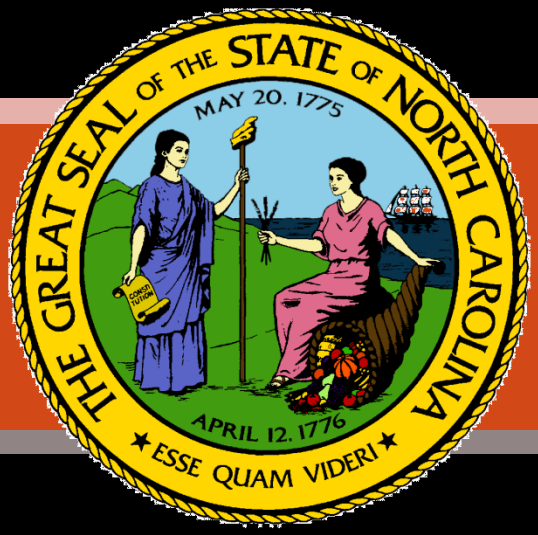
PRESENTER

SUSAN LUNDBERG

EDUCATION ATTORNEY



ETHICS & LOBBYING EDUCATION FOR PUBLIC SERVANTS

WHAT YOU NEED TO KNOW TO COMPLY WITH NC'S STATE GOVERNMENT ETHICS ACT & LOBBYING LAW

What if.....

You arrive at your office
and find an ink pen in a box
in your chair.

Can you keep it?

What if….

You, a public servant covered under the Ethics Act, have been invited to a symposium related to your public position / duties. The symposium is being hosted/sponsored by a consultant that your agency or board has a service contract with and lunch will be served?

Can you attend?

If so, can you eat?

What if….

You are invited to a reception sponsored by a lobbyist principal where food & beverage will be served.

Can you attend?

If so, can you eat and drink?

What if

You want to host a fundraiser at your house for one of your friends who is a public official running for re-election, does the Ethics Act allow this?

If yes, must this activity be disclosed under the Ethics Act?

What if…

You are a public servant and your spouse owns a business which will financially benefit from a proposed rule change or policy that is scheduled to be voted on by the state board you sit on.

Can you participate in the discussion of the proposed rule change?

Can you vote on it?

Ethics Laws & Policies…

State Govt. Ethics Act & Lobbying Law

State & Federal Laws

Agency Policies

Executive Orders

Goals of Education Presentation

- Give you a ***broad overview*** of State Government Ethics Act & Lobbying Law
- Help you understand ***your obligations*** under these laws
  - Duties
  - Prohibitions
- Inform you of the ***consequences*** for violations, and
- Tell you where & how to get ***advice***

WHO IS COVERED:

ETHICS ACT & LOBBYING LAW

WHO IS COVERED BY THE STATE ETHICS ACT?

LEGISLATIVE

- Legislators
- Legislative Employees

JUDICIAL
"Judicial Officers"

- Supreme Court Justices
- Court of Appeals Judges
- Superior & District Court Judges
- District Attorneys
- Clerks of Court
- *AOC employees who are covered are "public servants"*

EXECUTIVE
"Public Servants"

- Governor
- Lt. Governor
- Council of State
- Cabinet Secretaries
- Governor's office employees
- Policy-making positions chief deputies, confidential assistants
- Certain managerial positions
- Others designated by Governor
- Certain UNC & community college officials, Board of Governors & boards of trustees members
- Voting members of State non-advisory boards

Who is NOT Covered by the ETHICS ACT?

State Ethics Act does NOT apply to

- **All State employees**
  - Other ethical codes of conduct, including executive orders, or laws may apply
- **Local government board members or employees (e.g., county commissioners)**
  - Other laws apply
  - Local governments must adopt their own code of ethics *(G.S. 160A-83)*
- **Members of advisory boards**, i.e., those that make only recommendations to a final decision-maker
  - Other ethical codes, including executive orders, may apply

WHO IS COVERED BY THE LOBBYING LAW?

Lobbyists — Are → Someone who is paid to advocate position of another (lobbyist principal)

Lobbyist Principals — Are → Person who hires or contracts with a lobbyist

Lobbyist Principals — Are NOT →

Law firm, consulting firm, or other group hired to represent another's interests. *Example: Lawyer in law firm hired as a lobbyist; law firm is NOT a lobbyist principal*

or →

Individual members of an association *Example: Trade association employs a lobbyist; trade association IS a lobbyist principal, but members of the association are NOT lobbyist principals*

or →

State Agency

or →

Local Govt. ***unless local govt. has contracted with a lobbyist***

WHO ARE… Governmental Liaisons/ "Liaison Personnel"?

State or local government <u>employees</u> whose <u>principal duties</u> include lobbying legislators or legislative employees

NC House of Representatives

NC Senate

ETHICS ACT CODE OF CONDUCT

DUTIES

You Must:

1. ***File*** a personal and financial interest disclosure form annually (a "Statement of Economic Interest" or "SEI")

2. ***Attend*** ethics education

3. ***Monitor & avoid*** conflicts of interest

4. ***Agency heads*** have additional duties

FILE DISCLOSURE: STATEMENTS OF ECONOMIC INTEREST (SEIs)

FILING

- **WHO** has to file?
- **WHAT** has to be disclosed?
- **WHEN** is it due?
- **HOW** do I file?
- **REVISED** form!

PENALTIES

EVALUATIONS

NORTH CAROLINA STATE ETHICS COMMISSION

2015 STATEMENT OF ECONOMIC INTEREST

CONTACT INFORMATION

This contact information page will *not* be available on the Commission's website, but it is a public document.

919-715-2071 www.ethicscommission.nc.gov

FOR ETHICS COMMISSION USE ONLY

____ Checked for completion ___Scanned

Date Received:

Incomplete ?s ____ ____ ____ ____

Supp. Sent Date _____ By _____

Supp. Received Date _____

Entered in database _____ By _____

Evaluated By_____ Date _____

COMPLETE THIS FORM AND SEND SIGNED ORIGINAL TO:

STATE ETHICS COMMISSION

BY MAIL AT:
1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324

OFFICE LOCATION:
CAPEHART CROCKER HOUSE
424 N. BLOUNT ST.
RALEIGH, NC 27601-1010

FILER'S NAME (FIRST, MIDDLE, LAST)

First Name	Middle Name	Last Name	Suffix

MAILING ADDRESS (REQUIRED)

Address	City	State	Zip

DAYTIME PHONE NUMBER (REQUIRED)	ALTERNATE PHONE NUMBER

E-MAIL ADDRESS (REQUIRED)

HOME ADDRESS:

PROVIDE YOUR HOME ADDRESS ONLY IF YOU ARE HOLDING OR SEEKING AN ELECTED OFFICE WITH A RESIDENCY REQUIREMENT. This requirement does not apply to Judicial Officers.

Judicial officer means Justice or Judge of the General Court of Justice, District Attorney, or Clerk of Court, or any individual elected or appointed to any of these positions prior to taking office.

☐ Same as Mailing Address

Address	City	State	Zip

This contact information page is a public record.

WHO must file?

- **Generally, most everyone covered by the State Ethics Act**
- **Candidates for election to covered offices**
- **Former *elected* officials in covered offices must file year *after* leaving office**

Exceptions:

- Covered State employees making less than $60,000
- Voting *student members* of university & community college boards of trustees

Executive Branch
Public Servants

Legislative Branch
Legislators

Judicial Branch
Judicial Officers

WHAT has to be disclosed?

Certain financial, professional, & personal information about you and your *immediate family*:

- Spouse unless legally separated
- Unemancipated children living in your household
- Members of your "extended family" *who live with you*, including
  - You and your spouses lineal ascendants & descendents (great grandparents, grandparents, parents, children, grandchildren, great grandchildren, etc.), siblings, AND the spouse of any of the above

Disclosure of Certain Campaign Contributions

Appointed to a ***covered board***

A board subject to the State Government Ethics Act

By a ***Constitutional Officer***

- ✓ **Governor**
- ✓ Lt. Governor
- ✓ Sec. of State
- ✓ Auditor
- ✓ Treasurer
- ✓ Superintendent of Public Instruction
- ✓ Attorney General
- ✓ Agriculture Commissioner
- ✓ Labor Commissioner
- ✓ Insurance Commissioner

- Must disclose contributions with a ***cumulative total of more than $1,000*** during preceding calendar year
- Made by **you** to the ***Constitutional Officer who appointed you***

Disclosure of "Campaign-Related *Activity*"

If you are a …

- Justice, Judge
- Head of Principal State Dept. appt'd by Gov., or
- Member of a **Certain Board** appt'd by a Constitutional Officer

Must disclose if:

1. "Bundled" contributions
2. Hosted a fundraiser in your home or business
3. Volunteered for campaign-related activities

For the **Constitutional Officer who appointed** you

- ✓ ABC Commission
- ✓ Coastal Resources Commission
- ✓ State Board of Education
- ✓ State Board of Elections
- ✓ Employment Security Commission
- ✓ Environmental Management Commission
- ✓ Industrial Commission
- ✓ State Personnel Commission
- ✓ Rules Review Commission
- ✓ Board of Transportation
- ✓ UNC Board of Governors
- ✓ Utilities Commission
- ✓ Wildlife Resources Commission

WHEN is the SEI filing due?

INITIAL

Generally, SEI must be **filed & evaluated before** you can begin serving on the covered board or in the covered position

- **Exception: Provisional Appointments by Universities & Community Colleges.** SEI must be filed but does not have to be evaluated prior to assuming covered position
- **Exception:** Appointees or employees hired by Constitutional Officers during the first 60 days of Constitutional Officer's term

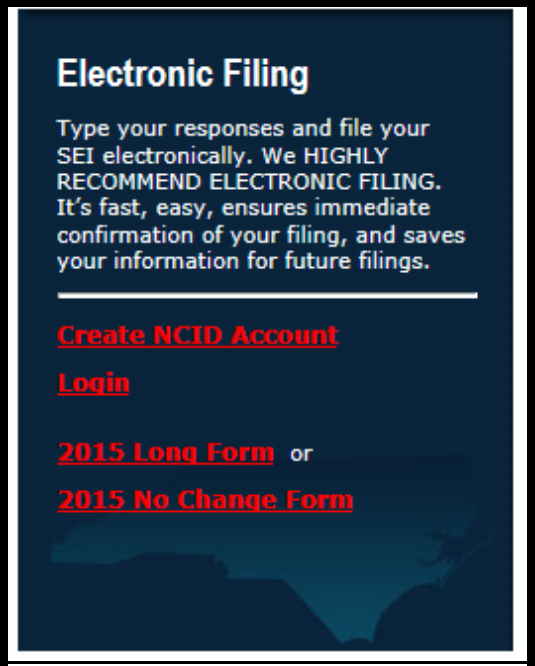
ANNUAL

ANNUAL FILING DEADLINE APRIL 15TH

HOW do I file?

- ✓ **Electronic Filing** – obtain an NCID account, use the e-filing link on the website & submit your SEI electronically to the State Ethics Commission.

- ✓ **Manual Filing** – print & fill in your responses, sign, and mail or hand-deliver the original to the State Ethics Commission
  - Forms available on website: www.ethicscommission.nc.gov



REVISED STATEMENT OF ECONOMIC INTEREST (SEI)

NEW – CONTACT INFORMATION PAGE

- Front (first) page
- REQUIRED INFO
  - full name
  - mailing address
  - daytime phone
  - email address
- HOME ADDRESS NOT REQUIRED EXCEPT if holding or seeking elected office that has a residency requirement
- Will NOT be available on the Commission's website
- IS PUBLIC INFORMATION

NORTH CAROLINA STATE ETHICS COMMISSION

2015 STATEMENT OF ECONOMIC INTEREST

CONTACT INFORMATION

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919-715-2071 www.ethicscommission.nc.gov

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☐ Same as Mailing Address

Address	City	State	Zip

This contact information page is a public record.

SEI HELPFUL TIPS

- ✓ Read EACH question carefully
- ✓ List COMPLETE name of state board(s) or agency for which you are filing the SEI
- ✓ Pay close attention to the time periods the question is addressing – THEY VARY
- ✓ Answer each question – ALL PARTS – use "No" or "Not Applicable" when appropriate
- ✓ Only list minor children's INITIALS on the SEI – full names on the Confidential Form
- ✓ FAXED OR EMAILED SEIS CANNOT BE ACCEPTED

NORTH CAROLINA STATE ETHICS COMMISSION

2015 STATEMENT OF ECONOMIC INTEREST

919-715-2071 www.ethicscommission.nc.gov

FOR ETHICS COMMISSION USE ONLY

FILER'S NAME (FIRST, MIDDLE, LAST)

First Name	Middle Name	Last Name	Suffix

CURRENT EMPLOYER	JOB TITLE

NATURE OR TYPE OF BUSINESS

REASON FOR FILING (SELECT ALL THAT APPLY)

☐ STATE GOVERNMENT JOB (Please specify the agency for which you work or are being considered)	☐ BOARD/COMMISSION (Please list complete name of all State boards on which you are serving or are being considered)
☐ JUDICIAL OFFICER (Please specify the office you hold)	☐ LEGISLATOR (Please specify House or Senate)

Do other immediate family members reside in your household?

☐ Yes ☐ No

When used throughout this form, the term **Immediate family** includes your spouse (unless legally separated). It also includes members of your extended family (your and your spouse's children, grandchildren, parents, grandparents, and siblings, and the spouses of each of those persons) **who reside in your household.**

ONLY LIST THE INITIALS OF UNEMANCIPATED CHILDREN. However, you MUST submit the children's full names on the Confidential Form available at the end of this document.

Minors are emancipated by marriage, enlistment in the US military, or court action for emancipation.

FULL NAME OF ADULTS & EMANCIPATED MINORS	RELATIONSHIP	EMPLOYER	JOB TITLE	NATURE OF BUSINESS

The SEI and any attachments, excluding the Confidential Form, are public records.

Page 1 of 10

CONFIDENTIAL FORM UNEMANCIPATED CHILDREN

(attached to the SEI – last page)

- ✓ List the FULL NAMES of those children who were identified by initials on your SEI
- ✓ Manual filing – Sign, Date and file Original
- ✓ NOT A PUBLIC RECORD and it will not be available on the Commission's website

Confidential Form
Unemancipated Children
2015 Statement of Economic Interest

Confidential: Not subject to public disclosure pursuant to N.C.G.S. § 138A-24(a)(1)

Name of Person Filing SEI _____

Position Held/Sought or Board(s) Served _____

Please list the full names of those children who were identified by initials on your Statement of Economic Interest.

Initials	Child's Name

_____
Signature of Person Filing Supplement

Date: _____

This Confidential Form is NOT a public record; and the Commission will NOT make it available on the Commission's website.

CORRECTIONS OR CHANGES TO SEI

CORRECTIONS

- If you forget to disclose or need to correct something, notify the Ethics Commission as soon as possible

CHANGES DURING YEAR

- Once SEI is properly completed and filed, you are not required to update or supplement during the year
- Account for any changes on next year's filing

SEI VIOLATIONS

Civil Penalty for Late or Non-Filing

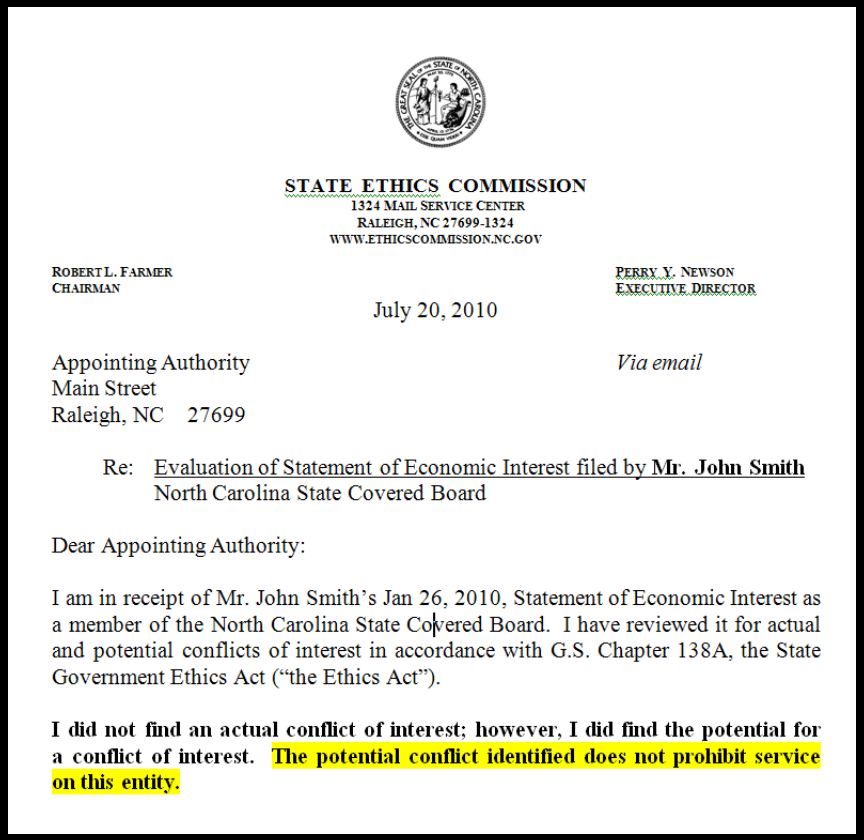
- $250 civil penalty
- May result in removal from public position

Criminal Penalties

- **Class 1 misdemeanor** for knowingly concealing or failing to disclose
- **Class H felony** for knowingly providing false information

SEI EVALUATIONS

- ✓ Public servant SEIs are evaluated for "actual & potential conflicts of interest"
- ✓ Having a conflict does <u>not</u> mean you cannot serve
- ✓ May require you to recuse yourself
- ✓ Failing to eliminate a ***disqualifying*** conflict of interest or resign
  - May result in removal from public position
- ✓ ***Evaluation letters help you identify areas where you need to exercise caution – they are "red flags"***



STATE ETHICS COMMISSION
1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

July 20, 2010

Appointing Authority
Main Street
Raleigh, NC 27699

Via email

Re: Evaluation of Statement of Economic Interest filed by **Mr. John Smith**
North Carolina State Covered Board

Dear Appointing Authority:

I am in receipt of Mr. John Smith's Jan 26, 2010, Statement of Economic Interest as a member of the North Carolina State Covered Board. I have reviewed it for actual and potential conflicts of interest in accordance with G.S. Chapter 138A, the State Government Ethics Act ("the Ethics Act").

I did not find an actual conflict of interest; however, I did find the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

SEIs & evaluation letters are public records!

ATTENDING ETHICS EDUCATION

- **Initial.** All public servants & ethics liaisons must attend an initial ethics education presentation within six (6) months of assuming their position

- **Refresher.** Must attend a refresher presentation at least every two (2) years thereafter

- **Live** or **Online**

- **Violation Consequences.** Failure to attend is violation of State Ethics Act & may result in disciplinary action

MONITORING & AVOIDING CONFLICTS OF INTEREST

- Must make due & diligent effort to identify conflicts of interest prior to taking any action or participating in discussions
- Must also continually monitor, evaluate, & manage personal, professional, and financial affairs to avoid conflicts of interest

Periodically review SEI Evaluation Letter

Review board's agenda prior to meeting

Discuss with legal counsel

Review Ethics Act Conflict of Interest materials in this handout

Duty to ask State Ethics Commission if unsure

ADDITIONAL DUTIES FOR AGENCY HEADS

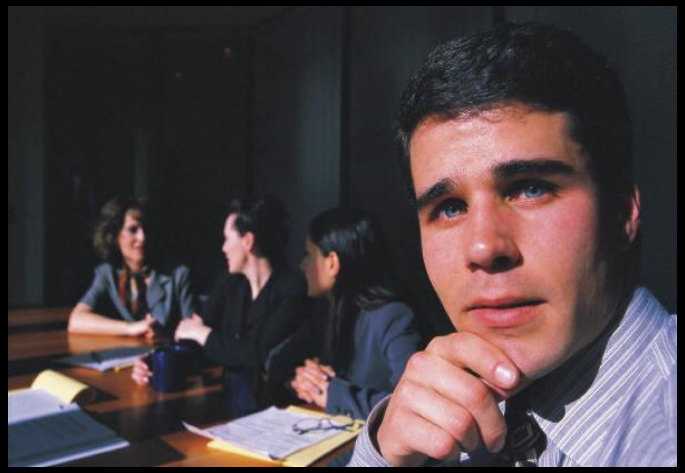
- Includes Board chairs
- Take an active role in furthering ethics & ensuring compliance
- Be familiar with Commission's opinions, rules, newsletters, etc.
- Remind board members of their duty to avoid conflicts of interest & ensure conflicts of interest are recorded in the board's minutes ("Ethics Reminder" at beginning of meetings)
- Ensure that your legal counsel is familiar with the ethics law
- Consider the need for customized ethics education programs
- Notify the Commission of changes in public servants
- Designate an Ethics Liaison

ETHICS ACT CODE OF CONDUCT

PROHIBITIONS:
CONFLICTS OF INTEREST

CONFLICTS OF INTEREST

"Remember which hat you're wearing"



I. WHAT IS A CONFLICT OF INTEREST under the State Ethics Act?
   1. Financial benefit
   2. Relationship with participant in the proceeding

II. Are there any "SAFE HARBORS" that allow participation?

III. WHAT TO DO if you have a conflict

Conflict of Interest: Financial Benefit -- Questions to Ask

1. Am I taking an *"official action"*?

   Any decision, including administration, approval, disapproval, preparation, recommendation, rendering of advice, and investigation **made or contemplated in any** proceeding, application, submission, request for ruling or other determination, contract, claim, controversy, investigation, charge, or rule-making.

2. ***Who*** benefits?
   - You; or
   - "Person with which associated"

3. Is it a ***"financial benefit"?***

   Direct pecuniary gain or loss to the public servant or a "person with which associated," ***or*** a direct pecuniary loss to a business competitor of the public servant or a "person with which associated."

CONFLICT OF INTEREST: "FINANCIAL BENEFIT"

A Public Servant may not participate in Official Action if the Public Servant Knows that he/she or a Person With Which Associated:

EXTENDED FAMILY

Member of Extended Family

OR

CLIENTS

Your clients

OR

BUSINESS

with which you or immediate family is

- Employee
- Lobbyist
- Director, Officer, Partner, etc.
- Or Owns Lesser of $10K+ or 5% Interest

OR

NON-PROFIT

with which you or immediate family is

- Employee
- Director, Officer, Bd. member, etc.
- Lobbyist
- Independent Contractor

OR

GOVERNMENTAL ENTITIES

State Entity or Political Subdivision that Employs you or Immediate Family

May Incur a Reasonably Foreseeable Financial Benefit from the Official Action, which Financial Benefit would Impair the Public Servant's Independence of Judgment or It Could Be Reasonably Inferred that the Financial Benefit Would Influence Participation.

CONFLICT OF INTEREST: RELATIONSHIP WITH "PARTICIPANT IN PROCEEDING"

You have a duty to remove yourself from any ***proceeding*** where your impartiality might be questioned

Proceeding includes quasi-legislative proceedings, such as rulemaking, & quasi-judicial proceedings, such as hearings.

Due to a familial, personal, or financial ***relationship***

Personal relationship includes a leadership or policy-making position in an organization or group.

With a ***participant in the proceeding***

Participant includes

1. An individual or group involved in the proceeding; or
2. Someone who has petitioned for rulemaking or has a specific, unique, or substantial interest in the proceeding.

Conflicts of Interest generally exclude financial benefits that are…

- Available on same terms to other citizens of NC; or
- Remote, tenuous, or speculative; or
- Permitted under the "Safe Harbors" of G.S. 138A-38

WHEN CAN YOU TAKE OFFICIAL ACTION? "SAFE HARBORS" FOR PUBLIC SERVANTS

Benefits to Class or Group

The benefit to you, your extended family, or a business or non-profit with which you are associated is no greater than benefit to all members of the profession, occupation, or class

Compensation

Official actions affecting your compensation

Quorum

You can be counted to obtain a quorum

Legal or Ministerial

You are only one having legal authority to act *and* you disclose the interest; or

Ministerial acts

Disclosed & Authorized

Received a written advisory opinion from the Commission authorizing participation; or

Written disclosure of interest to your board or agency which made written determination that participation would not influence your judgment

What Do You Do If You Have a Conflict of Interest

DISCLOSE

Disclose the conflict in writing to your agency or board

RECUSE

- Do not take any written or verbal action
- Do not vote; ***AND***
- Do not participate in discussions or deliberations

RECORD

Record recusal in board minutes

ETHICS ACT CODE OF CONDUCT

OTHER PROHIBITIONS

Use of Title or Position

Non-Governmental Advertising

- Cannot mention or allow another to mention your public position
- In non-governmental advertising advancing your or another's private interest

Exceptions:

- Political advertising
- News stories or articles
- Directories or biographical listings
- Documents related to a meeting when the disclosure could be considered material by someone attending
- Charitable solicitations for 501(c)(3)
- Information listed in meeting agenda

State Funds for Public Service Announcements

Cannot use State funds for ads or public service announcements if

- Contain your name, picture, or voice; and,
- Appear on radio, TV, billboard or in magazine or newspaper

Exception : State or national emergency & announcement necessary to official duties

Does not apply to public TV or radio fundraisers

Misuse of Confidential & Non-Public Information

- Cannot use or disclose nonpublic information for personal financial interest of
  - You
  - Your extended family
  - Governmental unit with which you are associated
  - Business with which you are associated
  - Person with which you are associated
- Cannot improperly use or disclose confidential information

Hiring or Supervising Extended Family Members

Unless specifically authorized,

- You cannot cause the employment, appointment, promotion, transfer, or advancement of extended family to State office or position which you supervise or manage
- You cannot participate in any disciplinary action relating to an extended family member

“Quid Pro Quo”

Other than what you receive from the State, you cannot knowingly, directly or indirectly:

- Accept, solicit, agree to receive, or assign anything of value
- For you or another person
- In exchange for being influenced in the discharge of your official responsibilities

Honoraria

"Payment for services for which fees are not traditionally or legally required."

Cannot accept honorarium from ***any outside source***, if ***ANY*** of the following apply:

- Your agency reimburses you for travel, subsistence, or registration
- You use your agency's work time or resources
- Activity bears a reasonably close relationship to your official duties, i.e., "But for" being a public servant, you would not be performing the activity

Additional Compensation. Other than what you receive from the State or what is approved by your agency, you are prohibited from soliciting or receiving personal financial gain for acting in your official capacity

Limitations on Charitable Solicitations. A public servant cannot solicit charitable donations from subordinate State employees

- **Exceptions:**
  - Generic written solicitations to a class of subordinates
  - Serve as honorary State Employees' Combined Campaign chair

LOBBYING LAW

WHAT IS "LOBBYING" &
WHAT IS THE CODE OF CONDUCT?

Why the Lobbying Law is Important to Public Servants

- Executive Branch lobbying is regulated
- State agencies must designate "liaison personnel" to lobby for legislative action
- "Revolving Door" for certain public servants and State agency employees

LOBBYING LAW:
WHAT IS *"LOBBYING"*?

Direct

Influencing or attempting to influence ***legislative*** or ***executive*** action through direct communications with a legislator, legislative employee, or public servant, *or* their immediate family.

Goodwill

Developing goodwill, including building relationships, with a legislator, legislative employee, or public servant, or their immediate family with the intention of influencing current or future ***legislative*** or ***executive action***.

What is *"Executive Action"*?

IS "Executive Action"

- Generally, *all* activities associated with making a policy, guideline, RFP, procedure, regulation, or rule by a public servant
  - Includes *preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, or rejection*

Is NOT "Executive Action"

- ✓ Contested case proceedings
- ✓ Communications involving permits, licenses, eligibility, or certification
- ✓ Inquiries regarding a benefit, claim, duty, etc.
- ✓ Inquiring about or responding to an RFP
- ✓ Ratemaking
- ✓ Internal & ministerial functions
- ✓ Public servant's communications concerning public comments made at an open meeting or submitted as a written comment, in response to a request for public comment

Lobbyist & Lobbyist Principal Requirements

Registration

- ✓ Lobbyists must register with & pay fee to Secretary of State for each principal
- ✓ Principals must file an authorization with & pay fee to Secretary of State

Reporting

- ✓ Monthly while General Assembly is in session for legislative reportable expenditures
- ✓ Otherwise quarterly

Identification

- ✓ Lobbyists must identify themselves and principals prior to lobbying

General Prohibitions & Restrictions on Lobbyists

1. No Contingency Fees
2. Gift Ban
3. No Use of Cash or Credit Unless Present
4. Cannot be Appointed by State Official to Serve on Certain Boards & Commissions

Campaign Restrictions on Lobbyists

Lobbyists cannot

- Make campaign contributions to legislators & Council of State members <u>or candidates for those offices</u>
- Serve as Treasurer or Assistant Treasurer for political committee to elect legislator or Council of State member
- "Bundle" campaign contributions

No person (including lobbyist or lobbyist principal) can attempt to influence the action of public servant or legislator by promising financial support to their candidacy or by threatening financial support to the opposition

Exemptions from Lobbying Law

- Expression of personal opinions
- Appearing before a committee by invitation
- Government officials and employees (when in connection with public office and duties)
- Professional services (such as bill drafting)
- Media
- Designated individuals (public servants, legislators, legislative employees) acting in their official capacity
- Responding to inquiries
- Political committees & national political conventions

"Cooling-Off" Periods

Legislators	Constitutional Officers & Principal Dept. Heads	State Agency Employees
Cannot register as a lobbyist: • While in office • Before the later of close of session in which serving or 6 months after leaving office	Cannot register as a lobbyist • While in office • For 6 months after leaving office	Former employee of State agency cannot register • To lobby the State agency that previously employed him or her • For 6 months after leaving the State agency Can register & lobby other agencies

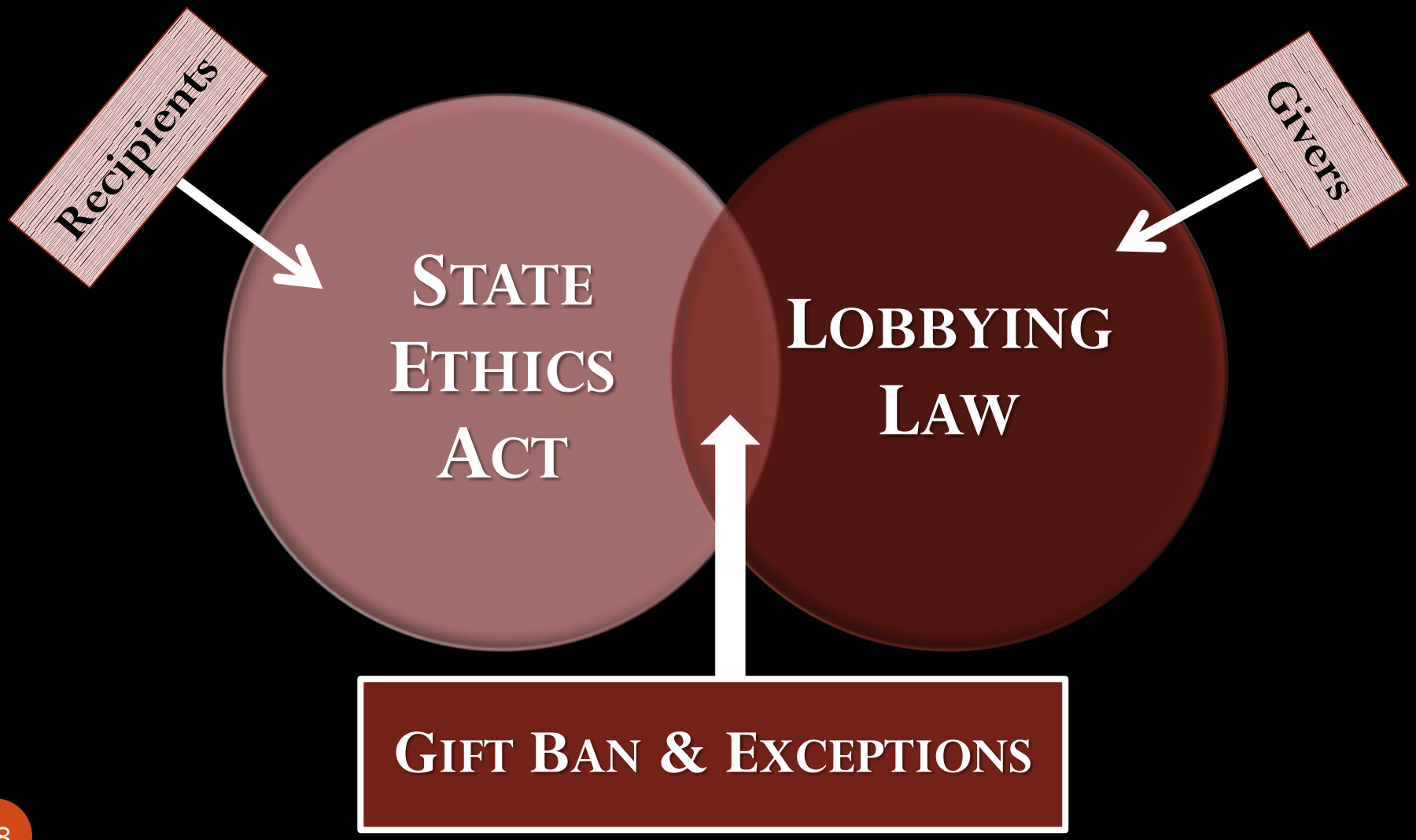
Lobbying Law
Violation Consequences

- Civil Penalty
- Depending on **type** of violation, may also be:
  - Class 1 Misdemeanor
  - Ban on lobbying for 2 years

ETHICS ACT & LOBBYING LAW

NC's "GIFT BAN"

The Gift Ban: Intersection of Ethics & Lobbying Laws



NC's GIFT BAN

WHAT IS IT & WHEN DOES IT APPLY?

- You cannot accept a *"gift,"* directly or indirectly, from a *"prohibited giver"*
  - **Registered Lobbyist**
  - **Registered Lobbyist Principal**
  - **"Interested Person"**
- Unless it is permitted under the State Ethics Act.
- Applies at all times and in all circumstances:

24/7/365!

59

How do you know if someone is a *"Lobbyist"* or *"Lobbyist Principal"*?

- **Must register with the Secretary of State**
- **List available on Secretary of State's website**

How do you know if someone is an *"Interested Person"*

Persons who:

- **Business.** Are doing or seeking to do business with your agency or board; or,
- **Regulated.** Are engaged in activities that are regulated or controlled by your agency or board; or,
- **Financial.** Have financial interests that may be substantially & materially affected by the performance or nonperformance of your official duties.

There is no list of interested persons.
Duty is on you to determine if someone is an interested person as to your board or agency!

NC's GIFT BAN : *WHAT IS A "GIFT"?*

- ✓ A gift is **anything of monetary value** that you receive from a prohibited giver

- ✓ ***No de minimis exception!***

- ✓ ***Value does not matter!***

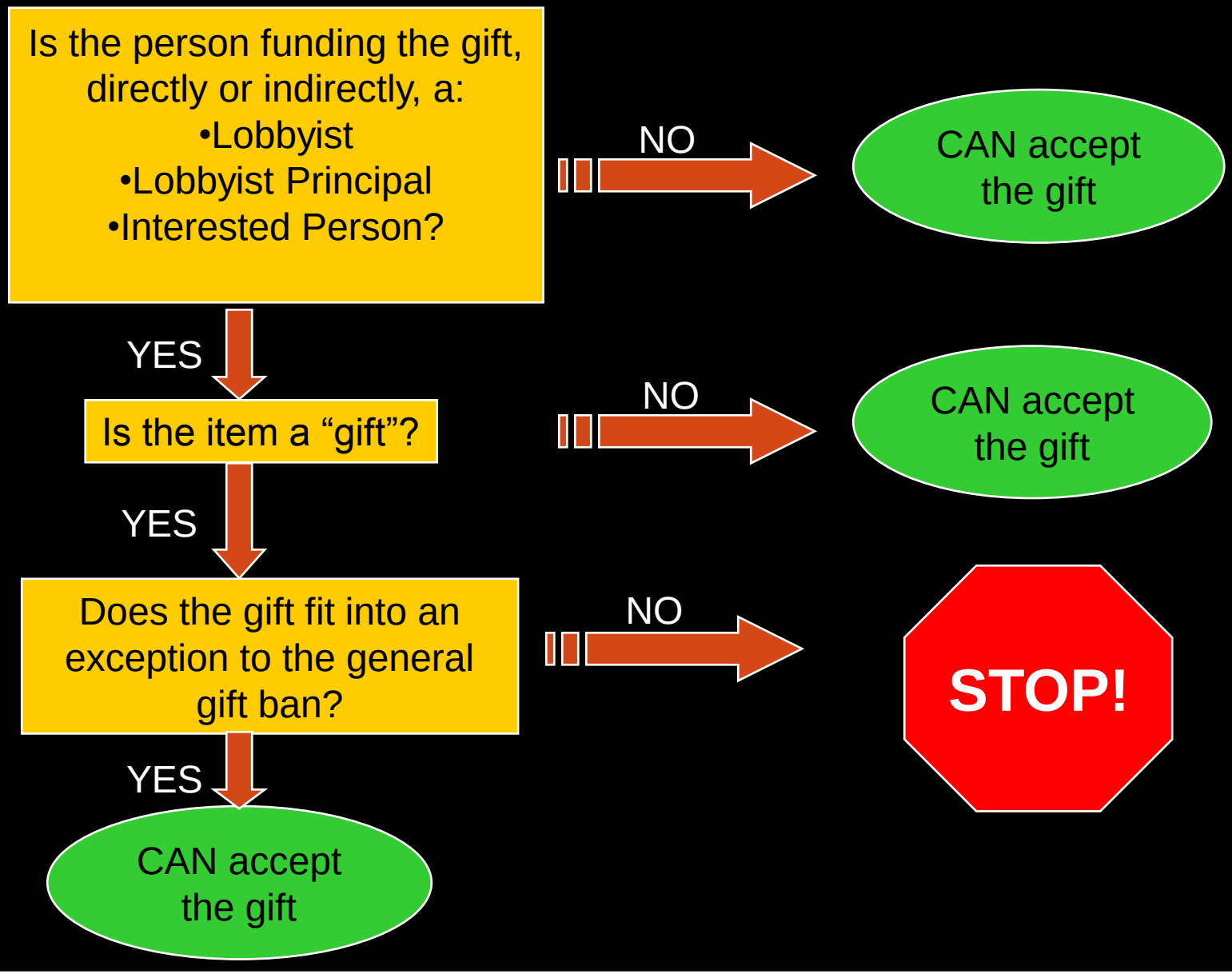
- ✓ ***A cup of coffee is a gift!***

NC's GIFT BAN

WHAT IS NOT A "GIFT"?

- ✓ Paid fair market or face value
- ✓ Commercially available loans made on same terms & not for lobbying
- ✓ Contractual or commercial arrangements not made for lobbying
- ✓ Academic or athletic scholarships
- ✓ Campaign contributions properly received & reported
- ✓ Certain expressions of condolence
- ✓ Cards, letters, notes, e-mails, etc (State Ethics Commission determination)

DECISION TREE FOR GIFTS



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NC's GIFT BAN:
Are there exceptions?

Yes . . .*BUT there are three things to remember:*

- Specific criteria must be met for each one
- Can only accept the gift(s) the exception allows
- Even if allowed, gifts generally must be reported, usually by the prohibited giver
  - Reports
    - Are filed with the Secretary of State
    - Generally include the **name** of the recipient & a **description** & **value** of the gift
    - Are public record

GENERAL EXCEPTION CATEGORIES

I. **Receptions, Meetings & Conferences Generally**
   a) Public Meetings & Gatherings
   b) Official Duties
   c) Reimbursable Expenses
   d) Educational Meetings & the Speaker Exception
II. **Nonpartisan Agency Organizations**
   a) Meetings & Conferences
   b) Gifts Directly to Non-Partisan Organizations
III. **Informational Materials**
IV. **Behalf of the State or Related to State Business**
V. **Family, Friends & Others**
   a) Family
   b) Other Relationships
   c) Relationship with a Lobbyist Principal
   d) Plaques & Nonmonetary Mementos
VI. **General Public**
VII. **UNC Athletic Tickets**

I. Receptions, Meetings & Conferences:

Public Meetings & Gatherings

- Any **prohibited giver** can pay for
- **Food & beverage** for *"immediate consumption"* at

Open Meeting of Public Body

Gathering Open to the General Public

✓ 10 or more attendees

✓ Sign or other communication outside gathering indicating open to the public

Receptions & Other Gatherings

- Any **prohibited giver** can pay for
- **Food & beverage** for **immediate consumption** when 1 or more ***from each*** of the following groups are "invited":

✓ All House or Senate members;
✓ All members of county or municipal legislative delegation;
✓ Recognized caucus;
✓ Committee/commission of General Assembly;
✓ All legislative employees; ***or***
✓ Public servant's entire board or at least 10 public servants.

And

At least 10 people associated with host or sponsor actually attend; ***or*** all shareholders, employees, bd. members, officers, members, subscribers located in NC are invited.

"Invited" – written; at least 24 hrs in advance; date, time, location; from at least 1 host or sponsor; if sponsored by lobbyist or lobbyist principal, must state whether gathering is permitted by this exception.

I. Receptions, Meetings & Conferences: *Official Duties*

- **Lobbyist, lobbyist principal, interested person** can pay for
- **Food & beverage** for **immediate consumption** at a
- Gathering where
  - Public servant's attendance is **primarily related to his/her public position;**

AND

  - 10 individuals other than the public servant or immediate family attend

I. Receptions, Meetings & Conferences: *Reimbursable Expenses*

- **Lobbyist, lobbyist principal, interested person**
- Can pay for **any expense that would otherwise be reimbursable by the State**
- **SO LONG AS** you received **approval in advance** to accept the expense on behalf of the State
- Actual expense may exceed State rate

STATE OF NORTH CAROLINA
BUDGET MANUAL
OFFICE OF STATE BUDGET AND MANAGEMENT

Effective Date July 1, 2009 — Updated January 1, 2011

5.0 TRAVEL POLICIES AND REGULATIONS

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I. Receptions, Meetings & Conferences:

Educational Meetings & Speaker Exception

- ✓ Lobbyist principal ONLY:
- ✓ Can pay reasonable actual expenditures for food & beverage, travel, registration, lodging, incidental items of nominal value, incidental entertainment to attend
  - ✓ *1)* **"Educational" Meeting** (primarily related to your public duties); or
  - ✓ *2)* where you are a **speaker or panel member**
- ✓ Meeting has **formal agenda, notice given at least 10 days in advance** and **attended by at least 10 participants**.
- ✓ Food, beverage, transportation & entertainment must be
  - Provided to all attendees or defined groups of 10 or more; and,
  - Part of or in conjunction with meeting
- ✓ Entertainment must also be incidental to the principal agenda

II. NONPARTISAN AGENCY ORGANIZATIONS: *Meetings & Conferences*

- ✓ **Lobbyist principal ONLY**
- ✓ Can pay reasonable actual expenditures for food & beverage, travel, registration, lodging, incidental items of nominal value, & incidental entertainment
- ✓ **Attendance at meeting**
  - ✓ As member of board, agency, or committee of
  - ✓ Non-partisan organization of which public servant's agency is a member *or* public servant is a member because of public position
- ✓ Meeting has **formal agenda, notice given at least 10 days in advance** and **attended by at least 10 participants**
- ✓ Food, beverage, transportation & entertainment must be
  - Provided to all attendees or defined groups of 10 or more; and,
  - Part of or in conjunction with meeting
- ✓ Entertainment must also be incidental to the principal agenda

II. Nonpartisan Agency Organizations:
Gifts Directly to Nonpartisan Organization

Gifts are allowed if they are:

- Made by a **lobbyist** or **lobbyist principal** (not an interested person) to
- **Nonpartisan** state, regional, national, or international organization of which
- Your **agency is a member**; or
- **You are a member** or participant by virtue of your **public position**

III. Informational Materials

- You may accept ***informational materials relevant to your public duties*** from any prohibited giver

IV. On Behalf of the State

- Lobbyist, lobbyist principal, or interested person
- May pay for gifts accepted on behalf of the State
- For use by and benefit of the State

Related to State Commerce

Industry & Tourism Related. Food, beverage, transportation, lodging, entertainment, or related expenses if

- Gift not otherwise subject to an exception
- Public servant is responsible for conducting industry recruitment, international trade, or tourism promotion
- Gift was not solicited or accepted in exchange for performing public duties
- Gift is reported to the State Ethics Commission

Cultural Protocol. Gift

- Valued at less than $100
- Given in accordance with cultural protocol
- As part of overseas trade mission

V. Family, Friends & Others

Extended Family

You may accept gifts from your ***extended family*** even if the family member is a prohibited giver

V. FAMILY, FRIENDS & OTHERS:
Other Relationships

Gifts based on business, civic, religious, fraternal, personal, or commercial relationship permitted if:

- ✓ Relationship not based on public position; <u>and</u>,
- ✓ Reasonable person would conclude not given for "lobbying"

V. FAMILY, FRIENDS & OTHERS:

Relationship with Lobbyist Principal

"Eat your own lunch"

- If **you** are a director, officer, board member, employee or independent contractor of a lobbyist principal *or* a 3rd party that receive funds from the lobbyist principal
- **Lobbyist principal** ***only*** (not lobbyist) m pay for
- **Food & beverage for immediate consumption**, & **related transportati**
- At **conference, meeting, similar event**
- Available **to all attendees of same class**

V. Family, Friends & Others:

Plaques & Non-Monetary Mementos

You may accept a plaque or similar non-monetary memento recognizing your service in a field or specialty or to a charitable cause

VI. Gifts to the General Public or All State Employees

You may accept

- Anything made available to the general public or all State employees
- By a Lobbyist or Lobbyist Principal

VII. UNC Athletic Tickets

- UNC Board of Governors, UNC constituent institutions, or their legislative liaisons
- Cannot give public servants, legislators, or legislative employees
- Athletic tickets
- For lobbying

"Ungifting"

What to do if you receive an impermissible gift

Promptly

- Decline it
- Return it
- Pay Fair Market Value for it
- Donate it to charity or to the State

REMINDER ABOUT REPORTING

- Gifts are reported
- Generally includes name, description & value of the gift
- Generally reports are made by the <u>giver</u>
- **But there are 2 instances when the reporting requirement is on *you*…..**

Reporting Requirements for Public Servants

What & Value	Reportable expenditure valued over $200/calendar quarter	Scholarship (grant-in-aid to attend meeting) valued over $200/calendar quarter
From	Person ▪ Outside NC ▪ Not required to register	Person ▪ Outside NC ▪ Not required to register
Why	Made for lobbying	Scholarship related to public service or position
Where Accepted	You were outside NC when accepted	You were either in NC or outside NC
Reporting	You must report date, description, name of person, & estimated FMV either to Secretary of State or on SEI	You must report date, event, name of person granting scholarship, & estimated FMV either to Secretary of State or on SEI

ETHICS ACT

COMPLAINTS & CONSEQUENCES

COMPLAINTS

- ***Anyone*** can file an ethics complaint against you
- The complaint must
  - Be in writing
  - State specific facts alleging a violation of law and when the alleged violation occurred
  - Be signed & sworn
  - Be filed within 2 years.

STATE ETHICS COMMISSION

COMPLAINT FORM

Official Use Only:
Date Received: _____
Case Number: _____
Type of Official: _____

The State Ethics Commission has the authority to investigate complaints against those persons covered by Chapter 138A, North Carolina General Statutes, "The State Government Ethics Act," for alleged violations of the Act. Please see section 138A-12 of the Act. This complaint must be filed within two years of the date you, the Complainant, knew or should have known of the conduct upon which this complaint is based. Please note that the Ethics Commission does NOT have jurisdiction over all public officials or state employees.

CONTACT INFORMATION
(Please Type or Print clearly)

The Ethics Act requires that a complaint contain the name, address, and telephone number of the person filing the complaint. The Commission cannot accept anonymous complaints.

Printed Name: _____

Address: _____

4. If possible, check the statutory provision you believe has been violated ***(check all that apply):***

Chapter 138A: the State Government Ethics Act
_____ use of public position for private gain – covered persons and legislative employees (138A-31)
_____ receipt of a prohibited gift (§138A-32)
_____ receipt of other compensation -- public servants and legislative employees (§138A-33)
_____ use of nonpublic information for private gain -- public servants & leg. employees (§138A-34)
_____ conflict of interest while performing official duties – public servants (§ 138A-36)
_____ conflict of interest while taking legislative action – legislators (§ 138A-37)
_____ Other (please explain) _____

SWORN COMPLAINT

I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that the information provided in this complaint is true, correct, complete, and of my own personal knowledge, or if not, I believe the information to be true based upon: _____

_____

_____ Date: _____
(Signature)

NOTICE

- You will be notified immediately upon the Commission's receipt of a written allegation of unethical conduct

STATE ETHICS COMMISSION
1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICSCOMMISSION.NC.GOV

CONFIDENTIAL

Inquiry Notification Form

Upon receipt by the State Ethics Commission of a written allegation of unethical conduct by a covered person or legislative employee, or upon the initiation by the Commission of an inquiry into possible unethical conduct, the Commission must notify the covered person or legislative employee about whom the inquiry was made. North Carolina General Statutes § 138A-12(a1). Pursuant to this law, the Commission is hereby providing you with a copy of such a request or initiation.

At this time, the Commission has *not* made any determination as to the validity of this attempted complaint and has *not* initiated a formal inquiry pursuant to section 138A-12 of the State Government Ethics Act. If the Commission determines that the alleged facts are sufficient to initiate a formal inquiry to determine whether there is probable cause of a violation of the Ethics Act or other applicable laws, you will be so notified.

THIS CONFIDENTIAL NOTICE IS FOR INFORMATIONAL PURPOSES ONLY. A FORMAL INQUIRY BY THE COMMISSION HAS NOT BEEN INITIATED AT THIS TIME.

The following is a general summary of the attempted complaint:

Requester: _____

Subject: _____

CONFIDENTIALITY

Complaints, responses, and other investigative documents related to the inquiry are **confidential, *unless***:

- Respondent requests that records be made public, i.e., waives confidentiality
- A hearing commences; or,
- Sanctions are recommended without a hearing

After a Complaint is Filed

1. **Preliminary Inquiry**
2. **Probable Cause Determination**
3. **Hearing or Referral.** If probable cause is found,
   - For public servants, open hearing before the State Ethics Commission

CONSEQUENCES

- Willful noncompliance considered violation of written work order and may be fired
- Misfeasance, malfeasance, or nonfeasance and may be removed from public position
- Reminder – additional civil and criminal penalties may apply for SEI violations

ETHICS ACT

WHERE & HOW TO GET ADVICE

State Ethics Act Questions

- **WHO** can ask for an opinion for you or about you?
- **WHAT** can you ask for, WHAT are the differences, & WHAT do you get?
- **WHERE** do you send your questions?
- **WHEN** should you ask?
- **WHY** should you ask?

WHO CAN ASK?

1. You
2. Your supervisor if a covered employee
3. Your appointing authority
4. Your legal counsel
5. Your agency's Ethics Liaison
6. State Auditor's Office

- State Ethics Commission can also issue advisory opinions on its own motion

Unless authorized by statute, Commission does not issue advice or advisory opinions to third parties

WHAT can you ask for?

- Informal advice from Commission staff
- Formal advisory opinions from the State Ethics Commission
- Both are confidential & not public record
  - Including your identity, the existence of the request, and any information related to it
  - Redacted formal advisory opinions are published on the Commission's website

WHAT ARE THE DIFFERENCES?

INFORMAL ADVICE	FORMAL ADVISORY OPINION
Request can be written or by phone	Request must be in writing
Confidential	**Confidential**
▪ Issued by Commission staff ▪ **No immunity**	▪ Issued by Commission. ▪ **Confers immunity.**
Not published	Published in redacted form within 30 days of issuance by the Commission.

WHAT is *"Immunity"*

By following the advice in a formal advisory opinion, you are immune from:

- Investigation by the State Ethics Commission.
- Disciplinary action in your job or removal from your public position
- Investigation by the Secretary of State's office

No immunity for violations of criminal law in the performance of your official duties.

WHERE DO YOU SEND YOUR QUESTIONS?

STATE ETHICS COMMISSION

Call:	(919) 715-2071
Fax:	(919) 715-1644
E-mail:	ethics.commission@doa.nc.gov
Mail:	1324 Mail Service Center
	Raleigh, NC 27699-1324
Hand Deliver:	424 N. Blount St.
	Raleigh, NC 27601

WHEN should you ask?

- Anytime you are unsure about what you should do
- Must be before the situation occurs!
- Requests for advice and formal advisory opinions must relate prospectively to real or reasonably anticipated fact settings or circumstances

WHY should you ask?

- Avoid trouble BEFORE it happens – *an ounce of prevention is worth a pound of cure*
- Obtaining a formal advisory opinion grants you immunity
- Violations can result in disciplinary action up to and including dismissal or removal from your public position

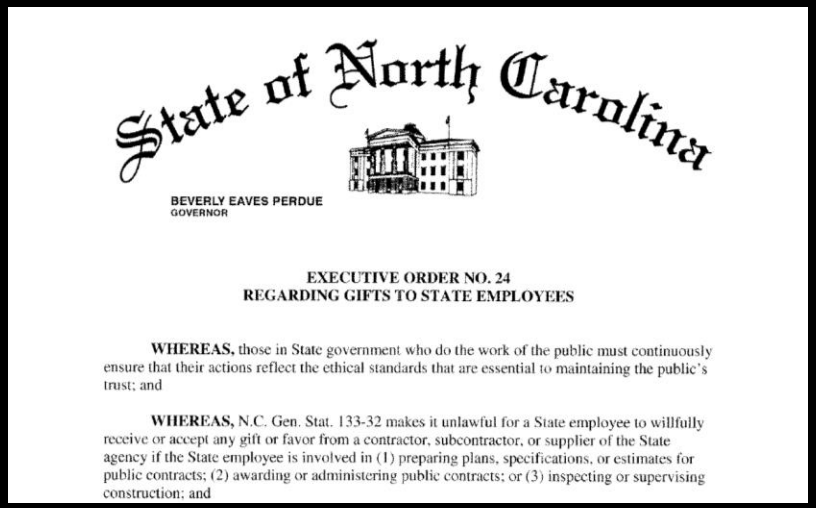
ETHICS ACT

AND ONE LAST THING…

OTHER LAWS, RULES, POLICIES`

Gifts to & from Contractors

- By law, generally anyone involved in the contracting process cannot accept gifts or favors from contractors or subcontractors
- Executive Order 24 extends prohibition to employees in Cabinet agencies & Governor's Office
- Executive Order 34 extends prohibition to Governor's appointees to boards and commissions



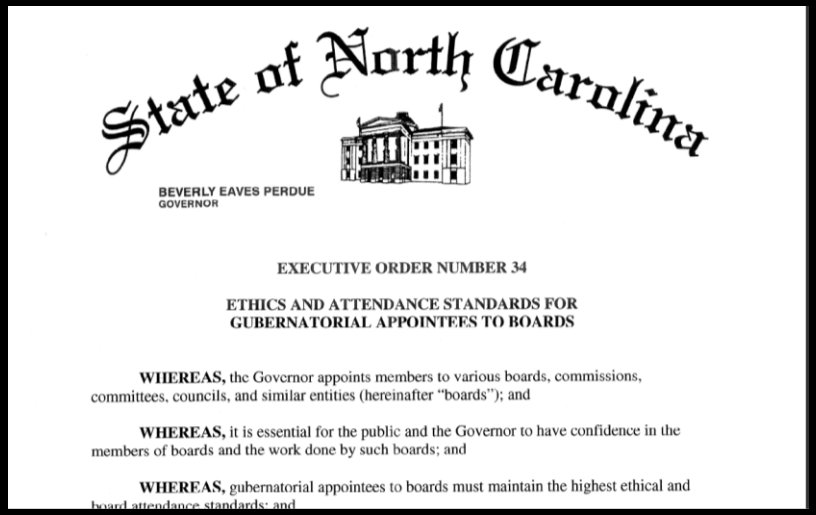
State of North Carolina

BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 24
REGARDING GIFTS TO STATE EMPLOYEES

WHEREAS, those in State government who do the work of the public must continuously ensure that their actions reflect the ethical standards that are essential to maintaining the public's trust; and

WHEREAS, N.C. Gen. Stat. 133-32 makes it unlawful for a State employee to willfully receive or accept any gift or favor from a contractor, subcontractor, or supplier of the State agency if the State employee is involved in (1) preparing plans, specifications, or estimates for public contracts; (2) awarding or administering public contracts; or (3) inspecting or supervising construction; and



State of North Carolina

BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NUMBER 34

ETHICS AND ATTENDANCE STANDARDS FOR
GUBERNATORIAL APPOINTEES TO BOARDS

WHEREAS, the Governor appoints members to various boards, commissions, committees, councils, and similar entities (hereinafter "boards"); and

WHEREAS, it is essential for the public and the Governor to have confidence in the members of boards and the work done by such boards; and

WHEREAS, gubernatorial appointees to boards must maintain the highest ethical and board attendance standards; and

- **Prohibition on Self-Dealing**
  - Cannot benefit from or influence public contracting
- **Other Agency & Departmental Statutes**
  - Some agencies have specific ethical requirements in their statutes
- **Other Agency & Departmental Policies**
  - State Ethics Act authorizes agencies to adopt additional ethical standards
  - Governor is also authorized to adopt additional ethical standards for State agency employees & gubernatorial appointees

CONCLUSION

WRAP UP, HYPOTHETICALS & KEY POINTS TO REMEMBER

WRAP UP…

Conflicts of Interest

Financial Benefit

- *Official action*
- Benefits you or *person with which associated*
- *Financial benefit*
- "Safe Harbors"

Relationship w/Participant in Proceeding

- Impartiality might reasonably be questioned
- Personal, family, financial relationship with
- *Participant in proceeding*

Gift Ban

- **APPLIES 24/7/365**
- Must be an exception
- Value of gift does not matter

SEI Filing

April 15th

Other Laws EOs, Rules

- Other parts of Ethics Act
- Other laws
- Executive Orders
- Dept. policies

What if.....

- You arrive at your office and find an ink pen in a box in your chair.

- Can you keep it?

Upon opening the box, you find a note enclosed with the pen indicating it is from a company that is licensed by your agency.

DECISION TREE FOR GIFTS

Is the person funding the gift, directly or indirectly, a:
- Lobbyist
- Lobbyist Principal
- **Interested Person?**

NO → CAN accept the gift

YES ↓

Is the item a "gift"?

NO → CAN accept the gift

YES ↓

Does the gift fit into an exception to the general gift ban?

NO → **STOP!**

YES ↓

CAN accept the gift

What if….

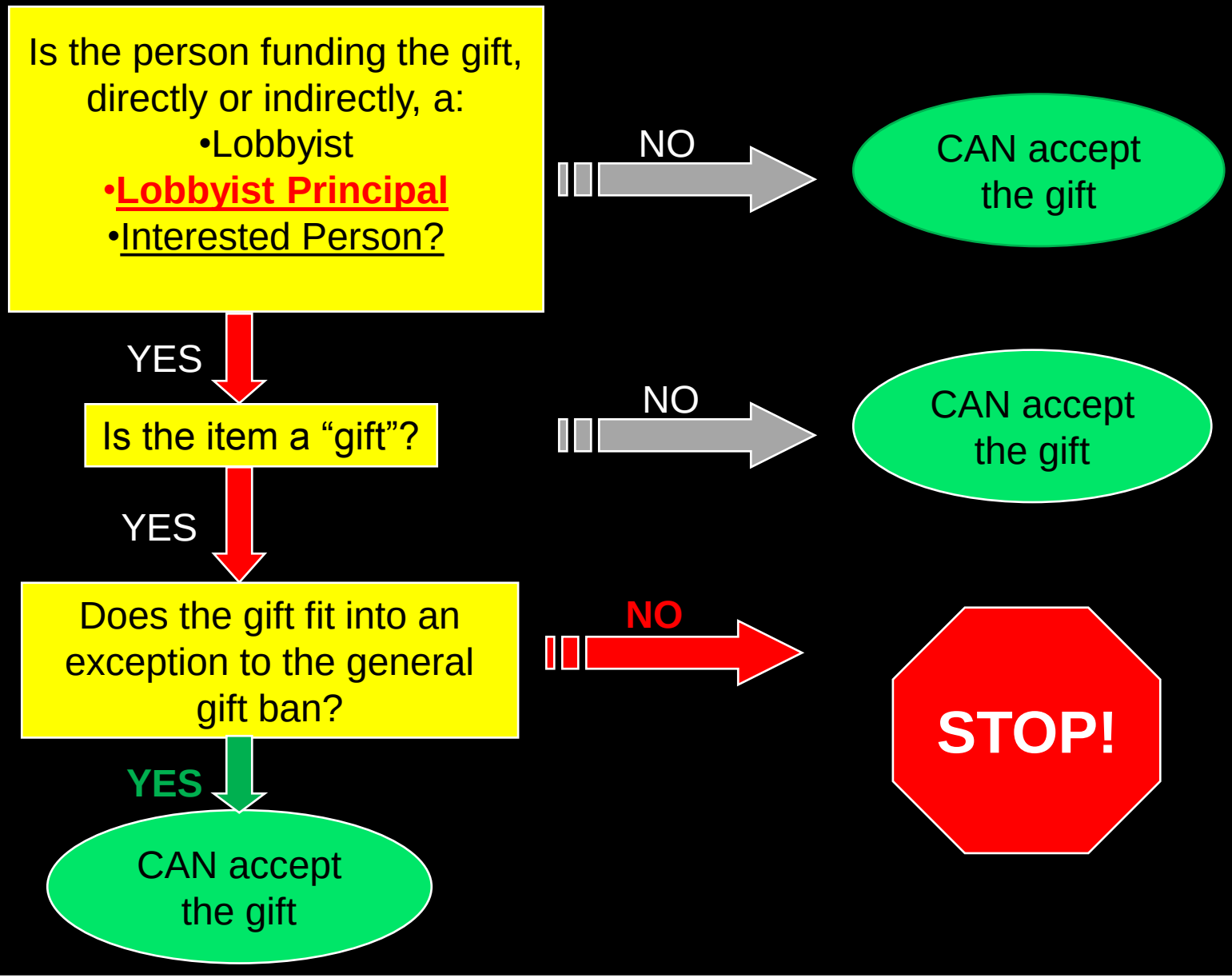
You’ve been invited to a reception sponsored by a lobbyist principal where food & beverage will be served.

Can you attend?

If so, can you eat and drink?

Upon reading the invitation, you realize the lobbyist principal is not regulated by and has no interests before your agency.

DECISION TREE FOR GIFTS



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What if….

You, a public servant covered under the Ethics Act, have been invited to a symposium related to your public position/duties. The symposium is being hosted/sponsored by a consultant that your agency or board has a service contract with and lunch will be served?

Can you attend?

If so, can you eat?

The consultant has also invited all of their other NC clients, about 200 individuals

Many of the others are paying a registration fee to attend, you are not –

DECISION TREE FOR GIFTS

Is the person funding the gift, directly or indirectly, a:
- Lobbyist
- Lobbyist Principal
- **Interested Person?**

NO → CAN accept the gift

YES ↓

Is the item a "gift"?

NO → CAN accept the gift

YES ↓

Does the gift fit into an exception to the general gift ban?

NO → **STOP!**

YES ↓

CAN accept the gift

111

What if…

You want to host a fundraiser at your house for one of your friends who is a public official running for re-election, does the Ethics Act allow you to do this?

If yes, are you required to disclose this activity under the Ethics Act?

Your friend is the Governor who appointed you to the Board of Transportation – does this matter ?

You CAN hold the fundraiser – Do you need to disclose it?

1. Were you appointed to your Board by a Constitutional Officer?

Yes → Governor appointed you and is a Constitutional Officer

2. Is your Board one of the following Boards?

Yes →

- ✓ ABC Commission
- ✓ Coastal Resources Commission
- ✓ State Board of Education
- ✓ State Board of Elections
- ✓ Employment Security Commission
- ✓ Environmental Management Comm.
- ✓ Industrial Commission
- ✓ State Personnel Commission
- ✓ Rules Review Commission
- ✓ Board of Transportation
- ✓ UNC Board of Governors
- ✓ Utilities Commission
- ✓ Wildlife Resources Commission

3. Are you holding a fundraiser at your home or business?

Yes → Your home

4. Is it for the Constitutional Officer who appointed you?

Yes → The Governor

Yes - Must disclose the fundraiser on your SEI

What if…

You are a public servant and your spouse owns a business which will financially benefit from a proposed rule change that is scheduled to be voted on by the state board you sit on.

Can you participate in the discussion of the proposed rule change?

Can you vote on it?

1. Are you taking "official action"?

Yes

Voting & deliberations or discussions are "official action"

2. Will you or a "person with which associated" benefit?

Yes

"Person with which associated" includes "Business with which associated" includes a business where your spouse is employed, holds a certain interest, is an officer, or lobbyist

3. Is it a "financial benefit"?

Yes

Direct pecuniary gain to "person with which associated"

Determine if there is a Safe Harbor

If not, Disclose, Recuse, Record

Key Points To Remember:

- Remember Code of Conduct
- Remember the gift ban applies at all times!
- Ask for advice BEFORE taking action you think may be a violation
- Get to know your Ethics Liaison & agency legal counsel

If you have questions or need advice, contact the State Ethics Commission!

STATE ETHICS COMMISSION CONTACT INFORMATION

- **MAILING ADDRESS**
  1324 Mail Service Center
  Raleigh, NC 27699-1324
- **STREET ADDRESS**
  424 N. Blount Street
  Raleigh, NC 27601-1010
- **PHONE & FAX**
  Phone: 919-715-2071
  Fax: 919-715-1644
- **E-MAIL:**
  - SEI Questions: SEI@doa.nc.gov
  - Education Questions: Education.Ethics@doa.nc.gov
  - Advice & Advisory Opinion Requests: ethics.commission@doa.nc.gov
- **WEBSITE:** www.ethicscommission.nc.gov

PRESENTER

SUSAN LUNDBERG

EDUCATION ATTORNEY