



"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 3, Issue 1

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**W**elcome to the latest 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

This issue of our newsletter focuses primarily on advisory opinions issued by the Board in the recent past. Included, you will find opinions that present a wide variety of ethical issues and concerns.

Although we remain ready and willing to assist Public Officials with any specific ethical dilemma they face as they perform their duties, we hope that this publication will also serve as a useful guide for Officials to reference should ethics questions of a general nature arise.

To request an advisory opinion from the Board, or to obtain a copy of the full text of an opinion included in this newsletter, please contact the Board's staff at 919/733-2780.

George F. Bason 

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"... when a person voluntarily accepts a position of public trust, he takes on new obligations. If he doesn't want to live up to them, he is free to decline the job. Not only is this a fair demand, but granting authority without expecting public servants to live up to it would be unfair to everyone they are expected to serve."

(Michael Josephson 1998)

### **Have you filed your Supplemental Statement of Economic Interest for the Year 2000?**

Executive Order 127, Section 7(c)(2) states, "A public official shall continually monitor, evaluate and manage his or her personal, financial and professional affairs to ensure the absence of conflicts of interest and appearances of conflict of interest."

The annual filing of the Statement helps Public Officials to fulfill this mandate. Please take the time to complete the appropriate form and return it to our office. Remember, all forms must be signed AND notarized! If you have NOT received forms, please contact our office as soon as possible. Thank you.

**IMPORTANT!!!**  
**The filing deadline is Monday,**  
**May 15, 2000**

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## BOARD NEWS

Maureen Atta, Research Assistant to the Board, will be leaving our staff to work as a summer associate with the law firm of Ferguson Stein Wallas Adkins Sumter Gresham in Charlotte, N.C. We will miss her contributions to our staff and her efforts in publishing this newsletter.

## Recent Advisory Opinions...

**AO 99-017:** The board has “certified reviewers” who evaluate programs for certification and recommend either approval or denial of these programs by the full board. Certified reviewers may and often do charge a fee for this service. A recently-appointed board member conducts such reviews as part of her business. The board member asked whether continuing to do so would constitute a conflict of interest or the appearance of a conflict. She also asked whether she could continue to be involved in “political advocacy” on behalf of a national professional association. **OPINION:** While board members are not required to relinquish any licenses or certifications they may hold because they are appointed to a covered board, they may not participate in any decision involving their own license or certification. Nor should a board member participate in the board’s determination regarding any program that has been reviewed by that particular member. The board member’s participation in the board’s certification decisions regarding reviews conducted by other certified program reviewers, while the member is independently performing reviews herself, could, at a minimum, create the appearance of conflict of interest. Therefore, to completely remove any appearance of conflict of interest, the board member should refrain from conducting program reviews during her tenure with the board. Her political advocacy and involvement with the national organization does not constitute an actual conflict of interest or an appearance thereof.

**AO 99-016:** An appointee to a board inquired as to whether the precautionary measures he had taken to monitor for potential conflicts of interest between his service on the board and his employer’s clients were sufficient. The appointee is employed by a business that has many clients that may do business with the board upon which he serves. The employer’s clients are great in number and are constantly changing. **OPINION:** The Board found that while public officials must perform their official duties in a manner that promotes the best interests of the public, the standard is not one of unfailing perfection. The Board noted that the preamble of the Order recognizes that “because many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of conflict of interest will occur.” The Order specifically prohibits officials from “knowingly” using their position in a way which will result in a benefit to themselves, their family or their business associates. The Board found that the appointee had put in place reasonable measures to ensure that he does not knowingly use his position in a manner which will result in a financial benefit to him or his employer.

**AO 99-015:** A public official inquired as to whether he would have a conflict of interest when the commission on which he serves will consider a permit application and the appointee is also a member of a non-profit athletic booster club which is affiliated with but has no financial or business relationship with the permit applicant. **OPINION:** The Board found that this arrangement would not create a potential for conflict of interest because the granting or denying of the permit would not bestow any reasonable or measurable financial or personal benefit on the appointee or the organization of which he is a member. Nor would an appearance of conflict of interest be created because a reasonable person would not conclude that membership in a

non-profit organization would unduly influence an official’s decision as to whether to grant a permit to a private business when that business has no personal or financial relationship with the non-profit organization.

**AO-99-013:** The authority approves grants to local governments to develop local parks and recreation areas. In 1997, the authority awarded such a grant to the Town. Two years later, to show its appreciation for the grant, the Town wanted to give all authority members a framed print worth \$74.14. The Town is eligible to apply for and receive other similar grants in the future. **OPINION:** In order to avoid the appearance of a conflict of interest, authority members should not accept gifts from former grant recipients.

**AO-99-007:** The authority is considering pursuit of a new type of facility to accomplish its statutory mission. Two members of the authority are employed by entities that have seriously questioned the feasibility and advisability of

### ETHICS EDUCATION:



"HAVE ORDER, WILL TRAVEL"

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 provide basic information about ethical obligations under Executive Order 127 and can be tailored to address particular issues or situations faced by your agency or group.

pursuing the new type of facility. **OPINION:** The two authority members may discuss and answer questions on a proposal which their respective employers are on record as questioning, but, in order to avoid the appearance of impropriety, they may not vote on the proposal.

**AO-99-008: APRIL 1999:** The commissioner is primarily employed in the harvest of crabs. The commission was considering adoption of means to control crab harvests by allocating the number of crabs one can take in the future based on the number taken in the past. The commissioner estimates that he is in the top 5% of crab fishermen. **OPINION:** A commissioner who is among the top 5% of those fishermen in the crab fishery may discuss and answer questions about, but not vote on, proposals to allocate the ability to fish under a system based on the size of prior harvests.

**AO-99-011: JUNE 1999:** The board's computer programming work is done by outside contractors. The board was seeking bids from vendors for such work. One bid was from a company solely owned by a board member's spouse. **OPINION:** The Board found that awarding a contract to a board member's spouse's company would create an appearance of conflict of interest.

**AO-99-04:** Does Executive Order 127 prohibit the law partner of a sitting board member from performing non-adversarial title examinations for the acquisition of property for state projects? **OPINION:** The Order does not prohibit law partners of board members from providing such services when: 1) the board member is not involved in the title work, and 2) the board itself does not get involved in selection of attorneys to do title work (such attorneys are chosen by the Deputy Attorney General from a roster of eligible attorneys willing to do such work). The Board also stated that this evaluation is limited to the application of the Executive Order. Any further legal interpretation and application of statutes covering board members must be referred to the board's legal counsel.

**AO-99-02:** A board member wants to rent his ski condominium to an employee of a major vendor that does business with the board. Does this create a prohibited conflict of interest? **OPINION:** A board member's rental of 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 would create the appearance of a conflict of interest.

**AO-99-01:** Are owners of professional training school prohibited from serving on the licensing and/or regulatory board for the industry in which they practice? **OPINION:** Statutory qualifications for members of this board do not prohibit owners of schools from being appointed to the board. Whether school owners should be allowed to serve on the board is a legislative, not ethical, matter. Should a school owner be appointed, he or she would not automatically have an actual conflict of interest, but would have the potential for a conflict when considering matters involving themselves, their employees, or their own school.

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

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**AO 98-26:** A general inquiry was made regarding the involvement of board members in professional organizations and conflict of interest. **OPINION:** The Board stated that the Executive Order does not intend to keep appointees from participating in professional activities. The Board noted, however, that the more involved board members are with persons they are regulating, the greater the risk of conflict of interest while performing public duties. Individual board members must weigh this risk carefully when deciding whether to serve in both roles. **NOTE:** This opinion was originally written under Executive Order Number 1, which has since been superseded by EO 127. It was reissued under the new order in 1998, but may still contain some language which seems inconsistent with the current order.

**AO 98-019:** A large business and industry association invited all the members of a regulatory Commission to an appreciation dinner in the members' honor. Other officials were included in the invitation as well. The Attorney General's Office sought an opinion as to whether attendance at the reception and dinner would constitute: (1) a conflict of interest, or (2) the appearance of a conflict of interest. **OPINION:** The Board concluded that the reception and dinner would not be a conflict of interest because attendance would not be considered the receipt of something of value in return for being influenced in the discharge of a member's duties. The Board concluded that attendance could be viewed by members of the public with opposing views to the association as an appearance of conflict because the public might perceive that the business association was gaining additional access or the potential for influence with the Commission members.

**TO RECEIVE A COPY OF THE FULL TEXT OF AN ADVISORY OPINION INCLUDED IN THIS NEWSLETTER,  
PLEASE CALL 919/733-2780.**