REQUEST FOR BOARD ACTION

ITEM NO. 15.

DATE OF MEETING: September 20, 2010

REQUESTED BY: Trey Thurman, County Attorney

SHORT TITLE: Resolution Adopting a Code of Ethics for the Pender County Board of Commissioners

BACKGROUND: Section 160A-86 of the North Carolina General Statutes requires local government boards to adopt a code of ethics prior to December 31, 2010. The School of Government has crafted a model code of ethics for local governments establishing guidelines for ethical standards of conduct. The guidelines include a statement of general principles underlying a code of ethics, a code of ethics, and an optional section that includes censure procedures. The optional section is written in italics.

A copy of the draft code is attached for Board consideration.

The draft code of ethics was presented to the Board at the September 7, 2010 meeting and the Board requested it be placed on the September 20 agenda for consideration.

SPECIFIC ACTION REQUESTED: To consider a resolution adopting a Code of Ethics for the Pender County Board of Commissioners.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

_____
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby adopts the attached Code of Ethics for the Pender County Board of Commissioners (with/without the optional censure procedures). The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED_____ SECONDED_____

APPROVED_____ DENIED_____UNANIMOUS

YEA VOTES: Tate___ Blanchard ___ Brown ___ Rivenbark ___ Williams ___

_____ _____
Jimmy T. Tate, Chairman Date

_____ _____
ATTEST Date

CODE OF ETHICS FOR THE PENDER COUNTY BOARD OF COMMISSIONERS PENDER COUNTY, NORTH CAROLINA

DRAFT

PREAMBLE

WHEREAS, the Constitution of North Carolina, Article I, Section 35, reminds us that a "frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty;" and

WHEREAS, a spirit of honesty and forthrightness is reflected in North Carolina's state motto, *Esse quam videri,* "To be rather than to seem;" and

WHEREAS, Section 160A-86 of the North Carolina General Statutes requires local governing boards to adopt a code of ethics; and

WHEREAS, as public officials we are charged with upholding the trust of the citizens of Pender County, and with obeying the law; and

NOW THEREFORE, in recognition of our blessings and obligations as citizens of the State of North Carolina and as public officials representing the citizens of the County Government of Pender County, and acting pursuant to the requirements of Section 160A-86 of the North Carolina General Statutes, we the Pender County Board of Commissioners do hereby adopt the following General Principles and Code of Ethics to guide the Board of Commissioners in its lawful decision-making.

GENERAL PRINCIPLES UNDERLYING THE CODE OF ETHICS

- The stability and proper operation of democratic representative government depend upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials
- Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.
- Board members must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent.
- Board members must always remain aware that at various times they play different roles:
  - As advocates, who strive to advance the legitimate needs of their citizens.
  - As legislators, who balance the public interest and private rights in considering and enacting ordinances, orders, and resolutions
  - As decision-makers, who arrive at fair and impartial quasi-judicial and administrative
  - determinations.
- Board members must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.
- Board members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each official must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

CODE OF ETHICS

The purpose of this Code of Ethics is to establish guidelines for ethical standards of conduct for the Pender County Board of Commissioners and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a board member's best judgment.

Section 1. Board members should obey all laws applicable to their official actions as members of the board. Board members should be guided by the spirit as well as the letter of the law in whatever they do.

At the same time, board members should feel free to assert policy positions and opinions without fear of reprisal from fellow board members or citizens. To declare that a board member is behaving unethically because one disagrees with that board member on a question of policy (and not because of the board member's behavior) is unfair, dishonest, irresponsible, and itself unethical.

Board members should endeavor to keep up to date, through the board's attorney and other sources, about new or ongoing legal or ethical issues they may face in their official positions. This educational function is in addition to the day-to-day legal advice the board may receive concerning specific situations that arise.

Section 2. Board members should act with integrity and independence from improper influence as they exercise the duties of their offices. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly to a code of sound values
- Behaving consistently and with respect toward everyone with whom they interact
- Exhibiting trustworthiness
- Living as if they are on duty as elected officials regardless of where they are or what they are doing
- Using their best independent judgment to pursue the common good as they see it, presenting their opinions to all in a reasonable, forthright, consistent manner
- Remaining incorruptible, self-governing, and unaffected by improper influence while at the same time being able to consider the opinions and ideas of others
- Disclosing contacts and information about issues that they receive outside of public meetings and refraining from seeking or receiving information about quasi-judicial matters outside of the quasi-judicial proceedings themselves
- Treating other board members and the public with respect and honoring the opinions of others even when the board members disagree with those opinions
- Not reaching conclusions on issues until all sides have been heard
- Showing respect for their offices and not behaving in ways that reflect badly on those offices
- Recognizing that they are part of a larger group and acting accordingly
- Recognizing that individual board members are not generally allowed to act on behalf of the board but may only do so if the board specifically authorizes it, and that the board must take official action as a body.

Section 3.a. Board members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach. Although opinions may vary about what behavior is inappropriate, this board will consider impropriety in terms of whether a reasonable person who is aware of all of the relevant facts and circumstances surrounding the board member's action would conclude that the action was inappropriate.

Section 3.b. If a board member believes that his or her actions, while legal and ethical, may be misunderstood, the member should seek the advice of the board's attorney and should consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney).

Section 4. Board members should faithfully perform the duties of their offices. They should act as the "especially responsible citizens" whom others can trust and respect. They should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

Board members should faithfully attend and prepare for meetings. They should carefully analyze all credible information properly submitted to them, mindful of the need not to engage in communications outside the meeting in quasi-judicial matters. They should demand full accountability from those over whom the board has authority.

Board members should be willing to bear their fair share of the board's workload. To the extent appropriate, they should be willing to put the board's interests ahead of their own.

Section 5. Board members should conduct the affairs of the board in an open and public manner. They should comply with all applicable laws governing open meetings and public records, recognizing that doing so is an important way to be worthy of the public's trust. They should remember when they meet that they are conducting the public's business. They should also remember that local government records belong to the public and not to board members or their employees.

In order to ensure strict compliance with the laws concerning openness, board members should make clear that an environment of transparency and candor is to be maintained at all times in the governmental unit. They should prohibit unjustified delay in fulfilling public records requests. They should take deliberate steps to make certain that any closed sessions held by the board are lawfully conducted and that such sessions do not stray from the purposes for which they are called.

Optional:

Censure Procedures. If a majority of the board has reason to believe that one of its members has violated a provision of this Code of Ethics, it shall [may] open an investigation into the matter to determine whether probable cause exists to initiate censure proceedings against the member. All information compiled, including the grounds for any finding of probable cause, shall be shared with the member when it is received. All information pertaining to the case shall be open to public inspection and copying pursuant to the North Carolina public records statutes. If upon investigation the board concludes that a violation of a criminal law may have occurred, it shall refer the matter to the local district attorney.

Should the board determine that it wishes to proceed further with censure proceedings, it shall call for a hearing, to be held at a regular meeting or a special meeting convened for that purpose. Notice of the hearing stating its time, place, and purpose shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the jurisdiction. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Alternatively, the hearing shall be advertised on the jurisdiction's website for the same period of time, up to and including the date of the hearing. The notice shall state that a detailed list of the allegations against the member is available for public inspection and copying in the office of the clerk or secretary to the board.

The hearing shall be convened at the time and place specified. The hearing and any deliberations shall be conducted in open session in accordance with the North Carolina open meetings statutes.

The accused board member shall have the right to have counsel present, to present and cross-examine expert and other witnesses, and to offer evidence, including evidence of the bias of any other board member or the presiding officer. An audio or video and audio tape of the proceedings shall be prepared. Any and all votes during the hearing shall be taken by the ayes and noes and recorded in the board's minutes.

Once the hearing is concluded, it shall be closed by vote of the board. The presiding officer shall next entertain a motion to adopt a nonbinding resolution censuring the member based on specified violations of the code of ethics. Any motion made must be an affirmative one in favor of adopting a nonbinding resolution of censure. If the motion or resolution does not state particular grounds for censure under the code of ethics, the presiding officer shall rule it out of order.

If a motion to adopt a nonbinding resolution of censure stating particular grounds under the code of ethics has been made, the board shall debate the motion. The accused member shall be allowed to participate in the debate [but shall not] [and shall also be allowed to] vote on the motion to adopt the resolution.

At the conclusion of the debate, the board shall vote on the resolution. If the motion to adopt the nonbinding resolution of censure is approved by a [majority] [two-thirds] [three-fourths] vote of those present and voting, a quorum being present, the motion passes and the nonbinding resolution of censure is adopted.

The text of the nonbinding resolution of censure shall be made a part of the minutes of the board. Any recording of the board's proceedings shall be approved by the board as a permanent part of the minutes. The proceedings shall then be considered concluded, the board having done all it legally can with respect to the matter in question.

Adopted this ___ day of _____, 2010.

_____
Jimmy T. Tate, Chairman

ATTEST:

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Rick Benton, Clerk to the Board