

Revised Conflict of Interest Law
G.S. 14-234
S.L. 2001-409
Effective July 1, 2002

Prohibitions:

14-234(a)

- 1) Public officer or employee involved in making a contract on behalf of a public agency shall not derive a direct benefit from the contract except as otherwise provided in the law (see exceptions).
- 2) Public officer or employee who will derive a direct benefit from a contract but is not involved in making or administering it shall not attempt to influence any other person who is involved in making or administering the contract.
- 3) Public officer or employee shall not solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves.

Penalty:

14-2324(e)

Violation of the statute is a Class 1 misdemeanor.

Definitions:

14-234(a1)

- 1) **Public officer** means an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of the agency.
- 2) A public officer or employee is **involved in administering a contract** if he or she oversees the performance of the contract, or has authority to make decisions regarding or to interpret the contract.
- 3) A public officer or employee is **involved in making a contract** if he or she participates in the development of specifications or terms, or in the preparation or award of the contract. A public officer is also involved in making a contract if the board, commission or other body of which he or she is a member takes action on the contract, whether or not the officer participates in that action, unless the contract is approved under an exception under which the officer is allowed to benefit and is prohibited from voting.
- 4) A public officer or employee **derives a direct benefit** from a contract if the person *or his or her spouse*: (i) has more than a 10% ownership interest in the entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract.
- 5) A public officer or employee is **not involved in making a contract** solely because of the performance of ministerial duties related to the contract.

Exceptions:**14-234(b)**

- 1) Any contract between a public agency and a bank, savings and loan or public utility.
- 2) An interest in property conveyed by an officer or employee of a public agency under a judgment, including a consent judgment, entered by a superior court judge in a condemnation proceeding initiated by the public agency.
- 3) Any employment relationship between a public agency and the spouse of a public officer of the agency.
- 4) Remuneration from a public agency for services, facilities, or supplies furnished directly to needy individuals by a public officer or employee of the agency under a public assistance program, subject to certain conditions set forth in the statute (14-234(b)(4)).

No public officer who will derive a direct benefit from a contract entered into under any of these exceptions may deliberate or vote on the contract, or attempt to influence any other person who is involved in making or administering the contract.

Additional Exception for Small Jurisdictions:**14-234(d1)**

- 1) The prohibitions under 14-234(a) do not apply to *elected officials*:
 - (a) in any incorporated municipality with no more than 15,000 people;
 - (b) in any county in which there is no incorporated municipality with more than 15,000 people;
 - (c) on any city board of education in a city with no more than 15,000 people;
 - (d) on any county board of education in a county in which there is no incorporated municipality with more than 15,000 people;or to any:
 - (e) physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county health, mental health or social services board serving a county in which there is no incorporated municipality with more than 15,000 people; and to any member of the board of directors of a public hospital.
- 2) The official entering into the contract shall not participate in any way or vote on the contract.
- 3) A contract within this exception may not exceed, within a 12-month period, \$12,500 for medically related services, and \$25,000 for other goods and services.
- 4) This exception does not apply to contracts that are subject to the competitive bidding statutes, that is, contracts over \$5,000 for construction or repair, and purchase of equipment, apparatus supplies and materials. (14-234(d2).)
- 5) A brief description (including the name of the interested official) of all contracts entered into under this exception must be posted quarterly in a conspicuous place, and the total annual amount must be noted in the audited financial statement of the unit.

Effect on validity of Contracts:**14-234(f)**

Contracts entered into in violation of the statute are void, but may continue in effect until an alternative can be arranged when (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved as provided in this subsection.

Continuation must be requested by a public agency that is a party to the contract as follows:

(1) local governments, as defined in G.S. 159-7(15), public authorities, as defined in G.S. 159-7(10), local school administrative units, and community colleges may request approval from the chairman of the Local Government Commission.

(2) All other public agencies may request approval from the State Director of the Budget.

Approval shall be given for the minimum period necessary to protect the public health or welfare.

Other Exceptions:

14-234(d3) - Application or receipt of grant under the Agriculture Cost Share Program for Nonpoint Pollution Control (G.S. 143-215.74), subject to provisions of G.S. 139-4(e); district supervisor of a soil and water conservation district, subject to provisions of G.S. 139-8(b).

14-234(d4) – Application for or receipt of grant or other financial assistance from the Tobacco Trust Fund (Chapter 143, Article 75), subject to provisions of G.S. 143-717(g).

14-234(d5) – Public hospitals, subject to conflict provisions in G.S. 131E-14.2; or public hospital authorities, subject to conflict provisions in G.S. 131E-21.