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Gift Ban: Public Servants

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GIFT BAN LAWS FOR “PUBLIC SERVANTS”¹

The purpose of this newsletter is to explain the SGEA gift ban and give some practical pointers and reminders or “cautions” about accepting gifts. The last page of this newsletter contains a one-page “Rules to Live By” concerning the gift ban as it relates to public servants.

The State Government Ethics Act (SGEA) contains both a “general” gift ban prohibiting gifts *from* certain persons *to* certain persons unless there is an exception and a “no quid pro” gift ban which prohibits receiving anything of value in exchange for taking or not taking an official action. Both of these gift bans apply to “public servants.”

In addition, **there are other laws or agency policies that may apply to you.** Some of those laws have criminal penalties. Furthermore, those laws may apply to both public servants and other employees who are not subject to the SGEA. On October 1, 2009, the Governor signed Executive Order 24, Regarding Gifts to State Employees (EO #24). This Executive Order extends the ban on receiving gifts or favors from contractors, subcontractors, or suppliers to State agencies to **all State employees** in the Cabinet agencies and Office of the

¹ “Public Servants” are defined in G.S. 138A-3(30) as:

- **Executive Branch Elected Officials & Employees.** Governor, Lieutenant Governor, and Council of State, including individuals elected or appointed prior to taking office; Governor’s Office employees; Heads of principal State departments who are appointed by the Governor; Chief deputy and chief administrative assistant of the Governor, Lieutenant Governor, and Council of State, and heads of principal State departments, and their confidential assistants and secretaries; Employees in policy-making or managerial exempt positions and their secretaries; and Other employees designated by the Governor.
- **Board & Commission Appointees.** Members of State non-advisory boards and commissions, including ex-officio members and permanent designees.
- **Administrative Office of the Courts (“Judicial Employees”).** Director and assistant director of AOC and any other individual designated by the Chief Justice whose annual compensation is \$60,000 or more.
- **UNC System.** Board of Governors voting members; President and vice-presidents; Boards of Trustees voting members; Chancellors & vice-chancellors.
- **Community College System.** State Board of Community Colleges voting members; President and chief financial officer of the Community College System; Boards of Trustees voting members; President, chief financial officer, and chief administrative officer of each community college.
- **Contract Employees.** Individuals under contract working in or against one of the above positions.

Governor. Other agencies have recently adopted gift bans as well. It is important that you are also aware of your agency's ethics and gift ban policies.

The SGEA's gift ban and exceptions are complex. Violating the gift ban is considered a violation of the SGEA and may lead to disciplinary action or removal from your public position. Therefore, if at any time, you have questions concerning the gift ban or its exceptions, you should contact the State Ethics Commission. Contact information appears at the end of this newsletter.

SGEA GENERAL GIFT BAN: GIFTS FROM LOBBYISTS, LOBBYIST PRINCIPALS, & "INTERESTED PERSONS"

The following is a series of questions and answers to help you better understand the gift ban as it relates to gifts from lobbyists, lobbyist principals, and "interested persons." Also included are "Cautions" addressing areas of particular concern.

1. **HOW DO I KNOW IF THE SGEA'S GIFT BAN APPLIES TO ME?** The SGEA's gift ban applies to legislators, legislative employees, and *public servants*. "Public Servants" are defined in G.S. 138A-3(30). See *Footnote 1* above.

CAUTION. *Even if you are not a public servant, there are other State and federal laws that may apply, some of which carry criminal penalties. Furthermore, individual agencies may have gift bans that apply more broadly than the State Government Ethics Act. You should always check with your agency's legal counsel if you have any questions concerning the applicability of other laws or policies.*

2. **WHAT IS THE SGEA'S GENERAL GIFT BAN?** As a public servant, you *may not accept "gifts,"* either directly or indirectly, from *registered lobbyists, registered lobbyist principals, or "interested persons"* unless there is an exception.

CAUTION. *The gift ban applies at all times for as long as you are in your job or serving on a covered board.*

3. **WHAT IS A "GIFT"?** Under the SGEA, a "gift" is generally *anything* of monetary value that is paid for by a lobbyist, lobbyist principal, or interested person. There are limited exemptions from the definition of "gift." The following are *not* "gifts:" 1) anything for which fair market or face value is paid; 2) commercially available loans made in the normal course of business, on terms not more favorable than to the general public, and not for the purpose of lobbying; 3) contractual or commercial arrangements made in the normal course of business and not for the purpose of lobbying; 4) academic or athletic scholarships awarded on the same criteria as applied to the public; 5) campaign contributions properly received and reported under Article 22A of N.C.G.S. Chapter 163A; 6) certain expressions of condolence; and 7) greeting cards, including holiday cards.

CAUTION. *There is no de minimis or small gift exception. Therefore, the value of the gift does not matter. If it has monetary value and is coming from a lobbyist, lobbyist principal, or interested person, you may not accept it unless there is an exception.*

4. **WHO ARE LOBBYISTS & LOBBYIST PRINCIPALS?** Lobbyists and lobbyist principals are individuals who engage in “lobbying” either executive branch agencies or the General Assembly. “Lobbying” includes both direct lobbying and “goodwill” lobbying. Direct lobbying is influencing or attempting to influence legislative or executive action through direct communications or activities with a public servant, legislator, or legislative employee or that person’s immediate family. Goodwill lobbying includes developing goodwill, including the building of relationships, with a public servant, legislator, or legislative employee or that person’s immediate family with the intention of influencing current or future executive or legislative action. Generally speaking, lobbyists are individuals who are paid to engage in lobbying. A lobbyist principal is the person on whose behalf the lobbyist lobbies.

5. **HOW DO I KNOW IF SOMEONE IS A REGISTERED LOBBYIST OR LOBBYIST PRINCIPAL?** Lobbyists and lobbyist principals must register with the Secretary of State’s Office. The Secretary of State’s Office maintains and regularly updates the list of registered lobbyists and lobbyist principals at <http://www.secretary.state.nc.us/lobbyists/>.

CAUTION. *It does not matter whether or not the lobbyist or lobbyist principal is engaged in lobbying your agency or board or has an interest in the activities of your agency or board. If the individual is a registered lobbyist or the organization is a registered lobbyist principal, you may not accept a gift unless there is a gift ban exception.*

6. **WHO ARE “INTERESTED PERSONS”?** “Interested persons” are persons whom the public servant knows or has a reason to know:

- Are doing or seeking to do business of any kind with the public servant’s agency or board;
- Are engaged in activities that are regulated or controlled by the public servant’s agency or board; or
- Have financial interests that may be substantially and materially affected by the public servant’s performance or nonperformance of their duties.

7. **IS THERE A LIST OF “INTERESTED PERSONS”?** No. Unlike lobbyists and lobbyist principals, interested persons are not required to register. Therefore, there is no list of interested persons.

CAUTION. *Since there is no list of interested persons, the duty is on the public servant to determine whether or not someone is an interested person as to the public servant’s agency or board.*

8. **ARE THERE EXCEPTIONS TO THE GIFT BAN?** Yes. For example, several exceptions permit a public servant to accept food and beverage for immediate consumption, and in some cases, travel and related expenses. Other exceptions allow public servants to receive gifts such as plaques or nonmonetary mementos recognizing their service to a particular field or charity. There is also an exception for informational materials related to the public servant’s official duties. Another exception allows public servants to accept gifts as part of a relationship (e.g., business, civic, personal) between the public servant and the giver so long as the relationship is not related to the public servant’s position. However, in order for the gift to be permissible under the SGEA, specific criteria must be met for each exception. Furthermore, if the gifts are given by a lobbyist or lobbyist principal, they must be reported to the Secretary of State’s Office. The reports are public record and generally include the name of the recipient along with a description and value of the gift.

CAUTION. *The exceptions are complex. Please do not assume that an exception applies. If you have any questions, you should contact the State Ethics Commission.*

9. **ARE THERE ANY PENALTIES FOR VIOLATING THE GIFT BAN? Yes.** Accepting a prohibited gift is a violation of the State Government Ethics Act. If you are a public servant/employee, a violation of the SGEA is considered a willful violation of a written work order and may lead to disciplinary action, up to and including dismissal from your job. If you are a public servant serving on a board or commission, violation of the SGEA is considered misfeasance, malfeasance, or nonfeasance, and you may be removed from your public position.

CAUTION. *These are the consequences for violating the SGEA. However, depending on the facts and circumstances, there may be other State or federal laws that apply, some of which impose criminal penalties. Your agency or board may also have additional restrictions on gifts. You should always consult with your agency's legal counsel if you have any questions concerning other laws or rules that may apply.*

SGEA GIFT BAN: GIFTS IN RETURN FOR PERFORMING A PUBLIC DUTY (“QUID PRO QUO”)

Public servants and other State officials and employees cannot take something in return for performing or not performing their official responsibilities. This prohibition is known as “no quid pro quo.” Specifically, public servants cannot knowingly, either directly or indirectly:

- Ask, demand, exact, solicit, assign, receive, or agree to receive
- Anything of value
- For themselves or another person
- In return for being influenced in the discharge of their official responsibilities.

CAUTION. *While violating the no quid pro quo statute under the SGEA may result in a public servant being subjected to a personnel disciplinary action or being removed from his or her position on the covered board, depending upon the facts and circumstances, accepting something of value in exchange for doing or not doing a public duty may also be a State or federal crime. Furthermore, these criminal statutes may apply to employees and officials who are not covered by the SGEA.*

OTHER LAWS AND POLICIES CONCERNING GIFTS, BENEFITS, & FAVORS

As stated previously, there are laws other than the SGEA of which you need to be aware. While the following is not an exhaustive list of these laws, it does highlight two of the most far-reaching. One of them is **G.S. 14-234, Public Officers or Employees Benefitting from Public Contracts.** This statute generally prohibits *any* public officer or employee who is involved in making or administering a contract on behalf of a public agency from deriving a benefit from the contract.

Also, **G.S. 133-32, Gifts and Favors Regulated,** prohibits any officer or employee of a governmental agency who prepares plans, specifications, or estimates for public contracts; awards or administers public

contracts; or inspects or supervises construction from receiving any gifts or favors from the contractor, subcontractor, or supplier. **On October 1, 2009, Governor Perdue issued Executive Order #24 extending this prohibition to all State employees in the Cabinet agencies and the Governor's Office, regardless of whether or not that employee is involved in the contracting process.** A copy of EO #24 is available on the Governor's website at <http://www.governor.state.nc.us/NewsItems/ExecutiveOrderList.aspx>.

Finally, in addition to other laws that may apply, most State agencies have internal ethics policies. Some of these policies impose more stringent gift bans than the SGEA and may apply whether or not the person is covered by the SGEA.

CAUTION. *These laws, EO #24, and agency policies may apply in addition to the SGEA's gift ban. They may apply regardless of whether or not the person is covered by the SGEA. If you have any questions about how these laws, EO #24, or agency policies apply to you, please contact your agency's legal counsel.*

CONCLUSION & CONTACT INFORMATION

North Carolina's gift ban laws and exceptions are complex. To the extent you have any questions concerning the gift ban in the SGEA and how it applies to you as a public servant, we encourage you to contact the State Ethics Commission. By law, the advice issued by the staff and the formal advisory opinions issued by the State Ethics Commission are confidential and not matters of public record. This confidentiality includes any information you provide to us as well as the Commission's responses to you. Therefore, if you have any questions or would like informal advice or a formal advisory opinion, please contact the State Ethics Commission, at (919) 715-2071, or by e-mail at ethics.commission@doa.nc.gov.

Finally, it is important to remember that there are other laws, rules, and policies that may apply to you in addition to the SGEA. If you have questions concerning other laws, EO #24, or agency policies, including whether or not they apply to you, you should contact your agency's legal counsel.

GIFT BAN LAWS FOR “PUBLIC SERVANTS”:¹ RULES TO LIVE BY

GIFTS FROM LOBBYISTS, LOBBYIST PRINCIPALS, & “INTERESTED PERSONS”

1. Under the State Government Ethics Act’s general gift ban, if you are a public servant, you may not accept gifts, directly or indirectly, from registered lobbyists, registered lobbyist principals or “interested persons” unless there is an exception.
2. A “gift” is anything of monetary value from a lobbyist, lobbyist principal, or interested person. There are only limited exceptions to the definition of “gift.”
3. The gift ban applies at all times.
4. The value of the gift does not matter. There is no de minimis or small gift exception.
5. Lobbyists and lobbyist principals are listed on the Secretary of State’s website at <http://www.secretary.state.nc.us/lobbyists/>
6. There is no list of “interested persons”. Therefore, the public servant must determine if the giver of the gift is an “interested person” as to the public servant’s agency or board.
7. There are exceptions to the gift ban. However, very specific criteria must be met for each one.

NO QUID PRO QUO

1. Under the State Government Ethics Act, you cannot ask for, take, solicit, or demand anything of value for you or another person in exchange for performing or not performing your public duties.
2. Depending upon the facts and circumstances, violating the no quid pro quo rule may also be a violation of other State or federal criminal laws.

OTHER LAWS & POLICIES

1. There are other State and federal laws that apply in addition to the State Government Ethics Act.
2. These laws may apply to both persons who are and are not subject to the State Government Ethics Act.
3. G.S. 14-234 is a criminal statute that prohibits any public officer or employee who is involved in making or administering a contract on behalf of a public agency from deriving a benefit from the contract.
4. G.S. 133-32 prohibits any officer or employee of a governmental agency who prepares plans, specifications, or estimates for public contracts; awards or administers public contracts; or, inspects or supervises construction from receiving any gifts or favors from the contractor, subcontractor, or supplier. Executive Order #24 issued by Governor Perdue extends this prohibition to all State employees in the Cabinet agencies and the Governor’s office, regardless of whether or not that person is involved in the contracting process.
5. Other State agencies have also adopted ethics policies, including gift bans that may be more stringent or apply more broadly than the SGEA’s gift ban. You should contact your agency’s legal counsel.

¹ “Public Servants” are defined in G.S. 138A-3(30).

**FOR QUESTIONS CONCERNING THE STATE GOVERNMENT ETHICS ACT, PLEASE
CONTACT THE STATE ETHICS COMMISSION AT (919) 715-2071 OR BY E-MAIL AT
ETHICS.COMMISSION@DOA.NC.GOV**