
Coates' Canons Blog: Conflicts of Interest: How Do The Voting Statutes Relate to the Criminal Statute?

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The subject of conflicts of interest for city and county elected officials has both legal and ethical dimensions. In the legal realm, there are two main statutory provisions: 1) the contracting statute, which creates criminal liability when a public official or employee who is involved in making or administering a contract derives a direct benefit from the contract; and 2) the voting statutes for city and county governing boards, which provide that a member shall be excused from voting only upon “matters involving the member’s own financial interest or official conduct.” This post identifies some important differences between the two statutory provisions, and discusses to issues about how they relate to each other. Next week’s post will discuss the process of excusing members from voting.

How the statutes are different:

The contracting statute, G.S. 14-234, creates criminal liability, making it a Class 1 misdemeanor for an individual to derive a direct benefit from a contract with his or her unit of government. The resulting contract is void and unenforceable. The contracting statute defines key terms, such as “direct benefit,” and “making or administering a contract.” The definition of direct benefit in the contracting statute specifically includes an interest by the spouse of the public official or employee. The contracting statute applies to all public agencies, and any public employee or officer within those agencies, but only with regard to the making or administering of contracts.

The voting statutes, G.S. 160A-75 (cities), 153A-44 (counties), are silent as to any liability or consequence for failing to be excused from voting on a matter involving one’s own financial interest. The statutes do not define terms and give no specifics about what constitutes financial interest, except to state that the question of compensation and allowances for the board does not involve a member’s own financial interest. They apply to any matter that might come before the board – not just contracts.

How the statutes relate:

Should the definition of “direct benefit” in the contracting statute be used as a guide in interpreting what constitutes a member’s own “financial interest” in the voting statutes? No. Both statutes probably have a common purpose: to ensure objective decision-making in the public’s (rather than a private individual’s) best interest. But the scope and applicability of the statutes are different. The contracting statute seeks to prevent financial gain from contracts, and it defines “direct benefit” in ways that are specific to interests that arise in contracting. The broader language in the voting statutes reflects their broader applicability across all matters coming before the board. The voting statutes address “financial interest,” which could be either beneficial or detrimental. So, for example, a person might be excused from voting on a matter involving her employer, since she could stand to gain or lose, depending upon how she votes. As such, the definition of direct benefit in the contracting statute is too narrow to encompass all of the financial interests that might affect voting.

On the other hand, in cases where there *is* a direct benefit under the contracting statute, it *is* safe to assume that the benefit is considered a financial interest under the voting statute. This is reflected in the voting statutes themselves, which cross-reference both the contracting statute and several provisions in the land use regulations statutes, to make clear that a conflict under those provisions is a basis for being excused from voting.

If a person is excused from voting, does this avoid liability under the contracting statute? No. A person cannot avoid liability simply by not voting on a contract from which he or she stands to derive a direct benefit, as defined in the contracting statute. A key element for liability under that statute is being involved in “making or administering” the contract. The statute specifies that if the board approves a contract in which a member has direct benefit, a violation occurs *even if the member doesn’t participate in the vote*. G.S. 14-234(a1)(3). Here’s the actual language of this provision: “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, unless the contract is approved under an exception to this section under which the public officer is allowed to benefit and is prohibited from voting.” As the provision suggests, there are several exceptions in the statute that allow contracts in which a person has a direct benefit. When one of these exceptions applies, the board must approve the contract by special resolution, and the interested party is prohibited from deliberating or voting on the contract. As noted above, this situation is incorporated by reference into the voting statute as grounds for being excused. But it’s important to understand that it’s the exception that makes the contract legal, not the fact that the person is excused from voting on it.

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-234.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-75.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-44.html