

# **Ethics, Conflicts, and Offices**

**A Guide for Local Officials**

**A. Fleming Bell, II**

Second Edition

2010



**UNC**  
SCHOOL OF  
GOVERNMENT

For other School of Government resources related to ethics  
for local officials, [www.sog.unc.edu/programs/ethics](http://www.sog.unc.edu/programs/ethics)

Model Code of Ethics

North Carolina Ethics and Lobbying Reform Statutes

Training Opportunities

Ethics Verification Form

Publications and Related Resources

A frequent recurrence to fundamental principles  
is absolutely necessary to preserve the blessings  
of liberty.

Constitution of North Carolina,  
Article I, Section 35

The School of Government at the University of North Carolina at Chapel Hill works to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials and citizens understand and improve state and local government. Established in 1931 as the Institute of Government, the School provides educational, advisory, and research services for state and local governments. The School of Government is also home to a nationally ranked graduate program in public administration and specialized centers focused on information technology, environmental finance, and civic education for youth.

As the largest university-based local government training, advisory, and research organization in the United States, the School of Government offers up to 200 courses, seminars, and specialized conferences for more than 12,000 public officials each year. In addition, faculty members annually publish approximately fifty books, book chapters, bulletins, and other reference works related to state and local government. Each day that the General Assembly is in session, the School produces the *Daily Bulletin*, which reports on the day's activities for members of the legislature and others who need to follow the course of legislation.

Operating support for the School of Government's programs and activities comes from many sources, including state appropriations, local government membership dues, private contributions, publication sales, course fees, and service contracts. Visit [www.sog.unc.edu](http://www.sog.unc.edu) or call 919.966.5381 for more information on the School's courses, publications, programs, and services.

Michael R. Smith, DEAN

Thomas H. Thornburg, SENIOR ASSOCIATE DEAN

Frayda S. Bluestein, ASSOCIATE DEAN FOR FACULTY DEVELOPMENT

Todd A. Nicolet, ASSOCIATE DEAN FOR OPERATIONS

Ann Cary Simpson, ASSOCIATE DEAN FOR DEVELOPMENT AND COMMUNICATIONS

Bradley G. Volk, ASSOCIATE DEAN FOR ADMINISTRATION

#### FACULTY

Gregory S. Allison	Willow S. Jacobson	Dale J. Roenigk
David N. Ammons	Robert P. Joyce	John Rubin
Ann M. Anderson	Kenneth L. Joyner	John L. Saxon
A. Fleming Bell, II	Diane M. Juffras	Jessica Smith
Maureen M. Berner	David M. Lawrence	Karl W. Smith
Mark F. Botts	Dona G. Lewandowski	Carl W. Stenberg III
Joan G. Brannon	James M. Markham	John B. Stephens
Michael Crowell	Janet Mason	Charles A. Szypszak
Shea Riggsbee Denning	Laurie L. Mesibov	Shannon H. Tufts
James C. Drennan	Christopher B. McLaughlin	Vaughn Upshaw
Richard D. Ducker	Kara A. Millonzi	A. John Vogt
Robert L. Farb	Jill D. Moore	Aimee N. Wall
Joseph S. Ferrell	Jonathan Q. Morgan	Jeffrey B. Welty
Alyson A. Grine	Ricardo S. Morse	Richard B. Whisnant
Norma Houston (on leave)	C. Tyler Mulligan	Gordon P. Whitaker
Cheryl Daniels Howell	David W. Owens	Eileen R. Youens
Jeffrey A. Hughes	William C. Rivenbark	

© 2010 School of Government, The University of North Carolina at Chapel Hill

Use of this publication for commercial purposes or without acknowledgment of its source is prohibited. Reproducing, distributing, or otherwise making available to a non-purchaser the entire publication, or a substantial portion of it, without express permission, is prohibited.

Printed in the United States of America

14 13 12 11 10 1 2 3 4 5

ISBN 978-1-56011-615-8

∞ This publication is printed on permanent, acid-free paper in compliance with the North Carolina General Statutes.

♻️ Printed on recycled paper

Cover concept by Rachel Bell

# Contents

**Preface to the Second Edition / ix**

**Acknowledgments from the First Edition / xi**

**Introduction / xv**

## **Part I Ethics in Public Life / 1**

### **Chapter 1 Approaches to Ethics / 3**

**What Is Ethics? / 3**

**Ethics Based on Principles and Relationships / 4**

The Deductive Approach / 4

The Inductive Approach / 5

Combining the Two Approaches / 6

**Justice and Caring / 8**

**Questions for Reflection and Application / 12**

For Reflection / 12

For Application / 12

### **Chapter 2 Ethics and the Community / 15**

**To What End? / 15**

**Freedom, Rights, and Responsibility / 17**

**The Rise of Individualism / 20**

**What Citizens and Public Officials Expect of Each Other / 22**

The Role and the Responsibilities of Citizens / 22

The Role and the Responsibilities of Public Officials / 23

What Do Citizens Expect of Public Officials? / 25

What Should Public Officials Expect of Citizens? / 26

Joint Expectations / 27

**Questions for Reflection and Application / 29**

For Reflection / 29

For Application / 30

### **Chapter 3 Ethics Codes and Regulations / 33**

**Ethics Codes: Why? / 34**

Certainty / 34

Accountability / 36

Identity / 37

**Codes of Ethics for Local Elected Officials / 37**

**What Codes of Ethics Typically Cover / 39**

Aspirational Codes / 40

Prohibitive Codes / 40

Hybrid Codes / 41

Which Approach Works Best? / 41

**Legal Limits on Ethics Codes / 43**

**Creating an Ethical Climate: The Role of Codes / 45**

**Questions for Reflection and Application / 47**

For Reflection / 47

For Application / 47

## **Part II Ethics and the Law: Legal Principles and Requirements / 51**

### **Chapter 4 Conflicts of Interest / 53**

**Law and the Public Trust / 53**

**Minimum Standards of Ethical Behavior Ensured by the Law / 53**

**Origins of the Law: Incompatible Roles and Conflicts of Interest / 55**

Issues with Nonprofit Organizations / 57

**Statutory Restrictions on Conflicts of Interest / 58**

The Main Contractual Conflict-of-Interest Prohibition: Historical Development / 58

The Main Contractual Conflict-of-Interest Prohibition: Current Law / 60

Status of Contracts That Involve Violations of the Statute / 64

**Exceptions to G.S. 14-234's Conflict-of-Interest Prohibitions / 67**

The Banking and Utilities Exception / 67

The Property Condemnation Exception / 68

Exception for Service Providers to Needy Persons / 68

Exception for Certain Other Officials, Primarily in Small Towns and Counties / 69

Exception for Employment Contracts with the Spouses of Public Officers / 70

When Government Is the Seller / 71

Issues with Nonprofit Organizations / 72

Certain Employment Contracts with County Commissioners and

Other County Officials and with Municipal Governing Board

Members from Mayor–Council Small Towns / 74

The Common Law and G.S. 14-234 / 76

**Other Statutes Regulating Public–Private Role Conflicts / 77**

Building Inspector Conflicts / 77

Conflict-of-Interest Rules for Project Designers / 78

Conflicts of Interest Involving Hospitals / 78

Conflicts and Voting by City and County Governing Board Members / 79

Gifts and Favors from Contractors and Others / 86

Misuse of Confidential Information / 89

**Conclusion / 90**

### **Chapter 5 Conflicts of Interest under the Common Law / 91**

**Contracting and Conflicts under the Common Law / 91**

**Conflicts in Other Areas / 96**

**Quasi-Judicial and Legislative Decisions / 97**

**“In-Between” Decisions / 100**

**Will Deference to Legislative Decisions Continue? / 101**

**Summary / 103**

**Chapter 6 Multiple Office-Holding / 105****Constitutional and Statutory Restrictions on Multiple Office-Holding / 105**

The Pre-1971 Ban on Holding Several Offices / 105

Consequences of Violating the Pre-1971 Ban / 109

Current Constitutional and Statutory Provisions  
concerning Multiple Office-Holding / 110

Consequences of Violating the Multiple Office-Holding Ban / 118

**What Is an Office? / 123****What Is *Ex Officio* Office-Holding and When Is It Allowed? / 131**Providing for *Ex Officio* Service / 134North Carolina Cases Dealing with *Ex Officio* Office-Holding / 135Cities and Counties and Their *Ex Officio* Office-Making Authority / 136Duration of *Ex Officio* Service / 140The *Ex Officio* Doctrine Summed Up / 141**Chapter 7 Incompatible Office-Holding / 143****Survival of the Incompatibility Doctrine / 143****Types of Incompatibility / 148**

Subservience as a Measure / 149

Performance as a Measure / 152

Fair Treatment as a Measure / 154

A Fourth Rule / 157

**Modifying Incompatibility Rules / 158****Scope and Effect of Incompatibility Rules / 160****Conclusion / 165****Appendixes / 167****Appendix A 2006–2010 State Ethics and Lobbying Reform Statutes / 169****Appendix B Resources for Preparing Codes of Ethics / 213****Appendix C A List of Positions and Associated Statutes Relating to  
Office-Holding / 237****Appendix D Multiple Office-Holding: North Carolina Cases and  
Opinions / 245****Indexes / 271****Cases and Statutes Cited / 273****Subject Index / 277**





## Preface to the Second Edition

In 1996, I completed work on what was for me, a professor of law and government, a different kind of publication. This book, *Ethics, Conflicts, and Offices: A Guide for Local Officials*, explored both the laws governing conflicts of interest and office-holding in North Carolina and the ethical underpinnings for those statutes and court decisions. I addressed questions concerning the definition of ethics; what it means to be an ethical public official; the responsibilities we share in relationship to one another and our communities; and the role of ethics codes in promoting ethical behavior.

This part of the book was followed by a detailed examination of North Carolina's laws for public officials that have at their root some aspect of ethical or proper public service. Included are laws that govern conflicts between the public and private roles of public officials, such as restrictions on contracting and the giving and receiving of gifts, and laws that affect the roles that public officials may play, such as those dealing with multiple and incompatible office-holding.

I am very grateful that my efforts were well received. I as well as many others have used this book in our teaching, and it has been consulted frequently by the intended audience of public officials and citizens.

Since publication of the first edition, the General Assembly of North Carolina has made important changes in some of the laws governing contractual conflicts of interest. It also has enacted a law requiring local governments to adopt a code of ethics and local officials to receive ethics training. In addition, the legislature has enacted an ethics and lobbying law that, while intended primarily to govern the conduct of state officials, also has important implications for local governments. These changes are significant enough that I decided it would be helpful to my readers to prepare a new edition reflecting

the latest laws. I have not changed my general approach to the subject matter, however.

Those familiar with the first edition will notice that most of the substantive changes are found in Chapter 3, which discusses codes of ethics and ethics education, and Chapter 4, which explains contractual conflict of interest laws. Much of the rest of the original text remains the same. The last two chapters deal with multiple and incompatible office-holding, respectively. They have been modified very little. The implications of North Carolina's ethics and lobbying law for local governments and their officials and employees are presented in a new Appendix A. The original appendixes, which present sample codes of ethics, North Carolina statutes related to office-holding, and a compilation of cases related to multiple office-holding, have been updated and redesignated as appendixes B through D.

I wish to acknowledge once again the support and assistance of the many individuals listed in the "Acknowledgments" from the first edition, which is reprinted below, as well as the editorial assistance of Katherine Dunn, a third-year law student at the University of North Carolina School of Law. I also thank the University of North Carolina at Chapel Hill's Parr Center for Ethics (formerly a part of the university's Institute for the Arts and Humanities), which allowed me to be a member of an extremely rewarding faculty seminar in 2002 and awarded me a generous fellowship that allowed me to participate in other ethics-related events. Last but certainly not least, I thank the public officials and citizens who, through their use of the first edition of the book, have helped me refine and, it is hoped, improve the contents. To these persons goes a good share of the credit for the second edition. Any mistakes are of course my responsibility.

My adventure in the field of ethics remains a work in progress. I hope that this new edition of *Ethics, Conflicts, and Offices* will continue that work by providing useful guidance for the people of North Carolina for many years to come.

A. Fleming Bell, II  
Professor of Public Law and Government and  
Fellow, Parr Center for Ethics

Chapel Hill  
Spring 2010

# Acknowledgments from the First Edition

About five years ago, I decided to embark on a new enterprise—the study of ethics and the place of ethical considerations in local government. I was not sure at the time where this endeavor would lead, but I was confident of my interest and of the potential importance of the subject for North Carolina’s public officials.

While I was quite familiar with North Carolina’s ethics-related laws, I also knew the limits of my knowledge in the field of ethics. To navigate successfully the waters on which I was about to embark, I needed guidance from more experienced sailors.

I decided to contact a former professor of mine, Dr. Thomas E. McCollough, associate professor of religion at Duke University. Dr. McCollough has taught and written in the area of ethics and public policy for many years. He graciously agreed to work with me, making suggestions for my research and serving as a gifted and thoughtful sounding board.

At about the same time I happened on the work of Michael Josephson, founder of the Joseph and Edna Josephson Institute of Ethics in Marina del Rey, California. Mr. Josephson, an attorney and former law school professor, has conducted ethics seminars across the country for a wide variety of groups, including public officials, students, and business leaders. The Josephson Institute publishes a regular newsletter and various other materials to help with the practical work of acting ethically in today’s world. Mr. Josephson also gave graciously of his time and knowledge to help me in my endeavor.

My project was also aided substantially by John Sanders, then director of the Institute of Government, who supported my idea with a gift of that most precious of commodities, time. He graciously authorized a six-month special assignment for me to devote full time to my project, and he continued to support my work after I returned.

As I worked, I found much that I liked in Dr. McCollough's and Mr. Josephson's work. They both emphasize the relationships that exist between persons in our society and the responsibilities that we have to the communities of which we are a part. Using similar themes, I developed teaching plans for several seminars, which I began to offer in late 1992. As is frequently the case, my classroom experiences helped me to further refine my ideas.

The approach to ethics that I take in the first part of this book owes much to the guidance of Dr. McCollough and Mr. Josephson. It also benefits from the seasoning provided by the public official students with whom I first explored the ideas there presented. I hope that my writing will be useful to them and to other local government officials in North Carolina as they consider ethical questions in the years ahead.

With support and encouragement from the Institute's present director, Michael Smith, and from several of my colleagues, I next examined the connections between the ethical issues that I had been exploring and several North Carolina laws that regulate the roles that public officials play and their conduct in those roles. It made sense to me to help local government officials understand not only the rules that they must obey but also the philosophical underpinnings of those rules.

The second part of the book is the result of my exploration of the connections between ethics and law. While it deals primarily with constitutional provisions, statutes, and cases, ethical principles and concerns are never very far beneath the surface. This is as it should be, for in the real world in which public officials live and work, neat lines between law and ethics seldom exist. The "legal thing" and the "right thing" are fundamentally related to each other, as are the reality and the perception of an official's actions.

My own reflections on the subjects treated in this volume have also been aided considerably by the thoughtful suggestions of the persons who have reviewed portions of the manuscript. I thank Thomas McCollough and my Institute colleagues Stephen Allred, Frayda Bluestein, Joseph S. Ferrell, David M. Lawrence, Richard R. McMahan, David W. Owens, John L. Sanders, and Warren Jake Wicker for their many helpful insights, and James B. Blackburn, III, of the North Carolina Association of County Commissioners for his assistance. I also thank my editor Rebecca Johns-Danes, whose sensitive editing has been invaluable in helping the various parts of this project evolve into a coherent whole.

My thanks also go to a former Institute of Government law clerk, Gerry Leonard, Ph.D., for his excellent work on portions of the multiple office-holding materials in the volume. His valuable contributions are noted in the text. I am grateful as well to Grainger R. Barrett, a former Institute faculty member and now Person County Attorney, whose unpublished article, “Multiple Office Holding in North Carolina,” provided important source material for my work on office-holding. I also thank the organizations noted in Appendix B and their officials for permission to reproduce their codes of ethics.

Finally, I thank my mother, Ann; my wife, Meg; and my daughters—Rachel, Susannah, and Lucy—for putting up with me and sticking by me during the long years of bringing this work to fruition. To all of these persons goes much of the credit for the result. Any mistakes and omissions are of course my responsibility.

Preserving the public’s trust and pursuing the public good are never easy, but it is vital that we continue to do so if our democratic system is to survive and flourish. I hope that this book will serve for many years as a useful reference for public officials concerned about the ethical and legal implications of their actions.

A. Fleming Bell, II  
Professor of Public Law and Government  
Chapel Hill  
Summer 1996



# Introduction

Americans treasure freedom. The right to be and to do whatever we choose is important to us. We often see ourselves as independent individuals intent on pursuing our own happiness in an increasingly impersonal society.

But this view of the world is incomplete. We are also persons who live together in communities, communities with at least some shared history, traditions, and beliefs. We depend on the cooperation of others for the food we eat, the things we learn, the jobs we hold, and the love we share—in short, for much of what we need in our individual quests to live “a long and happy life.”<sup>1</sup> We treasure independence and autonomy, but we also have common needs, common desires, and common goals.

How to draw lines between our public and private worlds is an issue that daily confronts local public officials. Most citizens recognize a need for local governments to exist, to help order our common lives. But many citizens also want to restrict how much power the government has over them. We know that there must be rules, but we disagree about how much those rules should limit individual freedom. In short, what characteristics do we want our lives together to have? Where should individual freedom end and community responsibility begin?

The tension between individual and community responsibility also involves questions about the proper roles of the appointed and elected officials whom we have entrusted to administer public affairs and about our connections to them as citizens. In a democracy there is a special relationship

1. Reynolds Price, *A Long and Happy Life* (New York: Atheneum, 1962). I am grateful to Thomas E. McCollough, associate professor of religion *emeritus*, Duke University, for suggesting the contrast between individuals in society and persons in community. His counsel has been invaluable in developing many of the ideas presented here.

between the government and the governed, a relationship built on trust. While we value freedom, we generally do not want our fellow citizens who work for us to take personal advantage of their public positions; nor do we wish to see favoritism shown to particular citizens at the expense of others.

The special relationship of trust between citizens and their public officials lies at the heart of most of North Carolina's statutory and common-law restrictions on conflicts of interest and office-holding. To fully understand the laws governing these subjects, local officials need to have a clear understanding of some of the ethical issues they face in public service. By examining how ethics is applied in local government, we can clarify what we think about government, society, and the roles of individuals and communities.

Chapters 1, 2, and 3, which constitute Part I, explore what ethics and the public trust mean in terms of our lives in community as well as ways to improve the ethical climate of government. Included in that discussion is a consideration of requirements for ethics training and ethics codes for local governments. Building on this foundation, the chapters in Part II examine in detail North Carolina laws governing conflicts of interest and the holding of multiple or incompatible offices. This discussion is augmented by a new Appendix A, which presents the provisions of North Carolina's ethics and lobbying laws for state officials that affect local governments and local officials.

The focus throughout is on the interconnection of ethical concerns and legal issues. By recognizing and safeguarding the special trust that they have been given, local public officials can show their fellow citizens that North Carolina's motto, *esse quam videri*, continues to guide us "to be, rather than to seem."