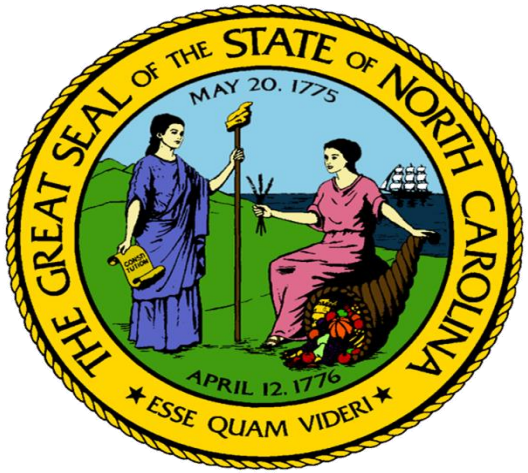



# ETHICS & LOBBYING EDUCATION FOR PUBLIC SERVANTS

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

# *What if…..*

You arrive at your office and find a pen & 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 & 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 has hired a lobbyist and is therefore a lobbyist principal.

**Does the State Government Ethics Act allow this?**

# *What if…*

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

Can you vote on it?

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

# Ethics Laws & Policies…

State & Federal Laws

The State Government Ethics Act and the Lobbying Law

Agency Policies

Executive Orders

# WHO ARE THE “PLAYERS” UNDER THE

## State Government Ethic Act

# WHO IS COVERED BY THE ETHICS ACT?

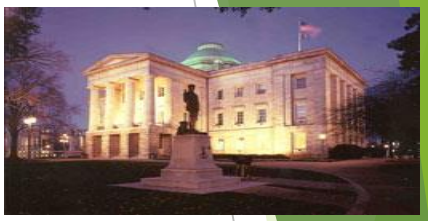
## LEGISLATIVE

- Legislators
- Legislative Employees

## JUDICIAL
## *"Judicial Officers"*

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

## EXECUTIVE
## *"Public Servants"*



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

# Who is NOT Covered by the State Ethics Act?

## The Ethics Act does NOT apply to

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

# WHO IS COVERED BY THE LOBBYING LAWS OF THE STATE ETHICS ACT?

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

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

Are **NOT**

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

**or**

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

**or**

State Agency

**or**

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

# WHO ARE … Governmental Liaisons/ "Liaison Personnel"?

State or local government 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.

# ETHICS ACT CODE OF CONDUCT:

## AFFIRMATIVE DUTIES

**You Must:**

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

***Attend*** ethics education

***Monitor & avoid*** conflicts of interest

**Plus:**

***Agency heads*** have additional duties

# WHO must file a Statement of Economic Interest (SEI)?

- Generally, most everyone covered by the State 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 & community college boards of trustees

# 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 & descendants (great grandparents, grandparents, parents, children, grandchildren, great grandchildren, etc.), siblings, AND the spouse of any of the above

# Disclosure of Certain Campaign Contributions

Appointed to a ***covered board***

A board subject to the Ethics Act

By a ***Constitutional Officer***

- 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***

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

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

For the **Constitutional Officer who appointed** you

→

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

# SEI HELPFUL TIPS

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

**NORTH CAROLINA STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT**

**2018 STATEMENT OF ECONOMIC INTEREST**

FOR COMPLIANCE UNIT USE ONLY

Date Received:

____ Checked for Completion

**CONTACT INFORMATION**

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

919-814-3600 www.ncsbe.gov/Ethics/SEI

**THIS ENTIRE FORM MUST BE COMPLETED TO FULFILL YOUR SEI FILING OBLIGATION.**

COMPLETE THIS FORM AND SEND SIGNED ORIGINAL TO:

**NORTH CAROLINA STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT**

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

*HAND DELIVERY:*
The Dobbs Building
430 N. Salisbury Street.
3rd Floor
Raleigh, NC 27603

FILER’S NAME (FIRST, MIDDLE, LAST)

| Prefix | First Name | Middle Name | Last Name | Suffix |
|---|---|---|---|---|
| | | | | |

MAILING ADDRESS (REQUIRED)

| Address | City | State | Zip |
|---|---|---|---|
| | | | |

| DAYTIME PHONE NUMBER (REQUIRED) | ALTERNATE PHONE NUMBER |
|---|---|
| | |

E-MAIL ADDRESS (REQUIRED)

HOME ADDRESS:

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

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

☐ Same as Mailing Address

| Address | City | State | Zip |
|---|---|---|---|
| | | | |

**This contact information page is a public record.**

# CONFIDENTIAL FORM UNEMANCIPATED CHILDREN (attached to the SEI - last page)

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

**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

SEI must be *filed* & evaluated before taking your position

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

## Annual Filing

***2019 ANNUAL* Filing**

**Manual Filing Began January 15**

**Ends April 15th**

**Electronic Filing TBD**

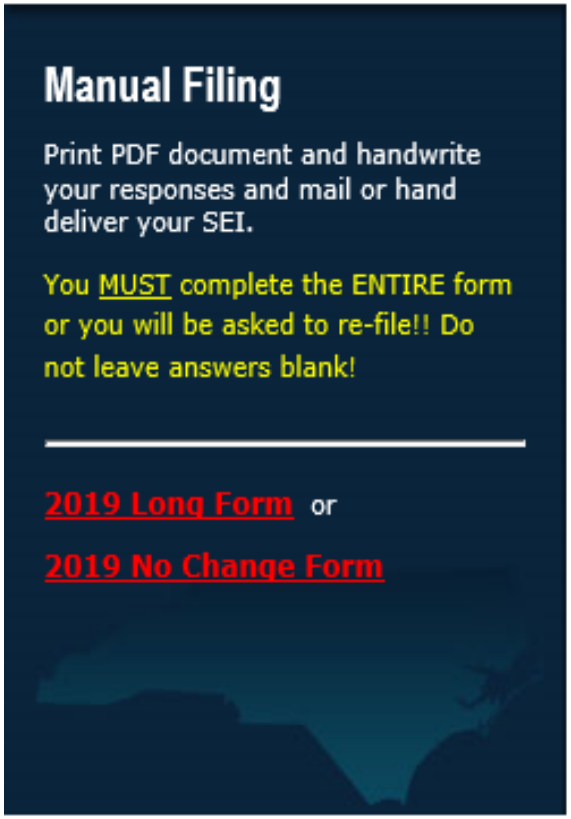
***ANNUAL* FILING DEADLINE**

**APRIL 15TH**

# HOW do I file in 2019?

## Manual Filing in 2019

- ✓ Print out the correct SEI form
  - ✓ **Must use correct year** =
    - ✓ 2019 form for 2019
  - ✓ **Long Form or No Change Form**
- ✓ Fill in your responses
- ✓ Sign
- ✓ Mail or hand-deliver the original to the State Ethics Commission
  - Forms available on website: https://ethics.ncsbe.gov then under "Statement of Economic Interest"



# HOW do I file in 2019?

## Electronic Filing

Filing commencement date to be determined and announced in the near future

# HOW do I file in 2019?

## Electronic Filing – When Open For Filing

- ✓ Go to website www.ethicscommission.nc.gov or ethics.ncsbe.gov.
- ✓ Click on "Statement of Economic Interest" or "Ethics" then "SEI".
- ✓ Click "Register."
- ✓ Complete all of the required information, including an id and a passcode, and click on "Create Account."
- ✓ You will receive a confirmation email that your account has been created and you will validate your account.
- ✓ Choose the type of filer you are – Regular, MPO/RPO, Candidate, Post-office.
- ✓ Answer the questions to determine which SEI form you need to complete – Long or No-Change.
- ✓ Complete the form electronically.
- ✓ Submit your SEI electronically.

# CORRECTIONS OR CHANGES TO SEI

## CORRECTIONS

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

## POST-FILING CHANGES

- Once 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 Penalty for Late or Non-Filing

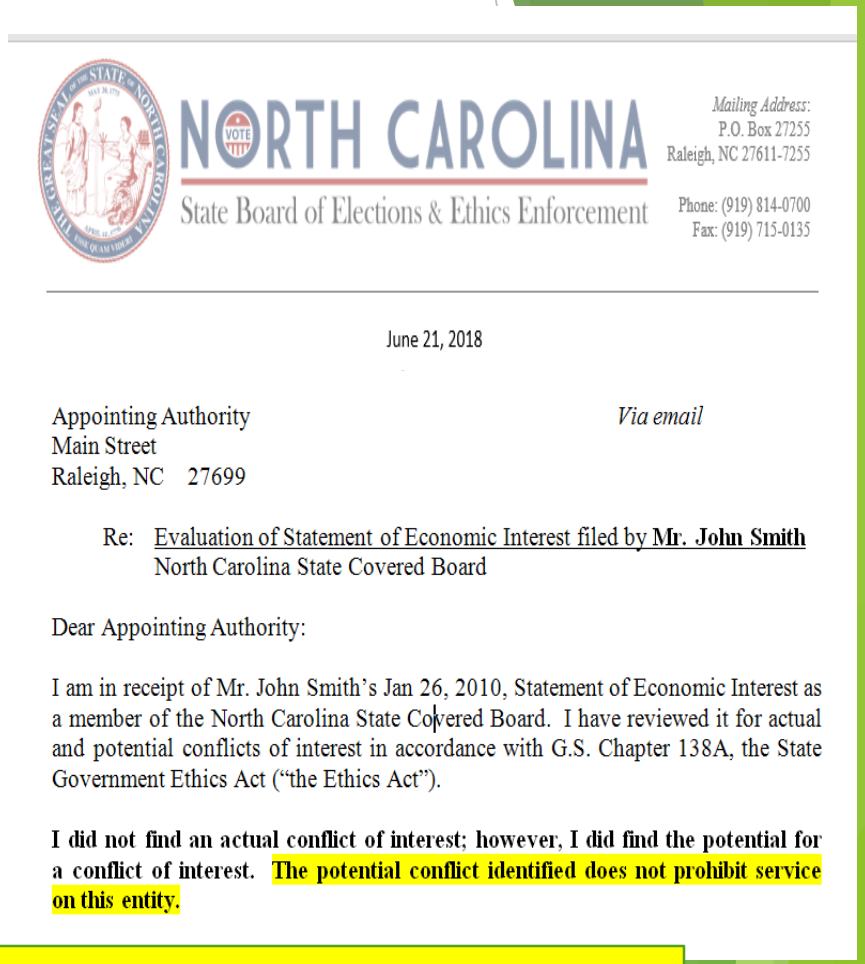
- $250 civil penalty
- Possible **removal from your public position**

## 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 & potential conflicts of interest"
- ✓ Having a conflict does <u>not</u> mean you cannot serve
- ✓ May require you to recuse yourself
- ✓ *Evaluation letters help you identify areas where you need to exercise caution – they are "red flags"*



NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611-7255

Phone: (919) 814-0700
Fax: (919) 715-0135

June 21, 2018

Appointing Authority
Main Street
Raleigh, NC 27699

*Via email*

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

Dear Appointing Authority:

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

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

**SEIs & evaluation letters are public records!**

# ETHICS EDUCATION

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

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

- **Options: Live** or **Online.**

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

# MONITORING & AVOIDING CONFLICTS OF INTEREST

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

Remember your SEI evaluation letter

Review board's agenda prior to meeting

Ask your legal counsel if you have any questions

Review Ethics Act Conflict of Interest materials in this handout

**Duty to ask the Ethics Commission if unsure**

# ADDITIONAL DUTIES FOR AGENCY HEADS

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

# RESPONSIBILITIES OF ETHICS LIAISONS

Serve as the POINT OF CONTACT for the Ethics Commission and the EL's board or agency.

- Promptly notify SEI Unit of newly covered employees/ appointees/members.
- Provide new person's name, appointing authority, start date, and end date.
- Notify the SEI Unit when employees/appointees retire, resign, or otherwise leave their position.
- Periodically review the Commission's website for new information, education opportunities, newsletters, and advisory opinions and rules.

# Ethics Liaisons:

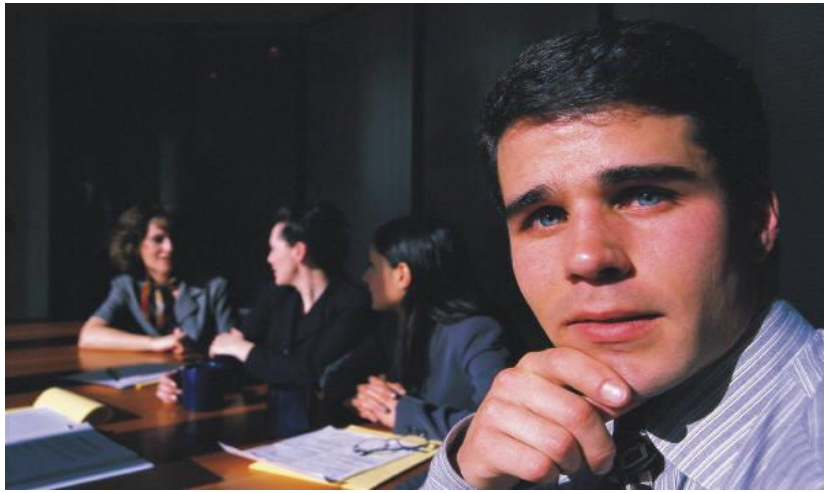
- Do NOT have to file an SEI, unless they are also serving in a covered position
- Must attend ethics education and awareness programs as required by G.S. 138A-14(e).
  - Within 6 months of being assigned or designated
  - At least every two years thereafter.

# ETHICS ACT CODE OF CONDUCT

## PROHIBITIONS:
## CONFLICTS OF INTEREST

# CONFLICTS OF INTEREST

Personal vs. Public Interest



Two Types of Conflicts of Interest Covered by the Ethics Act:

- Financial Benefit
- Relationships

# Conflict of Interest: Financial Benefit -- Questions to Ask

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

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

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

# CONFLICT OF INTEREST: "FINANCIAL BENEFIT"

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

**EXTENDED FAMILY**

Member of Extended Family

OR

**CLIENTS**

Your clients

OR

**BUSINESS**

with which you or immediate family is

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

OR

**NON-PROFIT**

with which you or immediate family is

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

OR

**GOVERNMENTAL ENTITIES**

State Entity or Political Subdivision that Employs you or Immediate Family

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

# CONFLICT OF INTEREST: RELATIONSHIP WITH "PARTICIPANT IN PROCEEDING"

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

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

↓

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

→ ***Personal* relationship** includes a leadership or policy-making position in an organization

↓

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.

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

**Benefits to Class or Group**

The benefit to you or a "person with which associated" is no greater than benefit to all members of the profession, occupation, or class

**Compensation**

Official actions affecting your compensation

**Quorum**

You can be counted to obtain quorum

**Legal or Ministerial**

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

-Ministerial acts

**Disclosed & Authorized**

-Written advisory opinion from Ethics Commission authorizes participation; or

-Written determination from your board or agency that financial benefit or relationship would not influence your judgment

# What Do You Do If You Have a Conflict of Interest

**DISCLOSE**

Disclose the conflict in writing to your agency or board

**RECUSE**

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

**RECORD**

Record recusal in board minutes

# ETHICS ACT CODE OF CONDUCT:

## OTHER PROHIBITIONS

# Use of Title or Position in Non-Governmental Advertising

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

# Use of Title or Position in Non-Governmental Advertising

## Exceptions:

- Political advertising
- News stories or articles (by media - not self authored)
- Directories or biographical listings
- Charitable solicitation for 501(c)(3)
- Information listed in meeting agenda
- Letters of Reference

# Letters of Character Reference

## May mention their title or position in a Letter of Character Reference for any of the following:

- A student seeking admittance to a school or institution of higher education.
- An individual seeking an academic scholarship.
- An individual seeking leniency upon sentencing by the courts or other matters related to probation or parole.
- An individual seeking employment, at the request of that individual or in response to the inquiry of a potential employer as to the qualifications and character of that individual.

# Use of State Funds for Advertisement or Public Service Announcement

Cannot use State Funds for advertisements or public service announcements if it

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

Exceptions:

- 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 & Non-Public Information

- Cannot use or disclose nonpublic information in order to affect the financial interest of
  - You
  - Your extended family
  - Governmental unit with which you are associated
  - Business with which you are associated
  - Person with which you are associated

- Cannot improperly use or disclose confidential information

# Hiring or Supervising Extended Family Members

Unless specifically authorized,

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

# “Quid Pro Quo”

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

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

# Honoraria

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

Cannot accept honorarium from ***any outside source***, if 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 performing the activity

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

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

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

# LOBBYING LAWS

## WHAT IS "LOBBYING" AND WHAT DO YOU NEED TO KNOW ABOUT IT?

# Why the Lobbying Laws are Important to Public Servants

- Executive Branch lobbying is regulated
- 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

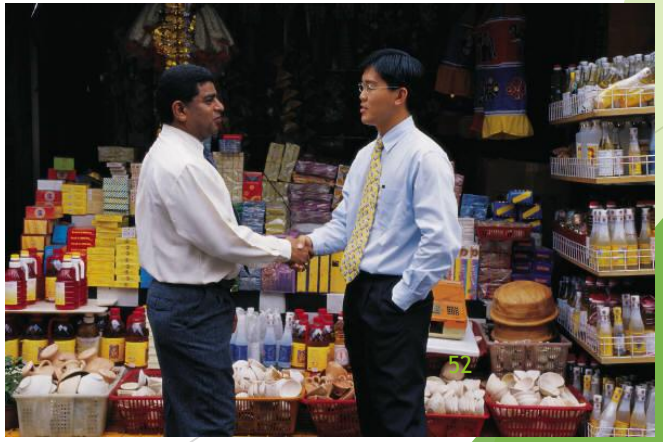
# WHAT IS *"LOBBYING"*?

## 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"*?

## IS "Executive Action"

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

## Is NOT "Executive Action"

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

# Lobbyist & Lobbyist Principal Requirements

## Registration

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

## Reporting

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

## Identification

- ✓ Lobbyists must identify themselves and their principals prior to lobbying

# Prohibitions & Restrictions on Lobbyists

The main one for your purposes is the *Gift Ban*:

- They cannot give, and
- You cannot take

Except in certain circumstances.

# Exemptions from Lobbying Laws

- 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)
- Expression of personal opinions
- Designated individuals (public servants = Board members) acting in their official capacity
- Responding to inquiries

# "Cooling-Off" Period:

| Legislators | Constitutional Officers & Principal Dept. Heads | State Agency Employees |
| --- | --- | --- |
| Cannot register as a lobbyist:<br><br>• While in office<br><br>• Before the later of the close of session in which serving or 6 months after leaving office | Cannot register as a lobbyist<br><br>• While in office<br><br>• For 6 months after leaving office | A former State agency employee cannot register to lobby<br><br>• the State agency that previously employed him/her<br><br>• for 6 months after leaving the State agency<br><br>• Can register & lobby ***other agencies*** |

# Lobbying Law *Violation Consequences*

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

# ETHICS ACT & LOBBYING LAW

## NC's "GIFT BAN"

# NC's GIFT BAN:

- 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!**



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**

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

Persons who:

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

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

## NC's GIFT BAN :

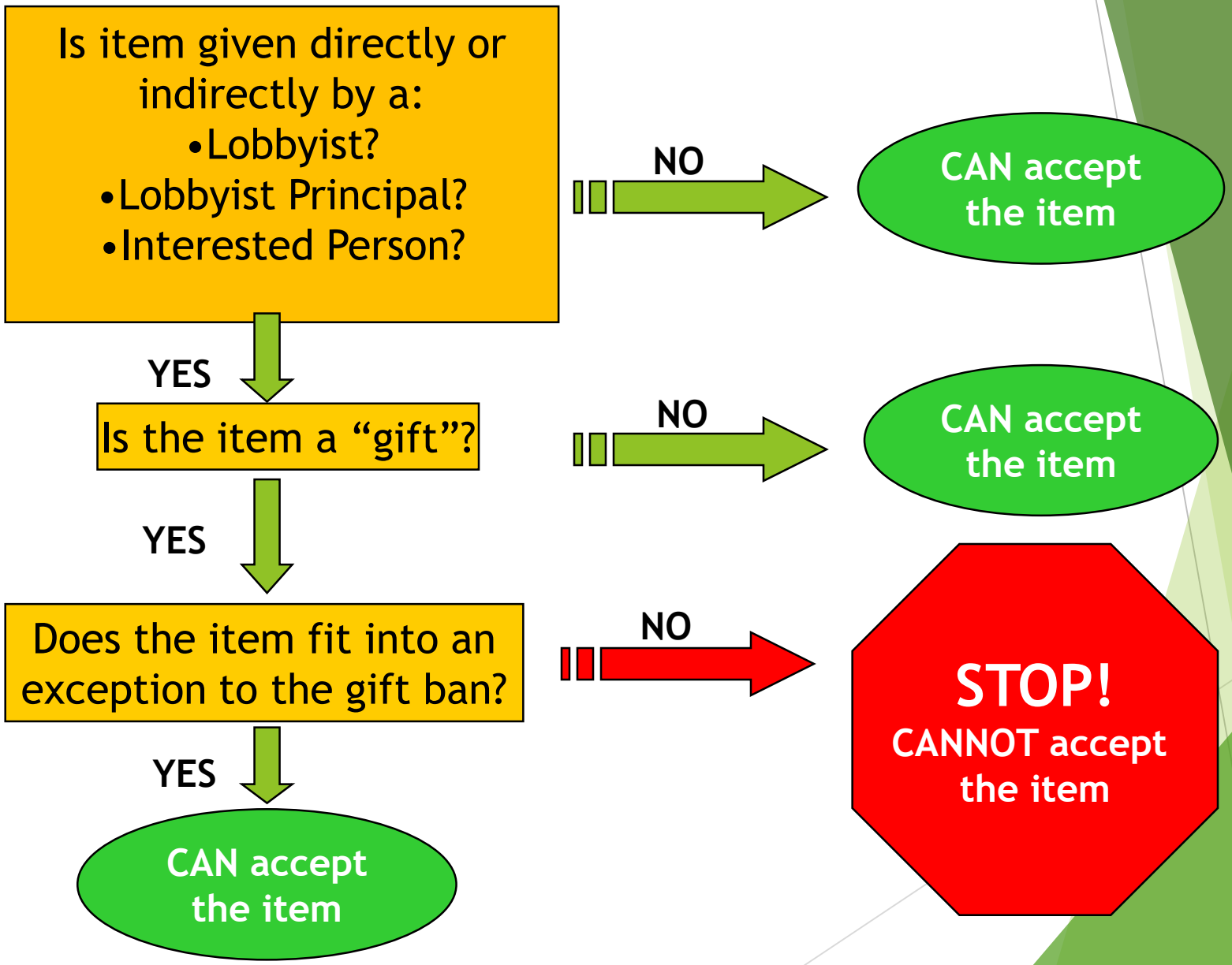
# *WHAT IS A "GIFT"?*

- ✓ A gift is **anything of monetary value** that you receive from a prohibited giver
- ✓ ***No de minimis exception***
- ✓ ***A cup of coffee can be a gift***

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

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

# DECISION TREE FOR GIFTS



NC's GIFT BAN:

# *Are there exceptions?*

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

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

# GENERAL EXCEPTION CATEGORIES

I. RECEPTIONS, MEETINGS & CONFERENCES GENERALLY
   a) Public Meetings & Gatherings
   b) Official Duties
   c) Reimbursable Expenses
   d) Educational Meetings & the Speaker Exception
II. NONPARTISAN AGENCY ORGANIZATIONS
   a) Meetings & Conferences
   b) Gifts Directly to Non-Partisan Organizations
III. INFORMATIONAL MATERIALS
IV. BEHALF OF THE STATE OR RELATED TO STATE BUSINESS
V. FAMILY, FRIENDS & OTHERS
   a) Family
   b) Other Relationships
   c) Relationship with a Lobbyist Principal
   d) Plaques & Nonmonetary Mementos
VI. GENERAL PUBLIC
VII. UNC ATHLETIC TICKETS

# I. Receptions, Meetings & Conferences:
## *Public Meetings & Gatherings*

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

**Open Meeting of Public Body**

**Gathering Open to the <u>General Public</u>**

- ✓ **10 or more attendees**
- ✓ **Sign or other communication outside gathering indicating open to the public**

# *Receptions & Other Gatherings*

- Any **prohibited giver** can pay for
- **Food & beverage** for **immediate consumption** when at least one of the groups from each of the boxes below are "invited":

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

***And***

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

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

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

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

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

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

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

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

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

**5.0 TRAVEL POLICIES AND REGULATIONS**

**Table of Contents**


5.0 Travel Policies and Regulations ..... 123
5.1 Travel Policies for State Employees ..... 124
5.2 Travel Policies for State Officials ..... 134
5.3 Travel Policies for Members of State Boards, Commissions, Committees, and Councils (Other than Licensing Boards and Members of the General Assembly) ..... 135
5.4 Travel Policies for Agency Committees Not Established by G.S. 143B-10(d) ..... 137
5.5 Travel Policies for Licensing Boards (Other than State Employees) ..... 137

# I. Receptions, Meetings & Conferences: *Educational Meetings & Speaker Exception*

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

# II. NONPARTISAN AGENCY ORGANIZATIONS: *Meetings & Conferences*

- ✓ **Lobbyist principal ONLY**
- ✓ Can pay reasonable actual expenditures for food & beverage, travel, registration, lodging, incidental items of nominal value, & incidental entertainment for
- ✓ **Attendance at a 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 be incidental to the principal agenda**

# II. Nonpartisan Organizations

## *Gifts Directly to Nonpartisan Organization*

**Gifts are allowed if they are:**

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

# III. Informational Materials

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

# IV. On Behalf of the State

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

# IV. Related to State Commerce

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

- Gift not otherwise subject to an exception
- Public servant is responsible for conducting industry recruitment, international trade, or tourism promotion
- Gift was not solicited or accepted in exchange for performing public duties; **and**
- Gift is reported to the State Board of Elections & Ethics Enforcement

**Cultural Protocol.** Gift

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

# V. Family, Friends & Others

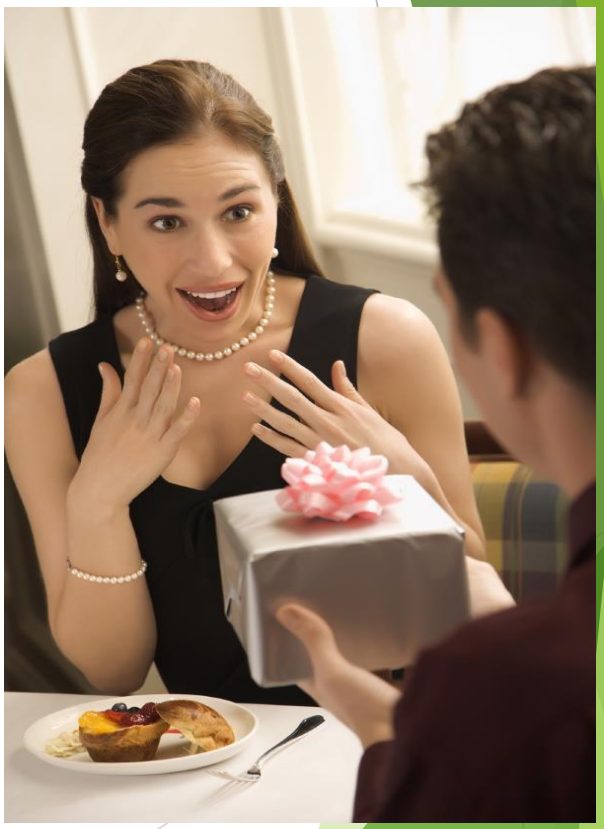
## *Extended Family*

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

# V. FAMILY, FRIENDS & OTHERS: *Other Relationships*

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

- ✓ Relationship not based on public position; and
- ✓ Reasonable person would conclude not given for "lobbying"



# V. FAMILY, FRIENDS & OTHERS:

## *Business Relationship with Lobbyist Principal (Related to Public Position)*

- 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)
- "Other relationship" exception doesn't apply since you are serving because of public position
- **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**

# *Plaques & Non-Monetary Mementos*

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

# VI. Gifts to the General Public or All State Employees

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

# VII. UNC Athletic Tickets

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

# "Ungifting"

## What to do if you receive an impermissible gift

**Promptly**

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

# REMINDER ABOUT REPORTING

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

# Reporting Requirements for Public Servants

| | | |
|---|---|---|
| **What & Value** | Reportable expenditure valued over $200/calendar quarter | Scholarship (grant-in-aid to attend meeting) valued over $200/calendar quarter |
| **From** | Person<br>▪ Outside NC<br>▪ Not required to register | Person<br>▪ Outside NC<br>▪ 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 promptly report date, description, name of person, & estimated FMV to the Secretary of State or on your next SEI | You must promptly report date, event, name of person granting scholarship, & estimated FMV either to the Secretary of State or on your next SEI |

# ETHICS ACT

## COMPLAINTS & CONSEQUENCES

# COMPLAINTS

- ***Anyone*** can file an ethics complaint against you

- The complaint must
  - Be in writing
  - State specific facts alleging a violation of law and when the alleged violation occurred
  - Be signed & sworn
  - Be filed within 2 years.

STATE ETHICS COMMISSION

COMPLAINT FORM

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

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

CONTACT INFORMATION
*(Please Type or Print clearly)*

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

Printed Name: _____

Address: _____ _____

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

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

SWORN COMPLAINT

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

_____

_____ Date: _____
(Signature)

# Notice of Allegations

- You will be notified immediately upon the Ethics Commission's receipt of a written allegation of unethical conduct
- "Written allegation" = Anything
- Construed very broadly
- Does NOT mean it is valid

# CONFIDENTIALITY

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

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

# After a Complaint is Filed

1. **Preliminary Inquiry**

2. **Probable Cause Determination**

3. **Hearing or Referral.** If probable cause is found,
   - For public servants, open hearing before the Ethics Commission

# CONSEQUENCES

- For State employee public servants, willful noncompliance is considered violation of a written work order permitting disciplinary action, including termination from employment
- For public servant board members, willful noncompliance is considered misfeasance, malfeasance, or nonfeasance justifying removal from the board
- Additional civil and criminal penalties may apply for SEI violations

# ETHICS ACT

## WHERE AND HOW TO GET ADVICE

# WHO CAN ASK FOR ADVICE OR AN ADVISORY OPINION ?

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

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

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

# WHAT can you ask for?

- Informal advice from Ethics Commission staff
- Formal advisory opinions from the 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 Ethics Commission's website

# WHAT ARE THE DIFFERENCES?

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

# WHAT is *"Immunity"*

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

- Investigation by the Ethics Commission and the Secretary of State;
- Disciplinary action in your job or removal from your public position; and

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

# WHERE DO YOU SEND YOUR QUESTIONS?

## STATE ETHICS COMMISSION

**Call:** (919) 814-3600
(Select Option 3 then 2)

**Fax:** (919) 715-2059

**E-mails:** **SEI Info:** SEI@ncsbe.gov
**Education:** education.ethics@ncsbe.gov
**Advice:** ethics.commission@ncsbe.gov

**Mail:** P.O. Box 27685
Raleigh, NC 27611

**Hand Deliver:** Dobbs Building, 3rd Floor
430 N. Salisbury St.
Raleigh, NC 27603

# WHEN should you ask?

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

# WHY should you ask?

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

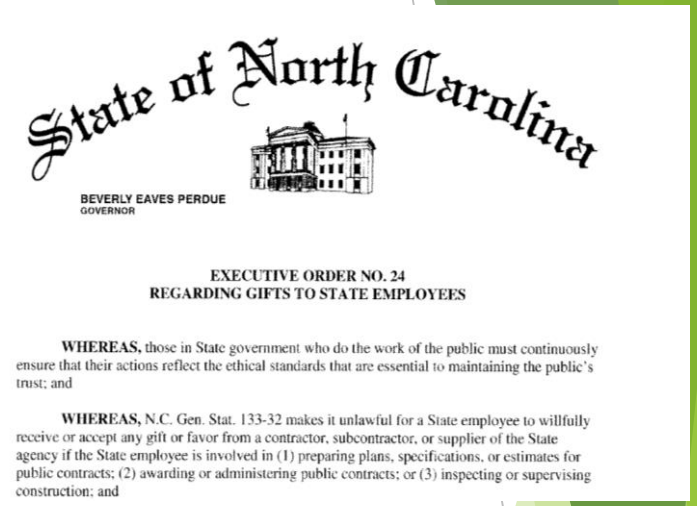
# ETHICS ACT

## AND ONE LAST THING…

# OTHER LAWS, RULES, POLICIES`

## Gifts to & from Contractors

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



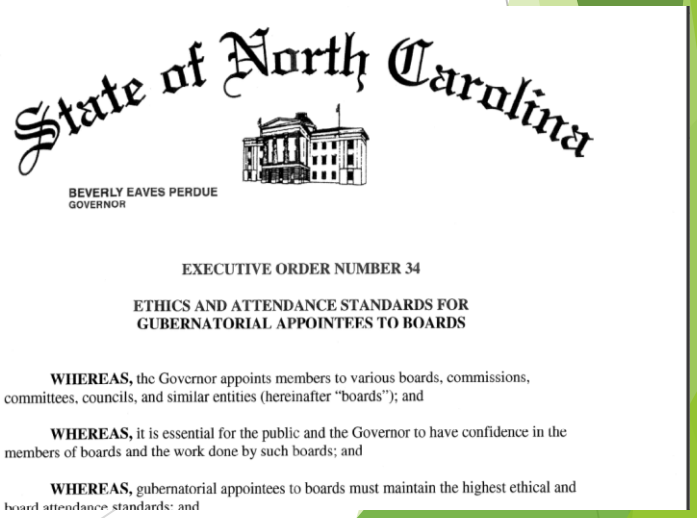
State of North Carolina

BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 24
REGARDING GIFTS TO STATE EMPLOYEES

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

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



State of North Carolina

BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NUMBER 34

ETHICS AND ATTENDANCE STANDARDS FOR
GUBERNATORIAL APPOINTEES TO BOARDS

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

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

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

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

# CONCLUSION

## WRAP UP, HYPOTHETICALS AND KEY POINTS TO REMEMBER

# WRAP UP…

## Conflicts of Interest

***Financial Benefit***

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

**Relationship w/Participant in Proceeding**

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

## Gift Ban

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

## SEI Filing

**Annually on or by April 15th**

## Other Laws EOs, Rules

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

# *What if…..*

- You arrive at your office and find a pen & pencil set in your chair.

- Can you keep it?

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

# DECISION TREE FOR ACCEPTING ITEMS/GIFTS

**Is the person who gave you the pen & pencil set, directly or indirectly, a:**
- **Lobbyist**
- **Lobbyist Principal**
- **Interested Person?**

**YES**

**Is the pen & pencil set a "gift"? Does it have monetary value?**

**YES**

**Does the pen and pencil set fit into an exception to the general gift ban?**

**NO**

**STOP!**
**CANNOT accept the pen & pencil set**

# *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 impacted 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?

**A Gift is anything of monetary value given by a prohibited giver.**

**<u>Question to Ask</u>**

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

  **NO**

  **<u>Not from a prohibited giver – so not a "gift" prohibited under the Ethics Act</u>**

**CAN accept the gift of the lunch**

# What about the Check?

***An Honorarium is "payment for services for which fees are not traditionally or legally required."***

***<u>Question to Ask</u>***

***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***

**CANNOT accept the honorarium (the $25 check) from the Rotary Club under these facts**

# *What if….*

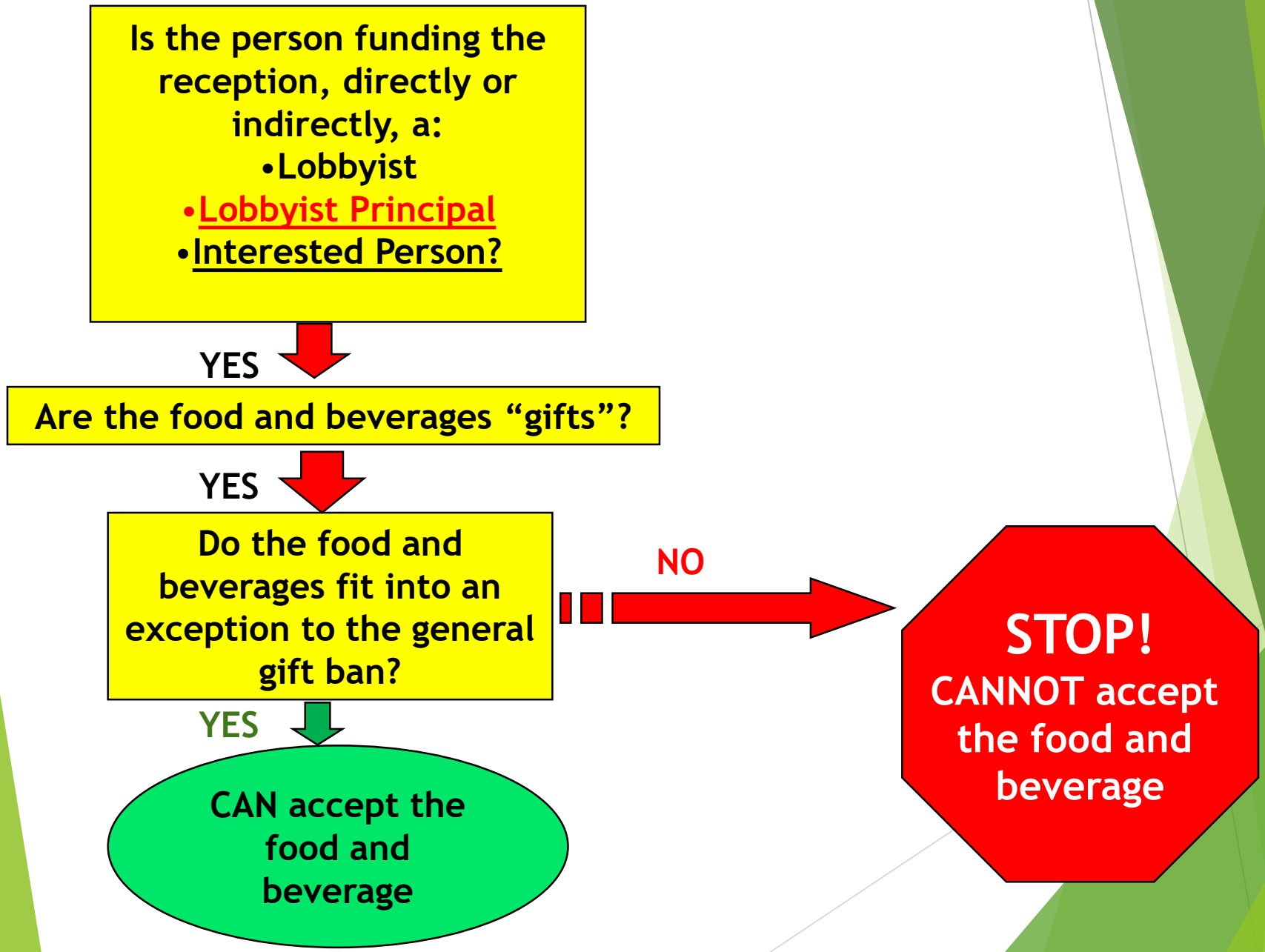
You've been invited to a reception sponsored by a lobbyist principal where food & beverage will be served.

Can you attend?

If so, can you eat and drink?

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

# DECISION TREE FOR ACCEPTING ITEMS



# 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 - IF No Actual Conflicts Exists

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

If no actual conflict – allowed but need to be thinking of any potential conflict –

If a potential conflict arises –

Disclose - Recuse - Record

# *What if…*

Your spouse owns a business which 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 & deliberations or discussions are "official action"

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

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

3. Is it a "financial benefit"?

Yes → Direct pecuniary gain to a "person with which associated"

Determine if there is a Safe Harbor → If not, Disclose, Recuse, Record

# Key Points To Remember:

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

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

# STATE BOARD OF ELECTIONS AND ETHICS CONTACT INFORMATION

- **MAILING ADDRESS**
  **P.O. Box 27685**
  **Raleigh, NC 27611**

- **STREET ADDRESS**
  Dobbs Building, 3rd Floor
  430 N. Salisbury St.
  Raleigh, NC 27603

- **PHONE & FAX**
  **Phone: 919-814-3600 (Select Option 3 then 2)**
  **Fax: 919-715-2059**

- **E-MAIL:**
  - **SEI Questions: SEI@ncsbe.gov**
  - **Education Questions: education.ethics@ncsbe.gov**
  - **Advice & Advisory Opinion Requests: ethics.commission@ncsbe.gov**

- **WEBSITE: www.ethicscommission.nc.gov**