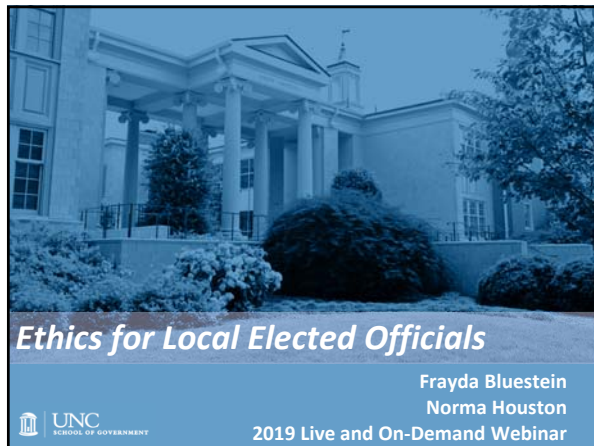




Goals for Our Session:

- ✓ Distinguish between legal and ethical standards
- ✓ Identify key legal issues and ethical considerations
- ✓ Discuss and compare views about civility among board members



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WHAT IS ETHICS?



Ethics vs. Law – What Do YOU Think?

If people act *legally*
are they also acting *ethically*?



If you *can* do it,
does that mean you *should* do it?



Key Concepts

1. Your conduct involves both *legal requirements* and *ethical considerations*
2. The law places *limits* on:
 - **Voting**
 - **Contracting**
 - **Gifts & Favors**
 - Misuse of Confidential Information
 - Misuse of Public Property
 - Other offenses related to misuse of public office
3. Your *ethical obligations* include:
 - Obeying all applicable laws
 - Upholding integrity and independence of office
 - Avoiding impropriety in exercise of official duties
 - Faithfully performing duties of office
 - Conducting board business in open and public manner

(G.S. 153A-53; 160A-86(b))



You Have A Choice



You have a *choice* about how to act; you should evaluate *legal* and *ethical* factors in deciding how to act



Deciding How to Act: Two Questions

Is it legal? + Is it ethical? = Your Decision

☐ yes
☐ no
☒ ~~maybe~~

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CIVILITY

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What is Civility?

Definition of CIVILITY

plural civilities

1 *archaic* : training in the humanities

2 a : **civilized** conduct; *especially* : **COURTESY, POLITENESS** in our politics
 b : a polite act or expression

Merriam-Webster

One Word: What is Civility?

One Word: What is LACK of Civility?

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Remember Your Ethical Obligations:

- Obeying all applicable laws
- Upholding integrity and independence of office
- Avoiding impropriety in exercise of official duties
- Faithfully performing duties of office
- Conducting board business in open and public manner

(G.S. 153A-53; G.S. 160A-86(b))



SOG Model Code Standard:

Acting With Integrity

- Treating other board members and the public with respect
- Honoring the opinions of others even when the board members disagree with those opinions
- Recognizing that they are part of a larger group and acting accordingly



Local Governing Boards as Models of Civility



COMPLIANCE & ENFORCEMENT



Compliance



Compliance is voluntary, unless the actions violate a state law and that state law provides a remedy



But. . .there is always the court of public opinion!

What is Censure?

Resolution expressing dissatisfaction with the board member's conduct

Has no legal effect!



What Can Be Done About Unethical Behavior?

- Recall: No general authority (some units have charter provisions allowing it)
- Amotion: Common law power to remove board member - very high standard and due process required



Coates' Canons Blog

<http://canons.sog.unc.edu/removing-an-elected-official-by-amotion-judge-says-it-can-be-done/>



CONFLICTS OF INTEREST



Duty to Vote

- City and County governing board members have a **statutory duty to vote**
- No authority to "recuse" oneself from voting

May be **excused** from voting **only**:

- For a conflict of interest defined by statute, or
- When prohibited from voting by statute



Cities: “Default Yes” Rule

- **Cities Only: G.S. 160A-75**
- If a city council member
 - is present
 - has not been excused from voting
 - yet fails to vote
 the member will be counted as voting **yes**
- Some county boards include this rule in their local board rules of procedure



Cities: Limited Authority to Abstain

- No general authority to abstain from voting
- A city board member who is present but does not vote **on the repeal or amendment of a zoning ordinance** is recorded as **abstaining** and is **not** counted as voting “yes”
- Still requires a majority of members not excused to pass; 2/3 on first reading



Can You Vote? 2 Questions:

1. Does the Matter Involve . . . ?	2. Do You Have A . . . ?	If So . . .
Legislative Land Use (examples: rezoning or text amendment) GS 153A-340(g); 160A-381(d)	Direct, substantial, and readily identifiable financial interest in the matter	Cannot participate or vote
Quasi-Judicial Hearing (examples: special use permit or appeal of a personnel decision) GS 153A-345.1; GS 160A-388(e)(2)	Fixed opinion prior to the hearing, undisclosed ex parte communications, close familial, business, or other relationship with an affected person, or financial interest in outcome	Cannot participate or vote
Contract GS 14-234	Prohibited direct benefit that would be derived by you or your spouse under the contract <i>and</i> the contract is allowed under an exception	Cannot participate or vote
All Other Matters GS 153A-44; GS 160A-75	Financial interest in the matter or the matter involves your own official conduct	May be excused from voting

"Own Financial Interest"

- Board member **may** be excused from voting if the matter involves his or her own financial interest
- No definition of "own financial interest"
- Factors to consider:
 - Number of people affected
 - Extent of financial interest (positive or negative)
 - Likelihood of impact

Financial Interest Continuum

- Many people

- Nominal impact

- Remote likelihood



- Board member only

- Significant impact

- Strong likelihood

<https://canons.sog.unc.edu/board-member-financial-interest-mapping-the-points-on-the-continuum/>

Legal Authority for Being Excused from Voting (G.S. 153A-44; G.S. 160A-75)

Prohibited When:

- Legislative zoning decisions in which you have a **financial interest**
- Quasi-judicial decisions in which you have a **fixed opinion, bias, financial interest, or close personal relationship**
- Public contracts from which you derive a **direct financial benefit**

May Be Excused If:

- Matter before board involves your **own financial interest**
- Matter before board involves your **official conduct**

Self-Benefiting in Public Contracting G.S. 14-234(a)(1)

Making or administering a contract



If you're involved at any point in the contracting process, you're involved in "making or administering" the contract

Self-Benefiting in Public Contracting

G.S. 14-234(a)(1)

Making or
administering
a contract

+

Direct benefit to
you or
your spouse



There's a **direct benefit** if you or your spouse:

1. Own more than 10% of the company,
2. Receive income or commission from the contract, or
3. Acquire property under the contract

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Self-Benefiting in Public Contracting

G.S. 14-234(a)(1)

Making or
administering
a contract

+

Direct benefit to
you or
your spouse

=

Class 1
misdemeanor* &
void contract*



***Unless an exception applies:** banks and utilities, friendly condemnation, spouse employment, public assistance programs, small jurisdictions

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Self-Benefiting in Public Contracting

G.S. 14-234(a)(1)

- Not like other financial conflicts - cannot cure this conflict by being excused from voting
- Unless an exception applies, cannot enter into contract – period!
- If exception applies, conflicted official cannot participate or vote



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What Do You Think – Ethical v Legal?



Nonprofit Board Sister Permit Sister Contractor Councilmember Vendor

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Is it Ethical? Nonprofit Board

A county commissioner also serves on the board of the local nonprofit arts council. The arts council is seeking grant funds from the county to support its annual craft fair. The grant request comes before the board of commissioners for consideration.



Is it ethical for the commissioner to participate in the discussions and vote on the grant award?
Why or Why Not?

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Is It Legal? Nonprofit Board

A county commissioner also serves on the board of the local nonprofit arts council. The arts council is seeking grant funds from the county to support its annual craft fair. The grant request comes before the board of commissioners for consideration.



Is it legal for the commissioner to participate in the discussions and vote on the grant award?

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Conflict of Roles?

- Service on nonprofit is not a **financial conflict** and missions may be in alignment
- But consider possible **future conflicts**:
 - Legal or financial dispute – commissioner on both sides
 - Expectation of allegiance by both boards
 - Confidentiality of information



Is It Ethical? Sister Permit

A county commissioner's sister is a local developer and has applied for a special use permit for a major project in county.

Is it ethical for the commissioner to vote on her sister's permit application?
Why or Why Not?



Is It Legal? Sister Permit

A county commissioner's sister is a local developer and has applied for a special use permit for a major project in county.

Is it legal for the commissioner to vote on her sister's permit application?



Is It Ethical? Sister Contractor

A county board of commissioners is considering awarding a multi-million dollar construction contract to a commissioner's sister. The sister's company is the lowest responsive, responsible bidder.

Is it ethical for the commissioner to vote on her sister's construction contract?
Why or Why Not?




Is It Legal? Sister Contractor

A county board of commissioners is considering awarding a multi-million dollar construction contract to a commissioner's sister. The sister's company is the lowest responsive, responsible bidder.

Is it legal for the commissioner to vote on her sister's construction contract?




Is It Ethical? Commissioner Vendor

A recently elected county commissioner owns a t-shirt company. The County Parks & Rec Department has regularly purchased uniforms for its little league teams from the commissioner's company.

Is it ethical for the county to continue to purchase t-shirts from the commissioner's company after he takes office?
Why or Why Not?




Is It Legal? Commissioner Vendor

A recently elected county commissioner owns a t-shirt company. The County Parks & Rec Department has regularly purchased uniforms for its little league teams from the commissioner's company.



Is it legal for the county to continue to purchase t-shirts from the commissioner's company after he takes office?



How to Manage Perceptions



Many local codes of ethics require all board members to “**avoid the appearance of impropriety in the exercise of their official duties.**”

If you are required by law to vote, how might you manage the perception that you have a conflict of interest?



GIFTS & FAVORS



Gifts and Favors from Contractors

G.S. 133-32



Prohibited Giver:
Contractor or vendor who is:

1. Past (within 1 year)
2. Current
3. Potential future



= Class 1 misdemeanor, unless an exception applies

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Gifts and Favors from Contractors

G.S. 133-32



Prohibited Recipient:
Public officer or employer who:

1. Prepares plans or specifications for public contracts, or
2. Awards or administers public contracts, or
3. Inspects or supervises construction



= Class 1 misdemeanor, unless an exception applies

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Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

Honoraria	Souvenirs	Banquets	Professional Organizations	Family / Friends
-----------	-----------	----------	----------------------------	------------------



Honoraria

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Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

Honoraria	Souvenirs	Banquets	Professional Organizations	Family / Friends
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Souvenirs / advertising items of nominal value

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Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

Honoraria	Souvenirs	Banquets	Professional Organizations	Family / Friends
-----------	-----------	----------	----------------------------	------------------



Meals at banquets

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Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

Honoraria	Souvenirs	Banquets	Professional Organizations	Family / Friends
-----------	-----------	----------	----------------------------	------------------



Gifts to professional organizations

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Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

Honoraria	Souvenirs	Banquets	Professional Organizations	Family / Friends
-----------	-----------	----------	----------------------------	------------------



Non-business customary gifts from friends or family (must be reported to agency head)

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Can You Accept It?

A county board of commissioners awards a grant to a nonprofit arts council to fund a local jazz festival. The nonprofit gives each commissioner a complimentary ticket to the festival.





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Can You Accept It?

A consultant not under contract with the county invites the county's board members to join her for dinner during the NCACC Annual Conference.





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Can You Accept It?

A city's solid waste contractor delivers a holiday gift basket to the Town Hall addressed to "Our Favorite City Council, With Our Gratitude."



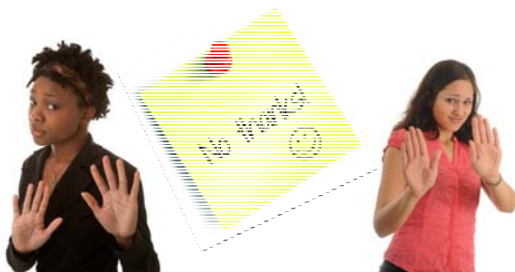
Can You Accept It?

A city councilwoman and her childhood best friend take annual family trips together to the friend's beach house. After the friend wins a multi-million-dollar consulting contract with the city, she invites the councilwoman to their annual beach trip.



Gift Ban Rule of Thumb

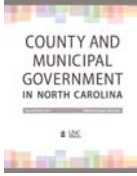
When In Doubt, Do Without!



Additional Resources



<https://www.sog.unc.edu/resources/microsites/ethics-local-government-officials>



<https://www.sog.unc.edu/publications/books/county-and-municipal-government-north-carolina-second-edition-2014-hard-copy-format>



<https://canons.sog.unc.edu/>

Thank You!



Frayda Bluestein
919.966.4203
bluestein@sog.unc.edu

Norma Houston
919.843.8930
nhouston@sog.unc.edu

One Last Thing . . .

Don't Forget Your Verification Form!

To get credit for today's ethics training:

- ✓ Fill out **both** parts of the verification form
- ✓ Keep the top part for **your records**
- ✓ Give the bottom part to your board **clerk – do not send to the SOG!**



Forms and Evaluation

The **CLE** and **Ethics Verification forms** are PDF documents that will open by clicking the corresponding links below:

- ❖ [Elected Officials Verification](https://sakai.unc.edu/x/dlMJ51)
(<https://sakai.unc.edu/x/dlMJ51>)
- ❖ [Attorneys Self-Report CLE Form](https://www.nccle.org/for-lawyers/forms/)
(<https://www.nccle.org/for-lawyers/forms/>)

You can return to the webinar room by clicking the webinar room icon from your taskbar



Please complete our [evaluation](#).