

Ethics Laws That Every Government Employee, and Those Doing Business with the Public Sector, Should Know

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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

- 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.
- Recognize that public officials are the "*especially responsible citizens*." They have been given a *special trust*.

Legal vs. Ethical Standards

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

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.

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 methods:

- 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.

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?

Project Designer Conflicts of Interest – G.S. 133-1, 133-2

- ❑ Both laws apply to state, county, and city work.
- ❑ G.S. 133-1 **prohibits** designers from **knowingly specifying** building materials, equipment, or other **items** that are manufactured, sold or distributed by any firm or corporation **in which the designer has a financial interest.**
- ❑ G.S. 133-2 **prohibits** designers from **employing or allowing manufacturers** or their representatives or agents **to write, plan, draw, or make specifications** for such public works.

Project Designer Conflicts of Interest Penalties – G.S. 133-4

- ❑ Violation of G.S. 133-1, 133-3, or some other related statutes is a Class 3 misdemeanor
- ❑ Penalty:
 - Mandatory one-year loss of the violator’s “license to practice his profession” in North Carolina
 - Fine of up to \$500

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

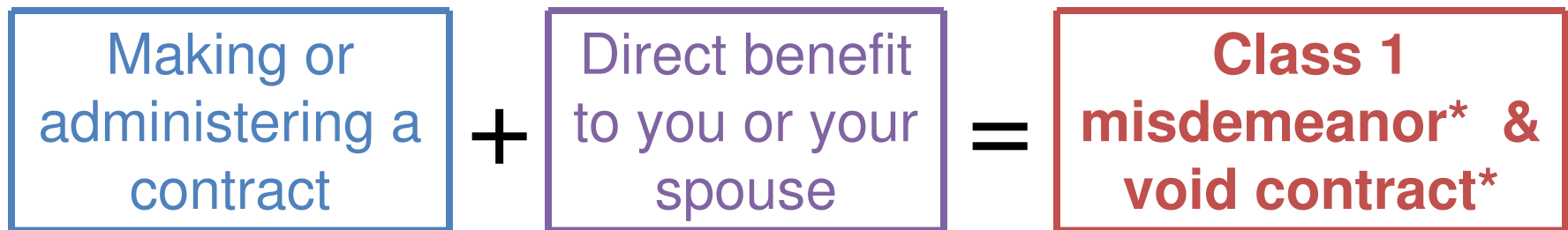
Class 1 misdemeanor

- 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).

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.

Definitions

Public officer:

- Elected or appointed; not independent contractor or employee

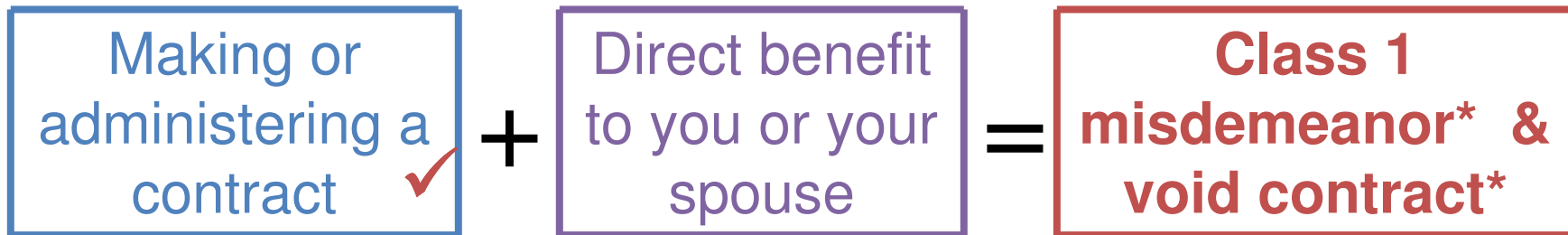
Administering a contract:

- 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

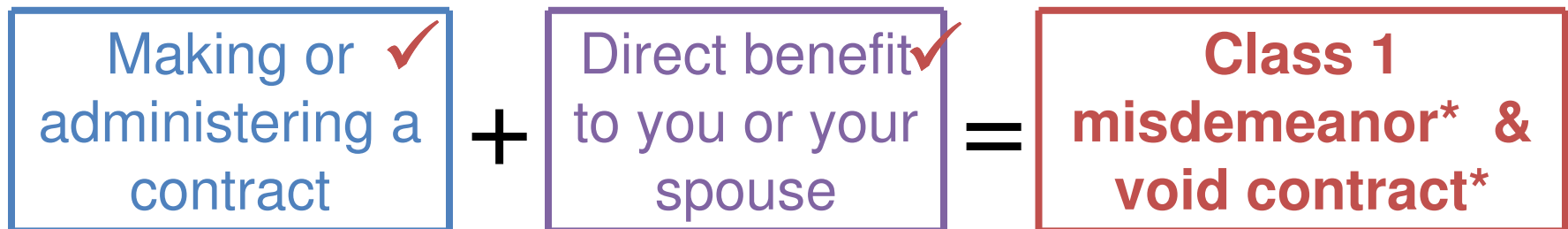
Bottom line: You are involved in “making” the contract, if you participate in development of specifications, or you award the contract. You are involved in “administering” the contract, if you oversee performance, or have authority to make decisions about or interpret the contract.

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

Exceptions

- Remember, public officer may not vote or participate when a contract is entered into under an exception.**
- Exceptions include:
- Contracts with banks, savings and loans, public utilities.
- Interest in property conveyed in condemnation proceeding by consent judgment.
- Employment relationship between a public agency and the spouse of a public officer.

Exceptions (continued)

- Payment from a public agency for services, etc., furnished directly to needy persons by agency's officer or employee under a public assistance program, if certain conditions are met.
- Exception for small and some other jurisdictions (see next slide)

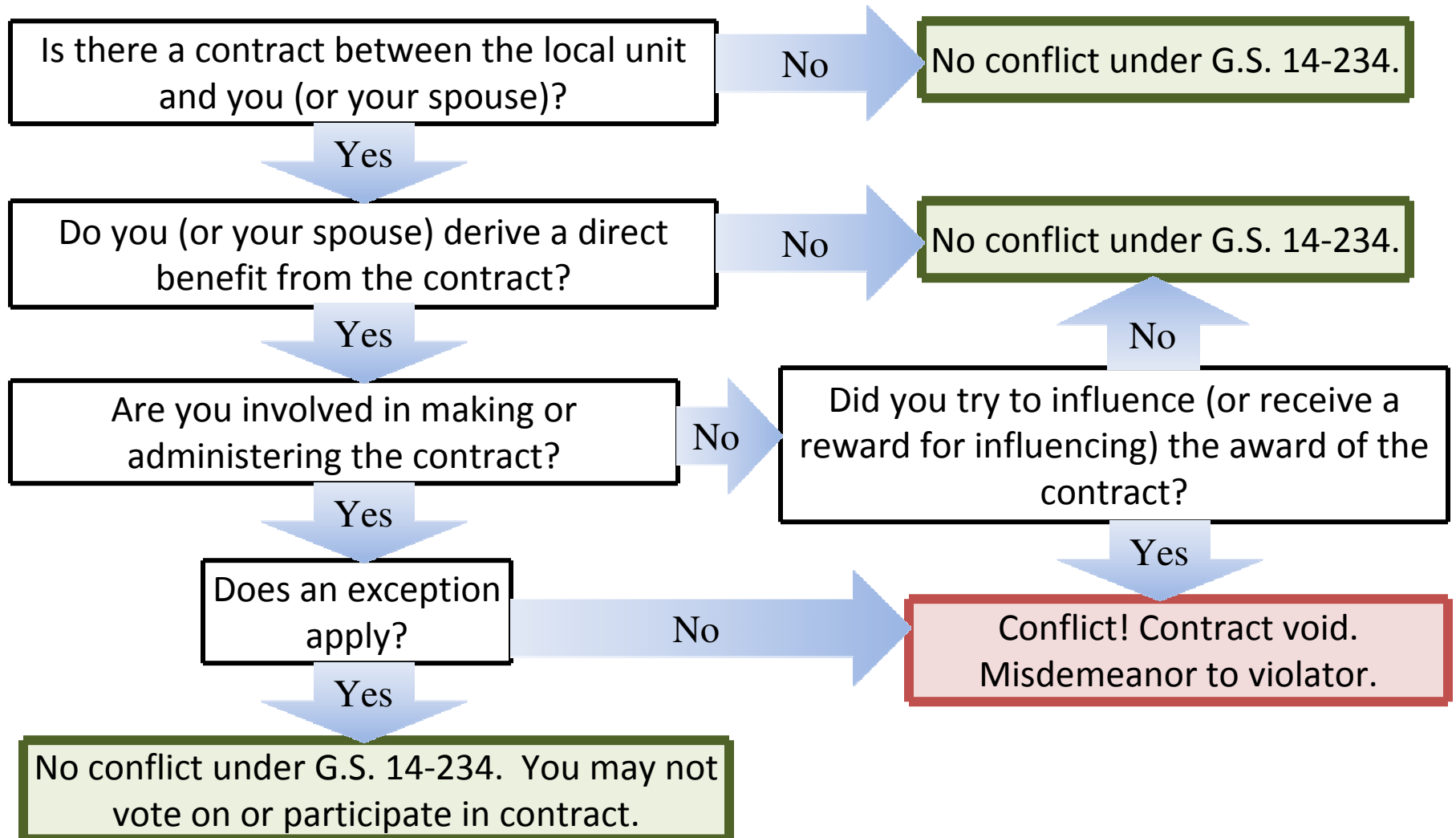
Small and Some Other Jurisdictions

- ❑ Elected officials and certain appointed officials may contract with own unit.
- ❑ 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

Practical, Ethical 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

Conflicts of Interest—G.S. 14-234



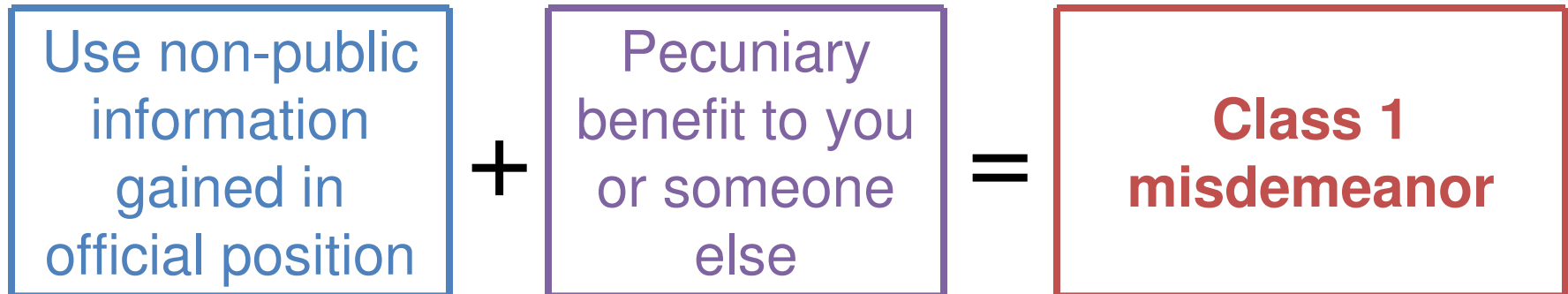
Conflicts in Contracting

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

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 Info—G.S. 14-234.1



Conflicts in Contracting

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- 3. Gifts and favors G.S. 133-32**

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
- Exceptions:** Honoraria; advertising items or souvenirs of “nominal” value; meals at banquets; participation in professional organizations; gifts from family or friends (must be reported to agency head)
- 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, unless an exception applies.

Stricter Gift Rules

- Governor Perdue's Executive Order No. 24, Regarding Gifts to State Employees
- Dept. of Transportation Rules Concerning Gifts

Remember NC's Motto

Esse quam videri

(To be, rather than to seem)