Conflicts of Interest Laws[[1]](#footnote-1)

# The “Big 3” Conflicts of Interest Statutes

The following three statutes address conflicts of interest for all public officers and employees at the state and local government level:

1. G.S. 14-234: “Self-benefiting” – Public officers or employees benefiting from public contracts
2. G.S. 133-32: “Gifts and favors” – Gifts and favors regulated.
3. G.S. 14-234.1: “Insider Trading” – Misuse of confidential information

# What is a “Contract”

“An agreement between two or more parties creating obligations that are enforceable or otherwise recognized by law . . . [in the context of government] a contract in which a government receives goods or services.”

- Black’s Law Dictionary (7th edition)

# 1. Self-benefiting (G.S. 14-234)

A. Key terms

* **Making a contract** - A public officer or employee is involved in **making a contract** if he or she participates in the preparation of the contract. A board member is also involved in making a contract if the board takes action on the contract, whether the board member participates in the board’s action or not. In other words, each board member is involved in making any contract entered into by the member’s unit of government. Performing ministerial duties related to a contract is not “making” a contract.
* **Administering a contract** - A public officer or employee is involved in **administering a contract** if he or she oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract. Performing ministerial duties related to a contract is not “administering” a contract.
* **Direct benefit** - A public officer or employee receives a **direct benefit** if he or she—or his or her spouse:
* owns more than 10% of the company
* derives any income or commission directly from the contract, or
* acquires property under the contract.

B. What the statute prohibits

G.S. 14-234 prohibits three activities:

1. **Deriving a direct benefit if making or administering a contract:** A public officer or employee who makes or administers a contract on behalf of a public agency may not also derive a direct benefit from the contract (unless an exception applies).
2. **Influencing others if deriving a direct benefit:** A public officer or employee who will derive a direct benefit from a contract but is not involved in making or administering it shall not attempt to influence any other person who is involved in making or administering the contract.
3. **Getting gifts in exchange for influencing others:** A public officer or employee shall not solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves. Does not require that the officer or employee either derive a direct benefit or be making or administering the contract to violate this section of the statute.

C. Consequences of violation

Violation of this statute can result in a Class 1 misdemeanor, punishable by up to 120 days imprisonment and a fine in an amount left to the judge’s discretion (there is no maximum allowable fine for a Class 1 misdemeanor). In addition, contracts entered into in violation of this statute are void.

D. Exceptions

There are five exceptions to the first activity prohibited under the self-dealing statute (deriving a direct benefit when involved in making or administering a contract) that permit contracts which would otherwise violate the statute. If one of these exceptions applies, a public officer with a conflict cannot participate in any way, vote, or attempt to influence someone involved in making or administering the contract.

These exceptions are:

1. contracts between a public agency and a bank, banking institution, savings and loan association, or a public utility;
2. interests in property conveyed by an officer or employee of a public agency under a judgment entered by a superior court judge in a condemnation proceeding initiated by the public agency (a “friendly” condemnation);
3. an employment relationship between a public agency and the spouse of a public officer of the agency – this exception does not apply to employees;
4. payments by a public agency for certain public assistance programs; and
5. contracts entered into by small jurisdictions (cities having a population of no more than 15,000 and counties that have no cities with a population of no more than 15,000 within them) – this exception only applies to city or county elected officials, not employees.

Additional rules must be followed for the small jurisdiction exception (#5 above):

* a contract permitted under the exception cannot exceed $40,000 of goods or services per year ($20,000 for medical services);
* the exception does not apply to competitive bidding contracts (purchases or construction or repair contracts costing $30,000 or more); and
* the contract must be approved in a regular, open meeting of the board, declared in the local government’s annual audit, and posted in a conspicuous place (the posting must be updated every three months).

E. State Law vs. the federal Grants Management Common Rule

The Grants Management Common Rule (GMCR) is a set of federal regulations that applies to most federal grant funds. The GMCR prohibits self-benefiting from a public contract when federal funds are involved. While substantially similar to the state law prohibiting deriving a direct benefit from a contract when involved in making or administering the contract (GS 14-234(a)(1)), the GMCR differs in some ways, as illustrated below:

|  |  |  |
| --- | --- | --- |
|  | **State (G.S. 14-234(a)(1))** | **Federal (GMCR)** |
| Who is covered | Officers, employees | Officers, employees, and agents of grantee and subgrantees |
| Who else is covered | Spouse | Spouse, immediate family, partners, current or soon-to-be employer |
| What kind of interest | Direct benefit | Real or apparent financial or other interest |
| Exceptions | 1. Banks & utilities 2. Friendly condemnation 3. Spouse employment 4. Public assistance 5. Small jurisdictions | Financial interest that is not substantial |
| Penalties | Class 1 misdemeanor  Void Contract | Loss of federal funds  Disciplinary action |

# 2. Gifts and Favors (G.S. 133-32)

A. What the statute prohibits

A public officer or employee may not accept gifts or favors from a past (within the past year), current, or potential future vendor or contractor if the officer or employee is charged with the duty of any or all of the following:

* preparing plans, specifications, or estimates for public contracts;
* awarding or administering public contracts; or
* inspecting or supervising construction.

B. Exceptions

Exceptions are allowed for:

1. honoraria
2. advertising items or souvenirs of nominal value
3. meals at banquets
4. gifts to professional organizations
5. gifts from family or friends (which must be reported to the employee’s agency head)

C. Consequences of violation:

Violation of this statute can result in a Class 1 misdemeanor, punishable by up to 120 days imprisonment and a fine in an amount left to the judge’s discretion (there is no maximum allowable fine for a Class 1 misdemeanor).

D. State law vs. the federal Grants Management Common Rule

The GMCR also prohibits accepting gifts from contractors when federal funds are involved. While substantially similar to the state gift prohibition (GS 133-32), the GMCR differs in some ways, as illustrated below:

|  |  |  |
| --- | --- | --- |
|  | **State (G.S. 133-32)** | **Federal (GMCR)** |
| Prohibited giver | Past (w/in 1 year), present, or future | Current or future |
| Prohibited receiver | Officers and employees involved in:   1. Preparing plans 2. Awarding or administering 3. Inspecting or supervising construction | *All* officers, employees, agents of grantee and subgrantees |
| Exceptions | 1. Honoraria 2. Nominal advertising items 3. Meals at banquets 4. Professional groups 5. Family and friends | Unsolicited gift of nominal value |
| Penalties | Class 1 misdemeanor | Loss of federal funds  Disciplinary action |

# 3. Insider Trading (G.S. 14-234.1 – Misuse of secret information)

A public officer or employee may not benefit, or help someone else benefit, from the use of non-public information that the person has learned through his or her official position.

Violation of this statute can result in a Class 1 misdemeanor, punishable by up to 120 days imprisonment and a fine in an amount left to the judge’s discretion (there is no maximum allowable fine for a Class 1 misdemeanor).

# Resources

A. Fleming Bell, II, *Ethics, Conflicts, and Offices: A Guide for Local Officials* (2nd edition)

A. Fleming Bell, II, *A Model Code of Ethics for North Carolina Local Elected Officials with Guidelines and Appendixes*

Frayda S. Bluestein, *A Legal Guide to Purchasing and Contracting for North Carolina Local Governments* (2nd edition)

School of Government Local Government Purchasing and Contracting webpage: <http://www.sog.unc.edu/programs/purchase/index.html>

School of Government Ethics for Local Government Officials webpage: <http://www.sog.unc.edu/node/797>

School of Government Coates Cannons NC Local Government Blog, *Federal Grants and Codes of Conduct,* Eileen Youens, November 4, 2009 <http://sogweb.sog.unc.edu/blogs/localgovt/?p=1185>

1. Prepared by Norma Houston, UNC School of Government, with appreciation to Eileen Youens, UNC School of Government. [↑](#footnote-ref-1)