Ethics and Lobbying for Public Servants

WHAT YOU NEED TO KNOW TO COMPLY WITH N.C.'S STATE GOVERNMENT ETHICS ACT AND LOBBYING LAW

What if . . .

. . . you arrive at your office and find a pen and pencil set in your chair?

Can you keep it?

What if . . .

. . . you are invited to speak at a Rotary Club about the issues your board is addressing this year? The Rotary Club is not a lobbyist principal.

The Rotary Club provides you with lunch and gives you a $25 check to you thank you for your time.

Can you eat the lunch?

Can you accept the $25 check?

What if . . .

. . . you are invited to a reception sponsored by a lobbyist principal where food and beverages will be served?

Can you attend?

If so, can you eat and drink?

What if . . .

. . . you are asked to sit on the board of directors of a company that is a lobbyist principal?

Does the Ethics Act allow this?

What if . . .

. . . your spouse owns a business that will financially benefit from a proposed rule change or policy that is scheduled to be voted on by the board you sit on?

Can you vote on it?

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

Ethics Laws and Policies…

Other State and Federal Laws

The State Government Ethics Act and Lobbying Law

Agency Policies

Executive Orders

Who is covered by the Ethics Act?

Executive
"Public Servants"

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

Judicial
"Judicial Officers"

- Judges at all levels
  - Supreme Court
  - Court of Appeals
  - Superior Court
  - District Court
- Clerks of Court
- District Attorneys
- Not magistrates

Legislative

- Legislators
- Legislative Employees

Who is *not* covered by the Ethics Act?

The Ethics Act does *not* apply to:

- all state employees
- local government officials (e.g., city council members, county commissioners, sheriffs)
- members of advisory boards (those that make only recommendations to a final decision-maker)

  - But other provisions, including executive orders, might apply. For example, local governments must adopt their own code of ethics.

Who is covered by the Lobbying Law?

- **Lobbyist** – an individual paid to influence legislative or executive action by communicating with or developing goodwill with designated individuals

- **Liaison personnel** – a state employee whose principal duties include lobbying legislators or legislative employees

- **Lobbyist principal** – the person or governmental unit who hires the lobbyist and who pays for the lobbying.

Lobbyist principals are <u>not</u>:

- **Law firms and consulting firms** hired to represent another's interests. If a lawyer in a law firm is hired as a lobbyist:
  - The law firm's client is a lobbyist principal.
  - The law firm is not.

- **Individual members of an association**. If a trade association employs a lobbyist:
  - The trade association is a lobbyist principal.
  - Members of the association are not.

Lobbyist principals are ***not***:

- State agencies
- Local government agencies (unless the local government has contracted with a lobbyist)

Who are "liaison personnel"?

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

- State agencies and boards cannot contract with independent lobbyists to lobby for legislative action unless their statute specifically allows it.

Affirmative Duties under the Ethics Act

You must . . .

- file an SEI each year
- attend ethics education
- monitor and avoid conflicts of interest

Also, agency heads have additional duties

Who must file an SEI?

- Generally, covered persons under the Ethics Act
- Candidates for election to covered offices
- Former *elected* officials in covered offices must file the year *after* leaving office

Exceptions:

- covered state employees making less than $60,000
- voting student members of university and community college boards of trustees

What has to be disclosed?

Certain financial, professional, and 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*

Disclosure of Certain Campaign Contributions

If you were appointed by a Constitutional officer, you must disclose . . .

- contributions with a cumulative total of more than $1,000
- during the preceding calendar year
- to that Constitutional officer.

Disclosure of Certain Campaign Contributions

Constitutional officers include:

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

Disclosure of Campaign-related Activity

If you are:

- a judge,
- the head of a principal state department, or
- appointed by a Constitutional officer . . .

Disclosure of Campaign-related Activity

. . . to serve on one of these boards . . .

- ABC Commission
- Coastal Resources Commission
- State Board of Education
- State Board of Elections
- Employment Security Commission
- Environmental Mgmt. Commission
- Industrial Commission
- State Personnel Commission
- Board of Transportation
- UNC Board of Governors
- Utilities Commission
- Wildlife Resources Comm'n

Disclosure of Campaign-related Activity

. . . you must disclose if you:

- "bundled" contributions,
- hosted a fundraiser in your home or business, **or**
- volunteered for campaign-related activities

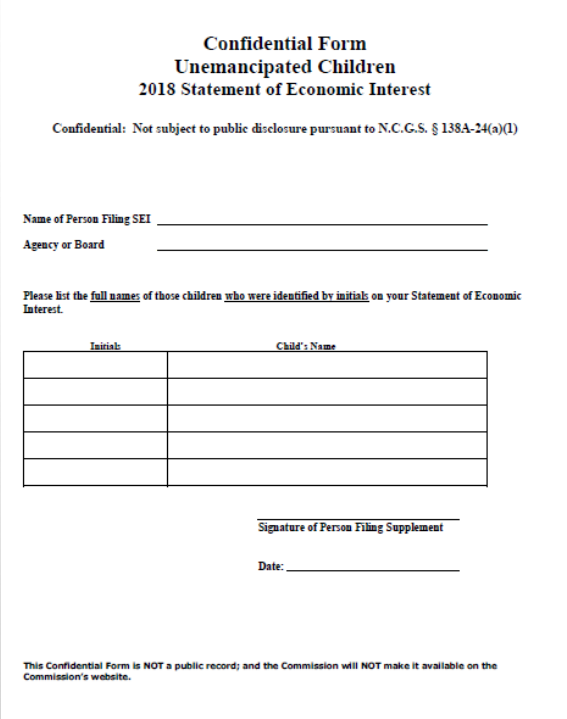
- for that constitutional officer
- in the preceding calendar year.

SEI Helpful Tips

- Read each question carefully.
- List complete name of your board or agency.
- Pay close attention to the time periods the question is addressing – they vary.
- Answer all parts of each question – use “no” or “not applicable” when appropriate.
- Only list minor children’s initials on the SEI – full names on the confidential form.
- Faxed or emailed SEIs cannot be accepted.

Unemancipated Children Form (Confidential)

- List the full names of those children who were identified by initials on your SEI
- Not a public record.



Confidential Form
Unemancipated Children
2018 Statement of Economic Interest

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

Name of Person Filing SEI _____

Agency or Board _____

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

Initials	Child's Name

_____
Signature of Person Filing Supplement

Date: _____

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

When is the SEI filing due?

Initial Filing

The SEI must be filed and evaluated *before* taking your position. Two exceptions:

- Provisional appointments by universities and community colleges. SEI must be filed but not evaluated prior to assuming covered position
- Appointees or employees hired by constitutional officers during the first 60 days of that officer's term

Annual Filing

April 15
(unless that date falls on a weekend or holiday)

Electronic Filing

- Go to the Commission's website and file there directly.
- Benefits
  - Quick!
  - Easy!
  - Your information will be saved for next year!

Manual Filing

- Print a *current* SEI form.
- You can use a no-change form if you have no material changes from the previous year.
- Answer all of the questions.
- Sign.
- Mail or hand-deliver the original to the Ethics Commission.
- Forms available on EC's website.

Corrections to SEI

Corrections

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

Changes in circumstance during the year

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

SEI Violations

Civil Penalties

- $250 civil penalty for late- or non-filing
- possible removal from your public position

Criminal Penalties

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

SEI Evaluations

- Public servant SEIs are evaluated for "actual and potential conflicts of interest."
- A potential conflict does <u>not</u> prohibit service, but might require recusal.
- Evaluation letters help identify cautionary areas.
- SEIs and evaluation letters are public records.

Ethics Education

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

- **Refresher.** They must attend a refresher presentation at least every two years thereafter.

- **Options:** live or online.

- **Violation consequences.** Failure to attend is a violation of the Ethics Act and may result in disciplinary action.

Monitoring and Avoiding Conflicts of Interest

- You must make due and diligent effort to identify conflicts of interest before taking action or participating in discussions.

- You must also continually monitor, evaluate, and manage personal, professional, and financial affairs to avoid conflicts of interest.

Monitoring and Avoiding Conflicts of Interest

- Remember your SEI evaluation letter.
- Review agendas before meetings.
- Ask counsel if you have questions.
- Review this presentation.
- Ask our staff if you're unsure.

Additional Duties for Agency Heads

- Agency heads includes board chairs.
- Take an active role in furthering ethics and ensuring compliance
- Be familiar with Commission's ethics and lobbying opinions, rules, newsletters, etc.

Additional Duties for Agency Heads

- Remind members/employees of their duty to avoid conflicts of interest and ensure conflicts are recorded in meeting minutes.
- Ensure that your legal counsel is familiar with the Ethics Act.
- Consider the need for customized ethics education programs.
- Notify the Commission of changes in public servants.
- Designate an ethics liaison.

Additional Duties for Agency Heads

- Take an active role in furthering ethics in public service and ensuring compliance with the Ethics Act. This means . . .
  - ensuring the Commission is promptly notified when
    - newly covered persons start.
    - previously covered persons depart.
  - periodically reviewing the Commission's website for new information, education opportunities, newsletters, advisory opinions, and rules.

Ethics Liaisons . . .

- do not have to file an SEI unless they are also serving in a covered position

- must attend ethics education and awareness programs (same deadlines apply)

Conflicts of Interest

Two types covered by the Ethics Act:

- financial benefit
- relationships

Using Public Positions in Official Actions (financial benefit)

1. Are you using your public position in an "official action"?

An official action is 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.

Using Public Positions in Official Actions (financial benefit)

2. Who is benefiting from the official action?

- You?
- A member of your extended family?
- A business you're associated with?

Using Public Positions in Official Actions (financial benefit)

3. Is the benefit a "financial benefit"?

- A financial benefit is defined as a direct pecuniary gain or loss to
  - you
  - a "person with which [you are] associated,"
  - your business competitor, **or**
  - a business competitor of a "person with which [you are] associated."

Using Public Positions in Official Actions (financial benefit)

3.b. Is the benefit going to a business you're associated with?

- "Business with which associated" means a business in which you or a member of your immediate family:
  - is an employee,
  - is a director, officer, partner, proprietor, or member or manager of an LLC,
  - owns an interest of $10,000 or 5% (whichever is less), **or**
  - is a lobbyist.

Using Public Positions in Official Actions (an oversimplified summary)

- So if you are about to use your public position in an official action, and one of these would financially benefit:
  - you,
  - your extended family, **or**
  - your business

. . . Don't do it. Consider recusal instead.

Participating in Official Actions (financial benefit)

1. Are you authorized to perform an official action requiring the exercise of discretion?
2. Do you know that you or a person you're associated with might incur a reasonably foreseeable financial benefit from that official action?

Participating in Official Actions (financial benefit)

2.a. Are you associated with the "person" receiving the benefit?

- The definition is broad and includes:
  - a member of your extended family
  - your client
  - a business that you or your immediate family is associated with
  - a nonprofit that you or your immediate family is associated with
  - a state entity that employs you or your immediate family

Participating in Official Actions (financial benefit)

2.b. Is the benefit going to a nonprofit organization you're associated with?

"Nonprofit . . . organization with which associated" means

- any not for profit corporation, organization, or association, ***that is***
- organized or operating in the state ***primarily for***
- religious, charitable, scientific, literary, public health and safety, or educational purposes ***and of which***
- you or your immediate family ***is a***
- director, officer, board member, employee, lobbyist, or independent contractor.

Participating in Official Actions (financial benefit)

3.a. Would that financial benefit would impair your independence of judgment **or**

3.b. Could it be reasonably inferred that the financial benefit would influence your participation in the official action?

Participating in Official Actions (financial benefit)

If so . . .

- Abstain from taking any verbal or written action, **and**
- Submit the reasons for the abstention in writing to the employing entity.

Removal from Proceedings
(familial, personal, or financial relationship)

You must take appropriate steps

- under the particular circumstances and
- considering the type of proceeding involved
- to remove yourself to the extent necessary
  - to protect the public interest and
  - to comply with the Ethics Act . . .

Removal from Proceedings
(familial, personal, or financial relationship)

. . . from any proceeding

- in which your **impartiality might reasonably be questioned**
- due to your familial, personal, or financial relationship
- with a participant in the proceeding

Removal from Proceedings
(familial, personal, or financial relationship)

- "Proceedings" include quasi-judicial proceedings and quasi-legislative proceedings.

- A "personal relationship" includes one in a leadership or policy-making position in a business, organization, or group.

Removal from Proceedings
(familial, personal, or financial relationship)

- A "participant" includes:
  - an owner, shareholder, partner, member or manager of an LLC involved in the proceeding
  - an employee, agent, officer, or director of an organization involved in the proceeding, or
  - an organization that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding.

Safe Harbors for Public Servants

Notwithstanding N.C.G.S. § 138A-36, you may participate in an official action if:

1. The benefit is no greater than the benefit accruing to all members of a profession, occupation, or class;
2. The official action would affect your compensation;
3. Your presence is necessary to obtain a quorum;

Safe Harbors for Public Servants

4. You get written approval in a . . .
   - formal advisory opinion from the commission, **or**
   - written determination from your board or agency that the financial benefit or relationship would not influence your judgment
5. The action is ministerial only and does not require the exercise of discretion.

Hiring or Supervising Extended Family Members

Unless specifically authorized, you cannot:

- employ, appoint, promote, transfer, or advance an extended family to a State office or position you supervise or manage
- participate in any disciplinary action relating to an extended family member

What to do with a conflict of interest . . .

Disclose

. . . the conflict in writing

Recuse

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

Record

. . . the recusal in board minutes

Titles or Positions in Non-governmental Advertising

- You can't mention your public position in non-governmental advertising that advances a private interest.
- Also don't let anyone else mention your public position in that way.

Titles or Positions in Non-governmental Advertising

Exceptions:

- political advertising
- news stories or articles (by media – not self authored)
- directories or biographical listings
- charitable solicitations for 501(c)(3) orgs
- information listed in conference agenda

Letters of Character Reference

- a student seeking admission to college
- a person seeking an academic scholarship
- a person seeking leniency upon sentencing by the courts or other matters related to probation or parole
- a person seeking employment, at the request of the person or the potential employer

State funds for Advertisement or PSA

You can't use State funds for an ad or PSA if it

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

<u>Exceptions</u>

- state or national emergency if the announcement is necessary to your official function
- does not apply to public TV or radio fundraisers

Misuse of Confidential and Non-public Information

You cannot use or disclose nonpublic information in order to affect the financial interest of

- you
- your extended family
- your board or agency
- a business you're associated with
- a person you're associated with

- cannot improperly use or disclose confidential information

Honorarium

- Definition -- payment for services for which fees are not traditionally or legally required

Honoraria

You cannot accept honoraria from any outside source, if one of the following apply:

Your agency reimburses you for travel subsistence, or registration.

or

You use your agency's work time or resources.

or

Activity bears a reasonably close relationship to your official duties. I.e., "but for" being a public servant, you would not be doing it.

Other Compensation

Other than what you receive from the State or what is approved by your agency, you may not solicit or receive personal financial gain for acting in your official capacity.

Limits on Charitable Solicitations

- You may not solicit charitable donations from subordinate State employees.
- **Exceptions:**
  - generic written solicitations to a class of subordinates
  - service as honorary head of State Employees' Combined Campaign

Why the Lobbying Laws Matter to You

- Executive branch lobbying is lobbying.
- State agencies must designate "liaison personnel" to lobby for legislative action.
- "Revolving door" or "cooling off" period for certain public servants and state agency employees.

What is lobbying?

Direct

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

Goodwill

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

What is executive action?

- Generally, all activities associated with making a policy, guideline, RFP, procedure, regulation, or rule by a public servant

What is executive action?

- . . . includes preparation, research, drafting, development, ***consideration***, modification, amendment, adoption, approval, tabling, postponement, or rejection of the policy, rule, etc.

What is not executive action?

- contested case proceedings
- communications involving permits, licenses, eligibility, or certifications
- inquiries regarding a benefit, claim, duty, etc.
- inquiring about or responding to an RFP
- ratemaking
- internal and ministerial functions
- public servant's communications concerning public comments made at or for an open meeting in response to a request for public comment

Lobbyist and Lobbyist Principal Requirements

- **Registration**
  - Lobbyists must register with the Secretary of State for each principal.
  - Principals must file an authorization with the Secretary for each lobbyist.

- **Reporting –** Lobbyists must report their expenses made for lobbying. Timing depends on whether the General Assembly is in session.

- **Identification --** Lobbyists must identify themselves and their principals prior to lobbying.

Prohibitions and Restrictions on Lobbyists

The main one for your purposes is the gift ban:

- they cannot give, and
- you cannot take

except in certain circumstances.

These things are not lobbying:

- appearing before a committee by invitation
- government officials and employees acting in connection with matters pertaining to their public office and duties
- performing professional services (such as bill drafting)
- expressing personal opinions
- designated individuals (public servants = board members) acting in their official capacity
- responding to inquiries

"Cooling-off" Periods

Agency Employees

A former state agency employee cannot register to lobby . . .

- that agency
- for six months after leaving the agency, but
- can register and lobby *other agencies* immediately.

Const'l Officers and Principal Dept. Heads

. . . cannot register as a lobbyist

- while in office
- for six months after leaving office

"Cooling-off" Periods

A legislator cannot register as a lobbyist:

- while in office, or
- before the later of the close of session in which serving or six months after leaving office.

Lobbying Law Violation Consequences

- Civil penalties
- Criminal consequences
  - If willful → Class 1 misdemeanor
  - Ban on lobbying for two years

How to know if someone is a lobbyist or lobbyist principal?

- Check the Secretary of State's website: https://www.sosnc.gov/divisions/lobbying

- To see a lobbyist principal's authorization, click on one of its lobbyists, then click "Filings" under that lobbyist.

Gift Ban (generally)

- You cannot accept a gift directly or indirectly, from a prohibited giver. These include:
    - lobbyists
    - lobbyist principals
    - "interested persons"
- unless it is permitted under the Ethics Act.

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"Interested Persons"

These are persons who:

- are doing or seeking to do business with your agency or board;
- are engaged in activities that are regulated or controlled by your agency or board; or
- have financial interests that may be substantially affected by the performance of your official duties.

Nobody keeps a list.

What is a "gift"?

- anything of monetary value that you receive from a prohibited giver
- no *de minimis* exception
- So a cup of coffee can be a gift.

What is not a "gift"?

- things paid for at fair market value
- commercially available loans made on same terms and not for lobbying
- contractual or commercial arrangements not made for lobbying
- academic or athletic scholarships
- campaign contributions properly received and reported
- certain expressions of condolence

Gift Ban Exceptions (generally)

- You must meet the specific criteria for each one.
- If allowed, the items generally must be reported, usually by the prohibited giver.
- Reports
  - are filed with the Secretary of State
  - generally include the name of the recipient and a description and value of the item
  - are public record

Gift Ban Exceptions
(Food and Beverages at Public Gatherings)

For "immediate consumption" at:

a. an open meeting of a public body

b. a gathering of a person or governmental unit with at least ten people in attendance that is open to the public and has a sign indicating as much

Gift Ban Exceptions (Food and Beverages at Public Gatherings)

c. . . . for immediate consumption when at least one of the groups on the left is "invited" and one of the conditions on the right is true.

- all House or Senate members,
- all members of a county or municipal legislative delegation,
- a recognized caucus,
- a General Assembly committee,
- all legislative employees,
- 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, members, etc. located in N.C. are invited.

Gift Ban Exceptions (Food and Beverages at Public Gatherings)

- For this purpose, "invited" means the host gave written notice:
  - containing the date, time, and location,
  - at least 24 hours in advance,
  - from at least one host or sponsor,
  - to the specific qualifying group.
- If the event is sponsored by a lobbyist or lobbyist principal, the invitation must say whether the event is permitted by this exception.

Gift Ban Exceptions (Food and Beverages at Meetings re: Official Duties)

You can accept food and beverage for immediate consumption at a gathering where your attendance is primarily related to your public position, **if**

- 10 people other than you or your family attend, **or**
- All members of the person or governmental unit who are located in a specific N.C. office or county are invited

Gift Ban Exceptions (Educational Meetings and Meetings of Nonpartisan Organizations)

You can accept reasonable actual expenditures for food, beverages, registration, travel and lodging in connection with your:

- attendance at an educational meeting primarily related to your public duties,
- participation as a speaker or panel member at a meeting, or
- participation in meetings as a member of a nonpartisan organization of which your agency is a member

Gift Ban Exceptions (Educational Meetings and Meetings of Nonpartisan Organizations)

Conditions

- Applies to lobbyist principals only.
- Meetings must be attended by at least ten people.
- Formal agenda required.
- Ten days notice.
- Entertainment must be incidental.
- Everybody gets the stuff.
- You must be a bona fide speaker.

Gift Ban Exceptions (industry- and tourism-related)

You may accept food, beverage, transportation, lodging, entertainment, or related expenses if:

- you're responsible for conducting industry recruitment or promoting international trade or tourism
- you did not solicit or accept the gift in exchange for performing public duties; and
- you report the gift to the Ethics Commission

Gift Ban Exceptions (Informational Materials)

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

Gift Ban Exceptions (Customary Protocol)

You can accept a gift if it is . . .

- valued at less than $100
- given in accordance with customary protocol
- as part of an overseas trade mission

Gift Ban Exceptions (Extended Family)

You may accept gifts from your extended family or household member even if that person is a prohibited giver.

Gift Ban Exceptions
(business relationship with lobbyist principal)

- **If** you are a director, officer, board member, employee, or independent contractor of a lobbyist principal (or a third party that received funds from the principal) **and**
- . . . you're at a conference, **then**
  - a lobbyist principal (but not a lobbyist) may pay for
  - food and beverage for immediate consumption, and related transportation
  - available to all attendees of same class

Gift Ban Exceptions (Other Relationships)

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

- relationship is not based on public position; and
- a reasonable person would conclude not given for "lobbying"

Gift Ban Exceptions
(Plaques and 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.

Gift Ban Exceptions (Gifts to the General Public or All State Employees)

You may accept anything made available to the general public or all State employees.

UNC Athletic Tickets

- Special prohibition that applies to the UNC Board of Governors, UNC constituent institutions, and their legislative liaisons. They cannot give:
  - public servants, legislators, or legislative employees
  - athletic tickets
  - for lobbying

Gift Ban Exceptions (Accepted on Behalf of the State)

You may accept gifts:

- on behalf of the State,
- for use by the State, or
- for the State's benefit.

Gift Ban Exceptions (Reimbursable Expenses)

A lobbyist, lobbyist principal, or an interested person can . . .

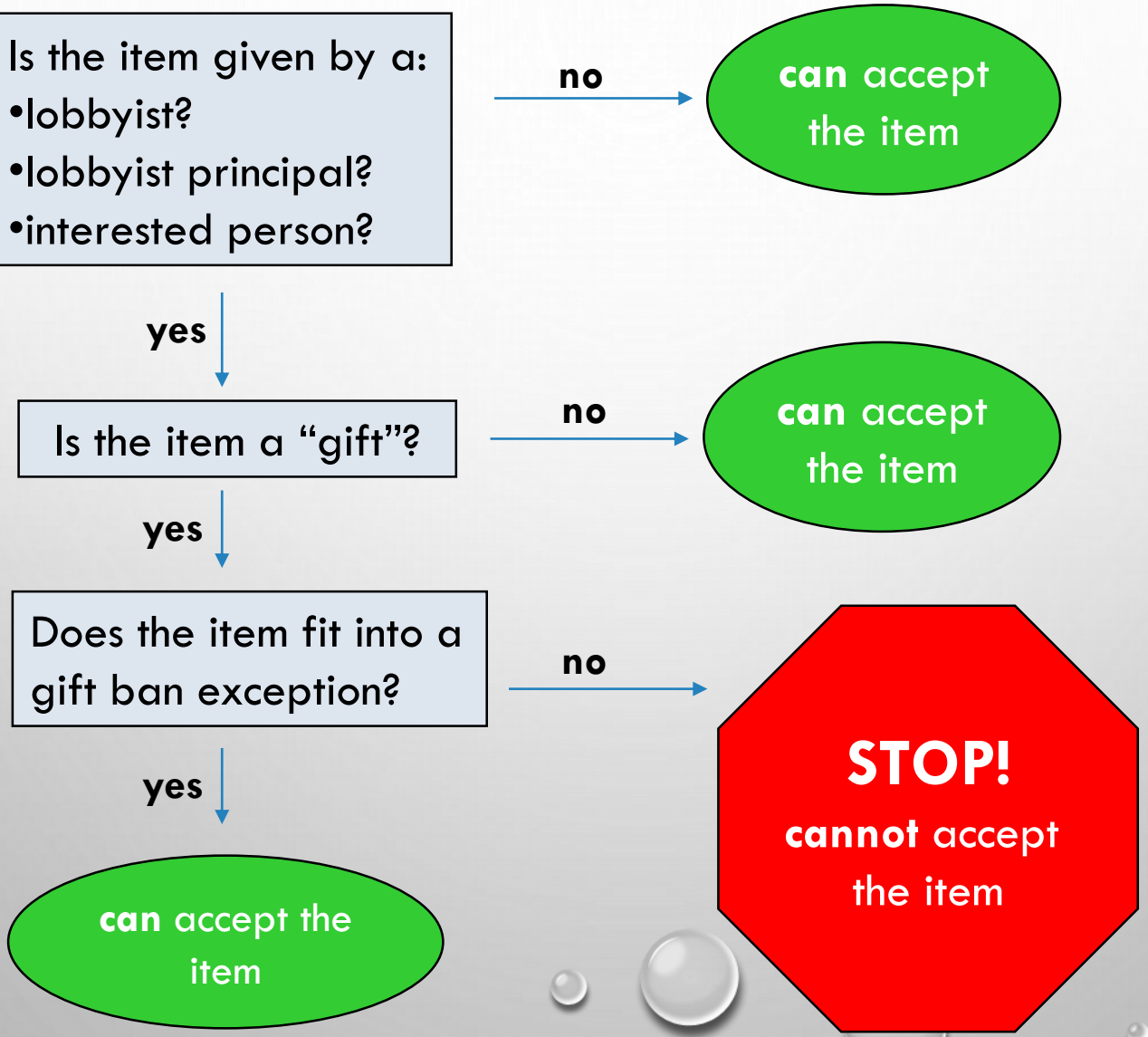
- pay an expense of yours that would otherwise be reimbursable by the State
- as long as you received approval in advance to accept the expense on the State's behalf.
- The actual cost may exceed the State reimbursement rate.

Re-gifting and De-gifting

If you receive a prohibited gift, there's still hope for you! You can . . .

- decline it
- return it
- pay fair market value for it
- donate it to charity or to the State

Decision Tree for Gifts



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Reminder about Reporting

- Gifts to public servants are reported, generally by the giver.

- But there are two instances when the reporting requirement is on *you*…

Reporting Requirements for Public Servants

What and Value	Reportable expenditure valued over $200/calendar quarter	Scholarship (grant-in-aid to attend meeting) valued over $200/calendar quarter
From	Person • Outside N.C. • Not required to register	Person • Outside N.C. • Not required to register
Why	Made for lobbying	Scholarship related to public service or position
Where Accepted	outside N.C.	inside **or** outside N.C.
Reporting	You must promptly report date, description, name of person, and estimated FMV to the Secretary of State or on your next SEI	You must promptly report date, event, name of person granting scholarship, and estimated FMV either to the Secretary of State or on your next SEI

Ethics Complaints

- Anybody can file an ethics complaint.
- Complaints must . . .
  - be in writing
  - state specific facts alleging a violation of law and when the alleged violation occurred
  - be signed and sworn
  - be filed within two years.

Notice of Allegations

- You will be notified immediately upon the Commission's receipt of a written allegation of unethical conduct.
- "Written allegation" is construed broadly.
- Not all written allegations are valid.

Confidentiality

Complaints, responses, and other investigative documents related to Ethics inquiries are confidential, *unless*:

- the Respondent waives confidentiality,
- a hearing commences, or
- sanctions are recommended to the employing entity

After a Complaint is Filed

1. Preliminary inquiry – two-member panel

2. Probable cause determination – same panel

3. Hearing or referral. If probable cause is found,
   - for public servants, open hearing before the Commission

Consequences

- For employees, willful noncompliance is a violation of a written work order permitting disciplinary action, including termination.

- For board members, willful noncompliance is considered misfeasance, malfeasance, or nonfeasance justifying removal.

- Additional civil and criminal penalties may apply for SEI violations.

Who can ask for ethics advice?

- You
- Your supervisor if you're a covered employee
- Your appointing authority
- Your legal counsel
- Your agency's ethics liaison
- the State Auditor's office.

The Commission can also issue advisory opinions on its own motion.

Unless authorized by statute, the Commission does not issue advice to third parties about a covered person's conduct.

What can you ask for?

- Informal advice from Commission staff
- Formal advisory opinions from the Commission

  - Both are confidential, including your identity and the existence of the request.
  - Redacted formal advisory opinions are published on the Commission's website.

Comparing Informal and Formal Ethics Advice

Informal Advice

- Request can be written or by phone
- No immunity
- Issued by Commission staff
- Not published

Formal Advisory Opinion

- request must be in writing
- confers immunity
- issued by Ethics Commission
- published in redacted form within 30 days of issuance.

What “immunity” means here

Following the advice in a formal advisory opinion yields immunity from:

- investigation by the Commission and the Secretary of State; and
- adverse action by the employing entity.

The statute does not provide immunity for violations of criminal law in the performance of your official duties.

When should you ask?

- Anytime you are unsure about what you should do
- Must be <u>before</u> the situation occurs.
- Requests for advice and formal advisory opinions must relate prospectively to real or reasonably anticipated circumstances.

Why should you ask?

- An ounce of prevention is worth a pound of cure.
- Formal advisory opinions bring immunity.
- Violations can result in disciplinary action including dismissal or removal from your public position.

Other Laws, Rules, Policies

Gifts to and from Contractors

- By statute, State employees involved in the contracting process cannot accept gifts or favors from contractors.
- Executive Order No. 24 extends prohibition to employees in cabinet agencies and Governor's office.
- Executive Order No. 34 extends it to Governor's appointees to boards and commissions.

Other Laws, Rules, Policies

- **Other agency and departmental policies**
  - The Ethics Act authorizes agencies to adopt additional ethical standards.
  - The Governor is also authorized to adopt additional ethical standards for state agency employees and gubernatorial appointees

Other Laws, Rules, Policies

- **Other statutes** -- Some agencies have specific ethical requirements in their statutes.

What if . . .

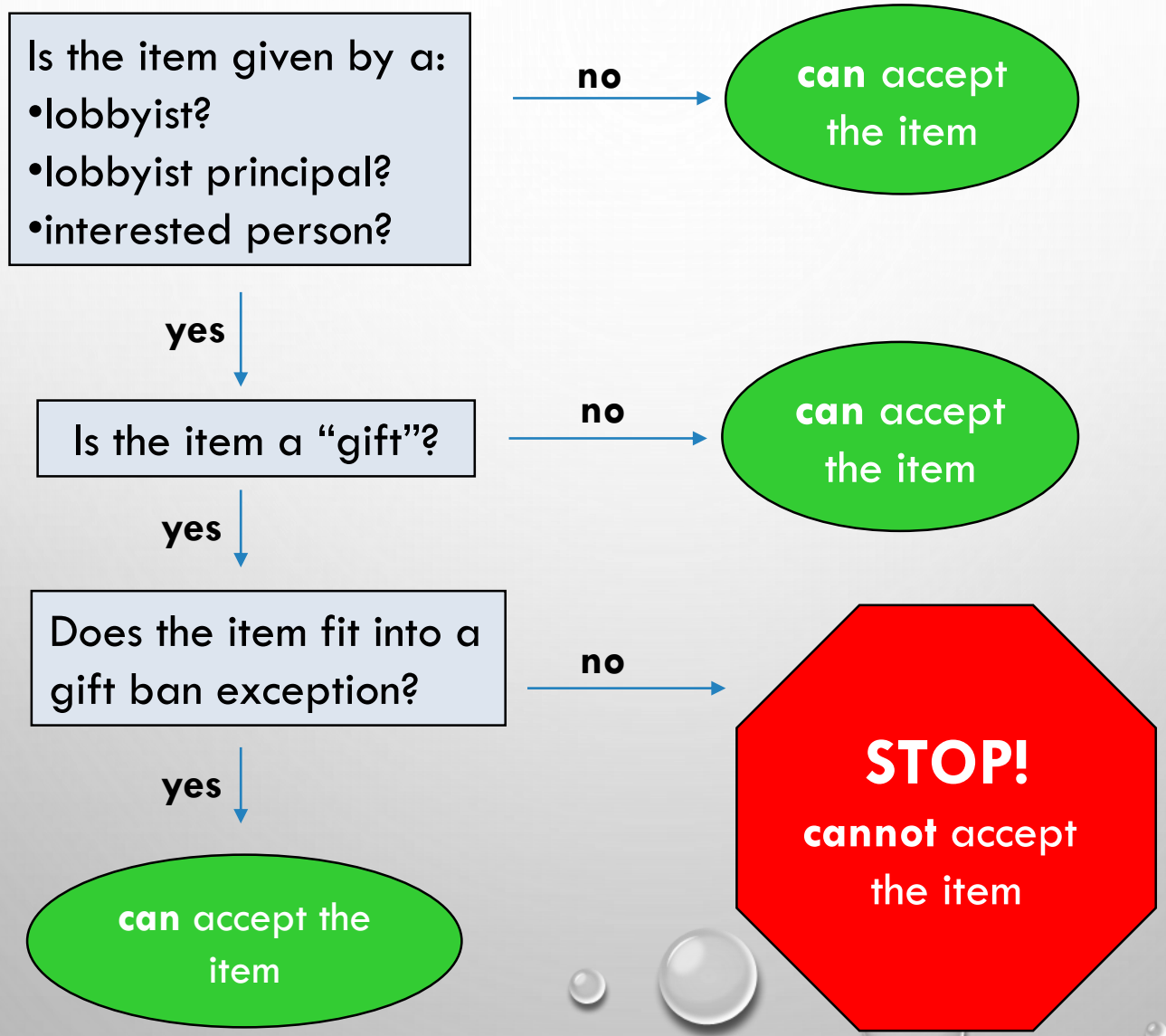
. . . you arrive at your office

and find a pen and pencil set

in your chair. Can you keep it?

Upon opening the box, you find a note indicating the set is from a company that is licensed by your agency.

Decision Tree for Gifts



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What if…

You are invited to speak at a Rotary Club about the issues your Board is addressing this year. The Rotary Club is *not* a lobbyist principal or affected by your Board's official decisions.

- Can you speak to the club?

The Rotary Club provides lunch and a $25 check to you thanking you for your time.

- Can you eat the lunch?
- Can you accept the $25 check?

What is being given here, by whom, and can it be accepted?

- Remember: a gift is anything of monetary value given by a prohibited giver.
- So ask: Is the Rotary Club a lobbyist, lobbyist principal, or interested person? **No.**
- So eat up.

What about the check?

- Remember: an honorarium is "payment for services for which fees are not traditionally or legally required."
- So ask: Does speaking to the Rotary Club bear a reasonably close relationship to your official duties? **Yes.**
  - "But for" being a member on the state board, you would not be speaking to the Rotary Club.
- So: you cannot accept the $25 honorarium check under these facts.

What if . . .

- You’ve been invited to a reception sponsored by a lobbyist principal where food and drinks will be served.
- Upon reading the invitation, you realize the lobbyist principal is not regulated by and has no interests before your agency.

- Can you attend?

- If so, can you eat and drink?

Decision Tree for Accepting Items

Is the person funding the reception a:
- lobbyist
- lobbyist principal
- interested person?

yes

Are the food and beverages "gifts"?

yes

Do the food and beverages fit into a gift ban exception?

no

STOP!
CANNOT accept the food and beverage

yes

CAN accept the food and beverage

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What if . . .

- You are asked to sit on the board of directors of a company that has hired a lobbyist and is therefore a lobbyist principal.

- Does the Ethics Act allow this?

Allowed . . . <u>if</u> no actual conflicts exists.

- If actual conflict exists, you would either need to eliminate the conflict or resign your public servant position.

- If no actual conflict, allowed but need to consider potential conflicts.

- If a potential conflict arises:
  - disclose
  - recuse
  - record

What if…

Your spouse owns a business that will financially benefit from a proposed rule change that is scheduled to be voted on by your board.

- Can you vote on it?
- Can you *participate* in the discussion of the proposed rule change?

Analysis

1. Are you taking "official action"?

Yes. Voting and deliberations or discussions are "official action"

2. Will a person you're associated with benefit?

Yes. "Person with which associated" includes a business your spouse owns.

3. Is it a "financial benefit"?

Yes. Direct pecuniary gain to your spouse's biz counts.

4. Does a safe harbor apply?

Seems unlikely.

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