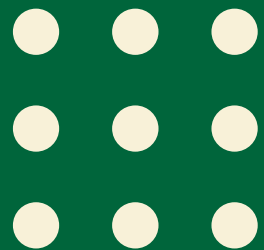




North Carolina Association
of County Commissioners



Ethics for County Officials

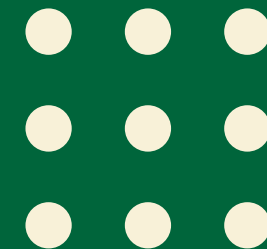
NCACC Annual Conference

August 2023

Amy Bason, NCACC

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Spruill, LLP

Kara Millonzi, UNC SOG



Why Are You Here?

Legal Mandate

§ 160A-87. Ethics education program required.

- (a) All members of governing boards of cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties shall receive a minimum of two clock hours of ethics education within 12 months after initial election or appointment to the office and again within 12 months after each subsequent election or appointment to the office.
- (b) The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level.
- (c) The ethics education may be provided by the North Carolina League of Municipalities, North Carolina Association of County Commissioners, North Carolina School Boards Association, the School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the governing board.
- (d) The clerk to the governing board shall maintain a record verifying receipt of the ethics education by each member of the governing board.

Ethics are the principles that guide your conduct and actions as a board member and a board.

I, ... do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my officeso help me God.”

North Carolina Constitution, Article VI, Sec. 7

A code of conduct to guide county officials in exercising their duties lawfully and with integrity and transparency.

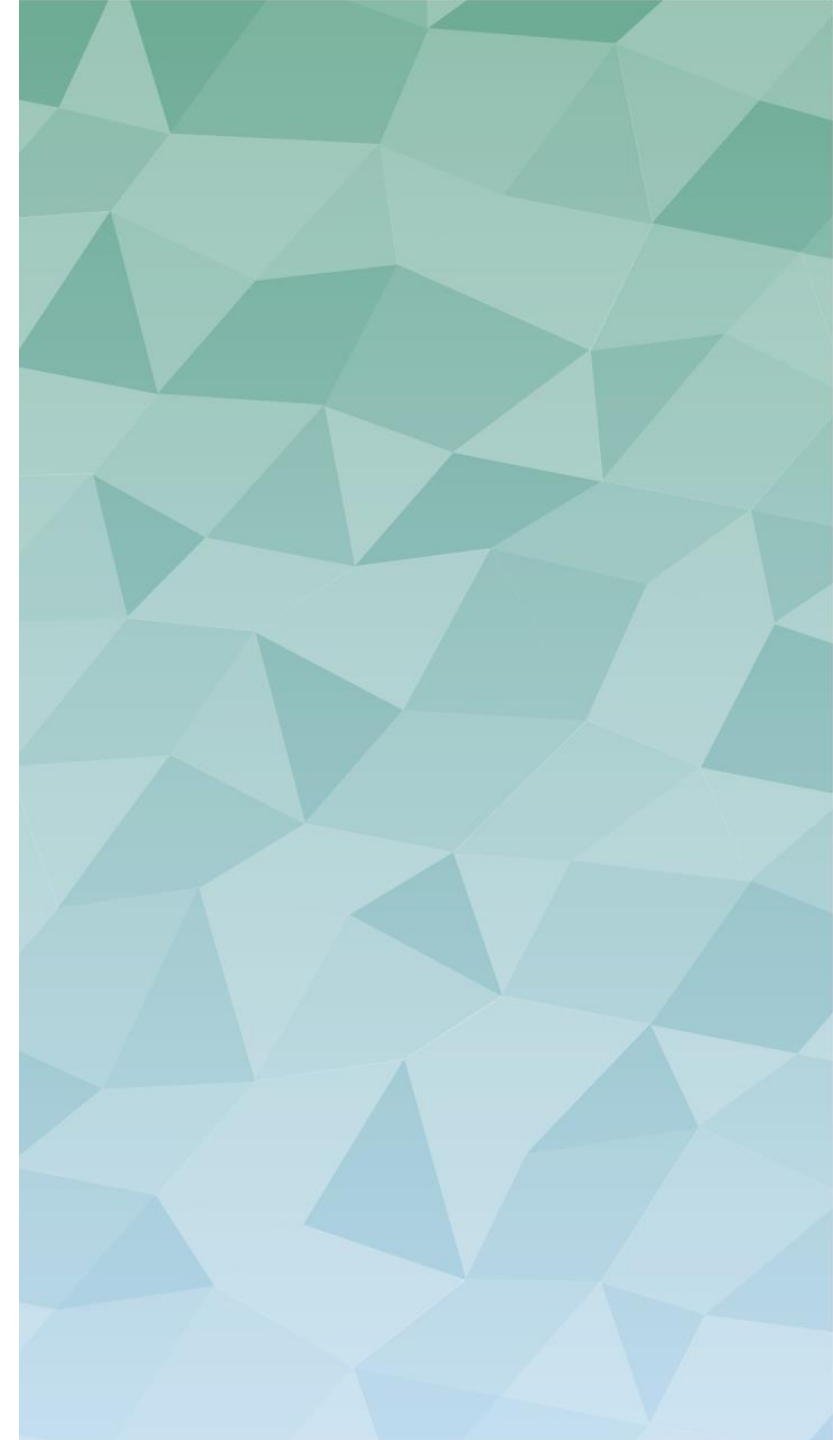
Ethical
Standards

Legal
Obligations

County officials and staff must have legal authority to engage in any activity.

How is this Different from State Ethics Training?

- State law requires covered persons to attend State Ethics training:
 - Includes Members of State Boards and Commissions
 - Includes Community College Boards of Trustees
 - Covers State ethics and lobbying laws
- If covered by G.S. 160A-87, must still attend local government ethics training



Each board of county commissioners must adopt a code of ethics.

1 Ask for a copy of your board's code of ethics.

2 Review the code.

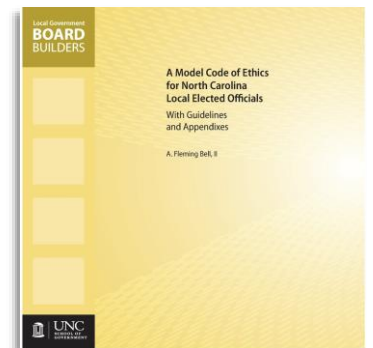
3 Discuss any questions/issues with other board members, county attorney, and county manager.

4 Suggest changes/additions.

Code of Ethics

1. Obey all applicable laws
2. Uphold integrity and independence of your office
3. Avoid impropriety in the exercise of your official duties
4. Faithfully perform the duties of your office
5. Conduct board business in an open and public manner

Resource on developing & implementing a code of ethics



Follow All Applicable Laws



But the law does not allow us to do it...

WHAT STATUTE SAYS WE CAN'T DO IT???

We need to do this for our citizens...

What Statute Says We Can Do It?

A county may only undertake activities that it has been granted authority to undertake

Sources of Authority

- General Laws
(eg Ch. 153A, 160D, 143)
- Local Acts

Limits on Authority

- Federal Law
- State Constitution
- State Regulations

Uphold Integrity, Avoid Impropriety, & Faithfully Perform

Discuss at
your table

1. What duties do you owe to the public?
2. What duties do you owe to the county?
3. What duties do you owe to other board members?
4. What does it mean to act with integrity as a commissioner?
5. What is independent decision-making?
6. What else is involved in faithfully performing your duties?
7. How do you address conflict?
8. Who do you go to for help?

Conduct Business in an Open & Public Manner

If following public records and open meetings laws, how do you conduct business?



Duty to Vote



County commissioners have a *legal duty* to vote, imposed by statute.

Unless a statutory exception applies, a board member **must vote**.

There is no “general authority” to recuse—a statutory exception must apply.



§ 153A-44. Members excused from voting.

The board may excuse a member from voting, but only upon questions involving the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct.

Commissioners also are prohibited from voting in certain land regulation matters under 160D-109.

When Not to Vote

Does the Matter Involve	Do You Have A	If So . . .
Legislative Decision Regarding a Development Regulation G.S. 160D-109(a)	Direct, substantial, and readily identifiable financial interest in the outcome of the matter	DON'T VOTE (Statutory prohibition)
Rezoning Petition or Zoning Text Amendment G.S. 160D-109(a)	Close familial, business, or other associational relationship with applicant for zoning text amendment or landowner of property subject to rezoning petition	DON'T VOTE (Statutory prohibition)
Quasi-Judicial Hearing G.S. 160D-109(d) (land use matters)	Fixed opinion prior to the hearing, undisclosed <i>ex parte</i> communications, close familial, business, or other relationship with an affected person, or financial interest in outcome	DON'T PARTICIPATE OR VOTE (Statutory prohibition)
Public Contract G.S. 14-234	Prohibited “direct benefit” that you or your spouse would derive under the contract	DON'T PARTICIPATE OR VOTE (Statutory prohibition)
All Other Matters G.S. 153A-44	Financial interest in the matter <i>or</i> the matter involves your own official conduct	MAY BE EXCUSED FROM VOTING (Statute authorizes board to excuse member from voting)

What is a “close familial” relationship?

A spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. (G.S. 160D-109(f)).

What is a Financial Interest?

Board member *may* be excused from voting if the matter involves his or her “own financial interest”

Statute does not define “own financial interest”

Factors to consider:

- Number of people affected
- Extent of financial interest (positive or negative)
- Likelihood of impact



Financial Interest Continuum

Affects many people
Nominal impact
Remote likelihood



Affects board member only
Significant impact
Strong likelihood

When Not to Vote

Does the Matter Involve	Do You Have A	If So . . .
Legislative Decision Regarding a Development Regulation G.S. 160D-109(a)	Direct, substantial, and readily identifiable financial interest in the outcome of the matter	DON'T VOTE (Statutory prohibition)
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A County Commissioner's "Own . . . Official Conduct"

Board member *may* be excused from voting if the matter involves his or her "own . . . official conduct"

Statute does not define "official conduct"

Potential Excusal Scenarios:

- Voting to Censure a Member
- Voting to Excuse a Member from Voting on a Matter Involving a Member's "Own Financial Interest"

RESET PAGE



Self-Benefiting in Public Contracting Prohibited

G.S. 14-234



If you're involved at any point in the contracting process, you're involved in "making or administering" the contract

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

Cannot be cured by excusing board member from voting

*Unless an exception applies

Self-Benefiting in Public Contracting Exceptions

G.S. 14-234(b)(1)-(4), (d1)-(d5)

Certain types of contracts do not trigger a violation:

1. Banks and regulated utilities contracts
2. Friendly condemnation
3. Spouse employment contracts
4. Public assistance programs
5. Certain grants under 14-234(d3)
6. Grants or other financial assistance from the Tobacco Trust Fund under certain circumstances per 14-234(d4)
7. Public hospitals under 14-234(d5)
8. Small Jurisdiction Exception*
 - Cities with a population of less than 20,000
 - **Counties that contain no city with a population of greater than 20,000**
 - Contract for medical services cannot exceed \$20,000 and a contract for goods or services cannot exceed \$60,000

* *Does not apply to public building contracts*

Requirements for the small jurisdiction exception:

- Must be approved at regular meeting in open session
- The conflicted public official cannot participate in any way
- The total annual amount of contracts with each official must be specifically noted in the audited annual financial statement
- The governing board must post in a conspicuous place a list of all officials with whom such contracts have been made, briefly describing the subject matter of the undertakings or contracts and showing their total amounts. This list shall cover the preceding 12 months and must be updated at least quarterly

Conflict of Interest: 14-234.3



“Public official” is:
Any individual
elected OR
appointed to a
governing board of
political subdivision.

1. Deliberating or voting;
2. Attempting to influence another that is voting; OR
3. Soliciting or receiving a gift or favor (including future employment) in exchange for recommending / influencing award of contract

An incorporated *or* unincorporated nonprofit corporation, organization, or association organized or operating in the State primarily for tax-exempt purposes AND of which the public official is a director, officer, or governing board member.*

Does NOT include nonprofit corporations created by State or its political subdivisions.

**Unless an exception applies

Public official must record recusal with the clerk AND NOT “knowingly participate”.

G.S. 14-234.3 Exceptions



Certain types of contracts do not trigger a violation:

1. Contracts Between Public Agencies and Banks or Regulated Utilities
2. Friendly Condemnation
3. Employment of a Spouse of a Public Officer
4. Public Assistance Payments
5. Small Jurisdiction

Is It Legal? Spouse Marketing

A board of county commissioners wants to hire a marketing and PR agency to help it draft social media policies and provide training on board members' and employees' social media use. Can the board hire the marketing firm that employs one of the commissioner's husbands?

Is it legal?



Is It Legal? Sister Contractor

A county board of commissioners is considering awarding a multi-million dollar construction contract to a commissioner's sister. The sister's company is the lowest responsive, responsible bidder.

Is it legal for the commissioner to vote on her sister's construction contract?



Is It Legal? Nonprofit Board

A county commissioner also serves on the Boys and Girls Club Board of Directors. The Club is seeking grant funds from the county for after-school programs. The potential grant contract comes before the board of commissioners for consideration.

Is it legal for the county commissioner to participate in the discussions and vote on the grant contract?



Excusal v. Recusal



VOTE
TODAY

“EXCUSED” FROM VOTING

- own financial interest; official conduct; exceptions to contract prohibition; and non-profit contracts
- other board members decide/vote
- member whose potential interest or conduct should not vote

“RECUSAL”

- land use matters

“OBJECTION”

- if member does not **recuse** → remaining members vote on objection

Practitioner's Advice

- Fine tune your ethical (and political) antenna
- Consult with your attorney
- Make a plan
- Consider whether to publicly disclose and get “cover,” even when there is not a disqualifying conflict

Gifts and Favors



Cannot solicit or receive any gift, favor, or promise of reward in exchange for influencing or attempting to influence the award of a contract

Class 1 Misdemeanor!

G.S. 133-32

Gifts and Favors



If you award or administer public contracts, you cannot receive a gift or a favor from a contractor

Past, present, or future contractor

Class 1 Misdemeanor!

G.S. 133-32

Gifts and Favors

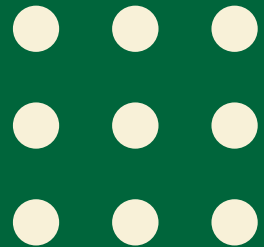


Gifts to the County?

- Transportation, food, lodging for county business?
- Consider addressing in your Code of Ethics
- Approvals/ Reporting?



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Thank you!

Amy Bason, NCACC

Robert Hagemann, Poyner
Spruill, LLP

Kara Millonzi, UNC SOG

