



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

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Holiday Edition



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The Holidays Are Quickly Approaching!

Each year at holiday time the State Ethics Commission, now the State Board of Elections and Ethics Enforcement (State Board), receives numerous questions concerning the gift bans of the State Government Ethics Act (SGEA) and the Lobbying Law and what exceptions, if any, might be applicable to holiday events and holiday gift-giving. This newsletter summarizes those gift bans and provides general information on a few of the common gift-giving situations and holiday events. As always, you should contact the Ethics Unit of the State Board if you have any doubt about what you should do in a particular situation.

The SGEA's Gift Ban prohibits public servants, legislators and legislative employees from accepting gifts from certain givers *unless* an exception to the gift ban applies and allows the gift to be received.

The Lobbying Law Gift Ban prohibits direct and "indirect" gift giving from lobbyists, lobbyist principals and liaison personnel to a public servant, legislator or legislative employee *unless* a gift ban exception applies and allows the gift to be given. (An **indirect gift** is a gift given to another with the intent that a legislator, legislative employee or public servant be an "ultimate recipient.")

There is **no de minimus or small gift exception**. In other words, unless a gift ban exception applies, all gifts from these certain givers are prohibited regardless of value.



If You Are A:	You Generally Cannot Accept Gifts From:
Public Servant	<ul style="list-style-type: none"> • Lobbyists • Lobbyist Principals • "Interested Persons"
Legislator or Legislative Employee	<ul style="list-style-type: none"> • Lobbyists • Lobbyist Principals • Liaison Personnel
If You Are A:	You Generally Cannot Give Gifts To:
Lobbyist or Lobbyist Principal	<ul style="list-style-type: none"> • Legislators • Legislative Employees • Public Servants
Liaison Personnel	<ul style="list-style-type: none"> • Legislators • Legislative Employees

Names of lobbyists, lobbyist principals and liaison personnel can be found at:
<https://lobby.ncsbe.gov>

Names of public servants, legislators and legislative employees can be found at:
<https://ethics.ncsbe.gov/coverage/coveredPersons.aspx>

There is no list of "interested persons." However, **interested persons are individuals or organizations:**

- 1) doing or seeking to do business of any kind with the public servant's agency or board;
- 2) engaged in activities that are regulated by the public servant's agency/board; or
- 3) having a financial interest that may be substantially affected by the public servant's action or inaction.

You Wear Your Covered Person Hat At All Times!

Remember, if you are a legislator, legislative employee or public servant, you “wear that hat” at all times, not just during the holidays, and not just when you are engaged in your official duties or employment. Therefore, you should always consider the following before accepting a gift:

- **Is this a “gift” as defined in the Ethics Act?** (A “gift” is anything or service with monetary value, regardless of the value).
- **Who is paying for or funding the gift** (*i.e.*, is the gift directly or indirectly being paid for or funded by a lobbyist, lobbyist principal, liaison personnel or “interested person?”)?
- **If it is a gift from one of these prohibited givers, does the gift fit within a gift ban exception?** Note that if an exception does not apply, you cannot accept the gift. Exceptions are listed in G.S. 1638A-212(f)



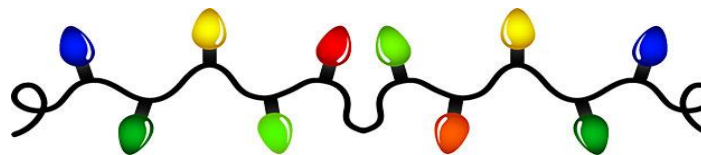
Holiday Gift Giving Hypo

Gifts from Extended Family:

You are a public servant as a member of a State board covered under the SGEA. Your daughter-in-law has a computer service contract with your board, thus she is an “interested person” to your agency. Interested persons are prohibited givers so you can only accept a gift from them if the gift fits within a gift ban exception.

Q. May your daughter-in-law give you a Christmas present?

A. Yes. G.S. 163A-212(f)(7) exception applies. Gifts given by extended family members or a member of the same household are permissible even though the person would otherwise be prohibited from giving such a gift and you would otherwise be prohibited from accepting it.



Common Questions Asked

Q. Is a Holiday *Greeting Card* a gift?

A. No. Holiday greeting cards are not gifts. Thus, they may be given and received without violating the gift ban.

Q. Is a Holiday *Gift Card* a gift?

A. Yes. Holiday gift cards that can be exchanged for something of value are gifts and may not be given or received unless a gift ban exception applies.

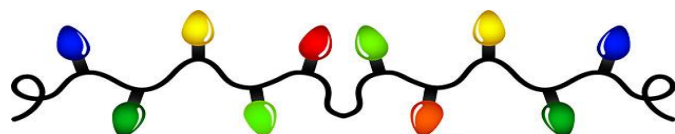
Q. What should I do if I receive a prohibited gift?

A. Promptly decline it, return it, pay fair market value or face value for it, or donate it to a charity or the State. You should also keep a written record of your actions.

Q. Are there exceptions to the gift ban?

A. Yes. But there are four things you must remember regarding the exceptions:

- 1) specific criteria must be met for each exception;
- 2) you can only accept the gift(s) the exception allows;
- 3) the gifts usually must be reported to the State Board by the giver with the report including the name of the recipient and a description and value of the gift; and
- 4) the report is a public record.



Holiday Gift Giving Hypo

Gifts Given Generally to all Others:

You are a public servant and your insurance company is a lobbyist principal. Around the holidays, the company gives calendars to all of its clients and to the general public.

Q. Are you allowed to accept a calendar?

A. Yes. G.S. 163A-212(f)(6) exception applies. Gifts of items generally made available or distributed to the general public or all other State employees by a prohibited giver do not violate the gift ban and are allowed to be given and accepted.



Charitable Solicitations

The Holidays present many opportunities for charitable donations. However, legislators, public servants and judicial officers are prohibited from soliciting charitable donations from subordinate State employees. This rule does not apply to generic written solicitations to all members of a class of subordinates.

HAPPY NEW YEAR



Contact the State Board's Ethics Advice Unit for detailed guidance and advice at 919-814-3600 or ethics@ncsbe.gov.

Food & Beverage Exception

There are several exceptions allowing for food and beverages for immediate consumption at certain types of events. However, if the person paying for or funding the event is a prohibited giver, the specific conditions/rules of the particular exception must be met for the legislator, legislative employee or public servant to eat and drink the food and beverages at the event.



Holiday Party Hypo

You are a covered public servant. Your neighbor is a lobbyist and is having a neighborhood holiday party where food and beverages will be served.

Q. May you attend the party and eat and drink the food and beverages being served to all of the attendees?

A. Because the food and beverages are a gift under the SGEA and are being given by a lobbyist, for you to be able to eat and drink an exception must apply. Gifts given as part of a business, civic, religious, fraternal, personal or commercial relationship are permissible if two conditions are met: (1) the relationship is not tied to your public service or position; and (2) the gift is given under circumstances that a reasonable person would conclude that the gift was not given to lobby you.

In this case, (1) You were invited to a neighborhood party because you are a neighbor, not because you are a public servant. The food and beverages are being given to you as a neighbor of this lobbyist and this relationship is not tied to your public service or position; and (2) you are being given the same gift of food and beverages as all of the attending neighbors. Therefore, a reasonable person would conclude that the gift was not being given to lobby you.

The two conditions of this exception are met so you may attend the neighborhood holiday party and eat and drink food and beverages.

