WARNING!!!

If you have a question . . .

...contact your attorney or the SOG!

Ethics In Government

Whose interests do you serve?
Citizens want public officials who will promote the **public interest**

**Not their own** personal or financial interest

**Legal vs. Ethical Standards**

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

If you *can* do it, does that mean you *should* do it?
Ethics vs. Law

Who decides when a public official has acted unethically?

Citizens

The press

The public official
Ethics vs. Law

Who decides when a public official has acted unethically?

Other public officials

Legal Requirements

Local Governing Board Members:
- Ethics Training
- Local Ethics Codes

All Public Officials & Employees:
- Self-benefiting prohibited
- Gifts and favors prohibited
- Misuse of confidential information prohibited
- Other public office offenses (embezzlement, bribery, etc.)

Sources of Legal Standards

Remember the “Most Restrictive Rule”
Ethics Key Concepts

1. Your conduct involves both legal requirements and ethical considerations.

2. You have a choice about how to act; you must evaluate legal and ethical factors in deciding how to act.

Deciding How to Act: Two Questions

- Is it legal?
- Is it ethical?

Your Decision

WHAT IS A CONFLICT OF INTEREST?

WHAT DO YOU THINK?
What is a Conflict of Interest?

When personal interests are in conflict with public interests

Brother’s Business

Can you purchase office supplies for your unit from your brother’s office supply store?

Surplus Property

Can you buy items that are sold at your unit’s surplus property auction?
Board Member Contract
Can your unit contract with your board chair’s spouse to perform consulting services?

Employee Contract
Can your unit contract with your husband’s company to perform consulting services?

Free Lunch
Can a vendor who is not currently under contract with your unit take you to lunch?
Conference Reception
Can you eat and drink at a conference reception sponsored by a vendor under contract with your unit?

Employee Appreciation
Can you ask a vendor under contract with your unit to donate biscuits for an employee appreciation breakfast?

Happy Holidays
Can you enjoy the holiday basket goodies sent to your office by a vendor doing business with your department?

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Neighbor Contractor

Can you tell your neighbor about a potential bidding opportunity with your unit?

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LEGAL REQUIREMENTS

UNDER STATE LAW

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Ethics Legal Requirements

1. Conflicts of Interest / Self Benefiting
1. Self-Benefiting in Contracting

Direct contracting

Attempting to Influence Contracting

If you’re involved at any point in the contracting process, you’re involved in “making or administering” the contract.

Direct Contracting

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

Making or administering a contract

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
**Direct 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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**Direct Contracting Exceptions**

1. Contracts with banks, savings and loans, public utilities
2. “Friendly” condemnation
3. Employment of the spouse of a public officer (local elected & appointed officials only)
4. Payment for public assistance programs
5. “Small” jurisdictions (local elected & appointed officials only)

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**Direct Contracting**

“Small Jurisdiction” Exception (G.S. 14-234(d1))

- City Population under 15,000
- City Council

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**Direct Contracting**
“Small Jurisdiction” Exception (G.S. 14-234(d1))

- Board of Commissioners
- Board of Education
- Mental Health
- DSS
- Health

**Limits on Scope:**
- **Total contract** amount must be under $40,000 in a 12-month period ($20,000 for medical services)
- Contracts for **purchases or construction** must be under $30,000

**Procedural Requirements:**
- Approved at regular board meeting
- Declared on annual audit
- Publicly posted
- **No** participation or voting by conflicted official

**“Small Jurisdiction” Exception**
G.S. 14-234(d1)

- County with no city population over 15,000
- Only if:
  - Physician
  - Pharmacist
  - Dentist
  - Optometrist
  - Vet
  - Nurse

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**Attesting to Influence Contracting**

G.S. 14-234(a)(2)

- Direct benefit to your spouse
- Attempt to influence
- Someone involved in making or administering

= Class 1 misdemeanor

Doesn’t have to be a contract you make or administer!

No exceptions!

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**Brother’s Business**

Can you purchase office supplies for your unit from your brother’s office supply store?

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**Surplus Property**

Can you buy items that are sold at your unit’s surplus property auction?

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Board Member Contract
Can your unit contract with your board chair’s spouse to perform consulting services?

Employee Contract
Can your unit contract with your husband’s company to perform consulting services?
2. Gifts & Favors

- Gifts from Contractors
- Gifts for Influencing Contracts

What is a Gift?

“Something voluntarily given by one person to another without compensation.”

- Webster’s Dictionary

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
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

Exceptions:
Honoraria
Souvenirs
Banquets
Professional Organizations
Family / Friends

Honoraria

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

Gifts and Favors from Contractors
G.S. 133-32

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

Gifts to professional organizations

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)
Gifts for Influencing Contracts
G.S. 14-234(a)(3)

Doesn’t have to be a contract you or your spouse benefit from!
No exceptions!

Gift Ban Rule of Thumb
When In Doubt, Do Without!

Free Lunch
Can a vendor who is not currently under contract with your unit take you to lunch?
Conference Reception

Can you eat and drink at a conference reception sponsored by a vendor under contract with your unit?

1. Yes
2. No

Employee Appreciation

Can you ask a vendor under contract with your unit to donate biscuits for an employee appreciation breakfast?

Happy Holidays

Can you enjoy the holiday basket goodies sent to your office by a vendor doing business with your department?
3. Insider Trading

Misuse of Confidential Information G.S. 14-234.1

- Use non-public information gained in official position
- Pecuniary benefit to you or someone else
- Class 1 misdemeanor
Neighbor Contractor
Can you tell your neighbor about a potential bidding opportunity with your unit?

SPECIAL RULES FOR GOVERNING BOARD MEMBERS

Special Rules for Board Members

1. Ethics Training
   - Within 12 months
   - Of election or appointment
   - And re-election or re-appointment

2. Local Ethics Codes

3. Duty To Vote
Complying with Local Ethics Codes

No specific authority to sanction board members

What is Censure?

- Resolution expressing dissatisfaction with the board member’s conduct
- Carries no legal sanctions

Duty to Vote

- City and County governing board members have a **statutory duty** to vote
- **City Rule** - If a member is present, has not been excused from voting, yet fails to vote, the member will be counted as voting **YES**
- **County Rule** – No statutory “default yes” but some have rule in local policy.
New Limited Authority to Abstain

Effective 2015:
• A 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.

Legal Authority for Being Excused from Voting

Prohibited When:
• Zoning map or text amendment in which member has a financial interest
• Quasi-judicial decisions in which member has a fixed opinion, bias, financial interest, or close personal relationship
• Public contracts from which member or spouse derives a direct financial benefit

May Be Excused If:
• Matter before board involves member’s own financial interest
• Matter before board involves member’s official conduct

What about avoiding the appearance of impropriety?

DAILY NEWS
Council Member Votes For Brother’s Project
What about avoiding the appearance of impropriety?

Unless there is a legal basis for abstaining or being excused, the member must vote - even if it seems unethical to do so.