

# Conflicts of Interest in Public Contracting

Certified Educational Chief Technology Officers Program  
Norma Houston  
June 8, 2011



UNC  
SCHOOL OF GOVERNMENT

www.sog.unc.edu

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## Legal vs. Ethical Standards

- If people act legally are they also acting ethically?
- What's legal may not always be ethical.
- What's ethical may not always be legal.
- The "floor" versus the "ceiling" . . .
- This session:

The "Floor" = The LAW



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## WARNING!!!

If you have a question . . .



. . .contact  
your attorney  
or the SOG!



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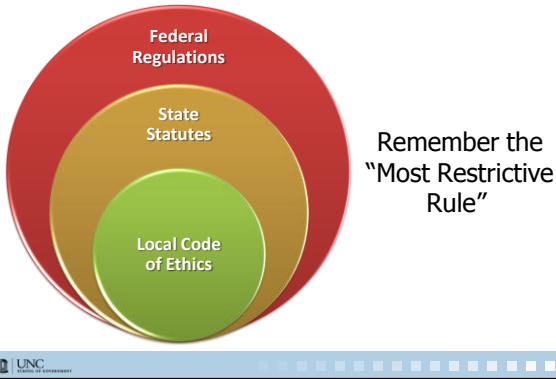
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## Sources of Legal Standards



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## Local Ethics Codes

### Requirements (State Statutes)

- State statutes generally require a code (only for cities, counties, school boards, and sanitary districts)
- May** impose additional requirements beyond state statutes governing conflicts of interest
- Must** cover governing board members; **may** cover other boards and employees

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## Local Ethics Codes

### Requirements (Federal Regulations)

Grants Management Common Rule applies to most federal grants

Grantees and Subgrantees must develop and follow a **written** code of conduct that addresses:

- Real** and **apparent** conflicts of interest
- Gifts and favors
- Disciplinary actions for violations

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# What is a conflict of interest?



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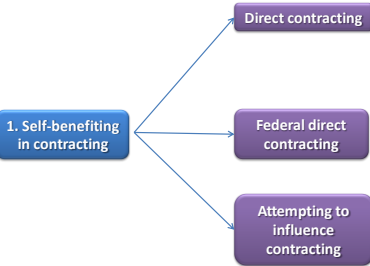
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# What is a conflict of interest?



Self-benefiting –  
(G.S. 14-234)

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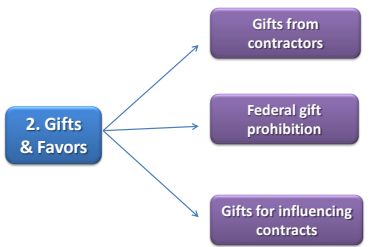
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# What is a conflict of interest?



Gifts & Favors –  
(G.S. 133-32, G.S. 14-234)

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## What is a conflict of interest?



### 3. Insider Trading

**Insider Trading –**  
(G.S. 14-234.1)

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## What is a contract?



“An agreement between two or more parties creating obligations that are enforceable or otherwise recognized by law . . . a contract in which government receives goods or services.”

- Black's Law Dictionary (7<sup>th</sup> ed.)

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## Are these contracts?



- Construction
- Repair
- Services
- Property Transaction (real and personal)
- Property disposal (sales, auctions, etc.)
- Invoice
- Purchase Order
- Credit Card Purchase

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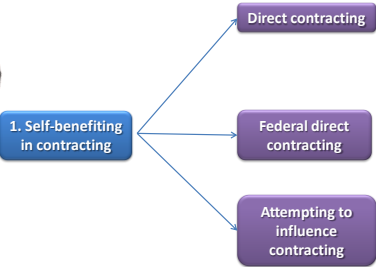
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# What is a conflict of interest?



Self-benefiting –  
(G.S. 14-234)

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## Self-benefiting

### Direct Contracting (G.S. 14-234)



**Bottom line:** If you're involved in any point in the contracting process, you're involved in "making or administering" the contract

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## Self-benefiting

### Direct Contracting (G.S. 14-234)



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

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

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## Self-benefiting

### Direct Contracting (G.S. 14-234)



**\*Unless an exception applies:** banks and utilities, friendly condemnation, spouse employment, public assistance programs, small units

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## Self-benefiting

### Direct Contracting (G.S. 14-234)

Exceptions:

1. Contracts with banks, savings and loans, public utilities
2. "Friendly" condemnation
3. Employment of the spouse of a public officer (not employee)
4. Payment for public assistance programs
5. "Small" jurisdictions (not employee)

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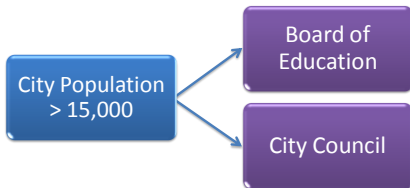
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## Self-benefiting

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



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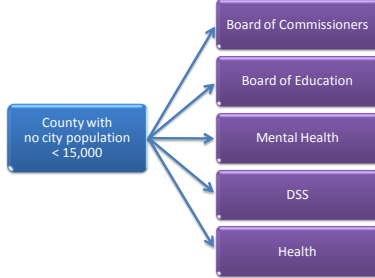
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## Self-benefiting

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



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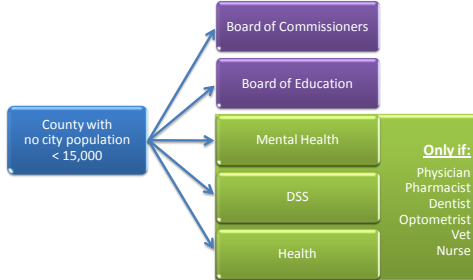
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## Self-benefiting

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



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## Self-benefiting

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

Exception Requirements:

- **Total contract** amount must be under \$40,000 in a 12-month period (\$20,000 for medical services)
- Contracts for **purchases or construction** must be under \$30,000
- Approved at regular board meeting, declared on annual audit, publically posted
- No participation or voting by conflicted official
- Doesn't apply to competitive bidding contracts

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## Self-benefiting - Federal Rule

### Grants Management Common Rule



**Bottom line:** If you're involved in any point in the contracting process, you're involved in "selecting, awarding or administering" the contract.

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## Self-benefiting - Federal Rule

### Grants Management Common Rule



The rule **does not** define "financial or other interest"

**Exception:** Financial interests that are "not substantial"

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## Self-benefiting - Federal Rule

### Grants Management Common Rule



**\*Unless an exception applies**

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## Self-dealing - Federal Rule

### Grants Management Common Rule

Whose “financial or other interest”?

- Employees, officers, and agents of grant recipient;
- Their immediate family members;
- Their partners;
- Any organization which employs or *is about to employ* any of the above.
- Any of the above of grantees *and subgrantees*

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## Self-benefiting

### Attempting to Influence (G.S. 14-234)

Direct benefit to you or your spouse



Doesn't have to be a contract you make or administer!

[Exceptions don't apply](#)

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## Self-benefiting

### Attempting to Influence (G.S. 14-234)

Direct benefit to you or your spouse



Attempt to influence



Doesn't have to be a contract you make or administer!

[Exceptions don't apply](#)

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### Self-benefiting

#### Attempting to Influence (G.S. 14-234)

Doesn't have to be a contract you make or administer!

[Exceptions don't apply](#)

UNC  
University of North Carolina

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### Self-benefiting

#### Attempting to Influence (G.S. 14-234)

Doesn't have to be a contract you make or administer!

[Exceptions don't apply](#)

UNC  
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### What is a conflict of interest?

Gifts & Favors –  
(G.S. 133-32, G.S. 14-234)

UNC  
University of North Carolina

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## Gifts and Favors

(G.S. 133-32)



### Prohibited Giver:

Contractor or vendor who is:

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



= Class 1 misdemeanor, unless an exception applies

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## Gifts and Favors

(G.S. 133-32)



### Prohibited Recipient:

Public officer or employer who:

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



= Class 1 misdemeanor, unless an exception applies

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## Gifts and Favors

(G.S. 133-32)

### Exceptions:

Honoraria    Souvenirs    Banquets    Professional Organizations    Family / Friends



Honoraria

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## Gifts and Favors

(G.S. 133-32)

### Exceptions:

Honoraria   **Souvenirs**   Banquets   Professional Organizations   Family / Friends



Souvenirs / advertising items of nominal value

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## Gifts and Favors

(G.S. 133-32)

### Exceptions:

Honoraria   Souvenirs   **Banquets**   Professional Organizations   Family / Friends



Meals at banquets

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## Gifts and Favors

(G.S. 133-32)

### Exceptions:

Honoraria   Souvenirs   Banquets   **Professional Organizations**   Family / Friends



Gifts to professional organizations

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## Gifts and Favors

(G.S. 133-32)

### Exceptions:

Honoraria    Souvenirs    Banquets    Professional Organizations    Family / Friends



Non-business customary gifts from friends or family (must be reported to agency head)

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## Gifts and Favors – Federal Rule

### Grants Management Common Rule



**Prohibited Giver:**  
Contractor or vendor who is:

1. Current or
2. Potential future



All gifts prohibited, but local government/nonprofit may create an exception for small, unsolicited gifts.

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## Gifts and Favors – Federal Rule

### Grants Management Common Rule



**Prohibited Recipient:**

1. Employee,
2. Officer, or
3. Agent
4. Subgrantee

of local government or nonprofit recipient of federal funds



All gifts prohibited, but local government/nonprofit may create an exception for small, unsolicited gifts.

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## Gifts and Favors

(G.S. 14-234)

Solicit or receive a gift or favor



Doesn't have to be a contract you or your spouse benefit from!

[Exceptions don't apply](#)

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## Gifts and Favors

(G.S. 14-234)

Solicit or receive a gift or favor



Attempt to influence



Doesn't have to be a contract you or your spouse benefit from!

[Exceptions don't apply](#)

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## Gifts and Favors

(G.S. 14-234)

Solicit or receive a gift or favor



Attempt to influence



Someone involved in making or administering



Doesn't have to be a contract you or your spouse benefit from!

[Exceptions don't apply](#)

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# Gifts and Favors

(G.S. 14-234)



Doesn't have to be a contract you or your spouse benefit from!

[Exceptions don't apply](#)

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# What is a conflict of interest?



## 3. Insider Trading

Insider Trading –  
(G.S. 14-234.1)

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# Insider Trading

Misuse of Confidential Information (G.S. 14-234.1)

Use non-public information gained in official position



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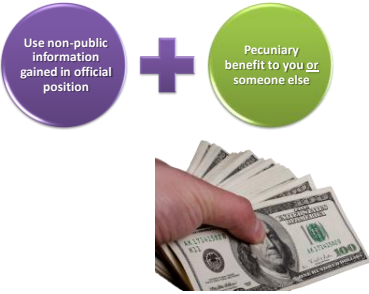
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# Insider Trading

Misuse of Confidential Information (G.S. 14-234.1)



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# Insider Trading

Misuse of Confidential Information (G.S. 14-234.1)



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# What Do You Think?



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## Questions?

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[www.ncpurchasing.unc.edu](http://www.ncpurchasing.unc.edu)

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Supplemental Information

## CONFLICTS OF INTEREST IN PUBLIC CONTRACTING

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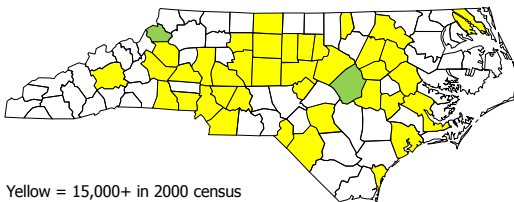
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## Counties with +15,000 Cities 2010 Census



Yellow = 15,000+ in 2000 census  
Green = 15,000+ in 2010 census  
(yellow counties remain in  
15,000+ category in 2010)

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## Self-dealing – State v. Federal

	State (G.S. 14-234(a)(1))	Federal (GMCR)
Who is covered	Officers, employees	Officers, employees, and agents of grantee and subgrantees
Who else is covered	Spouse	Spouse, immediate family, partners, current or soon-to-be employer
What kind of interest	Direct benefit	Real or apparent financial or other interest
Exceptions	<ol style="list-style-type: none"> <li>1. Banks &amp; utilities</li> <li>2. Friendly condemnation</li> <li>3. Spouse employment</li> <li>4. Public assistance</li> <li>5. Small jurisdictions</li> </ol>	Financial interest that is not substantial
Penalties	Class 1 misdemeanor Void Contract	Loss of federal funds Disciplinary action

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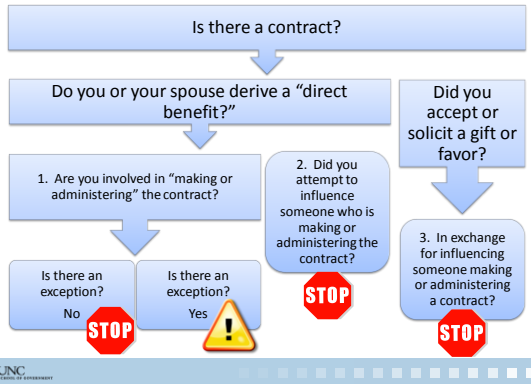
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## Self-benefiting Analysis (G.S 14-234)




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## Gifts and Favors – State v. Federal

	State (G.S. 133-32)	Federal (GMCR)
Prohibited giver	Past (w/in 1 year), present, or future	Current or future
Prohibited receiver	Officers and employees involved in: <ol style="list-style-type: none"> <li>1. Preparing plans</li> <li>2. Awarding or administering</li> <li>3. Inspecting or supervising construction</li> </ol>	All officers, employees, agents of grantee and subgrantees
Exceptions	<ol style="list-style-type: none"> <li>1. Honoraria</li> <li>2. Nominal advertising items</li> <li>3. Meals at banquets</li> <li>4. Professional groups</li> <li>5. Family and friends</li> </ol>	Unsolicited gift of nominal value
Penalties	Class 1 misdemeanor	Loss of federal funds Disciplinary action

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