possible ways that this principle may be violated as the range of private interests and improper motives is almost inexhaustible. This provision makes it clear that it is improper to make any use of office or position primarily to attain personal benefits, whether they are financial, social or political. This statement of principle is somewhat broader but not inconsistent with Tennessee Code Annotated, Section 39-16-402.

SECTION 20.

(a) No legislator or legislative employee shall seek nor accept anything of value as a result of the proper performance of public responsibilities. This provision shall not be construed to prohibit solicitation for and acceptance of campaign contributions under circumstances which are otherwise permitted.

(b) No legislator or legislative employee shall accept anything of value under circumstances where the legislator or legislative employee knows or reasonably should know that it is offered with the intent to influence legislative, administrative or political actions.

(c) In addition to all civil remedies authorized under Section 9, violation of this section is a Class A misdemeanor.

GUIDELINES AND COMMENTARY

(i) Legislators and legislative employees have an obligation to perform their duties diligently, promptly, efficiently and fairly. In representing constituents from their districts, they have the additional responsibility to exercise oversight over administrative agencies and, in some cases, to assist constituents in a reasonable manner that does not unduly interfere with the independent judgment of administrators. The only lawful compensation for properly performing these services is official salary and allowances paid by the state. It is improper to seek or receive anything of value from a citizen as a reward, expression of gratitude or payment

for the performance of public duties even if the benefit had no actual effect on public decisions or actions.

(ii) Even unsolicited gratuities otherwise permitted create an appearance of impropriety when they are given to a legislator or legislative employee after or in anticipation of an official action or informal representation within the normal scope of duties. Though the recipient may not have anticipated the gift and, therefore, could not have been influenced by its prospect, a reasonable observer might believe it was a payment or reward for services rendered. Minor courtesy items such as coffee cups and desk mementos, flowers or a box of candy may be accepted, but generally gifts ought to be returned with a polite but firm message that the gesture was unnecessary and could be construed as improper. If this is not feasible, they ought to be given to charity or otherwise handled in a way which makes it clear that the public servant has not accepted and does not want any personal benefit for official actions.

(iii) The ability of a citizen to confer directly with a legislator is frequently referred to as access. Because of the great press of duties and demands on the legislator's time, it is not always possible for a legislator to personally talk with everyone who seeks an audience or to give them all the time they would like. The legislator's time is a crucial asset which must be carefully allocated among competing demands. It is important, however, that access is not determined by the willingness or ability of the person to provide any benefit to the official whether it be in the form of a gratuity, an honorarium or even a campaign contribution (regulations dealing with improper means of acquiring political support stated in Section 32).

(iv) Section 20(b) concerns improper offers and the obligation to reject them. Under Tennessee's criminal law, Tennessee Code Annotated, Section 39-16-102, "a person commits bribery if the person offers, confers, or agrees to confer a pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, or exercise of official discretion in the public servant's official capacity". If the benefit conferred is accepted with the intent to use one's government position for private gain, the public servant is also guilty

of bribery - even if no act was actually performed. It is critical to recognize, therefore, that the acceptance by a legislator or legislative employee of benefits of any sort from persons who seek to influence official actions raises criminal as well as ethical issues. Although the high standard of proof and other procedural safeguards of a criminal trial make it difficult to establish the crime of bribery, the ethical obligation to avoid transactions which cast doubt on the integrity of government is not, however, delimited by the standards of provable bribery. Legislators and legislative employees must avoid both the appearance and the reality that public office was used for private gain. Therefore, it is improper to accept any benefit, whether in the form of compensation for services or a gratuity, from a person with a corrupt motive; it is not enough that the public servant has no intent to do anything improper or, in fact, that nothing improper is done.

SECTION 21.

(a) Legislators and legislative employees who receive an offer which reasonably appears to have been intended to improperly influence legislative, administrative or political action, shall firmly and unequivocally reject the offer and caution the person making it about a possible violation of undue influence and bribery laws.

(b) If the attempt to improperly influence is clear, the matter shall be reported to law enforcement authorities.

(c) Violation of this section will subject the violator to all civil remedies authorized under Section 9.

GUIDELINES AND COMMENTARY

It is not always sufficient to turn down an improper offer of gifts or other benefits. Any attempt to unduly influence a public official warrants some action to at least educate the offeror of the impropriety and risk of such conduct. Occasionally, an improper offer is made by an unsophisticated individual who should have, but did not know any better. A polite but firm warning may be sufficient. On the other hand, improperly motivated gratuities are attempted

bribes and when the source appears to be well aware of the significance and impropriety of the action, the matter should be handled with great seriousness. A failure to react with indignation or report improper offers to the authorities can be viewed as wrong in itself. (Imagine how it would look on the nightly news to learn that a public official was offered a bribe and the public official merely said "No thank you".)

SECTION 22.

(a) No legislator or legislative employee shall use public funds, time, facilities, equipment, mailing lists, computer data, services or any other government asset or resource for any unauthorized nongovernmental purpose or for the private gain or advantage of either the legislator, legislative employee or any other person unless authorized by law.

(b) No legislator or legislative employee shall seek, accept, use, allocate, grant or award public funds for any purpose other than that approved by law, nor shall any person make any false statement in connection with a claim, request or application for compensation, reimbursement or travel allowances from public funds.

(c) No legislator or legislative employee shall use or seek to use any legislative employee on government time to perform personal services or assist in any private activity not directly related to the official duties of the legislator or legislative employee.

(d) In addition to all civil remedies authorized under Section 9, violation of this section is a Class A misdemeanor.

GUIDELINES AND COMMENTARY

(i) Section 22(a) covers situations where a legislator or legislative employee improperly uses state property or resources for personal gain or that of another. In certain cases, economic development activities authorized by law involve using state resources to assist private enterprises. This is permitted.

(ii) Section 22(a) establishes the basic rule that state facilities, equipment and services (office space, typewriters, word processors, telephones, postage, computer data, stationery,

mailing facilities, photocopying, etc.) may not be appropriated for personal gain or advantage. Common sense and fairness require that this provision be interpreted reasonably. Though government facilities should certainly not be used for personal purposes on a substantial, regular or ongoing basis, occasional and limited usage should be permitted so long as: (1) it does not interfere with the performance of public duties; (2) the cost or value related to the use is so nominal that reimbursement procedures would not be worth the effort; and (3) the use does not raise an unreasonable appearance of impropriety or undue political advantage. For example, interpretation of these limitations should take into account the reasonable needs and expectations of employees and permit them to make and receive occasional personal phone calls of short duration.

(iii) Unless otherwise provided by law or regulation, the frequent flyer points or other bonuses related to air travel paid for by the state shall be treated as the personal property of the employee. While a strong logical case can be made that the collateral benefits of state-paid travel should accrue to the state, the practical and morale problems entailed in administering such a position do not justify the small gain. The state, of course, has an interest in seeing that public resources are used economically and only spent in the public interest. Allowing public employees to personally benefit from bonuses attributed to government travel raises a potential conflict of interest as it creates an incentive for the employee to select a carrier based on private economic advantage rather than state interests. Moreover, the prohibition against using public authority or funds for personal gain would make selection of a carrier on inappropriate criteria improper. Any legislator or legislative employee who actually allows the desire to earn frequent flyer points or bonuses to influence official decisions violates this provision and is subject to sanction notwithstanding the fact that any points earned are the property of the legislator or employee. This should provide a sufficient deterrent to protect the state's interests.

(vi) Section 22(c) prohibits misuse of legislative employees whose time is and should be treated as public property which should not be misappropriated to personal use. Publicly paid

employees simply must not be used as personal secretaries or private staff. Overly strict application of this provision, however, is inappropriate. For example, a legislator should be permitted to make moderate use of staff to help organize and schedule the legislator's calendar, appointments and travel plans - including some events of a political or private nature. Emphasis, however, must be placed on the word "moderate" and both the aide and the legislator must be vigilant to avoid actual abuse, as well as the creation of the appearance of unreasonable use of public personnel. Though this limitation should be interpreted in a reasonable manner given the pressing responsibilities of a legislator, purely personal errands such as dropping off laundry, picking up children, handling household or private matters and purchasing private gifts are justifiable only in extraordinary circumstances where the task is suddenly necessary to help the legislator perform professional duties. Generally, employees do not voluntarily contribute their personal time to benefit their employers. Yet public officials sometimes claim that employees willingly perform personal services "on their own time" - during lunch hour, after normal working hours. Such claims should be examined with skepticism as there is a high risk that the employees believed that they were required to perform personal work as part of their jobs. In such cases, there is at least an appearance of improper exploitation and such use of public personnel should be avoided. If a legislative employee is asked to perform any personal service, it is best if the employee is paid for his or her time out of the official's private funds.

SECTION 23.

(a) Public resources, including funds, facilities and personnel, should be used only for the good of the public at large and should not be used to further partisan campaign purposes or to influence the outcome of an election. Elections should be fair and open and not distorted by the use of public resources to the advantage of individual candidates. The taxpayers should not be forced to subsidize the campaign of an incumbent legislator.

(b) No legislator or legislative employee shall use public funds, time, facilities, equipment, mailing lists, computer data, services or any other government asset or resource for the purpose of political fund raising, campaigning, to influence the outcome of an election or other purely political purposes.

(c) No legislator or legislative employee shall use or seek to use any legislative employee on government time to assist in political party activities, campaigning, fund raising, or other partisan or personal political activities.

(d) Unless and until comprehensive regulations relating to the use of government resources for political purposes have been developed by the legislature and adopted by the LEC pursuant to Section 25, the following prohibitions shall apply:

(1) No legislator may use or authorize the use of public funds, property, time, personnel or other resources to produce, print, photocopy, publish, broadcast or otherwise disseminate material intended to influence the result of an election.

(A) This provision shall apply to newsletters and other constituent correspondence which by its nature, content, timing or use clearly appears to be primarily intended to influence an election, even if the materials do not make a specific reference to the election.

(B) Unless approved by the LEC, no public funds may be used to print or distribute any mass mailing from or about a legislator who is a candidate for re-election to the legislature or any other state office within ninety (90) days of a primary election in which the legislator is a candidate. This prohibition shall continue until after the general election.

(2) No legislator, or any other person on behalf of the legislator or a campaign committee of the legislator shall solicit or accept a campaign contribution in a facility or office ordinarily used to conduct state government business. This provision applies to telephone conversations, personal meetings and mail. If an unsolicited contribution is offered or sent it shall be refused or returned promptly.

(3) No legislator, or any other person on behalf of the legislator or a campaign committee of the legislator shall distribute or post literature, placards, posters or other communications designed to influence the outcome of an election in a facility or office ordinarily used to conduct state government business.

(e) In addition to all civil remedies authorized under Section 9, violation of this section is a Class A misdemeanor.

GUIDELINES AND COMMENTARY

(i) Sections 23(b) through (d) regulate the use of government resources, including legislative employees, for political or campaign purposes. It is often difficult to distinguish legitimate political work within the scope of official duties from campaign activities, but the basic rule is clear: public resources should not be used for political purposes as the taxpayer should not be forced to subsidize campaign or other partisan political activities. In general, the use of public employees is justified in activities where there is a substantial and bona fide public purpose to the activity and there is no personal profit. Materials which express the legislator's opinions or views are generally proper whether in the form of a speech, article, newsletter or position paper. They can be worked on by legislative staff even if these materials will and are intended to be used as part of a campaign for legislative office.

(ii) Many legislators are assisted by an aide who also serves as a major campaign adviser. It is unrealistic to expect that such persons will not be involved intimately in the full political life of their employer. So long as the aide "does a full day's work for a full day's pay" to justify the government salary, party and campaign activities above and beyond public duties should be tolerated. In some cases, portions of the aide's salary ought to be paid out of campaign funds. Once one begins to use other legislative staff, however, a serious problem arises and unless the use is expressly justified by regulations promulgated by the legislature or the LEC, the use shall be regarded as improper.

(iii) A legislator or legislative employee who is unsure about the propriety of a use should seek advice from the LEC.

SECTION 24.

(a) Legislative employees who know or reasonably should know that they have been asked to perform improper personal or political tasks shall refuse to perform them.

(b) If a legislator or legislative employee with supervisory authority persists in requesting or demanding that a legislative employee perform improper tasks, or if reprisals are threatened or sanctions imposed as a result of the refusal to perform such tasks, the legislative employee subjected to the requests, threats or sanctions shall report the matter to the LEC.

(c) Violation of this section will subject the violator to all civil remedies authorized under Section 9.

GUIDELINES AND COMMENTARY

While it is improper for a superior to ask a subordinate to perform personal services, it also is improper for a subordinate, as a public servant, to accede to such requests. While tact is imperative as a practical matter, employees still have the obligation to assure that their services are not converted to nongovernmental uses. It is a violation of this act for a supervisor to harass, pressure, embarrass, intimidate or punish an employee who properly refuses to perform improper personal services. This provision will be difficult for some employees to comply with, yet its existence and their duty to do so provides the best protection against abuse. It is very likely that improper requests will be sharply reduced by the knowledge of this obligation and the fact that the employee subjected to such requests has no discretion to accede to them.

SECTION 25.

(a) The respective ethics committees shall meet jointly and shall develop and promulgate for the approval of the LEC detailed regulations relating to the use of government property, resources and personnel to assure that these provisions are interpreted uniformly and fairly and are consistent with the spirit of this act.

(b) If the respective ethics committees meeting jointly fail to provide the LEC with comprehensive regulations as described above by January 1, 1997, it shall develop and promulgate such regulations on its own initiative.

SECTION 26.

(a) No legislator or legislative employee shall use or disclose, other than in the performance of official duties or as required by law, nonpublic or confidential information acquired in the course of and by reason of legislative service to obtain private gain for the legislator or employee or any other person or business, including a person or business with whom the legislator or legislative employee is associated or has negotiated prospective employment.

(b) Nonpublic information refers to information that is not available to the general public, the use or disclosure of which would result in an unwarranted benefit or advantage. Confidential information refers to any information made confidential by law or which is conveyed or accepted with the understanding that it will only be used for official purposes.

(c) In addition to all civil remedies authorized under Section 9, violation of this section is Class A misdemeanor.

GUIDELINES AND COMMENTARY

This provision addresses the improper use of information gained in government service for private gain. It forbids the exploitation of not only information which is labeled "confidential" or is treated as confidential by law, it also prohibits the private use of other valuable information not available to the general public which was acquired by the legislator or legislative employee by virtue of public position. For example, "inside information" about state plans or negotiating strategies, information revealed to legislative committees with the expectation that it be only used for official purposes, financial data, computer data and lists obtained during legislative service may not be used to obtain undue advantages nor conveyed to others to give them such undue advantage.

SECTION 27.

(a) No legislator or legislative employee shall use, nor allow others to use, the authority, title or prestige of the legislator or employee's office to obtain unwarranted private economic benefits for the legislator, legislative employee or other person. This provision includes, but is not limited to, use of authority, title or prestige to obtain employment, contracts for goods or services, clients, grants or loans.

(b) No legislator or legislative employee shall use official letterhead or refer to the legislator or legislative employee's public position as a means of inducing or intimidating persons to resolve disputes more favorably, provide preferential treatment or give free tickets, discounts, favors or other advantages.

(c) No legislator or legislative employee shall use, or allow others to use, the authority, title or prestige of the legislator's or employee's office in the context of an endorsement of a commercial product or service, nor shall official letterhead be used in materials endorsing a product, service or candidate for office. This provision shall not be construed to prohibit the use of a:

(1) legislator's or legislative employee's official title or letterhead in the course of an otherwise proper recommendation of a person for employment; or

(2) legislator's official title, used in a dignified manner along with the name, as part of a political endorsement.

(d) No legislator or legislative employee shall solicit or accept compensation of any sort under terms and conditions where the compensation is not commensurate with the services performed or which would otherwise create in the minds of reasonable objective observers the perception that the stature of office has been unduly exploited for private gain.

(e) Unwarranted benefit refers to any benefit not earned, deserved or attained strictly on the merits or according to normal procedures, but attained as the result of improper use of public office.

GUIDELINES AND COMMENTARY

(i) The objective of these provisions is to prohibit legislators and legislative employees from affording themselves and others unwarranted advantages by the inappropriate use of official title or the prestige of office. Because of the great power and authority of the legislature, the prestige and implied "clout" that usually accompanies legislative service is often a marketable asset. Some dimensions of this prestige are intimately associated with the person who attained the position and they constitute valid qualifications. It is important, however, that it not appear that a legislator or legislative employee has sought or obtained undue personal benefits from the office, especially in a way that discredits, cheapens or commercializes government service or connections.

(ii) It is improper to use or permit the use of official title in any manner which would lead reasonable observers to believe that legislative office is being exploited to derive direct financial gain or enhance the stature, reputation or business opportunities of an individual, corporation or organization. It is common to use the stature and prestige of legislative office by direct reference to title or position or by use of official letterhead in communications. When carrying out the business of government, use or mention of official title or legislative affiliation is entirely proper. It is a different matter, however, when one is acting in a personal or private business capacity. Actual or apparent improprieties can arise from such conduct for several reasons: (1) a reference to public position may give the erroneous impression of governmental approval; (2) a person dealing with a high government official may think that the way the private matter is handled will affect treatment by the government; and (3) where legislators or legislative employees are affiliated with a private organization or business, potential clients or customers could easily conclude that the business has access to inside information or powerful connections that may be brought to bear on their behalf.

(iii) Enterprises of all sorts, including nonprofit associations, charitable organizations, corporations and firms involved in lobbying, public relations, law practice and consulting often

seek out persons serving in government, especially legislators, to serve on boards, advisory committees or as consultants. All such associations raise ethical problems because of the possibility that public office is used by the legislator and the enterprise that employs the legislator for private benefit. Because of the potential for conflicts of interest, Tennessee Code Annotated, Section 12-4-101, forbids a legislator from serving on the governing board of organizations that regularly have a direct interest in legislative, administrative and political actions of the legislator. In other situations, however, this provision applies. While the most serious problems arise when the public servant is compensated in relation to the association, even uncompensated relationships may violate this provision if the legislator or legislative employee knows or reasonably should know that the organization intends to trade on its affiliation with someone in the legislature.

(iv) It is especially important when legislators and legislative employees receive outside income that the compensation is commensurate with the actual personal services rendered. If any premium is being paid due to the public servant's position, or no significant services are being rendered, the enterprise is, in effect, improperly buying, and the public servant is, in effect, improperly selling the prestige associated with the office. In addition, premium payments may be perceived not as compensation, but as illegal gratuities.

(v) Where the compensation paid for services is proportional to the services performed by normal market standards, or the service is uncompensated, the appearance of impropriety is less severe. But even such relationships may reflect the inappropriate use of public office. For example, clients or customers may seek representation by a firm employing a legislator because they think that they will have some special advantage in dealing with government. Legislators and legislative employees who associate with private enterprises have a special duty to assure that these enterprises do not suggest or imply special influence with government and that clients and customers of the enterprise are not led to expect or encouraged to think

that the association of the public official with an enterprise may afford them unwarranted benefits.

SECTION 28.

(a) No legislative assistant or person who has served as a member of the legislature shall, within one (1) year of the expiration of such person's legislative service, use or disclose nonpublic or confidential information acquired in the course or and by reason of legislative service to obtain private personal gain or for the gain of another, including a person or business with whom the former legislator or legislative employee is now associated.

(b) Legislators and legislative assistants shall not, for a period of one (1) year after leaving office, assist another as a lobbyist, representative, consultant, adviser or advocate in seeking to influence:

- (1) Any legislator or legislative employee to take or withhold any legislative action; or
- (2) Any state agency, public official or employee with responsibility in an area in which the person, while a legislator or legislative assistant, had special oversight or budgeting responsibility, to take or withhold any administrative action.

(c) A person shall be deemed to have had special oversight or budget authority over an agency if he or she served, within the last year of his or her legislative term, as the speaker of the senate, speaker of the house, chair of the finance committee of either house or as chair or a committee directly concerned on a regular basis with the agency's activities.

(d) No former legislator, within one (1) year after leaving office, shall solicit or accept compensation of any sort under terms and conditions where the compensation is not commensurate with the services performed or which would otherwise create in the minds of reasonable, objective observers the perception that the stature of office has been unduly exploited for private gain.

GUIDELINES AND COMMENTARY

(i) Section 28(b) addresses the problem of the so-called "revolving door". The tendency of persons to leave positions of power and influence in government to represent private interests in their dealings with government, often for compensation many times more than earned in public life, raises a number of serious concerns about the integrity of the political system. Among the concerns: (1) the former legislator will unduly exploit connections and inside information to gain undue and unfair advantages for their clients or employers; (2) the legislator may adjust official conduct even while in office in an attempt to attract the attention of or curry favor with prospective employers or clients; and (3) former associates may be too willing to defer to or give favors to their former colleague. In any event, the perceptions of impropriety are great. Many people would ban former legislative officials from any representational activities concerning the legislature or state agencies. This provision is more narrowly drawn to permit representation of private interests with nonlegislative state agencies provided that the former legislative official did not have special oversight or budget authority. While this may seem to work an unfair hardship on presiding officers and certain committee chairs, their relationships with certain agencies is so close that to permit them to turn around and lobby these agencies within one (1) year of their government service is simply not appropriate. At the same time, the potential conflicts of interests arising from other legislators lobbying state agencies seems manageable so long as there is disclosure.

(ii) It is unseemly and a violation of the spirit of public service ethics when present or former government officials appear to be blatantly "cashing in" on their government service by acting as consultants, lobbyists or spokespersons for private interests in circumstances where it appears that they are peddling influence or selling the prestige and stature of their prior office. This is not to say that former government officials who have important experiences cannot serve on boards, make speeches for substantial fees or engage in consulting or lobbying. But, the circumstances including how, when and at what price they sell their services are of critical importance. (See also Guidelines and Commentary to Section 27 (iv) and (v)).

SECTION 29.

(a) Since the right to solicit and accept funds from the public for the purpose of supporting a person's campaign for office is purely an incident to our democratic political system, the use that can properly be made of campaign funds must be sharply limited to prevent actual misuse and improper appearances of misuse of funds. Legislative campaign funds are received, free of tax liability to the recipient, for the specific purpose of assisting a candidate to get elected or re-elected to office. Any other use of the funds, whether for personal gain or other purposes not closely related to bona fide campaign expenditures is improper.

(b) Campaign funds may be properly expended for any otherwise lawful purpose intended to influence voters to elect or re-elect the legislative candidate to the legislature including, but not limited to: payment of staff and consultants; rental of space and equipment for a campaign office; purchase of media time and space, design work; printing of campaign materials; postage; taking polls and interpreting them; telephone installation and usage; costs of distribution of materials; advertising in organizational and club bulletins or other brochures; inscribed promotional materials, including buttons, pencils, pens and items of clothing; necessary intrastate travel and related expenses for the candidate and any member of the candidate's staff or immediate family, if the travel and lodging are directly related to attempts to influence voters; victory and thank-you celebrations; and newsletters and mass mailings promoting the candidate.

(c) Candidates for the legislature shall not:

(1) Use funds raised and designated as campaign funds for personal economic benefit, to supplement personal income or enhance personal life style;

(2) Convert surplus campaign funds or interest earned on campaign funds to personal income; or

(3) Seek or claim a tax deduction or any other economic benefit for surplus funds disbursed to a charity pursuant to law.

(d) Legislative candidates shall not borrow from campaign funds nor loan them to any other person or group.

(e) Campaign funds shall be used only as is reasonable and necessary to advance the interests of the campaign.

(1) Any person or company providing goods or services to the campaign shall not knowingly be paid more than the fair market value of the goods or services purchased;

(2) Funds shall not be used in any way which would create in the mind of a reasonable, objective observer the belief that the funds are for the personal financial benefit of the candidate, the candidate's immediate family or any other person; or

(3) Campaign funds shall not be paid to a member of the candidate's immediate family as an employee or for goods or services provided to the campaign unless the amounts paid are reasonable and proper for the goods or services provided. Any excess amounts paid to family members shall be treated as an improper conversion of campaign funds to personal use.

(f) Except for funds irrevocably pledged during a campaign or campaign monies sent before a general election, a legislative candidate who has won office, and any committee related to the election, shall not accept campaign contributions. All post-election contributions shall be treated as illegal gratuities and shall be returned.

(g) No legislative candidate and no committee controlled by a legislative candidate shall use campaign funds to make any contribution to any other candidate running for office or to any committee supporting or opposing a candidate for office.

(h) Campaign funds shall not be used to pay fines or other monetary penalties or costs assessed against a candidate by a court or other body unless the fine, penalty or cost is assessed as a result of proscribed actions by any member or employee of a campaign committee or any other person acting on behalf of the candidate under circumstances where the

candidate did not know of, have reason to know of, acquiesce in, assent to or direct those actions.

(i) In addition to all civil remedies authorized under Section 9, violation of this section is a Class A misdemeanor.

GUIDELINES AND COMMENTARY

(i) A candidate who solicits donations for the purpose of conducting a campaign should accept such funds on the assumption that they are only given for the limited purpose of financing campaign activities for an immediate election. Campaign funds look like personal gifts or worse, attempted bribes, when they are converted to the candidate's personal use.

Conversion of campaign funds to personal use permits private gain from public office, creating blatant appearances of impropriety. Thus, it is improper to use campaign funds to: purchase personal items such as clothes, gifts or art; defray normal living costs such as auto leasing or maintenance, gas or dry cleaning; pay for the travel of spouses or other relatives not clearly relevant to a campaign; or decorate political offices. Prior law permitted candidates after an election to disburse surplus campaign funds to themselves provided they declared the funds as income. This provision is expressly overturned with respect to legislative candidates. The ability to convert surplus funds to personal income is totally inconsistent with the limited purpose under which the funds were and lawfully could be given and received. The converted sum, as well as sums used to repay campaign loans made by the legislator or the legislator's immediate family, are, in essence, illegal gratuities. While it may not be possible to determine who provided the gratuity since all contributions are commingled, it is clear that treating campaign funds as personal income results in the improper acceptance of a gratuity.

(ii) Loans of campaign funds to the candidate or others has the effect of converting the funds to personal use. Such loans create a serious appearance of impropriety, whether or not interest is paid and whether or not the loan is paid back in a timely manner.

SECTION 30.

(a) If a legislative candidate ceases to be a candidate or if there remains a balance in the account of the candidate or his or her controlled committee after the date of the election, the unexpended funds shall be:

(1) Used to retire bona fide loans supported by appropriate documentation, including loans made to a campaign by the legislative candidate or any member of the candidate's immediate family, provided that all other outstanding loans are paid first;

(2) Returned on a pro rata basis to those who have made contributions;

(3) Paid promptly to the state treasurer for deposit to the general fund of the state;

(4) Donated to one (1) or more charitable organizations which qualify for a federal tax exemption, if the charity is not one which is controlled by the candidate or a member of the candidate's immediate family or in which the candidate or a member of the candidate's immediate family is personally involved as a director, trustee, member of the board, officer or other position of responsibility; or

(5) Transferred to an ongoing political account controlled by the candidate but only in the amounts and according to the requirements set forth below.

(b) A maximum of five thousand dollars (\$5,000) for candidates of the house of representatives and ten thousand dollars (\$10,000) for candidates for the senate of surplus campaign funds may be transferred to an ongoing political account controlled by the candidate.

(c) Funds carried over pursuant to this section may be expended for any political purpose for which campaign funds can otherwise properly be used, but they may not be used for a campaign for any office other than the state legislature.

GUIDELINES AND COMMENTARY

Where candidates have raised more funds than they need for an immediate election, continued efforts to raise campaign funds is proper only if the donors are clearly informed about the likely use and lack of immediate need for their contributions. The increasing ability of an incumbent to amass large "war chests" well before an election has raised serious ethical issues.

This section prevents this by limiting the carryover of surplus funds to ten thousand dollars (\$10,000) for senate candidates and five thousand dollars (\$5,000) for house candidates. The discrepancy is justified by the length of time between elections and the fact that other provisions limit non-election year fund raising. Retained surplus campaign funds can be used for campaign travel and other political activities.

SECTION 31.

(a) Campaign funds may be used to defray attorney's fees and other legal costs incurred in the candidate's legal defense to any civil, criminal or administrative action or actions arising directly out of the conduct of the campaign or election process or the performance of any official action taken as part of the legislator's governmental activities and duties. Campaign funds shall not be expended, however, on defense costs relating to legal or ethics charges based on non-official personal conduct; a special defense fund may be established pursuant to the following rules:

(b) A legislative candidate or legislator wishing to establish a legal expense fund account pursuant shall file a statement or organization for the legal expense fund with the LEC.

(1) The statement of organization shall identify the specific civil, criminal or administrative proceeding or proceedings for which the legal expense fund is established.

(2) The legal expense fund shall establish a single account at an office of a financial institution located in the state of Tennessee, and all donations to the candidate or legislator for his or her legal expenses shall be deposited into that account.

(3) Only donations that are specifically designated by the donor as being for the legal expense fund may be deposited into the legal expense fund account. All such donations must be made payable to the legal expense fund, and no donation that is not specifically made payable to the legal expense fund may be deposited into the legal expense fund account.

(4) Expenditures from the legal expense fund account shall be made only for legal costs directly related to the civil, criminal or administrative proceeding or proceedings for which

the legal expense fund is established. In no instance, however, shall any expenditures from the legal expense fund account be used to pay or reimburse any fines, penalties, judgments, or settlements in connection with any criminal prosecution or any civil or administrative action in which the legislative candidate or legislator is found to have committed, or admits to having committed any intentional or negligent violation of the law.

(5) No funds may be transferred from the legal expense fund to any other committee. Surplus funds remaining in the legal expense fund account after the proceeding or proceedings have concluded for which the account is established may be used for no other purpose and shall be returned to donors on a pro rata basis or given to the state general fund within six (6) months after the final conclusion of the proceeding or proceedings.

(6) This section shall constitute the sole means for soliciting or accepting donations for legal costs free of this act's limitations.

(c) Funds received from testimonial dinners or other fund raising events must be clearly designated in advance as either for campaign purposes or for the legal expense fund and all proceeds shall be dealt with accordingly.

(d) In addition to all civil remedies authorized under Section 9, violation of this section is a Class A misdemeanor.

SECTION 32.

(a) Legislators wield substantial power and influence and it is essential that constituents and others interested in their legislative, administrative and political actions have, and believe they have, a fair and adequate opportunity to express their concerns, grievances and ideas without regard to their willingness or ability to provide personal benefits, contribute to particular charitable causes favored by a legislator or provide financial or other forms of political support.

(b) No legislator shall, directly or through others acting on the legislator's behalf, engage in any conduct which the legislator knows or reasonably should know is likely to create

the belief or impression in another that such persons and/or the causes they represent will receive more or less favorable consideration, or that they will be given more or less opportunity to personally state their case, or otherwise be benefited or disadvantaged as a direct result of their willingness to provide funds for a campaign contribution or any other cause favored by the legislator, or to provide the legislator with personal benefits or political support.

(c) A legislator shall not, directly or through others acting on the legislator's behalf:

(1) Agree to, or threaten to take or withhold any legislative, administrative or political action, including, but not limited to, support or opposition to a bill, employment, nominations and appointments, as a result of a person's decision to provide or not provide a political contribution;

(2) State or imply that the legislator will perform or refrain from performing any lawful constituent service as a result of a person's decision to provide or not provide a political contribution;

(3) Participate in any discussion, scheme or plan clearly designed to evade the plain spirit and purpose of campaign and contribution regulations and financial disclosure provision or any state law; or

(4) Knowingly accept any contribution given or offered in violation of law.

(d) In addition to all civil remedies authorized under Section 9, violation of this section is a Class A misdemeanor.

GUIDELINES AND COMMENTARY

(i) Difficult problems arise with respect to the solicitation and acceptance of any benefit, including campaign or other contributions from those who have a substantial interest in legislative, administrative or political actions of a legislator or legislative employee. In such cases, great caution should be exercised to avoid the appearance that solicitations of campaign contributions or other contributions are connected in any way, as a quid pro quo, with any legislative, administrative or political action which benefits the contributor. For example, solicitations of any benefit made shortly before or shortly after a legislator has done any act on

behalf of a constituent should be scrupulously avoided in order to avoid the appearance that the legislator expected a contribution or other benefit in return for legislative, administrative or political services.

(ii) A common complaint among lobbyists and others who have a substantial interest in legislative, administrative or political actions is that legislators directly or through their staff create the impression that those who make political contributions, hold fund raising events or provide other political support will have special access to the legislator when they want to make their case to influence action. In some cases, this access is expected to give the person an edge in persuading the legislator to take or refrain from taking certain actions. In others, the person solicited believes that the contributions are more defensive, necessary to lubricate the relationship, believing that the failure to be supportive would significantly reduce their ability to effectively plead their case. In all these situations, however, there is implicit impropriety with the exchange of favors sometimes closely resembling a pale form of bribery or the coercion of support resembling a mild form of extortion.

(iii) More and more, lobbyists and others who have a substantial interest in legislative, administrative or political actions have complained that legislators "strong arm" them to make donations to charities or other causes in which the legislator has a personal or political interest. Because of the importance of a positive relationship with the legislator, many persons so solicited feel obligation, not by conscience but by fear of offending, to comply with the request. Although most situations do not create the appearance of influence peddling since the benefit is not personal and since it is rarely large enough to create the appearance of a quid pro quo, many insiders see this as a form of extortion or a "tax" levied by legislative whim. If a legislator is to solicit another, either directly or through an aide, to contribute to a charity or a cause, he or she should do so in a manner that clearly and unequivocally removes any suggestion of coercion or implication that the decision to make or not make the requested contribution will in any way affect the professional relationship.

SECTION 33.

(a) Because the process of campaign fund raising involves activities which take great amounts of time and energy and which tend to place legislators in situations rife with the potential for conflicts of interest, fund raising should be limited in ways that permit legislators to concentrate their attention on public matters.

(b) No legislator, either directly, through a campaign committee or other means, shall solicit or accept a campaign contribution or a promise or pledge to make a contribution while the legislature is in session, nor shall a legislator otherwise be involved in any fund raising activities for the legislator's own campaign or for any other person or cause.

(c) No legislator, either directly, through a campaign committee or other means, shall solicit or accept a campaign contribution or a promise or pledge to make a contribution relating to candidacy for the legislature except during the following periods:

(1) Legislators and any other incumbent public officials intending to run for the legislature may fund raise from June 1 until December 31 in the year before an election in which they intend to be a candidate, and June 1 through the general election in November in the year of the election.

(2) Candidates for the legislature who are not in public office at the time of their candidacy may fund raise from June 1 in the year before an election in which they intend to be a candidate through the general election in November in the year of the elections.

(d) In addition to all civil remedies authorized under Section 9, violation of this section is a Class A misdemeanor.

GUIDELINES AND COMMENTARY

Section 33(b) expands the principle of limited fund raising by preventing "off-year" fundraising and limiting the total period of legislative fund raising to about ten (10) months for incumbents and fourteen (14) months for non-public official challengers. The nonincumbent candidates are permitted to fund raise during the legislative session in the year of the election

because the reasons to prevent fund raising during sessions do not apply to them and because there is a general consensus that nonincumbents need more time to raise funds.

SECTION 34.

(a) Legislators and legislative employees shall safeguard their ability to make independent, objective, fair and impartial judgments by scrupulously seeking to avoid financial, social and political relationships and transactions which may compromise or give the appearance of compromising their objectivity, independence or honesty.

SECTION 35.

(a) A financial conflict of interest exists when a person or a member of that person's immediate family has substantial financial interests which may be materially affected by any official action or decision they might make. The interest must be so substantial and the potential effect on that interest must be so material that a reasonable, objective person is likely to believe that the ability of the person with the financial interest to make an objective, fair and impartial professional judgment will be impeded by self-interest. It is not a conflict of interest as to a specific matter if:

(1) The person's economic interest is not substantial;

(2) The person's authority in relation to the interest is such that an action or decision is not likely to materially affect the financial interest; or

(3) The economic effect an official action or decision might have on a person's private financial interests is no greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region.

(b) Conflicts of interest arise most often and are most serious when a legislator or legislative employee has a financial or personal relationship with other persons or organizations that have a substantial interest in legislative, administrative or political action. Persons and organizations have such an interest if they:

(1) Are regulated by the legislature;

- (2) Provide goods or services to the legislature for compensation or profit;
- (3) Seek employment in the legislative branch or any government agency or in a private organization in which a legislator or legislative employee is likely to have, or reasonably appears to have, the ability to influence an employment decision;
- (4) Will be directly or substantially affected, either financially or personally, by any contemplated legislative, administrative or political action;
- (5) Have or seek contracts for goods or services with any agency of state government;
- (6) Are registered lobbyists;
- (7) Employ registered lobbyists; or
- (8) Represent, with or without compensation, a person or organization described in (1) through (7) above.

(c) Close economic association refers to a financial relationship between two (2) or more persons or between a person and an entity which creates economic interests in a legislator or legislative employee that either:

- (1) Conflicts with public duties and the obligation to exercise objective independent judgment;
- (2) Creates the appearance that such a person may have undue access to confidential information or otherwise receive favored treatment regarding public actions; or
- (3) Close economic association includes, but is not limited to, relationships involving compensation as an employee, agent, representative, counselor, advisor or consultant (including professional services as between a lawyer and client or a financial planner and a client); a financial interest resulting from an investment, business enterprise or interest in real property as a partner, investor, associate or major stockholder; a landlord and tenant or co-tenants sharing housing expenses; a debt, loan or loan guarantee; or any other relationship in which a legislator or legislative employee has a substantial economic involvement with another.

(d) Except in the relatively few cases in which certain conflict-laden transactions or relationships are banned by this chapter or where divestiture will be ordered by the LEC, conflicts of interest are dealt with primarily as a matter of required public disclosure and voluntary restraint.

GUIDELINES AND COMMENTARY

Public officials must be vigilant for relationships and transactions that create conflicts of interest. Such conflicts are either forbidden, in which case the interest must be divested or the relationship terminated, or it shall be disclosed pursuant to law. In addition, the legislator or legislative employee who has a conflict may be required to refrain from participating in any legislative, administrative or political action which involves the questioned financial interest or personal relationship. Financial conflicts of interest can arise out of almost any close economic association but the most common and significant conflicts for legislators and legislative employees relate to:

(1) Sources of nonlegislative income for personal services, especially when the income is derived from a source that has a substantial interest in legislative, administrative or political actions of the legislator or legislative employee;

(2) The conferment of any benefit, including investment opportunities, employment, entertainment, gratuities, honoraria, loans, favors and special treatment from a source that has a substantial interest in legislative, administrative or political actions of the legislator or legislative employee;

(3) Close economic associations with other public officials or lobbyists, especially those that have a substantial interest in legislative, administrative or political actions of the legislator or legislative employee;

(4) Personal financial interests in contracts or leases with the state or other government entities;

(5) Personal financial interests in licenses, permits, franchises or other valuable entitlements or privileges granted by the state;

(6) Personal participation in state loan or other programs conferring benefits;

(7) Representation of oneself or others in actions before state agencies or other government entities;

(8) State regulation or funding which substantially affect a profession, occupation or organization in which the legislator or legislative employee has a substantial economic interest; and

(9) Personal involvement at a managerial or governance level with a private enterprise or non-profit organization that is regulated by or seeks benefits from the state.

SECTION 36.

(a) A personal relationship conflict of interest exists when a legislator or legislative employee is involved in a close personal relationship with another person who is likely to be substantially affected by any official action or decision the legislator or legislative employee might make.

(1) A close personal relationship is a special relationship between a legislator or legislative employee and another person which creates strong bonds of loyalty, friendship and/or love that could potentially conflict with public duties and the obligation to exercise objective independent judgment or create the appearance that such a person may have undue access to confidential information or otherwise receive favored treatment regarding public actions.

(2) It includes, but is not limited to, immediate family, long-term personal friends or former business associates and persons with whom the legislator or legislative employee has a significant and continuous romantic relationship.

(b) Except in the very few cases where certain relationships give rise to specific legal limitations, such as the ban on nepotism, personal relationship conflicts are not restricted or

subject to mandatory disclosure. This makes them no less damaging to public trust however. Legislators and legislative employees shall avoid, where reasonably possible, getting into situations where they have personal relationship conflicts of interest. Where the situations are not reasonably avoidable, legislators and legislative employees shall take affirmative steps to disclose the conflicts that are not apparent and refrain, where reasonably possible, from making decisions or taking actions affected by the conflict.

SECTION 37.

(a) A member of the immediate family of a legislator shall not be employed for compensation:

- (1) In the house in which the legislator is a member during the legislative session;
- (2) In either house in the interim between legislative sessions; or
- (3) By the LEC, whether for compensation or not, and throughout the year.

(b) A member of the immediate family of a legislative employee shall not be employed for compensation in a position over which the employee has supervisory authority.

(c) For purposes of this section, a legislator is not an employee of the legislature.

(d) In cases where a relative of a legislator or legislative employee is uniquely qualified to perform a task, or any other extraordinary circumstances exist under which it would be in the state's interest to waive this limitation, an exemption may be sought from the LEC.

(e) Violation of this section will subject the violator to all civil remedies authorized under Section 9.

SECTION 38.

(a) A registered lobbyist shall not serve as a campaign manager or director or serve as a campaign treasurer or deputy campaign treasurer on a finance or fund raising committee, host a fund raising event or otherwise engage actively in the fund raising aspect of any legislative campaign. This provision shall not be construed to prohibit a lobbyist from making

personal contributions nor personal advocacy on behalf of a candidate, but it prohibits the lobbyist from engaging in all forms of fund raising.

(b) Legislators and legislative employees who have a close economic association as defined in Section 35(c) or a close personal relationship as defined in Section 36(a) with a registered lobbyist shall disclose in writing such relationship in confidence to the LEC during the first week of each annual session or within thirty (30) days of taking office; for those not in office during the first week of the session, or as soon as reasonably possible, but no later than forty-five (45) days of formation, a relationship that did not exist during the first week of the legislative session.

(1) The written disclosure shall state the name of the persons or entities involved, the nature of the relationship, and a brief narrative of what matters the legislator or legislative employee is working on or reasonably might work on in the future that could create an actual conflict of interest. The LEC may request further information which shall be promptly provided.

(2) The LEC shall make a determination as to whether the relationship creates a conflict of interest that requires restrictions or disclosure. Thereupon, the LEC may elect to keep the matter confidential, to order some restriction in the activities and/or to order disclosure in the journal of the appropriate body.

(c) No legislator or legislative assistant shall provide personal services for compensation for or on behalf of any registered lobbyist, lobbying firm or any other organization or firm that regularly engages in lobbying the legislature or state agencies, boards or commissions, not shall any legislator or legislative assistant have any financial interest in a business which receives a substantial part of its income from lobbyists, lobbying firms or any other organization or firm that regularly engages in lobbying the legislature or state agencies, boards or commissions.

(d) Knowingly false, deliberately misleading, incomplete or unnecessarily delayed disclosure to the LEC, as well as any other violation of this section, will subject the violator to all

civil remedies authorized under Section 9 and any other remedies available under laws regulating lobbyists.

GUIDELINES AND COMMENTARY

(i) When a lobbyist is actively involved as a major fund raiser in a legislative campaign, both financial interest and personal relationship conflict of interests emerge in major proportions. The likelihood that the legislator will be beholden to the lobbyist in a way that could impede objective, impartial independent judgment is so great that the relationship must be prohibited.

(ii) It is the purpose of this chapter to stay out of the private lives of those regulated to the greatest extent reasonably possible without compromising the public need to assure that impermissible conflicts are prevented and that questionable ones are revealed. The system established in Section 38(b) allows the LEC to privately screen and evaluate the substantiality of the conflict. Only if it finds the conflict to be substantial or one that ought to be disclosed publicly shall it take further action. In the case of legislators, however, there ought to be a strong presumption in favor of public disclosure because such information is necessary if the citizens of the legislator's district are to hold the legislator accountable. If the legislator or legislative employee requests, the matter shall be disclosed.

SECTION 39.

(a) No legislator or legislative employee shall serve a governing or advisory board of any organization which regularly has a substantial interest in the legislative, administrative and political actions of the legislator or legislative employee unless the legislator or legislative employee with the conflict discloses the relationship and excuses him or herself from any and all actions relating to the organization's interest.

(b) In extraordinary situations where the criteria for an exemption exists, a legislator or legislative employee may seek a waiver of this provision or a modified order from the LEC.

(c) Violation of this section will subject the violator to all civil remedies authorized under Section 9.

SECTION 40.

(a) No legislator or legislative employee shall have an equity or ownership interest in any business, investment, real property or lease, or other enterprise if such interest has a fair market value of twenty-five thousand dollars (\$25,000) or more if financial interest is likely to be materially affected by any legislative, administrative and political actions of the legislator or legislative employee, unless the legislator or legislative employee with the conflict excuses him or herself from any and all actions relating to the interests involved.

(b) In extraordinary situations where the criteria for an exemption exists, a legislator or legislative employee may seek a waiver of this provision.

(c) Violation of this section will subject the violator to all civil remedies authorized under Section 9.

SECTION 41.

(a) No legislator or legislative assistant shall professionally represent any person or entity in any legal action against the state where the state is the real party in interest, nor receive compensation or any other benefit for acting as an informal representative, advisor or consultant to persons or entities regarding their actions against the state. This provision shall not be construed to prevent a legislator or legislative employee who is an attorney from representing a criminal defendant or client in competency, commitment, delinquency, support or child in need of aid cases or similar proceedings where the state is not the real party in interest.

(b) No legislator or legislative assistant shall professionally represent, either formally or informally, as an advocate, advisor or consultant any person or entity in an action before an agency, board or commission of the state unless the proceeding is adjudicatory in nature and there is no reasonable basis to conclude that the side represented by the legislator or legislative

employee has an unfair advantage. A matter will be considered to be adjudicatory in nature where opposing sides are separately represented.

(1) This provision shall not prohibit an attorney from representing a client in any otherwise permissible action before a criminal or civil court nor to prevent a legislator or legislative employee from representing personal interests in an otherwise proper proceeding.

(2) This provision shall be construed to prohibit formal and informal professional representation for purposes of obtaining or retaining a state license, permit, franchise, grant, loan or other entitlement, whether or not other parties contending for the state benefit are represented. If, however, the granting of the benefit is a purely ministerial matter requiring little or no discretion, this provision shall not prohibit representation.

(c) Notwithstanding any other law to the contrary, no legislator or legislative employee, acting as an attorney or representative of another, shall seek or accept any special treatment, privileges, rights or concessions solely by reason of service in the legislature. This shall include the seeking and granting of legislative stays.

(d) This provision shall not be construed to prohibit a legislator or legislative employee from informally advising a constituent about the procedures or appropriateness of bringing an action against the state. If a legislator or legislative employee shall in an otherwise proper manner advise a constituent or another in an action against the state or before a state agency, the legislator or legislative employee shall not reveal any nonpublic or confidential information.

(e) If an attorney is disqualified under this provision in accordance with the attorney's code of professional responsibility, the firm of the legislator or legislative employee shall also be disqualified.

(f) In extraordinary situations where the criteria for an exemption exists, a legislator or legislative employee may seek a waiver of this section.

(g) Because this provision may require substantial adjustments in the way a legislator or legislative employee earns non-legislative income, those who find it unreasonably difficult to comply with the restrictions for any reason may, until January 1, 1997, represent persons in any proceeding provided that if the representation is one that would be prohibited under this section:

(1) A statement is filed with the LEC and published in the journal of the appropriate house, including the name of the client, an identifying name or number of the action, a brief description of the nature of the action, and the amount of compensation received or anticipated relating to the representation.

(2) Any changes in any of the above, including any additional compensation paid or anticipated, shall be filed every ninety (90) days until the matter is completed or January 1, 1997, at which point the representation shall be terminated.

(h) Knowingly false, deliberately misleading, incomplete or unnecessarily delayed disclosure to the LEC, as well as any other violation of this section, will subject the violator to all civil remedies authorized under Section 9.

SECTION 42.

(a) No legislator or legislative assistant nor member of the immediate family of the legislator or legislative assistant shall be a party to, or have a financial interest in, a state contract or lease except as provided below:

(1) If the contract is let through competitive sealed bidding under Tennessee Code Annotated, Title 12, Chapter 4, and the legislator or legislative assistant has filed a statement with the LEC at the time the bid is made certifying under penalty of perjury that the legislator or legislative assistant had no:

(A) access to inside, nonpublic or confidential information that reasonably could appear to provide an advantage; and

(B) discussions or contacts with state officials involved in letting the contract that could unduly influence the decision.

(C) The statement shall also specify the nature of the legislator or legislative assistant's personal or immediate family interest, including the percentage or share of profits that will be realized.

(D) The LEC may request additional information which must be promptly provided. If the LEC believes the nature or circumstances of the contract raise impermissible conflicts of interest, it may void the contract or order restrictions. The statement filed by the legislator or legislative assistant regarding the contract shall be made part of the public record and published in the journal of the appropriate house.

(2) If the total amount of the contract or lease over the course of a year is less than one thousand dollars (\$1,000), and it was let under circumstances that raise no substantial question as to the use of undue influence.

(3) If the contract or lease was developed and standardized under published guidelines and the benefits and rights conferred are widely available to the general public under the same terms and conditions.

(b) No legislator or legislative assistant shall seek or accept any compensation, whether in the form of a commission, bonus, retainer, kickback or other form on any state contract, nor shall any legislator or legislative assistant receive any similar compensation for services relating to recommending, supporting or advocating a contract between any person or business with any entity of state government, any entity of local government which receives substantial state subsidy or any private enterprise which does a substantial portion of its business with state government.

(c) No legislator, legislative assistant or former legislator or legislative assistant, within one (1) year of leaving legislative service, shall seek or accept any contract for goods or

personal services or any other compensation concerning a matter on which the legislator or legislative assistant worked extensively within the last year of service.

(d) A legislator or legislative employee may properly participate in statewide benefit programs or receive a loan from the state provided that the program or loan is generally available to members of the public, is subject to fixed objective eligibility standards and requires minimal discretion in determining qualification.

(1) The LEC shall review annually state programs and state loans and publish a list of programs and loans, designating which ones meet the qualifications stated.

(2) All persons participating in programs or receiving loans which do not qualify under this section shall file a written report with the LEC by the first Monday in February of each year stating the amounts of the loans and any other benefits received as of January 15 of that year from non-qualifying programs. The LEC shall promptly compile a list of such statements indicating the program and amount and send it to the presiding officer of each house, who shall have it published in the journal within three (3) weeks of the filing date. If the LEC requests more information, it shall be promptly provided.

(3) If loan proceeds or other program benefits are received from non-qualifying programs or loans after January 15, the legislator or legislative employee shall file a statement with the LEC within thirty (30) days after the beginning of participation in the state program or receipt of proceeds from the state loan. This statement shall be promptly forwarded to the presiding officer of the appropriate house, who shall cause it to be published in the journal.

(4) If the LEC determines that the nature and circumstances under which the legislator or legislative employee received a state benefit or loan raises an undue appearance of impropriety or was in fact the result of unfair or improper influence, it shall be treated as a violation of this act and the LEC may order whatever authorized remedies as are suitable.

(e) In extraordinary situations where the criteria for an exemption exist, a legislator or legislative employee may seek a waiver of this section.

(f) Knowingly false, deliberately misleading or incomplete or unnecessarily delayed disclosure to the LEC, as well as any other violation of this section, will subject the violator to all civil remedies authorized under Section 9.

SECTION 43.

(a) Public servants must be extremely cautious and circumspect about accepting any gratuity or favor, especially from persons or entities which have a substantial interest in their legislative, administrative or political actions. Even where there is a genuine personal friendship, the acceptance of personal benefits from those who could gain advantage by influencing official actions raises suspicions which tend to undermine public trust. These provisions are meant to discourage all gratuities but prohibit only those that create unacceptable conflicts of interest or appearances of impropriety.

(b) A legislator or legislative assistant shall not solicit, accept or receive, directly or indirectly, any benefit as a gratuity from any person or entity except as provided herein:

(1) Over the course of a year, a legislator or legislative employee may accept gratuities in the form of personal gifts, free or subsidized travel, tickets to entertainment or sporting events, lodging and any other benefit, as long as the aggregate value from a single source is not in excess of one hundred dollars (\$100) and such gifts are reported annually to the registry as to source and amount.

(2) Notwithstanding the foregoing, no benefit of any amount shall be accepted under circumstances in which it could be reasonably inferred that the gift is intended to influence the performance of official duties, actions or judgments.

(c) The following benefits may be accepted as gratuities without regard to the one hundred dollar (\$100) limit and they need not be reported except as noted within the appropriate subsection:

(1) Gifts from immediate family members are exempt.

(2) Birthday, wedding, anniversary and similar ceremonial gifts may be accepted from personal friends, but only if the donor does not have a substantial interest in the legislative, administrative or political action of the recipient.

(3) Gifts of sample merchandise, promotional items such as pens, calendars and the like, and appreciation tokens such as candy, fruit baskets or flowers, if they are of nominal or moderate value and are given to customers or potential customers in the ordinary course of business, and there are no special facts creating a conflict of interest or the appearance of impropriety.

(4) Unsolicited tokens or awards of appreciation or recognition with a value of less than one hundred fifty dollars (\$150) in the form of a plaque, trophy, clock, desk item, wall memento and similar items are exempt. More valuable awards such as watches, rings and works of art may be accepted only if the organization making the award does not have a substantial interest in the legislative, administrative or political action of the recipient, or the award has been approved by the LEC upon a finding that the gift does not create an impermissible conflict of interest.

(5) Informational material, brochures, pamphlets and unsolicited publications, including newspapers and magazines, with a market value of less than fifty dollars (\$50.00) on an annual basis.

(6) Food or foodstuffs indigenous to the state that are shared generally as a cultural or social norm; meals and beverages provided and consumed at social or fund raising events, conferences or professional meetings at a restaurant or club (provided that the cost is not lavish or excessive) or as part of personal hospitality at the residence or place of business of the host.

(A) This rule shall not be construed to permit gifts of any packaged alcoholic beverages or foodstuffs, nor shall it permit the acceptance of a restaurant meal not consumed with the person providing the gift (e.g., a lobbyist arranges to have a dinner for you and your spouse billed to the lobbyist).

(7) A legislator or legislative employee may accept a gift presented by a representative of a foreign government on behalf of the state but if it is worth more than one hundred dollars (\$100) it must be turned over to the presiding officer of either house for purposes of displaying the gift in public areas of the capitol or being sold at auction the proceeds shall go to charity or the state general fund at the option of the legislator or legislative employee. If the gift is worth less than one hundred dollars (\$100) and it was intended as a personal gift it may be kept, provided that it is properly reported.

(8) Reasonable and necessary expenses, including reimbursement for travel and related food and lodging are not gratuities when they are incidental to a trip paid for by a government agency or a bona fide non-profit educational or charitable institution for government or educational purposes, provided that lodging expenses are limited to the day preceding and the day or days of the event.

(A) If the institution paying the expenses does not have a substantial interest in the legislative, administrative or political action of the recipient, expenses may also be paid for a spouse or other companion, including a member of the legislator or legislative employee's family, so long as the value of the gift is reported on required disclosure forms.

(B) This rule does not permit acceptance of free travel from a person or nongovernmental entity with a substantial interest in the legislative, administrative or political action even if the purpose of the travel is related to matters of legislative concern.

(9) Hospitality, including overnight lodging, food and beverages at the residence or second home of the host, if the host is present. If the host is a personal friend and has no substantial interest in the legislative, administrative or political actions of the recipient and there are no other facts which create a conflict of interest, there is no limit to the number of days stayed. If the host has a substantial interest in the legislative, administrative or political actions of the recipient, the exempt stay may not exceed two (2) nights and the gratuity shall be reported on the conflict of interest disclosure forms.

(A) This provision shall not be construed to permit the use of a summer home, company retreat, resort facility, condominium or apartment or other lodging where the host is not personally present or, regardless of the presence of the host, and the purpose is to provide the legislator or legislative employee with a paid or subsidized vacation or similar benefit.

(B) While the host may use a personal or company car or van to transport the legislator or legislative employee to the place of a social event, unusual or expensive travel by air or limousine to the residence of the host or any other place shall not be accepted.

(d) No person shall directly or indirectly provide, offer or promise anything of value to a legislator or legislative employee with the intent to influence any legislative, administrative or political action. In extraordinary situations where the criteria for an exemption exists, a legislator or legislative employee may seek a waiver of this section.

(e) Knowingly false, deliberately misleading or incomplete or unnecessarily delayed disclosure to the LEC, as well as any other violation of this section will subject the violator to all civil remedies authorized under Section 9.

GUIDELINES AND COMMENTARY

(i) Some public officials take personal offense at the implication that they would allow their integrity to be compromised by a gift or favor. This reaction unduly personalizes the ethical theory and sound public policy which seeks to insulate public officials from the corrupting influences of gratuities. The motives of the gift givers offer insight to the problems. Rarely do they expect any quid pro quo; they do not think a public official will consciously change an action because of a gift. Gifts work more subtly to undermine objectivity. Receiving a gift often generates unconscious feelings of gratitude and appreciation which evoke a natural tendency to give something in return, whether out of natural gratitude or the desire to encourage further gifts. Gifts given freely out of affection by persons who want nothing in return create few problems, but most gratuities given to legislators or legislative employees are provided by persons or entities that do want something because they have a substantial interest in the

legislative, administrative or political action of the recipient. In spite of the confidence of those who accept gratuities that their judgment remains unimpeded, the people who provide gratuities seem to believe that it is to their advantage to do so and the public perception is that the gift givers are right at least some of the time. A legislator or legislative employee who is considering accepting even a lawful gratuity should carefully, realistically and objectively evaluate the likely motive of the person offering it: Why am I being offered this gift or favor? Will I be offered the benefit if I did not wield public influence? Who is paying for it? Is it likely to be written off as a business expense? If I accept the benefit will reasonable outsiders think that the donor has some hold on me or that I owe something in return? Since there is no offsetting public good to justify the appearance of impropriety created by the acceptance of gratuities, all close cases should be resolved against any action which raises reasonable suspicions regarding the integrity of the legislator or legislative employee or government in general.

(ii) These rules discourage the acceptance of all gratuitous benefits that could raise the slightest appearance of impropriety but they permit wide personal discretion in all but the clearest cases of improper appearances. While legislators and legislative employees need not be so sensitive to the adverse appearances that they are unable to have close and cordial relationships lubricated by hospitality, gratuities accepted should be moderate, infrequent and given under circumstances that do not create the impression that the giver seeks undue influence or that the receiver seeks undue personal benefit. Thus, the most stringent rules concern gratuities offered by those who have a substantial interest in the legislative, administrative or political actions of a legislator or legislative employee.

(iii) The rules follow the modern trend to require that gifts under the legal limit be aggregated annually to limit the overall giving power of any individual and to prevent avoidance of the limits by making frequent periodic gifts or by deliberately breaking down gifts into smaller parts.

(iv) This section exempts a substantial number of gratuities because they do not present sufficient conflicts of interest to warrant prohibition. There is no specific exemption for discounts that are provided to the general public or any large group since these are not things of value under the definitions of this act. However, if the basis of the discount relates to government status, it is a gift unless the LEC approves the discount program as one that presents no conflict of interest.

SECTION 44.

(a) Because legislators and many legislative employees serve the state only part-time, most must engage in income-producing activities to supplement their legislative salaries. It is the intent of this act to allow legislators and legislative employees substantial freedom in their ability to do so with due regard for the state's interest in preventing conflicts of interest and appearances of impropriety that undermine the integrity of government and public trust.

(b) No legislator or legislative employee shall seek, accept or retain any employment, including as an advisor or consultant which:

(1) Will make it unreasonably difficult to fulfill legislative obligations;

(2) Requires the disclosure or use of nonpublic or confidential information acquired in the course of legislative service;

(3) Requires the improper use of government relationships or the authority, prestige, or title associated with legislative office;

(4) Involves payments that by reasonable, objective standards are not commensurate with the services rendered and appear to involve a premium as a result of the legislator or legislative employee's position in the legislature;

(5) Would disable the legislator or legislative employee under conflict of interest and disqualification requirements to refrain from taking legislative, administrative or political actions in an undue number of situations; or

(6) Will require the legislator or legislative employee to compromise any other ethical or legal duty.

(c) No legislator or legislative employee shall receive compensation for personal services from any state entity except the legislature except as specifically provided or as approved by the LEC.

(1) Legislators or legislative employees shall not be precluded by this section from earning compensation at any state funded school or university provided that no undue influence was used to obtain the position.

(d) Legislators or legislative employees who accept otherwise permissible employment with individuals or entities that have a substantial interest in their legislative, administrative or political actions shall be subject to special disclosure provisions set forth in Section 48 and shall scrupulously avoid any conduct that would lead a reasonable person to believe that the legislator or legislative employee is unable or unwilling to exercise independent, objective and impartial judgment in considering matters which affect the interests of the legislator or legislative employee's employer.

(e) No legislator or legislative employee shall seek or accept any honoraria in the form of a payment of money or anything of value from a person or entity that has a substantial interest in the legislative, administrative or political action as compensation for a speech, panel presentation, appearance or similar service.

(1) This provision shall not prevent a legislator or legislative employee from accepting an honoraria from any governmental entity outside of Tennessee, from a university or from any other bona fide nonprofit educational or civil institution, if the amount paid is reasonable and commensurate with the services performed and that the circumstances under which the services are to be performed do not create a conflict of interest or appearance of impropriety. All honoraria and related expenses shall be reported on conflict of interest disclosure forms.

(2) Pursuant to other provisions of this act, a legislator or legislative employee shall be permitted to accept travel and related expenses incurred as the result of an otherwise permissible activity.

(f) In extraordinary situations where the criteria for an exemption exists, a legislator or legislative employee may seek a waiver of this section.

(g) Knowingly false, deliberately misleading or incomplete or unnecessarily delayed disclosure to the LEC, as well as any other violation of this section will subject the violator to all civil remedies authorized under Section 9.

GUIDELINES AND COMMENTARY

(i) Assuring that a legislator or legislative employee's sources of outside earned income are consistent with the ethical obligations imposed by public office is a major and continuous challenge for the conscientious citizen-public servants. The major employers in Tennessee tend to be very active in the political process, employing lobbyists and engaging in other activities to assure that their interests are protected and advanced in the legislature. It would be unreasonable to ban employment with these employers, but any such employment must be subjected to the most rigorous scrutiny to assure that the legislator or legislative employee is acting in the public's interest rather than in the interest of the sources of outside income. The provisions of this act do not and cannot exhaust all the possible ways in which outside employment with a firm that has a substantial interest in legislative, administrative or political actions can create conflicts. The principles of good faith, public interest, independent judgment and public trust are especially important, therefore, in helping individual legislators, legislative employees and the LEC interpret and apply these provisions.

(ii) Employment by other state agencies is prohibited because of the appearance that a legislator or legislative employee has an undue advantage and may have exercised undue influence in obtaining the position. Compensation from the state ought to be strictly limited to official legislative pay and allowances unless special circumstances justify an exemption.

(iii) Because of the great potential for abuse, public servants should not accept payments for giving speeches or writing about matters concerning their public duties. Such payments, often called honoraria, may be proper in exceptional cases where the source has no significant interest in the public servant's governmental decisions and where the name and amount of the payment is clearly reasonable and proportional to the effort required to earn it. A public official should not accept compensation for merely appearing at a function or attending a breakfast, lunch or dinner meeting and discussing a matter of interest to other participants.

SECTION 45.

(a) Legislators and legislative employees shall exercise their powers and prerogatives without prejudice or favoritism. They shall not use public authority simply to reward relatives, friends or political supports or to hinder or punish enemies and opponents.

(b) In addition to all civil remedies authorized under Section 9, violation of this section is a class A misdemeanor.

GUIDELINES AND COMMENTARY

(i) All expenditures of public funds, whether hiring employees or making purchasing or other decisions with economic impact, involve the use of public resources. Those who have the authority to spend taxpayer money are obligated to do so with scrupulous consideration of the public interest and to avoid the temptations to favor family, friends or acquaintances or discriminate against personal enemies and political foes.

(ii) Legislators and legislative employees should make all employment decisions on the merits, only choosing those who are well qualified. This provision expands on specific anti-nepotism rules. In spite of the long tradition of patronage in American politics, public jobs should not be treated as the spoils of victory. Cronyism and patronage inevitably undermine the efficiency and integrity of government.

SECTION 46.

(a) The proper operation of democratic government requires that each public official carry out his or her duties free from any improper influences that tend to prevent decisions from being made on the merits according to fair and established procedures. Under our system of separation of powers, legislators have the responsibility to exercise oversight to assure that the executive branch is carrying out its functions equitably, efficiently and economically. This responsibility, combined with the duty to provide legitimate constituent service, creates situations where a legislator may become involved with administrative decisions or proceedings which affect constituents. The purpose of this section is to provide ground rules for such involvement so that the activity does not unduly distort or politicize the administrative process while still affording the legislator the opportunity to advocate and protect the interests of constituents.

(b) Legislators, either directly or indirectly, shall not interfere with the ability or willingness of any state or local government body, official or employee to make official decisions or take appropriate actions on the merits, based on independent objective judgment.

(c) Legislators, either directly or indirectly, shall not use or appear to use political influence in any way that is likely to cause another public servant to consider inappropriate factors in exercising public authority. Acts either intended to or likely to be construed as enticement, trade-offs, ingratiation, threats, intimidation or coercion are improper. Except to assure that a particular person is being treated fairly according to established rules and procedures, no legislator, directly or indirectly, shall interfere with or seek to influence:

(1) The outcome of substantive findings of any adjudicatory proceeding of a governmental regulatory body;

(2) A decision regarding the commencement, scope or termination of an investigatory process of a governmental agency; or

(3) An action of any governmental agency concerning the granting or revocation of a license, permit, franchise or similar entitlement.

(d) This provision shall not be construed to prevent a legislator:

(1) From making inquiries about the status of a matter;

(2) From openly advocating the position of constituents on the merits, if no effort is made to unduly influence the decision making process by express or implied political pressure in matters involving discretionary decisions of administrative bodies which will have direct and significant economic or social impact on the legislator's district; or

(3) From exercising vigilant oversight with respect to the policies, regulations, procedures and implementation practices of an agency, if such oversight activities are conducted through the normal committee processes of the legislature and that the focus is on the policies, procedures and practices of the agency, not on the handling of a particular matter.

(e) A legislator who, directly or indirectly, intervenes in any administrative consideration, action, or proceeding, shall explicitly convey to the administrators involved that the administrator is expected to make an independent judgment and that no advantages or disadvantages to the administrator or the agency will result from a favorable or unfavorable disposition.

(f) In addition to all civil remedies authorized under Section 9, violation of this section is a class A misdemeanor.

GUIDELINES AND COMMENTARY

(i) Legislators and legislative employees should be extremely cautious about directly or indirectly intervening with normal decision making, investigatory or adjudicative processes of governmental bodies on behalf of constituents or friends since such intervention can threaten the ability of government administrators to exercise independent, objective judgment on the merits. Generally, intervention on behalf of constituents or friends is proper only if it is strictly limited to assuring fairness of the procedures.

(ii) Elected officials are frequently asked by constituents and other supporters to intervene with other government agencies or departments. In fact, "case work" comprises a

major part of the service provided by elected officials at all levels of government. Constituents bidding on government contracts often seek the help of "their" representatives; those who are subjected to investigations may expect their legislator to provide protection from what they view to be unfair procedures, and persons seeking government approvals or licenses sometimes ask politicians to facilitate the process. In the ombudsman function, seeking to remedy clear injustices or otherwise assure fair determination of rights is appropriate. Still, efforts to intervene on behalf of constituents are fraught with potential appearances of impropriety and the possibility that the intervention will prevent other public officials from exercising independent objective judgment on the merits.

(iii) An initial problem with intervention is that the interests of a particular constituent are necessarily parallel with the interests of other constituents or the public as a whole. The primary obligation to advance the overall public good may require public servants to refuse requests for assistance in some cases. Another problem associated with intervention is that the public official may not know or understand all the facts that are relevant to a fair regulatory determination or a wise contracting decision.

(iv) Even where the intervening official has no intent to influence improperly the normal process of decision making, it is not unlikely that the public servants involved think otherwise. Unless the intervening officials are explicit and credible in stating the limited purposes of their involvement, administrators whose budgets are controlled by legislators are likely to feel pressure to make decisions differently than they otherwise would. Sometimes, regardless of the intervener's intent, administrators see the intervention as an opportunity to do a favor for the politician.

SECTION 47.

- (a) The intent of financial disclosure by legislators and legislative assistants is to:
- (1) Discourage legislators and legislative assistants from acting upon a private or business interest in the performance of a public duty;

(2) Assure that legislators and legislative assistants exercise their legislative function free of the influence of undisclosed private or business interests;

(3) Develop public confidence in persons seeking or holding legislative office, enhance the dignity of the legislature and make it attractive to citizens who are motivated to public service;

(4) Develop accountability in government by permitting public access to information necessary to judge the credentials and performance of those who hold public office; and

(5) Provide the public the financial disclosure required to meet the purposes listed above while preserving the maximum amount of privacy to legislators and legislative assistants.

GUIDELINES AND COMMENTARY

Financial disclosure is a less restrictive means of assuring that legislators and legislative assistants make decisions and take legislative action objectively. Instead of a full ban, disclosure allows some sources of outside income but requires them to be disclosed, so that a vigilant public can make informed judgments. To serve its "watchdog" function, financial disclosure shall be as comprehensive as possible to reveal effectively any potential conflicts of interest to the public.

SECTION 48.

(a) Legislators and legislative assistants shall disclose financial, professional and personal interests which are likely to create in the mind of a reasonable, objective person the belief that the legislator or legislative assistant's objectivity and ability to exercise independent judgment in the public interest have been adversely affected by those interests.

(b) Legislators and legislative assistants shall file with the LEC the reports described herein. The LEC shall adopt filing guidelines and develop forms which are compatible with financial disclosure forms required by Tennessee Code Annotated, Section 8-50-501, to be filed with the Tennessee registry of election finance.

(c) Legislators and legislative assistants (hereinafter, "reporting persons") shall disclose to the LEC on a form and within a time frame prescribed by the LEC, detailed information on the sources of outside income received by them, their spouses and their dependent children. Such information shall be divided into two (2) categories:

(1) Category A income refers to all benefits received, in the form of monetary compensation or any other thing of value, from persons and entities which are known or reasonably should be known to have a substantial interest in legislative, administrative or political actions.

(A) Persons providing benefits to a legislator or legislative assistant valued at one thousand dollars (\$1,000) or more per year are required by Section 52 to file a statement with the LEC with a copy to the recipient indicating, among other things, whether they do have a substantial interest in legislative, administrative or political actions.

(B) Persons and entities have a substantial interest in legislative, administrative or political actions if they:

(1) Are regulated by the legislature;

(2) Provide goods or services to the legislature for compensation or profit;

(3) Seek employment in the legislative branch or any government agency or in a private organization in which a legislator or legislative employee is likely to have, or reasonably appears to have the ability to influence an employment decision;

(4) Will be directly and substantially affected, either financially or personally, by any contemplated legislative, administrative or political action;

(5) Have or seek contracts for goods or services with any agency of state government;

(6) Are registered lobbyists;

(7) Employ registered lobbyists; or

(8) Represent, with or without compensation, a person or organization described in (1) through (7) above.

(2) Category B earned income refers to all benefits received, in the form of monetary compensation or any other thing of value, from persons and entities who do not, or are not known to fall within Category A.

GUIDELINES AND COMMENTARY

Disclosure requirements must balance the privacy interests of the legislator or legislative assistant against the public disclosure necessary to guard against conflicts of interest.

Disclosure requirements must not be so unnecessarily intrusive of an individual's privacy that qualified and interested individuals decline public service because of them. To keep disclosure from being unnecessarily burdensome is the purpose of the two-tier reporting requirement.

Income earned from persons or entities which have a substantial interest in legislative action involves such significant risks of appearances of impropriety that all amounts of income from those sources must be reported. Conversely, income from another source amounting to less than one thousand dollars (\$1,000) need not be reported. Income from another source which aggregates over one thousand dollars (\$1,000) must be reported to the commission but is generally confidential. Only if the commission determines affirmatively that the public interest in the disclosure outweighs the individual's right to privacy will the disclosure be made public.

SECTION 49. As to all benefits received from Category A sources, reporting persons shall file with the LEC a sworn statement including:

(a) As to all income received as compensation, regardless of the amount, reporting persons shall disclose the name and address of the source, a brief statement describing the nature of the services performed including sufficient detail to permit the LEC to determine whether the nature of the work created any conflicts of interest (for example: "consultant re: expansion of operation"; "engineer, quality control").

(b) As to each gratuity received and required to be reported under Section 43(b)(1), (c)(7), (8) and (9), reporting persons shall list the name and address of the person providing the gratuity, a brief description of its nature and a good faith statement of its fair market value (if exact values are not known, and cannot be found out without undue hardship or expense, reasonable good faith estimates are acceptable). Any loan which was forgiven during the period must be reported as a gratuity.

(c) Reporting persons shall disclose the name and address of the source, and the cash value of any reimbursement for expenses aggregating more than one hundred dollars (\$100) in the calendar year.

(d) As to each loan and/or loan guarantee yielding loan proceeds of at least one hundred dollars (\$100) in the reporting period and the lender or guarantor is a person or entity with a substantial interest in legislative, administrative or political actions, reporting persons shall list the name and address of the person or entity making the loan or guarantee, the amount of the loan, the terms and conditions under which the loan or guarantee was given, the amount outstanding at the time of filing and whether or not a written loan agreement exists.

(e) If the source of a reported benefit is a corporation, the statement shall indicate the name of its parent corporation, if any, and names of its top corporate officers. If the source is a partnership or association doing business under a fictitious name, the names of the principals.

(f) Category A Statements shall be reviewed by the LEC to determine whether any impermissible conflicts exist and whether special orders or restrictions are required.

(g) All Category A statements shall be made available for public inspection and shall be deemed to be public records.

SECTION 50.

(a) Reporting individuals shall file a statement conforming to the same requirements as Category A except that in the case of compensation, expense reimbursements, loans and

loan guarantees only those income sources providing benefits worth one thousand dollars (\$1,000) or more need be listed. As to gratuities, the requirements of Section 43(b)(1), (c)(7), (8) and (9) control.

(b) Category B statements will be reviewed by the LEC to determine whether any impermissible conflicts exist, whether special orders or restrictions are required and whether the statements shall be made available for public inspection and be deemed to be public records.

(1) If the person filing the statement is a legislator, the statement is presumptively public, which means that it will be made part of the public record unless the legislator submitting it requests that it be kept confidential, stating the reasons for the request, and the LEC finds that no valid public purpose would be advanced by publication.

(2) If the person filing the statement is a legislative assistant, the statement is presumptively confidential, which means it will remain confidential unless the LEC determines that the public benefit in disclosure substantially outweighs the individual's interest in privacy.

SECTION 51.

(a) Reporting persons shall file with the LEC a statement disclosing all close economic associations as defined in Section 35(c) and close personal relationships as defined in Section 36(a), including special statements required with respect to lobbyist relations (Section 38(b)), in confidence to the LEC.

(b) Filing should be made during the first week of each session. For those not in office during the first week of the session, or as soon as reasonably possible, but no later than forty-five (45) days of the formation of a relationship that did not exist during the first week of the legislative session.

(1) The written disclosure shall state the name of the persons or entities involved, the nature of the relationship, and a brief narrative of what matters the legislator or legislative employee is working on or reasonably might work on in the future that could create an actual

conflict of interest. The LEC may request further information which should be promptly provided.

(2) The LEC shall make a determination as to whether the relationship creates a conflict of interest that requires restrictions or disclosure. Thereupon, the LEC may elect to keep the matter confidential, to order some restriction in the activities and/or to order disclosure in the journal of the appropriate body.

SECTION 52. Persons and entities which have provided any compensation to a legislator or legislative assistant (employers) and who qualify as Category A sources because they have substantial interest in legislative, administrative or political actions, shall file, in a time frame and on a form prescribed by the LEC a statement regarding such compensation.

(1) The statement shall be made under penalty of perjury.

(2) It shall declare whether the employer, or any parent company, officer or individual stockholder with at least a twenty percent (20%) equity in the company has had, during the reporting period, a substantial interest in legislative, administrative or political action as defined herein.

(3) It shall include a brief narrative of the nature of the relationship with the reporting person, the terms of compensation during the reporting period.

SECTION 53. Knowingly false, deliberately misleading or incomplete, or unnecessarily delayed disclosure to the LEC will subject the violator to all civil remedies authorized under Section 9.

SECTION 54.

(a) Legislators and legislative employees shall abide by the letter and spirit of open meeting laws and, to the greatest extent reasonably possible, exercise the authority of their offices openly so that the public is informed about governmental decisions and the citizenry can hold them accountable for their actions.

(b) Legislators and legislative employees shall assure that those to whom they have delegated public power, including their staffs and administrative agencies, carry out their responsibilities efficiently, equitably and ethically.

(c) Legislators and legislative employees who believe that a law, policy or rule of the house is not achieving its intended purpose, is creating unintended harms or is wasteful or inefficient should take affirmative steps to improve procedures in a way that will increase the fairness and quality of government services and assure that policies are implemented equitably, efficiently and economically.

(d) Violation of this section will subject the violator to all civil remedies authorized under Section 9.

GUIDELINES AND COMMENTARY

(i) This ethical principle has been essentially incorporated in Tennessee's "Open Meetings of Governmental Bodies" law, Tennessee Code Annotated, Title 8, Chapter 44, and in the rules of each house. Secret or closed meetings and back room deals which conceal from the public facts that bear on its ability to exercise responsible citizenship are improper, even when made by well-intentioned public servants who simply seek to conduct government business efficiently without undue intrusiveness or embarrassment. Conscientious legislators and legislative employees should avoid the temptation to short cut open meeting requirements by devising legalistic theories which effectively remove the public business from the public eye. They should be especially scrupulous about maintaining maximum openness in dealing with issues of compensation, benefits and all other actions which affect their own rights and obligations. Although secrecy or confidentiality occasionally is in the public interest, exceptions to the general rule of openness should be rare and the principles and procedures for determining those exceptions should be subject to scrutiny, debate and oversight.

(ii) Legislators and legislative employees should honor the spirit and intent of open government rules and not engage in subterfuges or legalistic schemes to avoid them. While

public servants should abide by the letter and spirit of all rules, open meeting, freedom of information and "sunshine" laws are especially important because they reinforce accountability by requiring public business to be conducted in a way that assures citizen access to political processes. Although these rules tend to be unpopular with many public servants who believe they unreasonably invade privacy and encumber government operations, it is improper to engage in tactics which improperly evade their spirit.

(iii) It is the duty of public servants with agency oversight responsibilities to develop effective auditing and reporting procedures which permit the exercise of vigilant oversight. In addition, persons in supervisory authority should assure that their staff know and understand the legal and ethical obligations applicable to their duties.

(iv) This affirmative duty arising from the principle of accountability is not intended to be enforced or to provide the basis of any charge or sanction. It does, however, state an important ethical obligation of those who serve the legislature, especially staff members who might otherwise believe that the fairness and efficiency of government is not necessarily their responsibility. Legislators and legislative employees should take whatever actions they can to correct problems, streamline procedures and improve services. Where desirable changes exceed authority, public servants should promptly and forcefully recommend reform to the appropriate person or body. There is a tendency in all organizations to define one's responsibilities narrowly, fostering an "it's-not-my-job" mentality with respect to defects in policy or implementation. It is every public servant's job to see that the government serves the people well by assuring that it is responsive, respectful, efficient, economical and fair.

(v) Public servants are often in the best position to observe and take actions against unlawful and unethical uses of public position, authority and resources. In fact, many such uses could not occur without the active involvement or, at least, the acquiescence of colleagues and subordinates. The principles of public trust and accountability combine to place a special obligation on persons in public office to refuse to cooperate, to actively discourage, and if

necessary to prevent improper conduct, to report violations of both law and ethical standards. It is important to establish an atmosphere in government where potential wrongdoers undertake very high risk in seeking to misuse government office. This occurs when it becomes known that the pride and ethical commitment of all public servants impels them to police their own profession. The person who violates the public trust, not the one who prevents or reports such violations ought to bear the brunt of disapproval from the public and government colleagues.

SECTION 55.

(a) Legislators and legislative employees shall maintain the integrity and trustworthiness of government by taking whatever steps are necessary to prevent unethical practices, unlawful conduct, corruption, mismanagement, gross waste of public funds, danger to public safety or any other abuse of public position, authority or resources.

(b) Legislators and legislative employees who have a good faith reasonable belief that the public interest requires the disclosure of governmental policies or actions thought to be unlawful or improper should reveal their information to appropriate authorities.

(c) No legislator or legislative employee shall, directly or indirectly, subject a person who reports to the LEC or any other government entity, conduct the person reasonably believes is a violation of this act or any other state law, to reprisal, retaliation, harassment, discrimination or ridicule. A legislative employee who is discharged, disciplined, involuntarily transferred or otherwise penalized by a legislator or another legislative employee, may:

- (1) bring a complaint before the LEC; and
- (2) bring a separate civil action in the courts seeking damages, payment of back wages, reinstatement or other relief.

(d) In addition to the special civil remedies provided herein, violation of this section will subject the violator to all civil remedies authorized under Section 9.

GUIDELINES AND COMMENTARY

(i) Without the risk that conscientious public servants will, when necessary, disclose unlawful or improper governmental activities, the likelihood of illegal secret policies, corrupt practices, waste and mismanagement and unaccountable and arrogant decision making increases. Hence, persons who whistle blow in good faith act in the public interest. It is, therefore, improper to harass, punish or seek other reprisals against public servants who seek to hold government accountable. Whistle blowing is most often justified when it is the only practical way to reveal illegal conduct or major abuses of public authority. The decision to whistle blow, however, must be regarded with the utmost seriousness. Although whistle blowing can represent the highest form of loyalty to an institution and to democratic processes, it often requires breaching traditional notions of loyalty to colleagues and organizations. In addition, it may involve the violation of professional obligations of confidentiality. Thus, the act of whistle blowing invariably incurs hostility and resentment and tends to undermine trust and create an atmosphere of suspicion. Yet, in spite of the personal and institutional costs, whistle blowing is sometimes essential to the public interest and morally justified as a means of preventing or correcting serious wrongs.

(ii) While both leaking and whistle blowing may be acts of conscience, whistle blowers act overtly and hence take greater risk and subject themselves to significant personal abuse including reprisals. In contrast, leakers act covertly and are essentially unaccountable for the consequences of their actions. Since it is fairer that criticisms and charges be made on the record, whistle blowing is preferable to leaking. In fact, in most cases, leaking is an improper violation of confidentiality and fairness. Although leaking is presumptively improper, there are rare circumstances where it is justified as a means of holding the government accountable for improper covert actions. Many issues of great public importance (e.g., Watergate, Pentagon Papers, CIA assassination policies) came to light only because of leakers who acted in the public interest but sought to protect themselves and their families from the ramifications of their revelations. Because of general principles of trust, honor and professional discretion, however,

disclosure of confidential information or documents through secret leaking is justified only to advance a compelling public interest. In the absence of a clear and compelling interest in disclosure, public servants should honor their confidences and legal obligations to maintain the secrecy of specified confidential information (e.g., classified documents, grand jury testimony, medical or psychiatric records, reports about juvenile abuse, etc.). It is not proper, for example, to leak information simply to give one news organization a competitive advantage over another about matters that will be made public in due time (e.g., revealing the contents of a report a few days before it is to be formally issued). Nor is it proper to leak information simply as a means of affording the leaker some personal or political advantage.

(iii) An especially troublesome category of leaks concerns information that could unjustifiably damage reputations, improperly prejudice court proceedings, unfairly affect elections, or unreasonably endanger the safety of others. It is almost always improper, for example, to leak information about undercover operations, criminal investigations, unsubstantiated charges or secret grand jury testimony. Supervisors in departments which possess potentially damaging information should take steps to protect the rights of those who would be injured by leaks and to hold leakers accountable for their actions.

SECTION 56.

(a) No legislator or legislative employee shall knowingly engage in conduct that violates rights of others to be treated fairly, with dignity and respect, nor shall they engage in any improper act of discrimination, sexual harassment or abuse of any person in the course of legislative activities.

(b) Violation of this section will subject the violator to all civil remedies authorized under Section 9 but shall not affect liability for any other civil or criminal action arising from the conduct.

GUIDELINES AND COMMENTARY

This section simply makes it clear that improper or illegal conduct with regard to subordinates or colleagues is a legitimate matter for the LEC.

SECTION 57.

(a) No legislator or legislative employee shall knowingly use improper artifices or schemes to circumvent the clear purpose of laws or these rules, use procedural powers or processes in a way that prevents appropriate consideration of a matter, nor exercise leadership authority and power arbitrarily, arrogantly or in any other way that violates the spirit of representative democracy.

(b) Violation of this section will subject the violator to all civil remedies authorized under Section 9.

GUIDELINES AND COMMENTARY

(i) This provision is likely to seem naive to some who believe that "all is fair in love and politics" but this is, after all, a statement of ethical principles. The fact is, that notwithstanding various "might makes right" power theories, the ideals of democracy are clear - one person, one vote; the majority rules but never in a way that tramples the rights of the minority; matters of import should be decided on their merits after full and open debate, not on the basis of power politics which squelches dissent and coerces compliance. Though it is unlikely that a provable violation of this provision will arise, conduct which is inconsistent with this representative democracy standard is serious in spite of contrary customs, traditions and political rationalizations.

(ii) Legislators and legislative employees should not engage in artifices and schemes to exploit loopholes or ambiguities in the law in a way that undermines their spirit and purpose. When public servants seek to circumvent the spirit or purpose of laws they tend to undermine the public's confidence in government and diminish the public's commitment to civic responsibility by legitimizing self-interested evasions of public policy.

(iii) In using procedural rules, legislators and legislative employees should maintain the integrity, fairness and efficiency of the process by honoring the substance and spirit of the rules and by refraining from conduct which undermines the principles of representative democracy. The importance of technical procedures in the legislative and administrative process encourages legalistic manipulation to achieve political goals. While this is not inherently improper, there is a tendency to adopt an "ends-justifies-the-means" philosophy which can elevate process over substance and power over principle in a way that undermines fundamental assumptions of democratic government. The public interest is not served when public servants engage in trickery or procedural extortion to achieve their ends. Generally, the public views parliamentary machinations with cynicism. Responsible public servants recognize that no specific political victory is worth damaging the delicate structure of democratic government. Legalistic maneuvering which creates unfair or anti-democratic results inevitably spawns ill will and draconian countermeasures. Too often political scheming becomes so prevalent that it demeans the inherent nobility of the democratic process and reduces politics to a cynical game. For example, a fundamental rule of fairness is notice. Thus, it is improper to suspend the rules or force a vote in a way that violates customary practices and expectations of fair notice and, therefore, prevents legitimate opposition from having its say.

(iv) Legislative leaders and committee chairs should use their leadership powers only in a manner consistent with representative democracy. It is typical of government processes that administrative, screening and information gathering tasks are delegated to agencies, committees and individuals. The purpose of such delegation invariably should be to improve the process so that the organization's general will can be carried out more effectively. The purpose of such delegation never should be to grant individual leaders increased power to subvert or make public policy in a manner that derogates the prerogatives of the policy-making body as a whole. Skilled politicians can properly use leadership power to bring factions together, to fashion compromises and to break unhealthy gridlock situations. On the other

hand, Lord Acton's admonition that "power corrupts and absolute power corrupts absolutely", applies to legislative leaders who use their position in inappropriate ways to block consideration of important issues, to bully, bribe or intimidate fellow legislators to support positions and programs favored by the leader. A legislator who controls the parliamentary process or is otherwise in a position to facilitate or prevent the consideration of an issue, has an ethical obligation to avoid any use that effectively undermines representative democracy. For example, it is improper for legislative leaders, including committee chairs to unilaterally prevent measures from receiving appropriate consideration either on the floor or before the committee.

(v) In rare cases, legislators or legislative employees may exercise the prerogative of conscientious objection by disobeying the law. In such cases, the illegal behavior should be open and the official should be willing to bear the appropriate legal and political consequences. There is a long and revered history in this country of civil disobedience - the open and public refusal to abide by laws as a means of protest and as an impetus to change the law.

LEGISLATIVE ETHICS COMMISSION

SECTION 58. There is hereby established the Legislative Ethics Commission, also referred to in this act as the "LEC" or "Commission".

(a) The LEC shall consist of nine (9) members, who shall be selected as follows:

(1) One (1) member appointed jointly by the speaker of the senate and the senate minority leader;

(2) One (1) member appointed jointly by the speaker of the house of representatives and the house minority leader;

(3) Two (2) members appointed by the supreme court;

(4) Two (2) members appointed by the governor;

(5) One (1) member appointed by the registry of election finance;

(6) Within thirty (30) days of the composition of the members appointed as above, the appointed members shall select an additional two (2) members who shall be promptly appointed.

GUIDELINES AND COMMENTARY

The composition of the LEC responds to the need for an independent, highly qualified and respectable agency to implement the provisions of the Tennessee Legislative Ethics Act. It includes two (2) representatives selected by each branch of government, a representative selected by the commission most involved with the enforcement of general campaign and disclosure laws, the registry of election finance, and two (2) additional persons selected by the combined special appointees. In making their appointments, the supreme court and the registry shall develop their own procedures. It is expected that this commission will take a broad public view of legislative ethics and enable major stakeholders in the legislative process to participate in administering the act. In making appointments to the LEC, the appointing authorities should seek a representative group, diverse in terms of ethnic background, sex, region, and political orientation (including independents).

(b) Upon appointment, each commissioner shall execute a written oath that shall include the following undertaking: "I will solemnly perform the duties of this office in a manner that is consistent with both the letter and spirit of the Tennessee Legislative Ethics Act and I shall conform my own conduct to the provisions therein. I acknowledge the obligation and need to interpret and apply all its provisions, and the ethical principles that underlie them, vigorously, promptly, fairly and in good faith. All my actions, decisions and votes on matters relating to my duties will be made purely on the merits, objectively, independently, and without political, regional or ideological partisanship". Upon executing the oath or affirmation, an appointee shall be certified as a commissioner of the LEC (hereinafter referred to as a "commissioner") and shall immediately be deemed to have begun serving the appointed term.

(c) Anytime within forty-five (45) days of certification, a commissioner may be decertified by a majority vote of both houses of the legislature, if the legislature is in session, or by a two-thirds (2/3) vote of the members of the joint legislative services committee if the legislature is not in session. If decertified, the commissioner is disqualified and a replacement must be appointed to fill the vacancy.

GUIDELINES AND COMMENTARY

This decertification process, in effect, gives the legislature veto power over individual nominations. It is a power that should not be exercised lightly or used for political purposes. Other provisions of the act establish the ethical responsibility of legislators to rise above partisan politics especially when dealing with the LEC. Still, the legislature should be comfortable with the integrity, character and capacity of each commissioner and, for good cause, they may decertify a newly appointed commissioner.

(d) No commissioner or LEC employee shall be a legislator, a legislative employee, an elected or appointed public official (including the commissioner of another governmental body), an officer of any political party, or a candidate for public office.

(e) Commissioners shall serve staggered terms of five (5) years. However, the initial commissioners shall serve the following terms:

(1) The members appointed by the senate and the house and one (1) commission appointed member shall serve a term of five (5) years;

(2) The members appointed by the governor and one (1) commission appointed member shall serve a term of four (4) years;

(3) The member appointed by the registry of election finance shall serve a term of three (3) years; and

(4) The members appointed by the supreme court shall serve a term of two (2) years.

(f) No commissioner shall serve for more than ten (10) consecutive years, except that a commissioner shall continue in office until a successor has been appointed.

(g) A vacancy for the remainder of an unexpired term shall be filled within thirty (30) days of the occurrence of the vacancy in the same manner as an original appointment.

(h) The appointing authorities shall make their appointments within thirty (30) days of written request by the LEC or their appointment shall be made by the LEC itself.

(i) At its first meeting, the LEC shall elect a chair and a vice chair, each to serve for a two (2) year term with a limit of two (2) consecutive terms. The vice chair shall act as chair in the absence of the chair or in the event of a vacancy in the chairmanship.

(j) The LEC, by a majority vote, shall hire an executive director who shall serve at its pleasure.

(1) The executive director shall appoint and discharge employees, including special investigators, consistent with applicable laws and administrative policies and shall fix the compensation of employees and prescribe their duties.

(2) Each year the commission shall review the performance of the executive director with the executive director.

(k) The LEC, on recommendation of its executive director, may hire legal counsel to manage, direct and prosecute cases; such counsel shall serve at the commission's pleasure.

(l) In instances in which the LEC determines an investigation is necessary which cannot be efficiently, promptly or adequately handled by the LEC staff, the executive director shall nominate a special investigator to be appointed upon ratification by the LEC.

(1) The executive director shall create and maintain a list of individuals qualified to serve as a special investigator by virtue of their experience, reputation, likely availability, willingness to serve and freedom from conflicts of interest.

(2) Special investigators shall be subject to the same restrictions as commissioners and LEC employees.

(m) The LEC may employ the services of such technical, professional and clerical services experts and consultants as are necessary to carry out its duties. The LEC may also contract for services which cannot be satisfactorily performed by its employees, including legal counsel.

(n) A commissioner may be removed from office by a vote of two-thirds (2/3) of both houses of the legislature for good cause, including substantial neglect of duty, inability to discharge the powers and duties of office, violation of the act, gross misconduct or conviction of a felony.

GUIDELINES AND COMMENTARY

As with the power to decertify, the legislature is given the power to remove a commissioner but only for good cause.

(o) Commissioners shall receive compensation of one hundred dollars (\$100) for each day in which they attend or participate in a commission meeting of at least one (1) hour in length, either in person or by teleconference. The chair and vice chair shall receive an additional stipend of five hundred dollars (\$500) a year. A commissioner shall receive reimbursement for travel expenses in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general.

(p) Commissioners and LEC employees (including person hired by the LEC to perform investigatory or legal counsel functions) shall comply with all provisions of this act and shall be held to the same standards and requirements, including disclosure, as legislative assistants.

(q)

(1) In addition to being bound by the act and other applicable statutes, no commissioner or LEC employee shall:

(A) participate in political management or in a political campaign during the member or employee's term of office or employment; or

(B) participate in the campaign of, attend campaign fund raising events for, or make a financial contribution to (i) a candidate for the legislature, (ii) any current legislator or legislative employee who is a candidate for any other office, or (iii) any person running against a present legislator or legislative employee; or

(C) be a registered lobbyist or participate in lobbying activities that would require the individual to register as a lobbyist; or

(D) take any action or make any statement which is likely to create in the mind of a reasonable, objective observer a belief that the commissioner or LEC employee is not impartial or independent or is otherwise unable to properly perform public duties.

(2) Violations or alleged violations of this provision shall be treated as violations of any other provision of this act and shall be dealt with by the LEC accordingly. During the pendency of any complaint against a commissioner or LEC employee, the commissioner or employee shall not participate in any official actions of the LEC.

GUIDELINES AND COMMENTARY

Commissioners and LEC staff must not be involved with any political activities with respect to the legislature or individuals over whom they have adjudicatory responsibility in any way that casts reasonable doubt on their impartiality, objectivity or lack of partisanship. Similarly, it is improper to engage in any form of inappropriate conduct which casts reasonable doubt on their ability to serve. For example, the public expression of prejudices or opinions about a legislator or a matter which might come before the LEC is inconsistent with the neutral objective temperament demanded by the position.

SECTION 59. The LEC shall meet at the call of the chair or a majority of commissioners, but in no event less than once every three (3) months.

(a) A quorum of the LEC shall consist of five (5) commissioners.

(b) A vote of the majority of commissioners present at a meeting in which a quorum is present shall be required for any action in which a vote is required.

SECTION 60. The LEC shall administer the provisions of the Tennessee Legislative Ethics Act and shall have the following powers and duties:

(a) The LEC shall authorize and train its staff to give informal and/or written advice regarding the spirit and requirements of this act.

(b) The LEC shall, on request or its own initiative, issue formal written advisory opinions on specific situations or clarify any provision of the Legislative Ethics Act;

(c) The LEC shall consider requests for, and grant or deny, exemptions from the provisions of the act;

(d) The LEC shall investigate and adjudicate complaints and recommend disciplinary actions to the legislature;

(e) The LEC shall authorize research in the field of legislative ethics and carry out such educational programs which are required by the act and additional programs as it deems necessary to effectuate the policy and purposes of the act.

(f) The LEC shall prepare and distribute an ethics manual to legislators, legislative employees and lobbyists as provided in this act.

(g) The LEC shall prepare a bi-annual report to the legislature summarizing its activities over the previous two (2) years, evaluating the effectiveness of the Legislative Ethics Act in accomplishing its stated purposes, and recommending legislative reforms it thinks necessary to improve the administration of the act and to better advance its goals.

SECTION 61. The LEC may authorize and train its staff to give oral advice or provide a written "Informal Nonbinding Advice Letter" to persons seeking guidance as to the spirit or legal requirements of the act, if such advice is given with the express stipulations that:

(a) The opinions given are not necessarily those of the LEC; and

(b) That, though the advice will be given in good faith, the person seeking the advice relies on it at his or her own risk since it is in no way binding upon the LEC; and

(c) That information voluntarily provided to an LEC employee is not necessarily confidential and may be used against the person seeking the advice if it becomes material to any proceeding before the LEC.

GUIDELINES AND COMMENTARY

Ethical behavior is encouraged when legislators and staff are able to raise ethical issues freely and receive informed advice, both formally and informally. Individuals seeking to conform their actions to ethical principals deserve the guidance which informal letters and telephone conversations may give them. Often, unethical conduct can be avoided, and ethical principles maintained, by a simple recitation of the code as applied to any given circumstance. Advice given personally, over the telephone or by informal letter can provide valuable guidance relating to decisions which must be made rapidly or immediately and, thereby, advance behavior consistent with this act. However, the duties of the commission to interpret and implement the act cannot be delegated to staff nor can one seeking informal advice expect it to be preceded by the thorough discussion and research associated with a formal advisory opinion. Therefore, the person seeking advice must be explicitly informed that the opinions given are in no way binding on the LEC. If the person is unwilling to take the risk, he or she may request a formal advisory opinion which is binding, seek the nonbinding opinion of the committee of the legislature charged with ethics matters, or hire outside personal counsel to get additional guidance.

SECTION 62.

(a) The LEC may issue a formal written advisory opinion on its own initiative, on the request of a person to whom the act applies or on the request of a person elected to the legislature who at the time of election is not a member of the legislature.

(b) Requests for written advisory opinions shall be in writing and shall set forth with reasonable specificity the facts and circumstances of a real or hypothetical case.

GUIDELINES AND COMMENTARY

To assure clarity of facts and the seriousness of the request, requests for formal binding advisory opinions must be in writing. Subject to the provisions below, the request shall be kept confidential by the LEC and the staff.

(c) The LEC shall expeditiously determine whether to issue an advisory opinion addressing the issues raised.

(d) An opinion may be issued by a majority of a quorum of commissioners at any meeting. The vote of each commissioner participating in the opinion shall be indicated on the opinion and it shall be forwarded to the person requesting it and made a part of the public records of the LEC.

(e) Written formal advisory opinions issued by the LEC are binding on the LEC in any subsequent proceedings concerning the facts and circumstances of the particular case. If, however, any fact deemed to be material by the LEC was omitted or misstated in the request, the LEC shall not be bound by the opinion.

(f) The LEC may at any time review, withdraw, or elaborate on an advisory opinion.

(g) Under normal circumstances, the LEC shall issue its opinion within thirty (30) days of receiving the request, if the request is received during the first one hundred (100) days of the legislative session, or within sixty (60) days of the request if the request is received at any other time. The period for issuing an opinion may be shortened or extended by the chair of the LEC when such action is deemed necessary or appropriate to meet the goals of the act.

(h) The LEC and all LEC employees shall keep the identity of the requester confidential unless the request, the identity of the person making it, or any information conveyed orally or in writing relating to the request is or becomes material to a matter before the LEC.

GUIDELINES AND COMMENTARY

Confidentiality is important to enable individuals to seek advice without fear of reprisal or self-incrimination. And, unless matters revealed to the LEC or LEC staff are pertinent and important to a matter before the LEC, the identity of a requester of an advisory opinion and other collateral facts should be kept confidential and not be mentioned in public meetings or in public records. On the other hand, the LEC's responsibilities as an independent enforcement agency cannot be compromised by claims of confidentiality with respect to information freely and voluntarily disclosed to the commission. Persons requesting a formal opinion should be informed of this policy to avoid any misunderstandings.

SECTION 63.

(a) In situations in which principles of fundamental fairness are best served by exempting certain individuals or acts from specified provisions of the act, the LEC may grant qualified or unqualified exemptions.

(b) The person seeking the exemption (the "petitioner") shall submit a written petition under oath stating:

- (1) The relevant provisions involved in the exemption request;
- (2) The essential facts on which an exemption is requested;
- (3) The specific nature of the exemption sought; and
- (4) The anticipated unfair or unreasonable consequences that would result from a failure to grant the petition.

(c) In order to grant an exemption a majority of a sitting quorum of the LEC must find that the petitioner, by a preponderance of the evidence, has shown that the:

(1) Harm caused by strict application of the act substantially outweighs the benefit of its enforcement in the particular situation;

(2) Application of the rule or provision under the circumstances presented would be inconsistent with the spirit and purpose of the provision or the act as a whole; and

(3) Purposes of the act and the public interest will be best served by granting the applicant an exemption.

(d) The LEC may, at its sole discretion, require or permit the personal appearance of the applicant before the LEC and hold hearings regarding the exemption request.

(e) Unless a shortened or expanded time is deemed necessary or appropriate by the LEC, decisions on petitions for exemptions shall be made within thirty (30) days of filing of the petition. Unless the petitioner consents, extensions of time ordered by the LEC shall not exceed an additional sixty (60) days.

GUIDELINES AND COMMENTARY

This subsection was created to address occasional cases where strict application of the provisions of the act would be contrary to the purposes of the act. Exemptions should be granted only in rare and exceptional circumstances. The burden of proof is on the applicant to prove the three (3) criteria necessary for exemption.

SECTION 64.

(a) The filing of a complaint shall be the first step in the investigatory and adjudication process. It is the purpose of the act to assure that complaints should provide sufficient information on which to proceed, yet not be so complex or burdensome that the requirements unduly discourage or screen out valid good faith complaints.

(1) A complaint may be initiated by any person or by the LEC on its own motion.

(2) The LEC shall provide a simple form for complaints which shall include:

(A) Name and address of complainant;

(B) A statement of the facts known or believed to be true which form the basis of the complaint and the sources of the information including the approximate dates of the acts alleged and names and addresses of persons with personal knowledge of the facts alleged; and

(C) A certification that the complainant verifies under penalty of perjury that the facts stated are true to the best of the complainant's knowledge and that the complainant knows that it is a violation of state law to intentionally initiate a false complaint.

(3) Unless the chair of the LEC concludes that immediate notification would prejudice a preliminary investigation or subject the complainant to an unreasonable risk, a copy of the complaint shall be sent to the person charged (the "respondent") with misconduct within two (2) working days. If the matter is to be kept from the respondent for more than ten (10) days, a majority of the LEC must approve and indicate the conditions under which the respondent will be informed of the complaint.

(4) Until a preliminary finding on the validity of a complaint has been properly made, the existence and substance of a complaint shall be kept confidential except that all members of the LEC and necessary staff may be informed about it.

(b) Upon receiving a complaint, staff of the LEC shall review it for formal sufficiency within five (5) days of filing. If the complaint is unsigned or otherwise deficient on its face it shall be returned to the complainant with a statement of the nature of the deficiency.

(c) Once a complaint has been determined to be formally sufficient, staff of the LEC shall evaluate the complaint and advise the chair as to its opinion as to whether it states a valid complaint that should be investigated. If the executive director is a member of the bar, the executive director may provide such advice. Otherwise, the executive director shall appoint a duly qualified legal counsel to assist in making the determinations herein. To be valid, the complaint must:

- (1) Allege facts which, if true, establish a violation of this act;
- (2) The conduct providing the basis of the complaint has occurred within five (5) years of the complaint or the complaint alleges that the person charged with misconduct intentionally concealed or otherwise sought to prevent discovery of the relevant facts; and

(3) The person charged with misconduct is either a legislator or legislative employee at the time of the complaint or was a legislator within one (1) year of the filing.

(d) Within twenty (20) days of the filing of the complaint, or within forty-five (45) days if the chair of the LEC certifies additional time is required, a determination shall be made on the substantive validity of the complaint.

(1) If the chair of the LEC concludes there is no substantial reason to question the opinion of staff as to the validity of a complaint, the complaint shall either be dismissed or certified for further consideration in accordance with the opinion.

(2) The chair or any other commissioner, however, may request a hearing on the validity of the complaint at a meeting of the LEC.

(e) If a complaint is dismissed because of invalidity, it shall be returned to the complainant with a notice of dismissal stating in detail the reason for dismissal.

(1) If the LEC finds that the complaint was frivolous, malicious or was filed in bad faith, it shall so state in the notice of dismissal.

(2) If the LEC finds that the complaint alleges violations outside the scope of this act, it shall so state and forward the complaint to the appropriate enforcement body for disposition.

(3) The notice of dismissal shall be sent to the respondent.

(4) The notice of dismissal shall be a public record.

(f) If the LEC concludes that some or all of the allegations of the complaint, if proven, would constitute a violation of this act, or if the LEC has initiated the complaint, the complaint shall be certified and a factual investigation shall commence. The record of certification for further consideration shall be confidential subject to subsequent actions which may make it part of the public record.

SECTION 65.

(a) Investigation into ethics charges shall be undertaken in a manner which assures the public of an impartial and comprehensive review, is fair to the respondent and which elicits the information the LEC needs to make a decision.

(b) Before commencing an investigation, the LEC shall adopt a written resolution defining the scope of the investigation, a copy of which shall be supplied to both the complainant and the respondent.

(1) If, during the investigation, additional facts are discovered which justify an expansion of the investigation and the possibility of additional charges beyond those alleged in the complaint, the resolution shall be amended accordingly with copies sent to the complainant and the respondent.

(2) The resolution, and the fact that an investigation has been undertaken, shall be kept confidential by the LEC except that, upon inquiry, the LEC may verify that it is investigating a complaint along with a statement that no finding of probable cause has been made and that no adverse inference of impropriety or guilt should be drawn from the decision to investigate. No other facts concerning the nature or results of the investigation shall be revealed except as provided herein after a determination of probable cause has been made.

(c) A legislator or a legislative employee may request in writing that the LEC investigate charges of impropriety made against the legislator or legislative employee.

(1) The request must state with specificity the nature of the investigation requested.

(2) The LEC will determine whether it will undertake the investigation.

(3) If the LEC agrees to commence an investigation, the investigation will not necessarily be limited in scope by the request and, once begun, it shall be handled as any other investigation with the person requesting the investigation formally treated as a respondent.

(d) The investigation will be conducted by the staff of the LEC and such outside counsel and investigators as the LEC deems necessary. The purpose of the preliminary

investigation is to determine whether there is probable cause to proceed with a full adjudicatory hearing.

(e) The LEC's investigator shall have the power to order a hearing and subpoena witnesses and documents, conduct depositions under oath, require the participation of the respondent, and issue interrogatories to be answered under oath.

(1) No oral or written statements, whether incriminating or exculpatory, shall be considered in the investigator's report unless made under oath.

(2) The respondent shall be given an adequate opportunity to provide testimonial and documentary evidence and, upon request, shall be allowed to inspect and make copies of all evidence relating to the allegations.

(f) Upon completion of the investigation, a confidential written report summarizing the evidence, evaluating its credibility and detailing findings on each of the allegations investigated shall be submitted to the LEC along with recommendations as to whether the complaint, or any portion of it, should be dismissed or whether the matter should proceed to the full hearing stage.

(1) The report shall be prepared so as to exclude unreliable information and uncorroborated and irresponsible allegations.

(2) The investigator's notes, records of interviews and any other investigatory matter deemed unreliable or unduly prejudicial by the LEC shall remain confidential.

SECTION 66.

(a) The LEC shall consider the report in closed session and determine whether substantial credible evidence exists to believe that it is probable that a violation of the act has occurred.

(b) If the LEC does not find that substantial credible evidence exists to warrant a full adjudicatory hearing, it shall dismiss the complaint and so notify the complainant with a notice of dismissal stating in detail the reason for dismissal.

(1) If the LEC finds that the charges were frivolous, malicious, made in bad faith or that, in its opinion the respondent should be exonerated of the charges (found to be innocent), it shall so state in the notice of dismissal.

(2) If the LEC finds that the evidence supports violations outside the scope of this act, it shall so state and forward the complaint and its report to the appropriate enforcement body for disposition.

(3) The notice of dismissal shall be sent to the respondent.

(4) The notice of dismissal and the investigator's report containing findings and recommendations, but not the underlying investigatory materials, shall be made public unless the LEC determines that this would unfairly prejudice either the respondent or complainant. Nothing herein shall be construed to prevent either the complainant or respondent from making the notice of dismissal and the report public.

(c) If the LEC finds that substantial credible evidence exists establishing probable cause that a violation has occurred, it shall serve on the respondent in a manner consistent with the service of summons under the rules of civil procedure, a formal charge stating the specific allegations and scheduling a hearing.

(d) The hearing shall not be scheduled to commence sooner than twenty (20) days after service of the formal charge on the respondent.

(1) If the respondent requests an earlier date, the LEC may, but is not required to, consent.

(2) The LEC shall, upon request, grant the respondent reasonable additional time to prepare a defense.

(3) The respondent shall have the right to file a responsive pleading admitting or denying the various allegations.

(4) The LEC may suspend further proceedings if the respondent acknowledges violation and agrees to corrective actions and sanctions deemed appropriate by the LEC. If the

LEC suspends the proceedings or dismisses the charges as a result of a negotiated settlement, the terms and conditions of the settlement and the reasons for entering into the agreement shall be stated in a written report that shall be sent to the complainant and made part of the public record.

(e) Upon determining that probable cause exists to conduct a full adjudicatory hearing, the LEC shall make public the investigator's report containing findings and recommendations, but not the underlying investigatory materials.

SECTION 67.

(a) A formal hearing on ethics charges against a legislator or legislative employee shall be conducted in a manner that inspires confidence in the integrity and objectivity of the process and demonstrates full consideration for the rights and reputation of the respondent.

(b) The LEC will hold a contested case hearing in accordance with the requirements of the Uniform Administrative Procedures Act, except as otherwise expressly provided.

(c) The LEC may:

(1) Administer oaths and affirmations and subpoena individuals, including the respondent, to testify or to submit to written interrogatories under oath;

(2) Compel the production of documentary or tangible evidence;

(3) Pay witnesses the same fees and mileage reimbursements paid in similar circumstances by the courts of the state; and

(4) Seek enforcement of subpoenas by written application of the LEC to a judge with jurisdiction over administrative matters under state law.

(d) The respondent may:

(1) Appear before the LEC and submit testimony or other evidence;

(2) Personally, or through counsel, subpoena, examine and cross-examine witnesses, raise objections and make arguments; and

(3) Exercise any pretrial discovery procedures available in civil actions.

(4) The adjudicatory hearing shall be before a hearing board composed of five (5) commissioners. The chair of the LEC shall serve on the board and appoint four (4) other commissioners. If the chair cannot attend all hearing sessions without undue inconvenience, the vice chair shall serve in the chair's place. If neither the chair nor the vice chair is available, the chair shall appoint another commissioner. Hearings shall be conducted by the chair of the commission with the advice and counsel of the executive director or other legal counsel as directed by the LEC.

GUIDELINES AND COMMENTARY

Ethics complaints against public officials should be resolved as quickly as possible consistent with fundamental rules of fairness and the needs of both the respondent and the investigators to prepare. Ethics complaints put a cloud of suspicion over those charged and inevitably hinder their ability to fully and effectively perform their public duties until they are resolved. Thus, the adjudicatory process has been designed to allow for maximum speed and efficiency. Commissioners who have active business and personal lives will not always be available on short notice to alter their schedules to meet the intense time demands that an adjudicatory ethics hearing may require. By having nine (9) confirmed commissioners, any five (5) of whom may sit on the hearing board, the LEC is more likely to be able to impanel a tribunal quickly. In selecting the hearing board, the chair should assume all commissioners are qualified and shall select a board that can perform the adjudicatory function as efficiently as possible. The chair should avoid any appearances of impropriety in the selection process and, where possible, rotate assignments so that all commissioners are asked to serve on hearing boards.

SECTION 68.

(a) Within ten (10) days of the completion of hearings, the hearing board shall vote on each charge to determine whether it was established by a preponderance of the evidence and prepare a written opinion along with recommendations, if any. A vote of three (3) commissioners is necessary to find a violation.

(1) As to each charge on which the evidence was found to be insufficient to establish a violation, the hearing board shall issue a written opinion stating their findings.

(A) If the board finds that the charges were frivolous, malicious, made in bad faith or that, in its opinion the respondent should be exonerated of the charges (found to be innocent), it shall so state in its opinion.

(B) If the board finds that the respondent should be exonerated, it shall recommend that the legislature reimburse the respondent for all or part of reasonable legal fees incurred as a result of the charge. Unless the board makes such a recommendation, however, such fees shall not be paid from public funds.

GUIDELINES AND COMMENTARY

Since the commission had previously found probable cause to believe that a violation had occurred, it should be very rare that, after a full hearing, it finds that the respondent has been exonerated. If, however, the evidence produced at the hearing clearly establishes the falsity or unfairness of the charges, the respondent should have the opportunity to recoup legal fees. Without such a determination, however, the mere acquittal of the respondent should not be construed as a vindication warranting the state to pay for the defense.

(2) As to each charge on which the evidence was found to be sufficient to establish a violation, the hearing board shall issue a written opinion stating their findings of fact and law along with recommendations as to appropriate sanctions. As provided in Section 9, the recommendation may include, but shall not be limited to:

(A) Civil penalties of not more than five thousand dollars (\$5,000) for each offense, or equal to twice the amount improperly gained by the misconduct, whichever is greater;

(B) Divestiture of specified assets or withdrawal from specified relationships;

(C) Detailed disclosure, with or without additional periodic reporting requirements;

(D) Suspension from legislative service, with or without pay;

(E) Restitution or reimbursement;

- (F) Suspension of pay until orders are complied with;
 - (G) Forfeiture of pension benefits;
 - (H) Written reprimand;
 - (I) Voiding any legislation or other action resulting from conduct in violation of the act;
 - (J) Censure (a legislator censured shall not serve as a chair or a co-chair on any legislative committee for the remainder of the legislator's pending term in office);
 - (K) Expulsion of a legislator or dismissal of a legislative employee;
 - (L) Payment or costs related to the investigation and adjudication of the charge; and
 - (M) Any other sanction fashioned to achieve the purposes of this act.
- (b) If the person found to have violated the act is or was a member of the legislature, the hearing board's recommendations shall be forwarded by the chair of the LEC to the speaker of the house of the legislature to which the member belongs.
- (1) If the legislature is in session, the entire house or senate shall determine what sanctions, if any, are to be imposed. Such vote shall be taken within ten (10) legislative days of receipt of the LEC's recommendations.
- (2) If the legislature is not in session, the speaker may submit the recommendations to the appropriate legislative committee on ethics, which shall vote on the LEC's recommendations within thirty (30) days. If either expulsion or censure is recommended, the matter shall be voted on by the house or senate at the beginning of the next annual session, if the member continues as a member.
- (3) Except in the case of expulsion, which shall require a two-thirds (2/3) vote, all other sanctions shall be determined by a majority vote.
- (4) In determining what sanctions, if any, to impose, the legislature shall scrupulously observe the rule of nonpartisanship. It shall not retry the basic facts nor question

the hearing board's findings of fact. The only issue before it shall be the determination of the appropriate sanction assuming the validity of the board's findings.

(c) If the person found to have violated the act is a legislative employee, the hearing board's recommendations shall be forwarded by the chair of the LEC to the appropriate legislative committee on ethics or in the case of legislative employees who work for both houses to the ethics committees meeting jointly which shall, as soon as is reasonably possible, determine what sanctions, if any, are to be imposed. The committee shall scrupulously observe the rule of nonpartisanship. It shall not retry the basic facts nor question the hearing board's findings of fact. The only issue before it shall be the determination of the appropriate sanction assuming the validity of the board's findings.

SECTION 69.

(a) The attorney general shall assist the LEC and the legislature in enforcing all lawful orders and sanctions. The attorney general may independently bring a civil action relating to violations under this act regardless of the outcome or settlement of a charge before the LEC, provided that the cumulative civil penalties imposed for any violation do not exceed the amount that could be assessed in an action before the LEC. The LEC shall refer any criminal violations to the proper district attorney general.

(b) Documents filed with or produced by the LEC as public records must be retained for at least six (6) years.

(c) The LEC may require the cooperation of a state agency, official, employee and other person whose conduct is regulated by this act and all such persons are required to cooperate with the LEC. An individual shall make information reasonably related to an investigation available to the LEC on written request. The LEC may request and shall receive from every officer, department, division, board, bureau, commission, chamber of the legislature or other agency of the state cooperation and assistance in the performance of its duties.

(d) The LEC may perform the other acts, duties and functions authorized by or in connection with the administration of this act, consistent with the Uniform Administrative Procedures Act.

(e) Individuals subject to the provisions of this act shall not knowingly and improperly disclose any confidential information acquired in the course of official duties.

(f) The LEC may publicly respond to a statement or interpretation made concerning the contents of an advisory opinion or decision it has issued or is purported to have issued. A person who publicly identifies himself as the requester of an advisory opinion shall be deemed thereby to have waived the confidentiality of his identity and of all records obtained by the LEC in connection with the request for the advisory opinion.

LEGISLATIVE ETHICS EDUCATION PROGRAM

SECTION 70.

(a) The central function of an ethics code is to prevent, rather than punish, unethical conduct. Prevention depends almost entirely on an effective and comprehensive ethics education program. The purpose of this article is to assure that legislators and staff have the means and opportunity to learn and understand the rules and principles underlying the standards of conduct.

(b) The LEC shall oversee and develop the following components of a comprehensive ethics education program:

- (1) Publish an ethics education manual;
- (2) Establish an education advisory committee; and
- (3) Design and implement a legislative orientation training course, a current issues and applications seminar and a lobbyist training course.

GUIDELINES AND COMMENTARY

(i) In order for ethics rules to be sufficiently specific to provide meaningful guidance and enforceable standards, they must be detailed. If they are to reach the subtleties of the choices

that must be made, they sometimes must be complex. In many cases, they dictate results that are not intuitively obvious. It is unrealistic to expect that, without any special effort, that most legislators and legislative employees will read, let alone understand them. Ethics education will serve to explain the rules and regulations that legislators and their staffs must follow. But effective education goes far beyond reading the rules or getting instruction on the filing of disclosure forms. If public servants are to live lives consistent with these standards, they must internalize and remain sensitive to the norms of expected behavior. They need to understand the difference between that which is legal and what is ethical, and they must know what procedures can and should be followed if they are to adhere to the highest aspirations of the act. The ethics education program prescribed should help individuals develop the ability to apply rules, standards, values and ethics codes to specific situations. Public officials are constantly faced not only with hard decisions as to right and wrong, but even harder choices requiring them to choose among conflicting goods or the lesser of evils. Ethics education courses help public servants forge through and deal with the enormously complex ethical issues they are bound to face and emphasize the vital importance of the notion that public office is a public trust.

SECTION 71.

(a) The LEC shall prepare and publish a legislative ethics manual ("manual") which shall contain all ethics statutes, rules, regulations and related information, including detailed explanations of technical and specific legal requirements as well as the underlying purposes and ethical principles which comprise the "spirit" of such requirements. The manual shall include realistic examples with recommended actions, as well as questions and answers regarding common problems and situations.

(b) The LEC shall issue a revised and updated version of the manual no later than thirty (30) days after the beginning of the organizational session of each general assembly.

(c) The manual shall be distributed to all legislators, legislative employees and registered lobbyists. The manual shall also be available to all other members of the public.

GUIDELINES AND COMMENTARY

All that can be done should be done to educate public servants on their legal and ethical obligations. One of the overarching principles of this act is that it must be strictly enforced and that ignorance of the rules or their meanings will not be an acceptable excuse. The LEC should thoroughly distribute this manual at each time of issuance and develop procedures, in cooperation with the office of the legislative administration to assure that the manual reaches all new legislators, legislative employees and lobbyists.

SECTION 72.

(a) The LEC chairman shall appoint five (5) members to the education advisory committee which shall include at least two (2) members of the LEC, a legislator and a legislative employee. The education advisory committee may also include an outside expert in the field of ethics.

(b) The education advisory committee shall oversee the implementation of, and recommend the content for, the following ethics education programs:

- (1) Legislative orientation training course;
- (2) Current issues and applications seminar; and
- (3) Lobbyist training course.

SECTION 73.

(a) Commencing in 1997, and for every year thereafter, the LEC shall conduct a legislative ethics orientation training course ("course") which shall be mandatory for all legislators and legislative employees.

(b) In subsequent years, all new legislators and new legislative employees who have not already attended the course shall attend the course in January of each year unless otherwise decided by the LEC.

(c) The education advisory committee shall determine the specific content of the course, and it shall cover the ethics laws, internal rules and policies as well as the technical and specific legal requirements that legislators and legislative employees must follow. The course shall also cover the underlying purposes and ethical principles of all ethics laws, internal rules and policies and any other related regulations. The course shall highlight the principles of public service ethics and the intent of ethics laws, including their application to practical situations.

(d) The LEC shall offer separate sessions of the course for legislators and for legislative employees and shall offer as many sessions as necessary to accommodate the number of people required to take the course. Unless the LEC decides otherwise, the course shall be at least six (6) hours long and given in one (1) or two (2) sessions. To afford meaningful participation and direct involvement, the LEC shall limit the attendance of each session to approximately thirty (30) people.

GUIDELINES AND COMMENTARY

An orientation training course covering both the "letter" and "spirit" of all ethics laws should be a minimum of six (6) hours. The material is both extensive and in depth, involving many laws and complex issues surrounding those laws. The LEC should remember that the public's trust and confidence in government is based on the highest ethical standards which can, in fact, be taught. Legislators should attend orientation courses and workshops separately from legislative employees in order to allow the courses to focus on issues which only affect one or the other group of people. Legislative employees have many different ethical issues to deal with from those of legislators and, as well, will benefit from the more confidential atmosphere achieved by the absence of their superiors. Limiting attendance to thirty (30) people will afford every attendee ample opportunity to ask questions and fully participate in discussions, case studies and other educational activities. Effective ethics education deals with complex issues of

both a professional and personal nature and, therefore, depends on the active participation of all attendees and should avoid the development of a passive learning environment.

SECTION 74.

(a) Commencing in 1997, and for every two (2) years thereafter, the LEC shall conduct a current issues and applications seminar ("seminar") which shall be mandatory for all legislators and legislative employees who have previously completed the legislative ethics orientation training course.

(b) The specific content of the seminar shall be determined by the education advisory committee, and shall include an overview of all new substantive changes in the laws in the form of amendments, revisions, and new ethics advisory opinions. The seminar shall include discussions on problem solving skills, practical ethical issues likely to confront a legislator or legislative employee, and the underlying principles of public service ethics.

(c) The LEC shall offer separate sessions of the course for legislators and for legislative employees and shall offer as many sessions as necessary to accommodate the number of people required to take the seminar. Unless the LEC decides otherwise, the course shall be two (2) hours long in order to accommodate specific problem-solving. The LEC shall limit the attendance of each session to approximately thirty (30) people.

SECTION 75.

(a) Lobbyists shall complete a lobbyist training course ("training") conducted by the LEC as a condition of registering as a lobbyist with the state of Tennessee.

(b) The specific content of the training shall be determined by the education advisory committee and shall include a review of all ethics statutes, the rules and regulations relating to appropriate lobbyist conduct and the principles of public service ethics.

(c) Certifying completion of the training shall be a part of the lobbying registration process conducted by the Tennessee registry of election finance.

(d) Unless the LEC determines otherwise, the course should be about four (4) hours in length.

(e) Lobbyists shall repeat the training at least once every two (2) years and the LEC shall update the training accordingly.

(f) At the LEC's discretion, lobbyists may be charged reasonable fees not to exceed one hundred dollars (\$100) to attend the training.

GUIDELINES AND COMMENTARY

Lobbyists play an integral role in the political process and substantially influence public policy formation. Therefore, it is essential that lobbyists know and understand the specific legal requirements which regulate the lobbying profession. Furthermore, and more importantly, lobbyists share the ethical obligation to not act in ways which will impede the legislature's ability to perform its duties according to the highest standards of public service ethics. The LEC should cooperate and coordinate with the registry of election finance in order to most effectively implement and enforce lobbying regulations.

SECTION 76.

(a) The LEC shall assure the continued implementation, improvement and modification of the ethics education programs. The LEC shall develop procedures to assure the attendance of and course completion by all legislators, legislative employees and lobbyists, including procedures to review requests for exemptions.

(b) The LEC shall have the authority to impose sanctions, upon any legislator, legislative employee or lobbyist who fails to complete the ethics education requirements within a reasonable amount of time, as determined by the LEC. Such sanctions may include a suspension of pay and dismissal of a legislative employee, a recommendation of disciplinary action for a legislator, or a recommendation to deny or revoke a lobbyist's registration.

(c) The LEC shall supply the senate speaker and house speaker with the names of those legislators, legislative employees and lobbyists who have not complied with the ethics education requirements.

(d) The LEC shall offer all of the education programs at appropriate times and locations and shall fairly publicize them.

SECTION 77. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 78. The guidelines and commentary are printed as part of the bill to assist the individual in having a better understanding of legislative intent. The guidelines and commentary, however, are not the law and are intended to be codified as such. The Tennessee Code Commission is requested to reprint the guidelines and commentary as comments to the appropriate sections.

SECTION 79. Unless otherwise specifically provided, this act shall take effect on January 1, 1996, the public welfare requiring it.

AN ACT to amend Tennessee Code Annotated, Title 2, Title 3 and Title 8, to enact the Tennessee Legislative Ethics Act of 1995 relating to the establishment of a legislative ethics commission and standards of ethical conduct for legislators, legislative employees, former legislators and legislative employees, lobbyists.

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