

Ethics and Conflicts for IT Professionals

Crista M. Cuccaro, UNC School of Government
NCCGCIO Program
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Basic Principles of Ethics for Public Officials

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What is a Conflict of Interest?

Why Are We Talking About This?

“Public service is public trust.”

- Trustworthiness
- Respect
- Responsibility
- Fairness
- Caring
- Civic virtue and citizenship



Perception Is As Important As Reality



Why Do People Act Unethically?

- Pressure to perform
- Peer pressure
- Not understanding consequences
- Uncharted territory – *not knowing what to do*
- Personal loyalties
- Lack of long-term perspective – *thinking in the moment*
- High personal cost for doing the right thing
- Poor judgment
- Not understanding expected conduct
- Improper/inadequate training
- Small violations not punished lead to bigger violations

Does your place of employment have an ethics or conflict of interest policy?

G.S. 160A-86

Requires all North Carolina cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties to adopt a resolution or policy containing a code of ethics to guide actions by the **governing board members** in the performance of their official duties as members of that governing board.

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Legal Standards Applicable to Public Officials

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Sources of Legal Standards

Applies when federal funds are used for a contract



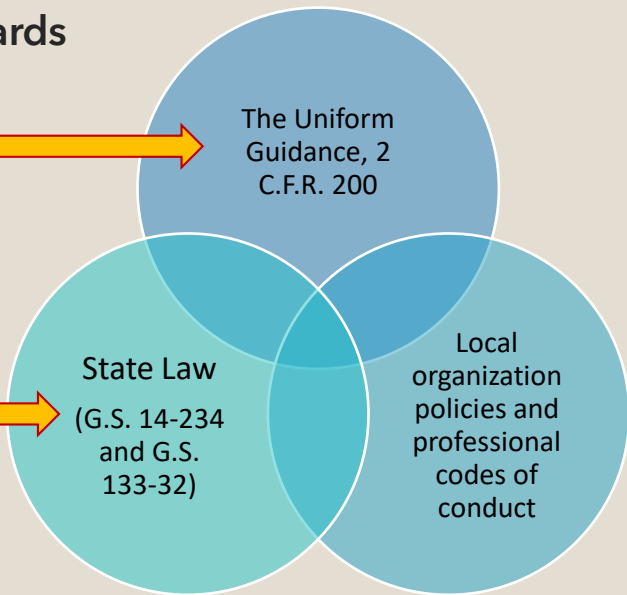
The Uniform Guidance, 2 C.F.R. 200

Note that some state government employees are subject instead to the State Government Ethics Act (e.g., legislators, judicial officers)



State Law
(G.S. 14-234 and G.S. 133-32)

Local organization policies and professional codes of conduct



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Applying ALL of the Rules Applicable to Local Government Public Officials

**Follow the
“Most Restrictive
Rule”**



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Two Main Categories of Conflicts of Interest Laws

Self-Benefitting in Contracting

N.C.G.S. 14-234
N.C.G.S. 14-234.3
2 C.F.R. 200.318(c)(1)

Gifts and Favors

N.C.G.S. 133-32
2 C.F.R. 200.318(c)(1)
47 C.F.R. 54.503(d)



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Conflicts of Interest Category 1: Self Benefitting in Contracting



Self-Benefitting in Contracting

Direct contracting
N.C.G.S. 14-234(a)(1)
2 C.F.R. 200.318(c)(1)

Attempting to Influence Contracting
N.C.G.S. 14-234(a)(2)

Public Officers on Non-Profit Boards
N.C.G.S. 14-234.3

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Sticky Situation: The CIO's Brother

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The Facts

- You are a CIO in the Town of Cary
- You have issued a solicitation for Supervisory Control & Data Acquisition (SCADA) in the Town's water treatment plants, whereby your unit is hiring a vendor to install sensors, flowmeters, and connected cameras and provide software to monitor the facilities
- Your brother owns a company and has submitted a "bid"
- The contract is estimated to cost \$28,000, funded with local funds



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Brotherly Love?

- **Question:** Can the city legally award the contract to the CIO's brother?
- **Answer:** Yes. Why?
- **Question:** *Should* the city award the contract to the CIO's brother?
- **Question:** Is the analysis different if federal funds are involved?

Brotherly Love?

- **Question:** Can the CIO be involved in making or administering?
- **Answer:** Yes. Why?
- **Question:** *Should* the manager be involved in making or administering the contract?



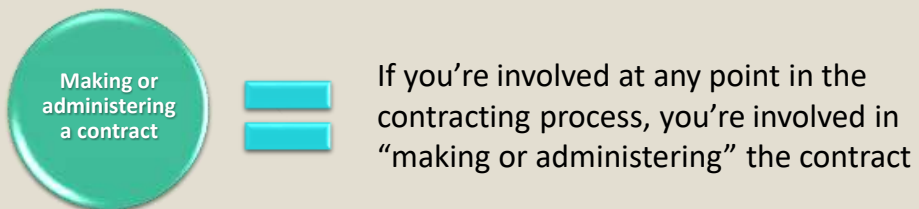
Self-Benefiting in Public Contracting When Direct Contracting G.S. 14-234(a)(1)

“No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.”



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Self-Benefiting in Public Contracting When Direct Contracting G.S. 14-234(a)(1)



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Self-Benefiting in Public Contracting When Direct Contracting G.S. 14-234(a)(1)

Making or
administering
a contract



Direct benefit to
you or
your spouse

There's a **direct benefit** if you or your spouse:

1. Own more than 10% of the company,
2. Receive income or commission from the contract, or
3. Acquire property under the contract

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Self-Benefiting in Public Contracting When Direct Contracting G.S. 14-234(a)(1)

**Class 1
misdemeanor* &
void contract***

***Unless an exception applies:**

1. banks and utilities
2. friendly condemnation
3. spouse employment
4. public assistance programs
5. small jurisdictions

If an exception does NOT apply, the contract is prohibited!

If an exception applies, elected officials can NOT deliberate or vote and all public employees or officers can NOT interfere with others!

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Small Jurisdiction Exception G.S. 14-234(d1)



- Prohibitions in the statute do not apply to elected officials or person appointed to an elective office in a “small jurisdiction”
- Exception only applies to certain types of contracts and can only be used if population is below a certain number

Small Jurisdiction Exception G.S. 14-234(d1)

- Population thresholds
 - Cities
 - Counties
 - Boards of education
- Contract types and maximums
- Procedural requirements





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The Facts

- A city council member of one of the largest cities in North Carolina also serves on the board of the non-profit E2D (Eliminate the Digital Divide)
- E2D is seeking grant funds from the city for the providing laptops and tablets to elementary school students
- The approval for the grant and grant agreement come before the city council for consideration...



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Participation in the Discussion?

◦ **Question:** Can the councilmember who serves on the E2D board legally participate in the discussion involved in the consideration?

◦ **Answer:** No. Recently enacted legislation prohibits public officials from making or administering contracts for non-profit organizations with which they are associated.



Voting on the Contract?

- Can the councilmember who serves on the E2D board legally vote on the grant award?



Public Officers on Non-Profit Boards G.S. 14-234.3



**Recusal allows unit to proceed with contract, but public official must not "knowingly participate"*

Conflicts of Interest under Uniform Guidance

2 C.F.R. 200.318(c)(1)

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a **real or apparent conflict of interest**.

Such a [real] conflict of interest would arise when **the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization** which employs or is about to employ any of the parties indicated herein, has a **financial or other interest in or a tangible personal benefit** from a firm considered for a contract.



Comparing Conflicts of Interest: Federal v. NC State Law

	Uniform Guidance (2 C.F.R. § 200.318(c)(1))	State (G.S. 14-234(a)(1))
Who is covered	Officers, employees, and agents of recipient and subrecipient involved in contracting	Officers, employees involved in contracting
Who else is covered	Spouse, immediate family, partners, current or soon-to-be employer	Spouse
What kind of interest	Real or apparent financial or other interest or personal tangible benefit	Direct benefit
Exceptions	Financial interest that is not substantial	<ol style="list-style-type: none"> 1. Banks & utilities 2. "Friendly" condemnation 3. Spouse employment 4. Public assistance 5. Small jurisdictions
Penalties	<ol style="list-style-type: none"> 1. Loss of federal funds 2. Disciplinary action 3. Other remedies for noncompliance listed at 2 C.F.R. § 200.338 	<ol style="list-style-type: none"> 1. Class 1 misdemeanor 2. Void Contract

Conflicts of Interest Category 2: Gifts and Favors



Gifts and Favors

N.C.G.S. 133-32
2 C.F.R. 200.318(c)(1)
47 C.F.R. 54.503(d)



Sticky Situation: Cheers!

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The Facts

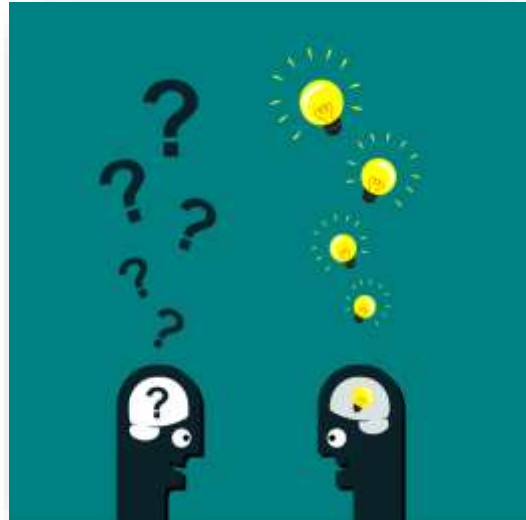
- A city's code of conduct policy allows employees to accept gifts valued under \$50
- A new parking meter vendor, who has not previously done business with the city, happens to meet the city purchasing officer at a community event
- After the event, the vendor and purchaser go to a bar downtown, where they run into purchaser's college roommate
- The college roommate owns a company that provides GIS services for the city
- When the bar tab arrives, both the vendor and college roommate offer to pay for the purchaser's drinks, which cost \$22



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Let Me Get This One ...

- **Question:** Can the parking meter vendor legally pay the purchasing officer's share of the bar tab?
- **Answer:** *Likely not.*
 - Why? Let's discuss the prohibitions in G.S. 133-32 and Uniform Guidance...
- **Question:** Can the land surveyor legally pay the purchasing officer's share of the bar tab?
- **Answer:** *No!*



Gifts and Favors from Contractors

G.S. 133-32



Prohibited Giver:

Contractor or vendor who is:

1. Past (within 1 year)
2. Current
3. Potential future



Prohibited Recipient:

Public officer or employee who:

1. Prepares plans or specifications for public contracts,
2. Awards or administers public contracts, or
3. Inspects or supervises construction

= Class 1 misdemeanor, unless an exception

Gifts and Favors from Contractors

G.S. 133-32

Allowable Exceptions:

- Honoraria
- Souvenirs
- Meals at banquets
- Gifts to professional organizations
- Non-business customary gifts from friends or family

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Gifts under Uniform Guidance

2 C.F.R. 200.318(c)(1)

The **officers, employees, and agents** of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Non-Federal entities may set standards for situations in which [...] the gift is an unsolicited item of **nominal value**.

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Comparing Gifts & Favors Rules: Federal v. NC State Law

	Uniform Guidance 2 C.F.R. § 200.318(c)(1)	State (G.S. 133-32)
Prohibited giver	Current or future contractor or vendor	Past (w/in 1 year), present, or future contractor or vendor
Prohibited receiver	All officers, employees, agents of recipients and subrecipients	Officers and employees involved in: <ol style="list-style-type: none"> 1. Preparing plans 2. Awarding or administering contracts 3. Inspecting or supervising construction
Exceptions	Unsolicited gift of nominal value	<ol style="list-style-type: none"> 1. Honoraria 2. Nominal advertising items 3. Meals at banquets 4. Professional groups 5. Family and friends
Penalties	<ol style="list-style-type: none"> 1. Loss of federal funds 2. Disciplinary action 3. Other remedies for noncompliance listed at 2 C.F.R. § 200.338 	Class 1 misdemeanor

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E-Rate Gift Prohibitions

47 C.F.R. 54.503(d)

- E-Rate program rules impose significant restrictions on schools and consultants regarding the direct or indirect solicitation or acceptance of gifts from service providers or prospective service providers in the school and libraries universal service program
- Gifts are defined as gratuities, favors, entertainment, loans, or *any other thing* of value
- Exception for items valued at \$20 individually, with a \$50 annual cap on total value of gifts one can receive from a single service provider
- Exception for gifts “motivated solely by a personal relationship”



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Rule of Thumb for Gifts

When In Doubt, Do Without!



UNC SCHOOL OF GOVERNMENT

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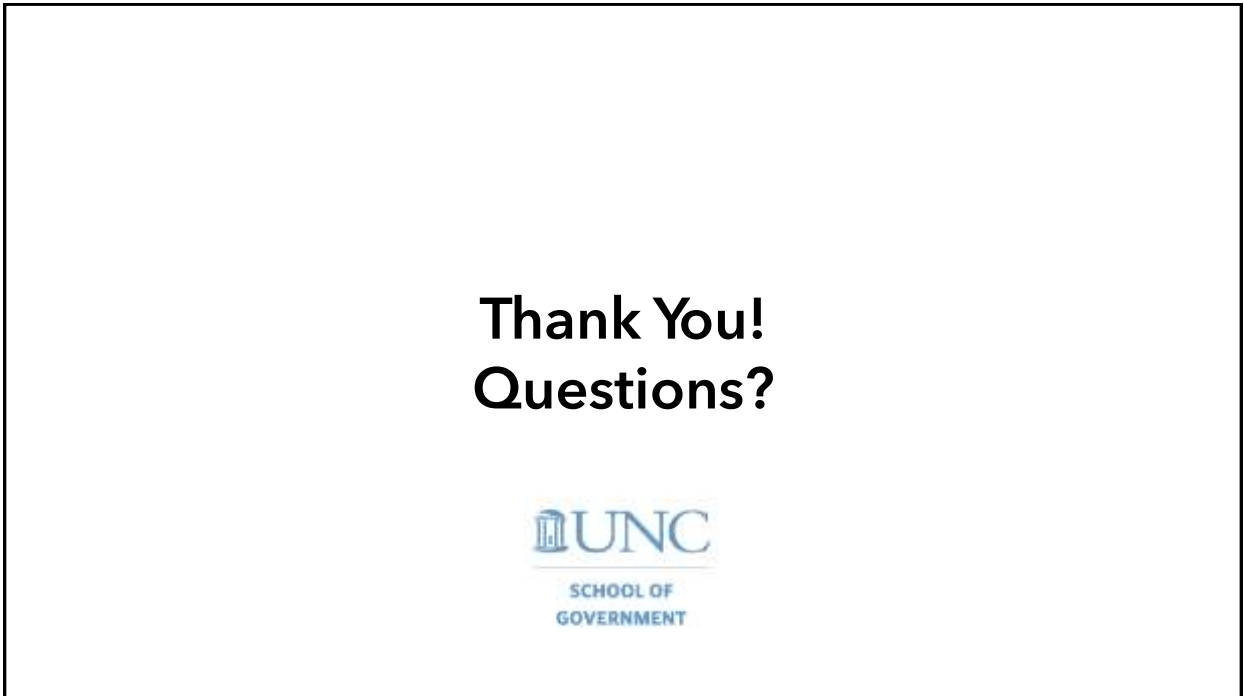


SOG Resources

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