

Conflicts of Interest under ARRA for North Carolina Local Governments

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Conflicts in Contracting: 3 Topics

1. Self-dealing

2. Misuse of secret information

3. Gifts and favors

Self-dealing

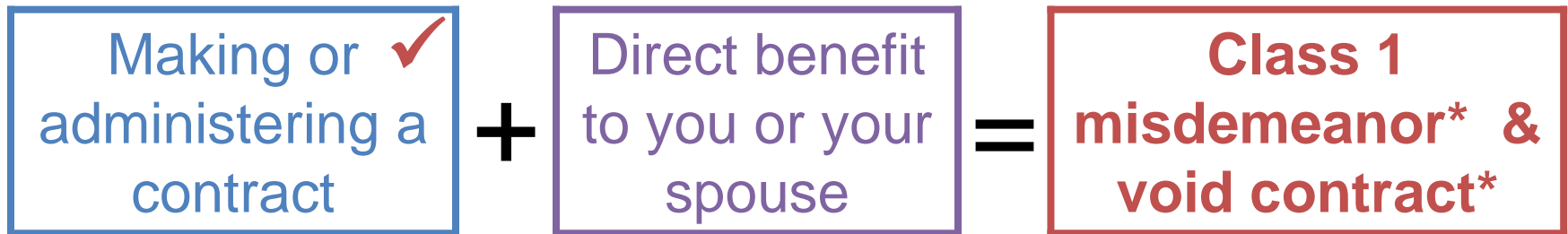
- State statute: G.S. 14-234
- Federal rule: the Grants Management Common Rule (GMCR)

Self-dealing (N.C.G.S. 14-234)



* Unless an exception applies

Self-dealing (N.C.G.S. 14-234)



* Unless an exception applies

Bottom line: If you're involved at any point in the contracting process, you're involved in making or administering the contract.

Self-dealing (N.C.G.S. 14-234)



* Unless an exception applies

Bottom line: There's a direct benefit if you or your spouse:

- 1. own 10% or more of company,*
- 2. receive income or commission from the contract, or*
- 3. acquire property under the contract*

Self-dealing (N.C.G.S. 14-234)

Whose “direct benefit”?

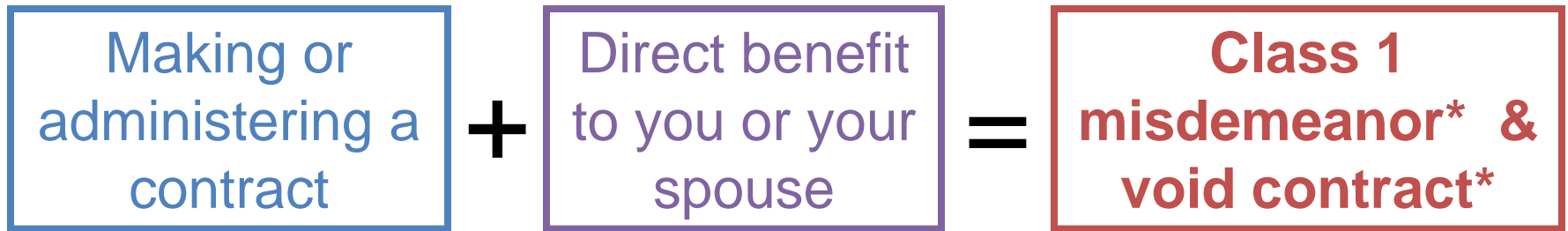
- Public officials and employees, and
- their spouses

Self-dealing (N.C.G.S. 14-234)

Exceptions:

- Contracts with banks, savings and loans, public utilities
- “Friendly” condemnation
- Employment of the spouse of a public officer
- Public assistance programs
- “Small” jurisdictions

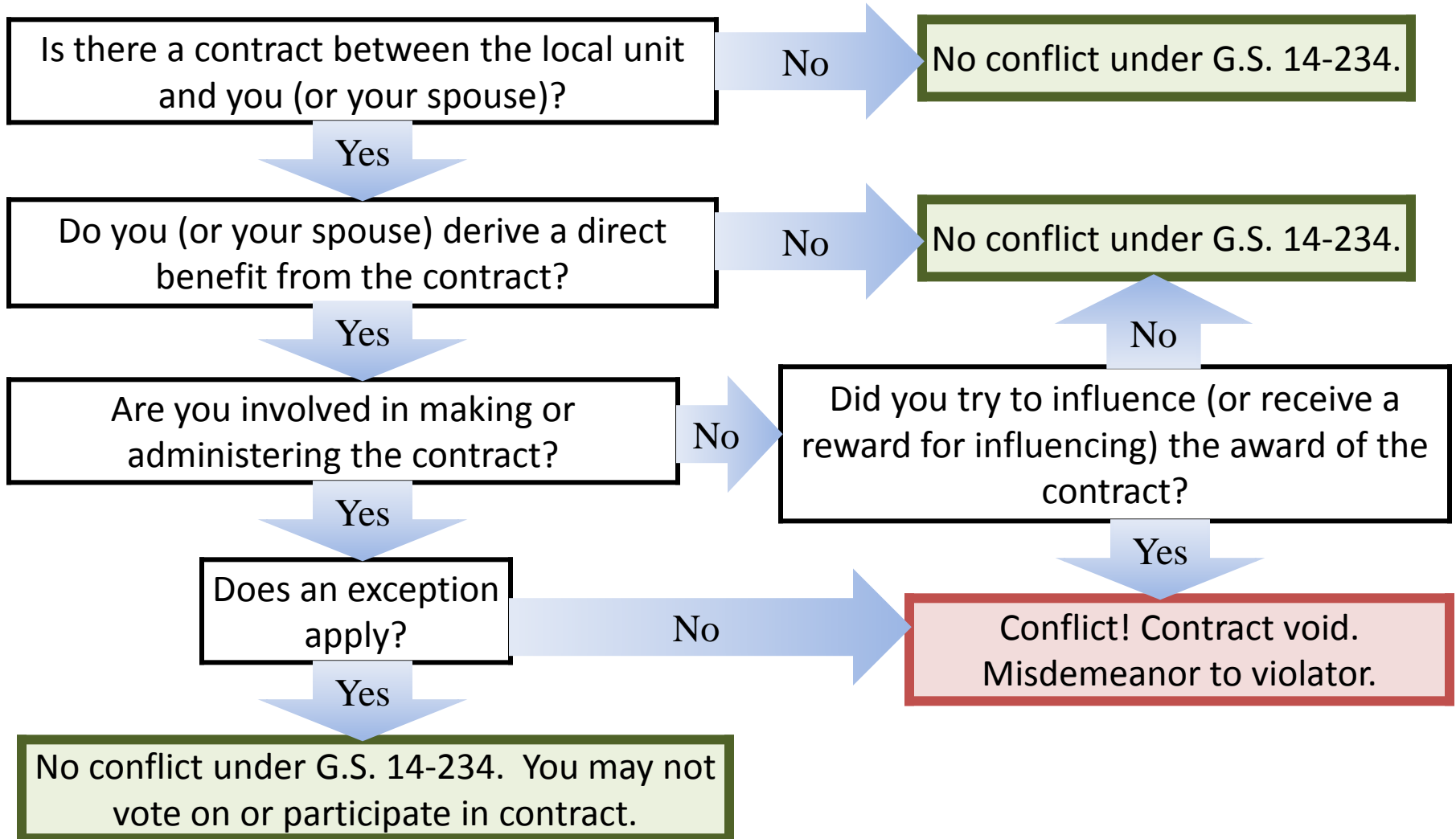
Self-dealing (N.C.G.S. 14-234)



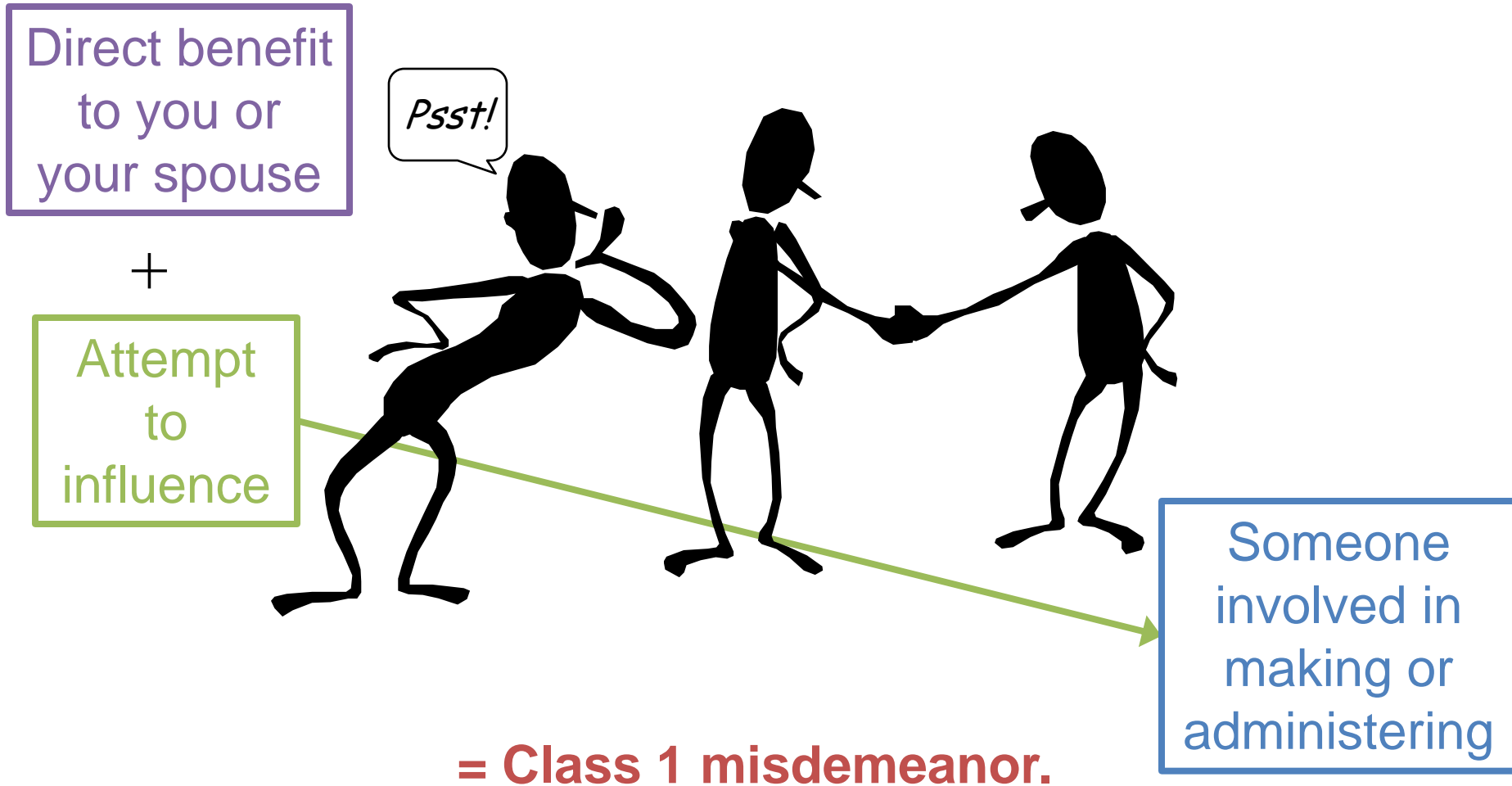
* Unless an exception applies

If an exception applies, the board member with the conflict may not vote, participate in any way, or attempt to influence others who are voting.

Self-dealing (N.C.G.S. 14-234)



Self-dealing (N.C.G.S. 14-234)

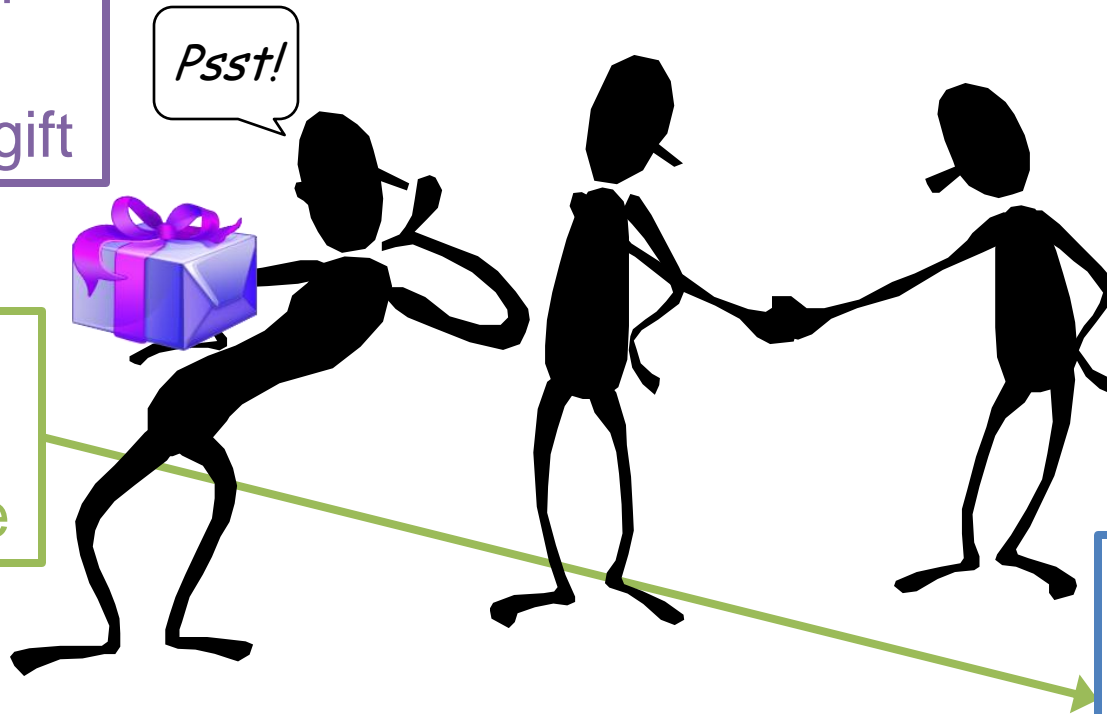


Self-dealing (N.C.G.S. 14-234)

Solicit or
receive
award or gift

+

Attempt
to
influence



Someone
involved in
making or
administering

= Class 1 misdemeanor.

Self-dealing

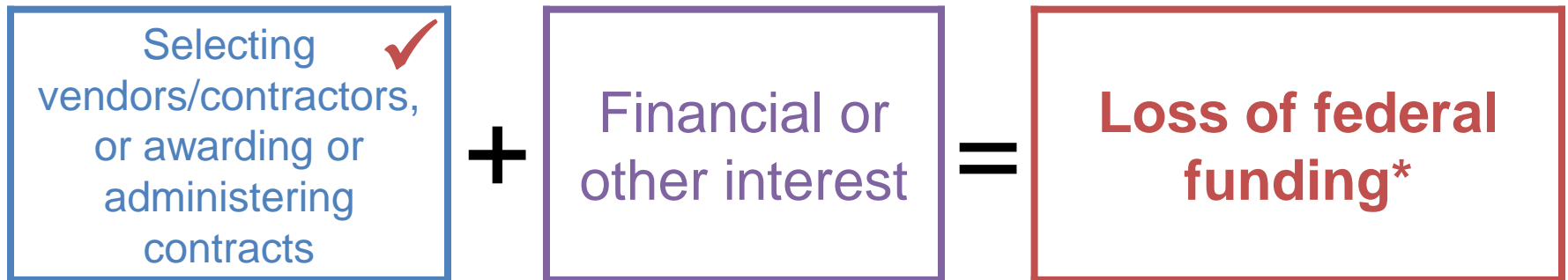
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Self-dealing (GMCR)



* Unless an exception applies

Self-dealing (GMCR)



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Self-dealing (GMCR)



* Unless an exception applies

The rule does not define “financial or other interest.”

Self-dealing (GMCR)

Whose “financial or other interest”?

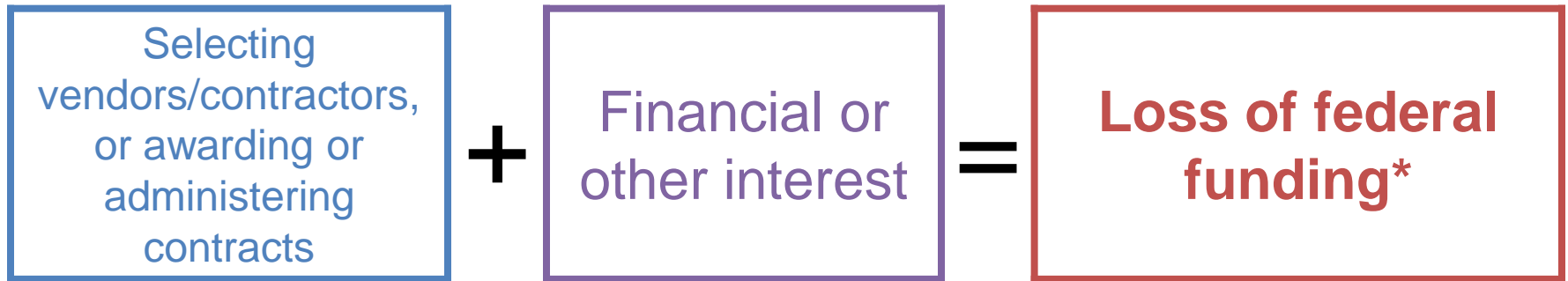
- Employees, officers, and agents of grant recipient;
- Their immediate family members;
- Their partners;
- Any organization which employs or *is about to employ* any of the above.

Self-dealing (GMCR)

Exception:

- Financial interests that are “not substantial”

Self-dealing (GMCR)



* Unless an exception applies

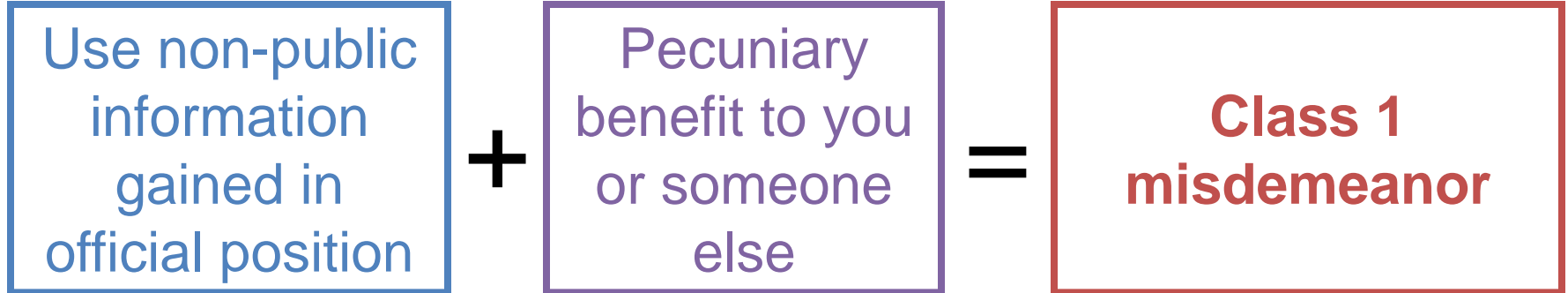
Conflicts in Contracting: 3 Topics

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Misuse of Secret Info (G.S. 14-234.1)



Conflicts in Contracting: 3 Topics

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Gifts and favors

- State statute: N.C.G.S. 133-32
- Federal rule: Grants Management Common Rule (GMCR)

Gifts and Favors (G.S. 133-32)

- Past (within 1 year),
- current, or
- potential future contractor or vendor



Public officer or employee who:

- prepares plans or specifications for public contracts, or
- awards or administers public contracts, or
- inspects or supervises construction.

= Class 1 misdemeanor, unless an exception applies.

Gifts and Favors (G.S. 133-32)

Exceptions:

- Honoraria
- Gifts of nominal value
- Meals at banquets
- Gifts to professional organizations
- Gifts from friends or family (must be reported)

Gifts and favors

- State statute: N.C.G.S. 133-32
- Federal rule: Grants Management Common Rule (GMCR)

Gifts and Favors (GMCR)

- Current or potential future contractor or vendor



- Employee,
- Officer, or
- Agent

of local government or nonprofit recipient of federal funds

All gifts prohibited, but local government/nonprofit may create an exception for small, unsolicited gifts.

Requirements (State Statutes)

- State statutes don't require a code
- Must obey statutes governing conflicts of interest
- Local policies may impose additional requirements governing conflicts of interest

Consequences (State Statutes)

- Class 1 misdemeanor and void contract if violation of state statutes
- Local policies may impose additional consequences for violation of local ethics code

Requirements (Federal Rules)

Must develop and follow a code of standards that addresses

- **Real and apparent** conflicts of interest
- Gifts and favors

Consequences (Federal Rules)

- Loss of federal funds
- Class 1 misdemeanor and void contract if violation of state statutes