

TOWN OF SMITHFIELD HISTORIC PROPERTIES AGENDA PACKET



Chairman: **Dr. Oliver Johnson**
Vice Chairman: **Art Andrews**

Members:

Jan Branch
Paul Worley
Rachel Ayers

Mary Nell Ferguson
Deanna Simmons

Steve Wensman, AICP, ALA, Planning Director
Julie Edmonds, Administrative Assistant
Mark Helmer, AICP, CZO, Senior Planner

Meeting Date: ***Thursday, April 15, 2021***
Meeting Time: ***3:00 p.m.***
Meeting Place: ***Webex on-line meeting***

**AGENDA
HISTORIC PROPERTIES COMMISSION
REGULAR MEETING
April 15, 2021
MEETING TIME: 3:00 PM
WEBEX INTERNET BASED MEETING**

Call to Order.

Approval of the minutes from October 15, 2020

Public Hearing

None

New Business

Approval of Historic Preservation Commission 2021 meeting schedule

Annual Ethics Training

- **Advisory Board Ethics Video by UNC School of Government**
- **Ethics and Conflicts of Interest Frayda S. Bluestein and Norma R. Houston**

Board Discussion

Old Business

Adjournment

DRAFT
Smithfield Historic Properties Minutes
Thursday, October 15, 2020
3:00 P.M., Town Hall, Conference Room

Members Present:

Chairman-Dr. Oliver Johnson
Jan Branch
Paul Worley
Rachel Ayers

Members Absent:

Deanna Simmons
Vice-Chair-Art Andrews

Staff Present:

Stephen Wensman, Planning Director
Mark Helmer
Gary Johnson
Sarah Edwards

Staff Absent:

Julie Edmonds, Admin Support

Call to Order

Approval of the minutes July 20th, 2020

Paul Worley made a motion to approve the minutes from July 20th, 2020; seconded by Jan Branch. Unanimously Approved

Public Hearing

None

New Business

Stephen Wensman stated that the proposed ordinance amendment will adopt the HPC regulations into the UDO. They were left out of the UDO when the Planning Board and Board of Adjustments were moved to the UDO.521.2. Instead, they remained in the Town's Administrative Code. We hope to accomplish this at the next Town Council meeting or soon afterwards.

Dr. Oliver Johnson said looking at section 3.5 Historic Properties Commission, it still reads the Purpose of this District instead of Commission. It was agreed upon at the last HPC meeting in July that it would be changed. He wanted to make sure this was corrected before it went to Town Council for approval.

Mr. Wensman said he would make the correction and thanked Dr. Johnson for catching the error.

Mr. Wensman mentioned the proposed ordinance amendment will change the official name of the Smithfield Historic Properties Commission to Historic Preservation Commission to match the Board's name as found in the Town of Smithfield Historic Preservation Design Guidelines manual.

Proposed Ordinance Defines Major and Minor Work

3.5.21.2 Work Requiring a Certificate of Appropriateness

3.5.21.2.1 Minor Works. Certain activities are considered by the Commission to not have a significant impact on the exterior appearance of the historic structures, and are delegated to the appropriate staff person for administrative approval.

3.5.21.2.2 Major Works. Consist of modifications which significantly alter the appearance of the structure or site. These projects are required to be reviewed by the Commission. The Commission shall hold public hearings for these cases.

Gary Johnson, Smithfield Parks and Recreation Director discussed a 170,000 grant for the Hastings House. In order to be eligible for the grant the property had to be eligible for the National Registry. The preliminary determination for eligibility was done from the NC HPO office. That went to the Department of Interior. They received a letter from the Department of Interior stating that the Hastings House was eligible to be placed on the national registry of Historic Places. In order to get the grant, they have to make application to the registry for inclusion.

Sarah Edwards, Downtown Development Director stated this grant was for damage done to publicly owned buildings by recent hurricanes.

Gary Johnson said not only is the Hastings House eligible but he questions if the Primitive Church, the Town Commons and even the boat ramp all the way back to the cemetery would be. The decision to include it would be up to the Town Council.

Mark Helmer said Planning Staff met with Jennifer Rose from the NC State Historic Preservation Office. She's the National Registered Coordinator. Jennifer mentioned visiting Smithfield to inventory the structures in the area and she mentioned some properties that Sarah Edwards thought would be of interest.

Sarah Edwards said currently Smithfield has 3 Historic Districts the North Smithfield Historic District, the Brooklyn Historic District and the Downtown Historic District. She named off a few locations that could be included into the Historic District.

Paul Worley asked if the properties on North Third Street, North of the Heritage Center had been altered too much to come into the Historic District.

Sarah Edwards said yes, from We Ship It down to Pizazz and even on down to The Meeting Place as well. The Meeting Place is a very large building that doesn't serve a lot of modern uses. It was built as a Sears Distribution Center. There is potential for that block to be redeveloped.

Paul Worley asked if there was a local match on the Parks and Recreation Grant.

Gary Johnson said no.

Paul Worley asked if it was coming from FEMA or State money.

Gary Johnson said it federal funding but he doesn't think it is coming from FEMA.

Paul Worley asked if there were terms and conditions regarding continuing control over the property once funds are awarded.

Gary Johnson said there are for a certain number of years based on the amount of money you receive. You can request up to 1 million dollars and for the Town of Smithfield it would be for 10 years. It would have to be open to the public so many hours per week.

Mark Helmer showed a map of the Proposed Historic Smithfield Riverfront study area. It starts from the Girl Scout Hut and ends at the Boat Ramp. All of these proposed sites are owned by the Town except for the Little Brown Jug. He went through each property explaining some of the history on each one and provided photographs of them. He also shared a website for the board members to visit that gives information on any property through the North Carolina State Historic Preservation Office. This is a GIS web service.

Mary Nell Ferguson said we have the map and we have looked at the district. Will the next step be for someone to come out from the State?

Mark Helmer said yes, before we make application to be nominated, we need them to be on board with it. If they are not interested, then they will make recommendations and if they can't they will let us know before we go to the trouble of hiring consultants and generating all these reports only to be turned down.

Mark Helmer recommended hiring a consultant if this board did want to do something like a district.

Old Business

None

Adjournment

Jan Branch made a motion to adjourn the meeting; seconded by Mary Nell Ferguson. Unanimously approved

Dr. Johnson adjourned the meeting.

The next HPC meeting is scheduled for January 21st, 2021 at 3pm.



Julie Edmonds
Administrative Support Specialist
Planning Department



**2021
Historic Preservation Commission
Meetings**

Thursday, January 21, 2021

Thursday, April 15, 2021

Thursday, July 15, 2021

Thursday, October 21, 2021

****All meetings will begin at 3:00 p.m. and are located
in the Town Hall Conference Room ****

Chapter 7

Ethics and Conflicts of Interest

Frayda S. Bluestein and Norma R. Houston

Ethics in Government: Why It's Important / 115

I. Requirements for Local Elected Officials / 116

Ethics Education Requirement / 116

Local Codes of Ethics / 116

Censuring Board Members / 117

II. Conflicts of Interest in Voting / 117

The Duty to Vote / 117

What Constitutes Financial Interest / 118

Number of People Affected / 119

Extent of the Financial Interest (Benefit or Detriment) / 119

Likelihood That the Financial Impact Will Actually Occur / 119

III. Conflicts of Interest in Contracting / 119

Contracts for Personal Benefit / 119

Gifts and Favors / 121

Misuse of Confidential Information / 122

IV. Conflicts of Interest for Specific Categories of Officials and Public Employees / 122

Building Inspectors / 122

Project Designers / 122

Public Hospital Officials and Employees / 123

Local Management Entity (LME) Board Members / 123

Housing Authorities / 123

V. Conflicts of Interest Applicable to Federal Grant Funds / 123

Additional Resources / 124

About the Authors / 124

Ethics in Government: Why It's Important

The conduct of local government officials and public employees affects public perceptions of and trust in government. Citizens expect local officials and public employees to act in the best interest of the public and not to use their office for their personal benefit. In some cases, laws restrict the conduct of local public officials, but in many cases they have a choice in how to act, for example, when deciding whom to hire, when to contract, and how to vote. North Carolina laws governing the conduct of local officials focus on financial interests in voting and contracting as well as on other ways in which government decision makers might personally benefit from the actions they take. In addition, constitutional due process requirements focus on the need for fair and unbiased decision making when certain types of private rights are at stake.

This material is a chapter from the School of Government publication [County and Municipal Government in North Carolina](#), Second Edition.

ISBN 978-1-56011-781-0. ©2014 School of Government. The University of North Carolina at Chapel Hill. This document may not be copied or posted online, nor transmitted, in printed or electronic form, without the written permission of the School of Government, except as allowed by fair use under United States copyright law. For questions about use of the document and permission for copying, contact the School of Government at sales@sog.unc.edu or call 919.966.4119.

I. Requirements for Local Elected Officials

Ethics Education Requirement

North Carolina law requires elected members of the governing boards of cities and counties, unified governments, consolidated city–counties, sanitary districts, and local boards of education to receive at least two (2) clock hours of ethics education within twelve (12) months after each election or reelection (or appointment or reappointment) to office. The education program must cover laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level; it is designed to focus on both the legal requirements and the ethical considerations so that key governmental decision makers will have the information and insight needed to exercise their authority appropriately and in the public interest. The ethics education requirement is an ongoing obligation triggered by re-election or reappointment to office.¹

While state law does not require ethics education for local employees and members of local appointed boards (such as boards of adjustment or advisory committees), a local governing board may impose this requirement on these groups under the board’s local ethics code or other ordinance or policy.

Local Codes of Ethics

North Carolina law also requires the governing boards subject to the ethics education requirement to adopt ethics resolutions or policies (often referred to as “codes of ethics”) to guide board members in performing their duties.² The ethics resolution or policy must address at least five key responsibilities of governing board members enumerated by statute:

1. obey all applicable laws about official actions taken as a board member,
2. uphold the integrity and independence of the office,
3. avoid impropriety in the exercise of official duties,
4. faithfully perform duties,
5. act openly and publicly.

The statute does not impose or authorize sanctions for failure to comply with ethics codes. Boards have no explicit authority to sanction their members as a means of enforcing the ethics code or for other purposes. However, failure to adopt a code or to comply with its provisions may elicit citizen and media criticism and may itself be considered unethical.

As with the ethics education requirement, state law does not require that ethics codes be applied to local employees and members of local appointed boards (such as boards of adjustment or advisory committees), but a local governing board may choose to extend the provisions of its code of ethics to these groups.

Some state government officials and senior employees are subject to the State Government Ethics Act,³ which establishes ethical standards of conduct for those covered under the act and regulates individuals and entities that seek to influence their actions. The North Carolina State Ethics Commission is responsible for enforcing the act, including investigating alleged violations. Most local government officials and employees are not subject to the State Government Ethics Act by virtue of their local government positions.⁴ Consequently, the State Ethics Commission does not have the authority to investigate allegations of unethical conduct by local government officials.

1. N.C. Gen. Stat. (hereinafter G.S.) §§ 160A-87 and 153A-53.

2. G.S. 160A-86; G.S. 153A-53.

3. G.S. Chapter 138A.

4. Individual officials and employees may be subject to the act if they also serve in a state level capacity covered under it, such as serving on a covered state board or commission. In addition, voting members of the policy-making boards of Metropolitan Planning Organizations (MPOs) and Rural Transportation Planning Organizations (RPOs) (these boards are often referred to as “transportation advisory committees” or “TACs”) are subject to ethics requirements specific to their service on the MPO or RPO TAC (G.S. 136-200.2(g)–(k) for MPOs and G.S. 136-211(f)–(k) for RPOs). For more information about the state ethics and lobbying

Censuring Board Members

Although state law does not provide specific authority for boards to sanction their members for ethical violations, elected boards do have general authority to pass resolutions or motions, and some boards use a motion or resolution of censure to address ethical or legal transgressions by board members, including violations of the board's code of ethics. This type of censure has no legal effect other than to express dissatisfaction or disapproval by the board (or a majority of the board) of the actions or behavior of one of its members. There are no specific procedural requirements for such an action. The School of Government's model code of ethics includes recommendations for a censure process.⁵

II. Conflicts of Interest in Voting

Ethical and conflict of interest issues often arise as questions about whether a board member may, must, or must not vote on a particular matter in which he or she has some personal interest. In general, a governing board member has a duty to vote and may be excused from voting only in specific situations as allowed by statute. North Carolina law does not explicitly authorize county or city board members to abstain or recuse themselves from voting. Instead, the statutes describe limited grounds for which a member may be excused from voting.

The statutes governing voting by county and city board members are slightly different, and especially for cities there is some ambiguity about the proper procedure for excusing a member. The county statute, G.S. 153A-44, provides that the board may excuse a member, whereas the city statute, G.S. 160A-75, simply says that a member "may be excused" without specifying who does the excusing. Another important difference is that the city statute enforces the duty to vote by providing that if a person is present at the meeting, does not vote, and has not been excused, the person is considered to have voted "yes." The county statute does not contain this provision. Both statutes are specific, however, about the reasons for which a person may be excused from voting. In addition, three other statutes prohibit board members from voting in situations involving contracting, land use decisions, and quasi-judicial decisions.

The Duty to Vote

Board members are often advised to avoid even the appearance of a conflict of interest, and in many situations and on many issues a board member may choose to act or to refrain from acting due to a concern about such an appearance. When it comes to voting, however, a board member's duty to vote overrides this choice, in some cases requiring a person to vote, while in only limited circumstances is a person required to refrain from voting. The general voting statutes—Sections 153A-44 (counties) and G.S. 160A-75 (cities) of the North Carolina General Statutes (hereinafter G.S.)—allow governing board members of cities and counties to be excused from voting *only* on matters

1. involving the consideration of the member's own official conduct or financial interest (board member compensation is not considered financial interest or official conduct) or
2. on which the member is prohibited from voting under the following statutes (discussed below):
 - (1) exemptions to the prohibition against directly benefiting under a public contract (G.S. 14-234),
 - (2) zoning matters (G.S. 153A-340(g); G.S. 160A-381(d)), and
 - (3) quasi-judicial decisions (G.S. 153A-345.1; G.S. 160A-388(e2)).

laws that apply to state officials, see Norma R. Houston, "State Government Ethics and Lobbying Laws: What Does and Does Not Apply to Local Governments," *Local Government Law Bulletin* No. 135 (March 2014), <http://sogpubs.unc.edu/electronicversions/pdfs/lglb135.pdf>.

5. A. Fleming Bell, II, *A Model Code of Ethics for North Carolina Local Elected Officials* (Chapel Hill: UNC School of Government, 2010), <http://shopping.netsuite.com/s.nl/c.433425/it.A/id.2531/.f>.

When there is a question about whether a board member has a conflict of interest in voting, the first thing to determine is what type of matter is involved. Specific statutes govern the standard to be applied, depending on the nature of the matter before the board for decision. The following is a short list of circumstances that will help identify the appropriate standard to apply:

1. If the matter involves a legislative land use matter (such as a rezoning or text amendment), the standard is as follows: a board member *shall not* vote where the outcome of the matter is reasonably likely to have a direct, substantial, and readily identifiable personal financial impact. G.S. 160A-381(d); G.S. 153A-340(g).
2. If the matter involves a quasi-judicial function (such as the issuance of a special use permit or an appeal of a personnel decision), the standard is as follows: a board member *shall not participate or vote* if the member has a fixed opinion (not susceptible to change) prior to the hearing; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome. G.S. 153A-345.1; G.S. 160A-388(e2). Note that this provision applies to any person (not just a governing board member) who serves on a board and exercises quasi-judicial functions.
3. If the matter involves a contract from which the member derives a direct benefit (this comes up only if the contract is allowed under an exception to the statute), the standard is as follows: the board member is *prohibited from participating or voting*. G.S. 14-234(b1).
4. For all other matters that come before the governing board for a vote, the standard is as follows: the board member *may be excused* if the matter involves the member's own financial interest or official conduct. G.S. 160A-75; G.S. 153A-44. As noted above, these general voting statutes specifically acknowledge a conflict under any of the other three statutes as grounds for being excused.

Note that each of the first three specific statutes *prohibits* the member from voting. Under the fourth statute, however, it is unclear whether the use of the word “may” in the general voting statutes is intended to make excusing a member from voting optional or whether it simply describes the permissible grounds for being excused.

What Constitutes Financial Interest

North Carolina courts have often ruled on matters involving conflicts of interest. School of Government Professor Fleming Bell fully explores the case law in *Ethics, Conflicts, and Offices: A Guide for Local Officials*. It's important to note, however, that some conflict of interest cases arise in the context of constitutional due process considerations or contracting issues, matters that are now governed by specific statutes that incorporate the standards from the cases. School of Government Professor David Owens analyzes the case law on conflicts of interest in land use matters in *Land Use Law in North Carolina*.

Other matters are governed by the general voting statutes, which contain the more broadly stated “own financial interest” standard. Several cases involving legislative and administrative decisions suggest that courts use a deferential standard when evaluating what constitutes a financial interest. For example, in *Kistle v. Randolph County*,⁶ board members' ownership of property near the area in which a school site was located was considered insufficient to constitute conflict of interest. And in *City of Albermarle v. Security Bank and Trust*,⁷ council members' direct ties to competing financial institutions did not require them to abstain from voting on a proposed condemnation of a portion of the bank's land. These holdings seem appropriate given the underlying obligation to vote as well as the usual judicial deference given to local government decisions in the absence of a clear abuse of discretion.

The following factors, based on case law and the statutes, may be useful in determining when a person may be excused from voting under the general voting statutes.

6. 233 N.C. 400 (1951).

7. 106 N.C. App. 75 (1993).

Number of People Affected

The range of financial impact on board members can be thought of as a continuum based on the extent to which the effect is unique to the board member, on one end of the spectrum, or experienced by many or most citizens, on the other end. If the effect on the board member is the same as the effect on a significant number of citizens, then it is fair to allow the individual to vote. The board member is affected as part of a larger group of citizens, and the vote can serve to represent that group. This is perhaps the most important factor. Even a significant financial effect may not be disqualifying if it is one that is universally or widely experienced by citizens in the jurisdiction.

Extent of the Financial Interest (Benefit or Detriment)

The general voting statutes refer to financial *interest*, not financial *benefit*, as some of the other statutes do. This means that a positive or a negative financial impact may be a basis for excusing a member from voting. An insignificant financial interest, however, whether positive or negative, is not enough to sway a person's vote and should not be used to avoid the duty to vote. Obviously, the significance of a financial interest must be considered in relation to the individual's particular situation, though it might be assessed based on what a reasonable person would do in that situation.

Likelihood That the Financial Impact Will Actually Occur

Sometimes several actions in addition to the specific vote in question are needed for an alleged financial interest to materialize. For example, a person who is a real estate agent votes in favor of a loan which will facilitate a project that the real estate agency might have the opportunity to offer for sale. Without more to suggest that the sales opportunity will actually arise and be available to the board member, such a chain of events is probably too speculative to form a basis for being excused from voting.

III. Conflicts of Interest in Contracting

Several state laws place limits on the ability of elected officials and public employees at the state and local government level⁸ to derive personal benefit from contracts with the governmental units they serve. These laws reflect the public's need to ensure that contracting and other decisions are made in a neutral, objective way based on what is in the public interest and not in consideration of actual or potential benefit to the decision maker. However, these laws do not prohibit all activity that the public might consider improper. Instead, they identify particular activities that the legislature has identified as serious enough to constitute a criminal offense. Situations that are not illegal may nonetheless be inappropriate, so public officials should always consider the public perception of their actions in addition to the legal consequences.

Contracts for Personal Benefit

A criminal statute, G.S. 14-234, prohibits a public officer (elected or appointed) or a public employee from deriving a direct benefit from any contract in which he or she is involved on behalf of the public agency he or she serves. The statute contains two additional prohibitions. Even if a public official or employee is not involved in making a

8. While the statutes discussed in this section apply to all state and local government officials and employees, certain senior-level state officials and employees are subject to specific standards of conduct under the State Government Ethics Act, G.S. Chapter 138A. This act does not generally apply to local government officials and employees unless they also serve in a state capacity, such as serving on a state board or commission covered under the act. Similarly, local government officials and employees are generally exempt from G.S. Chapter 120C, which regulates lobbying senior-level state officials and employees.

contract from which he or she will derive a direct benefit, the official or employee is prohibited from influencing or attempting to influence anyone in the agency who is involved in making the contract. In addition, all public officers and employees are prohibited from soliciting or receiving any gift, reward, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract, even if they do not derive a direct benefit under the contract. Violation of this statute is a Class 1 misdemeanor. Key definitions contained in the statute, along with several important exceptions, are discussed below.

As defined in the statute, a person “derives a direct benefit” from a contract if the person or *his or her spouse* (1) has more than a 10 percent interest in the company that is a party to the contract, (2) derives any income or commission directly from the contract, or (3) acquires property under the contract.⁹ Note that while the prohibition includes a direct benefit to a spouse, it does not extend to other family members or friends, or to unmarried partners. If the employee or official or his or her spouse does not derive a direct benefit from it, a contract between a public agency and a family member, friend, or partner of a board member or employee does not violate the law. Another important aspect of the statutory definition is that it does not make illegal a contract with an entity in which a county or city official is an employee as long as no commission or other direct benefit is derived from the contract.

Since the definition of direct benefit includes the acquisition of property, board members and employees who are involved in the disposal of surplus property are prohibited from purchasing that surplus property from their unit of government. Elected and appointed officials (but not employees) may be able to do so if the unit falls within the “small jurisdiction exception” described below.

The law also specifies what it means to be involved in “making or administering” the contract, which is a necessary element in the statutory prohibition. Individuals who are *not* involved in making or administering contracts are not legally prohibited from contracting with their unit of government. Activity that triggers the prohibition includes participating in the development of specifications or contract terms, or preparation or award of the contract, as well as having the authority to make decisions about or interpret the contract.¹⁰ Performing purely ministerial duties is not considered “making or administering” the contract.¹¹ The statute also makes clear that a person is involved in making the contract when the board or commission on which he or she serves takes action on the contract, even if the official does not participate. Simply being excused from voting on the contract does not absolve a person with a conflict of interest from potential criminal liability. If an exception (discussed below) applies, the interested party may be excused from voting and legally contract with the unit. However, unless an exception applies, simply being excused from voting does not eliminate a conflict under the statute.

As noted above, public officials or employees may legally benefit from a contract with the unit of government they serve as long as they are not involved in making or administering it. Thus, for example, employees who are not involved in disposing of surplus property may legally purchase items from the unit, and the unit may legally contract to acquire goods or services from employees whose county or city job does not involve them in making or administering the contract.

The broad prohibition in G.S. 14-234 is modified by several exceptions. In any case where an exception applies, a public officer who will derive a direct benefit is prohibited from deliberating or voting on the contract or from attempting to influence any other person who is involved in making or administering the contract.¹² Contracts with banks, savings and loan associations, and regulated public utilities are exempt from the limitations in the statute,¹³ as are contracts for reimbursement for providing direct assistance under state or federal public assistance programs under certain conditions.¹⁴ An officer or employee may, under another exception, convey property to the unit but only through

9. G.S. 14-234(a1)(4).

10. G.S. 14-234(a1)(2), (3).

11. G.S. 14-234(a1)(5).

12. G.S. 14-234(b1).

13. G.S. 14-234(b)(1).

14. G.S. 14-234(b)(4).

a condemnation proceeding initiated by the unit.¹⁵ An exception in the law also authorizes a county or city to hire as an employee the spouse of a public officer (this exception does not apply to public employees).¹⁶

A final exception applies only in cities with a population of less than 15,000 and in counties with no incorporated municipality with a population of more than 15,000.¹⁷ In these jurisdictions, governing board members as well as certain members of the social services, local health, or area mental health boards, of the board of directors of a public hospital, and of the local school board may lawfully contract with the units of government they serve, subject to several limitations contained in the exception. First, the contract may not exceed \$20,000 for medically related services and \$40,000 for other goods or services in any twelve-month period (note this requirement specifically applies to any twelve-month period, not necessarily a fiscal year). In addition, the exemption does not apply to any contract that is subject to the competitive bidding laws, which includes purchase and construction or repair contracts with an estimated cost of \$30,000 or more. Contracts made under this exception must be approved by special resolution of the governing board in open session. The statute imposes additional public notice and reporting requirements for these contracts and prohibits the interested board member from participating in the development of or voting on the contract. A contract entered into under the “small jurisdiction” exception that does not comply with all the procedural requirements applicable to this exception violates the statute.

Contracts entered into in violation of G.S. 14-234 violate public policy and are not enforceable. There is no authority to pay for or otherwise perform a contract that violates the statute unless the contract is required to protect the public health or welfare and limited continuation is approved by the Local Government Commission.¹⁸ Prosecutions under the statute are not common (although some have occurred), but situations in which board members or public officials stand to benefit from contracts involving public funds often make headlines.

Gifts and Favors

Another criminal statute, G.S. 133-32, is designed to prevent the use of gifts and favors to influence the award and administration of public contracts. The statute makes it a Class 1 misdemeanor for a current contractor, a contractor who has performed under a contract with a public agency within the past year, or a person who anticipates bidding on a contract in the future to give any gift or favor to public officials and employees who have responsibility for preparing, awarding, or overseeing contracts, including inspecting construction projects. The statute also makes it a Class 1 misdemeanor for those officials to receive the gift or favor.

The statute does not define gift or favor. A reasonable interpretation is that the prohibition applies to anything of value acquired or received without fair compensation unless it is covered by a statutory exception. These exceptions include advertising items or souvenirs of nominal value, honoraria for participating in meetings, and meals at banquets. Inexpensive pens, mugs, and calendars bearing the name of the donor firm clearly fall within the exception for advertising items and souvenirs. Gifts of a television set, use of a beach cottage, or tickets to a professional sports event probably are prohibited. Although meals at banquets are allowed, free meals offered by contractors under other circumstances, such as lunch, should be refused. Some local governments have adopted local policies establishing a dollar limit for gifts that may be accepted; however, a gift allowed under a local policy must still be refused if it violates state law.

The statute also allows public officials and employees to accept customary gifts or favors from friends and relatives as long as the existing relationship, rather than the desire to do business with the unit, is the motivation for the gift. Finally, the statute specifically does not prohibit contractors from making donations to professional organizations to defray meeting expenses, nor does it prohibit public officials who are members of those organizations from partici-

15. G.S. 14-234(b)(2). The statute specifically authorizes the conveyance to be undertaken under a consent judgment, that is, without a trial, if approved by the court.

16. G.S. 14-234(b)(3).

17. G.S. 14-234(d1). Population figures must be based on the most recent federal decennial census.

18. G.S. 14-234(f).

pating in meetings that are supported by such donations and are open to all members (for example, sponsorship of a conference event that is open to all conference attendees).

It is important to distinguish between gifts to individuals and gifts to the government entity itself. A contractor may legally donate goods and services to the local government for use by the unit. For example, a local business can legally donate products to the unit for its own use or for the unit to raffle to employees for an employee appreciation event. Gifts or favors delivered directly to individuals for their personal use should be returned or, in some cases, may be distributed among employees such that each person's benefit is nominal. The latter approach is common for gifts of food brought to a department by a vendor. Public officials should inform contractors and vendors about the existence of the gifts-and-favors statute and about any local rules in effect within the unit addressing this issue.

Misuse of Confidential Information

G.S. 14-234.1 makes it a Class 1 misdemeanor for any state or local government officer or employee to use confidential information for personal gain, to acquire a pecuniary benefit in anticipation of his or her own official action, or to help another person acquire a pecuniary benefit from such actions. Confidential information is any non-public information that the officer or employee has learned in the course of performing his or her official duties.

IV. Conflicts of Interest for Specific Categories of Officials and Public Employees

In addition to the statutes discussed above that apply to all local officials and employees, specific conflict of interest prohibitions apply to certain groups of officials and employees, including those discussed briefly below.

Building Inspectors

Both city and county building inspectors are prohibited from having a financial interest in or being employed by a business that furnishes labor, materials, or appliances for building construction or repair within the city or county jurisdiction. All employees of city and county inspection departments, including individuals working under contract with those departments, are prohibited from engaging in any work that is inconsistent with their public duties. In addition to these general prohibitions, the statute requires a city or county to find a conflict of interest if the employee (including individuals working under contract with an inspection department) has a financial or business interest in the project being inspected or has a close relationship with or has previously worked within the past two years for the project's owner, developer, contractor, or manager.¹⁹

Project Designers

Architects and engineers performing work on public construction projects are prohibited from specifying any materials, equipment, or other items manufactured, sold, or distributed by a company in which the project designer has a financial interest.²⁰ Project designers are prohibited also from allowing manufacturers to draw specifications for public

19. G.S. 153A-355 (counties) and G.S. 160A-415 (cities).

20. G.S. 133-1.

construction projects.²¹ A violation of these restrictions is punishable as a Class 3 misdemeanor; violators lose their licenses for one year and a pay a fine of up to five hundred dollars (\$500).²²

Public Hospital Officials and Employees

Boards of directors and employees of public hospitals and hospital authorities and their spouses are prohibited from acquiring a direct or indirect interest in any hospital facility, property planned to be included within a hospital facility, or a contract or proposed contract for materials or services provided to a hospital facility. Limited exceptions to this prohibition apply; a contract entered into in violation of these prohibitions is void and unenforceable.²³

Local Management Entity (LME) Board Members

Local management entity (LME) board members cannot contract with their LME for the delivery of mental health, developmental disabilities, and substance abuse services while serving on the board (and are not eligible for board service so long as such a contract is in effect).²⁴ Nor can an individual who is a registered lobbyist serve on an LME board.

Housing Authorities

Commissioners and employees of a housing authority, or of a city or county when acting as a housing authority, are prohibited from having or acquiring any direct or indirect interest in any housing project, property included or planned to be included in any project, or a contract or proposed contract for materials or services to be furnished or used in connection with any housing project.²⁵

V. Conflicts of Interest Applicable to Federal Grant Funds

The Grants Management Common Rule (GMCR) is a set of federal regulations that generally apply to the management of federal grant funds and include both specific procurement requirements as well as conflict of interest prohibitions that differ in some ways from state law. Grantees and subgrantees are required to adopt a written code of conduct that (1) addresses real and apparent conflicts of interest, (2) imposes prohibitions against accepting gifts and favors from vendors and contractors, and (3) establishes disciplinary actions for violations. In addition, the GMCR prohibits real or apparent financial or other interests in a contract funded with federal funds by officers, employees, and agents of grantees and subgrantees as well as their spouses, immediate family members, partners, and soon-to-be-employers. Finally, the GMCR prohibits all officers, employees, and agents of grantees and subgrantees from accepting gifts or favors from current or future contractors. A violation of these prohibitions can result in disciplinary action and loss of federal funding. Local governments should consult with the federal granting agency to ensure full compliance with the GMCR or any other federal regulations applicable to federal grant funds.

21. G.S. 133-2.

22. G.S. 133-4.

23. G.S. 131E-14.2 (public hospitals) and G.S. 131E-21 (hospital authorities).

24. G.S. 122C-118.1(b).

25. G.S. 157-7.

Additional Resources

Bell, A. Fleming, II. *Ethics, Conflicts, and Offices: A Guide for Local Officials*. 2nd ed. Chapel Hill: UNC School of Government, 2010.

_____. *A Model Code of Ethics for North Carolina Local Elected Officials*. Chapel Hill: UNC School of Government, 2010.

Bluestein, Frayda S. *A Legal Guide to Purchasing and Contracting for North Carolina Local Governments*. 2nd ed. with supplement. Chapel Hill: UNC School of Government, 2007.

Ethics for Local Government Officials, UNC School of Government webpage, www.sog.unc.edu/programs/ethics.
“Ethics & Conflicts.” *Coates’ Canons: NC Local Government Law Blog*, canons.sog.unc.edu/?cat=5.

Houston, Norma R. “State Government Ethics and Lobbying Laws: What Does and Does Not Apply to Local Governments.” *Local Government Law Bulletin* No. 135 (Mar. 2014).

About the Authors

Frayda S. Bluestein is a School of Government faculty member specializing in local government law. Norma R. Houston is a faculty member of the School of Government and a fellow of the Parr Center for Ethics at UNC Chapel Hill.

Your Essential Local Government Resource

County and Municipal Government in North Carolina provides a comprehensive look at the foundations, legal authority, organization, and administration of the state's counties and cities. Chapters are written by School of Government faculty and other experts in North Carolina local government.

Your Resource, Your Format

The complete reference book is available in PDF electronic format, and individual chapters are available for purchase at www.sog.unc.edu/pubs/cmgs.

Stay Current with School of Government Blogs

Faculty members write for a number of School of Government blogs, providing timely updates on emerging issues. The **Coates' Canons: NC Local Government Law** blog disseminates information about a broad range of legal issues affecting local governments and other public agencies in North Carolina. Subscribers receive timely updates on legislation, court cases, and other developments affecting local government law in North Carolina that keep readers up to date between supplements and new editions of this book. Subscribe today at canons.sog.unc.edu.

Training for Local Government Officials

Municipal and County Administration is a comprehensive course designed for city and county officials whose responsibilities require an understanding of local government functions beyond individual areas of specialization.

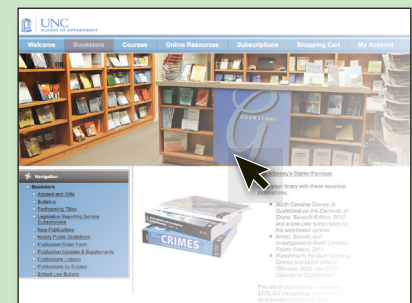
Held in alternating years, the *Essentials of County Government* and *Essentials of Municipal Government* courses provide newly elected officials, veteran elected officials, managers, and boards a two-day orientation in finance, roles and responsibilities, and the function of their agencies in local government.

The *Public Executive Leadership Academy* provides city and county managers, their assistants, and key department heads the opportunity to learn more about themselves as leaders and to gain skills to lead and manage change in their communities.

For more information on these course offerings, visit www.sog.unc.edu/courses.

About the School of Government

The School of Government at the University of North Carolina at Chapel Hill is the largest university-based local government teaching, advising, and research organization in the United States. Its mission is to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials and citizens understand and improve state and local government.



Contact the bookstore:

sales@sog.unc.edu or 919.966.4119

Check for updates to publications:

www.sog.unc.edu/pubs/updates

Order online:

www.sog.unc.edu/pubs



UNC School of Government



@uncsog