



Ethics Education & Lobbying Presentation

Chapter 138A & Chapter 120C
State Ethics Commission

(Rev'd 09/07/10)

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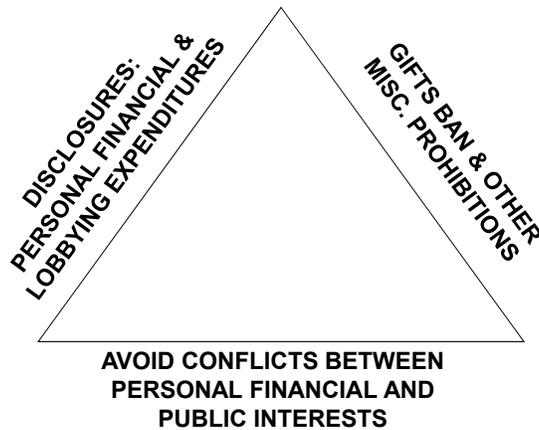
Overview of Presentation

- **Goals of Ethics laws.**
- **Overview of State Ethics Commission**
- **Individuals Covered by the State Government Ethics Act**
- **Advice & Advisory Opinions**
- **Complaints**
- **Duties & Responsibilities of Public Servants**
 - SEI Filing
 - Conflicts of Interest
 - Gift Ban & Exceptions
- **Lobbying: Why it matters to Public Servants**

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Goal of Ethics Laws: Code of Conduct & Transparency

How are those goals achieved?



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The State Government Ethics Act

What it is and how we got here

■ **Historic**

■ **Comprehensive**

■ **Inclusive**

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THE STATE ETHICS COMMISSION

NAME	APPOINTING AUTHORITY
The Honorable Robert Farmer (D), Chairman	Governor
Jane Flowers Finch (D), Vice-Chairman	Governor
The Honorable Alice Stubbs (R)	Governor
Ben Mayo Boddie (R)	Governor
Barbara Allen (D)	General Assembly, upon recommendation of Speaker
William P. Pope (R)	General Assembly, upon recommendation of Speaker
Clarence G. Newsome (D)	General Assembly, upon recommendation of President Pro Tempore
John G. "Jerry" Blackmon (R)	General Assembly, upon recommendation of President Pro Tempore

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State Ethics Commission Staff & Contact Information

- Perry Newson, Executive Director
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- Stacey Phipps, SEI Attorney
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WHO IS COVERED BY THE ETHICS ACT? “Covered Persons”

- **“PUBLIC SERVANTS”** (G.S. 138A-3(30))
 - **CONSTITUTIONAL OFFICERS & PRINCIPAL DEPARTMENT HEADS**
 - Their Chief Deputies/Administrative Assistants
 - Confidential Assistants & Secretaries of all
 - **GOVERNOR’S OFFICE EMPLOYEES**
 - **EMPLOYEES DESIGNATED POLICYMAKING OR MANAGERIAL EXEMPT**
 - **OTHER EMPLOYEES AS SPECIALLY DESIGNATED BY THE GOVERNOR**
 - **VOTING MEMBERS OF STATE NON-ADVISORY BOARDS**
 - ◆ INCLUDING EX OFFICIO MEMBERS AND PERMANENT DESIGNEES

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■ **OTHERS COVERED**

- **UNC SYSTEM**
 - Board of Governors – Voting Members
 - President & Vice Presidents
 - Chancellors & Vice Chancellors
 - Boards of Trustees – Voting Members
- **COMMUNITY COLLEGE SYSTEM**
 - State Board – Voting Members
 - President & Chief Financial Officer
 - President, CFO, & Chief Administrative Officer of each college
 - Boards of Trustees – Voting Members
- **JUDICIAL EMPLOYEES**
 - AOC Director & Assistant Director
 - Others designated by Chief Justice
- **JUDICIAL OFFICERS**
 - Judges
 - District Attorneys
 - Clerks of Court
- **LEGISLATORS & LEGISLATIVE EMPLOYEES**
 - Includes appointees & persons elected before taking office
 - Also includes consultants and counsel to GA committees paid with State funds

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2010 Legislative Change Additional “Public Servants”

Adds to “public servants”:

- Executive Director & Assistant Director of State Ethics Commission.
- Director of Office of State Personnel.
- State Controller.
- CIO, deputy CIOs, CFO, & general counsel of ITS.
- Director of State Art Museum
- Executive Director of DMV
- Commissioner of Banks & chief deputy commissioners.
- Executive Director of Housing Finance Agency.
- Executive Director, CFO, & COO of NC Turnpike Authority
- Members of Governor’s Crime Commission
- ***Effective upon August 2, 2010.***

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ADVICE & ADVISORY OPINIONS

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“Informal” Advice v. Formal Advisory Opinions

(G.S. 138A-13)

Informal Advice	Formal Advisory Opinion
Request can be written or by phone	Request <u>must</u> be in writing
Confidential	Confidential
<ul style="list-style-type: none"> ■ Issued by Commission staff ■ No immunity 	<ul style="list-style-type: none"> ■ Issued by the State Ethics Commission ■ Confers immunity.
Not published	Published in redacted form within 30 days of issuance by the Commission.

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Who can request advice or an advisory opinion?

(G.S. 138A-13)

- Public servants, legislative employees, individuals responsible for supervision or appointment of a public servant or legislative employee, or legal counsel.
- Legislators.
- Ethics Liaisons for agencies or boards.
- State Ethics Commission on its own motion.
- Judicial officers concerning SEI’s only.
- State Auditor as to the meaning and application of the Ethics Act.

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When should I ask for advice or an advisory opinion?

(G.S. 138A-13(a))

- Before a situation occurs.
- Requests for advice & formal advisory opinions must
 - Relate prospectively to
 - Real or reasonably anticipated fact settings or circumstances.
- No hypotheticals.

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Is the request confidential?

(G.S. 138A-13(e))

- **YES.** Informal advice & formal advisory opinions are confidential.
- Identity of requester, existence of request, & any information related to the request, including all documents, are confidential.
- Requester can waive confidentiality and authorize release.
- The Commission must publish **redacted** formal advisory opinions on its website.

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Can someone else ask about the legality of my actions?

- Generally, there are no third-party requests for advice or advisory opinions.
- Except as authorized by the statute, advice and advisory opinions **will not** be issued to individuals seeking an opinion as to the legality of the actions of someone else.

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What does it mean to have “immunity”?

(G.S. 138A-13(a2))

Reliance on the advice in a **formal advisory opinion** gives you immunity from:

- Investigation by the State Ethics Commission.
- Adverse action by your employing entity (agency, board, etc.)
- Investigation by the Secretary of State.
- Only applies to formal advisory opinions. No immunity for advice issued by Commission staff.
- Does not confer immunity for violations of criminal law in performance of official duties.

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COMPLAINTS & INQUIRIES

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What is the Commission's jurisdiction?

(G.S. 138A-12(b))

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.

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2010 Legislative Change Political Coercion

“Alleged violations of G.S.126-14 (Promise or threat to obtain political contribution or support)”

- Makes it unlawful for Constitutional officers to coerce “interested persons” (persons doing or seeking to do business with the State agency; regulated or controlled by the State agency; or have a financial interest that could be substantially or materially affected) to support or contribute to candidate or political party by threatening discipline or promising preferential treatment.
- *Effective December 1, 2010.*

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Who can file a complaint?

(G.S. 138A-12(b))

Anyone may file a complaint including:

- The Commission.
- Public servant.
- Any person responsible for appointing, hiring, or supervising a public servant.
- Any individual.

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What are the requirements for a valid complaint?

(G.S. 138A-12(c))

- Must be in **writing**.
- **Signed** -- cannot be anonymous.
- State **when** the alleged violation occurred.
- State **specific facts** alleging a violation of ethics laws or criminal law in performance of official duty.
- Be **sworn**. (Complaints & inquiries filed by public servants or the Commission do not have to be sworn.)
- Filed **within 2 years** of date filer knew or should have known of alleged improper conduct.

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Will I be notified if a complaint is filed?

(G.S. 138A-12(a1))

- **Yes**. The Commission must notify the covered person immediately upon receiving a written allegation of unethical conduct.

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Is the complaint confidential?

(G.S. 138A-12(n))

- **Yes.** 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.

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What happens after a complaint is filed?

(G.S.138A-12((f)-(m))

- **Preliminary Inquiry.**
- **Probable Cause Determination.**
- **Hearing or Referral.** If probable cause is found,
 - For public servants, open hearing before the State Ethics Commission.
 - For legislators, referral to Legislative Ethics Committee.
 - For judicial officers, referral to appropriate agency.

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2010 Legislative Changes Shortens Complaint Timelines

- Within 10 business days:
 - Send a copy of the complaint to the person.
 - Initiate an inquiry.
- Within 5 business days, receive any additional information requested by the Commission from complainant.
- Within 20 business days, conclude the preliminary inquiry, including dismissal of frivolous or bad faith complaints.
- ***Effective August 2, 2010.***

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What are the consequences for violations?

(G.S. 138A-45)

- **Public Servants Who Are Employees.**
Willful noncompliance considered violation of written work order.
- **Public Servants Serving on Boards.**
Misfeasance, malfeasance, or nonfeasance and may be removed.

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DUTIES & RESPONSIBILITIES OF PUBLIC SERVANTS

- **Public disclosure of financial interests through SEI filing.**
- **Monitor & avoid conflicts of interest.**
- **Do not accept prohibited gifts.**
- **Attend ethics education presentations.**
 - *Received funds to implement online ethics education. (2010 Legislative change)*
- **Agency heads have special responsibilities including taking “an active role in furthering ethics in public service” & appointing Ethics Liaisons.**

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SEI FILINGS: PUBLIC DISCLOSURE OF FINANCIAL INTERESTS

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SEI: Who has to file?

(G.S. 138A-22)

- Most public servants, legislators, & judicial officers.
- Candidates for covered offices.
- Exception: certain employees who are covered by the Ethics Act but make less than \$60K per year.
- Exception: ex-officio student members of university and community college boards of trustees.
- **Note: Even though there is an exception for certain employees and student members of boards of trustees, these individuals are still subject to all other provisions of the ethics law.**

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SEI: When do you have to file?

(G.S. 138A-22)

- **Annual filing deadline – April 15th**
- **New Hires or Appointees:** A prospective covered person “shall not be appointed, employed, or receive a certificate of election” prior to the receipt **and evaluation** of their SEI.
- **Exception for Appointees of Constitutional Officers:** Individuals hired or appointed by constitutional officer within the first 60 days of the constitutional officer’s initial term have 30 days from being hired or appointed to file their SEI.
- **Provisional Appointments by Community Colleges & Universities:** SEI must be filed but does not have to be evaluated prior to being hired, appointed, or elected.

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2010 Legislative Change Filing After Leaving Elected Office

- Requires certain **ELECTED** officials who are required to file an SEI to also file an SEI in the year *after* the elected official resigns or does not file a notice of candidacy.
- Applies only to Governor; Lt. Governor; Council of State; Supreme Court Justices; Court of Appeals, Superior & District Court Judges; District Attorneys; & Clerks of Court.
- ***Effective August 2, 2010.***

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SEI: What has to be disclosed & who is included?

(G.S. 138A-24)

WHAT

- Certain financial, professional, familial & personal information.

WHO

- Yourself.
- Immediate Family (G.S. 138A-3-(17))
 - Unemancipated children living in the household.
 - Your spouse, unless you are legally separated.
 - Members of your “***extended family***” who ***live with you.***

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Who is *extended family*?

G.S. 138A-3(13)

Your...	Your Spouse's...
Spouse	
Lineal ascendants (parents, grandparents, etc)	Lineal ascendants (parents, grandparents, etc)
Lineal descendants (children, grandchildren)	Lineal descendants (children, grandchildren)
Sibling	Sibling
Spouse of any of these individuals	

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2010 Legislative Changes Certain Political Contributions

- Requires filing person to provide a list of contributions with a cumulative total of more than \$1,000 during the preceding calendar year to the person who appointed the filing person to the covered board.
- Applies only to contributions made by the filing person, and not “immediate family.”

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2010 Legislative Changes Political Activities: Certain Appointees

- Requires heads of principal State departments (i.e., cabinet secretaries), justices & judges, and appointees to certain boards (ABC Commission; Coastal Resources Commission; State Bd. of Education; State Bd. 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)
 - Who were appointed by Constitutional Officer
 - To indicate if did the following on behalf of the campaign of Constitutional Officer who appointed the filer:
 1. Collected contributions from multiple contributors & delivered/transferred those contributions;
 2. Hosted fundraiser in residence or at place of business; or
 3. Volunteered for campaign-related activity.
- Effective January 1, 2011**

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2010 Legislative Changes Misc. SEI Revisions

- Adds “sole proprietorships” to list of business entities that must be listed.
- Clarifies that SEI should include name of each “business with which associated.”
- Allows filers to use initials of unemancipated children when filing SEI.

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SEI Forms & Filing Tips

- On website & .pdf fillable.
- No electronic filing at this time.
 - *Received funding to implement online SEI filing (2010 Legislative change.)*
- Make sure file correct form.
 - Long Form
 - No Change Form
 - Amendment to SEI Form
- Answer *all* questions.
- Signed.
- Notarized.
 - *Effective 1/1/11, no longer have to be notarized (2010 Legislative change. Effective January 1, 2011.)*
- Original.
- Postmarked by April 15th of each year.
- If you forget or need to correct something on SEI, should amend ASAP.

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SEI Evaluations & Public Records (G.S. 138A-23 & -24)

- **Evaluations.**
 - The Commission is required to evaluate SEIs of public servants for “actual and potential” conflicts of interest.
- **Public Records.**
 - SEI & written evaluations are public record once the individual is appointed or employed.

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SEI: Violation Consequences

(G.S. 138A-25 – 138A-27)

■ Penalties for Late or Non-Filing

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

■ Criminal Penalties.

- Class 1 misdemeanor for knowing concealment or failure to disclose.
- Class H felony for knowingly providing false information.

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CONFLICTS OF INTEREST

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Conflicts of Interest

WHAT KIND OF ACTION? “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.

WHO BENEFITS?

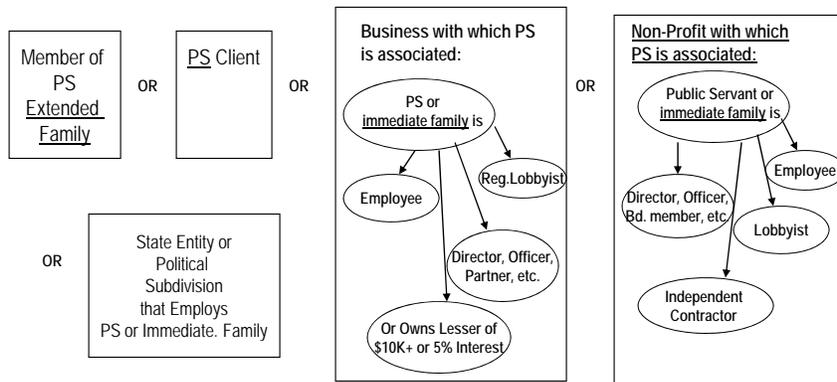
- Public servant or
- “Person with which associated”

WHAT KIND OF BENEFIT? “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.

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ANALYSIS: G.S. 138A-36(a) (Limited by G.S. 138A-38 Safe Harbor)

I. - 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 action.

AND

II. Financial Benefit would Impair PS’s Independence of Judgment or it could be reasonably inferred that benefit would influence participation.⁴²

Relationship with “Participant in the Proceeding”

G.S. 138A-36(c)

- Public servant has duty to remove himself or herself from any proceeding in which impartiality might reasonably be questioned due to a familial, personal, or financial relationship with a **“participant in the proceeding”**
 - Employee, agent, officer or director of a business, organization or group involved in the proceeding; **OR,**
 - Has some specific unique, and substantial interest in the proceeding.

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PERMITTED PARTICIPATION “SAFE HARBORS” (G.S. 138A-38)

YOU MAY TAKE OFFICIAL ACTION *IF*:

1. THE BENEFIT IS NO GREATER THAN BENEFIT TO ALL MEMBERS OF PROFESSION, OCCUPATION, OR GENERAL CLASS.
2. ACTION WOULD AFFECT COVERED PERSON'S COMPENSATION & ALLOWANCES AS A COVERED PERSON.
3. A WRITTEN ADVISORY OPINION AUTHORIZED THE PARTICIPATION.
4. BEFORE PARTICIPATING, PUBLIC SERVANT DISCLOSED INTEREST TO EMPLOYING ENTITY WHICH DETERMINED INTEREST WOULD NOT INFLUENCE PS & DETERMINATION WAS FILED WITH THE COMMISSION.
5. PERFORMING MINISTERIAL ACTS.

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6. **NO QUORUM — COVERED PERSON MAY BE INCLUDED FOR PURPOSES OF ESTABLISHING A QUORUM.**
7. **PUBLIC SERVANT IS THE ONLY INDIVIDUAL HAVING LEGAL AUTHORITY TO TAKE AN OFFICIAL ACTION & DISCLOSES INTEREST.**
8. **COMMUNITY COLLEGE OFFICERS & BOARD MEMBERS MAY SERVE ON NONPROFITS ESTABLISHED TO AID THE COMMUNITY COLLEGE UNDER CERTAIN CIRCUMSTANCES.**
9. **LEGISLATORS EMPLOYED OR RETAINED BY GOVERNMENTAL UNITS MAY TAKE LEGISLATIVE ACTION ON BEHALF OF THE GOVERNMENTAL UNIT IF ONLY MEMBER OF THE CHAMBER ELECTED FROM THAT DISTRICT AND RELATIONSHIP IS DISCLOSED.**

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WHAT TO DO IF YOU HAVE A CONFLICT?

GENERAL RULE:

■ DISCLOSE:

- ◆ DISCLOSE THE CONFLICT

■ RECUSE:

- ◆ REFRAIN FROM PARTICIPATING IN WRITING OR VERBALLY – NO INDIRECT INFLUENCE

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MISCELLANEOUS PROHIBITIONS

CANNOT BE PAID TWICE:

G.S. 138A-33 PROHIBITS PERSONAL FINANCIAL GAIN BY PUBLIC SERVANT OR LEGISLATIVE EMPLOYEE FOR PERFORMING OFFICIAL DUTIES.

CANNOT MISUSE CONFIDENTIAL INFORMATION:

G.S. 138A-34 PROHIBITS USE OF INSIDE INFORMATION OBTAINED IN COURSE OF DUTIES OR FOR PRIVATE GAIN.

CANNOT HIRE OR SUPERVISE FAMILY MEMBER:

G.S. 138A-40 PROHIBITS EMPLOYMENT AND SUPERVISION OF FAMILY MEMBERS, EXCEPT FOR CERTAIN GENERAL ASSEMBLY POSITIONS.

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MISCELLANEOUS PROHIBITIONS: USE OF PUBLIC POSITION IN NON-GOVERNMENTAL ADVERTISING

(G.S. 138A-31(b))

A COVERED PERSON GENERALLY

- CANNOT MENTION THEIR PUBLIC POSITION IN NON-GOVERNMENTAL ADVERTISING
- CANNOT MENTION OR PERMIT ANOTHER TO MENTION YOUR "PUBLIC POSITION" IN NONGOVERNMENTAL ADVERTISING WHICH ADVANCES YOUR PRIVATE INTEREST OR THE PRIVATE INTEREST OF OTHERS
- **EXCEPTIONS:**
 - POLITICAL ADVERTISING
 - NEWS STORIES OR ARTICLES
 - DIRECTORIES OR BIOGRAPHICAL LISTINGS
 - CHARITABLE SOLICITATIONS FOR 501(c)(3)
 - IT IS NOT "ADVERTISING" TO DISCLOSE YOUR POSITION TO INDIVIDUAL CUSTOMER OR CLIENT WHEN RELEVANT OR MATERIAL.

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**MISCELLANEOUS PROHIBITIONS:
USE OF STATE FUNDS FOR
PUBLIC SERVICE ANNOUNCEMENTS
(G.S.138A-31(c))**

YOU CANNOT USE STATE FUNDS:

- FOR ADVERTISEMENT OR PUBLIC SERVICE ANNOUNCEMENTS
- IN NEWSPAPER, RADIO, TV, MAGAZINE, BILLBOARDS
- CONTAINING YOUR NAME, PICTURE, OR VOICE.

EXCEPTIONS:

- ◆ STATE OR NATIONAL EMERGENCY **AND** ANNOUNCEMENT NECESSARY TO OFFICIAL FUNCTION
- ◆ INAPPLICABLE TO PUBLIC RADIO OR T.V. FUNDRAISERS

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HONORARIA:

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

(G.S. 138A-32(h))

You **cannot** accept an honorarium **if**:

- Your agency reimburses you for travel, subsistence, & registration; **or**,
- Your agency's work time or resources are used; **or**,
- Activity would be considered, or bear a reasonably close relationship to, an "official duty."

"Official Duty" = "But For." But for your public position, you would not be making the speech, performing the service, etc.

- **In lieu of an honorarium**, an outside source may reimburse the agency for actual expenses incurred in conducting the activity, or may pay a fee to the agency, in lieu of the honorarium.
- This is not considered a "gift."

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GIFT BAN & GIFT BAN EXCEPTIONS

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No “Quid Pro Quo”

(G.S. 138A-32(a))

Other than what is received from the State
for acting in your official capacity, you:

- Cannot accept, demand, exact, solicit,
seek, assign, receive, or agree to receive
- Anything of value
- For you or another person
- In return for being influenced in the
discharge of your official responsibilities

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GENERAL GIFT BAN

(G.S. 138A-32 & G.S. 120C-303)

Unless there is an exception, public servants cannot accept “gifts,” either directly or indirectly from:

- Lobbyists
- Lobbyist Principals
- “Interested Persons”

In addition, unless there is an exception:

- Lobbyists & lobbyist principals cannot give gifts to public servants, legislators, or legislative employees.
- “Liaison Personnel” (State agency “lobbyists”) cannot give gifts to legislators or legislative employees.

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Indirect Gifts

Gifts may not be accepted indirectly through an intermediary if you know

- The gift was obtained indirectly from a
 - Lobbyist;
 - Lobbyist Principal; or,
 - Interested Person; and,
- The lobbyist, lobbyist principal, or interested person intended for you to receive the gift.
- ***Clarifies that indirect gift ban applies regardless of the number of recipients. (2010 Legislative change. Effective December 1, 2010.)***

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Who are they?

- **Lobbyist.** Generally speaking, someone who is paid to advocate the position of another in an effort to influence legislative or executive action. Lobbyists must register with the Secretary of State.
- **Lobbyist Principal.** Person on whose behalf the lobbyist lobbies. Lobbyist principals must register with the Secretary of State.
- **“Interested Persons.”** Persons who:
 - **Business.** Are doing or seeking to do business with your employing entity (agency, board, office, etc.); or,
 - **Regulated.** Are engaged in activities that are regulated or controlled by your employing entity; or,
 - **Financial.** Have financial interests that may be substantially & materially affected by the performance or nonperformance of your official duties. (G.S. 138A-32(d))

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What is a “Gift”?

(G.S. 138A-3(15))

- A gift is anything of monetary value that you receive from lobbyist, lobbyist principal, or interested person.
 - **No de minimis exception!**
- A Gift is NOT**
- **Something you paid fair market or face value for.**
 - **Commercially available loans made on same terms & not for lobbying.**
 - **Contractual or commercial arrangements not made for lobbying.**
 - **Academic or athletic scholarships.**
 - **Campaign contributions.**
 - **Certain expressions of condolence.**
 - **Cards, letters, notes, e-mails, etc (State Ethics Commission determination)**

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IS IT A GIFT? 138A-3(15) EXCLUDES:
- THINGS FOR WHICH YOU PAID MARKET OR FACE VALUE,
- LOANS AND SCHOLARSHIPS AVAILABLE TO EVERYONE AND ON THE SAME TERMS,
- ARMS-LENGTH BUSINESS TRANSACTIONS
- CAMPAIGN CONTRIBUTIONS UNDER CHAPTER 163,
- EXPRESSIONS OF CONDOLENCE (CARDS, FLOWERS, FOOD OR BEVERAGES, DONATIONS UP TO \$200).

Public Servants

Is the gift given (**funded**)
directly or indirectly by a
Registered LP, L, or an IP?

NO. Then the Public
Servant may accept it.

YES. Then Public Servant
may not
accept it **UNLESS** it falls
within a gifts exception.

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EXCEPTIONS

- There are exceptions to the gift ban.
- Specific criteria must be met for each one.
- Gifts from lobbyists and lobbyist principals must be reported to the Secretary of State's Office generally by the giver.
- Generally, reports must include the name of the recipient, along with the value and description of the gift.

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What are the exceptions?

(G.S. 138A-32(e))

1. FOOD & BEVERAGE AT CERTAIN GATHERINGS.
2. INFORMATIONAL MATERIALS RELEVANT TO OFFICIAL DUTIES.
3. EXPENSES OF ATTENDING CERTAIN MEETINGS/CONFERENCES.
4. PLAQUE OR SIMILAR NON-MONETARY MEMENTO RECOGNIZING SERVICE TO FIELD OR CHARITY.
5. GIFTS ACCEPTED ON BEHALF OF THE STATE FOR USE BY OR BENEFIT OF THE STATE.
6. ANYTHING MADE AVAILABLE TO THE GENERAL PUBLIC OR ALL OTHER STATE EMPLOYEES.

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Exceptions (cont'd)

7. GIFTS FROM EXTENDED FAMILY OR MEMBER OF SAME HOUSEHOLD.
8. GIFTS GIVEN TO A PUBLIC SERVANT RESPONSIBLE FOR CONDUCTING INDUSTRY RECRUITMENT, INTERNATIONAL TRADE, OR TOURISM PROMOTION.
9. GIFT VALUED AT LESS THAN \$100 GIVEN AS A PERSONAL GIFT IN ANOTHER COUNTRY IN ACCORDANCE WITH CULTURAL PROTOCOL.

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Exceptions (cont'd)

10. GIFTS GIVEN AS PART OF A BUSINESS, CIVIC, RELIGIOUS, FRATERNAL, PERSONAL, ETC. RELATIONSHIP UNDER CERTAIN CONDITIONS.
11. MEAL, BEVERAGE, & TRANSPORTATION EXCEPTION FOR ATTENDANCE AT MEETING OF ENTITY WITH WHICH ASSOCIATED.
12. "OFFICIAL DUTY" MEAL & BEVERAGE EXCEPTION FOR PUBLIC SERVANTS.

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Exception for Gifts Given Directly to Organization

(G.S. 120C-303(d)-(e))

Gifts are allowed if they are:

- Made by a lobbyist or lobbyist principal to
- Nonpartisan state, regional, national, or international organization of which
- General Assembly or public servant's agency is a member; or
- Legislator, legislative employee, or public servant is a member or participant by virtue of his/her public position.

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Reimbursement Exception: Public Servants

(G.S. 138A-32(f))

- If the gift is the type of expense that would otherwise be reimbursable by the employing entity, it is considered a gift to the State and may be accepted by the public servant **if**
- **Approved:** Approval is received in advance from the employing entity to accept such items on behalf of the State.
- **Not Limited:** As long as the type of item or expense is reimbursable, items or expenses exceeding the reimbursement rate may be accepted.

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SELECT EXCEPTIONS IN MORE DETAIL

- **Food & Beverage Exceptions.**
- **Meeting/Conference Exceptions.**
- **Public Servant “Official Duty” Meal & Beverage Exception.**
- **Personal Relationship Exception.**
- **Leader/Employee/Independent Contractor’s Meeting or Conference Exception.**

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GENERAL RULES FOR FOOD & BEVERAGE EXCEPTIONS

G.S. 138A-32(e)(1)

- **WHO can give food & beverage?**
 - Anyone – Lobbyist, lobbyist principal, liaison personnel, interested persons.

- **WHAT can be given?**
 - Food and beverage for immediate consumption.

- **WHERE can it be given?**
 - At 3 types of gatherings and so long as certain conditions are met.

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Food & Beverage Exceptions 1 & 2: Public Meetings & Gatherings

WHO can give?	Lobbyist, lobbyist's principal, liaison personnel, interested persons
WHAT can be given?	Only food & beverage for immediate consumption
WHERE must it happen?	<ol style="list-style-type: none"> 1. Open Meeting of Public Body 2. Gathering Open to Public <ul style="list-style-type: none"> ■ Gathering where 10 or more people attend ■ Open to general public ■ Sign or other communication displayed at meeting that conveys gathering is open
Who has to be INVITED?	No specific requirements for who must be invited.

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Food & Beverage Exception 3: Other Gatherings

WHO can give?	Lobbyist, lobbyist's principal, interested persons.
WHAT can be given?	Only food & beverage for immediate consumption.
WHERE must it happen?	Gathering of person or governmental unit (local government).
Who has to be "INVITED"?	<p>Group 1: All House or Senate members; all members of county or municipal legislative delegation; recognized caucus; committee/commission of General Assembly; all legislative employees; public servant's entire board; <u>or</u> at least 10 public servants; <i>and</i></p> <p>Group 2: At least 10 people associated with person or govt. unit <u>actually</u> attend; <u>or</u> all shareholders, employees, bd. members, officers, members, subscribers located in NC are invited.</p>
<p>("Invited:" Written; from at least 1 host or sponsor; give date, time, location; sent at least 24 hours in advance; & if known at time invitation sent that sponsor is lobbyist or lobbyist principal, invitation must state whether or not gathering meets gift ban exception.)</p>	

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MEETING & CONFERENCE EXCEPTION G.S. 138A-32(e)(3)

1. What TYPES of meetings are included?	<ul style="list-style-type: none"> I. Educational II. Speaker/Panel Member III. Nonpartisan Organization: Legislature IV. Nonpartisan Organization: State Agency
2. WHO can pay for certain meeting expenses?	Lobbyist <i>Principals</i> – <u>Not</u> lobbyists or interested persons
3. WHERE must it take place?	<ul style="list-style-type: none"> ▪ "Formal" Meeting
4. WHAT can be given?	<ul style="list-style-type: none"> ▪ Food & Beverage ▪ Registration ▪ Travel ▪ Lodging ▪ Incidental Items of Nominal Value ▪ Incidental Entertainment

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Certain Meeting/Conference Expenses:
TYPES of Meetings

G.S. 138A-32(e)(3)

I. Educational Meeting:

Attendance at ***“Educational”*** meeting for:

- Purposes primarily related to person’s public duties & responsibilities

- State Ethics Commission has established criteria to determine if meeting is “educational.”

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Certain Meeting Expenses:
TYPES of Meetings (*cont’d*)

II. Speaker/Panel Member

Participation as bona fide speaker or panel member at a meeting.

III. Nonpartisan Organization: General Assembly

- Legislator/legislative employee’s attendance and participation in
- Meetings of nonpartisan organization;
 - General Assembly is member; **or**,
 - Legislator/legislative employee is member or participant because of public position, or member of subgroup of the nonpartisan organization.

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Certain Meeting Expenses:
TYPES of Meetings (*cont'd*)

**IV. Nonpartisan Organization:
Public Servant's Agency**

- Public servant's attendance and participation in meetings;
- As member of board, agency, or committee of
- Nonpartisan organization;
- Public servant's agency is member; **or**,
- Public servant is member because of public position.

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**Certain Meeting Expenses:
WHERE Must It Take Place?**

G.S. 138A-32(e)(3)

- Meeting attended by at least 10 or more participants;
- Formal Agenda; **and**,
- Notice given at least 10 days in advance.

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Certain Meeting Expenses: WHAT Can Be Given?

G.S. 138A-32(e)(3)

Reasonable Actual Expenditures for

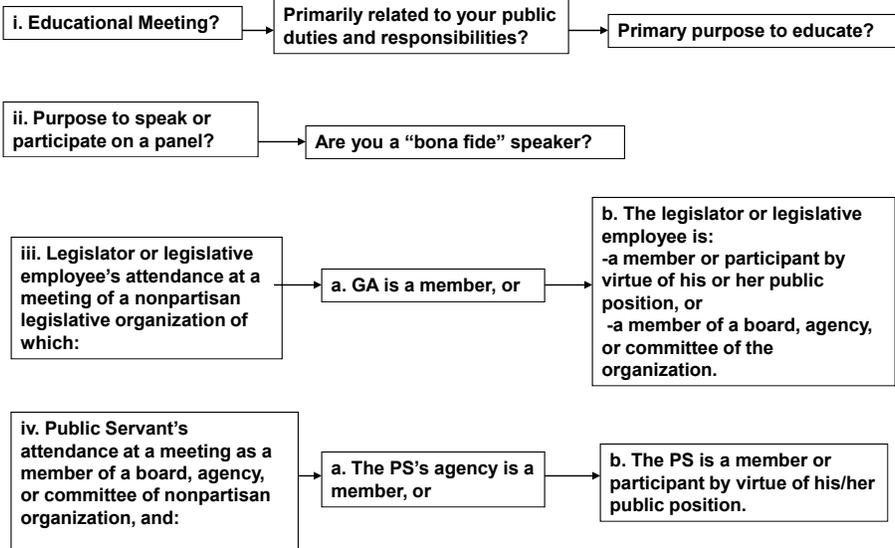
- **Food, beverage, transportation**

 - Provided to all attendees or defined groups of 10 or more attendees as part of/in conjunction with meeting.
- Registration
- **Entertainment**

 - Provided to all attendees or defined groups of 10 or more attendees as part of/in conjunction with meeting; **and**,
 - Incidental to principal agenda.
- Travel
- Lodging
- Incidental Items of Nominal Value

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MEETING EXCEPTION -- G.S. 138A-32(e)(3)



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**PUBLIC SERVANT “OFFICIAL DUTY”
EXCEPTION:
“Primarily Related to Public Duties”**

G.S. 138A-32(e)(12)

- | | |
|---|--|
| <ul style="list-style-type: none"> ■ WHO can GIVE? <ul style="list-style-type: none"> – Anyone – Lobbyist, lobbyist principal, interested persons ■ WHAT can be given? <ul style="list-style-type: none"> – Food and beverage for <u>immediate consumption</u> ■ WHERE can it be given? <ul style="list-style-type: none"> – Organized gathering of “person,” the State, or “governmental unit” | <ul style="list-style-type: none"> ■ WHO must be INVITED? <ul style="list-style-type: none"> – Public servant must be invited for purposes related primarily to public servant’s service or position; and, – 10 individuals, other than public servant or immediate family, actually attend; or, – All shareholders, employees, board members, officers, members, or subscribers of the person or governmental unit located in NC notified and invited. |
|---|--|

**PUBLIC SERVANT “OFFICIAL DUTY” MEAL & BEVERAGE
EXCEPTION**

G.S. 138A-32(e)(12)

- i. APPLIES ONLY TO PUBLIC SERVANTS
- ii. EVENT MUST BE PRIMARILY RELATED TO OFFICIAL DUTIES
- iii. APPLIES TO ALL CATEGORIES OF DONORS — Lobbyists, Lobbyist Principals, Interested Persons,
- iv. LIMITED TO THE ACCEPTANCE OF FOOD AND BEVERAGES FOR IMMEDIATE CONSUMPTION -- NO TRAVEL OR TRINKETS

- ONE OR MORE PUBLIC SERVANTS INVITED
- PRIMARILY RELATED TO DUTIES OR POSITION

AND

10 INDIVIDUALS
OTHER THAN PS OR
FAMILY ATTEND

=

MAY ATTEND

GIFTS BASED ON CERTAIN RELATIONSHIPS

G.S. 138A-32(e)(10)

- Gifts given or received as
- Part of business, civic, religious, fraternal, personal, or commercial relationship; **IF**,
 - Relationship is not related to public service or position; **AND**;
 - Reasonable person would conclude gift not given for lobbying.

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LEADER/EMPLOYEE/INDEPENDENT CONTRACTOR MEETING EXCEPTION

“Eat Your Own Lunch”

G.S. 138A-32(e)(11)

- **WHO can ACCEPT?**
 - Person who is director, officer, board member, employee or independent contractor of either
 - Lobbyist principal giving food, beverage, transportation; **or**,
 - 3rd party that received funds from lobbyist principal to purchase food, beverages, or transportation
- **WHO can GIVE?**
 - Lobbyist *Principal only*
- **WHAT can be given?**
 - Food and beverage for **immediate consumption** & related transportation
- **WHERE can it be given?**
 - During conference, meeting, or similar event; and,
 - Available to all attendees of same class as recipient

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Limitations on Charitable Solicitations

(G.S. 138A-32(b))

- Public servants, legislators, & judicial officers cannot solicit charitable donations from subordinate State employees.
- Exceptions:
 - Generic solicitations to a class.
 - Serve as honorary State Employees' Combined Campaign chair

79

Special Prohibition on Giving University Athletic Tickets

(G.S. 120C-501(e))

- The UNC Board of Governors and its constituent institutions, or liaison personnel designated by the BOG or the constituent institutions are prohibited from giving athletic tickets, for the purpose of lobbying, to legislators, legislative employees, or public servants.

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Reminder

- Even if the gift is permissible under a gift ban exception, it generally must be reported to the Secretary of State.
- Reports generally include name of recipient, value & description of the gift.

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If you receive an impermissible gift...

Promptly

- **Decline** it.
- **Return** it.
- **Pay** FMV for it.
- **Donate** it to charity or the State.

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Gift Analysis

1. **WHO** am I? Public Servant 24/7
2. **WHO** is paying for it? Lobbyist, Lobbyist Principal, Interested Person
3. **WHAT** is it? "Gift"
4. **WHERE** is it being given?
5. Is there an **EXCEPTION?**

**ALWAYS FEEL FREE TO ASK THE
STATE ETHICS COMMISSION!!!**

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LOBBYING

84

Why the lobbying law is important.

- Public servants can now *be* lobbied.
 - Executive branch lobbying is now regulated.
- Executive branch agencies must designate “liaison personnel” to lobby for legislative action.
- “No Revolving Door” provision for certain public servants **& *State agency employees.***

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Requirements, Prohibitions & Restrictions

(G.S. 120C-304)

1. **Identification.** Lobbyists must identify themselves and their principals prior to engaging in lobbying a legislator, legislative employee, or public servant. (G.S. 120C-200(e))
2. **Gift Ban.** Unless there is an exception, lobbyist cannot give gifts to legislators, public servants, or legislative employees.
3. **No Contingency Fees.** Lobbyists cannot accept a fee contingent upon the outcome of lobbying (G.S. 120C-300(a)-(b))

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Additional Requirements, Prohibitions & Restrictions

4. **Election Influence Prohibited.** Person (includes lobbyists and their LP) cannot attempt to influence the action of any public servant or legislator by promise of financial support of the public servant's or legislator's candidacy or by threat of financial support to their opposition. (G.S. 120C-301)
5. **Prohibited Campaign Contributions.** Lobbyist cannot make campaign contributions to legislators, certain public servants (Constitutional officers and individuals elected or appointed to those offices prior to taking office), candidates for these offices, or their campaign committees. (G.S. 163-278.13C(a) & (c))
 - Exception: lobbyist can give to his/her own campaign

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Additional Requirements, Prohibitions & Restrictions

6. **No "Bundling".** Lobbyists cannot collect campaign contributions from multiple contributors (i.e., "bundle") and deliver them to legislators, candidates for the General Assembly, certain public servants (Constitutional officers and individuals elected or appointed to those offices prior to taking office), or their campaign committees. (G.S. 163-278.13C(b))
7. **Cannot Serve as Treasurer.** Lobbyists cannot serve as campaign treasurer or assistant campaign treasurer for a political committee for the election of a legislator or Constitutional officer. (G.S. 120C-304(d))

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Additional Requirements, Prohibitions & Restrictions

8. **No Use of Cash/Credit.** No lobbyist or another acting on lobbyist's behalf can allow a public servant, legislator, or legislative employee or their immediate family member to use cash or credit of the lobbyist for lobbying, unless the lobbyist is present. (G.S. 120C-305).
9. **Appointments to Certain Boards Prohibited.** Lobbyist ineligible for appointment by State official to any State board that has regulatory authority over the activities of a person or governmental unit the lobbyist currently represented or has represented within 120 days after lobbyist's registration has expired. (G.S. 120C-304(e))
 - Any appointment or registration made violating this section is void
 - Does not prohibit appointments by local government

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Additional Requirements, Prohibitions & Restrictions

10. **Legislators Cannot Be Lobbyists.** No legislator or former legislator can be a registered lobbyist:
 - While in office; or
 - Before the later of the close of the legislative session during which the legislator served or 6 months after leaving office. (G.S. 120C-304(a))
11. **Certain Public Servants Cannot Be Lobbyists.** Constitutional officers and heads of principal State departments cannot be a registered lobbyist while in office or employed or within 6 months thereafter. (G.S. 120C-304 (b)-(c))

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2010 Legislative Change Revolving Door: State Employees

- No employee of any State agency may register as a lobbyist to lobby the State agency that previously employed that individual within 6 months of leaving that State agency.
- If former State agency employee registers as a lobbyist within 6 months, must indicate which State agency employed the individual.
- ***Effective October 1, 2010.***

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Who are “Liaison Personnel”?

- **State employees** whose principal duties include lobbying legislators and legislative employees on behalf of State agencies.
- Subject to parts of the lobbying law, including:
 - Gift ban **as to legislators & legislative employees.**
 - Registration & reporting requirements.

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Who must designate liaison personnel?

(G.S. 120C-500)

- Generally, all agencies and constitutional officers of the State must designate liaison personnel to lobby for legislative action.
 - Exception: State agencies or boards with no staff.
- No more than 2 individuals may be designated as liaison personnel for each agency or constitutional officer.
- State agencies or constitutional officers are prohibited from hiring contract lobbyists.

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2010 Legislative Change Local Government “Liaison Equivalents”

- Local government employees whose principal duties include lobbying must register & file reports.
- Gift ban applies for gifts to legislators & legislative employees.
- ***Effective January 1, 2011.***

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Reporting

- Gifts given under the gift ban exceptions generally must be reported by the lobbyist, lobbyist principal, or liaison personnel giving the gift.
 - This includes gifts based on business, civic, religious, fraternal, commercial, or personal relationships.
- Reports include the name, description & value of the gift.
 - Names generally do not have to be reported when more than 15 legislators, legislative employees, or public servants benefit, but the basis for their selection must be reported.
- Reports are filed monthly when the GA is in session. Quarterly at other times.

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Exemptions from Lobbying Law

(G.S. 120C-700)

Except for miscellaneous reporting requirements in Art. 8 of Ch. 120C, the lobbying law does not apply in the following situations:

- **Personal Opinion**. Individuals expressing personal opinions.
- **By Invitation**. Persons appearing before committees, etc. by invitation.
- **Govt. Officials & Employees**. Elected or appointed officials or employees of the State, U.S., county, municipality, school district, or other governmental agency when appearing in connection with matters pertaining to their office or public duties.

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- **Professional Services.** Persons performing professional services (e.g., bill drafting or giving legal advice)
- **News Media.** Persons engaged in acquisition & publication of the news.
- **Acting in Official Capacity.** Legislators, legislative employees, & public servants while acting in their official capacities.
- **Responding to Inquiries.** Persons responding to inquiries from legislators, legislative employees, or public servants.
- **Political Committees.** Political committees & their employees or contracted service providers.
- **Nat'l Political Conventions.** Anything of value given or received in connection with seeking or hosting a national convention of a political party.

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Advice & Advisory Opinions for Lobbyists & Liaison Personnel

(G.S. 120C-102)

- “Any person affected” by lobbying law can ask for advice or advisory opinion.
- Informal advice issued by staff.
- Formal advisory opinions issued by Commission.
- Formal advisory opinion confers immunity.
- Same confidentiality & publication provisions apply, *except* Commission must share unredacted copy of the opinion with the Secretary of State’s Office.

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What are the reporting requirements for public servants? (G.S. 120C-800(b) & (d))

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

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Other Laws, Rules, Regulations

In addition to the State Government Ethics Act & Lobbying Law, always think about & check for the applicability of other laws:

- Federal laws
- G.S. 133-32: Gifts To/From Contractors
- G.S. 14-234: "Self-Dealing" Statute
- Executive Orders
- Agency or Departmental Rules or Policies

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2010 Legislative Change Governor's Ethical Standards

- Authorizes the Governor to adopt additional ethical standards for the Governor's appointees to boards and commissions, including those covered by the State Government Ethics Act.
- Authorizes the Governor to adopt additional ethical standards for any employee of a State agency.

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WRAP UP...

GIFTS	CONFLICTS OF INTEREST	SEI's
<ul style="list-style-type: none"> ■ Am I a public servant? ■ Who is paying for it? ■ Is it a "gift"? ■ Is there an exception? ■ Remember: The value of the gift doesn't matter. 	<ul style="list-style-type: none"> ■ Are you taking an official action? ■ Who would benefit? ■ What is the benefit? ■ Would it or could it be inferred that it would impair independent judgment? ■ Do you have a relationship with a participant in the proceeding? ■ Is there a permitted participation exception? 	<ul style="list-style-type: none"> ■ Answer all questions. ■ Due April 15th.

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