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**"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. ONE

## Letter from the Chairman

Once again, we focus on recent advisory opinions issued by the Board. Advisory opinions are one of the most useful tools available to Public Officials to help them understand and comply with Executive Order Number One as they perform their public duties.

We remain ready and willing to assist Public Officials with any specific ethical dilemma they face in the course of their public service, but we also hope that this publication will serve as a useful guide for Public 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 

### **ETHICS EDUCATION**

Due to the current State budgetary situation, we are still unable to travel outside of the Raleigh area to make basic ethics education and awareness presentations.

If your board or agency is meeting in the area and you would like such a presentation, please call the Board's offices to make the necessary arrangements.

In the meantime, Board staff is always available for telephone consultations and conflict of interest questions.

## **"Advisory Opinions" on the Web**

In order to make the Board's advisory opinions more accessible to Public Officials and other interested parties, all opinions from January 1998 forward, select older opinions, and other related information are now available on the Board's web site.

In addition to all "recent" and other select opinions, a "*Comprehensive Index*" of most advisory opinions issued by the Board since its inception in 1977 is now available. This index is arranged alphabetically by general topic, issue, or organization/entity, as appropriate. Related topics are cross-referenced as much as possible. Researchers will be able to identify and examine all opinions addressing a particular issue or relating to a covered board or commission.

A "*Topical Index*" is also available. It is organized according to common issues or recurring ethical themes (for example, "Conflict of Interest," "Gifts," and "Employer-Employee Relationships"), and includes summaries of select opinions.

These and other indices will be updated periodically as the Board issues new opinions.

## **Have you updated your Statement of Economic Interest this year?**

All covered Officials must file an **updated Statement** between **April 15 and May 15** each year. See section 9 (b) of the Order. If you have any questions relating to the Statement, please call the Board's offices at 733-2780 and ask for Millie.

## “Power & Duty of Service”

“Because we understand ourselves to be a legitimately self-governing People, we recognize that this transfer of power is neither a desperate confession of inability to rule ourselves, nor an unconditional submission to some outsider’s superior claim to rule us. Those who receive the power to govern have no inherent right to it. Rather, the power that a free and willing citizenry gives to those who govern comes indelibly impressed with the duty to serve the interests of that citizenry. And, just as the power need not have been given, so it need not have been accepted. To take the power is to take on the responsibility of service with which it is invested.”

From “Keeping Faith: Government Ethics & Government Ethics Regulation,”  
ABA Committee on Government Standards (1993)

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## What is an “Advisory Opinion”?

Since 1977, “advisory opinions” have been an integral part the Board of Ethics’ effort to educate and assist covered “Public Officials” as they strive to conduct the public’s business in the best interest of the public. The issuance of advisory opinions is mandated by executive order. The current version is Executive Order Number One, which was issued January 12, 2001 (“EO One” or “the Order”). Section 5(d) of the Order requires the Board to answer questions relating to “real or reasonably-anticipated fact settings or circumstances.” The Board’s “Rules & Regulations” establish procedures for the request and issuance of advisory opinions. Opinions are intended to have prospective application only.

Those entitled to request an advisory opinion are (1) “Public Officials” as that term is defined by section 3 of the Order, (2) those responsible for appointing or supervising a Public Official, (3) Agency heads (which term includes the chair of each covered board), and (4) legal counsel for covered Agencies or boards.

The Board’s rules establish the procedure for issuing advisory opinions. First, the Board’s Executive Director drafts a preliminary advisory opinion which is reviewed by the Board Chairman. After incorporating the Chairman’s comments or suggestions, the preliminary opinion is sent to the requester and may be relied upon until the full Board meets and approves, disapproves, or modifies the opinion. All interested parties are notified of the final result.

The Board may decline to issue an opinion if (1) it determines that the request is frivolous, (2) the matter has already been considered and decided by the Board, or (3) the matter is not one with respect to which a ruling or determination would be appropriate.

All advisory opinions, both preliminary and final, 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. They may, however, serve as a general guide to other individuals similarly situated.

## RECENT ADVISORY OPINIONS

**AO-01-004 (April 27, 2001):** Among other things, the North Carolina Parks and Recreation Authority (“the Authority”) allocates funds for land acquisition, repairs, renovations, improvements, construction, and other capital projects from the Parks and Recreation Trust Fund (“PARTF” or “the Fund”). One of the Authority’s responsibilities is to approve matching grants from the Fund to local governmental units for local park and recreation purposes. The Authority’s 11 members must include persons who are knowledgeable about park and recreation issues in the State or who have expertise in finance. One Authority member’s spouse is the mayor of a town applying for a PARTF grant. Another member serves on an advisory sub-committee to a county applying for a grant that was recommended by a totally separate advisory committee to the same county. The latter member is from one of North Carolina’s largest counties which has created several levels of advisory bodies to study and make recommendations regarding various local parks and recreation issues. Specifically, each of the county’s nine park districts has a separate and distinct “advisory committee.” These separate advisory committees report to and are overseen by a 13-member Parks and Recreation Commission which is appointed by the county commissioners. The nine advisory committees operate independently of one another and make separate recommendations to “district supervisors” for routine matters and the Parks and Recreation Commission for larger or multi-district issues. The member in question serves on the county advisory committee for one such district. The county has applied for a PARTF grant in *another* district. Neither the member nor his particular advisory committee was involved in the preparation, review, or presentation of this separate grant proposal.

**OPINION:** The Authority member whose spouse is the mayor of a town applying for a PARTF grant should not discuss or vote on the town’s grant application. Generally, the interests of not only husbands and wives but also employers and employees are equated for conflict of interest analysis purposes. Thus, any financial benefit accruing to the spouse or his employer as a result of the grant award would be attributed to the Authority member. Likewise, the Board of Ethics has previously found that an elected official of a local government applying for a PARTF grant has a conflict of interest and may not participate in any discussion or voting on that particular grant application. Moreover, a reasonable person would question the Authority member’s objectivity when the town of which her spouse is the mayor is the applicant for a PARTF grant. Also, given the fact that a grant award is a quasi-judicial-type decision, the “reasonable and appropriate step” in this case is total recusal from the decision-making process, including discussion or “lobbying.”

The Authority member serving on an advisory sub-committee in one district should generally be allowed to fully participate in the Authority’s decisions regarding the PARTF grant request pertaining to a totally separate district. This includes discussion and voting. In so finding, the Board of Ethics distinguished an earlier opinion which prohibited an active member of a local government’s parks and recreation advisory board from voting on the local government’s grant proposal (AO-98-010).

**AO-01-005 (July 12, 2001):** A member of the North Carolina Board of Transportation (“BOT”) inquired about the conflict of interest/appearance of conflict ramifications of her company seeking to do business with an organization interested in and planning to address regional growth and development issues, including transportation issues. It is currently understood that the BOT will *not* be asked to make any decisions relative to the regional organization, and the organization will *not* be seeking funding from the Department of Transportation or the BOT.

**OPINION:** After noting the basic conflict of interest and appearance of conflict provisions of Executive Order One, the Board of Ethics found that in the present situation, the regional organization for which the BOT member may do business is not now, nor is it reasonably anticipated that it will be, a “participant” in any proceeding before the BOT. Specifically, it is not anticipated that the organization will seek any funding from the Department of Transportation. Therefore, the member did not have a conflict of interest or the appearance of a conflict of interest regarding her company’s prospective work for the outside organization. The member was reminded, however, that should the organization or any other group with which she is associated appear before or petition the BOT for specific action, she should keep the conflict/appearance of conflict rules in mind and exercise appropriate caution under the particular circumstances.

# INDEX OF MAJOR ARTICLES OR TOPICS

covered in the

## N. C. BOARD OF ETHICS NEWSLETTERS (1998 to Present)

<b>Actual vs. Potential Conflict of Interest</b>	-- November 1998 June 2001 (major article)
<b>Advisory Opinions</b>	-- November 1998 August 1999 December 1999 March 2000 December 2000 April 2001 July 2001 October 2001 March 2002
<b>Agency Heads &amp; Board Chairs, obligations of</b>	-- September 2000 March 2001
<b>Annual Reports</b>	-- June 2000 March 2001 January 2002
<b>Appearance of Conflict of Interest</b>	-- July 2001 (major article)
<b>Bias in Public Decision-Making</b>	-- December 1999 (major article)
<b>Board of Ethics Members</b>	-- November 1998
<b>Comparison of “Old” vs. “New” Ethics Orders</b>	-- February 2001 (major article)
<b>Conflict of Interest</b>	-- June 2001 (major article)
<b>CRC Decision (analysis of)</b>	-- December 1999 (major article)
<b>Definitions (select)</b>	-- March 2001 January 2002
<b>DMV Investigation Report</b>	-- August 1999
<b>Education Requirements/Program</b>	-- September 2000
<b>Ethics “Reminder”</b>	-- September 2000 (major article)
<b>Executive Order Number One (Easley’s)</b>	-- February 2001
<b>Filing Requirements</b>	-- February 2002 (major article)

**INDEX OF MAJOR NEWSLETTER ARTICLES (continued):**

<b>Financial Disclosure</b>	-- February 2002 (major article)
<b>Gifts &amp; “Freebies”</b>	-- August 1999 May 2001 (major article)
<b>“New” Order (Easley’s Number One)</b>	-- February 2001 (major article)
<b>Orientation, Ethics Education at</b>	-- September 2000
<b>“Personal Interest”</b>	-- December 1999 (major article)
<b>Potential Conflict of Interest</b>	-- November 1998 June 2001 (major article)
<b>Quasi-Judicial Proceedings</b>	-- December 1999 (major article)
<b>Quasi-Legislative Proceedings</b>	-- December 1999 (major article)
<b>Recusal</b>	-- December 1999
<b>“Reminder” Language</b>	-- September 2000 (major article)
<b>“Revolving Door”</b>	-- August 2001 (major article)
<b>Statements of Economic Interest (“SEI”)</b>	-- February 2001 March 2001 April 2001 February 2002 (major article)
<b>“Topical” Index of Advisory Opinions</b>	-- July 2001 (major article)

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“Whenever you are to do a thing, though it can never be known but to yourself, ask yourself how you would act were all the world looking at you and act accordingly.”

Thomas Jefferson

“Justice is not a rule or set of rules; it is a moral principle. By a moral principle, we mean a mode of choosing which is universal, a rule of choosing which we want all people to adopt always in all situations.... There are exceptions to rules....but no exceptions to principles.”

Lawrence Kohlberg, Psychologist (1927-1988)

# "Statements of Economic Interest" Due-Dates

All **new** employees or appointees who are covered by Executive Order Number One must file their Statement as soon as reasonably possible, the intent being to have a conflict evaluation prior to or contemporaneous with the commencement of public service where feasible.

All **currently serving** Public Officials who submitted a Statement under former Executive Order 127 were to resubmit a **new Statement** on or before **May 15, 2001**. See section 9 (e).

Thereafter, all covered Officials must file an **updated Statement** between **April 15 and May 15** each year. See section 9 (b).

If you have any questions relating to the Statement, please call the Board's offices at 733-2780.

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