

# Ethics: What Everyone Should Know

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*A frequent recurrence to  
fundamental principles is  
absolutely necessary to  
preserve the blessings of  
liberty.*

**Constitution of  
North Carolina,  
Article I, Section 35**

# Objectives

- 1. Define ethics and ethical behavior.**
- 2. Distinguish between legal and ethical standards.**
- 3. Explain the effects of role conflicts and interest conflicts on ethical decision making.**
- 4. Apply a process when making ethical decisions.**
- 5. Describe how to develop a successful code of ethics.**
- 6. Follow the laws governing conflicts in contracting.**

# Defining Ethics

1. What is fundamentally appropriate behavior?
2. Doing what is “good,” instead of what is “bad”
3. Characteristics of an ethical person

# Citizen and Public Officials' Expectations

- We can expect to hold each other accountable for ethical principles such as *honesty, fairness, and caring.*
- Citizens want public officials to make decisions based on *what is good for their communities,* not on what is good for the elected officials' own individual interests.
- We can recognize that public officials are the *"especially responsible citizens."* They have been given a *special trust.*

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# Legal vs. Ethical Standards

- If people act **legally** are they also acting **ethically**?
- How does **what's legal** differ from **what's ethical**?

# The Law Provides Only a Floor for Our Behavior—Ethics “Goes Beyond”

[T]he moral aspirations of law are minimal. Law seeks to establish and maintain only that **minimum of actualized morality** that is necessary for the healthy functioning of the social order....It enforces only **what is minimally acceptable**, and in this sense socially necessary....

- John Courtney Murray, S.J., *We Hold These Truths-- Catholic Reflections on the American Proposition* (New York: Sheed and Ward, 1960), 166 (emphasis added).

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What people think they ought to do depends largely on *how they see their roles*, and (most importantly) *the conflicts between their roles*.

Dorothy Emmet, *Rules, Roles, and Relations*  
(New York: St. Martin's Press, 1966)

**Conflicts of interest are fundamentally about *legal and other conflicts* between *public* and *private* roles.**

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# Making Ethical Decisions

The public trust can only be preserved if public officials take their calling seriously and make informed decisions that *reflect the core ethical principles* that they and their fellow citizens share.

Public officials should also consider *who or what is affected by the decision*, and *how they are affected*.

Michael Josephson, Josephson Institute of Ethics

# Making Ethical Decisions

## 2 approaches:

- **Top down** – apply ethical principles to the situation
- **Bottom out** – look at the situation, and ask who is affected, and how?

*Remember that the two methods can work together.*

**Top Down  
(deductive)**

responsible   honest   fair   caring   respectful

**E.D.**



**Bottom Out  
(inductive)**

who?   "win/win"   how?

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# Why have Ethics Codes, Regulations, or Statutes?

- Setting a minimum standard of conduct for public officials helps to provide *certainty* and *accountability*.
- Ethics codes help to provide *identity* for groups of public officials and other professional groups.

# Defining Codes and Regulations

1. **Aspirational:** Public officials should do these things
2. **Prohibitive:** Public officials must not do these things
3. **Hybrid:** Both aspirational and prohibitive

# Issues to Consider in Drafting Ethics Codes

1. How **detailed** should they be?
2. What **subjects** should they cover?
3. Should they be **positive or negative** in tone?
4. **Who prepares** the code? **Who is covered** by the code?
5. Does a statute contain requirements that the code must meet? [e.g., ethics codes for local elected boards under G.S. 160A-86; state ethics (G.S. Ch. 138A) and lobbying (G.S. 120C) laws for “public servants” and high-ranking state officials]

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# Conflicts in Contracting: 3 Statutes

1. Conflicts of interest G.S. 14-234
2. Misuse of secret information G.S. 14-234.1
3. Gifts and favors G.S. 133-32

# Conflicts in Contracting

1. Conflicts of interest G.S. 14-234
2. Misuse of secret information G.S. 14-234.1
3. Gifts and favors G.S. 133-32

# G.S. 14-234 – An Overview

- ❑ Statute applies to all public agencies.
- ❑ Prohibits public officers or employees who are involved in *making* or *administering a contract* from deriving a *direct benefit* from the contract.
- ❑ *Separate offenses* for attempting to influence or receiving benefit or reward for influence.
- ❑ Direct benefit includes benefit to spouse.

# Effects of Violation

## **Class 1 misdemeanor**

- for interested person (G.S. 14-234(e))

## **Contract void**

- May be continued for limited period if necessary to protect public health and safety under procedures set out in G.S. 14-123(f).

# Definitions

## **Public officer:**

- Elected or appointed; not independent contractor or employee

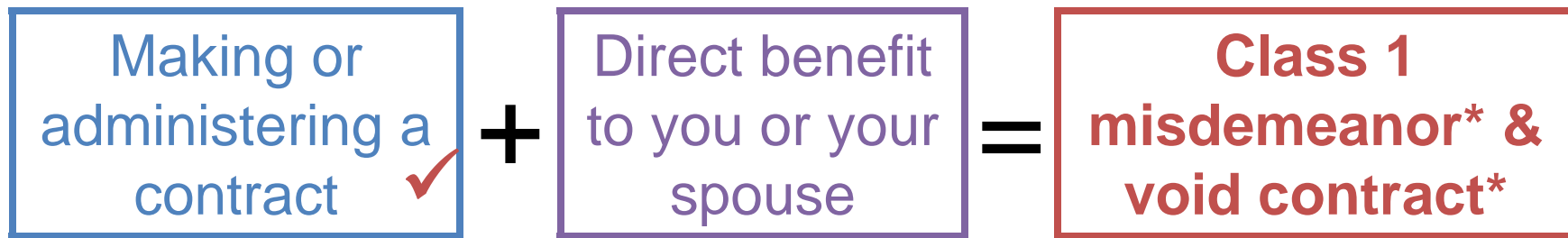
## **Administering a contract:**

- Oversees performance; has authority to make decisions about or interpret the contract

## **Making a contract:**

- Participates in development of specifications
- Awards the contract, individually or as a board
- Individual member of a board makes contract if board votes, even if individual does not, unless individual is excused as provided by law

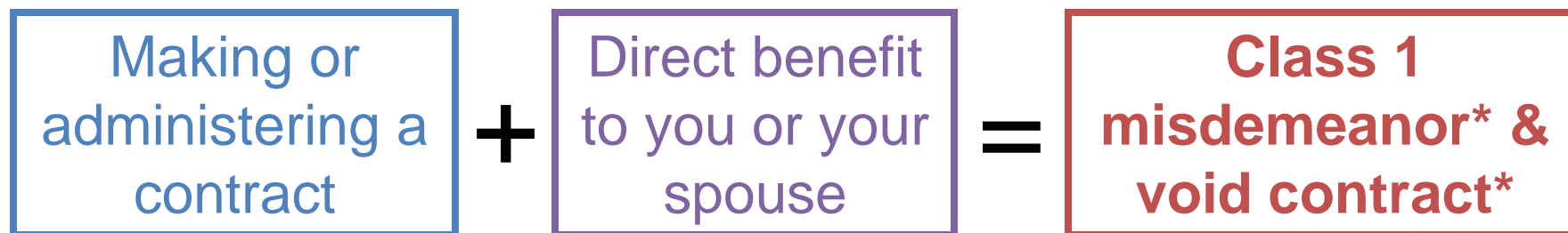
# Conflicts of Interest—G.S. 14-234



\* Unless an exception applies

***\* Bottom line: You are involved in “making” the contract, if you participate in development of specifications, or you award the contract. You are involved in “administering” the contract, if you oversee performance, or have authority to make decisions about or interpret the contract.***

# Conflicts of Interest—G.S. 14-234



\* Unless an exception applies

*\* If you have a conflict, but an exception applies, you may not participate in any way in making the decision or attempt to influence others who are involved in the decision-making process.*

# More Definitions

## Direct benefit:

- A public officer, or his or her spouse:
- Has more than 10% ownership or other interest in the entity that contracts with the unit, or
- Derives income or commission *directly* from the contract, or
- Acquires property under the contract

# Conflicts of Interest—G.S. 14-234



\* Unless an exception applies

***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***
- 3. acquire property under the contract***

# Conflicts of Interest—G.S. 14-234

## Exceptions\*:

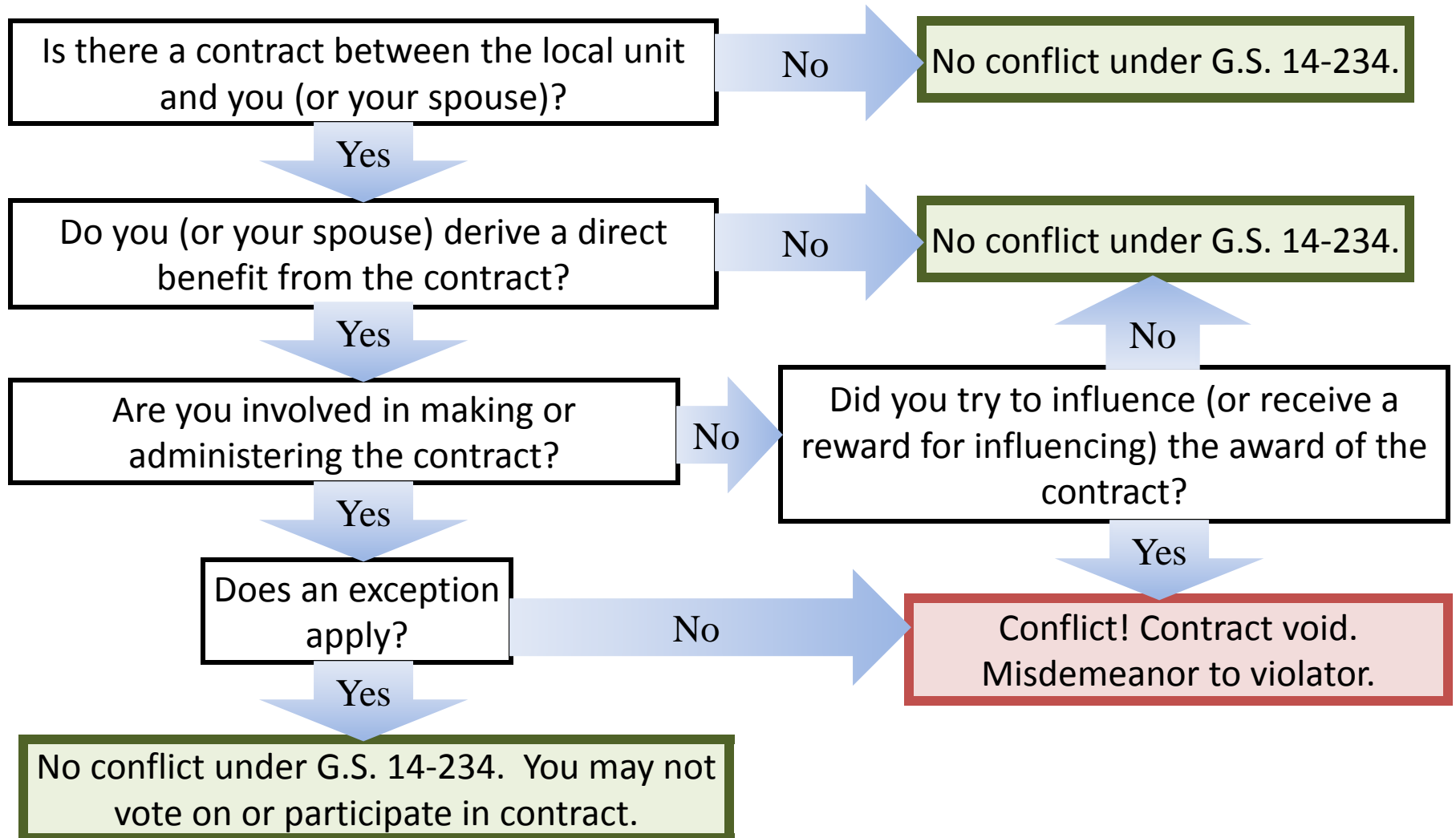
- Contracts with banks, savings and loans, public utilities
- “Friendly” condemnation
- Employment of the spouse of a public officer
- Public assistance programs
- “Small” jurisdictions (see next slide)

**\*Remember, public officer may not vote or participate when a contract is entered into under an exception.**

# Small and Some Other Jurisdictions

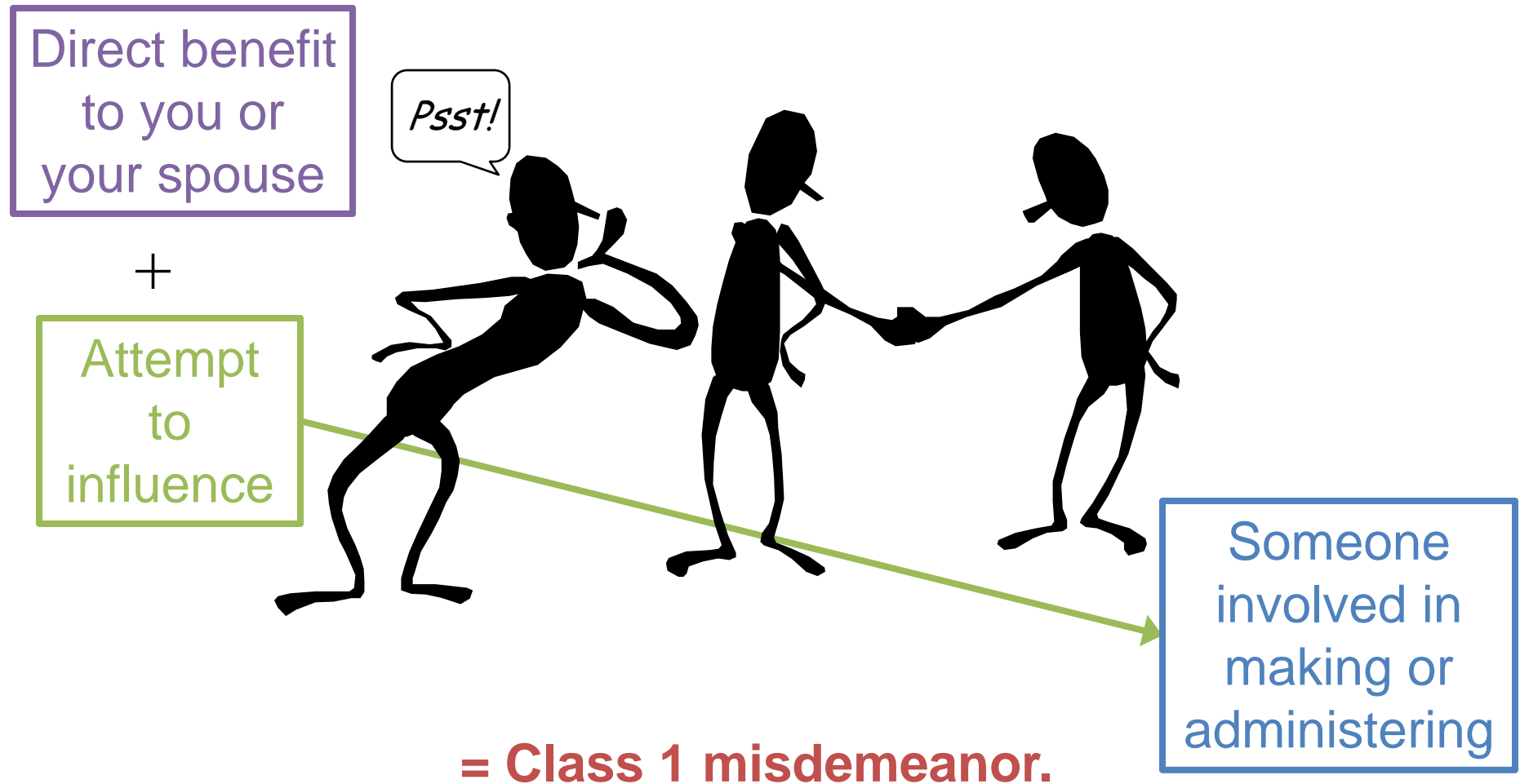
- ❑ **Elected officials and a very few appointed officials may contract with own unit. Most employees may not.**
- ❑ City of no more than 15,000; county with no incorporated municipality of more than 15,000; certain other jurisdictions.
- ❑ Contract may not exceed within 12-month period:
  - *\$20,000 for medically related goods and services.*
  - *\$40,000 for other goods and services.*
- ❑ Exception does not apply if contract is subject to bidding under G.S. Chapter 143, Article 8.
- ❑ Interested party may not vote or participate in any way.
- ❑ Additional reporting requirements apply.

# Conflicts of Interest—G.S. 14-234



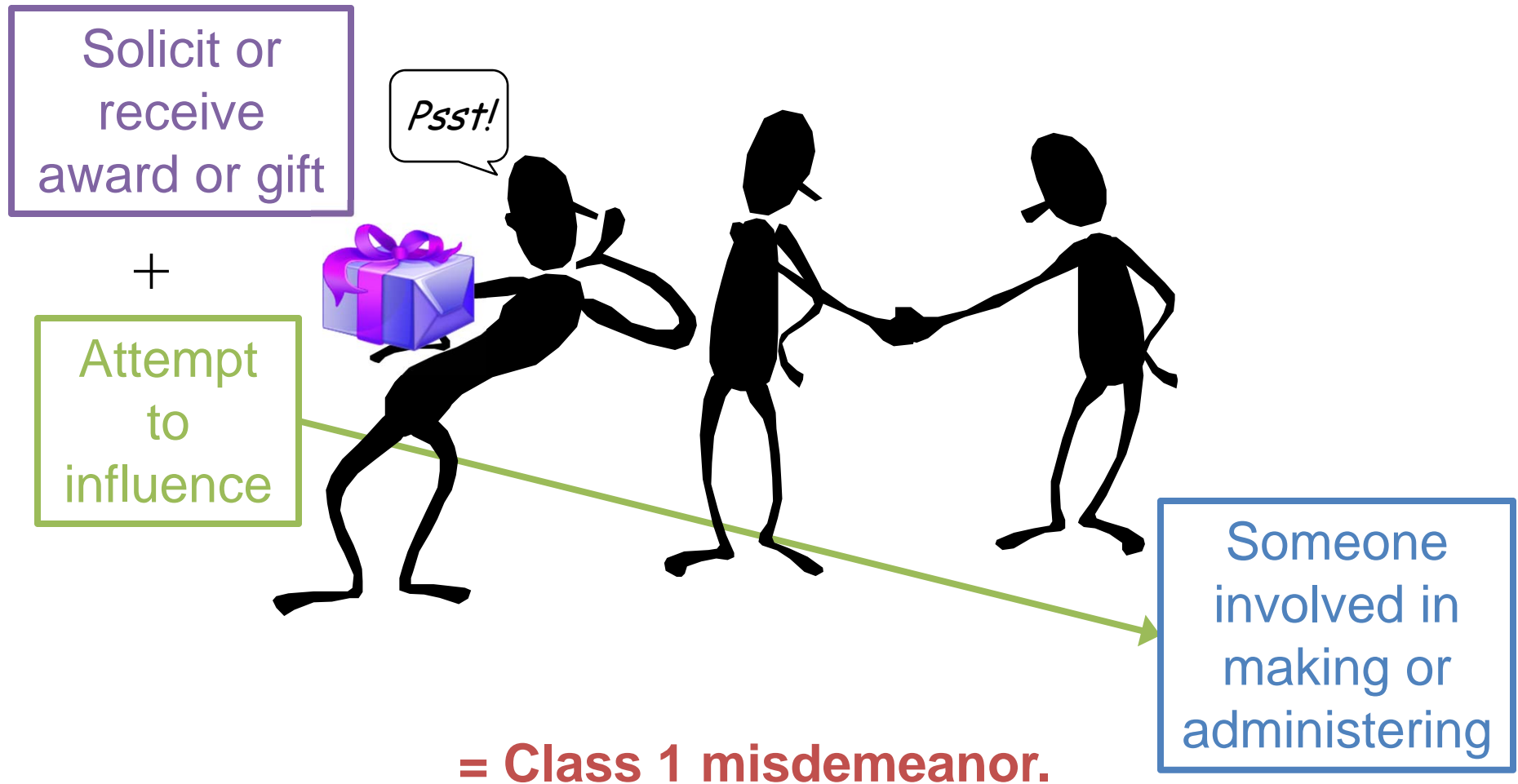
# Conflicts in Contracting—G.S. 14-234

## *Attempting to Influence*



# Conflicts in Contracting—G.S. 14-234

## *Soliciting or Receiving Award or Gift*



# Ethical and Other Practical Considerations

- ❑ Always consider the **negative effect** of contracting with officers or employees, **even when the contract does not violate criminal law.**
- ❑ Appearance of conflict or impropriety (Newspaper Rule).
- ❑ Potential for conflict during contract administration.
- ❑ Required or expected competition; perception of potential competitors.

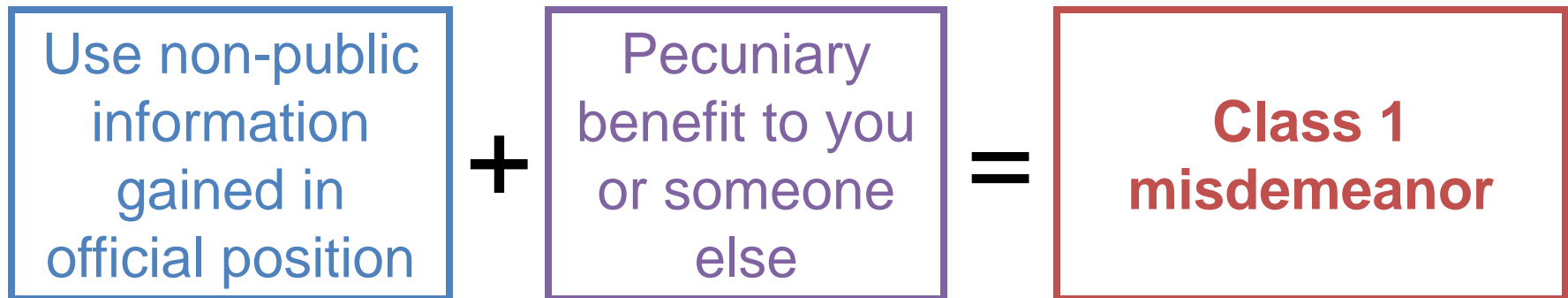
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- 1. Conflicts of interest G.S. 14-234
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- 3. Gifts and favors G.S. 133-32

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

- ❑ **Makes it unlawful for State or local officers or employees**, either
  - **In contemplation of their own official action or of official action by a governmental unit** with which they are associated, **or**
  - **In reliance on information** which was made known to them in their official capacity and **which has not been made public, to:**
- ❑ **Acquire a pecuniary interest** in any property, transaction, or enterprise, **or gain any pecuniary benefit, that may be affected** by such information or official action; **or**
- ❑ **Intentionally aid another** to do any of the above acts.
- ❑ **Violation of G.S. 14-234.1 is a Class 1 misdemeanor.**

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



# Conflicts in Contracting

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# Gifts and Favors – G.S. 133-32

- Applies to **any** type of contract; **violation is a Class 1 misdemeanor.**
- Prohibits gift by present, past, or future contractors.
- Prohibits receipt by elected official or employee involved in contracting.
- Gifts to governmental units are okay.

# Gifts and Favors—G.S. 133-32

- Past (within 1 year),
- current, or
- potential future contractor or vendor



Public officer or employee who:

- prepares plans or specifications for public contracts, or
- awards or administers public contracts, or
- inspects or supervises construction.

**Class 1 misdemeanor to give or to receive, unless an exception applies.**

# Gifts and Favors—G.S. 133-32

## Exceptions:

- Honoraria
- Gifts of nominal (i.e., trivial) value
- Meals at banquets
- Gifts to professional organizations, for “open” events
- Gifts from contractors who are friends or family (must be reported)
- There is no “minimum size” exception

## Reach of statute:

Expanded by Executive Order No. 24, discussed below.

# Stricter Gift Rules

**State and Federal Contracting Rules**—If State or Federal Money is Involved, State and/or Federal Rules Also Probably Apply

- E.g., Governor Perdue’s **Executive Order No. 24, Regarding Gifts to State Employees**
- **Dept. of Transportation Rules Concerning Gifts**
- **Federal Rules about Conflicts of Interest**
- See also Governor Perdue’s **Executive Order No. 32, Regarding Gifts to Gubernatorial Appointees**

# Summary of Executive Order No. 24, Regarding Gifts to State Employees

- 1. [G.S. 133-32's broader coverage](#). G.S.133-32 now applies to [all employees](#) in Cabinet agencies and the Office of the Governor.
- 2. Learning about G.S. 133-32, Executive Order No. 24, and other agency rules
  - All executive branch secretaries must take specified steps to make sure that all current and future employees know about G.S. 133-32 and Executive Order No. 24, including penalties for violations.
  - They must also review with all employees any additional agency policies or rules about accepting gifts, favors, or meals.
  - [All current and future employees must certify in writing](#) that they received the statute, the executive order, and any additional agency policies or rules, and that they are responsible for complying with them.

# Summary of Executive Order No. 24 (continued)

- 4. Contracts
  - All new RFPs, the N.C. General Contract Terms and Conditions, and all other contracts under the authority of all cabinet agencies **must include a provision about Executive Order No. 24 and G.S. 133-32**, to inform contractors of the requirements of the order and the statute. This includes, among others, DOT and DOA (Dept. of Administration) contracts.
  - **Current contractors** must also be notified.
- 5. State Ethics Act training. The State Ethics Commission must discuss the Executive Order and G.S. 133-32 in their training for State employees who are covered by the State Ethics Act.
- 6. Participation by other parts of state government. UNC, the Community College System, and Council of State agencies are encouraged to participate.
- 7. Reports by cabinet secretaries are required.

# Summary of Non-Collusion Affidavit, Debarment Certification, and Gift Ban Certification for DOT Contractors

## Gift ban

1. Each contractor is informed that N.C.G.S. § 133-32 and Executive Order 24 **prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a State contract, or from any person seeking to do business with the State.**
2. By execution of any response in the procurement, **contractor attests** for contractor's entire organization and its employees or agents, **that contractor is not aware that any such gift has been offered, accepted, or promised by any employees of contractor's organization.**

# Summary of Affidavit and Certification

(continued)

**For each contract, the contractor must swear or affirm:**

- **1. Non-collusion.** That neither the contractor nor any official, agent or employee has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with the contract.
- **2. Contractor does own work.** That the contractor intends to do the work with the contractor's own bona fide employees or subcontractors and did not bid for another contractor's benefit.
- **3. Contractor's debarment status.** That the contractor is certifying his or her status under penalty of perjury under the laws of the United States in accordance with the attached debarment certification, provided that it also includes any required statements concerning applicable exceptions.

# Summary of Executive Order No. 32, Regarding Gifts to Gubernatorial Appointees

- 1. **Recusal**. Persons appointed by the Governor to serve on boards must recuse themselves from voting on any matters on which they have a financial interest.
- 2. **Gifts prohibited**. Gubernatorial board appointees must not accept gifts from any contractors, subcontractors, or suppliers of the board. Gifts that would be permitted under the State Ethics Act are permitted (even if the appointee is not covered by the Act).
- 3. **Criminal investigations**. A gubernatorial board appointee is subject to possible removal if he or she is indicted by a grand jury for a felony or fails to cooperate fully in an investigation conducted by a state or federal agency pursuant to law.
- 4. **Attendance**. A person appointed to a board by the Governor must attend 75 percent of the board's regularly scheduled meetings each year, or be subject to removal from the board.

# **Ethics and Conflicts Problems**

- 1. The county's transit manager serves on the board of a local nonprofit organization with which the county is thinking about contracting to provide transportation services for senior citizens. Should the county contract with the nonprofit organization?**

# **Problems (continued)**

**2. The spouse of a transit authority employee works for a company that wishes to bid on the contract to maintain and repair the authority vehicles. Should the authority allow the company to bid?**

## **Problems (continued)**

**3. Several transit department employees knows that the city is making plans to buy some property to build a new bus garage, although this information is not yet public knowledge. The employees are thinking about pooling their money to buy the property, so that they can then sell it back to the city at a profit. Should they do so?**

# Problems (continued)

**4. A local contractor who has never done business with your local government meets you at a downtown street festival and offers to take you to lunch the following week. Should you accept?**

# Resources

Please see the School of Government's web page, "Ethics for Local Government Officials,"

<http://www.sog.unc.edu/programs/ethics/index.php>,

for information about

- Statutes
- How to contact School of Government faculty
- **A Model Code of Ethics for Local Elected Officials** (now available)
- **Ethics, Conflicts, and Offices: A Guide for Local Officials, 2nd ed.** (in press)
- Other topics

# Remember NC's Motto

*Esse quam videri*

*(To be, rather than to seem)*