Nurse Executives' Legal Conference:
Gifts to Public Officials and Employees

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The following three statutes (discussed below) address conflicts of interest for public officials and employees:

- G.S. 14-234 – conflicts of interest in contracting
- G.S. 14-234.1 – misuse of secret information
- G.S. 133-32 – gifts and favors

I. G.S. 14-234 – Conflicts of interest in contracting

A. Key terms

Making a contract - A public officer or employee is involved in **making a contract** if he or she participates in the preparation of the contract. A board member is also involved in making a contract if the board takes action on the contract, whether the board member participates in the board's action or not. In other words, each board member is involved in making any contract entered into by the member's unit of government.

Administering a contract - 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 the contract or to interpret the contract.

Direct benefit - A public officer or employee receives a **direct benefit** if he or she—or his or her spouse:

- owns more than 10% of the company
- derives any income or commission directly from the contract, or
- acquires property under the contract.

B. What the statute prohibits

G.S. 14-234 prohibits three activities:

1. A public officer or public employee who **makes** or **administers** a contract on behalf of a public agency may not also derive a **direct benefit** from the contract (unless an exception applies).
2. A 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. A public officer or employee shall not solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves.

C. Consequences of violation

Violation of this statute can result in a Class 1 misdemeanor, punishable by up to 120 days imprisonment and a fine in an amount left to the judge's discretion (there is no maximum allowable fine for a Class 1 misdemeanor).

In addition, contracts entered into in violation of this statute are void.

D. Exceptions

There are five exceptions to the conflicts of interest statute that permit contracts that would otherwise violate the statute as long as a public official with a conflict does not participate in any way or vote on the contract.

These exceptions are:
1. contracts between a public agency and a bank, banking institution, savings and loan association, or a public utility;
2. interests in property conveyed by an officer or employee of a public agency under a judgment entered by a superior court judge in a condemnation proceeding initiated by the public agency (a "friendly" condemnation);
3. an employment relationship between a public agency and the spouse of a public officer of the agency;
4. payments by a public agency for certain public assistance programs; and
5. contracts entered into by small jurisdictions (cities having a population of no more than 15,000 and for counties that have no cities with a population of no more than 15,000 within them).

Note that additional rules must be followed for the small jurisdiction exception:
- a contract permitted under the exception cannot exceed $40,000 of goods or services per year;
- the exception does not apply to purchases or construction or repair contracts costing $30,000 or more; and
- the contract must be approved in a regular, open meeting of the board, declared in the local government's annual audit, and posted in a conspicuous place (the posting must be updated every three months).

II. G.S. 14-234.1 – Misuse of secret information

A public officer or employee may not benefit from the use of non-public information that the member has learned through the member's official position.

Violation of this statute can result in a Class 1 misdemeanor, punishable by up to 120 days imprisonment and a fine in an amount left to the judge's discretion (there is no maximum allowable fine for a Class 1 misdemeanor).

III. G.S. 133-32 – Gifts and favors

A. What the statute prohibits

A public officer or employee may not accept gifts or favors from a past, current, or potential future vendor or contractor if the officer or employee is charged with the duty of any or all of the following:

- preparing plans, specifications, or estimates for public contracts;
- awarding or administering public contracts; or
- inspecting or supervising construction.

B. Exceptions

Exceptions are allowed for:

- honoraria
- advertising items or souvenirs of nominal value
- meals at banquets
- gifts to professional organizations
- gifts from family or friends (which must be reported)

C. Consequences of violation:

Violation of this statute can result in a Class 1 misdemeanor, punishable by up to 120 days imprisonment and a fine in an amount left to the judge's discretion (there is no maximum allowable fine for a Class 1 misdemeanor).

IV. Resources

A. Fleming Bell, II, *Ethics, Conflicts, and Offices: A Guide for Local Officials* (2nd edition forthcoming 2010)

Frayda S. Bluestein, *A Legal Guide to Purchasing and Contracting for North Carolina Local Governments* (2nd edition)