

The Business of Working as a Board

*Laws Governing How the Social
Services Board Operates*

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UNC

SCHOOL OF GOVERNMENT

DSS Board Business

Board Chair

- Elected by board
- At July meeting

Conducting Business

- Meet at least monthly
- Quorum—local procedure or majority

Social Services Director

- Serves as board secretary and executive officer
- *Not* a board member

Rules of Procedure

- Process for creating and adopting agendas
- Election of the board chair
- Public comment and order of business
- Motions, voting, absences
- Remote participation
- Appointment and removal of third or fifth board member



DSS Board Business

Removal of a Board Member

- Must be in open session
- By appointing body
- Grounds not specified in state law (but must be for good cause)
- Look to G.S. 153A-77 for examples of why a member can be removed (in CHSA context).

DSS Board Business

Oath of Office

- May be taken at any time between the board member's appointment and his or her assumption of office.
- May be administered anywhere in the State by a judge, magistrate, clerk of superior court, state legislator, city or county clerk, mayor, chair of the board of county commissioners, notary public, or other specified public official.
- Written copy of the oath signed by the board member must be filed with the clerk of the BOCC.
- Second term = second oath of office.



Open Meetings - Basics

- Open meetings law applies to “official meetings” of “public bodies”
 - Law requires **notice** and **access**
- “Official meeting”:
 - A majority of the members
 - Gathering simultaneously in person or electronically
 - To conduct a hearing, deliberate, vote or otherwise conduct public business
- Be careful about email exchanges
- Public bodies must create and retain minutes of meetings (and general accounts of closed sessions).
- Minutes and general accounts are public records
 - General accounts may be withheld from public to the extent necessary to avoid frustrating the purpose of the closed session.



Open Meetings - Remote Participation

Remote participation - New law applies only during state of emergency -- GS 166A-19.24

- Authorizes any public body to conduct remote meetings in accordance with the rules set out in the act, as well as with the provisions of the open meetings law.
- A member who is participating remotely must be counted as present for purposes of a quorum as long the communication is maintained for that member.
- **During a state-level state of emergency, there is no requirement to have a quorum *physically* present at a remote meeting.**
- **Even after state of emergency ends, *appointed* boards can create their own rules allowing remote participation to count for purposes of quorum.**

“Remote meeting”: An official meeting, or any part thereof, with between one and all of the members of the public body participating by simultaneous communication. Could be conference call, video, or electronic.

- A board member does not have a *right* to participate remotely.



Open Meetings – Closed Sessions

Limited authority to meet in closed session

- Preserve confidentiality of records
- Preserve attorney-client privilege
- Discuss economic development
- Consider performance, qualifications, or appointment of public employees and public officers (not members of the board itself or other boards)
 - Must be a specific employee or official, not employees in general
 - Final appointment or termination decision must be made in open session
- Matters involving alleged criminal misconduct



**Partial list: See G.S. 143-318.11 for complete description*

Motion in open session:

- Must state the purpose of the closed session.
- **Special rules for:**
 - Preservation of confidential records: Must cite the law that makes the record confidential.
 - Attorney-client privilege: If there is litigation, must identify the parties.

Multiple Choice

A DSS board may have a closed session to:

- a. *Dismiss director*
- b. *Approve recommendation for director's salary*
- c. *Discuss personnel policies*
- d. *Appoint 5th board member*
- e. *Remove 5th board member*
- f. *All of the above*
- g. *None of the above*



Open Meetings - Notice

Type of Meeting	Notice Requirements
Regular	Notice filed, posted, on website
Special	48 hour notice to “sunshine list”; posted on website
Emergency	Notice to news media who have requested it, in same manner as given to members of the public body
Recessed	Post on website

Board chair may call special meeting on 48 hours' written notice (G.S. 108A-7)



Open Meetings

Key points to remember

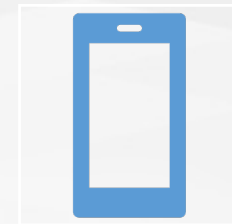
- Comply with notice and access requirements
- Do not conduct board business outside of meetings, even in the interest of efficiency
- Closed sessions are allowed for specific purposes
- Minutes (or general accounts for closed sessions) are always required



True or False?



Messages sent from your private email accounts are not subject to the public records law.



Text messages sent from your personal cell phone are not subject to the public records law



Public Records – Chapter 132 of the General Statutes



Any record made or received in the **transaction of public business** is subject to public access unless an exception applies.



It's the **CONTENT** of the record, not its **location**, that determines whether it is a **public record**.



Records created on **personal devices or accounts** are public records if the content involves **public business**.



Records created on government devices or accounts are not public records if the content does **not** involve public business.



Public Records

Right of access requires providing records:

- to anyone who requests them
- to inspect or receive a copy
- regardless of why they want them
- in the medium requested if possible
- “as promptly as possible”

Two types of exceptions:

- *May release*, but not required to when the law says “not public records”
 - Examples: Criminal investigation, economic development information
- *Shall not release* when the law says “confidential”



Public Records Requests: *Framework for Response*

1. Does a record exist that corresponds to the request?

- *If not, no disclosure is required.*
- *If yes, continue to question 2.*

2. Is the record “made or received in the transaction of public business?”

- *If not, disclosure is not required.*
- *If yes, continue to question 3.*

3. Is there an exception that applies?

- *If not, the requested access must be provided.*
- *If yes, continue to question 4.*

4. Does the exception apply to the entire record, or only to certain information? Does it prohibit disclosure or does it deny the right of access?

- *If a prohibition applies to the entire record, do not disclose; if it applies only to certain information, redact and disclose.*
- *If no right of access, but release is not prohibited, determine whether to release the record (in its entirety or redacted).*



Public Records – Discussion Questions

QUESTION 1

- A reporter asks your board chair for all emails between DSS board members regarding the current DSS director's performance. Do you have to provide them?

QUESTION 2

- Your board inspects some DSS records regarding applications for public assistance in your county. An advocacy organization contacts your board chair to ask for a copy of any DSS records your board inspected during your 2020 meetings. Does the board (or DSS) have to disclose them?



Records Retention

- Records retention schedules dictate what must be kept and how long it must be retained.
- Schedules must be approved by the local governing board before they can be used to authorize the destruction of public records.
- Records of “transient” value need not be retained
 - Personal messages (including electronic mail) not related to official business.
 - Records that do not contain information necessary to conduct official business, meet statutory obligations, carry out administrative functions, or meet organizational objectives.



NC DEPARTMENT
OF NATURAL AND
CULTURAL RESOURCES

Schedules:

<https://archives.ncdcr.gov/government/local>



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Public Records

Key points to remember

- “In connection with the transaction of public business” is the trigger
- Retention requirements apply
- General rule is that the public record must be made available upon request *unless* an exception applies



True or
False?

You cannot be sued
for anything related
to your work on the
social services board
because you are a
public official.



Liability



What types of lawsuits might the board face?

What types of lawsuits might DSS face?



Liability

Lawsuit against DSS or the Board

- Is a lawsuit against the county
- In some cases, State Tort Claims Act could also involve the state as a defendant

Official v. Individual Capacity

- “Official capacity” = county
- “Individual capacity” = you (or director or DSS employee)

Public Official Immunity

- Provides protection in “individual capacity” suits for alleged **negligence** under state law
- Must be engaged in a discretionary act
- Some exceptions/limitations – not absolute

Qualified Immunity

- May provide protection in certain circumstances for lawsuit under 42 U.S.C. 1983 (rarely used against board members)



Liability – Open Meetings

Anyone who believes that the board has violated the state's Open Meetings Law may file a lawsuit against the board in district or superior court.

Injunction may be issued.

Any action taken by the board in violation of the law can be declared null and void.

If board member *knowingly or intentionally* violated the law, member could be order to personally pay all or part of the plaintiff's attorney's fees.

No plaintiff's attorneys' fees owed if board member or the board followed the advice of an attorney regarding the board's actions.



Liability – Criminal Law



A DSS board member could be subject to *criminal* liability for:

- Unlawfully disclosing confidential social services information
- Unlawfully receiving a direct benefit from a contract that involves DSS
- Disrupting an official meeting of the DSS board
- Threatening or assaulting other board members, the DSS director, or DSS employees
- Embezzling county funds
- Willfully failing to discharge his or her duties as a board member

Liability



Liability

Key points to remember

- You can be held liable for your actions as a board member.
- Be careful when making personnel decisions concerning the director.
- Agency misconduct can have significant consequences—good oversight can help prevent future liability.
- Some forms of immunity are available, but they are not absolute.



Ethics

Distinguishing Legal Requirements from Ethical Standards

- What is a legal requirement?
- What is an ethical standard?

A legal requirement is a floor, not a ceiling.

Remember that public perception matters.



Ethics - Basics

**Act in the public interest and for the public good,
not for your own private benefit.**

Avoid using position on the board to promote partisan political platforms, parties, or candidates.

Cannot use position to influence the DSS director to hire, promote, or provide preferential treatment to the board member's spouse or any other relative.



Making a Contract – G.S. 14-234(a1)(2)-(3)

Making or administering a contract

A public officer or employee is involved in making or administering a contract if:

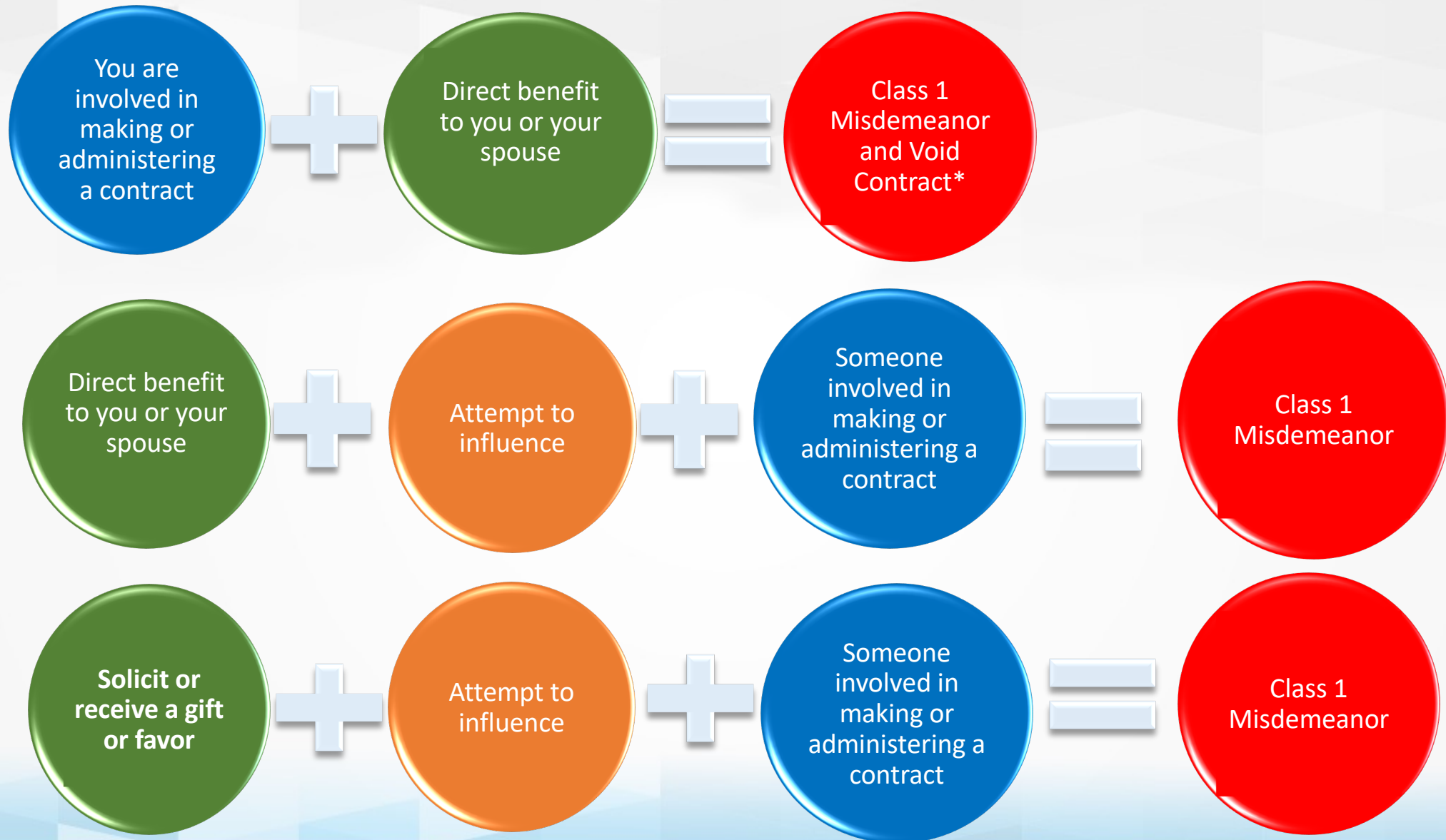
1. He or she oversees the performance of the contract; *or*
2. He or she has the authority to make decisions regarding the contract or interpret the contract; *or*
3. He or she participates in the development of terms or in the preparation or award of the contract.



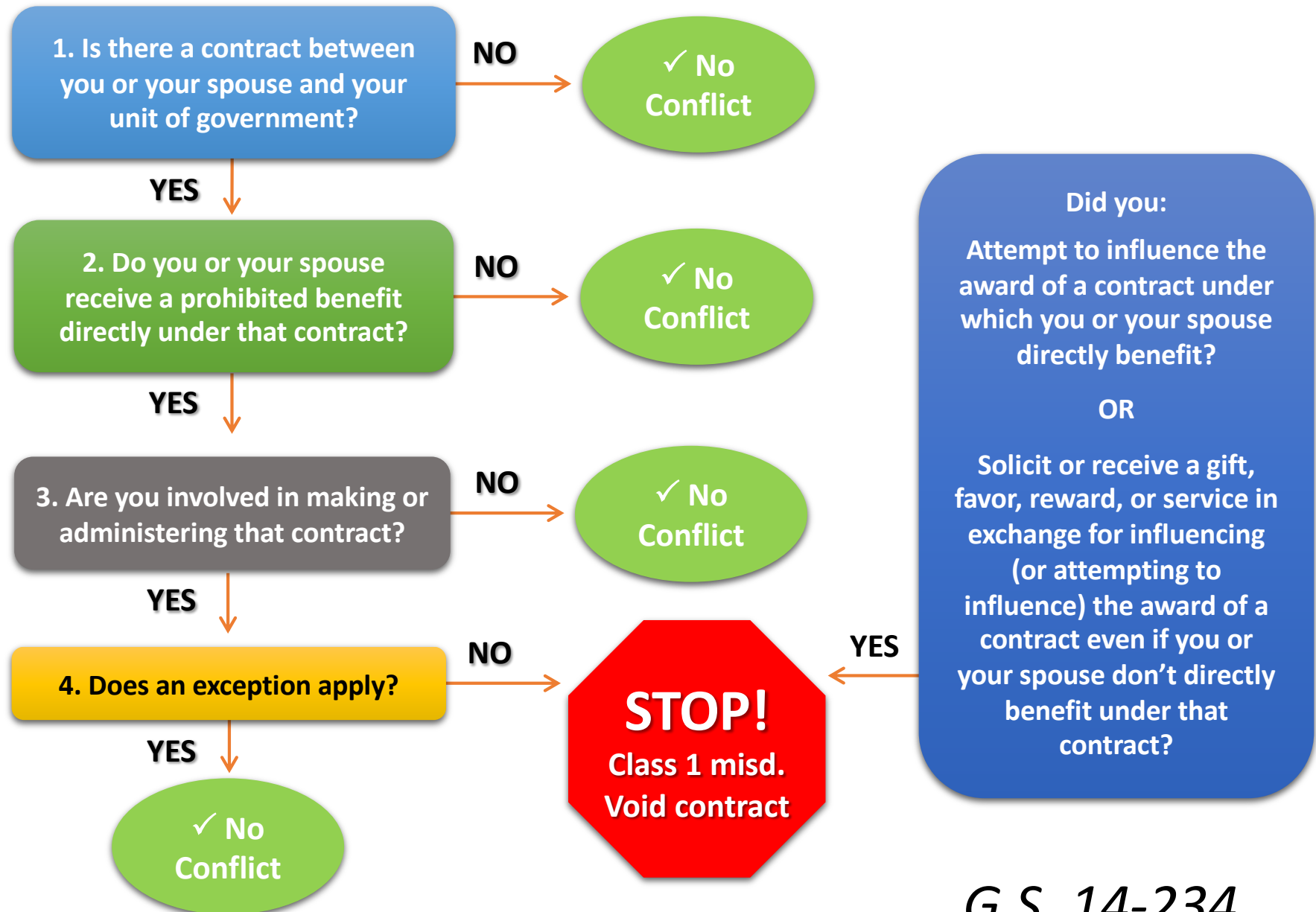
Is a social services governing board involved in making or administering contracts?



Be Careful with Contracts— G.S. 14-234(a)



Ethics - Conflicts of Interest in Contracting



G.S. 14-234

“Small Jurisdiction” Exception

G.S. 14-234(d1)

Total contract amount must be under **\$60,000** in a 12-month period (\$20,000 for medical services).

County with
no city population
over 20,000

Board of Commissioners

Board of Education

Mental Health

DSS

Health

Only:

Physician
Pharmacist
Dentist
Optometrist
Vet
Nurse

- Must meet certain procedural requirements, including no participation or voting by conflicted official.



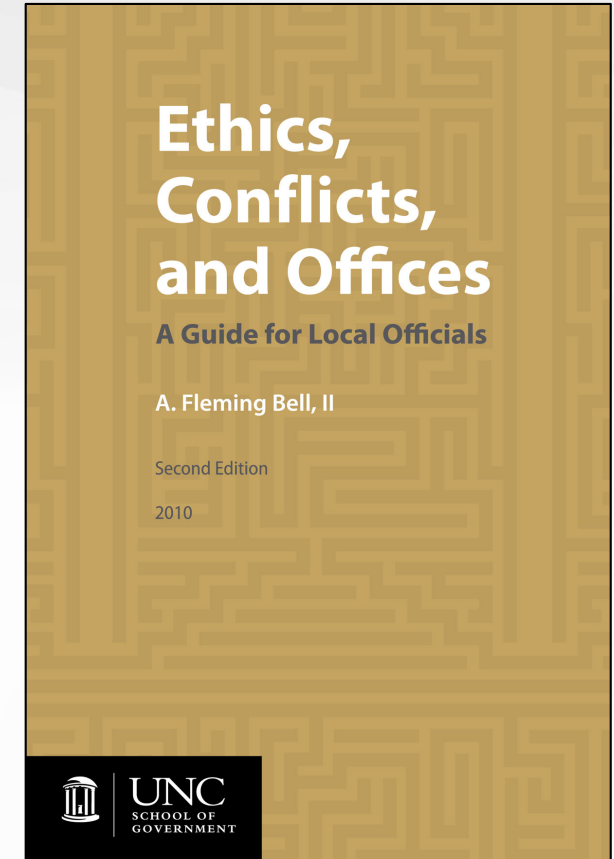
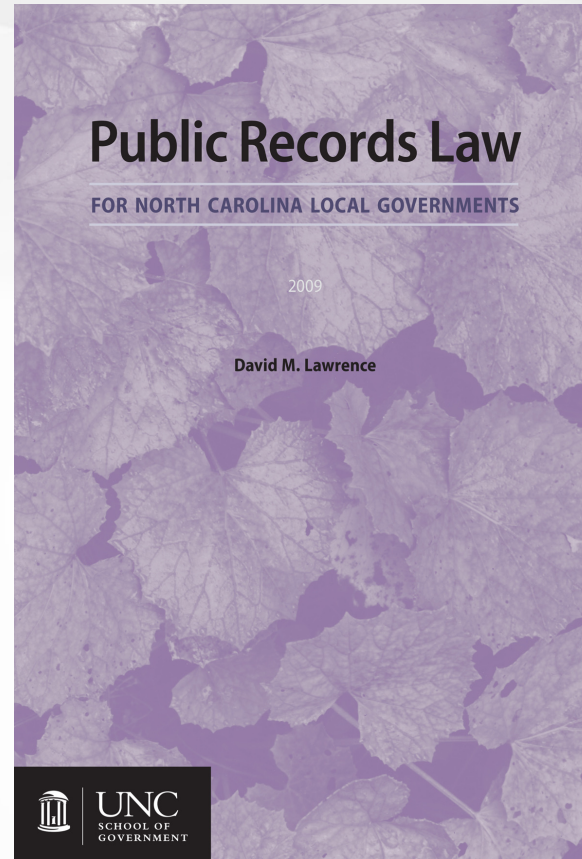
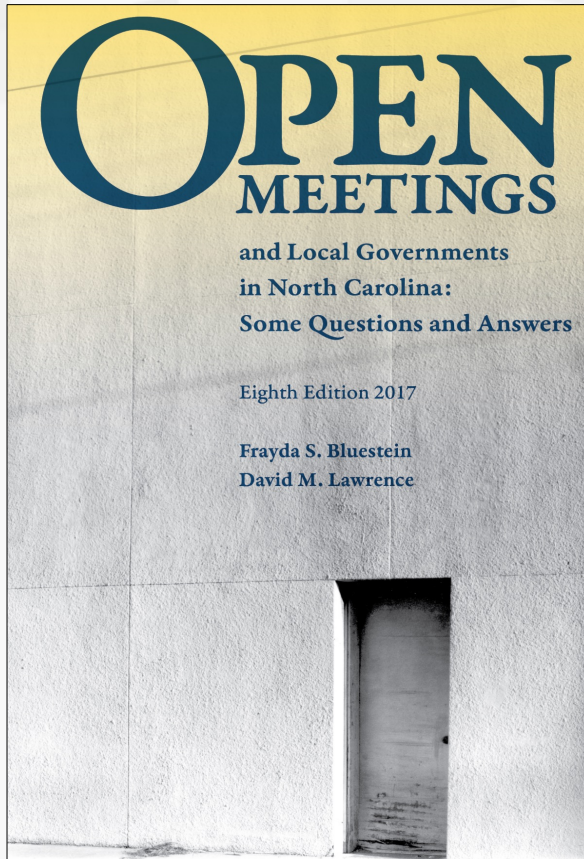
Ethics – Key Takeaways

Be
careful
of
conflicts
of
interest

- It is unlawful to:
 - Attempt to influence DSS director regarding employment of relative
 - Directly benefit from contract if involved in making or administering contract
 - Attempt to influence person making or administering a contract for benefit of official
 - Solicit or receive a gift or reward for recommending or influencing award of contract by public agency



Want to learn more?



Coates' Canons: NC Local Government Law



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Questions?



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