

# **THE EMOLUMENTS CLAUSE OF THE NORTH CAROLINA CONSTITUTION**

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**1. The North Carolina Constitution contains two emoluments clauses: Article I, Section 32 (Exclusive Emoluments) and Article 33 (Hereditary Emoluments). There is no caselaw concerning the prohibition of “hereditary emoluments” since none seem ever to have been granted. The focus of these remarks is therefore on “exclusive or separate emoluments or privileges.”**

N.C. Const., Art. I, Sec. 32. Exclusive emoluments.

No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

N.C. Const., Art. I, Sec. 33. Hereditary emoluments and honors.

No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

**2. With only a few editorial changes, both emoluments clauses date from the Declaration of Rights in the first North Carolina Constitution, adopted in December 1776, where they appeared as Section 3 on Exclusive Emoluments and Section 22 on Hereditary Emoluments. Their current numbering is due to editorial changes made in the North Carolina Constitution of 1971. Both sections were originally derived from a single section of the Virginia Declaration of Rights, adopted in June 1776, but divided into two separate sections in the North Carolina Declaration of Rights.**

Va. Const. of 1776, Declaration of Rights, Sec. 4.

That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge be hereditary.

**3. Emoluments are mentioned three times in the United States Constitution, ratified in 1788: Article I, Section 6 (prohibiting dual office holding by Senators and Representatives), Article I, Section 9 (prohibiting federal officers from receiving emoluments from foreign states), and Article II, Section 1 (limiting compensation of the President). There are suits pending in**

**federal courts charging President Donald Trump with violating Article I, Section 9 and Article II, Section 1 by receiving emoluments from foreign, federal, and state instrumentalities. The United States Department of Justice has argued on behalf of the President that the word “emolument” is limited to “profit arising from office or employ[ment].” These cases may result in a judicial determination of the meaning of “emoluments” as used in the United States Constitution, which may have some persuasive effect in North Carolina.**

U.S. Const., Art. I, Sec. 9, cl. 8.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

U.S. Const., Art. II, Sec. 1, cl. 7.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

**4. The argument of the United States Department of Justice that the word “emolument” is limited to “profit arising from office or employ[ment]” finds support in current dictionaries, but dictionaries at the time of the drafting of the American constitutions provided a more general definition. Professor John Mikhail at the Georgetown University Law Center has examined all English language and legal dictionaries from 1523 to 1807 and shown that “emolument” had a general meaning of “profit” or “advantage” at the time the North Carolina and the United States Constitutions were drafted.**

Representative definitions:

- *Black’s Law Dictionary* (Bryan A. Garner ed., 8<sup>th</sup> ed. 2004)  
Emolument, *n.* (*usu. pl.*): Any advantage, profit, or gain received as a result of one’s employment or one’s holding of office.
- Samuel Johnson, *Dictionary of the English Language* (1755)  
Emolument: Profit, advantage.

**5. North Carolina cases do not draw a sharp distinction between “emoluments” and “privileges,” but it is useful to distinguish cases concerning “emoluments” granted as compensation for public employment from cases concerning “privileges” granted in consideration of “public services” more generally.**

**Selected cases on “emoluments” as compensation for public employment:**

- *Crump v. Snead*, 134 N.C. App. 353, 517 S.E.2d 384, disc. review denied, 351 N.C. 101, 541 S.E.2d 143 (1999) (holding that a statute retroactively extending the term of an elected town councilmember did not confer an unconstitutional emolument) (citing Black’s Law Dictionary).
- *Leete v. County of Warren*, 341 N.C. 116, 462 S.E.2d 476 (1995) (holding that a grant of severance pay to a county manager upon his voluntary resignation constituted an unconstitutional “emolument” because it was not “in consideration of public services”).

**Selected cases on “privileges” granted in consideration of “public services” in general:**

- *Saine v. State*, 210 N.C. App. 594, 709 S.E.2d 379 (2011) (holding that grants to a private, non-profit school served a “public purpose” and did not constitute an unconstitutional emolument or privilege).
- *Town of Emerald Isle v. State*, 320 N.C. 640, 360 S.E.2d 756 (1987) (holding that a statute that exclusively benefits a particular group of persons is not an unconstitutional emolument or privilege if it is “intended to promote the general welfare rather than the benefit of the individual” and if “there is a reasonable basis for the legislature to conclude that the granting of the [benefit] serves the public interest”).
- *State v. Felton*, 239 N.C. 575, 80 S.E.2d 625 (1954) (holding that a statute authorizing a race track franchise in one county constituted an unconstitutional emolument or privilege), noted in 33 *N.C. L. Rev.* 109 (1954).

**6. The original constitutional requirement that “exclusive or separate emoluments or privileges” be granted only “in consideration of public**

**services” must be understood in the context of the state’s first constitution, which established a republican form of government. In the 1776 North Carolina Declaration of Rights, the Exclusive Emoluments clause appeared as Section 3, immediately following sections that established popular sovereignty. All “freemen” were equal and no one was to get unearned benefits from the government.**

A Declaration of Rights, made by the Representatives of the Freemen of the State of North Carolina.

1. That all political power is vested in and derived from the people only.
2. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.

**7. The meaning of “exclusive or separate emoluments or privileges” is often informed by reference to three other key phrases that appear in the state constitution:**

1. **“Equal Protection,” guaranteed in Article I, Section 19;**
2. **“Public Purposes,” required for the exercise of the power tax and spend by Article V, Section 2; and**
3. **“Classes,” permitted for general legislation in Article XIV, Section 3.**

**Selected opinions of the North Carolina Attorney General relating exclusive emoluments and privileges to other constitutional phrases:**

- **“Equal Protection” in Article I, Section 19.**

N.C. Const., Art. I, Sec. 19.

No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

*Op. Att’y Gen. (1995) (concerning tree-cutting in front of billboards).*

<http://www.ncdoj.gov/AboutDOJ/LegalServices/Lega-IOpinions/Opinions/Tree-Cutting-in-Front-of-Billboards.aspx>

“The test for constitutionality generally applied to the granting of special privileges and immunities is substantially similar to that used in determining whether the equal protection of the laws have been denied by the state.”

- **“Public Purposes” in Article V, Section 2.**

N.C. Const., Art. V, Sec. 2 (1).

The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended or contracted away.

*Op. Att’y Gen. (1999) (concerning hurricane relief).*

<http://www.ncdoj.gov/About-DOJ/Legal-Services/Legal-Opinions/Opinions/Authority-of-the-General-Assembly-to-Provide-Relie.aspx>

“The test for determining violations of this section of the Constitution [Article I, Section 32] is very similar to the test for determining violations of the public purpose clause of Article V, Section 2 (1) of the Constitution.”

- **“Classes” in Article XIV, Section 3.**

N.C. Const., Art. XIV, Sec. 3.

General laws may be enacted for classes defined by population or other criteria.

*Op. Att’y Gen. (1997) (concerning providing refunds to taxpayers who paid intangible tax and failed to file a timely protest).*

<http://www.ncdoj.gov/About-DOJ/Legal-Services/Legal-Opinions/Opinions/Authority-of-the-General-Assembly-to-Provide-Relie.aspx>

“A classification which favors a particular group of persons does not necessarily make it an ‘exclusive emolument or privilege’ within the meaning of the N.C. Constitution.”

**7. The “public services” required by Article I, section 32 to support grants of “exclusive or separate emoluments or privileges” are generally equated with “public purposes,” “public interest,” or “public welfare.”**

**Leading cases on “public purposes,” “public interest,” or “public welfare”:**

- *Madison Cablevision, Inc. v. City of Morganton*, 325 N.C. 634, 386 S.E.2d 200 (1989) (holding that a municipality may operate its own cable television system, so long as there is a “reasonable connection with convenience and necessity of the [State]” and the service benefits the public generally), noted in 68 *N.C. L. Rev.* 1295 (1990).
- *Maready v. City of Winston-Salem*, 342 N.C. 708, 467 S.E.2d 615 (1996) (holding that grants to private businesses are permitted when they further “the general economic welfare,” defined to include programs “to alleviate

conditions of unemployment and fiscal distress and to increase the local tax base”).

- For a recent analysis of economic incentives, see C. Tyler Mulligan, “Economic Development Incentives and North Carolina Local Governments: A Framework for Analysis,” 91 *N.C. L. Rev.* 2021 (2013).

## **8. Conclusions.**

**(1) Although probably not historically required, it useful, as a practical matter, to distinguish “emoluments” from “privileges.”**

**(2) “Emoluments” are usually payments from public funds, and the “public services” required to support such payments are usually services in the form of public employment.**

**(3) “Privileges” may involve payments from public funds, but can include other benefits granted by law. With respect to privileges, the “public services” required to support such grants are generally equated with “public purposes,” “public interest,” or “public welfare.”**

**(4) The “public services” required to support the grant of privileges cannot be defined with precision. Guidance must be sought in an examination of prior cases, not only those construing “emoluments and privileges” as used in Article I, Section 32 but also those construing other phrases used in the state constitution: “equal protection,” “public purposes,” and “classes.”**