



Navigating Ethical Issues

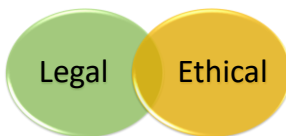
Goals for Our Session:

- ✓ Distinguish between legal and ethical standards
- ✓ Identify key legal issues
- ✓ Identify ethical considerations
- ✓ Discuss and compare views about how to navigate situations involving ethical issues



Ethics vs. Law

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



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



Legal

Who decides if you have acted **illegally**?



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

Legal

Who decides if you have acted **illegally**?



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

Ethical

Who decides if you have acted **unethically**?



Citizens

Ethical

Who decides if you have acted **unethically**?



The press



Ethical

Who decides if you have acted **unethically**?



You



Ethical

Who decides if you have acted **unethically**?



Your fellow board members



HOW DO YOU DEFINE IT? GROUP DISCUSSION



What Is A "Conflict of Interest"?



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
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. 160A-86(b))

Ethics and Civility



Civil Dialogue and Public Trust in Government

Citizens' trust in government, at all levels, is on a downward trend. Perhaps increased partisanship is to blame; or, maybe the pressure to provide more for less is the culprit. Regardless, a lack of integrity, cooperation and open communication are becoming widespread problems in government. To reverse the downward trend, increasing civility among elected officials, government employees and citizens must be a primary objective.



[Civil Dialogue and Public Trust in Government - NCACC](#)

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You Have A Choice



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

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Deciding How to Act: Two Questions



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HOW DO YOU NAVIGATE IT?

GROUP DISCUSSION



Scenario One: Nonprofit Board

A county commissioner also serves on a nonprofit board that has requested grant funding from the county.

The grant request is before the board for a vote.

POLL: Is it ethical for the commissioner to vote on the grant request?



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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**

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:

- Own more than 10% of the company,
- Receive income or commission from the contract, or
- 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

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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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Scenario Two: Contract With Spouse

A county board is considering awarding an economic development incentive to a company that employs a commissioner's spouse.

The incentive package is before the board for a vote.

POLL: Is it ethical for the commissioner to vote on the incentive package?



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Scenario Two: Contract With Spouse

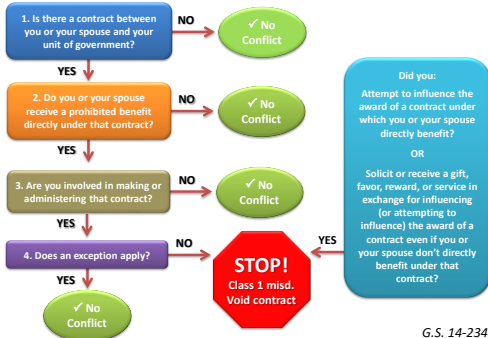
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Conflicts of Interest in Contracting



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Scenario Three: Contracting with Brother

A county board is considering the award of a five million dollar construction contract to the brother of the commissioner.

The brother was the lowest responsive, responsible bidder on the project.

The contract is before the board for approval.

POLL: Is it ethical for the commissioner to vote on the contract?



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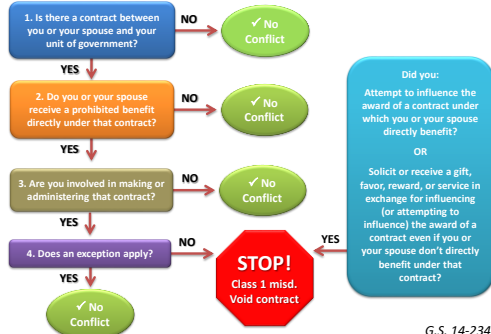
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Scenario Four: Permit for Commissioner's Sister

A county is reviewing a request by a local business for a special use permit.

The applicant is a commissioner's sister.

The permit request is before the board for a vote.

POLL: Is it ethical for the commissioner to vote on the permit?



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Scenario Five:

While attending a statewide conference, members of a county board member are invited to a private dinner organized by a consultant who has never done business with the county.

POLL: Is it ethical for the commissioners to accept the dinner invitation?



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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



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



Honoraria



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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Gifts & Favors Decision Tree



G.S. 133-32

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Scenario Six: Civility Within the Board

Relations among the board members have been strained by the recent election and are divided over whether to fire the manager.

Two newly elected members have asked to review closed minutes from prior closed sessions held to review the manager's performance.

The other three members have not agreed to allow access to the minutes and have refused to put the issue on the agenda for discussion.

POLL: Is this ethical to withhold the records?



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Recap of Legal Issues

Scenario One:

Board member has no financial interest and has a duty to vote

Scenario Two:

Board members does not benefit from the contract, but spouse might, so board member can be excused from voting

Recap of Legal Issues (cont.)

Scenario Three:

Board member has no financial interest and has a duty to vote

Scenario Four:

Quasi-judicial matter; family member applicant; board member is prohibited from voting

Recap of Legal Issues (cont.)

Scenario Five:

Potential future contractor and board members are both subject to the gift and favor statute

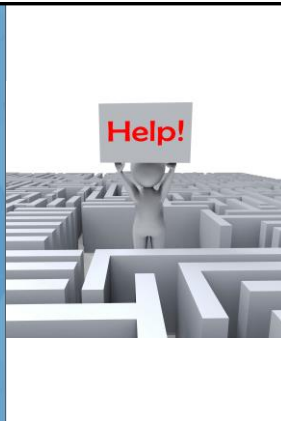
Bonus: Attendance of a majority would violate the Open Meetings Act

Scenario Six:

Refer to ethics code and ethical principles

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WHAT CAN YOU DO ABOUT IT?



Local Codes of Ethics



Boards develop their own or use a model code

Code can identify legal requirements and create standards for ethical behavior

<http://unc.live/2pCvCxk>

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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





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!



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://unc.live/2pCBt5G>

Successfully Navigating Ethics



Recap: Deciding How to Act



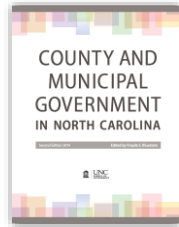
Additional Resources



<http://unc.live/2pC6lDu>



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



<http://unc.live/2qvflhJ>

Thank You!



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