



**Conflicts Of Interest: When Your Board Members Turn To You For Help**

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**Conflicts of Interest in Voting**

Gifts & Favors



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**CONFLICTS OF INTEREST IN VOTING**



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## Duty to Vote

State law imposes on board members a **duty to vote** unless there is a statutory basis:

1. Prohibiting the vote, or
2. Being excused from voting



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

### Prohibited When:

- Legislative zoning decisions 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 derive 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**



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## “Own Financial Interest”

- Board member *MAY* be excused from voting
- No definition of “own financial interest”
- Factors to consider:
  - Number of people affected
  - Extent of financial interest (positive or negative)
  - Likelihood of impact

Many people  
Nominal impact  
Remote likelihood



Board member only  
Significant impact  
Strong likelihood



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# 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



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# 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



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# 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



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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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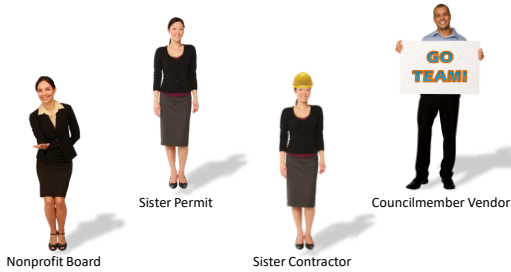
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## What Do You Think – Ethical v Legal?



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## Is it Ethical? Nonprofit Board

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

**Is it ethical for the council member to participate in the discussions and vote on the grant award?**



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## Is It Legal? Nonprofit Board

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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



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## 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 city.

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



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## 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 city.



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## Is It Ethical? Sister Contractor

A city council is considering awarding a major construction contract to a council member's sister. The sister's company is the lowest responsive, responsible bidder.

**Is it ethical for the council member to vote on her sister's construction contract?**



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## Is It Legal? Sister Contractor

A city council is considering awarding a major construction contract to a council member's sister. The sister's company is the lowest responsive, responsible bidder.



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## Is It Ethical? Commissioner Vendor

A recently elected county commissioner owns a t-shirt company. The 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 commissioner's company after he takes office?

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## Is It Legal? Commissioner Vendor

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




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## Can Board Member Vote? 2 Questions:

1. Does the Matter Involve . . . ?	2. Does Member Have A . . . ?	If So . . .
<b>Legislative Land Use</b> <i>(examples: rezoning or text amendment)</i>	Direct, substantial, and readily identifiable financial interest in the matter	Cannot participate or vote
<b>Quasi-Judicial Hearing</b> <i>(examples: special use permit or appeal of a personnel decision)</i>	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
<b>Contract</b>	Prohibited direct benefit that would be derived by member or member's spouse under the contract <i>and</i> the contract is allowed under an exception	Cannot participate or vote
<b>All Other Matters</b>	Financial interest in the matter or the matter involves member's own official conduct	May be excused from voting

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## How to Manage Perceptions



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

**If a board member is required by law to vote, how might the member manage the perception that he or she has a conflict of interest?**

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## GIFTS & FAVORS



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## 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



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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### Which Gifts Can a Board Member Accept?



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### Gift Ban Rule of Thumb

**When In Doubt, Do Without!**



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### COMPLIANCE & ENFORCEMENT



**RULES  
ARE  
RULES.**

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## 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!

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## What is Censure?

Resolution expressing dissatisfaction with the board member's conduct

*Has no legal effect!*



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## 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/>

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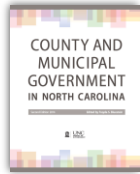
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## Additional Resources



<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/>



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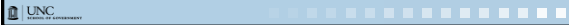
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## Thank You!



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