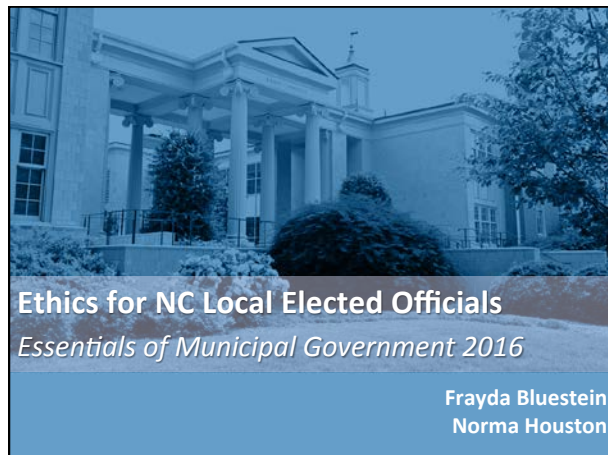




Ethics In Government



Whose **interests** do you serve?

UNC
University of North Carolina



Citizens want elected officials who will promote the **public interest**

UNC
University of North Carolina

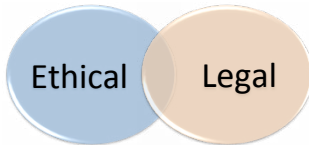


Not **their own** personal or financial interest

UNC
University of North Carolina

Ethics vs. Law

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



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



Key Concepts

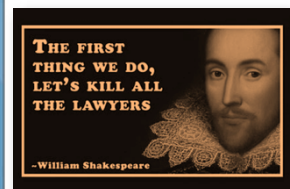
1. Your conduct involves both **legal requirements** and **ethical considerations**
2. The law places **limits** on:
 - Voting
 - Contracting
 - Gifts & Favors
 - Use of Confidential Information
 - Other criminal actions
3. You have a **choice** about how to act; you should evaluate legal and ethical factors in deciding how to act



Deciding How to Act: Two Questions



CASE PROBLEMS



Duty to Vote

- City governing board members have a statutory duty to vote
- If a member is present, has not been excused from voting, yet fails to vote, the member will be counted as voting **yes**



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:

- 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**

What about avoiding the appearance of impropriety?



What about avoiding the appearance of impropriety?



What about avoiding the appearance of impropriety?

Unless you have a legal basis for abstaining or being excused, you must vote - even if it seems unethical to do so

CASE PROBLEMS



I would challenge you to a battle of wits, but I see you are unarmed!
William Shakespeare

Self-Benefiting in Public Contracting

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



here's a direct benefit in any point in the contracting process or you're involved in making or administering the contract. **Unless an exception applies:** banks and utilities, friendly condemnation, private employment, public assistance programs, small jurisdictions

3. Acquire property under the contract

Self-Benefiting in Public Contracting

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



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)



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

Self-Benefiting in Public Contracting

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



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

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



Self-Benefiting in Public Contracting

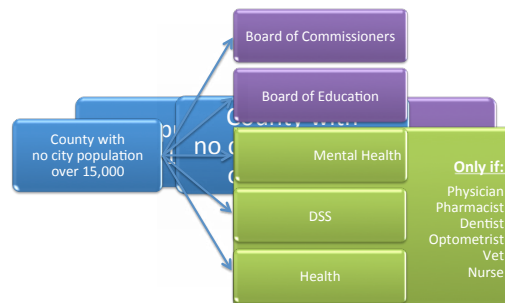
G.S. 14-234(b), (d1)

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**)

"Small Jurisdiction" Exception

G.S. 14-234(d1)



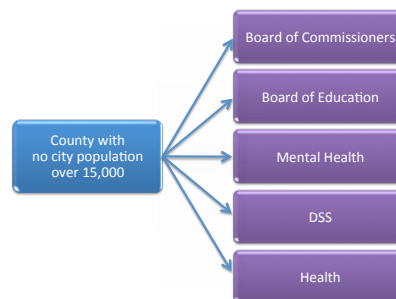
"Small Jurisdiction" Exception

G.S. 14-234(d1)



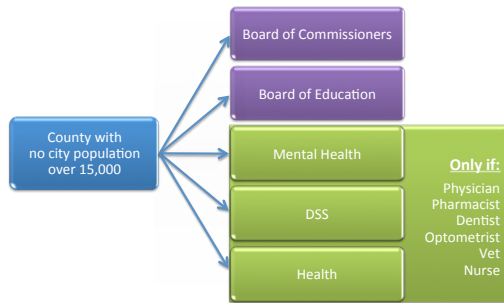
"Small Jurisdiction" Exception

G.S. 14-234(d1)



"Small Jurisdiction" Exception

G.S. 14-234(d1)



"Small Jurisdiction" Exception

G.S. 14-234(d1)

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
- Publically posted
- **No** participation or voting by conflicted official

Attempting to Influence Contracting

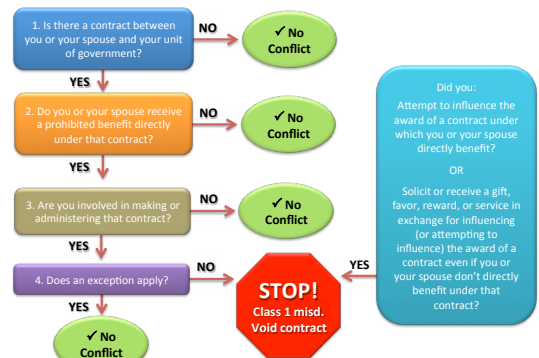
G.S. 14-234(a)(2)



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

No exceptions!

Conflicts of Interest in Contracting



What is a Gift?



"Something voluntarily given by one person to another without compensation."

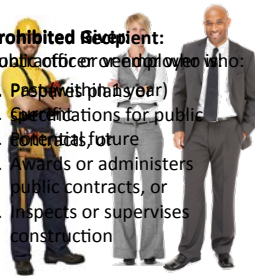
-Webster's Dictionary

Gifts and Favors from Contractors

G.S. 133-32

Prohibited Recipient:
Public officer or employee who:

1. Prepares plans (year)
2. Specifications for public
3. Potential future
2. Awards or administers public contracts, or
3. Inspects or supervises construction



= Class 1 misdemeanor, unless an exception applies

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

Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

Honoraria Souvenirs Banquets Professional Organizations Family / Friends



Souvenirs / advertising items of nominal value
Non Gifts to meals at banquets
or family (must be reported to agency head)

Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

Honoraria Souvenirs Banquets Professional Organizations Family / Friends



Honoraria

Gifts and Favors from Contractors

G.S. 133-32

Exceptions:

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



Souvenirs / advertising items of nominal value

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!



Gifts & Favors Decision Tree



G.S. 133-32

Misuse of Confidential Information

G.S. 14-234.1



CASE PROBLEMS



I am not
bound to
please thee
with my
answer.

William Shakespeare

Ethics vs. Law

Who decides when a public official has acted **illegally**?



Legislation applies to ones conduct that is established through case law. **Not the Legislature (can over ride the constitution & law. action)**

Ethics vs. Law

Who decides when a public official has acted **illegally**?



Legislature: defines conduct that is prohibited and establishes sanctions (criminal, civil, invalidation of action)

Ethics vs. Law

Who decides when a public official has acted **illegally**?



Judges: apply common law rules, established through case law. **Note: Legislature can override the common law.**

Ethics vs. Law

Who decides when a public official has acted **unethically**?



Other public officials

Ethics vs. Law

Who decides when a public official has acted **unethically**?



Citizens

Ethics vs. Law

Who decides when a public official has acted **unethically**?



The press

Ethics vs. Law

Who decides when a public official has acted **unethically**?



The public official

Ethics vs. Law

Who decides when a public official has acted **unethically**?



Other public officials

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/?p=7299>

Local Codes of Ethics



Mandatory, but no authority for sanctions

Note: Boards can modify ethics codes adopted by previous boards



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

What is Censure?

Resolution expressing dissatisfaction with the board member's conduct

Has no legal effect!



Recap: Deciding How to Act



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**

Thank You!



Frayda Bluestein
919.966.4203

bluestein@sog.unc.edu

Norma Houston
919.843.8930

nhouston@sog.unc.edu