
Coates' Canons Blog: Candidates and Conflicts of Interest – What Happens If You Win?

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You want to run for city council, but you or your company has a contract with the city (or maybe you

want to run to be a county commissioner and the contract is with the county). Can you be a candidate for election? What happens if you win?

Sure, you can run. The conflict of interest in public contracting statute (**G.S. 14-234**) does not apply to candidates for local government office (unless that candidate is an incumbent). But you are wise to prepare yourself for issues you might face if elected.

What is prohibited?

G.S. 14-234 generally prohibits public officers (whether elected and appointed), public employees, and their spouses from self-benefiting in public contracting. The statute specifically prohibits three types of activities:

1. Deriving a “direct benefit” from a contract that a public officer or employee is involved in making or administering on behalf of the public agency he or she serves;
2. Attempting to influence someone else who is making or administering a contract with the officer or employee’s public agency if that officer or employee derives a “direct benefit” from the contract; or
3. Soliciting or receiving any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency the officer or employee serves, even if he or she does not derive a “direct benefit” from the contract.

A “direct benefit” is specifically defined as (1) having more than a 10% ownership or other interest in an entity that is a party to the contract; (2) deriving any income or commission directly from the contract; or (3) acquiring property under the contract. The prohibition applies to public officers or employees and their spouses, but not to other members of their families, such as children, siblings, or parents. A violation of this statute is a criminal offense punishable as a Class 1 misdemeanor, and the contract is rendered void and unenforceable.

What does it mean to be involved in “making or administering” a contract? The statute defines these activities broadly. A public officer or employee is involved in *administering* a contract if he or she “oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract.” Being involved in *making* a contract means participating in “the development of specifications or terms or in the preparation or award of the contract.” A public officer is also involved in making a contract “if the board, commission, or other body of which he or she is a member takes action on the contract, whether or not the public officer actually participates in that action.” Local elected officials should assume that they are *always* involved in making or administering contracts on behalf of the public entity they serve, even if they don’t vote on the contract, because the governing board has the ultimate authority to interpret and make decisions on the contract on behalf of the unit of government.

What does this mean for candidates?

G.S. 14-234 does not apply unless and until the candidate is elected. The conflict of interest prohibition is triggered when the winning candidate assumes office. From this point forward until the public officer leaves office, the unit of government cannot enter into a contract under which the public officer or spouse derive a direct benefit, nor can the public officer engage in the other prohibited activities described above.

What if the candidate is already under contract with the local government when elected?

The statute prohibits *deriving* a direct benefit from a prohibited contract. If a contract between the candidate and the unit of government is already in place when the candidate is elected, a violation of the statute is triggered as soon as the candidate assumes office because, at that point, the candidate becomes a public officer with authority to oversee, make decisions about, or interpret the contract. The contract is rendered void by operation of the statute, and any direct benefit derived by the newly-elected official from that point forward is illegal.

For example, if the candidate has more than a 10% ownership interest in a company that is under contract with the local government, that ownership interest becomes an illegal direct benefit when the candidate assumes office. Similarly, if the candidate is receiving income or commission under the contract prior to the election, any such payment made after the candidate assumes office would be illegal.

What if the preexisting contract is with the candidate’s spouse?

The conflict of interest prohibition applies to both the public officer and the spouse, so the analysis is the same as if the contract were with the candidate. There is an exception if the contract involves the employment of the public officer’s spouse which is discussed below.

What if the preexisting contract is with another member of the candidate’s family?

The conflict of interest prohibition applies *only* to contracts involving the public officer and the spouse, *not* other members of the officer’s family such as children, siblings, or parents. Since a contract between the unit of government and the successful candidate’s family member (other than spouse) is not prohibited, the contract is not rendered void if the candidate is elected, nor is there a criminal violation.

What should be done if a candidate with the preexisting prohibited contract is elected?

There is arguably no official action to be taken by the unit of government on the contract itself because that contract would be void automatically by operation of the statute. However, in an abundance of caution, it may be wise to terminate the contract before the winning candidate takes the oath of office to avoid the possibility of committing a criminal violation, not to mention facing questions about ethics and conflicts of interest. And, the newly-elected official should not accept any income or compensation under the contract after taking office as doing so would be illegal.

There is one opportunity to temporarily continue an otherwise prohibited contract. A contract that violates **G.S. 14-234** may continue in effect until an alternative can be arranged when “immediate termination would result in harm to the public health or welfare” and the continuation is approved by the chair of the Local Government Commission. If approved, the contract can remain in effect only for the minimum amount of time necessary to protect public health or welfare. This restriction encourages local governments to move quickly in securing an alternative to the prohibited contract, such as entering into a new contract with another vendor or contractor.

Can the public officer avoid violating the statute by being excused from voting on the contract?

Generally speaking, no. Unless the contract fits into one of the exceptions to G.S. 14-234 (see below), the contract itself is null and void if the statute is violated and the conflicted public officer commits a criminal act by deriving a direct benefit under the contract. Recusing one’s self from voting on a prohibited contract does not avoid these legal consequences – even with the recusal the public officer is still involved in making or administering the contract, the contract is still void, and a criminal act has still been committed.

Are there any exceptions?

There are several exceptions to **G.S. 14-234**. Two in particular are worth mentioning. First, the conflict of interest prohibition does not apply to an employment relationship between a unit of government and the spouse of a public officer of the unit. If the candidate’s spouse is employed by the local government, the candidate’s election does not affect the spouse’s current or future employment. However, once elected, the public officer would be prohibited from deliberating or voting on any matter directly relating to the spouse’s employment or attempting to influence anyone else in a position of authority regarding the spouse’s employment, including his or her fellow governing board members.

What if the candidate is also an employee of the unit of government? Can he or she remain employed by the unit if elected? In most instances, the answer to this question is no. The public official’s own employment is not covered by the conflict of interest exception for employment contracts of the official’s spouse. In addition, serving both as an employee and an elected official of the same unit of government will, in most cases, constitute incompatible office holding. Frayda Bluestein and Bob Joyce both discuss this issue more fully in their blog posts on **board members as employees** and the **federal Hatch Act**.

The second exception to the conflict of interest statute worth mentioning here involves a contract between a “small” unit of government and the unit’s public officer or spouse. Whether a unit is “small” depends on city population as of the most recent census. For a city to be “small,” its population must be under 15,000. For a county to be “small,” it cannot have within its boundaries a city whose population is greater than 15,000. (This exception also applies to local boards of education and health professionals serving on boards of health, social services, and mental health within small cities and counties as well as public hospital boards.) If the city or county qualifies as a small unit, the governing board may contract with one of its public officers or the public officer’s spouse under limited conditions. All such contracts with either the public official or spouse cumulatively cannot exceed \$40,000 in a 12-month period for service contracts (\$20,000 for medical services) or \$30,000 in a 12-month period for purchases or construction and repair contracts. The unit’s governing board must follow specific procedures when entering into eligible contracts, namely:

1. Approving the contract by specific resolution adopted by the board in open meeting,
2. Recording the contract in the board’s minutes,
3. Noting the contract’s annual amount in the unit’s audited annual financial statement, and
4. Posting notice of the contract in a “conspicuous” place such as the courthouse or town hall (this notice must include a list of all contracts between the unit and its public officers for the preceding 12 months that is updated quarterly; the result of this requirement is that notice of the contract with the public officer will remain posted for 12 months).

The conflicted public officer cannot participate in any way or vote on the contract. The statute does not define “participate in any way,” so the conflicted official should err on the side of caution and avoid taking part in any discussions or deliberations related to the contract while it is being considered by the governing board.

Do conflict of interest prohibitions also apply to federal funds?

Absolutely. The federal Grants Management Common Rule (GMCR) applies to most sources of federal grant funds. In general, the GMCR also prohibits public officers and employees from self-benefiting in public contracting. However, there are some important differences between state law and the GMCR. Eileen Youens authored a very helpful **blog post** that compares the GMCR to state law. Since most local governments receive federal funds of some kind, and since most sources of federal funds are covered by the GMCR, public officers and candidates for public office should become familiar with federal conflict of interest prohibitions in addition to those imposed by state law.

Where is additional information available?

The School of Government has several resources for local officials and candidates for local office that may be helpful in better understanding ethics and conflicts of interest issues:

- Coates' Canon blog category on ethics and conflicts contains a number of blog posts on ethics and conflicts of interest.
- SOG ethics resource [webpage](#) for local government officials, which includes information on [ethics training opportunities](#) for local elected officials.
- SOG webpage for city and county elective offices provides more general information about the powers, duties, and responsibilities of city councils, mayors, and county commissioners in North Carolina.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-234
- canons.sog.unc.edu/?p=1599
- canons.sog.unc.edu/?p=1755
- canons.sog.unc.edu/?p=1185
- canons.sog.unc.edu/?cat=5
- www.sog.unc.edu/programs/ethics
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