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## STATE GOVERNMENT ETHICS ACT GUIDELINES FOR MEMBERS OF NEWLY COVERED BOARDS

We are providing you this newsletter to acquaint you with some of the primary duties and responsibilities under the State Government Ethics Act (SGEA). This information includes some of the most frequently asked general questions concerning the SGEA. *This information is intended to be general in nature and does not include all of the requirements of the SGEA. If you have specific questions, you should contact the State Ethics Commission.* Contact information is provided at the end of this newsletter.

### SCOPE OF COVERAGE

- **Does the SGEA (including SEI filing and education requirements) apply to the staff of the newly covered boards (executive directors and other staff members)?** Generally no. The SGEA does not apply to the staff members of newly covered boards. Therefore, staff members are not required to file a Statement of Economic Interest. Staff members are also not required to attend an ethics and lobbying education presentation *unless the staff person will be designated as the board's "ethics liaison."* *Ethics liaisons are required to attend an education presentation.* (See the Education section below for additional details.)

### ADVICE & ADVISORY OPINIONS

- **If I have a question about the State Government Ethics Act, what should I do?** As a public servant who must comply with the ethics act, you may contact the State Ethics Commission for general information, advice, or guidance at any time.
- **Is there a difference between getting advice from the Commission staff and from the State Ethics Commission?** Yes. Guidance or "informal advice" from the staff does not confer immunity. However, if you obtain and rely on a formal advisory opinion issued by the State Ethics Commission, you will have immunity from investigation by the State Ethics Commission and possible removal from your public position.
- **Is my request confidential?** Yes. Both formal and informal requests for advice and advisory opinions are confidential, including your identity and the existence of your request. Information you provide to us and responses we provide to you are not public record unless you authorize its release.
- **When should I ask for advice or a formal advisory opinion?** As soon as possible and certainly before the situation occurs. By law, informal advice and formal advisory opinions must relate prospectively to real or

reasonably anticipated fact settings or circumstances. In addition, while some questions may be simple, many are complex, and often we are unable to give you a quick response. Therefore, we request that you give us as much time as possible.

## STATEMENTS OF ECONOMIC INTEREST

- **What is a Statement of Economic Interest (SEI)?** Statements of Economic Interest are the public disclosure of your and your “immediate family’s” financial and other information. “Immediate family” includes your spouse unless legally separated, unemancipated children living in your household, and extended family members living in your household. These disclosures are required by law and are intended to assist the Commission in identifying any actual or potential conflicts of interest you may have.
- **If the Commission identifies a potential conflict of interest, will I have to resign?** No. Many board members have potential conflicts of interest. In fact, the statutes establishing some boards require that interested parties (e.g., licensees of a licensing board) be members of the board. Therefore, simply having a potential conflict of interest does not disqualify you from serving on the board. Only if the conflict of interest is considered “disqualifying,” i.e., the conflict is “of such significance that (it) would prevent (you) from fulfilling a substantial function or portion of (your) public duties,” would you need to either eliminate the conflict or resign from your public position. Disqualifying conflicts of interest are very rare.
- **Are SEIs public record?** Yes. Your SEI and the Commission’s written evaluation are public records.
- **How often do SEIs have to be filed?** *Every year* no later than **April 15<sup>th</sup>**. Even if you have had no changes since your previous SEI filing, you **must still file an SEI annually**. However, you may be able to file an amendment form or a no change form.
- **Do I have to respond to every question?** *Yes*. Even if a question does not apply to you, i.e., you do not have any information to disclose, you should indicate “No” or “None” for that question. **Failure to answer all questions is considered an incomplete filing**. If the filing is not complete by the deadline, you may be subject to penalties.
- **Are there penalties?** Yes. For late or non-filing, the Commission may assess a \$250 civil penalty and recommend removal from your public position. Knowingly concealing or failing to disclose information on your SEI is a Class 1 misdemeanor. Knowingly providing false information is a Class H felony.

## EDUCATION

- **Who must attend ethics and lobbying education presentations?** Board members and ethics liaisons are required by law to attend ethics and lobbying education presentations. ***The State Ethics Commission strongly encourages any staff member who works directly with the board to attend an education presentation.***
- **How long do I have to attend an education presentation?** Six (6) months from the date the Commission notifies your board that it has been designated as covered by the SGEA.
- **How often do I have to attend?** You must attend a refresher presentation at least every two (2) years after attending your initial education presentation.

- **How do I obtain information about upcoming presentations?** Visit the education section of our website at [http://www.ethicscommission.nc.gov/EDU\\_schedule.html](http://www.ethicscommission.nc.gov/EDU_schedule.html) for dates, locations, and registration information.
- **Are the presentations currently offered online?** No. Not at this time.
- **If I have already attended a presentation, do I have to attend again?** If you have attended an ethics and lobbying education presentation sponsored by the Commission within the last two years, you do not have to attend again. *However, you are still subject to the refresher attendance requirement. For example, if you attended a presentation on June 13, 2008, you will need to attend a refresher presentation on or before June 13, 2010.* Please contact the Commission if you have any questions about when you attended a presentation.
- **If I am a judicial officer (justice, judge, district attorney, or clerk of court), do I still have to attend an education presentation?** Yes. While judicial officers are generally exempt from the education presentation requirements, *if a judicial officer is also a member of a covered board, the judicial officer must attend an ethics education presentation.*

### CONFLICTS OF INTEREST

- **How do I know if I have a conflict of interest under the State Government Ethics Act?** For public servants, there are generally two main situations where conflicts may arise:
  1. General Conflict of Interest. Unless there is a permitted participation exception, you may not take an *official action* if *you* or a *person with which you are associated* receives a *financial benefit* from the official action and the financial benefit would impair your independence of judgment or it could be inferred that the benefit would influence your participation. An *official action* is generally any action you take in your capacity as a public servant, e.g., voting. A *person with which associated* includes: members of your “extended family;” clients; “businesses with which you (or your immediate family) are associated;” “non-profits with which you (or your immediate family) are associated;” and, the State or a political subdivision of the State (e.g., local government) that employs you or your immediate family. A *financial benefit* includes a direct pecuniary gain or loss to you or a person with which you are associated or a direct pecuniary loss to a business competitor of yours or a person with which you are associated.
  2. Relationship with a Participant in the Proceeding. You have a duty to remove yourself from any proceeding in which your impartiality might reasonably be questioned due to a familial, personal, or financial relationship with a “participant in the proceeding” – someone involved directly in the proceeding, or someone who has a unique and substantial interest in the proceeding.
- **Are there times when I may participate, even though there may be a potential conflict of interest?** Yes. There are several “safe harbors” or permitted participation exceptions in the ethics act. *However, conflicts of interest and the permitted participation exceptions are very fact specific. Therefore, if you have any questions concerning a potential conflict of interest, you should contact the State Ethics Commission for guidance as soon as possible.*
- **What should I do if I have a conflict of interest?** Disclose the conflict and totally recuse yourself from any participation, including voting, participation in deliberations, or discussions of the matter. Also, make sure your recusal is recorded in the minutes.

## GIFTS

- **Does the State Government Ethics Act prohibit accepting gifts?** Yes, from certain individuals. Unless there is an exception, you cannot accept a gift, directly or indirectly through a third party, if it is paid for by *lobbyists, lobbyist principals, and interested persons.*

“Lobbyists” and the persons who hire them (“lobbyist principals”) must register with the Secretary of State’s office. Therefore, a list of lobbyists’ names and lobbyist principals’ organizations is on the Secretary of State’s website at <http://www.secretary.state.nc.us/lobbyists/>. ***Note: it does not matter whether or not the lobbyist or lobbyist principal has an interest before your board. If the lobbyist or lobbyist principal is registered, then you are prohibited from accepting a gift unless there is an exception.***

“Interested persons” are persons who 1) are doing or seeking to do business with your board; 2) are regulated or controlled by your board; or 3) have financial interests that may be substantially and materially affected by the performance or nonperformance of your public duties. ***There is no list of interested persons; therefore, the duty is on you as a public servant to determine whether or not someone offering you or paying for a gift is an “interested person” as to your board.***

- **What if the value of the gift is nominal?** The value of the gift ***does not matter.*** There is ***no de minimis exception.*** If the gift has any monetary value and is being paid for by a lobbyist, lobbyist principal, or interested person, you may not accept it unless there is an exception.
- **What if I pay for it?** If you pay for it, it is not a gift. It is permissible to promptly pay fair market or face value for a gift without violating the gift ban.
- **Are there exceptions?** Yes. There are exceptions to the gift ban, several of which involve food and beverage for immediate consumption and certain relationships you may have with any of the prohibited donors where those relationships are not based on your public position. However, specific criteria must be met in order for an exception to apply. ***Therefore, if you have any questions concerning a gift or gift ban exception, you should contact the State Ethics Commission for guidance.***

## USE OF TITLE

- **Can I mention my public position in advertising?** Generally, no. You cannot mention or allow someone else to mention your public position in non-governmental advertising. There are exceptions for directories or biographical listings and charitable solicitations for 501(c)(3) organizations. ***Use of title questions are usually very fact specific; therefore, if you have any questions, you should contact the State Ethics Commission for guidance.***

## HONORARIA

- **Can I accept an honorarium?** It depends. Under the SGEA, an “honorarium” is payment for services for which fees are not traditionally or legally required, e.g., graduation speeches. You **cannot** accept an honorarium if your board reimburses you for travel, subsistence, or registration; your board’s work time or resources are used; ***or “but for”*** your public position, you would not be performing the service (e.g., making the speech) for which you are being offered the honorarium. However, the organization that offers you the honorarium may reimburse your board for actual expenses or pay your board a fee.

We hope this information is helpful to you and gives you some general guidance on your duties and responsibilities under the SGEA. Below is a list of contact information for our office and websites that you may also find helpful. We look forward to working with you.

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## **CONTACT INFORMATION**

**Advice & Advisory Opinions Involving Conflicts of Interest, Gift Ban, Other Miscellaneous Requirements.** Contact Christy Tillery, Paralegal, at (919) 715-2071, or by e-mail at [ethics.commission@doa.nc.gov](mailto:ethics.commission@doa.nc.gov).

**Education.** Contact Mary Shuping, Education Officer/Attorney, at (919) 715-2071, or by e-mail at [mary.shuping@doa.nc.gov](mailto:mary.shuping@doa.nc.gov).

**Statements of Economic Interest (SEIs).** Contact Stacey Phipps, SEI Attorney, at (919) 715-2071, or by e-mail at [stacey.phipps@doa.nc.gov](mailto:stacey.phipps@doa.nc.gov).

## **WEBSITES**

### **STATE ETHICS COMMISSION**

- **General Information.** <http://www.ethicscommission.nc.gov/>.
- **Education Schedule.** [http://www.ethicscommission.nc.gov/EDU\\_schedule.html](http://www.ethicscommission.nc.gov/EDU_schedule.html).
- **SEI Information.** <http://www.ethicscommission.nc.gov/secoi.htm>.

### **SECRETARY OF STATE'S OFFICE**

- **Lists of Lobbyists & Lobbyist Principals.** <http://www.secretary.state.nc.us/lobbyists/>.