



"WHEREAS, THE PEOPLE OF NORTH CAROLINA ENTRUST PUBLIC POWER TO ELECTED AND APPOINTED OFFICIALS FOR THE PURPOSE OF FURTHERING THE PUBLIC, NOT PRIVATE OR PERSONAL, INTEREST..."
EXECUTIVE ORDER NO. 127

Volume 1, Issue 2

August 1999

Welcome to the second edition of the *North Carolina Board of Ethics* newsletter. We hope that this publication will provide you with worthwhile information regarding ethics in North Carolina and will help to serve as a guide as you perform your duties as a public official. As always, the *Board of Ethics* wants to hear from you as well. Your comments, criticisms, ideas for articles and any other improvements are welcomed and appreciated.

Letter from the Chairman

We are excited to announce the arrival of a new staff member. Effective April 15, 1999, Mr. Perry Y. Newson joined the Board of Ethics staff as our new Executive Director. We hope you will share our enthusiasm in wishing Perry a warm welcome.

Mr. Newson comes to the Board after serving the State of North Carolina as a Special Deputy Attorney General in the Department of Justice for over five years. Under Perry's leadership, the Board will continue to be available to issue advisory opinions, handle complaints, and provide educational services for Public Officials.

I urge each of you, as Public Officials, to utilize the services offered by the Board of Ethics. Over the next few months, we hope to meet with more of you individually to discuss your needs and to help you address the ethical dilemmas which confront you as public servants. In the meantime, please do not hesitate to contact our office with any questions or concerns you may have.

George F. Bason 

Inside this Issue

Page 1	Letter from the Chair A Note on Conflict of Interest: Gifts
Page 2	Board of Ethics News Ethics Education DMV Investigation Comes to a Close
Page 3	Advisory Opinions

A Note on Conflict of Interest

GIFTS

Can I accept a "free lunch" from a person who is regulated by my board? ... What about accepting tickets to a sports event from a vendor that my division does business with? ... Can I accept pencils and other token gifts from vendors who visit my office?

We all know that public officials are expected to uphold the highest standards of personal integrity, truthfulness and fortitude in all their activities in order to inspire public confidence and trust in public institutions. We also know that to protect this integrity, public officials must exercise caution in their dealings with their clients or vendors.

Over the years, public officials have consulted the Board of Ethics regarding circumstances where they should or should not accept such gestures as free meals, the use of private clubs, or tickets to sports events, to name a few, from persons with whom they come in contact by virtue of their positions as public officials.

Although the State of North Carolina does not have a formal gift policy, generally it is not proper for public officials to accept any of these types of valuable gifts or services from someone whom the public official regulates, contracts with, or otherwise does business with as part of his or her service as a public official. Normally, the acceptance of gifts of nominal value such as pencils, matches, or coffee cups does not rise to the level of conflict of interest, nor does it create the appearance of conflict of interest. However, regardless of value, it is never acceptable for a public official to solicit items from clients or vendors.

Most importantly, to avoid conflict of interest, in all circumstances public officials must exercise discretion before accepting a gift and, when in doubt, should contact their ethics liaison or the Board of Ethics directly for advice.

BOARD NEWS

Donavant Honored for Years of Excellence

Millie Donavant, Administrative Officer to the Board of Ethics, who was named the 1998 Department of Administration Employee of the Year, was recently chosen as a recipient of the Department of Administration's Award of Excellence.

The staff and members of the Board of Ethics wish to extend their congratulations and sincere thanks to Ms. Donavant for her over 22 years of service and dedication to ethics in government and public service.

Ethics Board Staff Abroad

Board of Ethics' Research Assistant, Maureen Atta, returned to the Board office in July after taking a leave of absence to spend a semester abroad

"When it comes to public trust, perception is reality. It is not enough that we do no wrong, we must also try to assure that others believe we have done no wrong."

1998 Michael Josephson

ETHICS EDUCATION:



If your agency or organization would like training for a particular group of officials, employees or the public, please contact the Board at 919/733-2780 to arrange a convenient time and place. Training sessions will focus on the particular issues or situations faced by that group of individuals, as well as provide basic information regarding conflict of interest and the Board of Ethics. All materials will be provided and there is no cost to participants.

DMV Investigation Comes to a Close

Board Votes to Adopt Investigative Report

At its June 2, 1999 meeting, the Board of Ethics ("the Board") voted to adopt the recommendations and findings of an investigative report addressing allegations of ethical and criminal misconduct by officials in the Division of Motor Vehicles ("DMV"). The report was the result of an investigation conducted by Vice-Chair Jane F. Finch, with the assistance of Research Assistant, Maureen Atta, which included interviews with approximately 40 persons both within and outside of DMV.

In February 1999, Secretary Norris Tolson, Department of Transportation, requested that the Board conduct an investigation of allegations of ethics violations which may have occurred in connection with the solicitation of charitable contributions from employees of the enforcement section of the DMV. These donations were solicited by DMV employees from DMV employees and were to be given to charities favored by the Commissioner of Motor Vehicles, Janice A. Faulkner, as an expression of gratitude for her assistance in obtaining a pay equity raise for many of DMV's enforcement section employees. A complaint was also filed with the Board by the N.C. Foundation for Individual Rights regarding this matter.

Of the individuals involved, only Commissioner Faulkner was subject to the jurisdiction of the Board. Therefore, the scope of the investigation was limited to matters in the complaint which concerned Commissioner Faulkner.

The investigation revealed the following:

(1) Commissioner Faulkner did not knowingly use her position in any manner which would result in a direct or indirect benefit to herself, her family, or a business or individual with whom she is associated. Commissioner Faulkner undertook the effort to obtain pay equity raises for enforcement employees without any expectation or promise of a financial or personal benefit to herself or others.

(2) Commissioner Faulkner did not directly or indirectly ask, accept, demand, exact, solicit, receive, or agree to receive anything of value for herself or for another person in return for being influenced in the discharge of her responsibilities. The contributions made to charity by DMV enforcement employees were not given in exchange for Commissioner Faulkner's support. Instead, they were meant only as a demonstration of appreciation for her past support and efforts.

(3) The effort to collect contributions was initiated and conducted solely by enforcement section employees. Commissioner Faulkner was not aware that contributions were being solicited, how they were being solicited, or how much money, if any, was being collected. Commissioner Faulkner did not consider that any pressure would be exerted on personnel to make these contributions, nor that some persons may interpret her providing the list of charities which she supports to a DMV

Continued on pg. 3

DMV Investigation Comes to a Close (cont. from pg. 2)

employee as a request for recognition or an extortion of some kind. If such pressure was exerted or impression created, Commissioner Faulkner did not have notice of such occurrences or sentiment at that time.

(4) No evidence of any criminal or wrongful conduct by Commissioner Faulkner was found.

In conclusion, the Board found that neither the desire of the employees of DMV enforcement to express their appreciation of Commissioner Faulkner's leadership by contributing to charities which she supports, nor Commissioner Faulkner's yielding to the desire of her employees to express their thanks, in and of itself, constituted a violation of the Executive Order. However, avoidance of the series of events that took place in DMV and in similar situations can only be achieved by public officials rejecting of all types of gifts, honorary or otherwise which are given in connection with the performance of their responsibilities as a public official.

The Board recommended that a copy of the report be sent to Commissioner Faulkner along with a letter of caution urging her to increase ethics awareness and training efforts within her Division. The Board stressed that the Department of Transportation's ethics liaison should be consulted in all instances where there exists even a shadow of a doubt in regard to conflict of interest.

Do you have an ethics question or situation? Contact the Board of Ethics to request an ethics advisory opinion at 919/733-2780

Recently Approved Ethics Advisory Opinions...*

1. AO-99-013: May the members of a granting Authority accept gifts from former grant recipients?

OPINION—In order to avoid the appearance of conflict of interest, Authority members should not accept gifts from former grant recipients who are eligible to apply for and receive similar grants in the future.

2. AO-98: May the head of an agency accept a gift of fresh fruit from a vendor which does business with the agency during the holiday season?

OPINION—The agency head may accept the gift of nominal value, barring any applicable statute to the contrary, so long as the contents of the gift are made available to the general public and other employees of the agency.

3. AO-99-011: May a board award a bid contract to a company which is owned solely by a board member's spouse?

OPINION—Awarding a contract to a company which is solely owned by the spouse of a board member would create, at a minimum, an appearance of conflict of interest. A public official shall not knowingly use his or her position in any manner which will result in financial benefit, direct or indirect, to the Official, the Official's family, or an individual with whom or business with which the official is associated. Executive Order 127 §7 (a)(1) (emphasis added). An appearance of conflict of interest exists when a reasonable person would conclude from the circumstances that the public official's ability to protect the public interest, or perform public duties, is compromised by personal interests. Section 7(b).

4. AO-99-002: May a board member who owns a condominium in a ski resort rent the condo for recreational use to an officer of a vendor corporation that does business with the board?

OPINION—A board member should not rent a ski condo to an officer of a corporation which has been a major vendor for the Board and was recently awarded a significant new contract. To do so, would create the appearance of a conflict of interest.

** Please note that the Board of Ethics opinions are based upon the particular facts presented and issues raised in the specific request for an advisory opinion. As such, the scope of each opinion is limited to the request made and should only serve as a recommendation to the particular parties involved. It may, however, serve as a general guide to other individuals similarly situated.*

