

# **Legal Basics for Consolidated Human Services Boards**

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UNC School of Government**

# Plan

Why?

- Why do we have CHS governing boards?

Who?

- Who serves on a CHS board?

Where?

- Where are the different types of human services boards across the state?

What?

- What does a CHS board do? What does the CHSA director do?

How?

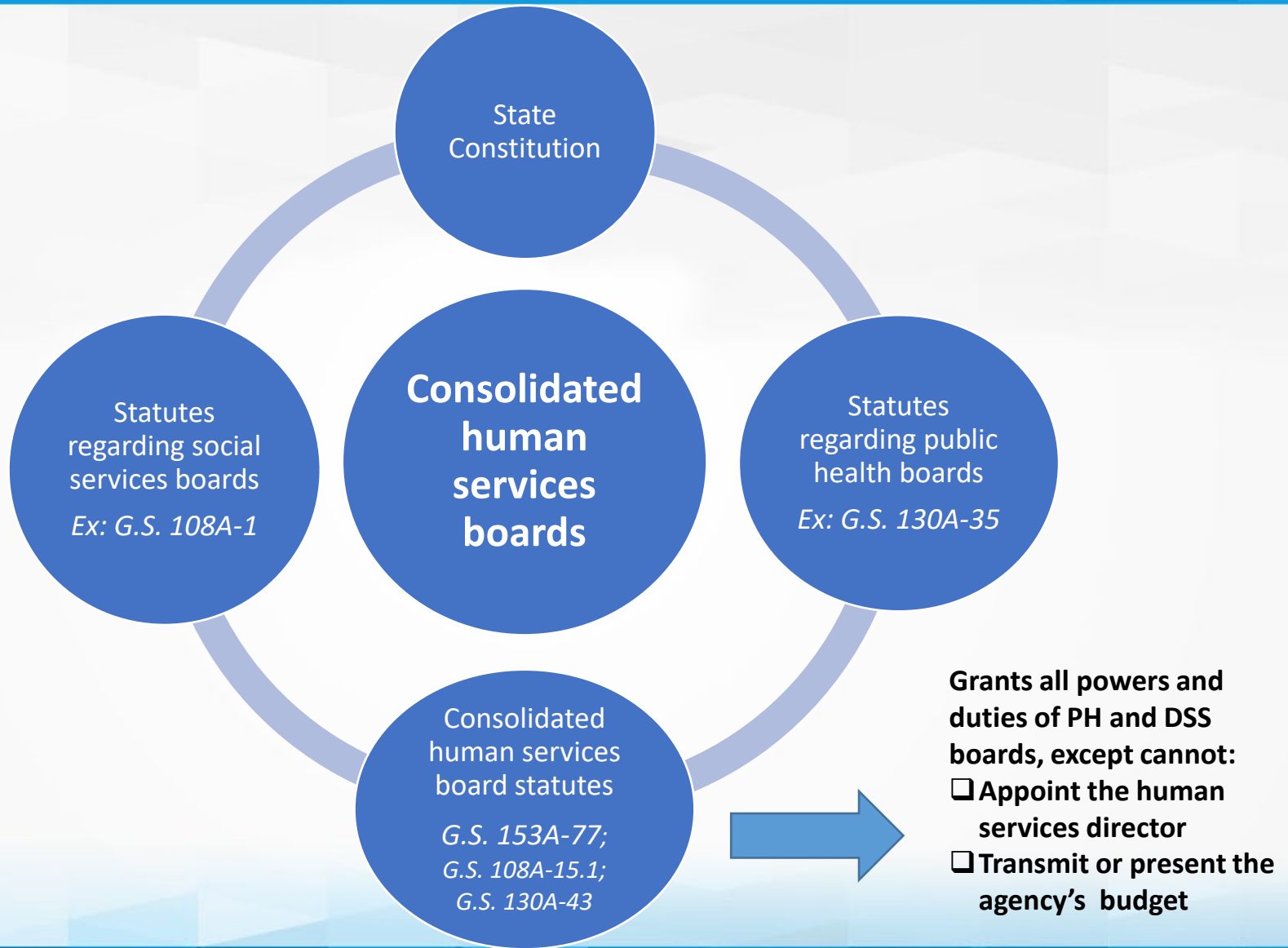
- How does the CHS board carry out its business?



# **WHY?**

**The legal framework for CHS boards**

# Legal Framework



# State law requires counties to:



## Social Services

- Have a county social services board
- Administer mandated social services programs under supervision of county social services director
- Provide adequate facilities for social services department
- Fund part of the cost of social services programs
- Comply with state law & policy



## Public Health

- Have a local board of health
- Provide, contract for, or certify available mandated public health services (some must be under direction of local health director and the supervision of the local board of health)
- Be accredited by the North Carolina Local Health Dept. Accreditation Board
- Fund part of the cost of local public health programs
- Comply with state law & policy

# State/County Relationship

## Social Services

### State

- Develops law and policy to shape programs
- Transmits federal and state funding to counties
- Supervises county administration

### County

- Administers programs
- Allocates funding
- Hires/supervises staff
- Develops some county-specific programs

## Public Health

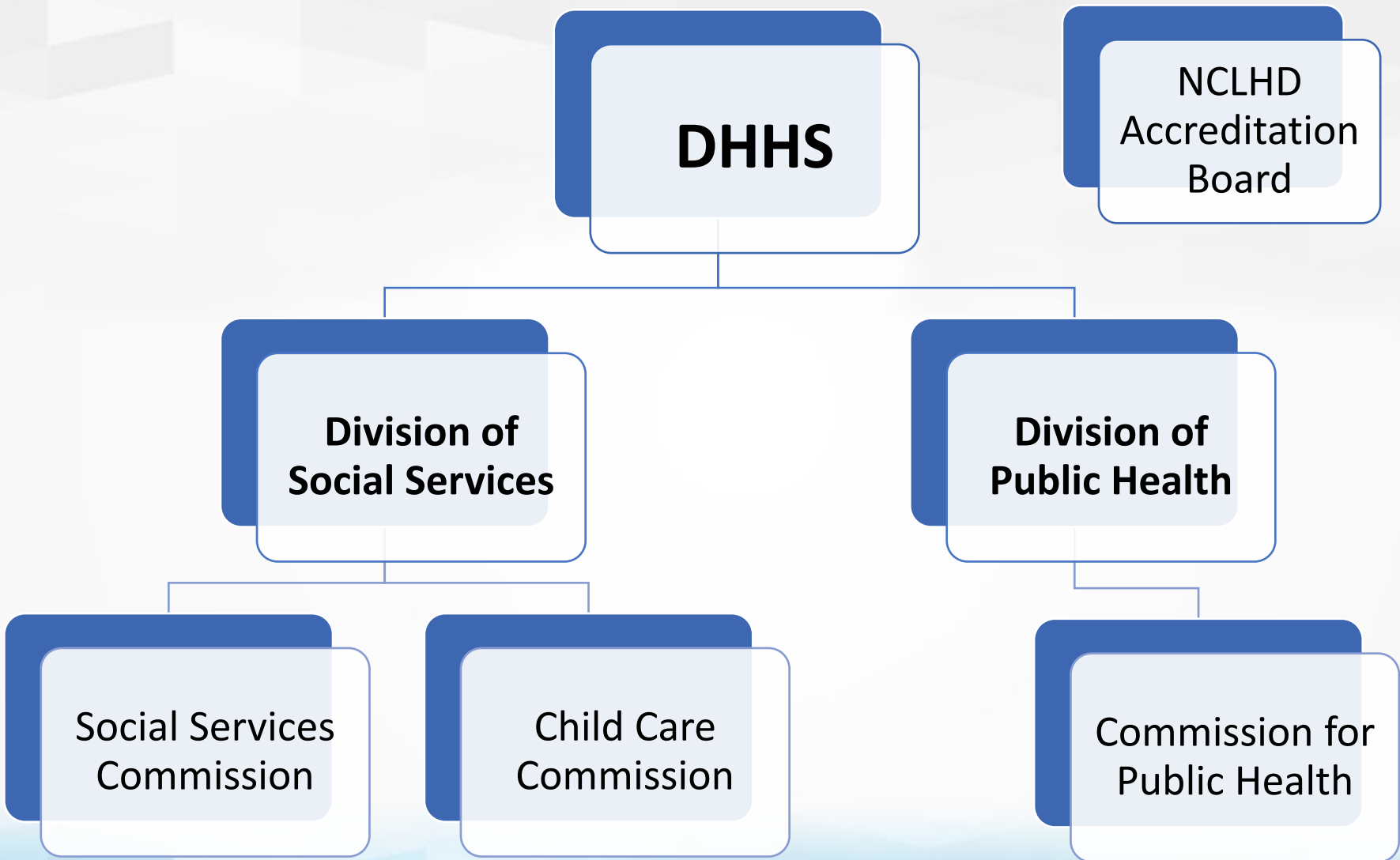
### State

- Develops law and policy to shape programs
- Administers statewide public health programs
- Transmits federal and state funding to local agencies
- Assures accreditation requirements are met
- Adjudicates disputes (OAH)

### County/District

- Administers programs, including providing public health services
- Allocates funding
- Hires/supervises staff
- Develops some county or district specific programs
- Engages in rulemaking and fee-setting
- Adjudicates disputes

# State Oversight and Rulemaking





# **WHO?**

## **The Composition of the CHS Board**



# Compare and Contrast

## Traditional DSS Board

- 3 or 5 members
- 2 appointed by BOCC; 2 by SSC; 1 by members
- No composition requirements
- 3-year terms

## CHS Board

- Up to 25 members
- All appointed by BOCC
- Composition requirements for some positions
- 4-year terms

## Traditional Board of Health

- 11 members
- All appointed by BOCC
- Composition requirements for most positions
- 3-year terms

# True or False?

- A consolidated human services agency's governing board must include a county commissioner
- A consolidated human services agency's governing board must include a psychologist



# Who is on the CHS Board?

Up to 25 people, including:

- One county commissioner
- Four consumers of human services
- Eight professionals: psychologist, pharmacist, engineer, dentist, optometrist, veterinarian, social worker, registered nurse.
- Two physicians licensed to practice medicine in NC (one must be a psychiatrist)
- Up to 10 others, “including members of the general public representing various occupations.”

**Board must “reasonably reflect the population makeup of the county.”**

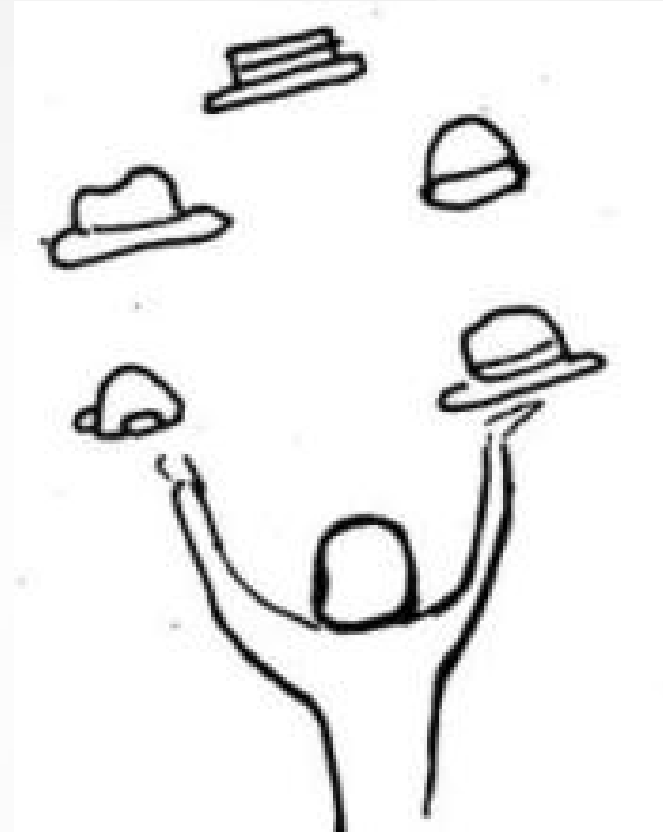
# Qualifications

- Legal **resident** of county
  - No minimum length of residency required
  - May be “part-time” resident or work in another county
- Certain CHS board members must meet professional qualifications
- Additional legal qualifications
  - May be established by board of county commissioners
- **Term Limits** – four years, can only serve two consecutive terms
  - County commissioner member may serve only as long as he or she remains a county commissioner.



# Multiple Office Holding Limits

- No person may *concurrently* hold more than
  - Two appointive public offices *or*
  - One elective and one appointive public office
- Appointment of county commissioner
  - Is “*ex officio*”
  - Doesn’t “count” as separate office



# Incompatible Office Holding



Office

Office

- May not hold two incompatible offices
- Offices are incompatible if:
  - Conflict between functions or duties
  - One is subservient to other

*May a board member serve as acting or interim director?*

# Other Potential Conflicts

- **Board member who is licensed foster parent**
  - May not be supervised by or accept placements from resident county
- **Board member (or spouse) who owns or operates nursing or adult care home**
  - May not receive Medicaid or Special Assistance payments



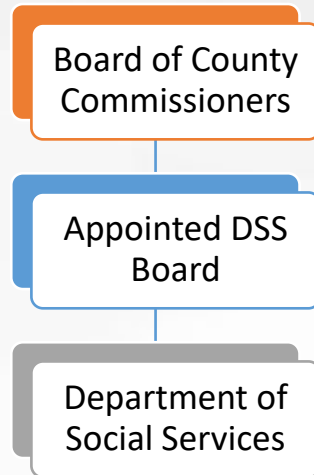
# **WHERE?**

**Human Services Agency Organization  
and Governance Across North Carolina**

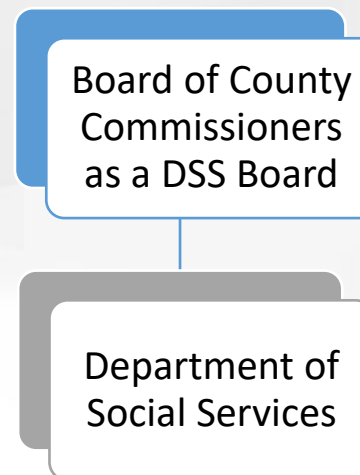


# Governance Models Available to Counties – Social Services Example

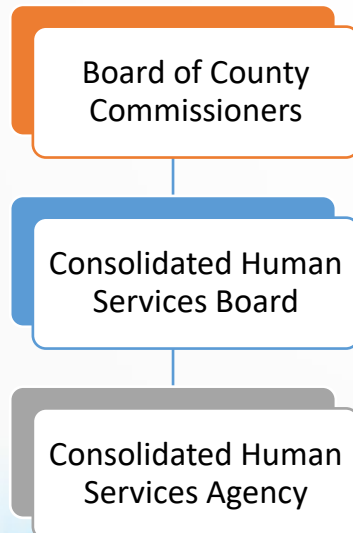
**OPTION A**



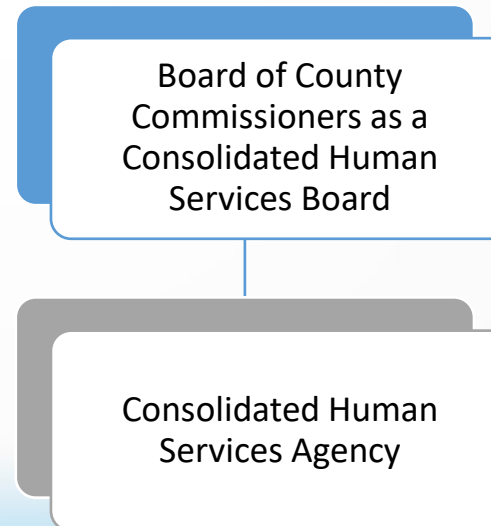
**OPTION B**



**OPTION C**



**OPTION D**



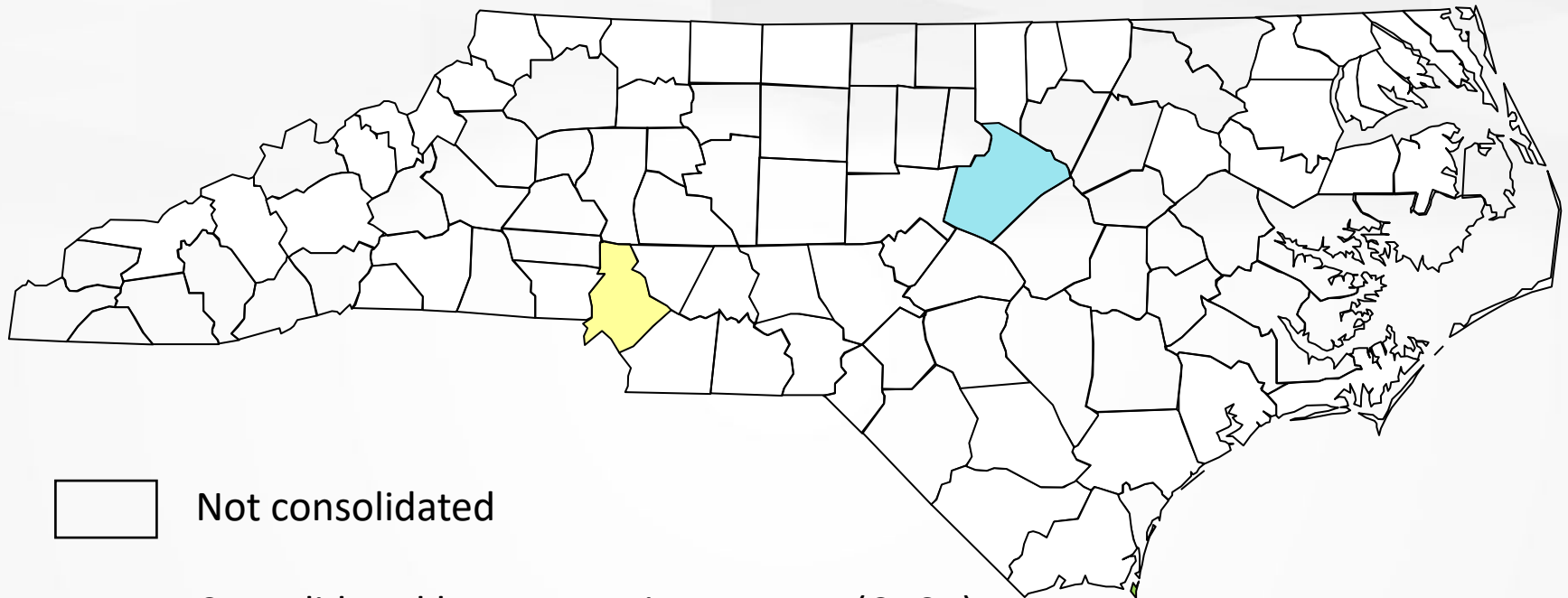
# Key Differences

		BOARD	DIRECTOR	EMPLOYEES
<b>Traditional Model</b>	<b>DSS w/ DSS Board</b>	Appointed; 3-5 members	Board hires	SHRA
	<b>Health Dept. w/ Board of Health</b>	Appointed; 11 members	Board hires	SHRA
<b>Options Available Since 2012 to Counties with a County Manager</b>	<b>BOCC as DSS and/or PH Board</b>	Elected*	BOCC hires	SHRA
	<b>CHSA with CHS Board</b>	Appointed; up to 25 members	County manager hires with advice & consent of CHS board	SHRA Optional
	<b>CHSA with BOCC as CHS Board</b>	Elected*	County manager hires with advice & consent of BOCC	SHRA optional

*\* If public health affected, must appoint health advisory committee*

# PH and SS Organization and Governance

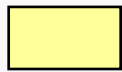
## June 2012



Not consolidated



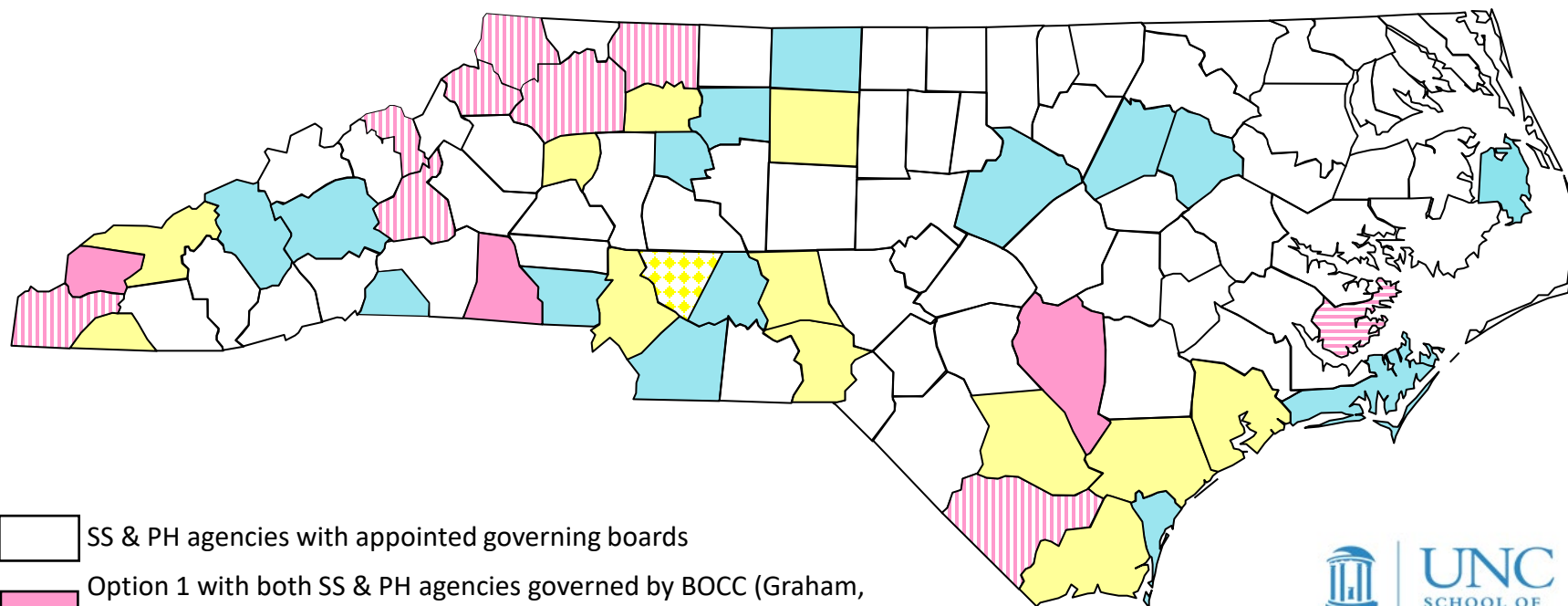
Consolidated human services agency (CHSA)  
with a consolidated human services board (Wake)










CHSA with BOCC as governing board (Mecklenburg)

# PH and SS Organization and Governance

As of September 2021



-  SS & PH agencies with appointed governing boards
-  Option 1 with both SS & PH agencies governed by BOCC (Graham, Cleveland, Sampson)
-  Option 1 with SS agency governed by BOCC, PH agency with appointed governing board (Cherokee, Ashe, McDowell, Mitchell, Watauga, Wilkes, Surry, Columbus)
-  Option 1 with PH agency governed by BOCC, SS agency with appointed governing board (Pamlico)
-  Option 2 with consolidated HS agency including SS & PH, appointed CHS board (Haywood, Buncombe, Polk, Gaston, Davie, Union, Forsyth, Stanly, Rockingham, Wake, Nash, Edgecombe, Carteret, Dare, New Hanover)
-  Option 3 with consolidated HS agency including SS & PH, governed by BOCC, health advisory committee (Clay, Swain, Alexander, Yadkin, Mecklenburg [no advisory comm.], Guilford, Montgomery, Richmond, Bladen, Brunswick, Pender, Onslow)
-  Option 3 with consolidated HS agency including SS & other human services but not PH, governed by BOCC (Cabarrus)

# **WHAT?**

**Powers and Duties of the CHS Board  
and the CHS Director**

# Powers and Duties

**Determined by State law**



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graph TD; A[Determined by State law] --> B[Statutes enacted by General Assembly]; B --> C[Administrative rules adopted by Social Services Commission and the North Carolina Commission for Public Health]; C --> D[Ordinances adopted by county commissioners];
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**Statutes enacted by General Assembly**

**Administrative rules adopted by  
Social Services Commission and the North  
Carolina Commission for Public Health**

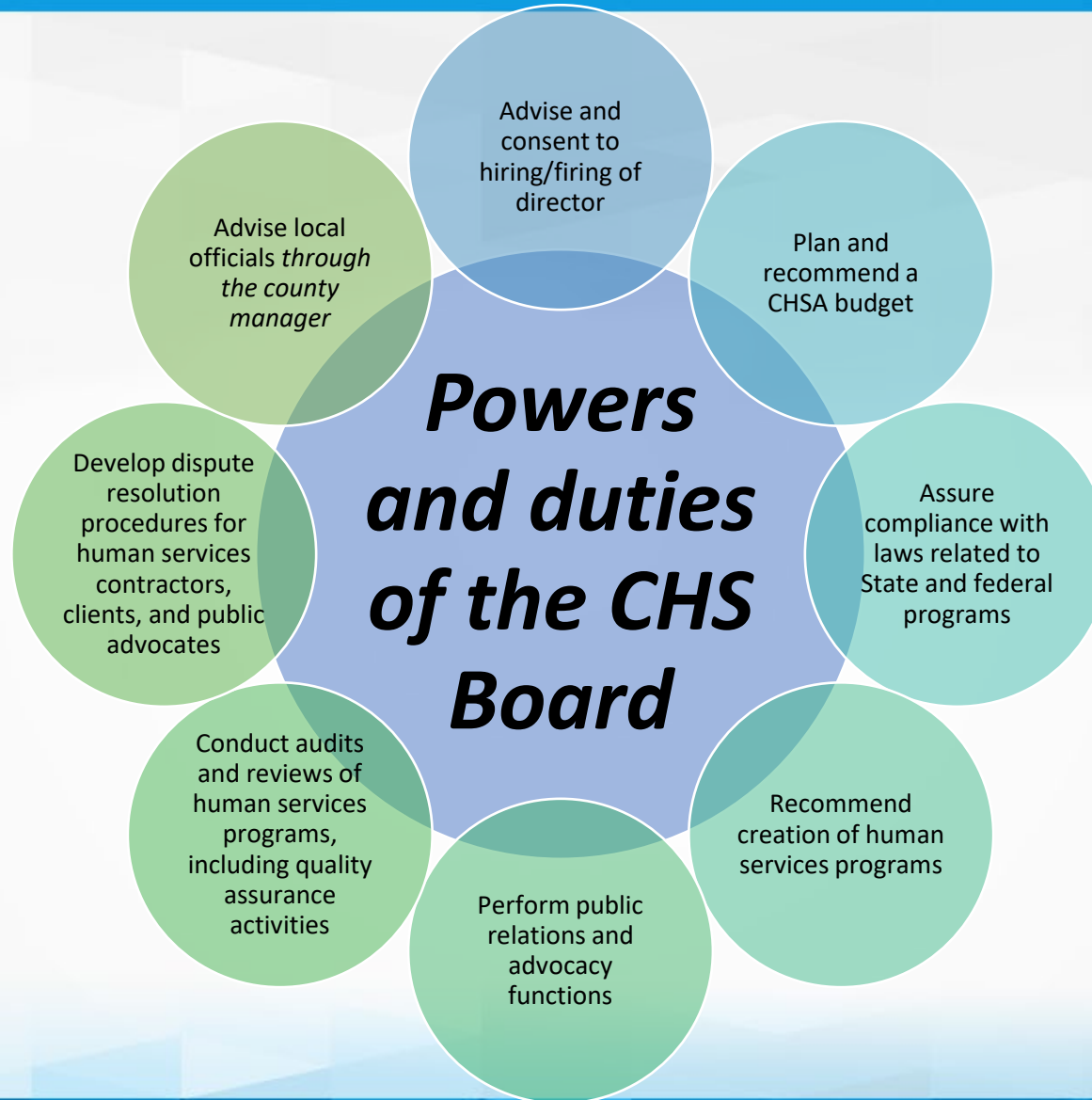
**Ordinances adopted by  
county commissioners**

# Powers and Duties

**What powers of the DSS Board and Board of Health does the CHS Board NOT have?**



# CHS Board Powers and Duties





# CHS Board Powers and Duties

## Powers and Duties Inherited from Board of Health

### Policy

- Make policy for local public health agency

### Rules

- Adopt local public health rules

### Disputes

- Adjudicate disputes regarding local rules or locally imposed public health administrative penalties (fines)

### Fees

- Impose local public health fees

### Accreditation

- Satisfy state accreditation requirements for local boards of health

# *Duty*- Accreditation

- In order to receive state and federal public health funds, local health departments must obtain and maintain accreditation under North Carolina's accreditation system (G.S. 130A-34.1; 130A-34.4).
- Assesses capacity to provide the ten essential public health services
- NCLHD Accreditation Board - Health Department Self-Assessment Instrument (HDSAI) Interpretation Document
  - Explains Accreditation Board's interpretation of rules (10A NCAC Chapter 48)
  - Identifies evidence to be used to satisfy the activities specified in the rules
  - Includes BOH/CHS Board training requirements

# Power— Public Health Rulemaking

## What is a local public health rule?

A local law that is necessary to protect or promote public health, and that is adopted by the CHS board.

Applies to jurisdiction covered by the local board, including within municipalities.

Has the “force of law” – there are legal means to enforce the rule against those who do not comply.

Can *prohibit* residents from doing something  
OR  
*require* residents to do something

## Limitations on subject matter:

Statutory

*Peedin* test

State preemption of local authority

A local rule may be more stringent than state public health rules if necessary to protect public health

# Public Health Training



<https://sph.unc.edu/nciph/nciph-boh-roles-respon/>



<https://sph.unc.edu/nciph/nciph-boh-rulemaking-authority/>



# CHS Board Powers and Duties

## Powers and Duties Inherited from DSS Board

Inspect  
Records

Authority to inspect social services and public assistance records

Program  
Decisions

Authority to make some decisions related to Work First, Special Assistance, & services funded through Social Services Block Grant (can be delegated to director)

Review  
Fraud

Review suspected cases of fraud for some public assistance programs (can be delegated to director)

Advise

Advise county and municipal authorities in developing policies and plans to improve the social conditions of the community

# *Power* - Access to Confidential SS Information

## Access

- Board members may inspect records relating to applications for and provision of public assistance and social services

## Protect

- Board members may not disclose any information acquired by examining such records

## Limits

- Right of access may be limited by some state confidentiality laws and federal funding requirements.

**SOG Blog Post on Coates' Canons:**

<https://canons.sog.unc.edu/access-confidential-records-social-services-governing-boards/>



# *Duty*- Confidentiality

Most individually identifiable information held by social services is confidential under law

Exceptions allow sharing with law enforcement, courts, schools, health care and other service providers, government oversight, etc.

Most individually identifiable health information held by public health is confidential under law

Exceptions allow disclosures to facilitate provision of health care, or for important public policy purposes, including disclosures to public health for disease control purposes, disclosures to DSS for protective services, disclosures for court proceedings, etc.

# Powers and Duties of CHSA Director

- Appoint CHSA staff with county manager's approval
- Administer state & local human services programs
- Act as secretary and staff to CHS board
- Plan CHSA budget
- Advise BOCC through the county manager
- Perform regulatory functions of investigation & enforcement of state & local health regulations
- Act as agent of and liaison to the State
- Appoint an individual with local health director qualifications (with county manager's approval)
- Exercise (or delegate, when permitted) legal powers & duties of local health director and director of social services





# Other Powers and Duties of the CHS Director

## Examples of Local Health Director Powers & Duties

- Administer public health programs & enforce PH laws
- Employ PH remedies, including abating PH nuisance, imposing fines in some instances, seeking misdemeanor charges, food embargo
- Investigate & control spread of communicable disease
- Order isolation or quarantine
- Rabies control activities
- Disseminate PH information and protect health

## Examples of Social Services Director Powers & Duties

- Administer public assistance and social services programs
- Serve as guardian of incompetent adults
- Serve as temporary guardian of minor children
- Serve on community child protection team, child fatality prevention team, & juvenile crime prevention council
- Arrange disposition of unclaimed bodies
- Issue youth employment certificates
- Perform functions specified in local emergency management plans

# HOW?

**Laws Governing How  
the CHS Board Operates**

# Board Business

## CHS Board Chair

- Must be elected annually by members of the CHS Board.

## CHS Board Actions

- For purposes of voting or otherwise making decisions as a board, a majority of the members constitutes a quorum.

## Removal of CHS Board Members

- **A board member may be removed for:**
  - Commission of a felony or other crime involving moral turpitude;
  - Violation of a State law governing conflict of interest;
  - Violation of a written policy adopted by the county board of commissioners;
  - Habitual failure to attend meetings;
  - Conduct that tends to bring the office into disrepute; or
  - Failure to maintain required qualifications for appointment.



- County commissioners (not CHS board) have removal authority

# Open Meetings - Basics

- Open meetings law applies to “official meetings” of “public bodies”
  - Law requires **notice** and **access**
- “Official meeting”:
  - A majority of the members
  - Gathering simultaneously in person or electronically
  - To conduct a hearing, deliberate, vote or otherwise conduct public business
- Be careful about email exchanges
- Public bodies must create and retain minutes of meetings and general accounts of closed sessions.
- Minutes and general accounts are public records, but may be withheld from public to the extent necessary to avoid frustrating the purpose of the closed session.



# Open Meetings – Closed Sessions

## Limited authority to meet in closed session

- Preserve confidentiality of records
- Preserve attorney client privilege
- Discuss economic development
- Discuss bargaining position for property acquisition
- Consider performance, qualifications, appointment, of public employees and public officers (not members of the board itself or other boards)
- Matters involving alleged criminal misconduct

*\*Partial list: See G.S. 143-318.11 for complete description*

- **Motion made in open session:**
  - Must state the purpose of the closed session.
  - **Special rules for:**
    - Preservation of confidential records: Must cite the law that makes the record confidential.
    - Attorney-client privilege: If there is litigation, must identify the parties.





# Open Meetings - Notice

Type of Meeting	Notice Requirements
Regular	Notice filed, posted, on website
Special	48 hour notice to “sunshine list”; posted on website
Emergency	Notice to news media who have requested it, in same manner as given to members of the public body
Recessed	Post on website

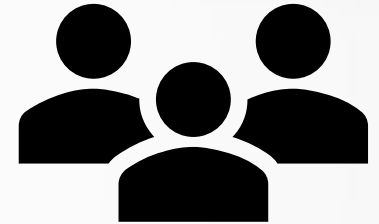
- Chair or three of the members may call special meeting on 48 hours written notice (G.S. § 153A-77(c))
- **KEEP IN MIND: Special notice requirements apply to PH rulemaking; must be provided in addition to open meeting notice. See G.S. 130A-39(d).**



# Open Meetings

## Key points to remember

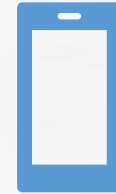
- Comply with notice and access requirements
- Do not conduct board business outside of meetings, even in the interest of efficiency
- Closed sessions are allowed for specific purposes
- Minutes (or general accounts for closed sessions) are always required



# True or False?



Messages sent from your private email accounts are not subject to the public records law.



Text messages sent from your personal cell phone are not subject to the public records law





# Public Records – Chapter 132 of the General Statutes



Any record made or received in the **transaction of public business** is subject to public access unless an exception applies.



It's the **CONTENT** of the record, not its **location**, that determines whether it is a **public** record.



Records created on **personal devices or accounts** are public records if the content involves **public business**.



Records created on government devices or accounts are not public records if the content does **not** involve public business.



# Public Records

## Right of access requires providing records:

- to anyone who requests them
- to inspect or receive a copy
- regardless of why they want them
- in the medium requested if possible
- “as promptly as possible”

## Two types of exceptions:

- *May release*, but not required to when the law says “not public records”
  - Examples: Criminal investigation, economic development information
- *Shall not release* when the law says “confidential”

# Public Records Requests: *Framework for Response*

## 1. Does a record exist that corresponds to the request?

- *If not, no disclosure is required.*
- *If yes, continue to question 2.*

## 2. Is the record “made or received in the transaction of public business?”

- *If not, disclosure is not required.*
- *If yes, continue to question 3.*

## 3. Is there an exception that applies?

- *If not, the requested access must be provided.*
- *If yes, continue to question 4.*

## 4. Does the exception apply to the entire record, or only to certain information? Does it prohibit disclosure or does it deny the right of access?

- *If a prohibition applies to the entire record, do not disclose; if it applies only to certain information, redact and disclose.*
- *If no right of access, but release is not prohibited, determine whether to release the record (in its entirety or redacted).*



# Records Retention

- Records retention schedules dictate what must be kept and how long it must be retained.
- Schedules must be approved by the local governing board before they can be used to authorize the destruction of public records.
- Records of “transient” value need not be retained
  - Personal messages (including electronic mail) not related to official business.
  - Records that do not contain information necessary to conduct official business, meet statutory obligations, carry out administrative functions, or meet organizational objectives.



## **Schedules:**

<https://archives.ncdcr.gov/government/local>

# Public Records

## Key points to remember

- “In connection with the transaction of public business” is the trigger
- Retention requirements apply
- General rule is that the public record must be made available upon request *unless* an exception applies





**True or  
False?**

You cannot be sued for anything related to your work on the CHS board because you are a public official.



# Liability: Key Points to Remember

## Lawsuit against CHSA or the Board

- Is a lawsuit against the county
- In some cases, State Tort Claims Act could also involve the state as a defendant

## Official v. Individual Capacity

- “Official capacity” = county
- “Individual capacity” = you (or director or CHSA employee)

## Public Official Immunity

- Provides protection in “individual capacity” suits for alleged **negligence** under state law
- Must be engaged in a discretionary act
- Some exceptions/limitations – not absolute

## Qualified Immunity

- May provide protection in certain circumstances for lawsuit under 42 U.S.C. 1983 (rarely used against board members)

# Liability – Open Meetings

Anyone who believes that the board has violated the state's Open Meetings Law may file a lawsuit against the board in district or superior court.

Injunction may be issued.

Any action taken by the board in violation of the law can be declared null and void.

If board member *knowingly or intentionally* violated the law, member could be ordered to personally pay all or part of the plaintiff's attorney's fees.

No plaintiff's attorneys' fees owed if board member or the board followed the advice of an attorney regarding the board's actions.





# Liability – Criminal Law

A CHS board member could be subject to *criminal* liability for:

- Unlawfully disclosing confidential social services information
- Disrupting an official meeting of the CHS board
- Threatening or assaulting other board members, the CHSA director, or CHSA employees
- Embezzling county funds
- Willfully failing to discharge his or her duties as a board member
- Unlawfully receiving a direct benefit from a contract that involves the CHSA

# Liability



# Ethics

## Distinguishing Legal Requirements from Ethical Standards

- What is a legal requirement?
- What is an ethical standard?

***A legal requirement is a floor, not a ceiling.***

***Remember that public perception matters.***



# Ethics - Basics

**Act in the public interest and for the public good,  
not for your own private benefit.**

Avoid using position on the board to promote partisan political platforms, parties, or candidates.

Cannot use position to influence the CHSA director to hire, promote, or provide preferential treatment to the board member's spouse or any other relative.

# Making a Contract – G.S. 14-234(a1)(2)-(3)

**Making or  
administering  
a contract**

A public officer or employee is involved in making or administering a contract if:

1. He or she oversees the performance of the contract; *or*
2. He or she has the authority to make decisions regarding the contract or interpret the contract; *or*
3. He or she participates in the development or terms or in the preparation or award of the contract.

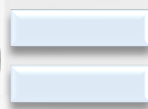


# Be Careful with Contracts— G.S. 14-234(a)

You are involved in making or administering a contract



Direct benefit to you or your spouse



Class 1 Misdemeanor and Void Contract\*

Direct benefit to you or your spouse



Attempt to influence



Someone involved in making or administering a contract



Class 1 Misdemeanor

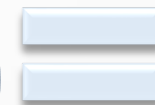
Solicit or receive a gift or favor



Attempt to influence



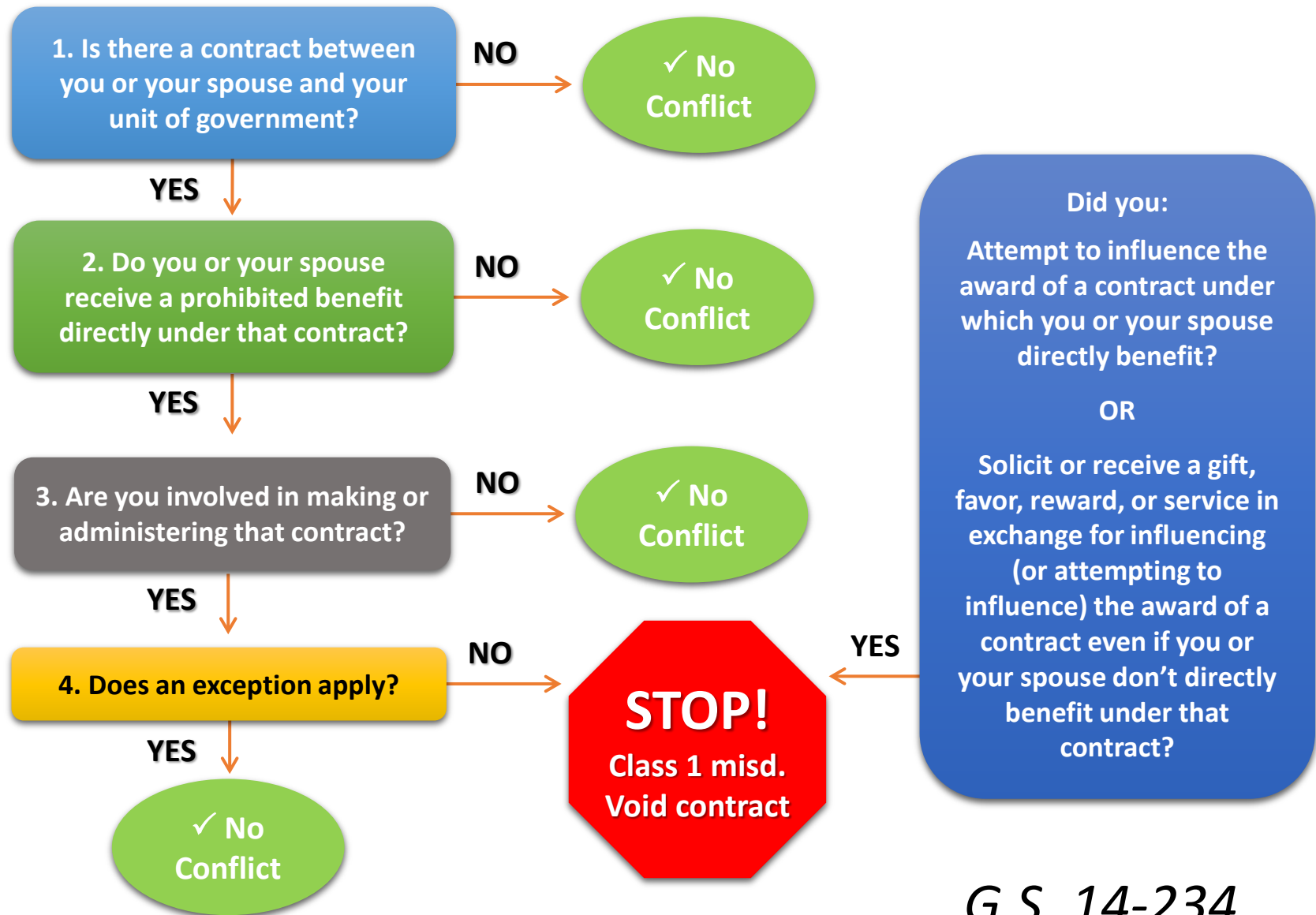
Someone involved in making or administering a contract



Class 1 Misdemeanor



# Ethics - Conflicts of Interest in Contracting



*G.S. 14-234*

# “Small Jurisdiction” Exception

G.S. 14-234(d1)

Total contract amount must be under **\$60,000** in a 12-month period (\$20,000 for medical services).

County with  
no city population  
over 20,000

Board of Commissioners

Board of Education

Mental Health

DSS

Health

**Only:**

Physician  
Pharmacist  
Dentist  
Optometrist  
Vet  
Nurse

- Must meet certain procedural requirements, including no participation or voting by conflicted official.



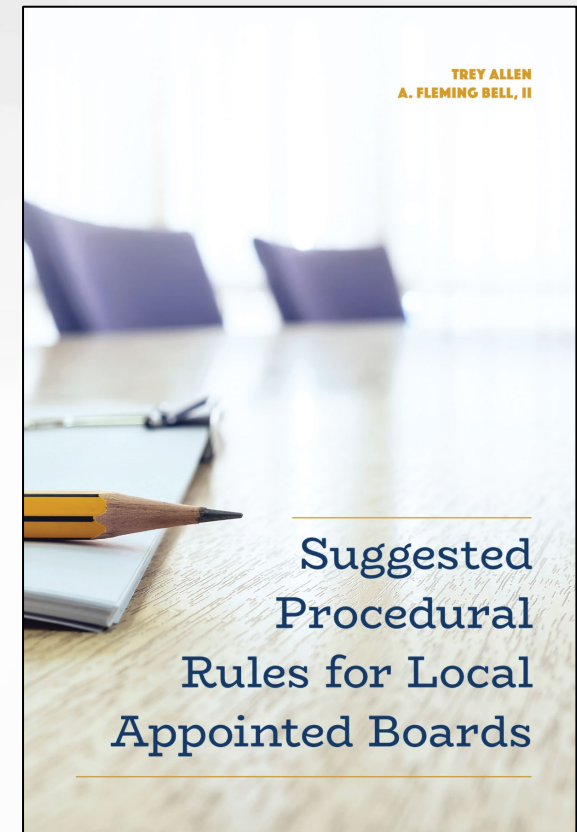
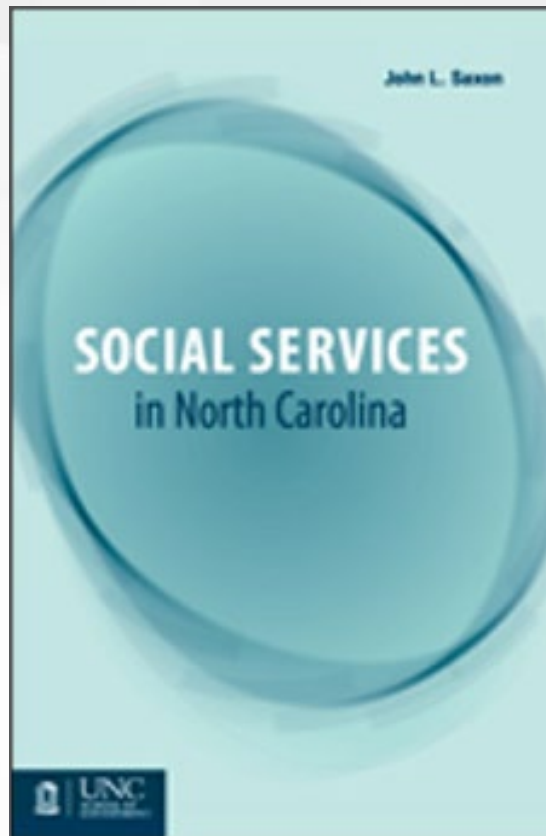
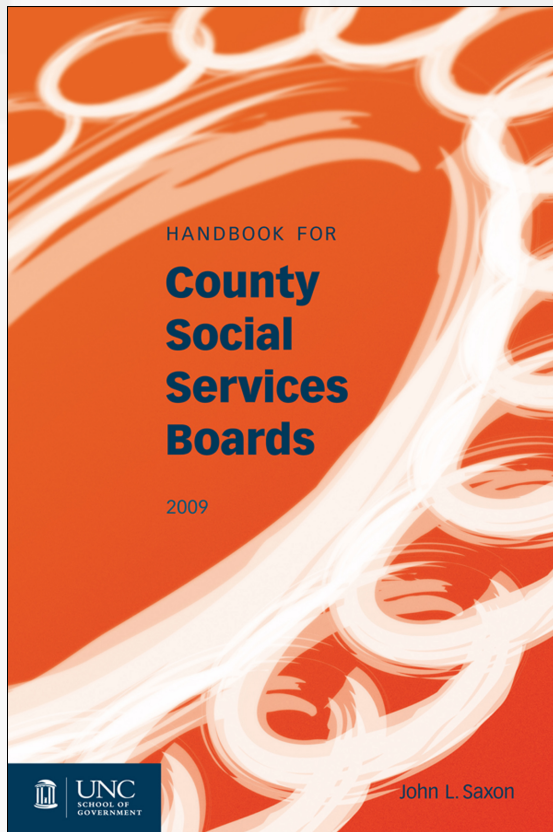
# Ethics – Key Takeaways

## Key points:

- Be careful of conflicts of interest in contracting
- It is unlawful to:
  - Directly benefit from contract if involved in making or administering contract
  - Attempt to influence person making or administering a contract for benefit of official
  - Solicit or receive a gift or reward for recommending or influencing award of contract by public agency



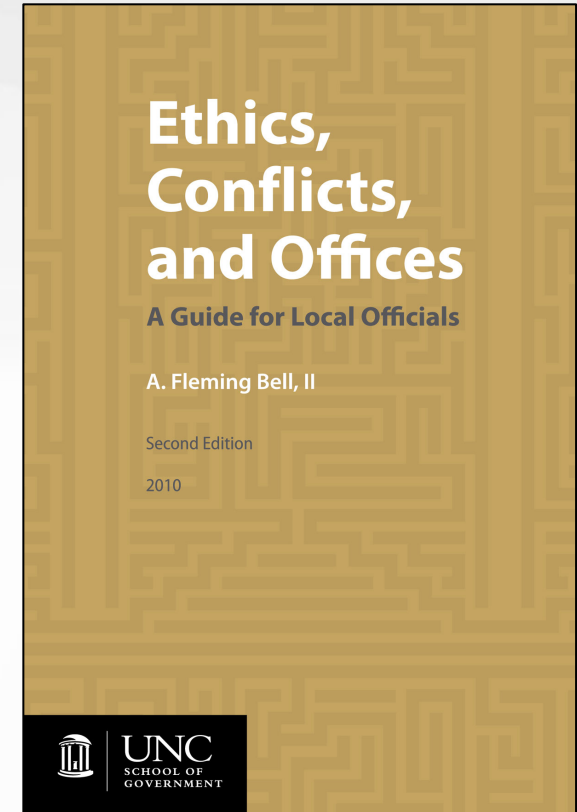
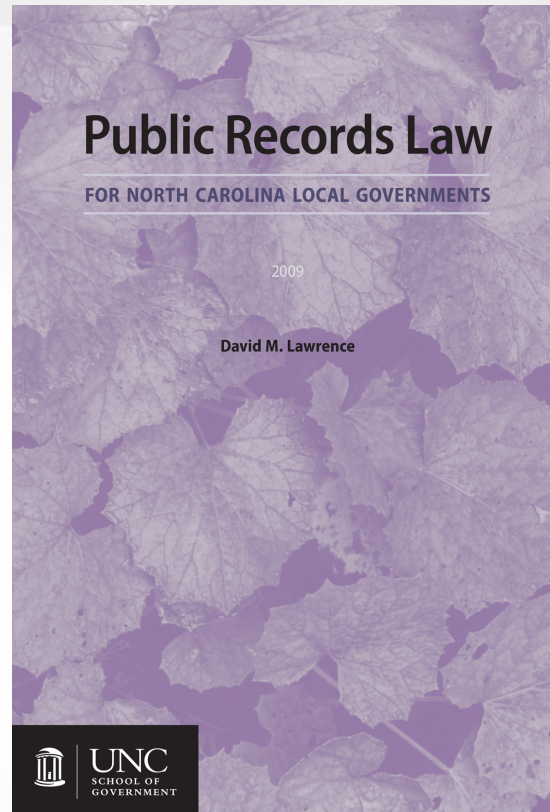
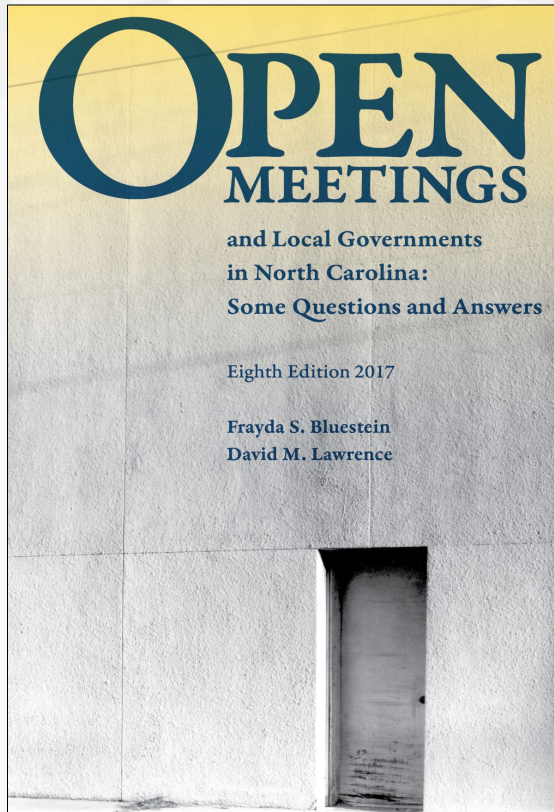
# Want to learn more?



**Coates' Canons:  
NC Local Government Law**

**SOG Social Services Microsite:**  
[https://www.sog.unc.edu/resources/  
microsites/social-services](https://www.sog.unc.edu/resources/microsites/social-services)

# Want to learn more?



## Coates' Canons: NC Local Government Law

# Questions?



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<http://www.sog.unc.edu/resources/microsites/social-services>