



Georgia Trauma Commission

GEORGIA TRAUMA CARE NETWORK COMMISSION

MEETING MINUTES

Thursday, November 18, 2010

Scheduled: 10:00 am until 1:00 pm
 Medical Center of Central Georgia
 Peyton Anderson Health Education Center
 877 Hemlock Street - 4th Floor - Weaver Board Room
 Macon, Georgia 31208

CALL TO ORDER

Dr. Dennis Ashley, Chair, called the scheduled monthly meeting of the Georgia Trauma Care Network Commission to order at 10:05 a.m.

COMMISSION MEMBERS PRESENT	COMMISSION MEMBERS ABSENT
Dr. Dennis Ashley Linda Cole, RN Ben Hinson Dr. Leon Haley Bill Moore Rich Bias Kelli Vaughn, RN Kurt Stuenkel (via tele-conference)	Dr. Joe Sam Robinson

STAFF MEMBERS SIGNING IN	REPRESENTING
Jim Pettyjohn, Executive Director Ryan Goodson, TCC Lead Carol Dixon, Administration	Georgia Trauma Care Network Commission Georgia Trauma Care Network Commission Georgia Trauma Care Network Commission

OTHERS SIGNING IN	REPRESENTING
Alex Sponseller Scott Sherrill (via tele-conference) Regina Medeiros Marty Billings Gigi Goble Lawanna Mercer-Cobb Silla Summerlin Kim Brown Gina Solomon Marie Probst Patricia Mayne Adam Bomar Russ McGee Debra Kitchens Renee Morgan	Assistant Attorney General GTRI MCG Health Metro Atlanta Ambulance Service GPT SOEMS/T – Region 6 MHUMC Hamilton Medical Center Gwinnett Medical Center OEMS/T Wellstar Kennestone Wellstar Kennestone Region 5 OEMS/T MCCG OEMS/T

Bambi Bruce Lee Oliver Rebecca Greener Josh Mackey Jamela Pope Christopher Dewte Danae Gambrell	Walton Regional Medical Center MCCG MAG GAEMS Children's Healthcare of Atlanta Grady Hospital/Emory GHA
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WELCOME, INTRODUCTIONS AND CHAIRMAN'S REPORT

Dr. Dennis Ashley welcomed all present. Confirmation of Commission members attending and Mr. Kurt Stuenkel and Mr. Scott Sherrill participated by conference call. Mr. Alex Sponseller confirmed quorum status.

Dr. Ashley stated Amendment 2 (Yes2Save Lives \$10 tag fee) did not pass and asked, "Where do we go from here?" He discussed the press release letter (*see attached*). Campaign outcome was 1.2 million yes votes and 1.3 million no votes. This is a difference of approx. 130,000 votes and we have taken trauma to a new level over the last 2 – 3 years. We need to continue to move forward and the message needs to be kept on target and straight forward. This was not a message of "no" against trauma, but the economic funding mechanism directed the narrow "no" vote. As we talk to legislators and move forward, Dr. Ashley says we need to keep everyone focused on that point. We will later discuss retreat options to update our strategic plan and priorities.

APPROVAL OF THE MINUTES OF THE 21 OCTOBER 2010 MEETING

The draft minutes of the 21 October 2010 meeting were distributed to the Commission prior to the meeting via electronic means and are also available to meeting attendees in printed form.

MOTION GTCNC 2010-11-01:

I move that the minutes of the 21 October 2010 meeting of the Georgia Trauma Care Network Commission distributed and presented here today to be approved.

MOTION BY: Ms. Linda Cole

SECOND BY: Mr. Rich Bias

DISCUSSION: Ms. Kelli Vaughn had a question about the 21 October 2010 Motion GTCNC 2010-10-04 on page 6 which pertains to EMS transportation of SB60 uncompensated care trauma patients to designated trauma centers outside of Georgia to qualify for EMS uncompensated care program. Ms. Vaughn's question is when trauma patients go to an outlying state trauma center; different states have various inclusion criteria. For instance, in the State of Florida, and they have a registry manual on line and their inclusion criteria is different than Georgia's. To be fair for all EMS, patients should have to meet Georgia trauma registry inclusion criteria in order to qualify for reimbursement.

Motion has been copied below:

"MOTION GTCNC 2010-10-04:

I propose a motion to allow services that transport SB60 qualifying trauma patients to designated Trauma

Centers outside of Georgia to qualify for the Commission's EMS Uncompensated Care program

reimbursement in FY2011 as long as an appropriate qualifying facility in Georgia was not closer or

bypassed."

MOTION BY: Mr. Ben Hinson (as a subcommittee motion)

SECOND BY: Not required

DISCUSSION: *Mr. Jim Pettyjohn asked Ms. Renee Morgan if the National Trauma Registry participation would require the trauma center to provide data to the National Trauma Data bank for the border states. Ms. Renee Morgan stated that she was aware of this available information from Erlanger in Chattanooga and Tallahassee, Florida but would have to check on others. Mr. Hinson said this caveat would need to be met and a process will be developed that will be the responsibility of the EMS agencies to get documentation that states the patient is on the National Registry. Mr. Moore confirmed that the available uncompensated EMS budget would remain the same, but would be reallocated to accommodate.*

Mr. Stuenkel questions whether this will push us further down the road for the out-of-state trauma centers to question medical care costs for Georgia residents that they are caring for in their hospitals. Mr. Hinson stated that in the research Mr. Sponseller provided, it is very clear in SB60, we cannot make payments for care rendered at out-of-state hospitals, (non-Georgia trauma care centers) in their facility through the Georgia Trauma Commission. It does not matter whether they are Georgia residents or not. Mr. Sponseller confirmed this is correct.

Ms. Linda Cole stated that she read in the EMS minutes that there would be an affidavit stating the EMS service did not bypass a Georgia trauma center or go further to get to an out-of-state trauma center. Mr. Hinson said if we have a good trauma system, the patient will only go out of state if it is the appropriate place to take the trauma patient and does not anticipate bypassing a Georgia trauma center to go out of state for this purpose. Also, a Georgia trauma center will not be bypassed because an EMS provider would suggest there was a better chance to get paid for their services. EMS uncompensated care reimbursement is very minimal.

Dr. O'Neal said we need to keep communication general as it may be more appropriate for a patient to go to an out-of-state Level One trauma center versus a closer Level Four in-state based trauma center determined by medical needs. The volume of these needs is not available at this time. Dr. O'Neal said that he does have some statistics on trauma centers where up to 40% of their volume comes from Alabama and Augusta also has a large number from South Carolina per Mr. Bias. Mr. Bias said, in terms of tracking, we should be able to go to the GHA data and use the county of origin for the patient by trauma code and track that they went out of state. Mr. Hinson said the EMS subcommittee would be investigating all resources to gather this information moving forward.

Mr. Alex Sponseller provided some hypothetical examples for consider in a letter to exhibit this. (Attached to minutes).

Ms. Cole asked if this included patients that have arrived at a non-designated trauma center and are then transported to a trauma center. Mr. Hinson said it involves the entire incident so if an EMS service picked up a patient in Ellijay and was taken to the local hospital and then moved to Erlanger, that original transport would be covered. This would be applicable to rotor wing transport if they were a licensed EMS rotor wing service. We are currently working on this licensing for rotor wing service. Mr. Jim Pettyjohn stated the trauma communications center could help to identify these needs.

ACTION: *The motion PASSED with no objections, nor abstentions. (Approved minutes will be posted to www.gtcnc.org) "*

Mr. Ben Hinson said the feeling of the EMS Subcommittee was that they want to pay for patients that are transported to trauma centers outside of Georgia the same way they would have been paid if the patient were transported to a trauma center inside Georgia. So, the intent was for the criteria to be the same.

We assumed after the EMS Subcommittee and Mr. Alex Sponseller looked at it, that SB 60 would allow us to do that. The language in SB60 said if the patient meets Georgia trauma registry criteria or a national trauma criteria and we do need to clarify the verbiage in the MOTION GTCNC 2010-10-04. At this point, Mr. Hinson suggests we need to approve this motion from the 21 October minutes procedurally, and Mr. Hinson will clarify later in the meeting in his EMS Subcommittee report update.

Ms. Regina Medeiros said there was some misinterpretation of SB60 language because SB60 does reference Georgia Trauma Registry but NTRACS is the type or software name and not the National Trauma Databank. It is separate. However, Ms. Medeiros does want to support funding out of state transports because they should not be at a disadvantage. We need to insure we fall within the allowable guidelines, which says the National Registry for the American College of Surgeons, which is NTRACS, not National Trauma Databank. She feels it does need further evaluation to make sure we can do this and that we measure consistently so that the criteria we use for instate transport matches the criteria for out of state transports as well.

Mr. Rich Bias said we are all clear on the intent and asks that the trauma coordinator group to focus on what would accomplish the intent and have them come back with a recommendation. Dr. Ashley agrees, we will approve the minutes, and address later.

ACTION: The motion ***PASSED*** with no objections, nor abstentions.
(Approved minutes will be posted to www.gtcnc.org)

ADMINISTRATIVE REPORT REVIEW

Mr. Pettyjohn summarized the Administrative Report (*Administrative report as well as all approved minutes will be posted to www.gtcnc.org.*)

Page two illustrates collections for HB 160 Super Speeder Bill for the first four months of FY2011. Part 1 represents \$1.1M for license reinstatement fees with a 17.2% collection rate. Part 2 is the actual speeding ticket associated with super speeder bill and there is \$2.6M collection for the first four months of FY2011 at 50% collection rate. That leaves an estimated revenue collections for FY 2011 of \$11.1M. Communications from the staff of the House Appropriations subcommittee is asking us to come up with a budget for 2012 and Mr. Pettyjohn feels they will be referencing the revenues from the super speeder bill.

Mr. Ben Hinson asked if the house staff provided these numbers. Mr. Pettyjohn said that Ms. Margie Coggins gave him the \$7M number for super speeder dollars generated last year. Ms. Paula Brown, OPB, estimates the projected amounts will be \$11M for this year. These numbers will be reviewed for the FY2011 base budget. Mr. Hinson stated super speeder was a plan on how we plan to fund it, but the \$23M is from the general funds. The super speeder was originated to create additional revenue.

Dr. Ashley wants to discuss as a Commission and be in general agreement for a "minimum amount required" budget number for next year as requested by Ms. Coggins. Mr. Rich Bias feels we need a bigger budget, but questions what is the baseline. He suggests we look at \$23M as continuation funding as a minimum from general funds. Uncompensated care and readiness associated with the new trauma centers coming on board would require additional funds and should be added on to the base amount for budget purposes. Mr. Hinson said we need to present a budget to the general assembly and explain if we do not get this money and what exactly would be lost. We must clearly define our needs and demonstrate what losses could take place and who they will affect. Ms. Linda Cole said we need to have a graduated plan and Mr. Bias said to arrange with priority locations for new trauma centers to come on and the Commission needs to provide a true case for support versus working from budget.

Mr. Hinson said if we make a hard case by showing what we can do to improve trauma care in every hospital in Georgia, whether they are designated or not, we might get a lot more support than if we say we are just going to work to designate more centers. Can we use some of the money to make

"everywhere" better while we designate centers? Dr. Ashley said the Broselow Luten system is going out to help multiple hospitals and carrying this to non-designated hospitals. We are increasing pediatric capability in hospitals that are non-designated trauma centers. Mr. Hinson added that our new trauma communications center would be helping every hospital. Mr. Hinson added how TeleHealth will be used to push it out to non-designated hospitals. Dr. Leon Haley agreed and said to provide a specific plan in the line items to include strategy for years 1 – 5 and be very clear about what is or is not going to happen based upon the budget.

We now have better information on the cost to bring a new center on board. Centers thinking about coming on board now can be added into next year's budget. Mr. Hinson asked, if the centers don't get funded, would they still plan to come on board? Mr. Bill Moore said could we make a case that mortality would be decreased if we have funding. Ms. Linda Cole suggested Ms. Rachel Forencik's, GA Health Policy Center, modeling ability and how this could demonstrate trauma scenario outcomes. A case for support can be set up and harder numbers following. Several Commission members agreed strongly. Mr. Moore suggested we bring this to the retreat. Ben said we need someone to do some work before the workshop. Dates for retreat were confirmed for 05 and 06 January 2011 in Rome, Georgia. (*See New Business below.*)

Dr. Ashley asks that Dr. O'Neal help to pull trauma numbers together to help us prepare for the January workshop. Dr. Ashley wants clarification of Georgia trauma deaths from the CDC database and based on population, would like a comparison to other surrounding states. Georgia is above the national average at this time. Dr. O'Neal says the data is fairly old and legislature will ask for more current information. Dr. Ashley said we might need to look for another reliable data source outside the CDC. Different examples and variables were discussed. Mr. Hinson will discuss further with Dr. O'Neal after the meeting to determine how we tackle this information, what research will need to be done and who the players will be for preparation prior to the retreat. Mr. Hinson hopes to get further information and a report from the Office of Highway Safety. Ben said he would discuss with Dr. O'Neal after the meeting and asks for help from anyone else.

Dr. O'Neal said the epidemiology position is currently in the hiring process now. He hopes to have the position filled in December and they could be very beneficial to assist in this area. The time frame could be tight to provide assistance in preparing for our workshop. Dr. O'Neal feels there may be other resources to be pulled from the epidemiology group at DCH but also feels there are resources at Georgia State and Georgia Tech, as well as the TEC entry program, who can help give us support. Mr. Bill Moore said we need good data and accurate info with a good base line to insure our funding proves there are a lot of trauma-related deaths in Georgia and what can we do to improve that.

Dr. Ashley asked Dr. O'Neal and Ms. Renee Morgan where we stand now with new positions coming on board and how this relates for budget reporting for FY2012 (beginning July 1, 2011). Ms. Morgan said the guarantees we have are with the new center start-up centers. Taylor, which has already signed on, would be included in projected budgets for FY2012 beginning July 1, 2011. If the centers are not coming on board until July 1, 2011, it would be unlikely that they would be eligible for FY2012 funding based on any methodology we have previously used. Mr. Bias stated the funding received this year would not affect them.

Mr. Pettyjohn stated, under current practice, for a hospital to receive readiness funding for any FY, they will need to be a designated trauma center on the day the FY begins. Any of these new trauma centers that come on board before June 30, 2011, would be eligible for readiness funding for FY2012. Unless they were a trauma center in calendar year 2009, they would not be eligible for uncompensated care payments in FY2012. For example, Athens will not receive uncompensated care funds now because they were not a trauma center in calendar year 2008, but they are eligible to receive readiness funding. For FY2011, Mr. Pettyjohn stated the uncompensated care funding is based on a survey from calendar year 2008. Dr. Ashley confirmed with Mr. Pettyjohn that these centers would be eligible for readiness funding if they are designated by the start of the fiscal year.

Dr. Ashley asked Mr. Pettyjohn and Ms. Renee Morgan to work together and provide information for our January retreat and put together the centers based on our definitions, methodology and history for trauma centers we think we would need to fund either readiness and/or uncompensated care so we can think about it with a summary of location and their eligibility opportunities for either. He wants to confirm how many centers we might be bringing on. Mr. Pettyjohn will review the trauma centers and eligible funding vs. budget year funding with Ms. Renee Morgan and report back at the retreat.

Dr. Ashley wants to have this data to report to the legislators and how this will affect the funding we will need for additional funding a year in advance, detailing which centers will be involved. Mr. Rich said rationale for the delay in uncompensated payment funding because of the timeline in place for appropriate collection efforts to occur and accounts to be closed is reasonable.

Mr. Pettyjohn reviewed the FY2011 contracts grants and agreements updates report in detail. *(Attached to Administrative report and will be posted to www.gtcnc.org.)*

- We will be working with OEMS/T and working on an amendment to address some issues on the contract to provide funding.
- The audit contract is in place and Dr. Ashley sent a letter to trauma centers' administration, medical directors and coordinators this past week explaining the upcoming audit.
- RFP for the trauma communications software was posted and closed and evaluations moving forward.
- GA Partnership for Telehealth is a \$50,000 grant that will pay the administrative fees for nine rural hospital facilities that will be participating with our hub centers to continue on with our pilot project for Teletrauma.
- Zolstice, new entity that owns the eBroselow system, contract has been extended to provide \$50,000 to bring on 15 additional hospitals with the eBroselow system. A piece of this, working through our EMS subcommittee, Zolstice will be developing a strategy plan to roll out an online pediatric dosing software to our EMS community. This is a very good opportunity for us to utilize our work with AVLS program where we were able to purchase equipment for almost all 911 EMS vehicles in Region 5 and Region 6. They have an OMG and onboard mobile gateway, which is a Wi-Fi bubble around each of the ambulances moving around. Our plan is for them to access the pediatric dosing system and to have seamless communication from the field with the pediatric patient to our hospitals over the next year. The goal is for the Pediatric Broselow computer systems to provide the ambulances real-time access to pediatric dosing information seamlessly. When they get to the emergency room, they will pass off the report. Alabama and South Carolina want to move forward with this program.
- Regarding the Broselow Lutin program update, Ms. Linda Cole discussed that we have received all the formulary information from the trauma centers that have pediatric focus and are in the process of standardizing dosing for emergency drugs. Mr. Greg Pereira is heading this up with Dr. Broselow and the pharmacists are working on this now for emergency drugs. Mr. Pettyjohn said last year brought on 35 hospitals, this year adding 15 more hospitals. Ms. Cole said the system would standardize pediatric services.
- The trauma centers and physicians' contracts are waiting for budget numbers. We hope to have those ready to move forward next week.
- ALL EMS vehicles grant awardees have received their grant award letters for 29 replacement vehicles. We have sent out sample work plans and invoices to assist with the paperwork and deliverables.

- The First Responder Training Grants and Trauma Care related equipment purchases grants are ready to move forward.
- We are working with DCH Procurement, in partnership, to insure that there is state oversight of our EMS vehicle grant awards.
- New Trauma Center Start-up Grants – All hospitals have received their executed Notice of Grant Award Letters. Mr. Renee Morgan will be insuring the deliverables are met.

Mr. Jim Pettyjohn proposed a new budget dated 18 November due to the \$676,889 budget shortfall from 2010. New budget being proposed today. *(Included in Administrative Report.)* We reduced \$153,925 from operations (*page 7*), audit contract was budgeted at \$100,000 was contracted for \$51,000 which was a savings of \$48,000 plus. We eliminated the procurement officer for this fiscal year, reduced contingency planning in from \$100,000 and reduced it to \$50,000. The remaining \$522,000 was spread out over the trauma center and physicians and EMS stakeholder budgets.

MOTION GTCNC 2010-11-02:

I move that the Georgia Trauma Care Network Commission accept the budget our Executive Director proposed to balance the budget.

MOTION BY:

Mr. Bill Moore

SECOND BY:

Ms. Kelli Vaughn

DISCUSSION: Dr. Ashley feels this is a reasonable request and takes into account the request from the last meeting to spread the budget cuts out. He said we should communicate our erroneous error to the legislature to try to get the \$676k back in this year's budget as perhaps a supplemental budget for FY2011. Dr. O'Neal said the predictions being heard from the Office of Planning and Budget is that the best scenario is to stay at a 4% hold and not have to increase to 6 – 8 % holds.

ACTION:

The motion ***PASSED*** with no objections, nor abstentions.
(Approved minutes will be posted to www.gtcnc.org)

SUBCOMMITTEE REPORTS

EMS Subcommittee on Trauma – Mr. Ben Hinson reported. *((02 November EMS subcommittee meeting – draft minutes attached).* A motion was made at this meeting to pay for EMS uncompensated reimbursement using Medicare and mileage. Rural EMS providers will receive a 50% increase in the mileage payment and will all be paid at highest Medicare ALS rate using the zip code to determine whether it is a rural area. Mr. Hinson has prepared a spreadsheet including a calculator and reviewed with Ms. Regina Medeiros to use for this purpose. Mr. Hinson requests the following motion for Commission approval.

MOTION GTCNC 2010-11-03:

I move that the Georgia Trauma Care Network Commission accept the Medicare payment methodology using an objective worksheet for reporting EMS uncompensated care claims which will be submitted to Ms. Regina Medeiros for reporting claims purposes.

MOTION BY:

Mr. Ben Hinson

SECOND BY:

Mr. Rich Bias

DISCUSSION: Mr. Hinson added that the actual payments may only be 50% of the calculated claim, thus we clearly meet the concern of SB60 that we are not being paid higher than the average payment by the state health benefit plan. Mr. Alex Sponseller said the way EMS is reimbursed by the state benefit plan is not easy to define because of different plans, but as long as it is below the payout average, and that condition is satisfied, this would be acceptable. Mr. Hinson added that the state uses different companies to actually process claims and the payments can be varied. This process will provide the same amount for the same service but at a fraction of what the Medicaid rate is. The base rate for

picking up the patient will be the same no matter where they are picked up in the state and payment will be based on how many loaded miles the patient is carried. If you were based in a rural county rather than getting paid, for example, \$4.00 per mile for vehicle and expenses, the rural EMS providers would get \$6.00 per mile on that part. The base rate will be the same but the mileage rate will get a 50% premium because of the "out-of-service" time.

ACTION: The motion ***PASSED*** with no objections, nor abstentions.
(Approved minutes will be posted to www.gtcnc.org)

AVLS GPS program is moving along and working well with approximately 85% participation. Presently there are two-user abilities with the vendor, InMotion, and there has been an interest for additional users at the EMS services. InMotion has proposed to give each provider five seats at a cost of \$180/year if all providers participate versus a cost of \$50 per seat. It would be advantageous for the Commission to pay \$180 for full functionality. Mr. Hinson will bring this back to the Commission after the next EMS subcommittee for voting consideration.

Mr. Kirk Pennywitt, GTRI, made a presentation at the last EMS subcommittee meeting (*EMS subcommittee 02 November 2010 draft meeting minutes handout attached*) and demonstrated how a snapshot can be taken of real-time physical locations of ambulances in the state of Georgia. There will be letters sent to all providers that will be included in the future contracts that say once a month a snapshot will be taken to show policymakers how well the GPS system is working. Mr. Pennywitt will view this from time to time to see how the deployment is working. Dr. Ashley stated this could be a positive talking point to use at the Capital as a disaster management tool. GEMA is holding a meeting on 22 November 2010 to put together the advisory group to continue to build this out statewide. Beginning 01 January 2011, GEMA will fund this with federal funds.

CMS/Medicare has decided, starting 01 January 2011, claims with miles must be billed to the tenth of a mile increment and will create a billing nightmare. Since a GPS system may be the best possible tool for measuring the mileage, there may be an increased need for additional units for this purpose. The EMS subcommittee may consider taking other EMS budget funds to address this. Hopefully, GEMA will be able to speed up the deployment of these systems with 200 units in the first year and we may need an additional 1,000 units in the future. We need continuity in the GPS system structure for our trauma communications center.

Georgia Committee for Trauma Excellence – MS. Kelli Vaughn reported a meeting was held 17 November 2010 in Atlanta. Mr. Jim Pettyjohn presented and gave the trauma coordinators an update on trauma center funding. They also discussed Mr. Greg Bishop's spreadsheet from this past spring which was a resource checklist assigning points for deficiencies in centers to see where this can be utilized and how to move forward. With Ms. Renee Morgan's help and OEMS/T, we hope to start out simple and structure some basic concepts to bring to the Commission for approval for budget year 2012 and incorporate into the 2012 performance based payment program.

Ms. Linda Cole suggested that Mr. Ben Hinson ask the EMS subcommittee to develop a pay for performance program for EMS payouts.

MOTION GTCNC 2010-11-04:

I make a motion that uncompensated care payment for EMS patients being transported to out of state trauma centers be qualified according to guidance given to us by Ms. Regina Medeiros by bringing a methodology report back to the Commission for review with new motion to accept her recommendation.

MOTION BY: Mr. Ben Hinson

SECOND BY: Ms. Kelli Vaughn

DISCUSSION: Ms. Regina Medeiros will need a list from the EMS subcommittee containing the out of state designated/ACS trauma centers that they transport patients to. We are clear on criteria as the definition of a registry patient for the state of Georgia. What we have not done is reached out to the out of state trauma centers to see if they can run those reports based on that criteria to provide those

services with a list of potential patients that they can identify as uncompensated. With this information, Ms. Medeiros can contact the centers and begin dialog. Mr. Jim Pettyjohn stated we need to be clear in our message and will work with Ms. Medeiros so this is messaged correctly. Mr. Rich Bias added that MCG will continue to provide support for this program based on the methodology that is put together with the EMS excel worksheet. Mr. Hinson stated the accountability is that of the provider to submit the paperwork for reimbursement.

ACTION:

The motion ***PASSED*** with no objections, nor abstentions.
(Approved minutes will be posted to www.gtnc.org)

FY2010 First Responder and trauma care equipment grants – Mr. Lee Oliver presented (*Two handouts provided*) the First responder grant list of awards. 72 services applied. Each service was scored based on the information they provided. Reimbursement of funds will go to the first tier list, based on the number of students attending. From there, we will be able to go into the second round. It is possible that the second round could have fewer student positions funded, and most probable, the third round will not be funded if everybody agrees to teach the class. There may be additional funding depending on the actual number of commitments for classes. Letters will be going out to the awardees.

Equipment grants list of awards presented. There were 128 services in 911 zone providers. Hancock was added later and it redistributed the funds by approximately \$1.00. Mr. Oliver will provide the updated report to Mr. Jim Pettyjohn. The total dollars available were divided by services who applied and the number of ambulances they have, validation process completed and divided total number of dollars by total number of ambulances, which equaled \$361 per ambulance. This is for trauma related equipment and it is from a specific list approved through the EMS stakeholders and approved at this level. Letters will be going out to awardees. GAEMS encourages the ambulance replacement grants to move forward. Ms. Linda Cole said this is a great example of how trauma dollars are going out to help everybody and would be nice to capture information to generate a story in the future of how this equipment was used on a trauma patient.

GAEMS encourages everyone to get the ambulance replacement process engaged so we are not confronted with end of year problems. Mr. Jim Pettyjohn said we are ready to go, have criteria, budget, and needs a partner from the EMS subcommittee to work with him to move this forward. Mr. Hinson is concerned about budgets and making sure all is in order since the FY2010 ambulance grants are being funded by FY2010 and FY2011 dollars. Mr. Ben Hinson said this person would be identified at the EMS stakeholder meeting on Tuesday, 07 December.

Mr. Rich Bias expressed concern for the budget and funding for big projects as our EMS grant invoices or trauma center payments get closer to fulfillment. Mr. Pettyjohn explained that Ms. Paula Brown, OPB, would fund a big project. Mr. Pettyjohn can push the process so we have executed agreements ready for funding. At that time, OPB can make a decision whether the funds are available. Mr. Bias says the entire budget funding needs to be reviewed. Regarding new EMS vehicle grants, application posting will probably post for 30 days, scoring in February and letters executed in March 2011.

Trauma Communications Center – Mr. Scott Sherrill presented an update. The MOU/lease for GPSTC was received and brief review indicates everything is acceptable. Effective date of 01 December and hopes to have executed by that date. A couple of small changes have been made; will wait on signatures and moving forward. Lease will be through 30 June 2011 followed by fiscal year renewals. Mr. Bias suggested they insert language to say "intent" to continue lease in the contract showing that we want to have continued renewal intent. Mr. Bias will send us some verbiage that they presently have at MCG. However, we do not want this to delay the lease agreement.

Mr. Sherrill is beginning to deliver an implementation plan to Mr. Pettyjohn listing necessary items needed to open the TCC in April 2011. Implementation to do so would start in January 2011 and will require identifying all the non-designated participating hospitals in regions 5 and 6. He is hoping this task can be assigned to an owner for assistance. The RFP has been issued and the deadline for returning bids has passed. The evaluation committee is reviewing submitted bids which we cannot discuss with anybody at

this time. The technical review will be completed this month subject to the request of the GTC. Mr. Sherrill Scott will present the evaluation committee's recommended vendor and product demonstration at the next scheduled Georgia Trauma Commission meeting on 16 December, (Auditorium at GTRI), with a one-item agenda. If we are not to this point of preparation, the meeting will be cancelled. This is subject to change.

DCH Division of Emergency Preparedness and Response – Ms. Renee Morgan reported the new trauma center startups are moving along on schedule and hiring is taking place in some trauma registrar and coordinator positions. Working with Lower Oconee to set their designation date in January 2011. New centers – Appling and Barrow are interested in coming on board as Level 4's. No contact from Phoebe. Data collection is for 3-6 months and then they begin application process through Ms. Morgan and Ms. Marie Probst verifies data. Columbus re-designation was 100% compliant with trip reports for their trauma charts, which is astounding. Mr. Sam Cunningham has been a strong instrument in this. Their registrar, Ms. Imogene Willis, has done a great job with this including the support of her hospital, staff and regional office.

Dr. O'Neal discussed a press release that Governor elect has reappointed Charlie English, Director of Homeland Security and Terry Nesbitt, DOD was reappointed. Dr. O'Neal feels these are very important positions due to high threat level in Germany for a major attack by Islamists. Intelligence information suggests there is a 60% probability of a major attack equal to or greater than a 911 attack to occur within next 12 months in the western world. It is important for Georgia to be prepared. There is a lot of readily available information regarding chemical attacks on the Internet.

There is no appointment yet for the Commissioner of DCH and Dr. O'Neal hopes the Governor elect will chose Mr. Clyde Reese who is doing an outstanding job and undertaking some re-organization at this time. Ms. Dana Green is no longer in charge of procurement. Mr. Reese is coalescing procurement, vendor management and contracts into a single section. Mr. Clyde Reese has also put together a group of individuals, headed up by Ms. Debbie Hall, that will be reviewing all of the DCH policies and procedures that need to be updated or eliminated. He feels there are too many policies and procedures that are constricting activity.

Sadly, Mr. Clyde White, Deputy General Council for DCH, who was very instrumental in helping everyone with contracts' process, made a resignation announcement to pursue other opportunities. He will be missed and be very difficult to replace.

Dr. O'Neal introduced Mr. Keith Wages. Effective 01 December, Office of EMS, Mr. Keith Wages, is the new Director of EMS. He is a former EMS state director for Georgia and Minnesota, worked as a consultant for years, has experience with GEMA, CDC, and has done a significant amount of work overseas and extensively at GAEMS. Role in advocacy is important between DCH and GAEMS and Mr. Wages will be a positive between the two. Dr. Jill Mabley was just hired as Deputy EMS Med Director and will start on 01 December 2010. Presently going through the interview process for a State EMS Director. Dr. Dennis Ashley and Mr. Jim Pettyjohn believe the communications and processes have been improving at DCH over the last few months and look forward to continued improvement.

The Public Health Commission convened in July 2010 to make a recommendation to the Governor, Lt. Governor and Speaker as well as the Legislature on what to do with Public Health. The decision to keep it in DCH or move it out have completed their work and recommended that Public Health be a stand alone agency. Mr. Reese was meeting with Governor Purdue this week. DCH took the position of neutrality. Mr. Purdue asked Mr. Reese if the PH Commission had reached a decision yet and was told by Mr. Reese that they had and would be meeting with him sometime in the next few days to give their recommendation to him before it moved on to the others and the recommendation would stand-alone. Mr. Reese said that Governor Purdue was quite irate with the recommendation. Dr. O'Neal believes the issue will boil down to one of cost, and a stand-alone agency (to create the infrastructure necessary for it to be stand alone and not be attached), is going to be costly. The present budget situation may not support this. Wherever Public Health goes, OEMS/T will go too.

LAW REPORT – Mr. Alex Sponseller sent a letter to the Commission members on 09 November 2010 (*attached to these minutes*) on ethical guidelines. There are four bodies of law that govern ethical and conflict of interest in government agencies. There are two specific statutes, two general statutes and the Georgia constitution itself. The conflict of interest statutes, Code Section 45-10-20, prohibits business transactions between private business and government agencies controlled by people working at that agency which also have an ownership stake in the business. He discussed business investment conflict definitions which prohibit business transactions with private business between government agencies controlled by people working at that agency. The threshold is the 25% stake in a business. The definition of business transaction means to sell or lease personal or real property to the agency, but the Commission and its members do not do that. We are giving out uncompensated care and grant money. In a letter, Mr. Sponseller concludes Commission business is not business transactions and there are also exceptions to that statute.

Financial disclosure statutes – Code 21-5-50. Commission members will need to comply. Each year the Commission members and the executive director will need to file a disclosure form. Starting January 2011, will complete an affidavit confirming that the subject public officer took no official action the previous calendar year that had a material affect on their private, financial or business interest. If there is a material effect or transaction, you will need to disclose this on the affidavit. Filed with state ethics commission.

Code of Ethics - 45-10-3 applies to all Commissions. If you or a family member has a **25% stake** in a business and coming before the agency for funds, you should recuse yourself from votes on those applications and criteria. When presentation is made to commission, it would be recommended that someone else present instead. If there is competition, refrain from voting on criteria or participate in final approvals. We are not conducting business transactions. Uncompensated funds are not an issue because there are no winners or losers. Anyone eligible for uncompensated funds can apply.

Readiness or competitive grant funds can be viewed differently since there is an application process and some will get money and some not. So, you should refrain from voting on the criteria and the final approval of applications if you, once again, have ownership criteria as stated above and plan on making an application for funds. The Commission has done this already, essentially, because it farms out the application to DCH. It is just important, going forward, those clear rules are set out. Mr. Hinson recommended we all go to the ethics to the ethics webpage and sign up.

Dr. Ashley suggests that we note this in the bylaws for institutional history. Mr. Sponseller will put this in writing and it will become a part of bylaws upon approval by the Commission. The attached letter from Mr. Sponseller will become part of the record for this meeting.

Mr. Jim Pettyjohn will send the ethics link link to all commission members to complete the affidavit form on the webpage.

Old business:

Ms. Linda Cole proposes Commission meetings be held every other month. It was decided that we schedule January, February and March 2011 meetings, but cancel February if there is not a driving reason to hold the meeting. We may then skip April and work on an every other month schedule.

New business:

Georgia Trauma Commission Retreat - Dates: 05 & 06 January 2011, Wednesday and Thursday in Rome, Georgia. Start time: 12:00 p.m. with lunch to continue to late afternoon on the 6th. Meeting announcement will be posted and be a full Commission working meeting; open to the public. There will be no other trauma commission meetings in January.

NEXT MEETING

Minutes Approved on 17 February 2011

December Commission Meeting – Date: 16 December 2010 Location: GTRI, Atlanta, Georgia and devoted to software review.

Meeting Adjourned: 12:58 p.m.

Minutes crafted by Carol Dixon



Georgia Trauma Commission
GEORGIA TRAUMA CARE NETWORK COMMISSION

03 November 2010

As Chair of the Georgia Trauma Commission, I would like to take a few moments and provide some personal insights into the recent trauma campaign that was on the ballot on November 2 as amendment 2. Many thanks to all of the patients, paramedics, nurses, physicians, and the entire Yes2Savelives campaign team and supporters for their tireless efforts in attempting to provide sustainable funding for Georgia's trauma system. This is a noble cause with the ultimate goal of providing rapid access to life saving trauma care to all Georgians involved in a serious accident.

Although disappointed in the outcome, it is important to note that 1.2 million Georgians supported access to trauma care and were willing to pay an additional fee of \$10.00 per year. This is a significant amount of support even in these difficult economic times. As I traveled throughout the state and heard comments from voters and evaluating the polling data, it is clear that even the people that voted "no" want the same access to trauma care and the development of a trauma system. They however, would like the funding to be provided by the general fund of the state with no new taxes at this time. So it is important that we realize that this "no" vote is not against trauma system development, but simply an objection to the source of funding at this particular time in history.

The Tea Party has stated in various reports over the last two months that they support trauma care, but no new taxes. The Trauma Commission will take this information back to our legislators in the next legislative session and we look forward to working with them to develop a statewide trauma system that will provide the rapid access to trauma care that we need.

In closing, we must remember that the injured patient is the reason that we continue to fight this battle for trauma system development. Our patients are grateful for our support and are counting on us. I hope that everyone will continue to work with us in the development of our system and again thank you for your tireless efforts supporting trauma care in Georgia!

Dennis Ashley, MD

Dennis W. Ashley, MD, FACS, FCCM
Director of Trauma and Critical Care
Medical Center of Central Georgia
Professor of Surgery
Mercer University School of Medicine



Georgia Trauma Care

NETWORK COMMISSION

EMS SUBCOMMITTEE ON TRAUMA

MEETING MINUTES
Tuesday, November 2, 2010
Scheduled: 10:00 am until 11:00 am
GTRI Conference Center
(Georgia Tech Research Institute)
250 14th St. NW
Atlanta, Georgia 30318
Meeting Room 119B

CALL TO ORDER

Mr. Ben Hinson called the November monthly meeting of the EMS Subcommittee on Trauma to order at the GTRI Conference Center at 10:15 a.m.

SUBCOMMITTEE MEMBERS PRESENT	SUBCOMMITTEE MEMBERS ABSENT
Ben Hinson, Chair Subcommittee & GA Trauma Commission Member Ralph McDaniel – EMS Region One Chad Black – EMS Region Two Richard Lee – Region Four Lee Oliver – Region Five (via tele-conference call) Blake Thompson – Region Six Jimmy Carver – EMS Region Seven Craig Grace-Region Eight (via tele-conference call) David Moore – Region Nine Huey Atkins – Region Ten	Dr. Pat O'Neal - SOEMS Pete Quinones-Region Three Rich Bias - GA Trauma Commission Member Courtney Terwilliger – EMSAC

OTHERS SIGNING IN	REPRESENTING
Ryan Goodson Marty Billings Mark Chapman David Borghelli Regina Medeiros Lawanna Mercer-Cobb Russ McGee Michelle Archer Scott Sherrill Kirk Pennywitt	Georgia Trauma Commission, Communications Lead Metro Atlanta Ambulance Service Children's Healthcare of Atlanta Houston Healthcare/Houston County EMS Medical College of Georgia Region 6 EMS Region 5 EMS Region 5 EMS GTRI GTRI

Welcome and Introductions

Mr. Hinson welcomed all present at the meeting. Mr. Hinson recognized a quorum of the voting members were present.

Approval of Minutes from October 5 Meeting

The first order of business was the approval of the minutes from the 5 October 2010 subcommittee meeting.

Mr. Ralph McDaniel stated that on page 6 in the first paragraph that the name of Mr. Russ Honeycutt was incorrect as to the person he was referring to was Mr. Russ McGee.

MOTION #1 EMS Subcommittee 2010-11-02:

I make the motion to approve the minutes from the 5 October 2010 meeting as written with the above changes being noted.

MOTION BY:

Ralph McDaniel

SECOND:

Jimmy Carver

ACTION:

The motion **PASSED** with no objections, nor abstentions.

AVLS PROGRAM UPDATE

Mr. Ryan Goodson presented an update on the AVLS Program. As of the last committee meeting we have reached out to more services in Regions 5 and 6 who were slow in responding by pushing more information out to the directors of the services in these areas. Region 5 has full participation from all agencies with the exception of one service. We are in the process of talking with Augusta Fire Department and bringing them on board in Region 6.

Mr. Kirk Pennywitt was introduced and provided a presentation for the AVLS Program Overview. (*PowerPoint presentation attached to minutes.*)

Some of the noted highlights are:

- Total of 27 of 30 providers and 193 of 239 vehicles in Regions 5 & 6 are expected to participate
- 146 AVLS units across 17 EMS organizations distributed to-date, with an additional 25 units and 3 organizations to be delivered this week. Seven more agencies with 22 vehicles are anticipated to join soon.
- Of the first 146 systems, 70 units across 14 agencies are either on-line or in the process of activation as of 1 November 2010. At least 10 agencies are fully operational.
- 8 of 11 organizations in Region 6 are participating with all units currently on-line. 1 more agency in this region is expected to join.
- 12 of 19 organizations in Region 5 are currently participating with up to 6 more anticipated shortly.
- Six organizations (all in Region 6) have submitted and been approved for reimbursement requests, at an average installation cost of \$300 per vehicle.

Gold Cross EMS and Jefferson County EMS were not interested in participating because they already have AVLS units installed and are pleased with what they have.

It is noted that Treutlen County EMS stated they are not interested in participating. Mr. Ryan Goodson visited with them many times and they just do not want to participate.

Mr. Ben Hinson stated that he knows these folks in Treutlen County and they are working hard to keep their doors open. They have many economic challenges and he had heard they were afraid it would cost them more money down the road.

Mr. Chad Black questioned "is the reason they are unwilling to participate due to the possibility of the program costing them more money down the road and is this the number one reason people didn't want to participate?"

Mr. Ryan Goodson confirmed the number one reason is the cost factor. After re-visiting with the services and giving them a more definitive definition of the grant process and taking the time to show them what it involved, we got a better response for participation.

Mr. Ben Hinson thanked Mr. Russ McGee for his help in turning Region 5 around.

Mr. Kirk Pennywitt stated that additional logins are also available for \$120 per year per seat extra cost or In Motion has stated that they would upgrade all agencies to five logins per agency for \$180 if everyone participated.

Mr. Ben Hinson requested clarification on the \$180 for the additional five logins and feels that this is something that needs to be discussed with the possibility of the Trauma Commission funding this.

There were no questions or comments and Mr. Hinson thanked Mr. Kirk Pennywitt for his presentation. It was noted that 90% participation was outstanding.

Discussion:

Mr. Pennywitt also referenced a map which shows the display of all the vehicle locations that are active with AVLS and online.

Mr. Huey Atkins questioned who had access to this display which shows all of the vehicles and their locations. Mr. Pennywitt responded that he was the only one who had access to this map. When questioned if he would supply that to others, Mr. Pennywitt stated he would have to get approval. Mr. Ben Hinson responded that no one would be allowed access to obtain this information.

Mr. Pennywitt stated that the information could be made available but it was agreed that this information would not be shared. Vehicle tracking and information is sensitive data and all the information is purged after 14 days with information being wiped off the server after the 14 day period. Mr. Hinson further stated that the only time the information would be shared would be in a disaster situation and that it would be in violation of the contract if the map was shown. Mr. Ben Hinson also asked Mr. Pennywitt, in the future, that no map be made available during meetings.

Mr. Huey Atkins feels if we have a system that is tracking on call/off call vehicles, then he has no problem with that but, if someone asked him where and what, then he would have a problem. Mr. Ben Hinson suggested that a letter be sent to the participating services to see if they would be okay with a map (snapshot) showing vehicles be made available at meetings.

Mr. Lee Oliver asked for a repeat of what Mr. Huey Atkins and Mr. Kirk Pennywitt stated. He feels that services within Region 5 bought in with the understanding that this information would not be shared and it may look like something else is going on. He agrees with Mr. Hinson and wonders what would happen if someone would not agree to showing this map. Mr. Hinson feels that everyone would understand that a snapshot once a month to show the progress would be okay.

Mr. David Moore questions if one service responds with a "no" would that cancel the whole thing for everyone. Mr. Ben Hinson responds that all have to agree.

Mr. David Moore stated there is a difference with a snapshot and a moving vehicle.

Mr. Ben Hinson recommends that a letter be sent out stating that for deployment planning purposes, etc. a snapshot is produced on a monthly basis to the EMS Subcommittee. The letter should state that if they have a problem with this being done, they need to notify the EMS Subcommittee. Mr. Richard Lee asks is this a statewide snapshot? Mr. Hinson requested that Mr. Kirk Pennywitt send this letter out to the services. Mr. Huey Atkins states that they need to be directed to contact their region representative if they have any questions.

Mr. Ralph McDaniel stated that he didn't know of anyone that would not agree to it but we need to ask permission and if they don't respond have someone contact them. Mr. Ben Hinson then agrees that we need to ask for permission and if they don't respond someone should contact them. This will be sent out in e-mail format.

Consensus of the group is agreeable with everyone of the subcommittee.

Mr. Chad Black questioned what are the plans if there is a disaster, would the incident command be able to log-in and see everyone? Mr. Ben Hinson replied that GEMA would be doing this and it would be visible in the GEMA command center. Mr. Ben Hinson stated there had never been a disaster where there was never enough EMS.

Mr. Ben Hinson reported that the Trauma Commission has not yet voted as to what a disaster is and cannot be turned on until this is done. He feels that this EMS Subcommittee should address this and make a recommendation to the Trauma Commission.

Mr. Chad Black feels it should be the director of the service involved to declare a disaster. Mr. Jimmy Carver agrees with this. Mr. Hinson questioned, "That if it is just a disaster for one area should the system be turned on for the whole statewide system?"

Mr. Kirk Pennywitt states that GEMA intends to address these issues with their AVLS Steering Committee/working group that they are in the process of assembling. They will be dealing with these issues as the new agencies come on-board in the future and grandfathering the agencies that are already on board. At this time, GEMA has no log-in and cannot access the information. Mr. Pennywitt and In-motion are the only ones at this time that can see this information.

Mr. Pennywitt has asked In Motion to provide a version of the software for GEMA that would display a real-time view but disable the tracking and they said this could be done. Mr. Chad Black questioned whether or not you could just turn on one region if needed instead of the whole state. Mr. Kirk Pennywitt stated it could be done.

Mr. Ben Hinson states he feels there could be a downside to pushing this too fast. We need to wait and do it right and we need to be sure as GEMA develops this that the subcommittee be involved. Is it right to appoint a subcommittee from this group? It is noted that GEMA is meeting November 22 and we need to be fully involved.

Mr. Chad Black states he feels that someone needs to go to GEMA and see how this is going to look.

Mr. Craig Grace wanted to know what the timeline is on the test program. When will everybody be on line and when will the test program actually begin and how long will it last? Mr. Ben Hinson stated we are awaiting the TCC to come online. Mr. Hinson reported that GEMA will take over January 1, 2011, with the deployment and they have agreed to follow the recommendations of the committee. We are working to get it completed as soon as we can.

Mr. Lee Oliver questioned had the contracts been signed in the two pilot areas for the hospitals participating in the TCC work. Ms. Regina Medieros stated they have not been.

Mr. Ben Hinson stated again that we need to hold off and see how Amendment 2 goes before we pursue the additional \$180 for five log-ins.

EMS UNCOMPENSATED CARE PROGRAM CRITERIA RECOMMENDATIONS

Mr. Huey Atkins reported that after discussion regarding the uncompensated care reimbursement, it was noted that everyone agreed to go with the Medicare reimbursement rate factor. Mr. Huey Atkins states whatever process is easiest for Ms. Regina Medeiros would be the way to handle this. If there is any money left over, what happens with this money? Ms. Regina Medeiros responded that there were more funds than claims and that the remainder was pro-rated and divided with emphasize that year being on trauma education. Ms. Regina Medeiros also stated that we could look at other alternatives, and there was a mechanism in place to handle this.

Mr. Atkins stated that he recommends that we go with the Medicare rate and use the rural modifier for those areas and keep it as simple as we can.

Mr. Ben Hinson presented a worksheet on the projector that would be emailed out to everyone. This spreadsheet allows everyone to input the data necessary but will keep certain areas locked down so certain items cannot be changed. Names, pick-up points and destinations would not be shown. The trauma center destination and trauma registry number will be shown and this is to try to make it as simple as we can, trying to get around HIPPA, etc. There will also be a certification form to be signed so that if there is ever an audit, we would be covered. This form will be provided to Ms. Regina Medeiros and it will give her the total approved charges with all claims on one sheet and will give her the amount to be paid for each claim. The sheet we want to come up will be simpler than the one we have presented today.

Mr. Huey Atkins states that the main purpose of this uncompensated care was to help the rural counties. However, Grady Hospital got 1/3 of the uncompensated care money last year and this is not going to the heart of the matter when the rural counties are the ones that are struggling with trauma care and this is what the money should have been going to.

Mr. Ralph McDaniel stated that not everyone applied, and if they did, then Grady would not have gotten 1/3 and CHOA 12%.

Mr. Huey Atkins states he wants to find a way to lean towards the rural sides and it needs to be a simple solution. What counties are considered to be rural? This process needs to be simple.

Mr. Ben Hinson suggested that if the agency is zoned primarily rural that they would receive the additional 50% increase for mileage only.

Mr. Ben Hinson states we can create this and it will be emailed to Ms. Regina Medeiros for processing and we can add whatever policy we need. The spreadsheet will include the trauma registry number, rural/non-rural, trauma center destination, number of miles, etc. and the form will be forwarded to Ms. Regina Medeiros for processing. The agencies will keep their original documents in house. The main purpose is to get this to Ms. Regina Medeiros for processing.

Mr. Huey Atkins feels that if the EMS Subcommittee can agree on the process then we can worry about the nuts and bolts.

MOTION #2 EMS Subcommittee 2010-11-02:

I make the motion to move forward with the uncompensated reimbursement using the Medicare rate and mileage and if they are considered to be rural they would get a 50% increase for mileage. All will be paid at the Medicare ALS rate.

**MOTION BY:
SECOND:
ACTION:**

**Huey Atkins
Chad Black**

The motion ***PASSED*** with no objections, nor abstentions.

Future Meeting Schedule Discussion:

Mr. Ben Hinson stated that when Amendment 2 passes that we would need to have a full-day or two-day meeting after the first of the year. If we get funding, we will do a two-day event because we will have a lot of work to do.

OLD BUSINESS

None

NEW BUSINESS

None

Meeting adjourned: 11:20 p.m.

Next meeting will be held Tuesday, 07 December, 2010, in Macon, Georgia. Location will be determined at a later date.

Georgia EMS Automatic Vehicle Location System (AVLS) Program Overview

2 Nov 2010

AVLS Unit Distribution by Organization

Provider	AVLS Units Delivered	Delivery Date	AVLS Units Online as of 11/1/10	Notes
Region 5				
Heartland EMS, Inc.	20	pending		Order received 10/18/10; delivery planned for week of 1Nov10.
Houston	14	8/4/10	0	Per email of 10/8/10, they plan to perform installations 10/25 - 11/8/10.
Jasper	3	9/29/10	2	2 of 3 oMGs configured Oct 13; 3rd of 3 Oct 19.
Johnson	3	9/29/10	0	Units delivered on 9/29/10.
Laurens	9	8/4/10	9	Completed.
MCCG	24	10/8/10	9	all 24 oMGs configured by Oct 26.
MidGeorgia	39	9/1/10	1	Large complex installation, will require some time.
Putnam	5	8/4/10	5	Completed.
Telfair	4	8/4/10	1	Beginning dialogue with Jennifer of Telfair (4 oMGs).
Washington	4	9/29/10	0	Units delivered on 9/29/10.
Wheeler	2	pending		Order received 10/18/10; delivery planned for week of 1Nov10.
Wilkinson	3	pending		Order received 10/18/10; delivery planned for week of 1Nov10.
Region 5 Totals	130		27	12 Participating Region 5 Providers, 20 % of vehicles online.
Region 6				
Burke	12	8/4/10	12	Completed. Reimbursed \$2,418 on 10/19/10.
Emanuel	5	8/4/10	5	Completed.
Jenkins	3	8/4/10	3	Completed. Reimbursed \$989.95 on 9/30/10.
Lincoln	3	8/4/10	3	Completed. Reimbursed \$897 on 9/16/10.
McDuffie	6	8/4/10	6	Completed. Reimbursed \$1,770 on 9/30/10.
Screven	4	8/4/10	4	Completed (4 oMGs)
Warren	3	8/4/10	3	Completed. Reimbursed \$885 on 9/15/10.
Wilkes	5	8/4/10	5	Completed. Reimbursed \$1,475 on 10/12/10.
Region 6 Totals	41		41	8 Participating Region 6 Providers, 100 % of vehicles online.
Total Participating Vehicles	171		68	20 Total Participating Region 5 & 6 Providers, 39 % of vehicles online.

Regions 5 & 6 Non-Participating Organizations

Non-Participants to-date	# of Vehicles	Notes	Tentative cutoff date of 1Nov2010 for final participation decisions
Region 5			
Dodge County EMS	4		sending the MOA today to sign.
Hancock County EMS	3		Have MOA and in process of signing it and returning it back to Jim.
Monroe Co. EMS	5		Have MOA, expecting a signed copy in the office soon.
Peach Co EMS	5		Have agreed to go with TC AVL program over their system; agreement in progress.
Taylor Regional Hospital EMS	3		Discussed program with Mr. Britt 11/1/10. Awaiting answer.
Treutlen Co. EMS	2	Won't participate.	Is there a reason given for their non-participation?
Wilcox Co. EMS	4		Agreement sent and waiting for it to return.
Region 5 Non-Participating Vehicles	26	2 Vehicles are Definite No's	
Region 6			
Augusta Fire Department	2		May reconsider, per 13Oct conversation w/ Ryan Goodson of GTCNC.
Gold Cross EMS, Inc.	39	Won't participate.	Already have IMT AVLS units installed.
Jefferson Co. EMS	1	Won't participate.	Covered by Gold Cross, already have IMT AVLS units installed.
Region 6 Non-Participating Vehicles	42	40 Vehicles are Definite No's	
Total Non-Participating Vehicles	68	10 Providers	3 Definite Non-Participating Providers

Current Status (as of 1 Nov 2010)

- Total of 27 of 30 providers and 193 of 239 vehicles in Regions 5 & 6 are expected to ultimately participate. = 90% Agency Participation Rate, 81% vehicle coverage.
- 146 AVLS units across 17 EMS organizations distributed to-date, with an additional 25 units and 3 organizations to be delivered this week. 7 more agencies with 22 vehicles are anticipated to join soon.
- Of the first 146 systems, ~70 AVLS units across 14 agencies were either online or in the process of activation as of 1 Nov 2010. At least 10 agencies are fully operational (i.e., installation & configuration fully completed).
- The remaining units are (or will be) distributed across 6 agencies and are awaiting activation.
- 8 of 11 Region 6 agencies are participating with all units currently online. 1 more Region 6 agency is expected to join.
- 12 of 19 Region 5 agencies are currently participating, with up to 6 more Region 5 agencies anticipated shortly.
- Six agencies (all in Region 6) have submitted and been approved for reimbursement requests, at an average installation cost of \$300 per vehicle.

Viewing Vehicle Status using oMM & GTVC

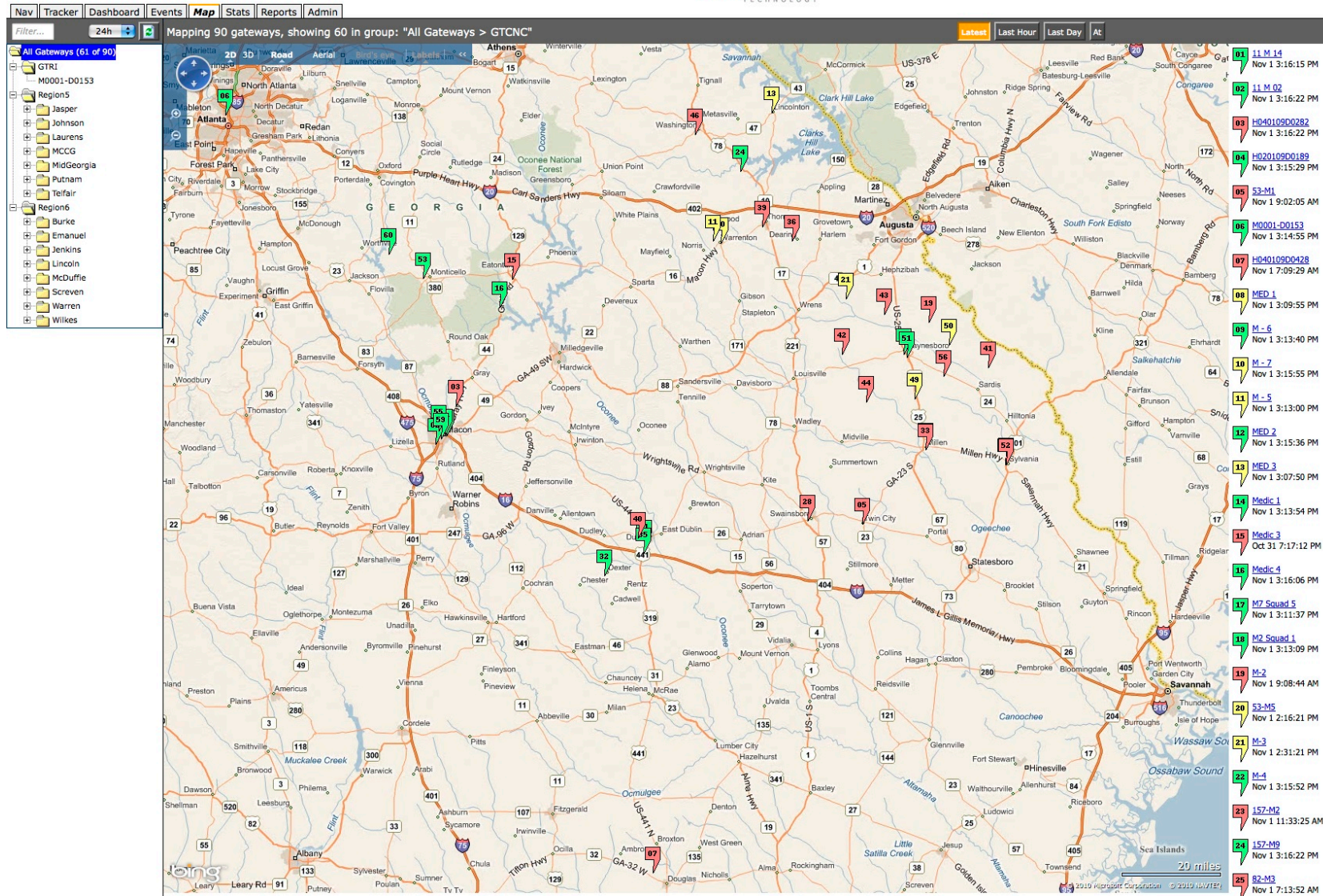
- Users may view their vehicle location using either In Motion's Onboard Mobility Manager (oMM) web software or the GTVC client software.
- In Motion provides two oMM user logins to each organization – one for the IT POC and one for the Dispatch user. **Additional logins available at \$120/yr per seat extra cost, or \$180/yr per agency for five (5) logins per agency.**

GTVC Display of Vehicle Locations

The screenshot displays the GTVC Client Version 2.2 interface. The main map shows the state of Georgia with various cities and roads. Numerous vehicle icons are overlaid on the map, each labeled with a unique identifier such as 'MED 1 43', 'M-6', 'M-7', 'M-2', 'M-11', 'M-10', 'M-5', 'M-9', 'M-8', 'M-9', '82-M2', '124 M4', 'M5', 'M8 Squad 2', '53-M5', '53-M1', '53-M3', 'M1 Squad 3', 'M4', 'M1 Squad 3', '11 M 05', '11 M 08', '11 M 01', 'Spare #03826', 'Medic 4', 'Medic 1', 'Med 3 #01480', 'M0001-D0153', and 'M0001-D0153'. The interface includes a menu bar (File, Edit, Navigate, My Places, Plug-Ins, View, Preferences, Help), a toolbar, and several panels on the right side: 'Overview Map' (Auto-Select: Level 4), 'Layers' (Session: Local Session, Session: Persistent Ambulance Session), and 'Users' (Session: Persistent Ambulance Session). A timeline and session explorer are visible at the bottom left. The status bar at the bottom right shows the coordinates: Lat/Lon: N 33° 57.969', W 084° 46.230' (WGS84).

InMotion oMM Display of Vehicle Locations

onBoard™ Mobility Manager



Additional Questions?

EQUIPMENT GRANT

Region#	Service Name	Number of Vehicles	Director's Name	Award
1	Angel Emergency Medical Services	13	D. DeWayne Wilson	\$4,693.00
1	Bartow County EMS	11	Larry Owens	\$3,971.00
1	Clark Ambulance Service	9	Keith A. Puckett	\$3,249.00
1	Fannin County EMS	5	Lonnie Oliver	\$1,805.00
1	Floyd Emergency Medical Services	11	M.L. Bud Owens	\$3,971.00
1	Gilmer County Fire and Rescue	6	Tony Pritchett	\$2,166.00
1	Gordon EMS	7	Courtney Taylor	\$2,527.00
1	Hamilton EMS	12	Rick Cobb	\$4,332.00
1	Murray EMS	6	Larry Ballew	\$2,166.00
1	Walker County EMS	9	Randy Camp	\$3,249.00
	Total For Region 1	89		
2	Dawson County BOC	5	Billy Thrumond	\$1,805.00
2	Franklin County Emergency Medical Services	8	Terry Harris	\$2,888.00
2	Rabun County EMS	7	Michael L. Carnes	\$2,527.00
2	Stephens County EMS	6	Aaron Wilkinson	\$2,166.00
2	Towns County EMS	5	Rickey Mathis	\$1,805.00
2	Union General EMS	6	Wesley Rogers	\$2,166.00
2	White County EMS	5	William Scandrett	\$1,805.00
	Total For Region 2	42		
3	City of Forest Park Department of Fire and Emergency Services	5	John E. Bulckholts Jr.	\$1,805.00
3	Douglas County Fire & Emergency Services	8	Scott E. Spencer	\$2,888.00
3	EMS Ventures dba Rural Metro Ambulance - North Fulton	18	Reg. P. James	\$6,498.00
3	EMS Ventures dba Rural Metro Ambulance - South Fulton	21	Reg. P. James	\$7,581.00
3	EMS Ventures dba Rural Metro Ambulance Dekalb County	18	Reg. P. James	\$6,498.00
3	Grady EMS-Grady Health Systems	47	Michael Colman	\$16,967.00
3	Gwinnett County EMS	34	Bill Myers	\$12,274.00
3	MetroAtlanta Ambulance Service	50	Marty Billings	\$18,050.00
3	National EMS	10	Huey Atkins	\$3,610.00
3	Newton Medical Center	8	Kevin Johnson	\$2,888.00
3	Puckett EMS Inc.	16	Doug Norton	\$5,776.00
	Total for Region 3	235		
4	Butts County Fire Department	4	Mike Wilson	\$1,444.00
4	Fayette County Fire and Emergency Services	6	M. Allen McCullough, PhD	\$2,166.00
4	Heard County EMS	5	Scott W. Blue	\$1,805.00

4	Henry County Fire Department
4	Meriwether County EMS
4	Mid Georgia Ambulance Lamar County
4	Mid Georgia Ambulance Pike County
4	Troup County EMS
4	Upson Regional EMS
4	West Georgia Ambulance Inc.
4	West Point Fire Department
Total for Region 4	
5	Dodge County EMS
5	Hancock County EMS
5	Heartland EMS Inc. Bleckley County
5	Heartland EMS Inc. Wheeler County
5	Heartland EMS Inc. Wilkinson County
5	Houston County EMS
5	Jasper County EMS
5	Johnson County EMS
5	Laurens County EMS
5	Medical Center of Central Georgia EMS (Baldwin County)
5	Medical Center of Central Georgia EMS (Bibb, Jones, Twiggs)
5	Mid Georgia Ambulance Bibb County
5	Mid Georgia Ambulance Crawford County
5	Monroe County EMS
5	Peach County EMS
5	Putnam County Ambulance Service
5	Taylor Regional EMS
5	Telfair County EMS
5	Toombs/Montgomery County EMS
5	Washington County EMS
5	Wilcox County EMS
Total For Region 5	
6	Burke County Emergency Management Agency
6	Emanuel County EMS
6	Gold Cross EMS/Jefferson County
6	Jenkins County EMS
6	Lincoln County Office of Emergency Services
6	Screven County EMS
6	Warren County EMS

16	Billy Kunkle	\$5,776.00
3	Thomas Chapman	\$1,083.00
2	Ben Hinson	\$722.00
2	Ben Hinson	\$722.00
5	Erin K. Downey	\$1,805.00
6	Richard Lee	\$2,166.00
5	Shane Bell	\$1,805.00
1	Milton I Smith	\$361.00
55		
4	Annette Huff	\$1,444.00
2	Richard Warren	\$722.00
21	W.J. (Bill) Cheek	\$7,581.00
2	W.J. (Bill) Cheek	\$722.00
3	W.J. (Bill) Cheek	\$1,083.00
16	David Borghelli	\$5,776.00
3	Jeff Bratcher	\$1,083.00
3	Wendell Brantley	\$1,083.00
9	Terry Cobb	\$3,249.00
5	Lee Oliver	\$1,805.00
19	Lee Oliver	\$6,859.00
8	Ben Hinson	\$2,888.00
1	Ben Hinson	\$361.00
5	Ronald Norriss	\$1,805.00
5	Al Ford	\$1,805.00
5	James M. Gregory	\$1,805.00
3	Ray Britt	\$1,083.00
4	Jennifer Williamson	\$1,444.00
2	Raymond Carroll	\$722.00
4	H.T. Downs	\$1,444.00
4	Randy Coker	\$1,444.00
128		
12	Rusty Sanders	\$4,332.00
5	Courtney Terwilliger	\$1,805.00
3	Carl Wagster	\$1,083.00
3	Henry Young	\$1,083.00
3	Casey Broom	\$1,083.00
4	Gary Pinard	\$1,444.00
3	Tommy Wolfe	\$1,083.00

6 Wilkes County EMS
Total For Region 6
7 Clay County EMS
7 Columbus Fire and EMS
7 Georgetown-Quitman EMS
7 Macon County EMS
7 Marion County EMS
7 Mid Georgia Ambulance Chattachhchee County
7 Mid Georgia Ambulance Muscogee County
7 Randolph County EMS
7 Schley County EMS
7 Stewart County EMS
7 Talbot County EMS
7 Taylor County Emergency Medical Service
Total for Region 7
8 Baker County EMS
8 Ben Hill County EMS
8 Berrion County EMS
8 Calhoun County EMS
8 Colquitt County EMS
8 Colquitt-Miller Fire EMS
8 Crisp County EMS
8 Decatur County EMS
8 Dougherty County EMS
8 Grady County EMS
8 Lanier County EMS
8 Mid Georgia Ambulance Cook County
8 Mitchell County EMS
8 Seminole County EMS
8 Thomas County Emergency Medical Services
8 Tift County EMS
8 Turner County EMS
8 Vitalcare/Sumter EMS
Total For Region 8
9 Alma Bacon County Ambulance Service
9 Appling Healthcare System
9 Atkinson County EMS
9 Brantley County Emergency Medical Services

5 Blake Thompson \$1,805.00
38
2 Ronald Brown \$722.00
10 Jeff Meyer \$3,610.00
2 Tammye Atkinson \$722.00
3 Andy Windham \$1,083.00
3 John Lassen \$1,083.00
1 Ben Hinson \$361.00
2 Ben Hinson \$722.00
3 Ellette H. Jackson \$1,083.00
2 Duane Montgomery \$722.00
2 Duane Montgomery \$722.00
2 Jerry Anthony \$722.00
3 Gary C. Lowe \$1,083.00
35
2 Melinda Worth \$722.00
6 Cathy Bishop \$2,166.00
4 Daryel Lancaster \$1,444.00
2 Dexter Beard \$722.00
5 Amy F. Williams \$1,805.00
3 Craig Tully \$1,083.00
5 Danny Edwards \$1,805.00
6 William B. Hogan \$2,166.00
13 Bobby Tripp \$4,693.00
3 William E. Rathel \$1,083.00
3 John R. Patten \$1,083.00
2 Ben Hinson \$722.00
7 Ann Lamb \$2,527.00
4 Toby Roland \$1,444.00
8 Tim Coram \$2,888.00
7 Craig Grace \$2,527.00
4 Randall Widdon \$1,444.00
4 Chris Hunter \$1,444.00
88
4 Robert S. Taylor \$1,444.00
5 Robin Crosby \$1,805.00
2 Waylan Carter \$722.00
5 Tim Crews \$1,805.00

9 Bryan County Emergency Services
 9 Bulloch County EMS
 9 Camden County Fire Rescue
 9 Candler County EMS
 9 Charlton County EMS
 9 Clinch County EMS
 9 Coffee Regional Medical Center EMS
 9 Effingham County EMS
 9 Jeff Davis County EMS
 9 Jekyll Island Fire & EMS
 9 Liberty Regional EMS/Liberty County
 9 Liberty Regional Long County
 9 McIntosh County EMS
 9 MedStarOne Ambulance Service
 9 Mercy Ambulance Service dba Southside Fire/EMS
 9 Pierce County EMS
 9 Tattnall Community EMS
 9 Toombs County EMS
 9 Ware County EMS
 9 Wayne County Ambulance Service
Total for Region 9
 10 Elbert County Emergency Services
 10 Greene County EMS
 10 Madison County EMS
 10 National EMS
 10 Oglethorpe County EMS
 10 Walton County EMS
Total For Region 10

6 James Anderson \$2,166.00
 8 Lee C. Eckles \$2,888.00
 7 Dennis Gailey \$2,527.00
 4 David Moore \$1,444.00
 3 Bernie Restepo \$1,083.00
 3 Jesse Roberts \$1,083.00
 5 James Turk \$1,805.00
 8 Wanda McDuffie \$2,888.00
 5 Ronnie C. Jowers \$1,805.00
 1 Jason Richardson \$361.00
 7 Jim Turner \$2,527.00
 2 Jim Turner \$722.00
 4 Sheila Keck-Deverger \$1,444.00
 17 Kenneth L. Justice \$6,137.00
 13 Timothy Genest \$4,693.00
 4 Kenneth L. Justice \$1,444.00
 6 Joseph Reynolds \$2,166.00
 4 Raymond Carroll \$1,444.00
 6 Mark Walker \$2,166.00
 5 Richard Johnson \$1,805.00
134
 5 Charles N. Almond Jr. \$1,805.00
 6 B. Jeff Smith \$2,166.00
 8 Jason Lewis \$2,888.00
 18 Huey Atkins \$6,498.00
 3 James A. Mathews \$1,083.00
 7 Nancy Couch \$2,527.00
47

\$321,651.00

Region 1	89	\$32,129.00
Region 2	42	\$15,162.00
Region 3	235	\$84,835.00
Region 4	55	\$19,855.00
Region 5	128	\$46,208.00
Region 6	38	\$13,718.00
Region 7	35	\$12,635.00

Region 8	88	\$31,768.00
Region 9	134	\$48,374.00
Region 10	47	\$16,967.00
	891	\$321,651.00
Amount per ambulance - total funding \$321,522.58	\$360.86	
Number used to figure final amount per unit	361	

FIRST RESPONDER TRAINING GRANT

Region #	Service Name	Director's Name	Population DensityScore	911 Zone Information Score	Total Score
5	The Medical Center of Central Georgia EMS/Twiggs County	Lee Oliver	60	50	110
5	Hancock County EMS	Richard Warren	60	40	100
5	Mid Georgia Crawford County	Ben Hinson	60	40	100
5	Treutlen County EMS	Gregg Higgs	60	40	100
7	Mid Georgia Chattahoochee County	Ben Hinson	60	40	100
7	Schley County EMS	Duane Montgomery	60	40	100
7	Talbot County EMS	Jerry Anthony	60	40	100
8	Baker County EMS	Melinda Worth	60	40	100
9	Atkinson County EMS	Waylan Carter	60	40	100
9	Liberty Regional EMS/ Long County	Jim Turner	60	30	100
5	The Medical Center of Central Georgia EMS/Jones County	Lee Oliver	57	40	97
5	Heartland EMS Inc-Wheeler County	W.J. (Bill) Cheek	60	30	90
6	Jenkins County EMS	Henry Young	60	30	90
7	Randolph County EMS	Ellette H. Jackson	60	30	90
7	Stewart County EMS	Duane Montgomery	60	30	90
8	Lanier County EMS	John R. Patten	60	30	90
9	Alma Bacon County Ambulance Service	Robert S. Taylor	60	30	90
9	Clinch County EMS	Jesse Roberts	60	30	90
5	Heartland EMS Inc. Beckley	W.J. (Bill) Cheek	57	30	87
5	Dodge County EMS	Annette Huff	60	20	80
5	Heartland EMS Inc.-Wilkinson County	W.J. (Bill) Cheek	60	20	80
5	Johnson County EMS	Wendell Brantley	60	20	80
5	Montgomery County EMS	Raymond Carroll	60	20	80
7	Taylor County EMS	Gary C. Lowe	60	20	80
8	Turner County EMS	Randall Widdon	60	20	80
10	Oglethorpe County EMS	James A. Mathews	60	20	80
4	Mid Georgia Pike County	Ben Hinson	57	20	77
4	Mid Georgia Lamar County	Ben Hinson	55.5	20	75.5
5	Jasper County EMS	Jeff Bratcher	60	10	70
5	Taylor Regional EMS	Ray Britt	60	10	70
5	Washington County EMS	H.T. Downs	60	10	70
6	Emanuel County EMS	Courtney Terwilliger	60	10	70
6	Screven County EMS	Gary Pinard	60	10	70

6 Wilkes County EMS	Blake Thompson	60	10	70
8 Colquitt-Miller Fire EMS	Craig Tully	60	10	70
8 Seminole County EMS	Toby Roland	60	10	70
9 Candler County EMS	David Moore	60	10	70
9 Charlton County EMS	Bernie Restepo	60	10	70
9 Wayne County Ambulance Service	Richard Johnson	60	10	70
2 Towns County EMS	Rickey Mathis	57	10	67
8 Grady County EMS	William E. Rathel	57	10	67
8 Mid Georgia Cook County	Ben Hinson	57	10	67
8 Crisp County EMS	Danny Edwards	55.5	10	65.5
2 Rabun County EMS	Michael L. Carnes	60	5	65
4 Meriwether County EMS	Thomas Chapman	60	5	65
6 Gold Cross EMS/Jefferson County	Carl Wagster	60	5	65
6 Lincoln County Office of Emergency Services	Casey Broom	60	5	65
9 Brantley County Emergency Medical Services	Tim Crews	60	5	65
9 Tattnall Community EMS	Joseph Reynolds	60	5	65
9 Ware County EMS	Mark Walker	60	5	65
10 Greene County EMS	B. Jeff Smith	60	5	65
10 Madison County EMS	Jason Lewis	60	5	65
1 Gilmer County Fire and Rescue	Tony Pritchett	57	5	62
2 Union General EMS	Wesley Rogers	57	5	62
5 Laurens County EMS	Terry Cobb	57	5	62
5 Monroe County EMS	Ronald Norriss	57	5	62
5 Putnam County EMS	James M. Gregory	57	5	62
9 Bryan County Emergency Services	James Anderson	57	5	62
9 Toombs County Board of Commissioners	Raymond Carroll	57	5	62
5 Peach County EMS	Al Ford	51	10	61
2 White County EMS	William Scandrett	55.5	5	60.5
8 Colquitt County EMS	Amy F. Williams	55.5	5	60.5
8 Thomas County EMS	Tim Coram	55.5	5	60.5
9 Bulloch County EMS	Lee C. Eckles	55.5	5	60.5
1 Murray EMS	Larry Ballew	54	5	59
1 Gordon EMS	Courtney Taylor	54	5	59
9 Liberty Regional EMS/Liberty County	Jim Turner	54	5	59
8 Tift County EMS	Craig Grace	52.5	5	57.5

5 The Medical Center of Central Georgia EMS/Baldwin County	Lee Oliver	51	5	56
1 Hamilton EMS	Rick Cobb	43.5	5	48.5
5 Houston Healthcare EMS	David Borghelli	43.5	5	48.5
9 Mercy Ambulance Service dba Southside Fire/EMS	Timothy Genest	4.5	5	9.5



Department of Law
State of Georgia

THURBERT E. BAKER
ATTORNEY GENERAL

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

9 November 2010

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RE: Commission Members and Administrator Conflict of Interest

Dear Dr. Ashley and Commission Members:

You have asked for guidance from this office regarding potential ethical issues and conflicts of interest in conducting the official business of the Georgia Trauma Care Network Commission ("GTCNC"). The GTCNC is made up of nine members representing designated trauma centers, trauma physicians, trauma nurses, and EMS providers. O.C.G.A. § 31-11-101. The GTCNC is mandated to fund and improve trauma services in the State and is assigned a number of duties and responsibilities, including: (1) apply for, receive, and administer state and federal funding; (2) provide funding to compensate designated trauma centers for readiness costs; (3) provide additional funding to trauma centers for other non-readiness costs; (4) provide funding to compensate physicians for trauma care services; (5) provide funding to increase the number of participants in the trauma system; (6) provide funding to compensate EMS for readiness costs and uncompensated trauma care costs; (7) provide funding for investment in a trauma transportation system; (8) act as accountability mechanism for the statewide trauma system; (9) coordinate the best use of existing trauma facilities to direct patients to the best facility for treatment; (10) administer programs to educate citizens on trauma prevention; (11) coordinate the collection of data to evaluate the provision of trauma services; and (12) determine the best practices and methods of trauma care and report any proposed changes to the General Assembly. O.C.G.A. § 31-11-102(1), (3)-(15).

In carrying out its duties and responsibilities, the GTCNC sometimes makes decisions or develops criteria that benefit institutions which employ or are owned and managed by individual GTCNC Commissioners. For example, the GTCNC regularly funds readiness costs for hospitals and EMS providers in the form of grants pursuant to its statutory mandate in O.C.G.A.

§ 31-11-102, and some of these hospitals and EMS providers employ individual Commissioners of the GTCNC, or are owned by individual Commissioners.¹ Although GTCNC has taken steps to address possible conflicts, such as having independent third parties score and award grant applications, questions as to whether funding of institutions connected to individual Commissioners is proper under State law persist.

I. Overview

Georgia ethics and conflicts law is governed by (1) the Conflicts of Interest statutes, O.C.G.A. §§ 45-10-20 to 45-10-70; (2) the Code of Ethics statutes, O.C.G.A. §§ 45-10-1 to 45-10-5; (3) the Georgia Constitution and common law principles; and (4) financial disclosure requirements, O.C.G.A. §§ 21-5-50 to 21-5-53. Each of these components is outlined and discussed below, followed by an analysis and application to the GTCNC. In general, it appears that service on the GTCNC does not implicate the conflicts of interest statute due to the transaction of business with the State, or require its members to file annual financial disclosure reports in 2011. In lieu of financial disclosure statements, GTCNC members and its Administrator would have to file yearly affidavits which aver that each “took no official action in the previous calendar year that had a material effect on such public officer's private financial or business interests.” O.C.G.A. § 21-5-50(a)(2). However, GTCNC members would still have to comply with the general Code of Ethics and keep the general conflicts rules in mind. Accordingly, in my view, it would be advisable for GTCNC Members and its Administrator to refrain from all official actions which they believe would have any material effect on their private financial or business interests.

II. Conflicts of Interest Statutes

To provide public officials with general guidance as to the existence of conflicts of interest, the General Assembly has enacted O.C.G.A. §§ 45-10-20 to 45-10-70. In general, conflicts of interest for public officers and employees under that statute depend on “transacting business”

¹ O.C.G.A. § 31-11-101(a) requires that the appointments to GTCNC include “a physician who is actively involved in providing emergency trauma care, a representative of a hospital that is a trauma care center, and a representative of a state 9-1-1 zone licensed emergency services provider.” Of the GTCNC’s current nine Commissioners, one member is Chief of Trauma at the Medical Center of Central Georgia, one is Chief of Surgery at the Medical Center of Central Georgia, one is the CEO of Atlanta Medical Center, one is the CEO of Floyd Regional Hospital, one is Chief of Trauma at Grady Hospital, one is a Vice-President at Children’s Hospital of Atlanta, one is a Vice-President at the Medical College of Georgia Hospital, one is a Trauma Coordinator at Archbold Hospital, and one is the President and owner of an ambulance service provider.

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with State entities, which is defined as meaning “to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative and means to purchase surplus real or personal property on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative.” O.C.G.A. § 45-10-20(12).

For purposes of conflict of interest rules, state officers and employees are divided into two categories: State officers or employees who have “state-wide powers” and State officers and employees who have limited powers. O.C.G.A. § 45-10-22. Members of GTCNC come under the latter category. A full discussion of these categories is set out in 2004 Op. Att’y Gen. 04-07, a copy of which is annexed hereto for your benefit. As officers or employees who have “limited powers,” members of GTCNC are only prohibited from transacting business with GTCNC. O.C.G.A. §§ 45-10-22(a)(2); 45-10-23; 45-10-24(a)(2); 2004 Op. Att’y Gen. 04-07. In addition to GTCNC members, this restriction applies to their spouses and dependents, and any business entity in which the GTCNC member owns more than 25%, which is considered a “substantial interest.” O.C.G.A. §§ 45-10-22; 45-10-23; 45-10-24; 2004 Op. Att’y Gen. 04-07.

The General Assembly has provided a number of exceptions to these prohibitions, so that “business transactions” that fall within these exclusions are not barred by the state’s “conflicts of interest” statute. O.C.G.A. §§ 45-10-22(b); 45-10-24(b); 45-10-25. These exceptions include transactions “undertaken pursuant to sealed competitive bids” that fall below \$250 per transaction and \$9,000 in the aggregate for a single calendar year, or, if relating to the sale or lease of real property, that are approved by the State Properties Commission or the Department of Administrative Services. *Id.* Other exceptions to the statutory prohibitions include transactions under the state's use of eminent domain; the granting of employment benefits; Medicaid reimbursements; approved part-time work for other agencies; sole source purchases; and transactions necessary to protect the public health, safety, or welfare. O.C.G.A. § 45-10-25(a)(1), (2), (4), (5), (8), (10), (11), (15); *Georgia Dep’t of Med. Assistance v. Allgood*, 253 Ga. 370 (1984) (finding that nursing homes owned by members of General Assembly and receiving Medicaid reimbursements were not “business transactions” and were subject to exceptions from conflicts statute); 2004 Op. Att’y Gen. 04-07.

The fact that a business transaction may be permitted by virtue of a statutory exception, does not end the inquiry where money flows from the State to an outside entity. Business transactions involving the receipt of State funds must be reported to the Secretary of State in January following the calendar year in which the transaction took place. O.C.G.A. § 45-10-26; 2004 Op. Att’y Gen. 04-07. The failure to disclose any transactions is a separate violation of the law unless the amount of the transaction does not exceed \$250 and the aggregate transactions do not exceed \$9,000 in a single calendar year. *Id.* Additionally, a failure to disclose such transactions can result in a person's removal from office, a civil fine of up to \$10,000, and a requirement that

any pecuniary benefit be repaid to the state. O.C.G.A. §§ 45-10-26(c); 45-10-28. A business that violates the disclosure requirements is also subject to a civil fine of up to \$10,000 and restitution to the state for any pecuniary benefit received as a result of the violation. O.C.G.A. § 45-10-28(a)(3).

III. Code of Ethics

The General Assembly has established a “Code of Ethics for Government Service” which lists a number of goals for all state officers and employees. O.C.G.A. § 45-10-1. These tenets include the admonishment that a government official or employee should not engage in any business with the government which is inconsistent with the conscientious performance of his governmental duties, and that such person should never use any information coming to him confidentially as a means for making a private profit. O.C.G.A. § 45-10-1 VII, VIII.

Additionally, boards, commissions, or authorities created by general law, such as the GTCNC, are subject to another specific Code of Ethics, violations of which may lead to removal from office. O.C.G.A. § 45-10-3. This Code Section incorporates the requirements that an officer perform his duties conscientiously and refrain from using confidential information for a private profit. It also specifically prohibits such person from taking any official action on any matter where he knows or should know that he has a direct or indirect monetary interest in the subject matter of the transaction. O.C.G.A. § 45-10-3(3), (4), (9).² Complaints regarding alleged violations of this Code of Ethics are reviewed and adjudicated by the Governor or his designee and can also lead to a person's removal from office. O.C.G.A. § 45-10-4.

IV. Georgia Constitution and Common Law Principles

All public officials are also governed by the Georgia Constitution and common law conflict principles. The State Constitution mandates that “[p]ublic officers are the trustees and servants of the people and are at all times amenable to them.” GA. CONST. Art. I, Sec. II, Para. I. The Supreme Court of Georgia has repeatedly recognized that this constitutional provision creates a special fiduciary duty of loyalty on behalf of public officers and employees and that duty should not be compromised by either divided loyalties or other conflicts of interest. *Georgia Dep't of Human Resources v. Sistrunk*, 249 Ga. 543, 546 48 (1982), *overruled in part, Georgia Ports Auth. v. Harris*, 274 Ga. 146, 147 (2001); *see also Crozer v. Reichert*, 275 Ga. 118 (2002); *Ianicelli v. McNeely*, 272 Ga. 234, 236 (2000); *Georgia State Bd. of Pharmacy v. Lovvorn*, 255 Ga. 259, 260 (1985); *Dunaway v. City of Marietta*, 275 Ga. 118 (1983). Hence, “[a]ll public

² The full list of the Code of Ethics for commissions is attached.

officers . . . are trustees of the people, and do accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from the discharge of their trusts.” *Sistrunk*, 249 Ga. at 547.

For example, the Supreme Court has found that a county planning director could not submit an application for a conditional use permit for his own land to the agency he headed. *Crozer*, 275 Ga. at 121. The Court has also found that the constitutional trust provision prohibits the chairman of the city planning commission from any participation in zoning applications filed by a corporation in which the chairman served as an officer. *Dunaway*, 275 Ga. at 118. Even though the chairman had disclosed his relationship to the applicant and abstained from voting on the application, the fact that he chaired a hearing at which the application was presented raised a factual question as to whether his limited participation tainted the subsequent proceedings. *Id.*

Second, judicial decisions and the common law may identify and prohibit other conflicts of interest. *See, e.g.*, 1997 Op. Att’y Gen. U97-11. One example is the common law prohibition against a public officer or employee holding two incompatible positions. Another example is a person engaging in a transaction where his personal interests are so intertwined that, even without some actual and personal pecuniary gain, the transaction should still be prohibited. *Id.*; *see also Mayor and Council of Macon v. Huff*, 60 Ga. 221 (1878) (mayor could not lease a city park to himself despite lease’s admittedly fair terms since he would be required to enforce contract on behalf of city); *Trainer v. City of Covington*, 183 Ga. 759 (1937) (sale of truck to city by its mayor was void, no matter how fair). Compliance with the aforementioned statutes and constitutional principles will usually safeguard a public officer or employee from engaging in impermissible conflicts of interest. *See Richmond County Hosp. Auth. v. Richmond County*, 255 Ga. 183, 188-89 (1985); 2004 Op. Att’y Gen. 04-07; 1995 Op. Att’y Gen. U95-111.

V. Financial Disclosure Statements

Finally, Georgia law requires the annual filing of financial disclosure statements of certain public officers and employees. O.C.G.A. § 21-5-50(a)(1). Prior to January 11, 2011, all “public officers” were required to file annual financial disclosure statements with the State Ethics Commission. O.C.G.A. § 21-5-50(a)(1). These forms required information including: (1) all business and real estate holdings exceeding \$10,000; (2) all stock and mutual fund holdings in excess of \$10,000; (3) the identities and occupations of the filer’s spouses and identities of the filer’s children. O.C.G.A. § 21-5-50(b). A “public officer” was defined to include “[t]he executive director of each state board, commission, or authority and the members thereof.” O.C.G.A. § 21-5-3(22)(E).

The General Assembly recently amended the financial disclosure laws to generally exclude from reporting those public officers identified in O.C.G.A. § 21-5-3(22)(E). Beginning in January 2011, executive directors and members of State commissions must now only file “an affidavit [with the State Ethics Commission] confirming that such public officer took no official action in the previous calendar year that had a material effect on such public officer's private financial or business interests.” O.C.G.A. § 21-5-50(a)(2) (as amended). However, this does not relieve executive directors and commission members of the business transaction reporting requirements of O.C.G.A. § 45-10-26. *Id.*

VI. Analysis and Application to GTCNC

With all these rules in mind, the GTCNC’s conduct in awarding grant funds implicates some of the aforementioned statutes and rules, but not others. First, it does not appear that the conflicts of interest prohibitions of O.C.G.A. §§ 45-10-20 to 45-10-70 would apply because GTCNC members would not be “transacting business” with the GTCNC as defined in those statutes. O.C.G.A. § 45-10-20(12). Further, because the recipients of the funds are not using the grants to directly benefit the State or sell any equipment purchased back to the State, even if the grants could be considered a “business transaction,” the exception in O.C.G.A. § 45-10-25(a)(3) would apply. *See Allgood*, 253 Ga. at 374.³ Hence, it is my view that the award of grant funds for readiness costs would not violate the conflicts of interest provisions of law of O.C.G.A. §§ 45-10-20 to 45-10-70.

Second, GTCNC members and its Administrator need not file annual financial disclosure reports, but should, starting in January 2011, file annual affidavits with the State Ethics Commission which aver that each official did not take any official action which materially affected the official’s private or business interest. O.C.G.A. § 21-5-50(a)(2) (as amended). If a member does take official action which materially affects an interest, or transacts business with the GTCNC, then these transactions should be identified as mandated in O.C.G.A. § 45-10-26(a).

Third, although the award of grants for readiness costs may not technically constitute “transacting business” with the State, and may be subject to an exception under the conflicts of interest statutes, the GTCNC must also be mindful of the State Code of Ethics, GA. CONST. Art. I, Sec. II, Para. I, and the cases interpreting these provisions. As noted at the beginning of this memorandum, GTCNC members are ultimately responsible for the processing of grant

³ In the *Allgood* case, the legislator was not a member of the Department of Medical Assistance. Membership on the GTCNC could be the basis for a distinction in the treatment of GTCNC members; however, that seems unlikely unless it appears that members of the GTCNC engage in negotiations in the development of the criteria that applications are evaluated on or it appears that a particular criterion is influenced by a member with an interest.

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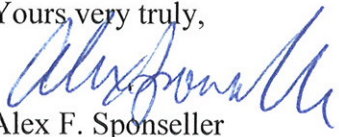
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applications. To avoid any potential conflict of interest or appearance of impropriety, GTCNC has provided for the scoring of applications by an outside agency. However, GTCNC has had to develop the criteria under which these applications are processed. This raises the question of whether GTCNC's role in establishing these criteria puts its members in a position where they may be seen as influencing the result of application evaluations one way or the other. Where there is no significant benefit to a private interest, the possibility of a conflict of interest may be remote. However, even when there is no possible benefit to a private interest, it is possible for a conflict to exist if a GTCNC member holds a position that puts him at odds with the goals of the GTCNC.

Of particular importance is the provision that a public official should “[n]ever take any official action with regard to any matter under circumstances in which he knows or should know that he has a direct or indirect monetary interest in the subject matter of such matter or in the outcome of such official action.” O.C.G.A. § 45-10-3(9). It is not entirely clear how this language should be interpreted, given the exemptions and other provisions of the conflict of interest statute. Accordingly, the only way for the Administrator and GTCNC members to be sure of the absence of any ethical defaults is to avoid to the maximum degree possible proposing, discussing, or voting on any matter which is likely to result in a financial benefit to that person, his or her employer, spouse or dependent, or a business entity in which he or she has a substantial interest. Reference to the conflict of interest statute would seem to be a reasonable benchmark of what constitutes a “substantial interest” or 25% ownership interest by GTCNC members in any institution or business which receives funds from the GTCNC. Of course, if GTCNC members or their family members do not apply to GTCNC for any funding, there would be no possible ethical or conflict issues. See GA. CONST. Art. I, Sec. II, Para. I; O.C.G.A. § 45-10-3; *Crozer v. Reichert*, 275 Ga. 118 (2002); *Ianicelli v. McNeely*, 272 Ga. 234, 236 (2000); *Dunaway v. City of Marietta*, 275 Ga. 118 (1983).

I hope this letter is responsive to your inquiry.

Yours, very truly,



Alex F. Sponseller
Assistant Attorney General

cc: Commission Members
Jim Pettyjohn, Administrator

Westlaw

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Ga. Op. Atty. Gen. No. 04-7, 2004 WL 1639478 (Ga.A.G.)

Office of the Attorney General
State of Georgia

Official Opinion No. 2004-7

July 23, 2004

Re: Members of the Board of Regents of the University System of Georgia hold fiduciary positions of trust under Georgia law, and business transactions between any Regent and the University System are prohibited absent a statutory exception permitting the transaction, and then only if there is no common law conflict creating a breach of their constitutional fiduciary duty.

To: Chancellor

Your office has requested advice on behalf of members of the Board of Regents of the University System regarding four questions dealing with issues relating to Board members transacting business with the state or the University System, and whether any such transactions would be impermissible conflicts of interest. In answering those questions, I will outline the general provisions of Georgia law that are relevant to your questions and then discuss their application to the hypothetical situations described in your letter. At the outset, it is important to recognize generally that members of the Board of Regents of the University System of Georgia hold fiduciary positions of trust under Georgia law, and business transactions between any Regent and the University System itself are prohibited absent a statutory exception permitting the transaction. Any decision on the ultimate propriety of a particular transaction, however, will depend on the facts and circumstances of that transaction and would need to be addressed on a case-by-case basis.

General Provisions of Georgia Law

Any analysis of “conflicts of interest” under Georgia law must begin with the Georgia Constitution and its provisions regarding the origin and structure of state government. The Constitution mandates that “[p]ublic officers are the trustees and servants of the people and are at all times amenable to them.” GA. CONST. Art. I, Sec. II, Para. 1. The Supreme Court of Georgia has repeatedly recognized that this constitutional provision creates a special fiduciary duty of loyalty on behalf of public officers and employees and that duty should not be compromised by either divided loyalties or other conflicts of interest. [FN1] *Georgia Dep’t of Human Resources v. Sistrunk*, 249 Ga. 543, 546 48 (1982), *overruled in part, Georgia Ports Auth. v. Harris*, 274 Ga. 146, 147 (2001). *See also Georgia State Bd. of Pharmacy v. Lovvorn*, 255 Ga. 259, 260 (1985); *Ianicelli v. McNeely*, 272 Ga. 234, 236 (2000). A public officer may not use this special trust to promote his or her own personal interests, regardless of how fair a contract may be, but must instead affirmatively avoid any conflicts of interest. *Sistrunk*, 249 Ga. at 547. [FN2]

In the wake of the *Sistrunk* decision, the General Assembly adopted a series of statutes addressing business transactions between state officers and employees and state agencies or entities. O.C.G.A. §§ 45-10-10 through 45-10-28. *Harris*, 274 Ga. at 146-47. These statutes recognized “not only the need for an impartial and independ-

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ent government and public confidence in the integrity of government, issues which form the core of [the Supreme Court's] holding in *Sistrunk*, but recognized that it is also essential to the proper operation of government that those best qualified be encouraged to serve the government." *Id.* Such legal safeguards against conflicts of interest must also, according to the Supreme Court of Georgia, be designed so as not to unnecessarily or unreasonably impede the recruitment and retention by the government of those men and women who are best qualified to serve. *Id.* at 147.

*2 An essential principle underlying the staffing of our government structure is that its elected officials and employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of such elected officials and employees to the public cannot be avoided.

Id., citing O.C.G.A. § 45-10-21(b)

The "conflicts of interest" statutes referred to above specifically address instances where public officers and employees engage in business transactions with state entities. The officers and employees are generally divided into two categories, each of which has its own specific prohibitions. State officers or employees who have "state-wide powers" are prohibited from transacting business with any state agency. [FN3] O.C.G.A. §§ 45-10-22, 45-10-24. "State-wide powers" means that a public officer or employee has the ability to influence or affect all of state government across the board, rather than on the level of a specific agency or entity. O.C.G.A. § 45-10-20(10). Offices that fall into this category include, but are not limited to, the Governor, Lieutenant Governor, members of the General Assembly, judges of the appellate and superior courts, district attorneys, the Secretary of State, the Attorney General, the state auditor, the commissioners of Administrative Service and the Merit System, members of the State Personnel Board, and the director of the Office and Planning and Budget. *Id.*

Officers and employees who have "limited powers" rather than state-wide powers, such as members of the Board of Regents, are otherwise generally prohibited from transacting business with their *own* agencies. O.C.G.A. §§ 45-10-22(a)(2), 45-10-23, 45-10-24(a)(2).

They may still conduct business [FN4] with other state entities, provided that the transaction with the other state entity is not also being undertaken for the direct or indirect benefit of the officer's own agency. *See* 1983 Op. Atty Gen. U83-56, 1991 Op. Atty Gen. U91-13. A public officer's or employee's spouse, dependents, or business entities in which the officer or employee owns more than 25% (which is considered a "substantial interest" under the statutes in question) are subject to the same prohibitions as the officer or employee. O.C.G.A. §§ 45-10-22, 45-10-23, 45-10-24.

The General Assembly has also provided a number of exceptions to these prohibitions, so that transactions that fall within these exclusions are not barred by the state's "conflicts of interest" statutes. O.C.G.A. §§ 45-10-22(b), 45-10-24(b), 45-10-25.

are provisions that otherwise prohibited transactions are permitted if they are "undertaken pursuant to sealed competitive bids," if they fall below \$250 per transaction and \$9,000 in the aggregate for a single calendar year, or, if relating to the sale or lease of real property, the transaction is approved by the State Properties Commission or the Department of Administrative Services. *Id.* Additional exceptions to the statutory prohibitions include transactions under the state's use of eminent domain; the granting of employment benefits; Medicaid reimbursements; approved part-time work for other agencies; sole source purchases; and transactions necessary to

protect the public health, safety, or welfare. O.C.G.A. § 45-10-25(a)(1), (2), (4), (5), (8), (10), (11), (15).

*3 Even if a transaction is not prohibited under these statutes or is otherwise permitted by virtue of a statutory exception, all transactions by a state official or employee with any state agency must be reported to the Secretary of State in January covering the period of the previous calendar year. O.C.G.A. § 45-10-26. The failure to disclose any of those transactions is a separate violation of the law unless the amount of the transaction does not exceed \$250 and the aggregate transactions do not exceed \$9,000 in a single calendar year. *Id.* Additionally, a failure to disclose such transactions can result in a person's removal from office, a civil fine of up to \$10,000, and a requirement that any pecuniary benefit be repaid to the state. O.C.G.A. §§ 45-10-26(c), 45-10-28. A business that violates the disclosure requirements is also subject to a civil fine of up to \$10,000 and restitution to the state for any pecuniary benefit received as a result of the violation. O.C.G.A. § 45-10-28(a)(3).

These statutes do not represent the sole provisions within Title 45 addressing the issue of "conflicts of interest." The General Assembly has also established a "Code of Ethics for Government Service" which lists a number of aspirational goals for all state officers and employees. O.C.G.A. § 45-10-1.

These tenets include the admonishment that a government official or employee should not engage in any business with the government which is inconsistent with the conscientious performance of his governmental duties, and that such person should never use any information coming to him confidentially as a means for making a private profit. O.C.G.A. § 45-10-1, VII, VIII.

Additionally, boards, commissions, or authorities created by general law, such as the Board of Regents, are subject to another specific Code of Ethics, violations of which may lead to removal from office. O.C.G.A. § 45-10-3. This Code reiterates the two aforementioned prohibitions requiring an officer to perform his duties conscientiously and to refrain from using confidential information for a private profit. It also specifically prohibits such person from taking any official action on any matter where he knows or should know that he has a direct or indirect monetary interest in the subject matter of the transaction. O.C.G.A. § 45-10-3(3), (4), & (9). Complaints regarding alleged violations of this Code of Ethics are reviewed and adjudicated by the Governor or his designee and can also lead to a person's removal from office. O.C.G.A. § 45-10-4.

Finally, in addition to the specific prohibitions under these state statutes, judicial decisions and the common law may identify and prohibit other conflicts of interest. *See, e.g.*, 1997 Op. Att'y Gen. U97 11. One example is the common law prohibition against a public officer or employee holding two incompatible positions. Another example is a person engaging in a transaction where his personal interests are so intertwined that, even without some actual and personal pecuniary gain, the transaction should still be prohibited. *Id.* *See also Mayor and Council of Macon v. Huff*, 60 Ga. 221 (1878) (mayor could not lease a city park to himself despite lease's admittedly fair terms since he would be required to enforce contract on behalf of city); *Trainer v. City of Covington*, 183 Ga. 759 (1937) (sale of truck to city by its mayor was void, no matter how fair). In this regard, the Attorney General, quoting *Montgomery v. City of Atlanta*, 162 Ga. 534, 546 (1926), has previously opined:

*4 One who is entrusted with the business of others will not be allowed to make out of the same a pecuniary profit to himself. This doctrine is based upon principles of reason, morality, and public policy. No public agent shall have the opportunity or be led into the temptation to make profit out of the public business entrusted to his care, by contracting with himself, directly or indirectly, in respect to such business 1997 Op. Att'y Gen. 97 29, at 89. Compliance with the aforementioned statutes and constitutional principles will usually safeguard a public officer or employee from engaging in impermissible conflicts of interest. *See Richmond County Hosp. Auth. v.*

Richmond County, 255 Ga. 183, 188-89 (1985); 1995 Op. Att'y Gen. U95 111.

Prohibitions Specifically Directed to the Board of Regents

Although all of the previous provisions of law apply to the members of the Board of Regents, the General Assembly has enacted even more specific proscriptions directed to members of the Board of Regents itself in O.C.G.A. § 45-10-40. That section may be divided into the following three prohibitions:

1. No member of the Board of Regents of the University System of Georgia or of the Board of Human Resources, no trustee or other officer of any institution which is wholly or in part supported by state funds, and no partnership of which such person is a member shall make *any* contract with the governing board or trustees of such institution or any officer of such institution for the sale and purchase of merchandise or supplies for such institution whereby profit shall accrue to such board member or trustee or such partnership of which such person is a member.

2. No such trustee or officer of such institution shall make any profit or receive any money for the sale, handling, or disposal of any crop or crops or property of such institution.

3. No such member, trustee, or other officer of such institution shall make or be interested in any contract for supplies or merchandise for such institution when such contract or the making of the same is *wholly or in part made or influenced by the action of the board governing* such institution or the trustees thereof or is controlled by any officer of such institution; and any and all such contracts are declared to be illegal and void, provided that any such contracts as are described in this Code section *may be made with a corporation of which any such board member or trustee is a stockholder if such member or trustee does not vote on or participate in the making of such contract.*

O.C.G.A. § 45-10-40 (emphasis added). A violation of these prohibitions is a misdemeanor and, upon conviction, a violator is subject to imprisonment of up to 12 months and a fine of up to \$1,000. O.C.G.A. § 45-10-41, O.C.G.A. § 1710-3(a)(1). Additionally a violator is automatically removed from office by operation of law on conviction and is not eligible to be reappointed to his or her office. O.C.G.A. § 45-10-41. On the other hand, also provides as an exception that “[n]o board member or trustee of such institution shall be prohibited from making contracts for furnishing *supplies* to the students or faculty of such institution for their *individual* use.” (Emphasis added.)

Hypothetical Scenarios

*5 The request for advice outlines four hypothetical scenarios which present “conflict of interest” issues. The use of hypotheticals is helpful in illustrating general principles. Of course, as noted above, the facts and circumstances of a particular business transaction may make a difference in the analysis of its propriety under Georgia law, and that analysis must be done on a case by case basis. *Georgia Ports Auth. v. Harris*, 274 Ga. at 147-48; *Ianicelli v. McNeely*, 272 Ga. at 236. In an actual transaction following the general outlines of the hypothetical situations described, additional levels of detail may well change the analysis. With that caveat, I will now address your hypotheticals in light of Georgia's legal framework.

I. A Regent's wholly owned company wishes to provide services under a cafeteria plan that markets to faculty and employees of an institution. The institution will coordinate with the company for monthly pre-tax payroll deduction of the annuity fees. The institution requires all interested companies to adhere to a competitive bid process and pursuant to bid the Regent's company is chosen by the institution to be a provider of insurance benefits. Does this arrangement violate either section 45-10-22 or section 45-10-40? Assume the same fact pattern as above, however, in lieu of a bid process the institution promulgates minimal guidelines that allow all companies

that meet the minimum standards to have pre-tax payroll payment of the annuity fee. [FN5]

The basic premise of the first part of your question is that the company in question is 100% owned by the Regent and is therefore subject to the same restrictions on doing business with the Board as is the Regent, i.e., both are prohibited from transacting any business with the Board itself absent a statutory exception permitting the transaction. [FN6] O.C.G.A. § 45-10-22(a)(2). The statutory exception proposed initially is “transaction made pursuant to sealed competitive bids.” O.C.G.A. § 45-10-22(b)(1).

The principal issue for interpretation here is the phrase “sealed competitive bids,” which the Attorney General has not previously construed by official opinion, particularly in regard to whether it refers generally to any sealed, competitive process. The phrase should be given the meaning it has for the subject matter, which here is state government procurement law. O.C.G.A. § 1-3-1(b) (“words of art or words connected with a particular trade or subject matter... shall have the signification attached to them by experts in such trade or with reference to such subject matter”); *Georgia Forestry Comm'n v. Taylor*, 241 Ga. App. 151, 153 (1999) (statutes on the same subject are construed together and harmonized).

In public procurement, “competitive bidding” in the technical sense refers to a process by which an award is made on the basis of lowest price, offered by a responsible bidder against a set of specifications. The process contrasts with more discretionary or subjective procurements, such as “requests for proposals” (RFPs) that are evaluated on the basis of technical merit as well as cost. For illustrations of the distinction, see O.C.G.A. §§ 50-5-67(a) (allowing DOAS to conduct an RFP when “use of competitive sealed bidding is either not practicable or not advantageous”); Department of Administrative Services *Georgia Procurement Manual*, Ch. 3, “Source Selection,” 3.1, 3.2, 5.2, 5.5, 5.6 (distinguishing “Request for Quotes” from “Request for Proposals,” with latter being a “formal solicitation method that seeks to leverage the creativity and knowledge of business organizations to solve a unique problem.” *Id.* 3.2); compare O.C.G.A. § 50-5-7.3 (Georgia Technology Authority “contracts shall be awarded by soliciting competitive sealed proposals or competitive sealed bids”) with *Rules of Georgia Technology Authority* 665 2 4.02, “Methods of Source Selection”; *Federal Acquisition Regulations*, § 6.4 (“Sealed bidding and competitive proposals, as described in Parts 14 and 15, are both acceptable procedures”), Part 14 (“Sealed Bidding”) & Part 15 (“Contracting by Negotiation”). [FN7]

*6 Notwithstanding the technical distinction, it is not unusual to see the words “bid” and “proposal” used colloquially to mean approximately the same thing. See, e.g., *Allstate Transp. Co. v. SEPTA*, 2000 U.S. Dist. LEXIS 3831, at 5 (E.D. Pa. 2000) (“In 1996, SEPTA issued a Request for Proposals (“1996 RFP”) in which it invited carriers to submit proposals on three different bid items.”) However, it is also a cardinal rule of construction that “[i]n all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy.” O.C.G.A. § 1-3-1(a).

Here, the interpretation concerns legislative intent in allowing an exception to a rule prohibiting conflicts of interest. When the phrase is “sealed, competitive bidding,” the apparent intent is to allow an exception where the process eliminates or minimizes the possibility of subjective favoritism. In an RFP,

[t]he evaluation of the vendor's experience, qualifications and solution often takes precedence over price. To determine the final award, both the proposed solution and the price offered will be weighted through evaluations according to the appropriateness of their value.

Department of Administrative Services *Georgia Procurement Manual* Ch. 3, 5.6(2).

For the foregoing reasons, I conclude that when the “conflicts of interest” statutes allow an exception for a

“transaction made pursuant to sealed competitive bids,” the intent is the technical meaning, not inclusive of the more general and subjective processes like “requests for proposals.” This might also preclude purchasing from a “statewide contract” in some cases, for example, where multiple vendors are eligible for state awards by state agencies, following a procurement not done by sealed competitive bid leading to one vendor. *See, e.g., Department of Administrative Services Georgia Procurement Manual*, Ch. 3, 3.4 (requests for qualifications), 5.1, 5.2 & 6.7 (statewide contracts).

You then ask whether it would make any difference if the sealed, competitive bid process is not used to select the company with which the Board was transacting business, but, instead, any company, including the Regent's company, which meets certain minimum standards is permitted to engage in the sale of the goods or services. As indicated above, under these assumptions the answer is yes, it would make a difference. There is no statutory exception that would permit this otherwise prohibited transaction with a Regent's wholly owned company just because other companies with similar products are also selling the goods or services. As outlined above, the Regent and his company are not similarly situated to those other companies, but instead are operating from a special fiduciary position of trust and loyalty. Because of that special trust, they are held to a higher standard of behavior to prevent conflicts of interest or even the appearance of impropriety or improper influence in such a business transaction.

*7 Finally, you ask whether, even if the transaction is permissible under O.C.G.A. § 45-10-22, it would be prohibited under O.C.G.A. § 45-10-40, the statute barring a Regent from contracting with the Board or its institutions. Again, from your description of the company the nature of the Regent's ownership is unclear. If it is a corporation in which the Regent is merely a stockholder or a board member, then the transaction between the corporation and the Board of Regents would be permissible under O.C.G.A. § 45-10-40, provided that the Regent “does not vote on or participate in the making of such contract.” However, all statutory exceptions must be satisfied, not just one.

The exception in O.C.G.A. § 45-10-40 does not allow for the situation where the Regent is the sole stockholder. It allows the exception where the Regent is “a stockholder if such member or trustee does not vote on or participate in the making of such contract.” (Emphasis supplied.) The use of the word “a,” here emphasized, implies that the Regent is not alone. This is consistent with the policy of avoiding favoritism. Code section 45-10-40 recognizes that corporations are independent legal entities, separate from their stockholders or officers. That independence and separation insulates the transaction to some extent from a Regent's personal disqualification, provided that the Regent does not vote on or participate in the making of the contract. Others must carry out those functions on behalf of the corporation. However, when the Regent is the sole stockholder or board member the element of insulation created by the corporate structure is eliminated, thus undermining the statutory safe-guard.

Given the fiduciary and trust duties and loyalties imposed upon the Regent in the statute, it would be hard to contemplate that a Regent under such circumstances would be able to reach the necessary level of disinterest to avoid a potential violation of O.C.G.A. §§ 45-10-40, 45-10-41 and the common law conflicts recognized under the case law outlined above. When difficulties arise in the performance of the contract, as they often do, the Regent will confront divided loyalties and likely be required to take a position that will violate duties owed to either the Board or the corporation. Such a scenario may well rise to the level of a common law conflict of interest, notwithstanding the language of O.C.G.A. § 45-10-40. The same may be said with regard to the statutory exception for competitive bidding. Even when a contract is procured competitively, it must be performed, and Regents and Regents staff must evaluate performance. The common law recognizes the conflict inherent in su-

pervising one's own performance:

[N]o officer or agent, public or private, whose duty it is to supervise a contract in behalf of his employers or principal, can himself undertake to do that thing which his office or agency makes it his duty to supervise for others, and to see to it for them that it is well and faithfully done. The reason is too plain and palpable for serious dispute.

*8 *Mayor & Council of Macon v. Huff*, 60 Ga. 221, 224 (1878). This observation from the *Huff* decision applies as well to hypotheticals 2 and 3 below as well.

2. *A Regent has a substantial interest in a company that sells computers. He sells to the state through a statewide contract procured through a competitive bidding process. May the Regent's company sell computers to the University System institutions pursuant to this statewide contract? May the Regents institutions take their computers for repair to the Regent's company, which does not have a statewide maintenance agreement?*

Given that the Regent in your hypothetical has a "substantial interest," i.e., over 25% ownership, in the computer company in question, the company would normally be prohibited from transacting business with the Board of Regents. O.C.G.A. § 45-10-22 (a)(2). However, because the transaction is made pursuant to a sealed competitive bid process accomplished through a statewide contract entered into by the Department of Administrative Services (DOAS) and obtained through a competitive bidding process, the transaction could be permissible. O.C.G.A. § 45-10-22(b)(1). If the company were a corporation and the dictates of O.C.G.A. § 45-10-40 were followed, then it would also appear the transaction could be permissible under O.C.G.A. § 45-10-41. I have assumed that the procurement for the statewide contract resulted in a single vendor, but that may not necessarily be the case. It is possible that the procurement resulted in multiple vendors of satisfactory qualifications, with or without fixed or common prices. The statutory exception requires a "transaction made pursuant to sealed competitive bids." O.C.G.A. § 45-10-22(b)(1). Unless the statewide contract results in a single vendor, neither the letter nor the spirit of the exception will be satisfied.

Whether servicing the computers is a separate business transaction or is adjunct to the purchase of the computers, the transactions would be prohibited under O.C.G.A. § 45-10-22(a)(2) absent a statutory exception permitting them. If that exception is not provided through the competitive bidding process, it is possible another exception might be applicable in accordance with the law outlined above. However, the burden is on the company to identify that exception and to assure compliance with the aforementioned laws before engaging in the service transactions.

3. *A Regent wishes to purchase from X real estate, which X currently rents to a University System institution. If the Regent purchases the real estate, he will become the institution's landlord instead of X. Is approval of the purchase from X by DOAS Space Management Division sufficient to cure any potential conflict of interest?*

Your hypothetical recognizes that renting real property to the Board of Regents by one of its members falls within the definition of "transacting business" and is normally prohibited under O.C.G.A. § 45-10-22 (a)(2). However, O.C.G.A. § 45-10-22 (b)(3) contemplates that such a lease arrangement is permissible if the "transaction" is approved either by the State Properties Commission or the Space Management Division of DOAS. If DOAS reviews and approves the sale of the real estate, with full disclosure that the sale is made subject to the rental agreement and that the Regent will become the landlord, that would appear to satisfy the requirements of the law to permit the transaction. It would also be a good practice to assure that any approval of the sale and the subsequent lease relationship is acknowledged by DOAS on the record of its review and approval so as to assure that there is no question in the future of compliance with the law.

*9 4. *A company wholly owned by a Regent provides communication services to a Regents institution prior to the Regent's appointment. Shortly after his appointment the Regent bids on a contract to provide additional and expanded services. At what point, if any, does the company's provision of services conflict with the conflict of interest statute? Does it make a difference if he is a "sole provider" in his geographical area?*

The sale of the services to the Board through one of its institutions by a company in which a Regent owns a substantial interest falls within the prohibition of O.C.G.A. § 45-10-22(a)(2). Therefore, as recognized in your inquiry, the question becomes whether there is any statutory exception which permits the transaction to go forward.

You have raised facts that suggest three separate possibilities, depending on the time-frame that is used in reviewing the transaction. A transaction that was entered into between the company and the school prior to the Regent's appointment is not affected by that appointment. Under O.C.G.A. § 45-10-25 (a)(13), transactions that occurred prior to the Regent accepting appointment to public office are not subject to the statutory prohibitions if they represent a legal obligation and duty to provide the services in question. The company would be able to complete its legal obligations under the contract.

However, once that initial contractual obligation has concluded, the question becomes whether the company and school may continue their business relationship. You have indicated that there is a bidding process for the award of the contract. If that process is a sealed, competitive bidding process as discussed above, then the award of the contract would appear to fall within the exception of O.C.G.A. § 45-10-22 (b)(1) and be permissible under Georgia law.

You have also asked whether it makes any difference in the analysis if the Regent's company is the "sole provider" in his geographic area. Under the conflicts of interest statute, there is a "sole source" exception that permits [a]ny transaction involving property or a service for which the *only source of supply in the State of Georgia* is from the public official or employee or a business in which such public official or employee or member of his family has a substantial interest.

O.C.G.A. § 45-10-25 (a)(11) (emphasis added). This "sole source" analysis is not limited to a geographic region within the state, but instead the company and the school carry the heavier burden of demonstrating that the company is the only one in the entire state that can provide the services in question. The transaction would be permissible under this exception only after such a showing.

Finally, although it is not clear exactly what kind of services would be provided, the Regent and his company would have to remain cognizant of the requirements of O.C.G.A. § 45-10-40. A business transaction for the sale of merchandise or supplies, for example, would be prohibited to the Regent personally. The company, if it is a corporation, could engage in the transaction under the guidelines outlined in that statute.

Conclusion

*10 Therefore, because members of the Board of Regents of the University System of Georgia hold fiduciary positions of trust under Georgia law, it is my official opinion that business transactions between any Regent and the University System are prohibited absent a statutory exception permitting the transaction, and then only if there is no common law conflict creating a breach of their constitutional fiduciary duty. Those transactions must be reviewed on a case by case basis to determine whether any prohibited conflicts of interest exist as defined under Georgia's Constitution, statutes, judicial decisions, or under the applicable principles of common law.

Prepared by:
Dennis R. Dunn
Deputy Attorney General

John B. Ballard, Jr.
Senior Assistant Attorney General

[FN1]. “ All public officers, within whatever branch and at whatever level of our government, and whatever be their private vocations, are trustees of the people, and do accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from the discharge of their trusts.” *Sistrunk*, 249 Ga. at 547

[FN2]. The *Sistrunk* decision has been extensively discussed in a variety of settings in previous opinions of the Attorney General. Some of those opinions, outside of the specific realm of lawyer-legislator conflicts issues, include 1982 Op. Att’y Gen. 82 82 (general discussion of conflicts of interest issues), 1983 Op. Att’y Gen. 83 64 (conflicts related to recipients of public grant funds), 1983 Op. Att’y Gen. U83 51 (member of authority has a conflict and cannot provide banking or medical services to his agency); 1984 Op. Att’y Gen. 84 82 (conflicts in hospital equipment financing), 1984 Op. Att’y Gen. U84 29 (court officers and driver improvement schools), 1988 Op. Att’y Gen. 88 4 (purchase of former state property by Board of Natural Resources member), 1997 Op. Att’y Gen. 97 29 (school board members as subcontractors on school projects), 1998 Op. Att’y Gen. 98 8 (contracts between a community service board and legislator) and 2002 Op. Att’y Gen. 02 4 (conflicts issues related to members of the State Ethics Commission).

[FN3]. “Transacting business” includes the selling or leasing of any real or personal property or any services to the state, regardless if it is done by the officer or employee or through a third-party, and the purchase of surplus real or personal property either by the official or employee, again regardless of whether it’s done by the official or employee or by a third-party on behalf of the public official or employee. O.C.G.A. § 4510-20(12).

[FN4]. Full-time employees of the Board of Regents are permitted, however, to serve as members of governing boards of private, nonprofit, educational, athletic, or research related foundations and associations which are organized to support institutions of higher education and which otherwise transact business with the Board. O.C.G.A. § 45-10-23(a); 1995 Op. Att’y Gen. 95 36.

[FN5]. It is unclear from the description of this business arrangement whether the companies in question are transacting business with the Board itself or whether the companies would actually be dealing directly with the employees of the Board. In the usual instance, both would occur. It is also unclear whether the statutory requirements of O.C.G.A. § 45-18-53 regarding the authorizing of payroll deductions have been met. *See also* 1982 Op. Att’y Gen. 82 79. For purposes of this response, it is assumed from your description that there would be a contractual agreement between the entities involved and the Board itself and that any payroll deductions would otherwise be permissible under the law.

[FN6]. Individual colleges and universities in Georgia have no independent corporate existence, but are all considered a part of the Board of Regents, which is then the ultimate party with which an entity transacts business. *See McCafferty v. Medical College of Georgia*, 249 Ga. 62, 69 (1982).

[FN7]. Neither FAR, which applies to federal procurement, nor GTA law and rules, which exclude Regents, O.C.G.A. § 50-25-1(b), applies to Regents, but they are illustrative. Procurement law itself is beyond the scope

of this opinion.

Ga. Op. Atty. Gen. No. 04-7, 2004 WL 1639478 (Ga.A.G.)
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C

West's Code of Georgia Annotated Currentness

Title 45. Public Officers and Employees

▣ Chapter 10. Codes of Ethics and Conflicts of Interest (Refs & Annos)

▣ Article 1. Codes of Ethics (Refs & Annos)

→ § 45-10-1. Code of ethics for government service

There is established for and within the state and for and in all governments therein a code of ethics for government service which shall read as follows:

--CODE OF ETHICS FOR GOVERNMENT SERVICE--

Any person in government service should:

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.

II. Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.

III. Give a full day's labor for a full day's pay and give to the performance of his duties his earnest effort and best thought.

IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

VI. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.

VII. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

VIII. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust.

CREDIT(S)

Laws 1968, p. 1369.

LIBRARY REFERENCES

Officers and Public Employees ↪ 110.
 Westlaw Key Number Search: 283k110.
 C.J.S. Officers and Public Employees §§ 197 to 204.

RESEARCH REFERENCES

Encyclopedias

Ga. Jur. Employment and Labor § 8:4, Duties of Public Employees.

NOTES OF DECISIONS

Conflict of interests 2
 Duty to disclose 1
 Full day's labor 3
 Questions of fact 5
 Transacting business with government 4

1. Duty to disclose

County housing inspector, who allegedly purchased house at price below its fair market value by threatening to condemn the house if certain repairs were not made, had duty to disclose to owner of house that owner was not required to move but would be given any necessary time to make the needed repairs and to disclose the availability of any financial assistance available to owner. O.C.G.A. § 45-10-1, subd. VIII. Pope v. Propst, 1986, 179 Ga.App. 211, 345 S.E.2d 880, certiorari denied. Counties ↪ 88

2. Conflict of interests

Lawyer-legislators are not automatically disqualified, under the state constitutional provision that public officers are the trustees and servants of the people or under conflict of interest principles applicable to attorneys, from



West's Code of Georgia Annotated Currentness

Title 45. Public Officers and Employees

▾ Chapter 10. Codes of Ethics and Conflicts of Interest (Refs & Annos)

▾ Article 1. Codes of Ethics (Refs & Annos)

→ **§ 45-10-3. Code of ethics for members of boards, commissions and Authorities created by general statute**

Notwithstanding any provisions of law to the contrary, each member of all boards, commissions, and authorities created by general statute shall:

- (1) Uphold the Constitution, laws, and regulations of the United States, the State of Georgia, and all governments therein and never be a party to their evasion;
- (2) Never discriminate by the dispensing of special favors or privileges to anyone, whether or not for remuneration;
- (3) Not engage in any business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties;
- (4) Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit;
- (5) Expose corruption wherever discovered;
- (6) Never solicit, accept, or agree to accept gifts, loans, gratuities, discounts, favors, hospitality, or services from any person, association, or corporation under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the performance of the member's official duties;
- (7) Never accept any economic opportunity under circumstances where he knows or should know that there is a substantial possibility that the opportunity is being afforded him with intent to influence his conduct in the performance of his official duties;
- (8) Never engage in other conduct which is unbecoming to a member or which constitutes a breach of public trust; and

(9) Never take any official action with regard to any matter under circumstances in which he knows or should know that he has a direct or indirect monetary interest in the subject matter of such matter or in the outcome of such official action.


CREDIT(S)

Laws 1976, p. 344, § 1.

LAW REVIEW AND JOURNAL COMMENTARIES

The Status of Administrative Agencies Under the Georgia Constitution. David E. Shipley, 40 Ga. L. Rev. 1109 (2006).


LIBRARY REFERENCES

States  72.
Westlaw Key Number Search: 360k72.
C.J.S. States § 123.

NOTES OF DECISIONS

Special favors 1

1. Special favors

Decision by directors of Georgia Public Telecommunications Commission to exclude Libertarian gubernatorial candidates from televised political debates did not constitute a “special favor” to majority party candidates in violation of Code of Ethics governing Commission. O.C.G.A. § 45-10-3. Chandler v. Georgia Public Telecommunications Com'n, 1990, 749 F.Supp. 264, vacated 917 F.2d 486, certiorari denied 112 S.Ct. 71, 502 U.S. 816, 116 L.Ed.2d 45. Telecommunications  1153(5)

Ga. Code Ann., § 45-10-3, GA ST § 45-10-3

Current through 2010 Regular Session

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