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All in the Family?

The sister and brother-in-law of a county commissioner collectively own 51% of a local construction company. The county is considering awarding a \$2.3 million building renovation contract and the company is the lowest responsive, responsible bidder on the job.

1. Is it ethical for the commissioner to vote on the award of the contract to the company?
2. Is it legal for the commissioner to vote on the award of the contract to the company?

Why or why not?



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Distinguishing Legal Requirements from Ethical Standards

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The First Rule

If you have a question or concern, ask before you act!



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GOVERNMENT

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The Second Rule

You are a public official.



Always remember whom you serve!

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Distinguishing Legal Requirements from Ethical Standards

- What is a legal requirement?
- What is an ethical standard?
- Legal Requirement = Ethical Standard?
 - *It depends. A legal requirement is a floor, not a ceiling.*



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Governing Board Members

- As required by North Carolina law, your board has adopted a code of ethics.
- That code addresses board members' obligations to:
 - Obey all applicable laws;
 - Uphold the integrity and independent of office;
 - Avoid impropriety in the exercise of their official duties;
 - Faithfully perform the duties of office; and
 - Conduct board business in an open and public manner.
- Board members also must obtain ethics training required by statute.



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Applicable Legal Requirements

- North Carolina law governs the conduct of elected officials *and* public employees.
- Certain statutes restrict the ability of officials or employees to:
 - Vote.
 - Contract with the units they serve.
 - Receive or solicit gifts and favors from certain third parties.
 - Misuse confidential information.
 - Misuse public property (e.g., embezzlement).



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A Decisionmaking Formula

Is it legal?

☐ YES
 ☐ NO
 ☐ MAYBE

+

Is it ethical?

☐ YES
 ☐ NO
 ☐ MAYBE

=

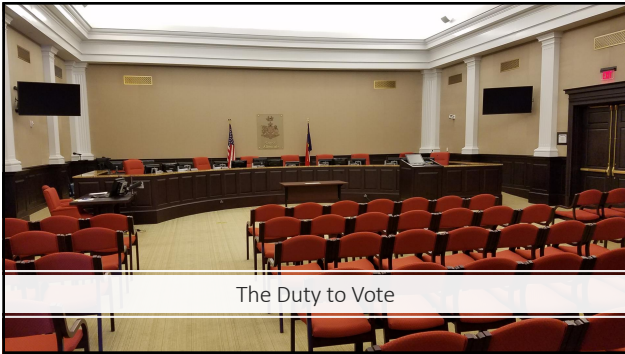
Your Decision

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Identifying and Understanding Key Legal Requirements


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A Legal Duty to Vote

- Governing board members have a **legal duty** to vote, imposed by statute.¹
- **Unless** a statutory exception applies, a board member **must vote**.
- There is no “general authority” to recuse for the appearance of impropriety—a statutory exception **must** apply.



¹ G.S. 153A-44 (counties); G.S. 160A-75 (municipalities).



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Self-Benefiting in Public Contracting
(G.S. 14-234)

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The Basic Prohibition – G.S. 14-234(a)(1)




- A public official administers a contract *if he or she has authority to make decisions regarding the contract or to interpret the contract.* (G.S. 14-234(a1)(2)).



- Bottom Line:** Governing board members are always involved in making or administering contracts into which their units enter.

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The Basic Prohibition – G.S. 14-234(a)(1)







- A direct benefit arises if you or your spouse:
 - Own 10% or more of the counterparty under contract with the unit;
 - Derive any income or commission directly from the contract; or
 - Acquire property under the contract.

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The Basic Prohibition – G.S. 14-234(a)(1)



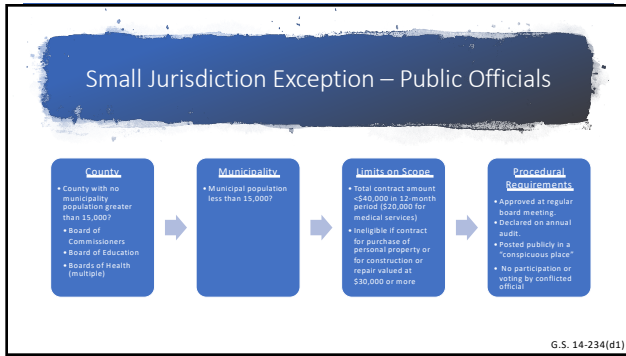


VOID

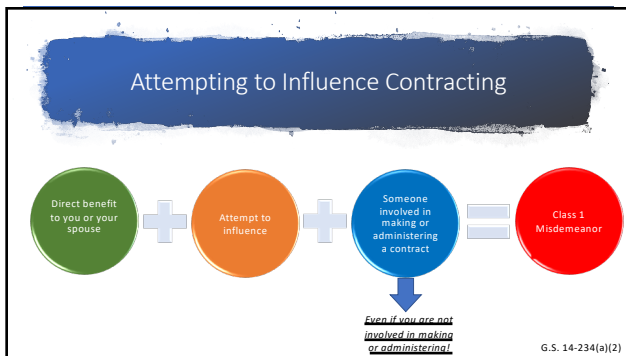


- *Unless an exception applies:**
 - Contracts Between Public Agencies and Banks or Regulated Utilities
 - "Friendly" Condemnation
 - Employment of a Spouse of a Public Officer (*not* employees)
 - Public Assistance Payments
 - "Small" Jurisdiction

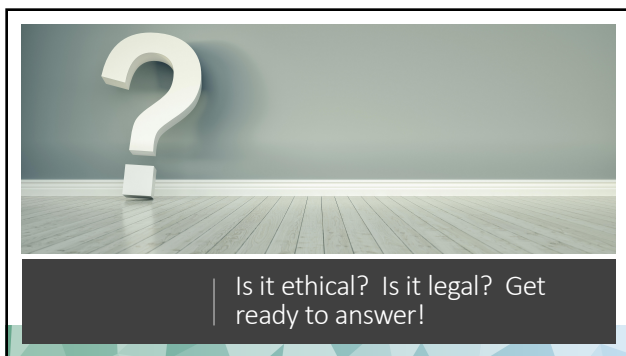
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Is it Ethical? Nonprofit Board

A city councilmember also serves on the board of directors of a nonprofit art museum in the city. The museum is seeking support from the city to fund the museum's arts instruction program for county residents. The request comes before the city council for consideration.

Is it ethical for the councilmember to participate in the discussions and vote on the grant award?

Why or why not?




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Is It Legal? Nonprofit Board

A county commissioner also serves on the board of directors of a nonprofit art museum in the county. The museum is seeking support from the county to fund the museum's arts instruction program for county residents. The request comes before the board of commissioners for consideration.

Is it legal for the commissioner to participate in the discussions and vote on the funding award?



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Conflict of Roles?

- Service on nonprofit board is not necessarily a **financial conflict** and missions may be in alignment.
- But consider possible future conflicts:
 - Legal or financial dispute – commissioner "on both sides"
 - Expectation of allegiance by both boards
 - Confidentiality of information



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Is It Legal? Family Contractor

A county commissioner's sister and brother-in-law collectively own 51% of a local construction company. The county is considering awarding a \$2.3 building renovation contract and the company is the lowest, responsive responsible bidder on the job.



Is it legal for the commissioner to vote on the award of the contract to the company?

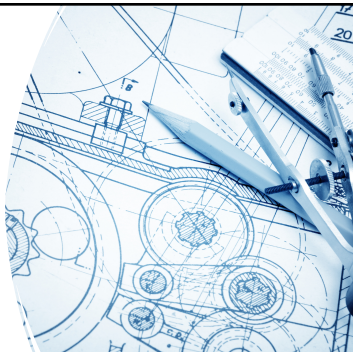
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Is it Ethical? The Engineer

An engineer under contract with the county to design an upgrade to the county's primary administrative building is elected to serve as a county commissioner.

Is it ethical for the county to continue to use the commissioner's services after she takes office?

Why or why not?



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Is It Legal? The Engineer

An engineer under contract with the county to design an upgrade to the county's primary administrative building is elected to serve as a county commissioner.



Is it legal for the county to *continue* to use the commissioner's engineering services after she takes office?

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Balancing Perception and Legal Duties



Many local codes of ethics require that board members “**avoid the appearance of impropriety in the exercise of their official duties.**”

But if you are required by law to vote, how do you manage the perception that you have a conflict of interest?

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

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



Prohibited Giver:
Contractor, subcontractor, or vendor:

1. Previously under contract with the county (within prior 12 months); or
2. Currently under contract with the county; or
3. Anticipates bidding on a contract in the future.



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

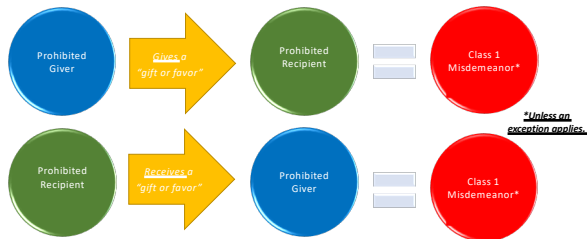


- Prohibited Recipient:**
Public officer or employee that:
1. Prepares plans or specifications for a public contract; or
 2. Awards or administers public contracts; or
 3. Inspects or supervises construction.



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Gifts and Favors from Contractors – G.S. 133-32



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

Exceptions:

- | | | | | |
|-------------|--|-------------------|-------------------------------------|---|
| Honorariums | Souvenirs and Advertising Items of Nominal Value | Meals at Banquets | Gifts to Professional Organizations | Customary Gifts from Friends and Family |
|-------------|--|-------------------|-------------------------------------|---|



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

Exceptions:


Honorariums

Souvenirs and Advertising Items of Nominal Value

Meals at Banquets

Gifts to Professional Organizations

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Exceptions:

Honorariums	Souvenirs and Advertising Items of Nominal Value	Meals at Banquets	Gifts to Professional Organizations	Customary Gifts from Friends and Family
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Non-business customary gifts from friends or family must be reported to agency head.

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Can it be accepted?
Get ready to answer!

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A Square Meal?

Tar Heel City's third-party financial advisor invites a councilmember from Wolfpack City's city council to join her for dinner during the NCLM's Annual Conference. Wolfpack City is not, and has never been, under contract with the financial advisor.

Is it legal for the financial advisor to pay for the Wolfpack City councilmember's dinner?
Why or why not?



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Hard Traveling?

Tar Heel County is purchasing a fleet of new ambulances. A manufacturer offers to pay for one county commissioner to travel to its production facility in Henderson, Nevada, located 20 miles from the Las Vegas Strip. The manufacturer wants to provide the County the opportunity to inspect its ambulances firsthand before making a substantial purchase.

Is it legal for a commissioner to accept an all-expenses paid trip to the production facility?

Why or why not?



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Gifts to the Unit

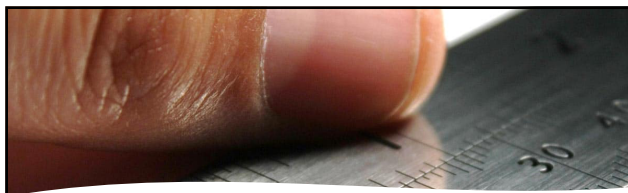
- Units of local government may accept gifts given to the *unit itself*.
 - Little League Sponsors?
 - Donations?
- Travel expenses are permissible ONLY IF:
 1. The unit legally can pay for the travel expense because it serves a public purpose;
 2. The unit chooses to pay for that travel expense; and
 3. The expenses are reimbursable under the unit's procurement policy and code of ethics.



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A Good Rule of Thumb


•When in doubt, do without!



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Ethics Training

- Governing board members must obtain ethics training:
 - Within 12 months of
 - Election or appointment, AND
 - Re-election or re-appointment.
- Clerks shall maintain a record verifying receipt of ethics education by each member of the governing board.
- The record is subject to public inspection.
- No penalty (but public opinion matters!)

G.S. 160-87

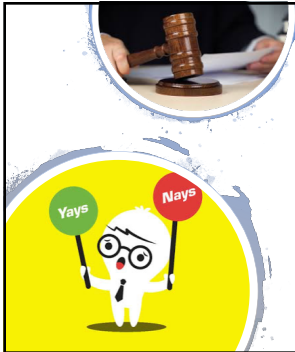
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Compliance with Local Ethics Codes

- Under state law, code compliance is voluntary—*unless* failure to comply violates a separate provision of state law.
- The governing board may pass a resolution expressing dissatisfaction with a board member's conduct (i.e., a resolution of censure).
 - It has practical, but not legal, significance.
- No general authority to "recall" members of a governing board.

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Remember the Duty to Vote

- An appearance of impropriety is not enough to require excusal.
- Review the statutory bases for recusal from a vote—and consult with counsel prior to the vote.

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Thank You!



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