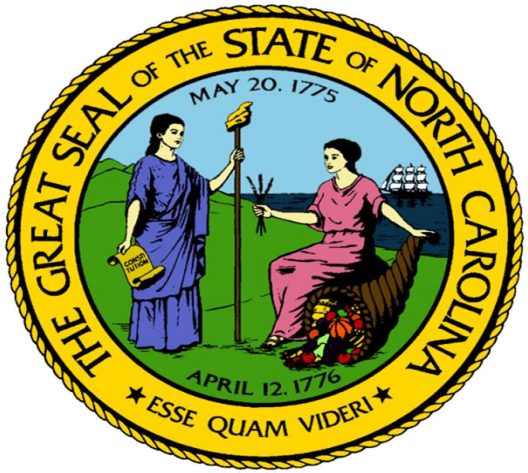
PRESENTER:

SUE LUNDBERG

ASSOCIATE GENERAL COUNSEL

BI-PARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT



ETHICS & LOBBYING EDUCATION FOR PUBLIC SERVANTS

What you need to know to comply with NC's State Government Ethics Act & Lobbying Law

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 Ethics Chapter of the Elections and Ethics Enforcement 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…

Ethics and Lobbying Chapter of the Elections and Ethics Enforcement Act

State & Federal Laws

Agency Policies

Executive Orders

WHO ARE THE “PLAYERS” UNDER THE

ETHICS & LOBBYING CHAPTER OF THE ELECTIONS AND ETHICS ENFORCEMENT ACT

WHO IS COVERED BY THE ETHICS CHAPTER?

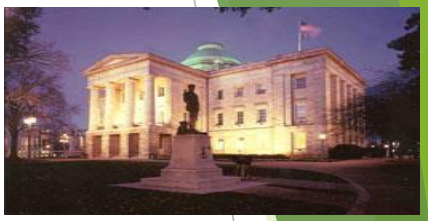
LEGISLATIVE

- 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 ETHICS CHAPTER?

The Ethics Chapter 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?

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 State Government 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

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 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.

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.

WHEN is the SEI filing due?

INITIAL

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

***ANNUAL* FILING DEADLINE**

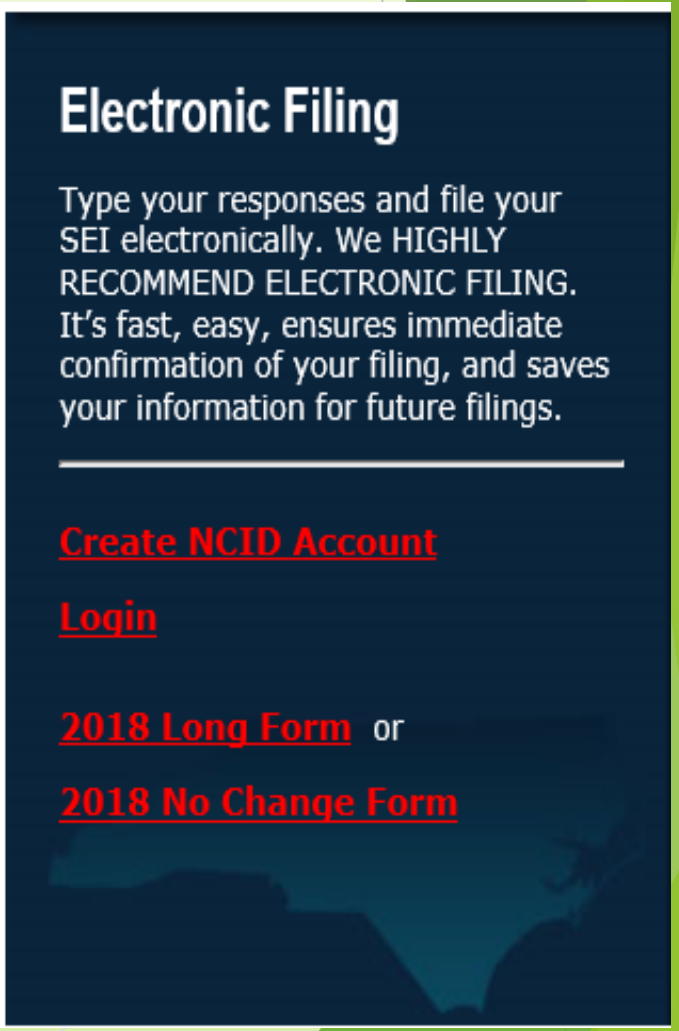
APRIL 15TH

****In 2018, filing deadline is April 16th because the 15th falls on a Sunday**

HOW do I file?

Electronic Filing

- ✓ Obtain an NCID account,
- ✓ Log in
- ✓ Use the e-filing link on the website –
- ✓ Choose the correct SEI form
- ✓ Complete the form electronically
- ✓ Submit your SEI electronically to the State Board of Election and Ethics Enforcement

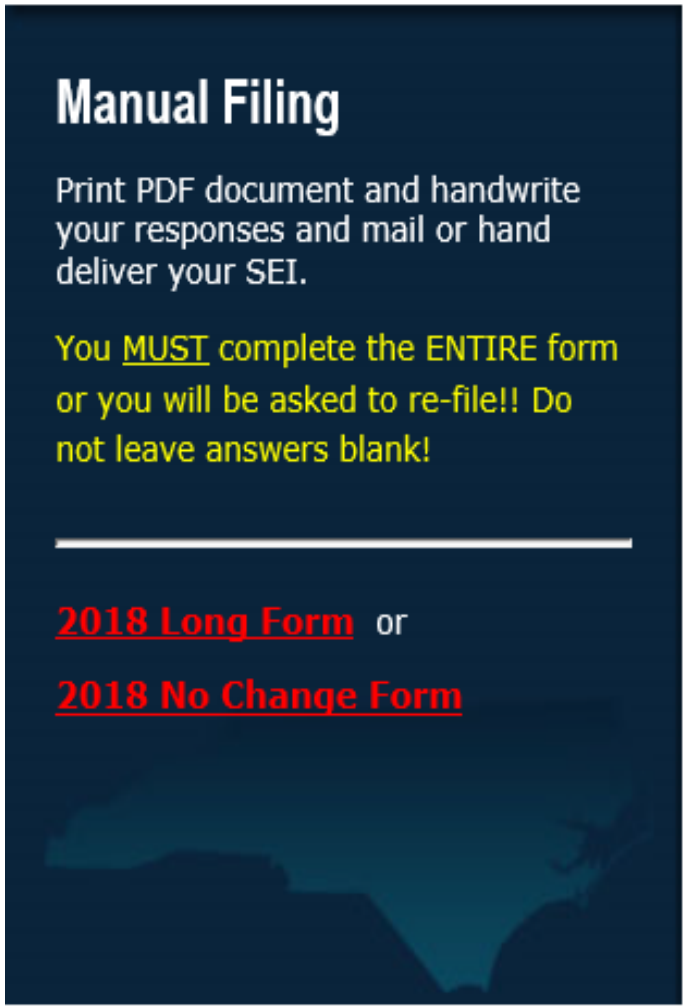


Manual Filing

- ✓ Print out the correct SEI form
- ✓ Fill in your responses
- ✓ Sign
- ✓ Mail or hand-deliver the original to the State Board of Elections and Ethics Enforcement

- Forms available on websites: www.ethicscommission.nc.gov

  www.ncsbe.gov then under Ethics tab click on Statement of Economic Interest



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

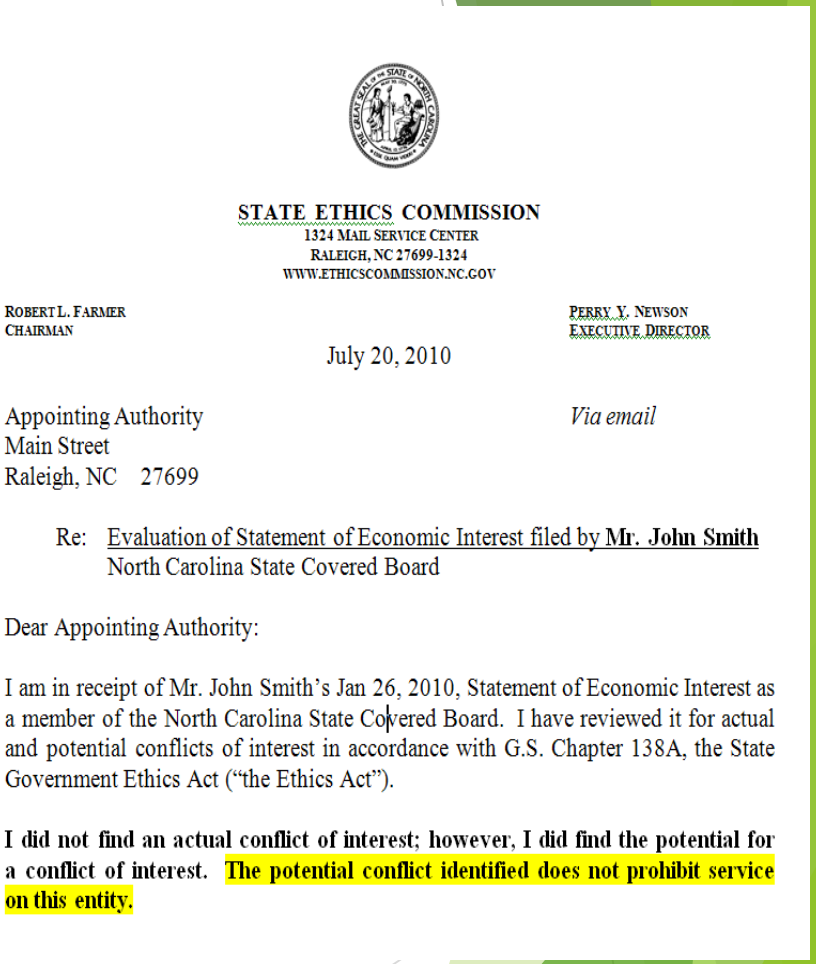
- $250 civil penalty
- Possible **removal from your public position**

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"*



STATE ETHICS COMMISSION
1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

July 20, 2010

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 State Board if unsure

ADDITIONAL DUTIES FOR AGENCY HEADS

- Includes Board chairs
- Take an active role in furthering ethics & ensuring compliance
- Be familiar with State Board 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 State Board of changes in public servants
- Designate an Ethics Liaison

RESPONSIBILITIES OF ETHICS LIAISONS

Serve as the POINT OF CONTACT for the State Board 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 State Board's ethics website for new information, education opportunities, newsletters, and advisory opinions and rules.

Ethics Liaisons:

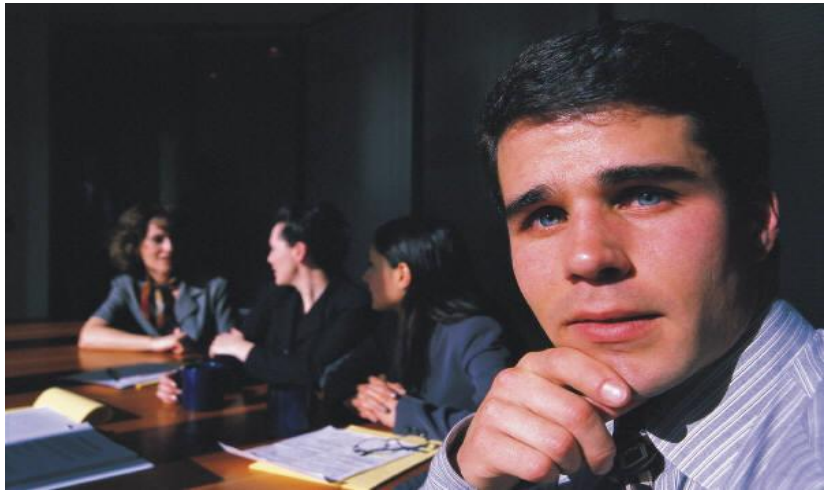
- Do NOT have to file an SEI, unless they are also serving in a covered position
- Must attend ethics education and awareness programs as required by G.S. 138A-14(e).
  - Within 6 months of being assigned or designated
  - At least every two years thereafter.

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 State Board authorizes participation; or

-Written determination from 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 LAW

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

Why the Lobbying Law is 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

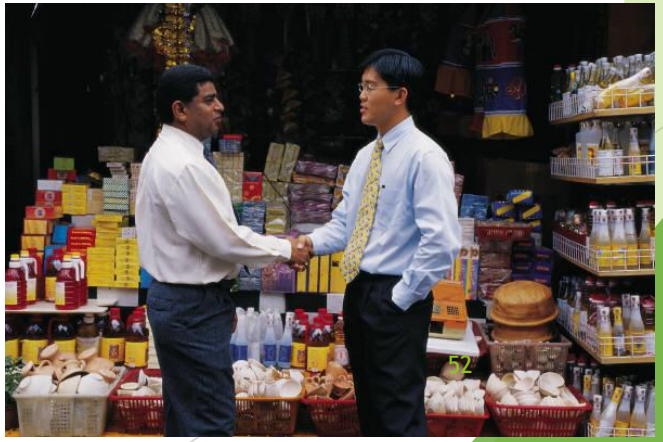
WHAT IS *"LOBBYING"*?

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 fee to Secretary of State for each principal
- ✓ Principals must file an authorization with & pay fee to Secretary of State

Reporting

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

Identification

- ✓ Lobbyists must identify themselves and 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 Law

- 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: • While in office • Before the later of the close of session in which serving or 6 months after leaving office	Cannot register as a lobbyist • While in office • For 6 months after leaving office	A former State agency employee cannot register to lobby • the State agency that previously employed him/her • for 6 months after leaving the State agency • 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:

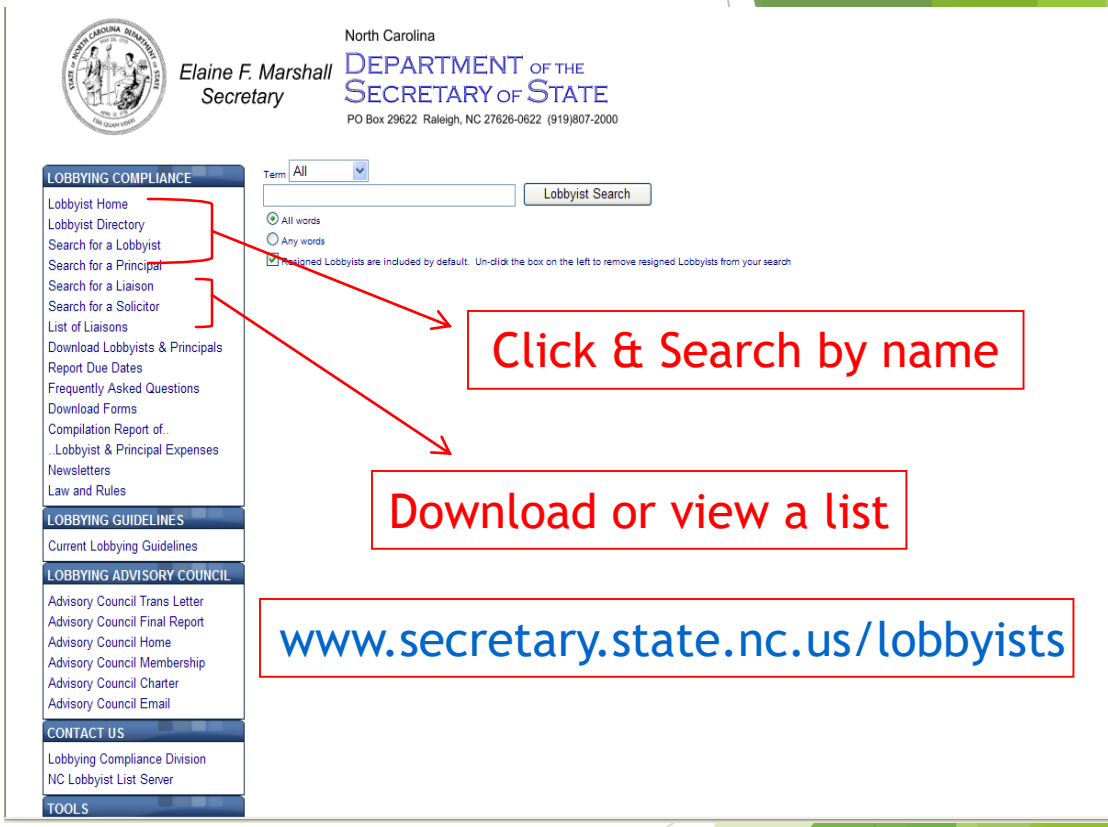
- You cannot accept a ***"gift,"*** directly or indirectly, from a ***"prohibited giver"***
  - **Registered Lobbyist**
  - **Registered Lobbyist Principal**
  - **"Interested Person"**
- Unless it is permitted under the State Ethics Act.
- Applies at all times and in all circumstances:

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 :

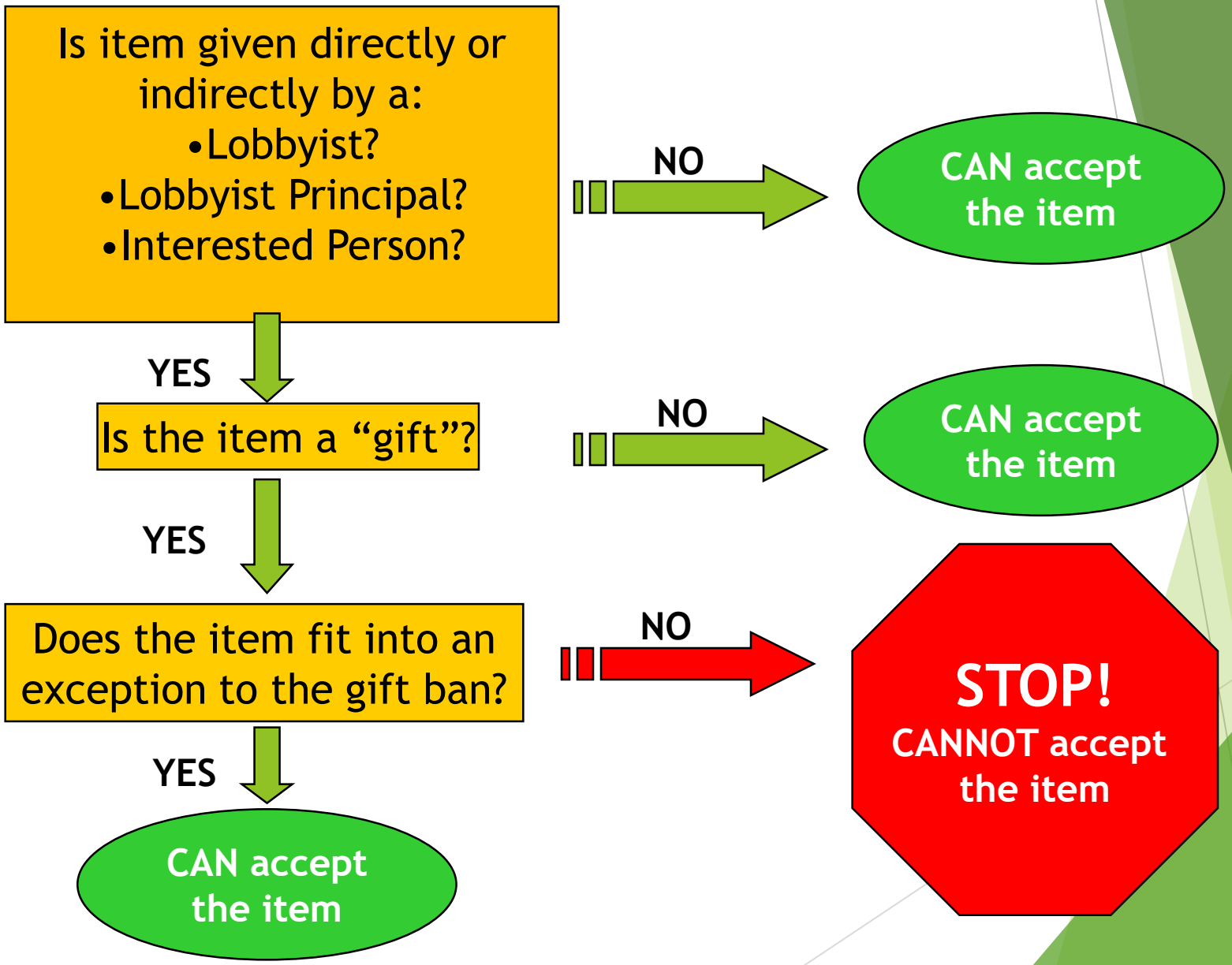
WHAT IS A "GIFT"?

- ✓ 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

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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**
- ✓ 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 Ethics Commission

Cultural Protocol. Gift

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

V. Family, Friends & Others

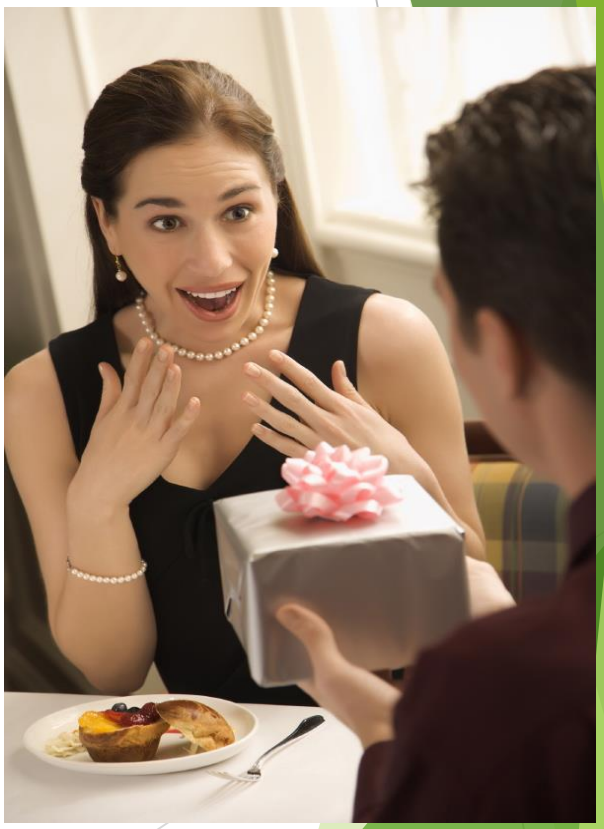
Extended Family

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 ▪ Outside NC ▪ Not required to register	Person ▪ Outside NC ▪ Not required to register
Why	Made for lobbying	Scholarship related to public service or position
Where Accepted	You were outside NC when accepted	You were either in NC or outside NC
Reporting	You must report date, description, name of person, & estimated FMV either to Secretary of State or on SEI	You must report date, event, name of person granting scholarship, & estimated FMV either to Secretary of State or on SEI

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 State Board'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 State Board

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 State Board can also issue advisory opinions on its own motion.

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

WHAT can you ask for?

- Informal advice from State Board staff
- Formal advisory opinions from the State Board
- 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 State Boards' ethics 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 State Board staff ▪ **No immunity**	▪ Issued by State Board. ▪ **Confers immunity.**
Not published	Published in redacted form within 30 days of issuance by the State Board.

WHAT is *"Immunity"*

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

- Investigation by the State Board;
- Disciplinary action in your job or removal from your public position; and
- Investigation by the Secretary of State's office

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

WHERE DO YOU SEND YOUR QUESTIONS?

STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT

Call: (919) 814-3600

Fax: SEI and Advice: 919-715-1644
Education: (919) 715-2059

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

Mail: 1324 Mail Service Center
Raleigh, NC 27699-1324

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

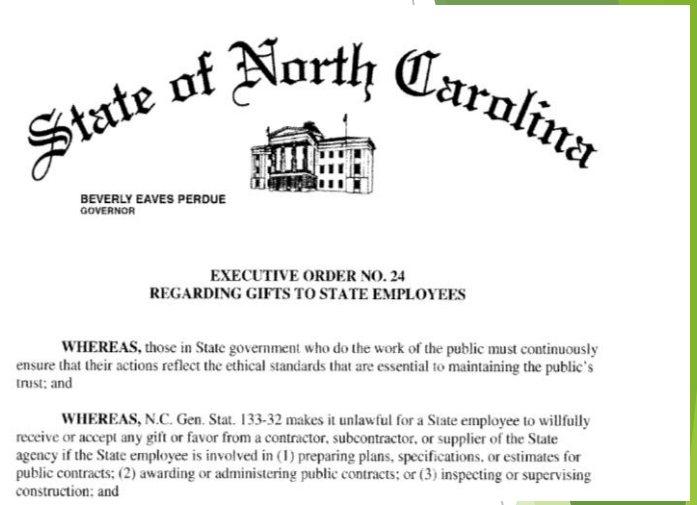
ETHICS ACT

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



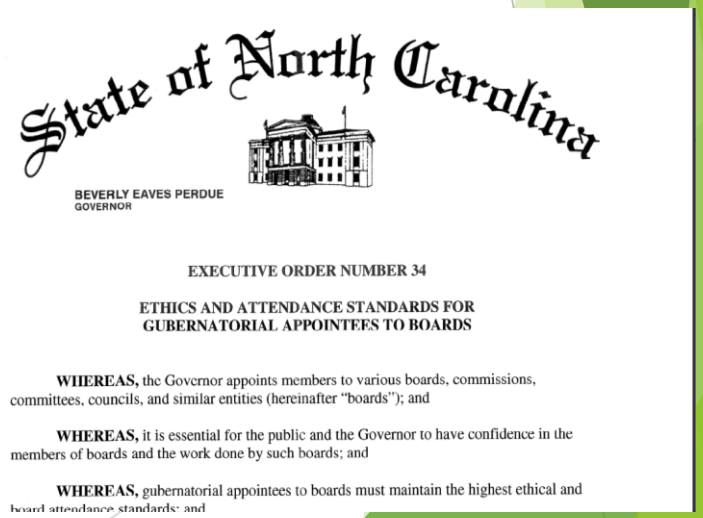
State of North Carolina

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 April 15th (in 2018 deadline was April 16th)

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

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

YES

Are the food and beverages "gifts"?

YES

Do the food and beverages fit into an exception to the general gift ban?

NO

STOP!
CANNOT accept the food and beverage

YES

CAN accept the food and beverage

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 <u>at all times</u>!
- Ask for advice BEFORE taking action you think may be a violation
- Get to know your Ethics Liaison & agency legal counsel

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

STATE BOARD OF ELECTIONS AND ETHICS CONTACT INFORMATION

- **MAILING ADDRESS**
  1324 Mail Service Center
  Raleigh, NC 27699-1324
- **STREET ADDRESS**
  Dobbs Building, 3rd Floor
  430 N. Salisbury St.
  Raleigh, NC 27603
- **PHONE & FAX**
  Phone: 919-814-3600
  Fax: 919-715-1644
  Education 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.ncsbe.gov - then under the Ethics tab
  www.ethicscommission.nc.gov

PRESENTER

Sue Lundberg

Associate General Counsel