

The State Ethics Act

A Practical Guide for UNC Governing Boards

Leslie J. Winner
Vice President and General Counsel
University of North Carolina
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The Main Questions

- What gifts are prohibited?
- When is giving a gift prohibited or required to be reported?
- When do you have a conflict of interests?
What must you do if you do?

Receiving Gifts

No Quid Pro Quo Gifts

- A UNC governing board member may not seek or receive a gift in return for being influenced. This quid pro quo demand or receipt would amount to bribery, and would be a Class F felony pursuant to G.S. §14-217 or §14-218.

What is a Gift?

- A gift is anything of monetary value.
- Exceptions:
 - Fair market value, or face value, is paid
 - Commercially available loans on generally available terms
 - Contractual arrangements in the normal course of business
 - Academic or athletic scholarships
 - Campaign contributions
- There is no *de minimus* exception.

Improper Gifts

- A gift is not improper unless it is from:
 - A lobbyist or a lobbyist principal
 - A person doing or seeking to do business with UNC
 - A person who is regulated or controlled by UNC
 - A person who has a financial interest that may be materially affected by your performance of your duties.

So the first question to decide if a gift is OK is, "Who is it from?"

What is a lobbyist principal?

- A lobbyist principal is the person on whose behalf a lobbyist lobbies—that is, the entity that hires the lobbyist.
- If the lobbyist works for a law firm, it is the client, not the law firm, who is the lobbyist principal.
- UNC, and other State agencies with liaison personnel, are not a lobbyist principals.

Primary Exceptions

- Food or beverages for immediate consumption at a **public event**
- Gifts from members of your **extended family** or household
- Gifts received as part of a **business, civic, religious, fraternal, personal, or commercial relationship** not related to your public service or position and made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying.

What is a public event*?

- Open to the general public and at least 10 public servants are invited
- Gathering of a governmental body subject to the open meetings law and at least 10 public servants are invited
- At least 10 public servants are invited and at least 10 people who are not public servants actually attend

*Note: there is a different definition of “public event” for legislators.

Who is your “extended family”?



- Your spouse
- Lineal descendants (children, grandchildren, etc.)
- Lineal ascendants (parents, grandparents, etc.)
- Siblings (brothers, sisters)
- Spouse of any of them (son-in-law, brother-in-law)

- Your spouse's lineal ascendants (parents-in-law)
- Your spouse's lineal descendants (stepchildren)
- Your spouse's siblings (brothers and sisters-in-law)
- The spouse of any of them (you sister-in-law's husband)

- Not aunts, uncles, nieces, nephews



Pop Quiz

1. Your friend who works for Local Bank gives you a Christmas present. Local Bank occasionally issues debt on behalf of UNC. May you take it?

Pop Quiz

- Your friend who works for Local Bank says the bank has bought season tickets to the Opera and invites you and your spouse to be his guest for an evening of culture. May you go?

Pop Quiz

- Local Utility employs a lobbyist to represent its interests in Raleigh. Your neighbor, who is the CFO of Local Utility, invites your family over to his house for a picnic. May your family go?

Pop Quiz

- The World Class University is seeking to open a branch in your city, and its president invites you to dinner to discuss its planned curriculum. May you be his guest for dinner?

Pop Quiz

- My niece, who is a lobbyist, invites me for Sunday dinner. She serves soup and salad. Do I have to reimburse her for the dinner? What if I bring bread and wine?

Pop Quiz

- Your freshman roommate is an architect interested in designing a UNC building. You haven't seen him in 20 years. He comes to town and invites you to dinner. Is it OK for him to pay for your dinner?

What to do with an Impermissible Gift?

- Decline it
- Return it
- Pay fair market value for it
- Donate it to charity
- Donate it to the State (or UNC)

Giving Gifts

- Legislators and other designated individuals, such as Council of State members and State Agency heads, may not accept gifts from lobbyists or lobbyist principals.
- UNC is not a lobbyist or lobbyist principal, so serving on a UNC governing board does not make giving gifts to these people prohibited.

But you may have to report it

- Even though you are not lobbyists, if you give a legislator or other designated individual gifts (e.g. pay for a meal), for the purpose of lobbying, with a total value of more than \$200 per calendar quarter, you must report them. That means you must keep track of them and their value.

Athletic tickets

- Neither UNC nor its constituent institutions nor their liaison personnel may give a designated individual an athletic ticket.
- This does not mean UNC Board members may not receive athletic tickets.
- If you have personal tickets that you did not receive as a result of your position with UNC, you may give them to anyone, but you may have to report the gift.

Conflicts of Interest

The heart of the matter!

You may not perform an official action if

- you
 - a member of your extended family OR
 - a business with which you are associated
- has an economic interest in or
will foreseeably benefit from the action.

It is also a conflict

- If the matter under consideration will hurt your business competitor

What is a business with which you are associated?

- You are associated with a business if you or a member of your immediate family
 - Is an employee OR
 - Holds a position such as director, officer, partner, proprietor or manager OR
 - Owns a legal, equitable, or beneficial interest > \$10,000 or >5% (This generally does not include a widely held investment fund such as a mutual fund).

What is an economic interest?

- You have an economic interest if the matter affects a business with which you are associated OR a non-profit with which you are associated.
- You are associated with a non-profit if you or a member of your immediate family is a director, officer, employee or independent contractor as of last December 31

You also have a conflict if

- you have a
 - familial,
 - personal, or
 - financialrelationship with a participant in a proceeding
- such that your impartiality might reasonably be questioned.

It is NOT a conflict if

- The benefit you or your family member would receive is no greater than a whole class of people would receive.
- The Board has made a determination that your interest will not impair your judgment
- One of the other exceptions apply

What to do if you have a conflict

- Tell the presiding officer
- Refrain from participating in writing or verbally
- Abstain from voting
- If you or your spouse would get a direct financial benefit from a contract or transaction, then the board may not enter into that transaction even if you abstain

Pop Quiz #2

What should you do?

1. If a student appellant is your child's close friend and the appeal comes to your committee?
2. You are an architect and your firm has submitted a proposal to design a building. You will not be involved in the design.

Pop Quiz #2 cont.

3. You are on P&T and one of the items is to approve a raise for you brother in law? For your niece?
4. Your brother is an employee of Acme Engineering. The Board is considering hiring Acme to be the engineer for a construction project.

Pop Quiz #2 cont.

5. Your child is on the faculty at UNC-X.
The BOG is voting on whether to give all faculty members an 8% raise.
6. Your spouse is on the board of a local private college. UNC is proposing to establish a joint degree program with that college.

Finally

- If you think a gift might be improper
- Or if you think you might have a conflict
- Call or e-mail me before you decide what to do!

Questions???