



Conflicts of Interest Laws for North Carolina Public Officials & Employees

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Ethics in Government: Why It’s Important

The conduct of government officials and public employees affects public perceptions of and trust in government. Citizens expect public officials and employees to act in the best interest of the public and not to use their office for their personal benefit. In some cases, laws restrict the conduct of public officials, but in many cases they have a choice in how to act, for example, when deciding whom to hire, when to contract, and how to vote. North Carolina laws governing the conduct of public officials focus on financial interests in voting and contracting as well as on other ways in which government decision makers might personally benefit from the actions they take. In addition, some state officials and senior level state employees are subject to specific standards of conduct under the State Government Ethics Act (G.S. Chapter 138A) and additional statutes and policies specific to their agencies or state boards.¹ This manuscript summarizes state conflicts of interest laws that are generally applicable to both state and local government public officials and employees.

1. The State Government Ethics Act, G.S. Chapter 138A, is beyond the scope of this manuscript. For more information about state ethics laws, see the North Carolina State Ethics Commission website at www.ethicscommission.nc.gov. The State Ethics Act does not generally apply to local government officials and employees unless they also serve in a state capacity, such as serving on a state board or commission covered under the act. Similarly, local government officials and employees are generally exempt from G.S. Chapter 120C, which regulates lobbying senior-level state officials and employees.

I. Conflicts of Interest in Public Contracting

Several state laws place limits on the ability of elected officials and public employees at the state and local government level to derive personal benefit from contracts with the governmental units they serve. These laws reflect the public's need to ensure that contracting and other decisions are made in a neutral, objective way based on what is in the public interest and not in consideration of actual or potential benefit to the decision maker. However, these laws do not prohibit all activity that the public might consider improper. Instead, they identify particular activities that the legislature has identified as serious enough to constitute a criminal offense. Situations that are not illegal may nonetheless be inappropriate, so public officials should always consider the public perception of their actions in addition to the legal consequences.

A. Contracts for Personal Benefit

A criminal statute, G.S. 14-234, prohibits a public officer (elected or appointed) or a public employee from deriving a direct benefit from any contract in which he or she is involved on behalf of the public agency he or she serves. The statute contains two additional prohibitions. Even if a public official or employee is not involved in making a contract from which he or she will derive a direct benefit, the official or employee is prohibited from influencing or attempting to influence anyone in the agency who is involved in making the contract. In addition, all public officers and employees are prohibited from soliciting or receiving any gift, reward, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract, even if they do not derive a direct benefit under the contract. Violation of this statute is a Class 1 misdemeanor. Key definitions contained in the statute, along with several important exceptions, are discussed below.

As defined in the statute, a person “derives a direct benefit” from a contract if the person or *his or her spouse* (1) has more than a 10 percent interest in the company that is a party to the contract, (2) derives any income or commission directly from the contract, or (3) acquires property under the contract.² Note that while the prohibition includes a direct benefit to a spouse, it does not extend to other family members or friends, or to unmarried partners. If the employee or official or his or her spouse does not derive a direct benefit from it, a contract between a public agency and a family member, friend, or partner of a board member of employee does not violate the law. Another important aspect of the statutory definition is that it does not make illegal a contract with an entity in which a county or city official is an employee as long as no commission or other direct benefit is derived from the contract.

Since the definition of direct benefit includes the acquisition of property, board members and employees who are involved in the disposal of surplus property are prohibited from purchasing that surplus property from their unit of government. Elected and appointed officials (but not employees) may be able to do so if the unit falls within the “small jurisdiction exception” described below.

The law also specifies what it means to be involved in “making or administering” the contract, which is a necessary element in the statutory prohibition. Individuals who are *not* involved in making or administering contracts are not legally prohibited from contracting with their unit of government. Activity that triggers the prohibition includes participating in the development of specifications or contract terms, or preparation or award of the contract, as well as having the authority to make decisions about or interpret the contract.³ Performing purely ministerial duties is not considered “making or administering” the contract.⁴ The statute also makes clear that a person is involved in making the contract when the board or commission on which he or she serves takes action on the contract, even if the official does not participate. Simply being excused from voting on the contract does not absolve a person with a conflict of interest from potential criminal liability. If an exception (discussed below) applies, the interested party may be excused from voting and legally contract with the unit. However, unless an exception applies, simply being excused from voting does not eliminate a conflict under the statute.

As noted above, public officials or employees may legally benefit from a contract with the unit of government they serve as long as they are not involved in making or administering it. Thus, for example, employees who are not involved in disposing of surplus property may legally purchase items from the unit, and the unit may legally contract to acquire goods or services from employees whose county or city job does not involve them in making

2. G.S. 14-234(a1)(4).

3. G.S. 14-234(a1)(2), (3).

4. G.S. 14-234(a1)(5).

or administering the contract.

The broad prohibition in G.S. 14-234 is modified by several exceptions. In any case where an exception applies, a public officer who will derive a direct benefit is prohibited from deliberating or voting on the contract or from attempting to influence any other person who is involved in making or administering the contract.⁵ Contracts with banks, savings and loan associations, and regulated public utilities are exempt from the limitations in the statute,⁶ as are contracts for reimbursement for providing direct assistance under state or federal public assistance programs under certain conditions.⁷ An officer or employee may, under another exception, convey property to the unit but only through a condemnation proceeding initiated by the unit.⁸ An exception in the law also authorizes a county or city to hire as an employee the spouse of a public officer (this exception does not apply to public employees).⁹

A final exception applies only in cities with a population of less than 15,000 and in counties with no incorporated municipality with a population of more than 15,000.¹⁰ In these jurisdictions, governing board members as well as certain members of the social services, local health, or area mental health boards, of the board of directors of a public hospital, and of the local school board may lawfully contract with the units of government they serve, subject to several limitations contained in the exception. First, the contract may not exceed \$20,000 for medically related services and \$40,000 for other goods or services in any twelve-month period (note this requirement specifically applies to any twelve-month period, not necessarily a fiscal year). In addition, the exemption does not apply to any contract that is subject to the competitive bidding laws, which includes purchase and construction or repair contracts with an estimated cost of \$30,000 or more. Contracts made under this exception must be approved by special resolution of the governing board in open session. The statute imposes additional public notice and reporting requirements for these contracts and prohibits the interested board member from participating in the development of or voting on the contract. A contract entered into under the “small jurisdiction” exception that does not comply with all the procedural requirements applicable to this exception violates the statute.

Contracts entered into in violation of G.S. 14-234 violate public policy and are not enforceable. There is no authority to pay for or otherwise perform a contract that violates the statute unless the contract is required to protect the public health or welfare and limited continuation is approved by the Local Government Commission.¹¹ Prosecutions under the statute are not common (although some have occurred), but situations in which board members or public officials stand to benefit from contracts involving public funds often make headlines.

B. Gifts and Favors

Another criminal statute, G.S. 133-32, is designed to prevent the use of gifts and favors to influence the award and administration of public contracts. The statute makes it a Class 1 misdemeanor for a current contractor, a contractor who has performed under a contract with a public agency within the past year, or a person who anticipates bidding on a contract in the future to give any gift or favor to public officials and employees who have responsibility for preparing, awarding, or overseeing contracts, including inspecting construction projects. The statute also makes it a Class 1 misdemeanor for those officials to receive the gift or favor.

The statute does not define gift or favor. A reasonable interpretation is that the prohibition applies to anything of value acquired or received without fair compensation unless it is covered by a statutory exception. These exceptions include advertising items or souvenirs of nominal value, honoraria for participating in meetings, and meals at banquets. Inexpensive pens, mugs, and calendars bearing the name of the donor firm clearly fall within the exception for advertising items and souvenirs. Gifts of a television set, use of a beach cottage, or tickets to a professional sports event probably are prohibited. Although meals at banquets are allowed, free meals offered by contractors under other circumstances, such as lunch, should be refused. Some local governments have adopted local policies establishing a dollar limit for gifts that may be accepted; however, a gift al-

5. G.S. 14-234(b1).

6. G.S. 14-234(b)(1).

7. G.S. 14-234(b)(4).

8. G.S. 14-234(b)(2). The statute specifically authorizes the conveyance to be undertaken under a consent judgment, that is, without a trial, if approved by the court.

9. G.S. 14-234(b)(3).

10. G.S. 14-234(d1). Population figures must be based on the most recent federal decennial census.

11. G.S. 14-234(f).

lowed under a local policy must still be refused if it violates state law.

The statute also allows public officials and employees to accept customary gifts or favors from friends and relatives as long as the existing relationship, rather than the desire to do business with the unit, is the motivation for the gift. Finally, the statute specifically does not prohibit contractors from making donations to professional organizations to defray meeting expenses, nor does it prohibit public officials who are members of those organizations from participating in meetings that are supported by such donations and are open to all members (for example, sponsorship of a conference event that is open to all conference attendees).

It is important to distinguish between gifts to individuals and gifts to the government entity itself. A contractor may legally donate goods and services to the local government for use by the unit. For example, a local business can legally donate products to the unit for its own use or for the unit to raffle to employees for an employee appreciation event. Gifts or favors delivered directly to individuals for their personal use should be returned or, in some cases, may be distributed among employees such that each person's benefit is nominal. The latter approach is common for gifts of food brought to a department by a vendor. Public officials should inform contractors and vendors about the existence of the gifts-and-favors statute and about any local rules in effect within the unit addressing this issue.

C. Misuse of Confidential Information

G.S. 14-234.1 makes it a Class 1 misdemeanor for any state or local government officer or employee to use confidential information for personal gain, to acquire a pecuniary benefit in anticipation of his or her own official action, or to help another person acquire a pecuniary benefit from such actions. Confidential information is any non-public information that the officer or employee has learned in the course of performing his or her official duties.

II. Conflicts of Interest for Specific Categories of Officials & Public Employees

In addition to the statutes discussed above that apply to all local officials and employees, specific conflict of interest prohibitions apply to certain groups of officials and employees, including those discussed briefly below.

A. Building Inspectors

Both city and county building inspectors are prohibited from having a financial interest in or being employed by a business that furnishes labor, materials, or appliances for building construction or repair within the city or county jurisdiction. All employees of city and county inspection departments, including individuals working under contract with those departments, are prohibited from engaging in any work that is inconsistent with their public duties. In addition to these general prohibitions, the statute requires a city or county to find a conflict of interest if the employee (including individuals working under contract with an inspection department) has a financial or business interest in the project being inspected or has a close relationship with or has previously worked within the past two years for the project's owner, developer, contractor, or manager.¹²

B. Project Designers

Architects and engineers performing work on public construction projects are prohibited from specifying any materials, equipment, or other items manufactured, sold, or distributed by a company in which the project designer has a financial interest.¹³ Project designers are prohibited also from allowing manufacturers to draw specifications for public construction projects.¹⁴ A violation of these restrictions is punishable as a Class 3 misdemeanor; violators lose their license for one year and a pay a fine of up to five hundred dollars (\$500).¹⁵

C. Public Hospital Officials and Employees

Boards of directors and employees of public hospitals and hospital authorities and their spouses are prohibited from acquiring a direct or indirect interest in any hospital facility, property planned to be included within a

12. G.S. 153A-355 (counties) and G.S. 160A-415 (cities).

13. G.S. 133-1.

14. G.S. 133-2.

15. G.S. 133-4.

hospital facility, or a contract or proposed contract for materials or services provided to a hospital facility. Limited exceptions to this prohibition apply; a contract entered into in violation of these prohibitions is void and unenforceable.¹⁶

D. Local Management Entity (LME) Board Members

LME board members cannot contract with their LME for the delivery of mental health, developmental disabilities, and substance abuse services while serving on the board (and are not eligible for board service so long as such a contract is in effect).¹⁷

E. Housing Authorities

Commissioners and employees of public housing authorities cannot acquire a direct or indirect interest in a housing project, property included or planned to be included in a housing project, or in a contract for materials or services furnished in connection with a housing project.¹⁸

F. Redevelopment Commissions

Commissioners and employees of redevelopment commissions cannot acquire a direct or indirect interest in a redevelopment project, property included or planned to be included in a redevelopment area, or in a contract for materials or services furnished in connection with a redevelopment project (under limited circumstances employees may acquire property to occupy as a personal residence).¹⁹

G. Local ABC Boards

Local ABC Boards are subject to specific conflicts of interest prohibitions involving financial interests in alcohol-related businesses and financial benefits to family members. Local boards must adopt a code of ethics and board members must attend ethics training.²⁰

III. Conflicts of Interest Applicable to Federal Grant Funds

The Grants Management Common Rule (GMCR) is a set of federal regulations that generally apply to the management of federal grant funds and include both specific procurement requirements as well as conflict of interest prohibitions that differ in some ways from state law. Grantees and subgrantees are required to adopt a written code of conduct that (1) addresses real and apparent conflicts of interest, (2) imposes prohibitions against accepting gifts and favors from vendors and contractors, and (3) establishes disciplinary actions for violations. In addition, the GMCR prohibits real or apparent financial or other interests in a contract funded with federal funds by officers, employees, and agents of grantees and subgrantees as well as their spouses, immediate family members, partners, and soon-to-be-employers. Finally, the GMCR prohibits all officers, employees, and agents of grantees and subgrantees from accepting gifts or favors from current or future contractors. A violation of these prohibitions can result in disciplinary action and loss of federal funding. Local governments should consult with the federal granting agency to ensure full compliance with the GMCR or any other federal regulations applicable to federal grant funds.

The following two charts summarize the major differences between state law and the GMCR:

16. G.S. 131E-14.2 (public hospitals) and G.S. 131E-21 (hospital authorities).

17. G.S. 122C-118.1(b).

18. G.S. 157-7. A "housing project" is defined under G.S. 157-3.

19. G.S. 160A-511.

20. G.S. 18B-201, -706.

A. Conflicts of Interest (state law vs. federal law)

| | State (G.S. 14-234(a)(1)) | Federal (GMCR) |
|-----------------------|--|--|
| Who is covered | Officers, employees | Officers, employees, and agents of grantee and subgrantees |
| Who else is covered | Spouse | Spouse, immediate family, partners, current or soon-to-be employer |
| What kind of interest | Direct benefit | Real or apparent financial or other interest |
| Exceptions | <ol style="list-style-type: none"> 1. Banks & utilities 2. Friendly condemnation 3. Spouse employment 4. Public assistance 5. Small jurisdictions | Financial interest that is not substantial |
| Penalties | Class 1 misdemeanor Void Contract | Loss of federal funds Disciplinary action |

B. Gift Ban (state law vs. federal law)

| | State (G.S. 133-32) | Federal (GMCR) |
|---------------------|---|---|
| Prohibited giver | Past (w/in 1 year), present, or future | Current or future |
| Prohibited receiver | Officers and employees involved in: <ol style="list-style-type: none"> 1. Preparing plans 2. Awarding or administering 3. Inspecting or supervising construction | <i>All</i> officers, employees, agents of grantee and subgrantees |
| Exceptions | <ol style="list-style-type: none"> 1. Honoraria 2. Nominal advertising items 3. Meals at banquets 4. Professional groups 5. Family and friends | Unsolicited gift of nominal value |
| Penalties | Class 1 misdemeanor | Loss of federal funds Disciplinary action |

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