

N.C. BOARD



OF ETHICS

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"Ethics" IQ

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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 Director

You've been appointed to a covered public board or commission, you've read the Governor's Executive Order Number One on ethics, and you've filed your Statement of Economic Interest with the Board of Ethics. Now you're ready to engage in public service.

Or are you? Do you know both the stated rules and how they are actually applied in our "real" ethical world? Take the "Ethics IQ" test in this newsletter and find out. Some of the answers might surprise you.

Remember, if you have any questions or would like additional information about any of the topics touched on here, do not hesitate to call on Board staff at your convenience.

Perry Y. Newson

ETHICS EDUCATION

"Have Order, Will Travel"

We are once again able to travel outside of the Raleigh area to make basic ethics education and awareness presentations. If your board or agency would like such a presentation, please call the Board's offices to make the necessary arrangements.

"But if you ask what is the good of education in general, the answer is easy: that education makes good men, and good men act nobly."

Plato

Ethics Bills Pending

There are now four "ethics" bills pending in the General Assembly: House Bills 1843 (Revise Legislative Ethics Act) & 1844 (Executive Branch Ethics Act), and Senate Bills 1694 (State Government Ethics Act) & 1976 (Reform Governmental Ethics).

They have many provisions in common, and with the exception of HB 1843 which pertains solely to the Legislature, the passage of *any* of these bills will have a significant impact on all current "Public Officials" covered by Executive Order Number One. Among other things, there will be new filing requirements, mandatory ethics education, enhanced investigative and enforcement powers, and a gifts provision.

Obviously, we will be tracking these and any related bills very closely. If and when an ethics law passes, we will inform you immediately and begin the process of letting you know what it means to *you*.

Please be alert to all notices, newsletters, and other communications relating to this important matter.

Your Statement of Economic Interest is Overdue

If you have not yet filed your Statement of Economic Interest for the new filing year, you should do so immediately. If you have any questions relating to the Statement, please call the Board's offices at 733-2780 and ask for Beth.

Test Your "Ethics" IQ

1. The North Carolina Board of Ethics has jurisdiction over all State employees, State legislators, and local government officials.
___ True ___ False
2. If I filed a Statement of Economic Interest (SEI) last year, I do **NOT** need to file another one this year.
___ True ___ False
3. I cannot serve on a *licensing board* if I am licensed by that board.
___ True ___ False
4. Board chairs are supposed to start every official meeting with an "ethics reminder."
___ True ___ False
5. You must first have an actual conflict of interest before you can have an *appearance* of conflict.
___ True ___ False
6. I can continue to deliberate and vote on a matter before me if all I have is an *appearance* of conflict of interest.
___ True ___ False
7. If I have to *recuse* myself from a vote due to a disqualifying conflict of interest or appearance of conflict, I can still *lobby* my fellow board members to vote a certain way.
___ True ___ False
8. If I have to *recuse* myself from a vote due to a disqualifying conflict of interest or appearance of conflict, I must leave the meeting room.
___ True ___ False
9. Having a *potential* conflict of interest disqualifies you from public service and you should resign your public position.
___ True ___ False
10. You do not have to file an SEI if your term has expired on the board or commission on which you are serving.
___ True ___ False
11. Executive Order Number One regulates the receipt of *gifts* to covered Public Officials.
___ True ___ False
12. "*Advisory boards*" are covered by Executive Order One and subject to the Board's jurisdiction.
___ True ___ False
13. Executive Order One prohibits the receipt of "*honoraria*."
___ True ___ False
14. Only the Governor, Speaker of the House, President Pro Tempore of the Senate, or other "appointing authority" can file a *complaint* against a Public Official.
___ True ___ False
15. I cannot have a disqualifying conflict of interest or appearance of conflict because of my association or involvement with a *non-profit, public-interest* organization or group.
___ True ___ False
16. I can accept free travel expenses (including airfare, hotel accommodations, and meals) from a vendor I do business with on behalf of my State agency.
___ True ___ False

Answers on the next page.



Don't forget to file your Statement of Economic Interest for the current filing year. If you have not had any material changes since your last filing, you may use the Board's "No-Change" ("Short") form. Be sure to answer every question, sign whichever statement you use, have it notarized, and return the original to the Board.

“Ethics IQ” Answers

1. *False.* The Board of Ethics’ primary jurisdiction is over high-level employees and appointees in the executive branch of State government. The persons subject to Executive Order Number One (defined as “Public Officials”) are listed in section 3 of the Order. They include the heads of all “principal departments” and their chief deputies or assistants, exempt employees, and gubernatorial appointees to non-advisory boards and commissions. In addition, section 4 invites other high-level officials to voluntarily cover their appointees, and many have done so.
2. *False.* In addition to their initial filing when first appointed, Public Officials must update their Statement of Economic Interest annually between April 15 and May 15 *each year*. See § 9 (b) of the Order. Even though the official annual filing period does not begin until April 15, Public Officials may file, and Board staff will accept, Statements filed after January 1 of the filing year *provided* that the financial and other information is current and timely and will not materially change between the time of filing and the annual filing period (April 15 to May 15). The intent of this provision is that Public Officials provide information that is as current, timely, and relevant as possible under the circumstances, taking into consideration the fluidity of everyone’s personal, financial, and even familial situation. For a detailed discussion of SEI filing requirements and deadlines, see the Board’s annual “SEI Edition” newsletter (usually in February).
3. *False.* Most laws creating licensing boards *require* that a certain number of board members be licensed by the very board on which they serve. Obviously this is not a disqualifying actual conflict of interest. It does, however, create the potential for a conflict of interest, and the licensee-Public Official must exercise caution in appropriate situations. For a detailed discussion of actual and potential conflict of interest, see the Board’s annual “Actual vs. Potential” conflict newsletter (last edition April 2006).
4. *True.* Section 6 (e) of the Order requires that the chair of each covered board remind all members of their duty to avoid conflicts of interest and appearances of conflict at the beginning of any official meeting. The chair is also to inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the board at that time. For further discussion of the ethics reminder requirement, see the Board’s September 2000 newsletter (in the context of former Executive Order 127, as modified).
5. *False.* Actual conflicts and appearances of conflict are two entirely different things. Section 7 of the Order deals with both in the context of “Rules of Conduct for Public Officials.” Section 7 (a) deals with conflicts of interest. They are primarily, though not exclusively, financial in nature. Section 7 (b) deals with appearances of conflict. The Order makes it perfectly clear that “An appearance of conflict [can] exist even in the absence of a true conflict of interest.” For further discussion of actual and potential conflict of interest, see the Board’s annual “Actual vs. Potential” conflict newsletter (last edition April 2006).
6. *False.* A Public Official must make every effort to avoid even the appearance of conflict of interest. In many instances, appearances can be just as damaging as actual conflicts. Section 7 (b) (2) of the Order makes it clear that a Public Official must remove himself or herself from any proceeding in which the Official’s impartiality might reasonably be questioned due to the Official’s familial, personal, or financial relationship with a participant in the proceeding. For further discussion of appearance of conflict, see the Board’s July 2001 newsletter.
7. *False.* The Board of Ethics has determined that a Public Official’s disqualification due to an impermissible conflict of interest, particularly a financial conflict of interest, extends to trying to influence the decision or outcome other than through an official vote. Stated otherwise, a disqualified Public Official may not try to do indirectly what he or she is prohibited from doing directly. For further discussion of “lobbying” fellow Public Officials, see the Board’s advisory opinion AO-01-001 (February 15, 2001), page 6.
8. *False.* But sometimes that might be a good idea. There is no “right” or “wrong” way to remove yourself from the decision-making process. In most situations, it will be sufficient to note the conflict and simply refrain from taking any official action on the matter. Officials often remain at the table or in the room while their fellow members vote. In cases involving a significant personal interest, it may make everyone more comfortable if the affected member is not present. For further discussion of recusal, see the Board’s December 1999 newsletter.

“Ethics IQ” Answers (continued from previous page)

9. *False.* Many, if not *most*, Public Officials have the potential for a conflict between their private interest and their public service. Many Public Officials are *required* to have a potential conflict of interest because of the legislatively-mandated requirements of their position. It is what a Public Official does in the face of a potential conflict that is important. He or she must be careful not to allow a perfectly acceptable potential conflict of interest to “ripen” into a forbidden actual conflict by some action or inaction in appropriate circumstances. Having a potential conflict of interest is an ethical “red flag” that should warn Public Officials to be careful when whatever causes the potential comes before them for some official action. For further discussion of potential conflict of interest, see the Board’s annual “Actual vs. Potential” conflict newsletter (last edition April 2006).
10. *False.* While the Order is silent on this question, since both the North Carolina Constitution (section 10) and State law (General Statutes §128-7) mandate that State officers continue in their positions until they are duly replaced, Board staff has always taken the position that Public Officials must continue to file annual Statements of Economic Interest until a successor is named for their position. While rare, it is not unheard of for Public Officials to continue in office for over a year without being reappointed or replaced. To allow Officials to serve without filing their annual SEI would frustrate one of the main purposes of the Order. See *generally* section 9 of the Order.
11. *False.* The only place Executive Order One mentions gifts is in the Statement of Economic Interest section (section 9). Section 9 (c) (2) (m) requires Public Officials to list all gifts exceeding certain monetary thresholds received during the preceding 12 months. Whether a Public Official should accept a gift would be dealt with through the conflict of interest and appearance of conflict rules (section 7). For further discussion of gifts and related issues, see the Board’s annual “Gifts & Freebies Edition” newsletters (usually issued in October).
12. *False.* Ever since the Board of Ethics was created in 1977, it has only had jurisdiction over *non-advisory* boards and commissions. See section 3 (f) of Governor Easley’s Executive Order One. Individual Public Officials, however, *may* be covered, depending on their circumstances and the facts of the particular case.
13. *False.* The Governor’s ethics order no longer deals with honoraria. Instead, honoraria are covered in the Office of State Budget and Management’s Budget Manual. Any Public Official or State employee who might be in the position of receiving an honorarium should carefully review applicable provisions of the Budget Manual (currently pages 171-72) and consult with their department or agency’s legal counsel. For further discussion of honoraria, see the Board’s annual “Gifts & Freebies Edition” newsletters (usually issued in October).
14. *False.* Section 5 (c) of the Order allows *any person* to file a complaint with the Board of Ethics against a covered Public Official. However, the Board may not investigate and cannot even accept complaints against employees or appointees who are not covered by the Order.
15. *False.* While a Public Official’s mere membership in or association with a professional or advocacy organization does not automatically give rise to an actual conflict of interest, significant involvement with them can, and it makes no difference that the outside organization is a not-for-profit or public-interest entity. Section 7 (b) of the Order makes no distinction between for-profit and nonprofit entities for conflict analysis, and indeed the Board has held that the fact that an advocacy group is legally recognized under state or federal law as a nonprofit, public interest corporation does not eliminate conflict of interest or appearance of conflict issues for members of such group who serve on State boards or commissions. For further discussion of potential conflicts of interest or appearances of conflict due to significant involvement with outside organizations or groups, see the Board’s annual “Actual vs. Potential” conflict newsletter; *see also* advisory opinions AO-00-006 (July 13, 2000) and AO-99-014 (July 7, 1999).
16. *False.* While Executive Order One does not directly regulate the receipt of gifts and “freebies,” the Board has stated on numerous occasions that allowing a private company which is doing or interested in doing business with that Official’s agency to pay the Official’s travel expenses causes at a minimum the appearance of conflict. For further discussion of gifts and related issues, see the Board’s annual “Gifts & Freebies Edition” newsletters (usually issued in October of each year).