ETHICS & LOBBYING EDUCATION FOR PUBLIC SERVANTS

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

September 2012

What if.....

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

Can you keep it?

2

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?

3

What if...

You are a public servant and your husband 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?

4

Did you know that...

Anyone can file a complaint against you for allegedly violating the State Government Ethics Act.

Violations of the Ethics Act may result in your being removed from your public position.

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

STATE ETHICS COMMISSION

COMPLAINT FORM

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: _____

_____

(City) (State) (Zip)

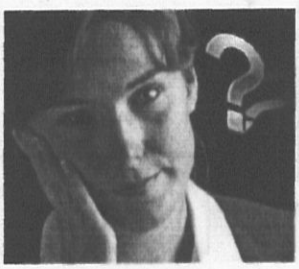
Telephone No: (_____) _____

5

ETHICS LAWS & POLICIES...

State Govt. Ethics Act & Lobbying Law

State & Federal Laws



Agency Policies

Executive Orders

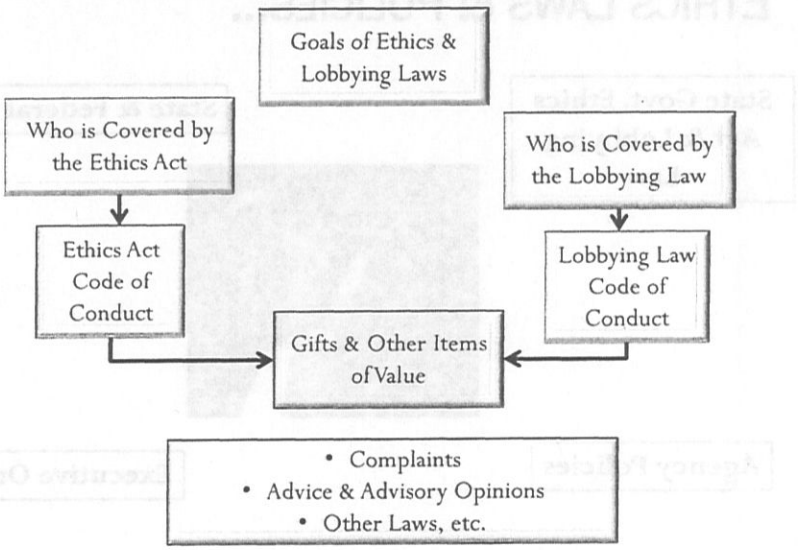
6

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
- Tell you where & how to get ***advice***

7

OVERVIEW OF PRESENTATION



8

GOAL OF ETHICS LAWS: CODE OF CONDUCT & TRANSPARENCY

CODE OF CONDUCT

State Ethics Act
- Monitor & avoid conflicts of interest
- Ban on gifts from certain persons
- Prohibitions on use of title
- Prohibition on honoraria

Lobbying Law
- Prohibition on giving gifts
- Prohibition on certain campaign activities, including contributions
- Prohibition on accepting contingency fees
- Cannot serve on certain boards

TRANSPARENCY

State Ethics Act
- Disclosure of financial interests (SEIs)
- Evaluations of SEIs for conflicts of interest
- Public disclosure of conflicts of interests
- List of covered persons posted on Commission website

Lobbying Law
- Registration
- Reporting of lobbying expenditures
- Reporting of gifts
- List of lobbyists & lobbyist principals on Secretary of State's website

9

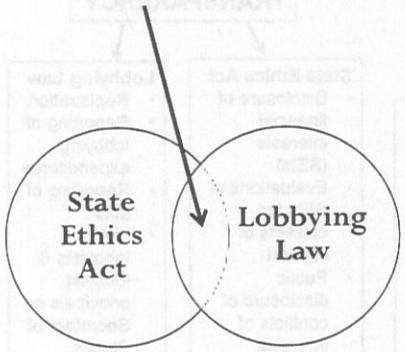
WHO IS COVERED:

ETHICS ACT & LOBBYING LAW

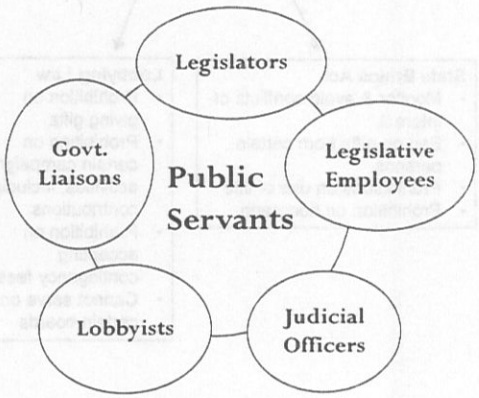
10

ETHICS & LOBBYING LAWS

SOME PROVISIONS OVERLAP



SOMEONE CAN SERVE IN MORE THAN 1 POSITION



11

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

12

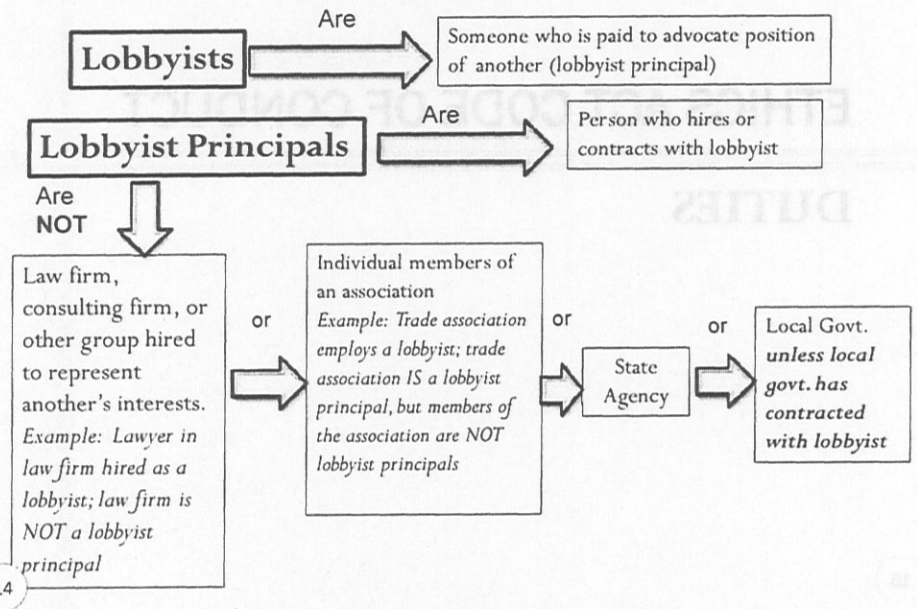
STATE ETHICS ACT: Who is NOT Covered?

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 a 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

13

WHO IS COVERED BY THE LOBBYING LAW?

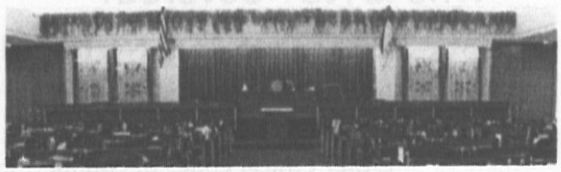


14

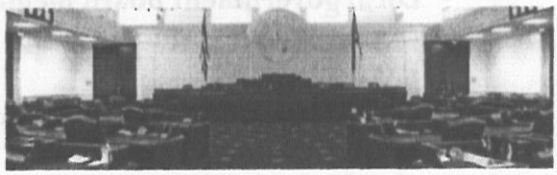
WHO ARE...
Governmental Liaisons/
"Liaison Personnel"?

State or local government employees whose principal duties include lobbying legislators or legislative employees

NC House of Representatives



NC Senate



15

ETHICS ACT CODE OF CONDUCT

DUTIES

16

1. ***File*** disclosure of economic & other interests ("Statement of Economic Interest" or "SEI")
2. ***Attend*** ethics education
3. ***Monitor & avoid*** conflicts of interest
4. ***Agency heads*** have additional duties

17

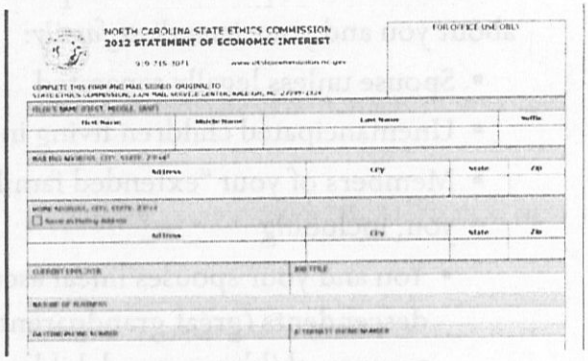
FILE DISCLOSURE: STATEMENTS OF ECONOMIC INTEREST (SEIs)

FILING

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

PENALTIES

EVALUATIONS


NORTH CAROLINA STATE ETHICS COMMISSION
2012 STATEMENT OF ECONOMIC INTEREST

18

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

19

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

20

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***

21

DISCLOSURE OF "CAMPAIGN-RELATED ACTIVITY"

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

Must disclose if:
1. "Bundled" contributions
2. Hosted a fundraiser in the 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

22

WHEN is the SEI filing due?

INITIAL

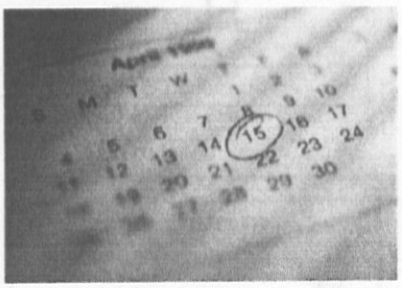
Generally, SEI must be **filed & evaluated before** you can begin serving on the covered board or in the covered position

- **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

23

ANNUAL

ANNUAL FILING DEADLINE APRIL 15TH



HOW do I file?

- ✓ **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
- ✓ **Fillable Web Form** – obtain an NCID account, fill the form out online, print, sign & mail or hand-deliver the original to the State Ethics Commission.
- ✓ **Electronic Filing** – obtain an NCID account, use the e-filing link on the website & submit your SEI electronically to the State Ethics Commission.

24

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

25

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

26

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 be removed from public position
- ✓ ***Evaluation letters help you identify areas where need to exercise caution***

STATE ETHICS COMMISSION

July 20, 2010

Appointing Authority
Main Street
Raleigh, NC 27699

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.

SEI & evaluation letter are public records!

27

ATTENDING ETHICS EDUCATION

- ➢ **Initial.** All public servants & ethics liaisons must attend initial ethics education presentation within 6 months of assuming position
- ➢ **Refresher.** Must attend a refresher presentation at least every 2 years thereafter
- ➢ **Live** or **Online**
- ➢ **Violation Consequences.** Failure to attend is violation of State Ethics Act & may result in disciplinary action

28

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 for 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

29

ADDITIONAL DUTIES FOR AGENCY HEADS

- Includes Board chairs
- Take 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
- Ensure legal counsel are familiar with the ethics law
- Consider the need for customized ethics education programs
- Notify Commission of changes in public servants
- Designate Ethics Liaison

30

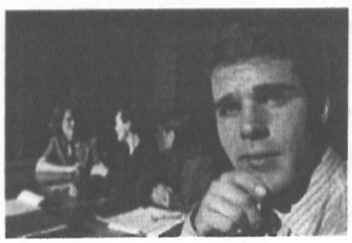
ETHICS ACT CODE OF CONDUCT

PROHIBITIONS: CONFLICTS OF INTEREST

31

CONFLICTS OF INTEREST

"Remember which hat you're wearing"



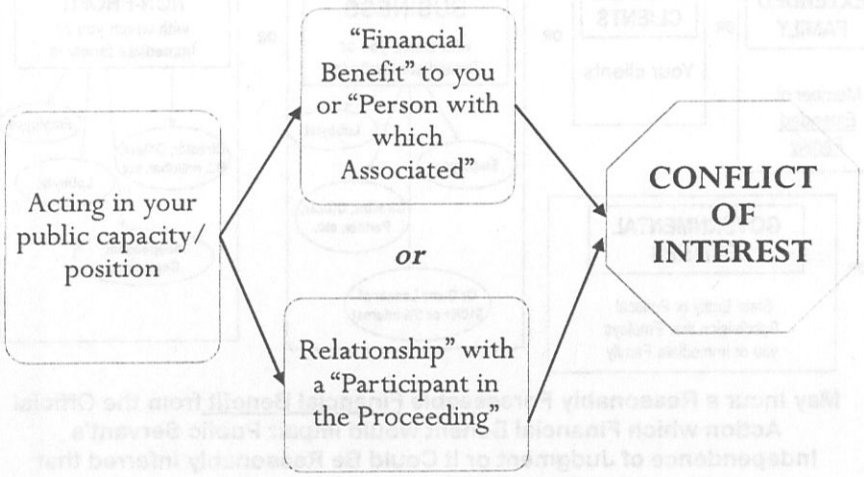
I. WHAT IS A CONFLICT OF INTEREST under the State Ethics Act?
   1. Financial benefit
   2. Relationship with participant in the proceeding

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

III. WHAT TO DO if you have a conflict

32

Generally, if you are...



33

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.

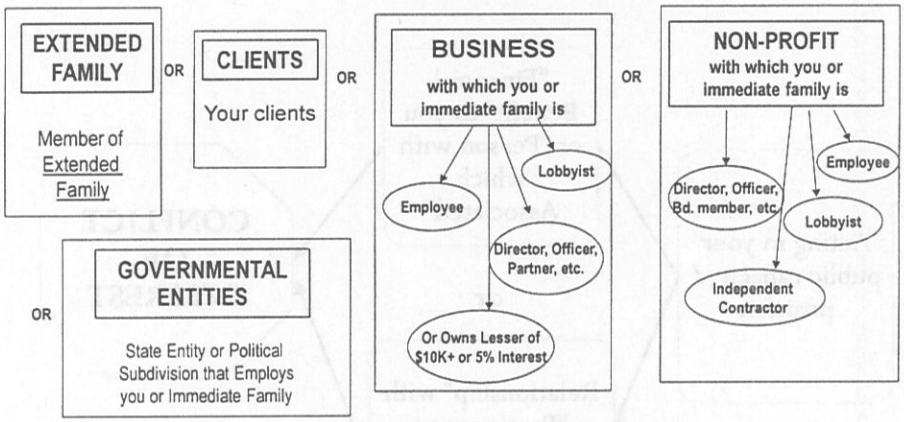
2. *Who* benefits?
   - You; or
   - "Person with which associated"

3. Is it a *"financial benefit"?*
   Direct pecuniary gain or loss to public servant, a person with which associated, ***or*** a direct pecuniary loss to a business competitor of the public servant, or a person with which associated.

34

CONFLICT OF INTEREST: "FINANCIAL BENEFIT"

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



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

35

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 family, 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.

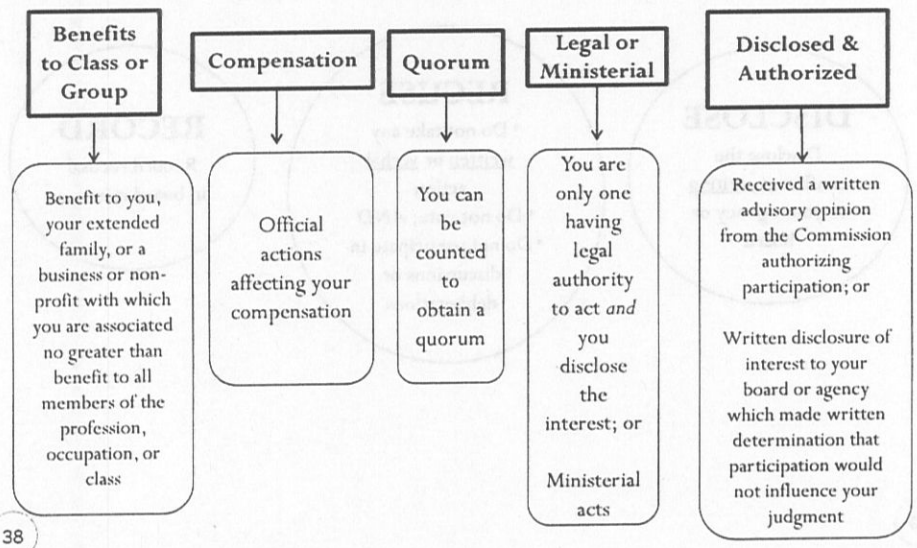
36

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

37

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



38

COMMUNITY COLLEGE NON-PROFIT BOARDS

If you are a community college president, chief financial or chief administrative officer, or a board of trustees member

AND

An officer, employee, or member of the board of a non-profit established under G.S. 115D-20(9) to aid the community college

NOT a conflict of interest to serve on the non-profit board so long as a majority of the non-profit board is not made up of the president, chief financial or chief administrative officers, or community college board of trustees members

39

What to 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

40

ETHICS ACT CODE OF CONDUCT

OTHER PROHIBITIONS

41

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)

42

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

43

Hiring or Supervising Extended Family Members

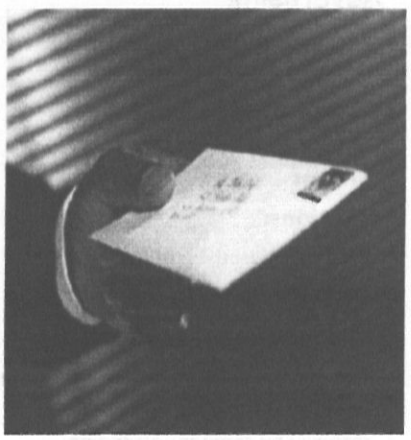
Unless specifically authorized,

- 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:

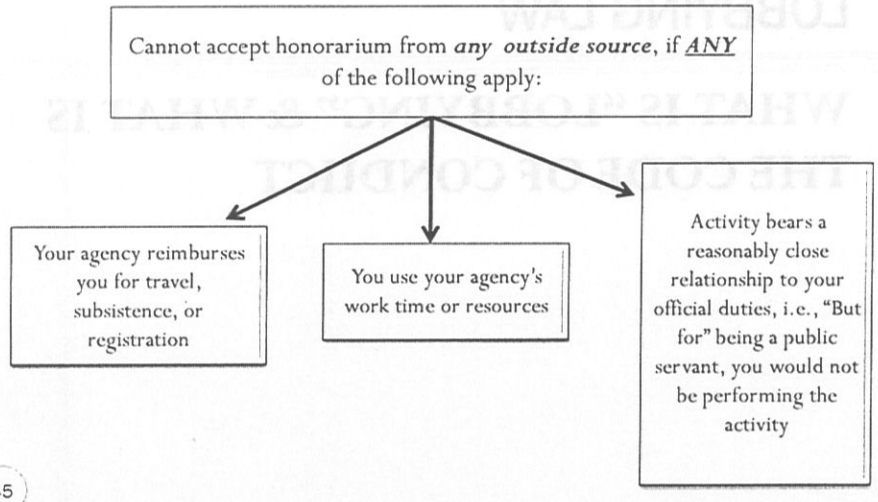
- Accept, solicit, agree to receive, or assign anything of value
- For you or another person
- In exchange for being influenced in the discharge of your official responsibilities



44

Honoraria

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



45

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

46

LOBBYING LAW

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

47

WHY THE LOBBYING LAW IS IMPORTANT TO PUBLIC SERVANTS

1. Executive Branch lobbying is regulated
2. State agencies must designate "liaison personnel" to lobby for legislative action
3. No Revolving Door for certain public servants and State agency employees

48

LOBBYING LAW:
First, what is NOT Lobbying?

- Communications or activities
- Part of a business, civic, religious, fraternal, personal, or commercial relationship ***and***
- ***NOT*** connected to legislative or executive action

49

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***.

50

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

51

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

52

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

53

Campaign Restrictions on Lobbyists

Lobbyists cannot

- Make campaign contributions to legislators & Council of State members or candidates for those offices
- 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 candidacy or threatening financial support to opposition

54

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

55

"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

56

LOBBYING LAW
VIOLATION CONSEQUENCES

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

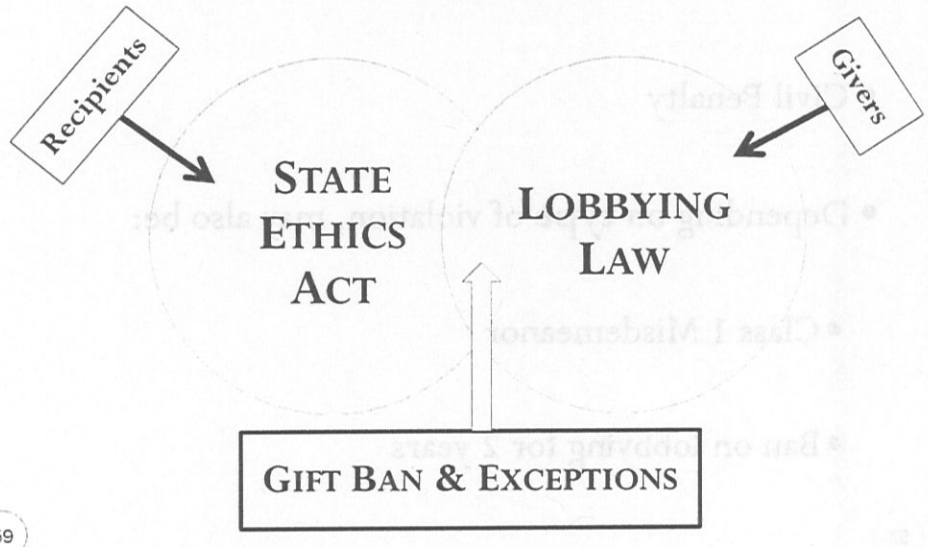
57

ETHICS ACT & LOBBYING LAW

NC's "GIFT BAN"

58

THE GIFT BAN: INTERSECTION OF ETHICS & LOBBYING LAWS



59

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!

HOW DO YOU KNOW...

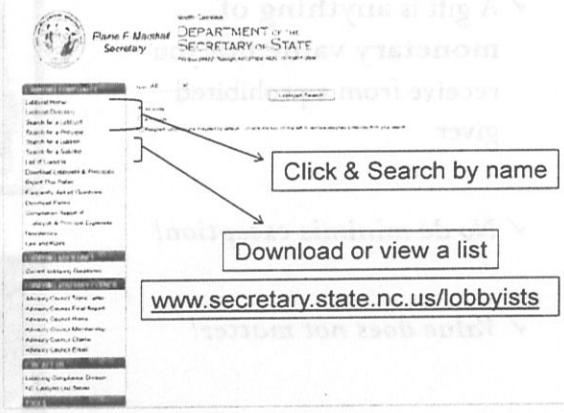
1. If it's from a "prohibited giver"?
2. If it's a "gift"?
3. If there is an exception?

60

60

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**

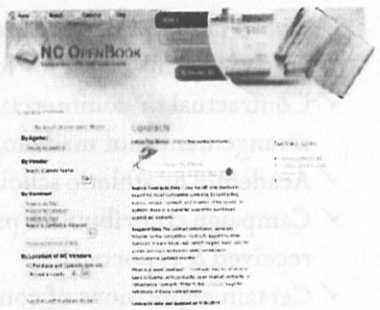


61

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!

62

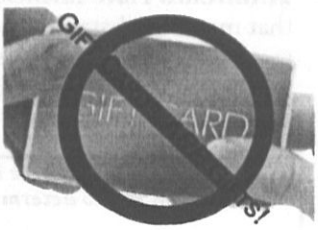
NC's GIFT BAN
WHAT IS A "GIFT"?

- ✓ 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!***

63

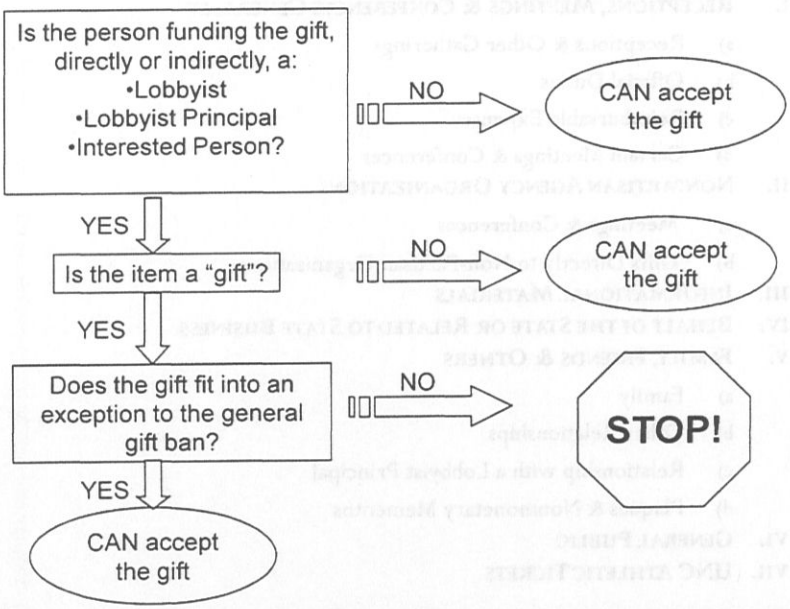
NC's GIFT BAN
*WHAT IS **NOT** A "GIFT"?*

- ✓ 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)



64

DECISION TREE FOR GIFTS



65

65

NC's GIFT BAN: *Are there exceptions?*

Yes . . .*BUT…*

- Specific criteria must be met for each one
- Even if allowed, gifts generally must be reported <u>usually by the prohibited giver</u>
- Reports
  - Are filed with the Secretary of State
  - Generally include the **<u>name</u>** of the recipient & a **<u>description</u>** & **<u>value</u>** of the gift
  - Are public record

66

GENERAL EXCEPTION CATEGORIES

I. RECEPTIONS, MEETINGS & CONFERENCES GENERALLY
   a) Receptions & Other Gatherings
   b) Official Duties
   c) Reimbursable Expenses
   d) Certain Meetings & Conferences
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

67

I. RECEPTIONS, MEETINGS & CONFERENCES: *Receptions & Other 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

68

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

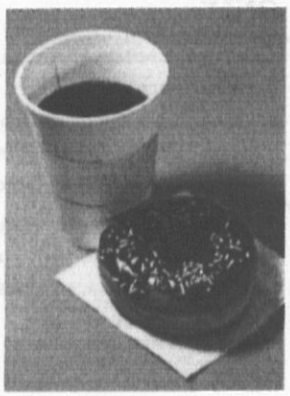
At least 10 people associated with host or sponsor actually attend; ***or*** all shareholders, employees, bd. members, officers, members, subscribers located in NC are invited.

"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.*

69

I. RECEPTIONS, MEETINGS & CONFERENCES: *Official Duties*

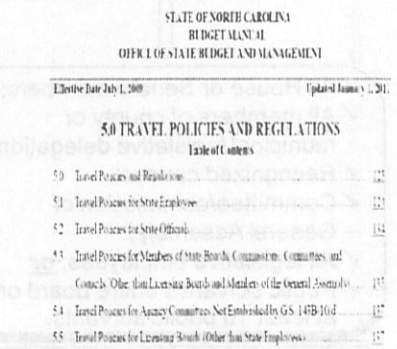
- **Lobbyist, lobbyist principal, interested person** can pay for
- **Food & beverage** for **immediate consumption** at
- Gathering where
  - Public servant attendance **primarily related to public position; AND,**
  - 10 individuals other than public servant or immediate family attend



70

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, 201

5.0 TRAVEL POLICIES AND REGULATIONS

Table of Contents

5.0 Travel Policies and Regulations
5.1 Travel Policies for State Employees
5.2 Travel Policies for State Officials
5.3 Travel Policies for Members of State Boards, Commissions, Committees, and Councils Other than Licensing Boards and Members of the General Assembly
5.4 Travel Policies for Agency Committees Not Established by G.S. 143B-10(d)
5.5 Travel Policies for Licensing Boards (Other than State Employees)

71

I. Receptions, Meetings & Conferences: *Certain Meetings & Conferences*

✓ **Lobbyist principal ONLY.**

✓ Can pay **reasonable actual expenditures** for food & beverage, travel, registration, lodging, incidental items of nominal value, incidental entertainment.

✓ *1)* **"Educational" Meeting** (primarily related to your public duties); or, *2)* 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

72

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

73

II. NONPARTISAN AGENCY ORGANIZATIONS: *Gifts Directly to Organization*

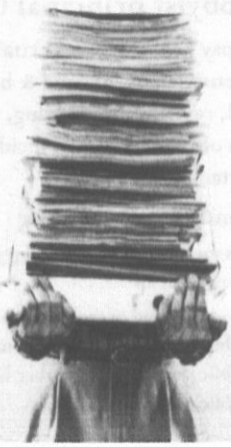
Gifts are allowed if they are:

- Made by a **lobbyist** or **lobbyist principal** (<u>not</u> 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**

74

III. Informational Materials

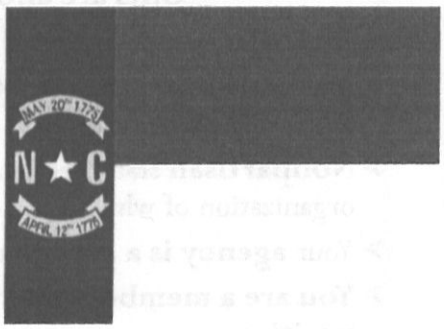
- You may accept ***informational materials relevant to your public duties*** from any prohibited giver



75

IV. 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**



76

RELATED TO STATE BUSINESS

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

77

V. FAMILY, FRIENDS & OTHERS
Extended Family

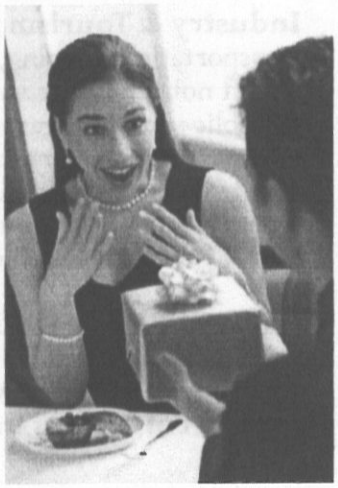
You may accept gifts from your ***extended family*** even if the family member is a prohibited giver

78

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; and,
- ✓ Reasonable person would conclude not given for "lobbying"



79

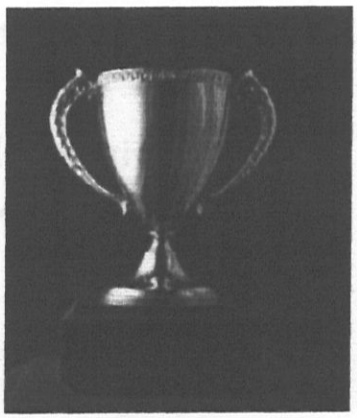
V. FAMILY, FRIENDS & OTHERS: *Relationship with Lobbyist Principal* *"Eat your own lunch"*

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

80

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



81

VI. Gifts to 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

82

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

83

"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

84

REMINDER ABOUT REPORTING

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

85

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

86

ETHICS ACT

COMPLAINTS & CONSEQUENCES

87

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

CONTACT INFORMATION

SWORN COMPLAINT

88

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(a).. 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:

Requestor: _____

Subject: _____

89

COMMISSION'S JURISDICTION

Broader than just the State Ethics Act

The Commission is required to conduct inquiries into:

- Application or violation of the State Government Ethics Act
- Alleged violations of the criminal law by covered persons in the performance of their official duties
- Alleged violations of G.S. 126-14 (Promise or threat to obtain political contribution or support)
- For legislators, the application of alleged violations of the Legislative Ethics Act

90

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

91

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

92

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

93

ETHICS ACT

WHERE & HOW TO GET ADVICE

94

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?

95

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

96

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

97

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.

98

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.

99

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

100

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

101

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

102

ADVICE FOR LOBBYISTS, LOBBYIST PRINCIPALS & GOVT. LIAISONS

- "Any person affected" by lobbying law can request
- Both formal advisory opinions and informal advice
- Formal advisory opinion confers immunity
- Same confidentiality and publication provisions, *except* must share unredacted copy with Secretary of State

103

ETHICS ACT

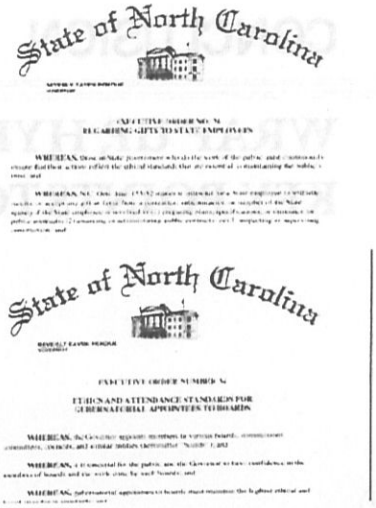
AND ONE LAST THING…

104

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

State of North Carolina

105

- **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

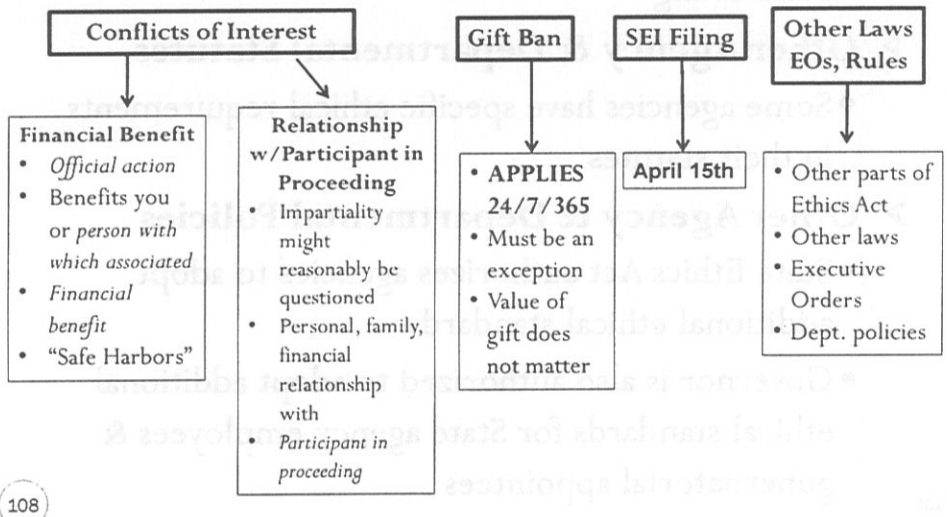
106

CONCLUSION

WRAP UP, HYPOTHETICALS & KEY POINTS TO REMEMBER

107

WRAP UP...



108

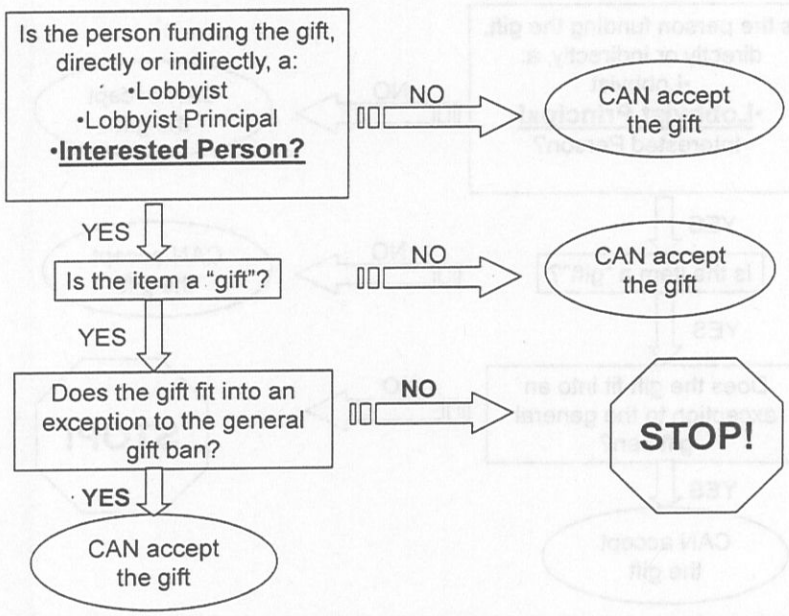
What if.....

- 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.

109

DECISION TREE FOR GIFTS



110

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.

111

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

112

112

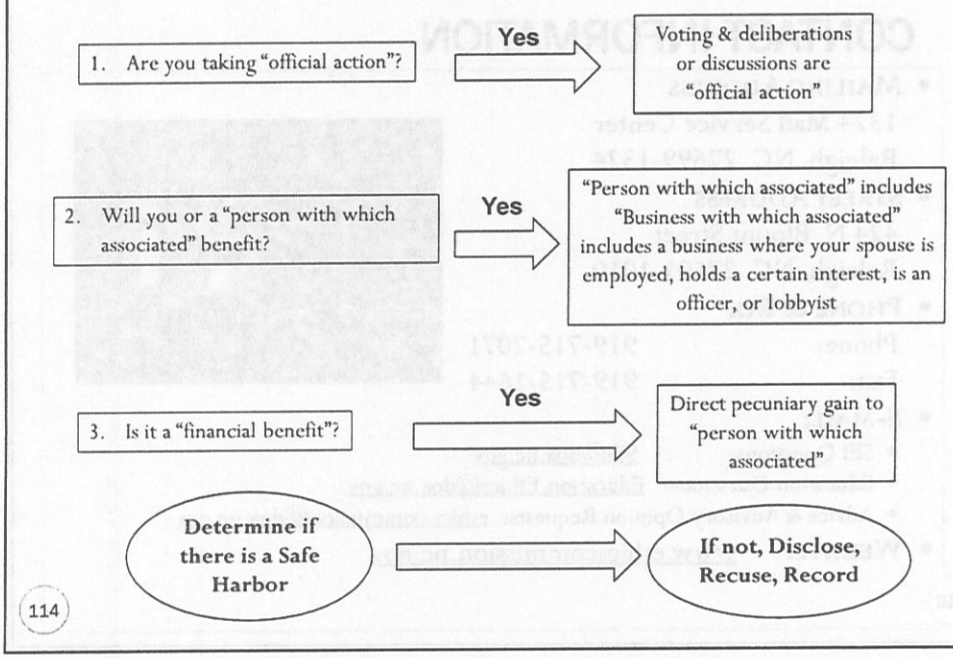
What if...

You are a public servant and your husband 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?

113



114

KEY POINTS TO REMEMBER:

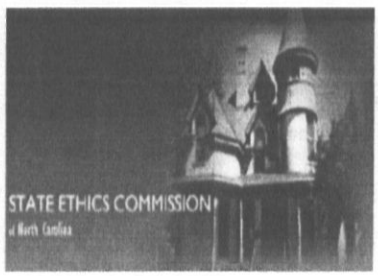
- Remember Code of Conduct
- Remember the gift ban applies at all times!
- Ask for advice BEFORE taking action you think may be a violation
- Get to know your Ethics Liaison & agency legal counsel

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

115

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



116