

HENRY COUNTY CODE OF ETHICS



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Henry County Code of Ethics

I. Purpose

To ensure Henry County Government, its officials, and employees be and give the appearance of being, independent and impartial, that public office not be used for private gain, and that there be public confidence in the integrity of Henry County officials and employees through educational training, promotion of ethical awareness, and prompt investigation of suspected violations.

II. Definitions

For the purposes of this Code the following definitions shall apply:

2.1 **Agency** means any board, bureau, body, commission, committee, department, or office of Henry County to which the Board of Commissioners has appointment powers.

2.2 **Business** means any corporation, partnership, organization, sole proprietorship, other entity operated for economic gain, whether professional, industrial, or commercial, and entity which for purposes of federal income taxation is treated as a nonprofit organization.

2.3 **Confidential information** means information which has been obtained in the course of holding public office, employment, acting as an independent contractor, or otherwise acting as an official or employee and which information is not available to members of the public under state law or other law or regulation and which the official, independent contractor, or employee is not authorized to disclose.

2.4 **Contract** means any claim or demand against or any lease, account, or agreement with any person, whether expressed or implied, executed or executory, verbal or in writing.

2.5 **Emergency situation** means any circumstance or condition giving rise to an immediate necessity for the execution of a contract by and between Henry County and an official or employee or between Henry County and a business in which an official or employee has an interest and where, to the satisfaction of the Board of Commissioners, it is shown that there is no one other than such persons with whom the contract could have been made and that the necessity was not brought about by such persons' own fault or neglect.

2.6 **Immediate family** means an official or employee and his or her spouse, parents, brothers, sisters, and natural or adopted children.

2.7 **Interest** means any direct or indirect pecuniary or material benefit held by or accruing to the official or employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with Henry County. Unless otherwise provided in this section, the term 'interest' does not include any remote interest. An official or employee shall be deemed to have an interest in transactions involving:

- A. Any person in the official's or employee's immediate family;
- B. Any person, business, or entity that the official or employee knows or should know is seeking official action with Henry County, is seeking to do or does business with Henry County, has interests that may be substantially affected by performance or nonperformance of the official's or employee's official duties, or with whom a contractual relationship exists whereby the official or employee may receive any payment or other benefit;
- C. Any business in which the official or employee is a director, officer, employee, shareholder, or consultant; or
- D. Any person of whom the official or employee is a creditor, whether secured or unsecured.

2.8 **Official or employee** means any person elected or appointed to or employed or retained by Henry County or any agency, whether paid or unpaid and whether part time or full time. Such term includes retired employees or former county employees during the period of time in which they are later employed or retained by the county or any agency. Such term does not include superior and state court judges and their immediate staffs, the district attorney, the solicitor of the state court, the clerks of the superior and state courts, magistrates, the judge of the probate court, and their respective staffs.

2.9 **Official act or action** means any legislative, administrative, appointive, or discretionary act of the Board of Commissioners, the chairperson of the Board of Commissioners, or a commissioner.

2.10 **Paid** means the receipt of, or right to receive, a salary, commission, percentage, brokerage, or contingent fee.

2.11 **Participate** means to take part in official acts, actions, or proceedings personally as an official or employee through approval, disapproval, decision, recommendation, investigation, the rendering of advice, or the failure to act or perform a duty.

2.12 **Person** means any individual, business, labor organization, representative, fiduciary, trust, or association, whether paid or unpaid, and includes any official or employee of Henry County.

2.13 **Property** means any property, whether real or personal or tangible or intangible, and includes currency and commercial paper.

2.14 **Remote interest** means the interest of:

- A. A non-salaried director, officer, or employee of a nonprofit organization;
- B. A holder of less than 5 percent of the legal or beneficial ownership of the total shares of a business;
- C. Any person in a representative capacity, such as a receiver, trustee, or administrator; or

D. Any person who, by determination of the Board of Ethics, is deemed to have such an interest.

2.15 **Transaction** means the conduct of any activity that results in or may result in an official act or action of an official or employee of Henry County.

2.16 **Value** means something of monetary worth.

III. Proscribed Conduct

No official or employee of Henry County shall:

3.1 Impartiality in Performing Official Duties. By his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official acts or actions or that he or she is affected unduly by the rank or position of or kinship or association with any person.

3.2 Gifts from Outside Sources.

3.21 Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, or thing of value for himself or herself or another person if:

- A. It tends to influence him or her in the discharge of his or her official duties; or
- B. He or she recently has been, or is now, or in the near future may be, involved in any official act or action directly affecting the donor or lender.

3.22 Section 3.21 shall not apply in the case of:

- A. An occasional nonpecuniary gift of value less than \$100.00;
- B. An award publicly presented in recognition of public service; or
- C. A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of Georgia to engage in the making of such a loan;

3.3 Disclosure of Confidential Information. Disclose or otherwise use confidential information acquired by virtue of his or her position for his or her or another person's private gain.

3.4 Misuse of Position. Appear on his or her own personal behalf, or represent, advise, or appear on the personal behalf, whether paid or unpaid, of any person before any court or before any legislative, administrative, or quasi-judicial board, agency, commission, or committee of this state or of any county or municipality concerning any contract or transaction which is or may be the subject of an official act or action of Henry County or otherwise use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or other persons

3.5 Incompatible Interests. Engage in, accept employment with, or render services for any agency, private business, or professional activity when such employment or rendering of services is adverse to and incompatible with the proper discharge of his or her official duties.

3.6 Conflict with Official Duties. Acquire an interest in any contract or transaction at a time when he or she believes or has reason to believe that such an interest will be affected directly or indirectly by his or her official act or actions or by the official acts or actions of other officials or employees of Henry County.

3.7 Activity Prohibited by Law. Engage in any activity or transaction that is prohibited by law now existing or hereafter enacted which is applicable to him or her by virtue of his or her being an official or employee of Henry County.

3.8 Inappropriate conduct by a member of the Board of Commissioners. Members of the Board of Commissioners shall not issue directives to employees who report to the county manager, threaten to terminate the employment of a county employee, threaten to terminate a county contract so as to exert undue influence, or engage in conduct that is unbecoming of a member of the Board of Commissioners.

3.9 Gifts to Certain Employees. No employee of the purchasing department of Henry County shall accept any gift of value from anyone who has had or may reasonably be anticipated to have any business with or before such department. Gifts from persons who do not have or who would not be reasonably anticipated to have any business with or before such department may be accepted by an employee of such department only when such gifts are based solely on a family relationship or personal friendship.

3.10 Disclosure of interests. An official or employee who has an interest that he or she has reason to believe may be affected by his or her official acts or actions or by the official acts or actions of another official or employee of Henry County shall disclose the precise nature and value of such interest by sworn written statement to the Board of Ethics and ask for the board's opinion as to the propriety of such interest. Every official or employee who knowingly has any interest, direct or indirect, in any contract to which Henry County is or is about to become a party, or in any other business with Henry County, shall make full disclosure of such interest to the Board of Commissioners and to the Ethics Officer and the Board of Ethics. The information disclosed by such sworn statements, except for the valuation attributed to the disclosed interest, shall be made a matter of public record by the Board of Ethics. In cases where a conflict of interest exists, such official or employee shall recuse himself or herself from participating or taking any official acts or actions in any matter for the county affected by such conflict of interest.

3.11 Participation in Contracts.

3.111 An official or employee shall disqualify himself or herself from participating in any official act or action of Henry County directly affecting a business or activity in which he or she has any interest, whether or not a remote interest.

3.112 Henry County shall not enter into any contract involving services or property with an

official or employee of the county or with a business in which an official or employee of the county has an interest. This subsection shall not apply in the case of:

- A. The designation of a bank or trust company as a depository for county funds;
- B. The borrowing of funds from any bank or lending institution which offers the lowest available rate of interest for such loans;
- C. Contracts for services entered into with a business which is the only available source for such goods or services; or
- D. Contracts entered into under circumstances which constitute an emergency situation, provided that a record explaining the emergency is prepared by the Board of Commissioners and submitted to the Board of Ethics at its next regular meeting and thereafter kept on file.

3.113 Henry County shall not enter into any contract with, or take any official act or action favorably affecting, any person, or business represented by such person, who has been within the preceding two-year period an official or employee of Henry County.

IV. Complaints

Any person who witnesses or becomes aware of a violation of this section may complain of the violation as follows:

4.1 Reporting Violations. A complaint may be communicated anonymously to the Ethics Administrator. Such complaint shall be made in good faith and with veracity and sufficient specificity so as to provide the Ethics Officer with salient and investigable facts. The Ethics Administrator may require the anonymous complaint to be made in a manner and form that is intended only to obtain relevant facts related to the alleged violation of this section and that is not designed to reveal the identity of the complainant; and

4.2 Written Complaints. A sworn written complaint may be filed with the Ethics Administrator as described in this subparagraph. All written complaints to be considered by the Board of Ethics and the Ethics Officer shall contain the following, if applicable:

- i. The name and address of the person or persons filing the complaint;
- ii. The sworn verification and signature of the complainant;
- iii. The name and address of the party or parties against whom the complaint is filed and, if such party is a candidate, the office being sought;
- iv. A clear and concise statement of facts upon which the complaint is based along with an allegation that such facts constitute one or more violations of law under the jurisdiction of the Board of Ethics;
- v. A general reference to the allegedly violated statutory provisions of the Code of Ethics within the jurisdiction of the Board of Ethics; and
- vi. Any further information which might support the allegations in the complaint, including, but not limited to, the following:
 - a. The names and addresses of all other persons who have first-hand knowledge of the facts alleged in the complaint; and

- b. Any documentary evidence that supports the facts alleged in the complaint.

4.3 Written Notice. Upon receipt of a complaint by the Ethics Administrator, the Ethics Administrator shall send a written notice to the subject of the complaint by the next business day. Both this notice and any subsequent documents shall be subject to Article 4 of Chapter 18 of Title 50 of the O.C.G.A.

4.4 Dismissal for Lack of Conformity. Upon receipt of a written, non-anonymous complaint which does not conform to the applicable requirements of Section 4.2, the Ethics Administrator shall by letter acknowledge receipt of the complaint and advise the complainant of the defect in the complaint and that the complaint will not be considered by the Board of Ethics unless the defect is corrected.

V. Investigations/Hearings

5.1 Investigations. The Board of Ethics shall conduct investigations into alleged violations of the code of ethics, hold hearings, and issue decisions as prescribed in this subsection.

5.2 Open Records. The proceedings and records of the Board of Ethics shall be open unless otherwise permitted by state law.

5.3 Advisement of the Board of Ethics. Upon request of the Board of Ethics, the Henry County Solicitor or any attorney representing the office of the Henry County Solicitor, or in the event of a conflict any attorney who shall be selected by a majority vote of the Board of Ethics, shall advise the Board of Ethics.

5.4 Initiation of Investigations. A complaint may be filed by the Ethics Officer, any resident, or a group of residents of Henry County by submitting to the Ethics Administrator a written, verified, and sworn complaint under the penalty of perjury or false swearing. The complaint shall specifically identify all provisions of the Henry County Code of Ethics which the subject of the complaint is alleged to have violated, set forth facts as would be admissible in evidence in a court proceeding, and show affirmatively that the complainant or affiant, if in addition to or different from the complainant, is competent to testify to the matter set forth therein. All documents referenced in the complaint as well as supporting affidavits shall be attached to the complaint.

5.5 Preliminary Investigation of Complaint. Upon receipt of the complaint, the Ethics Administrator shall bring the complaint before the Board of Ethics which shall cause the Ethics Officer to conduct a preliminary investigation to determine whether it meets the jurisdictional requirements as set forth in this section. Upon the conclusion of the preliminary investigation, the Ethics Officer shall report his or her findings to the board. If, in the opinion of the board, the complaint fails to meet the jurisdictional requirements as set forth in this section, the board shall direct the Ethics Officer to notify the person who filed the complaint and such person shall have ten days from the date of notice to correct and refile the complaint with the board. A complaint which fails to satisfy the jurisdictional requirements as established by this section and by the rules and procedures established by the Board of Ethics shall be dismissed by the Board of Ethics

no later than 30 days after the complaint is filed with the Ethics Administrator, unless extended by a majority vote of the Board of Ethics.

5.6 Probable Cause Finding. The Ethics Officer will report his or her findings and recommendation to the Board of Ethics and advise whether there is probable cause for belief that the Code of Ethics has been violated, warranting a formal hearing. If the Board of Ethics determines, after the preliminary investigation of a complaint by the Ethics Officer, that there does not exist probable cause for belief that this section has been violated, the Board of Ethics shall so notify the complainant and the subject of the investigation, and the complaint will be dismissed. If the Board of Ethics determines, after a preliminary investigation of the complaint by the Ethics Officer, that there does exist probable cause for belief that this section has been violated, the Board of Ethics shall give notice to the person involved to attend a hearing to determine whether there has been a violation of this section.

5.7 Subpoenas. For use in proceedings under this section, the Board of Ethics shall have the power to issue subpoenas to compel any person to appear, give sworn testimony, or produce documentary or other evidence. Any person who fails to respond to such subpoenas may be subjected to the penalties set forth in subsection (6) of this section.

5.8 Hearings. All hearings of the Board of Ethics pursuant to this section shall be as follows:

- a) All testimony shall be under oath, which shall be administered by a member of the Board of Ethics. Any person who appears before the Board of Ethics shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts of this state. Any person whose name is mentioned during a proceeding of the Board of Ethics and who may be adversely affected thereby may appear personally before the Board of Ethics on such person's own behalf or may file a written sworn statement for incorporation into the record to be made part of all proceedings pursuant to this subsection;
- b) The decision of the Board of Ethics shall be governed by a preponderance of the evidence standard; and
- c) At the conclusion of proceedings concerning an alleged violation, the Board of Ethics shall immediately begin deliberations on the evidence and proceed to determine by a majority vote of members present whether there has been a violation of this section. The findings of the Board of Ethics concerning a violation and the record of the proceedings shall be made public by the Ethics Officer as soon as practicable after the determination has been made.

5.9 Time Limitation. Any investigation or hearing pursuant to this subsection shall be commenced within two years of the date of the alleged violation; provided, however, that any complaint filed against an elected official within 60 days of an election in which such official is a candidate for public office shall not be acted upon until such election is concluded and certified.

5.10 Legal Counsel. The county attorney shall be prohibited from appearing before the Board of Ethics on behalf of any person.

VI. Violations/Appeals

- 6.1 Violations. Any intentional violation of this section, furnishing of false or misleading information to the Board of Ethics or the Ethics Officer, failure to follow an opinion rendered by the Board of Ethics, or failure to comply with a subpoena issued by the Board of Ethics pursuant to this section shall subject the violator to any one or more of the following:
- A. Administrative sanction of not more than \$1,000.00 assessed by the Board of Ethics;
 - B. Public reprimand by the Board of Ethics; and
 - C. Prosecution by the Henry County Solicitor in the magistrate court of Henry County and, upon conviction, a fine of up to \$1,000.00 per violation and up to six months' imprisonment whether the official or employee is elected or appointed, paid or unpaid. Nothing in this section shall be interpreted to conflict with state law. An action for violation of this section or the furnishing of false or misleading information or the failure to comply with a subpoena issued by the Board of Ethics must be brought within two years after the violation is discovered.
- 6.2 Additional Remedies. With regard to violations by persons other than officials or employees, in addition to the remedies in paragraph (6.1) of this subsection, the Board of Ethics may recommend to the Board of Commissioners any one or more of the following:
- A. Suspension of a contractor; and
 - B. Disqualification or debarment from contracting or subcontracting with Henry County.
- 6.3 Appeals. The decision of the Board of Ethics after a hearing shall be final; provided, however, that such proceeding shall be subject to review by writ of certiorari to the Superior Court of Henry County. The Ethics Administrator shall be authorized to acknowledge service of any such writ and shall, within the time provided by law, certify and cause to be filed with the clerk of the superior court a record of the proceedings before the Board of Ethics, the decision of the Board of Ethics, and the notice of the final actions of the Board of Ethics.

VII. Advisory Opinions

The Board of Ethics may render advisory opinions with respect to the interpretation and application of the Code of Ethics to all officials or employees who seek advice as to whether a particular course of conduct would constitute a violation of the standards imposed in this section or other applicable ethical standards.