

---

## Coates' Canons Blog: The North Carolina Criminal Self-Dealing Statute (G.S. 14-234): Five Things You Should Know

By Frayda Bluestein

Article: <https://canons.sog.unc.edu/the-north-carolina-criminal-self-dealing-statute-g-s-14-234-five-things-you-should-know/>

This entry was posted on June 26, 2015 and is filed under **Conflicts, Conflicts Of Interest, Disposal Of Property / Surplus Property, Ethics & Conflicts, Miscellaneous, Purchasing / Purchase Contracts / Purchase Orders, Purchasing, Construction, Property Transactions**

---

In North Carolina, it is a crime for certain public officials and employees to contract with the units of government they work for or represent. G.S. 14-234 makes it a misdemeanor for a government official or employee who is involved in making or administering a contract to derive a direct benefit from that contract. The terms “making or administering a contract” and “direct benefit” are defined in the statute. These definitions are set out at the end of this post.

Here are five things you should know about this statute:

- 1. The statute applies to any kind of contract.** The statute does not define “contract.” A general definition of contract from The Law Dictionary is: *a promise that is a legally enforceable agreement between two or more parties*. So the law applies to purchase orders; service contracts (including payment for using companies or facilities owned by a public official or employee); employment contracts; leases, sales and purchases of real and personal property; and any other type of contract through which the public official or employee, *or their spouse*, obtains any of the three types of direct benefit as defined in the statute. The prohibition extends to oral or written contracts, regardless of whether they are otherwise legally valid.
- 2. An elected board member does not avoid liability simply by being excused from voting on the contract.** A violation occurs when a government official (or his or her spouse) derives a direct benefit from a contract they make or administer. The statutory definition provides that a person “administers a contract” if he or she has the authority to make decisions about or interpret the contract. Governing board members always have authority to do those things, since the ultimate authority to contract rests with the board, even when aspects of contracting have been delegated to others. So contracts with governing board members are always potentially problematic. But excusing the interested member from voting doesn’t solve the problem. The statute makes clear that an official can violate the statute even if he or she is excused from voting on the contract. If the board approves the contract, even with the interested board member not voting, that member is still in a position to interpret or make decisions on the contract, therefore the violation still occurs. The statute’s definition of “making a contract” says: “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.” (Emphasis added). So if a board member (or his or her spouse) stands to derive a direct benefit, and there is no exception that applies, the contract simply cannot lawfully be made. If the contract is allowed under a statutory exception, the board member is prohibited from participating in the process or voting on the contract. See G.S. 14-234 (b1). So in that limited situation, the board member may be excused from voting, but that’s not what makes it legal. It’s the exception that makes it legal. If there is no exception that applies, a board member cannot avoid liability by not voting.
- 3. Some officials and employees may legally contract with the units they serve, but there may be good reasons to limit this practice.** Some public officials and many employees are not involved in making or administering contracts. They are not prohibited from benefiting from a contract with their units of government. Even so, there are reasons to think twice before entering in to such contracts. First, citizens may feel that it’s unethical for contracts to be awarded to individuals who work for or serve the unit, and might assume that they have some sort of inside advantage that they’ve used for their own benefit. (Note that there are separate statutory prohibitions for using one’s public position to derive personal financial benefit. See G.S. 14-234(a)(2) and G.S. 14-234.1. Second, the unit may violate the federal wage and hour laws and the Internal Revenue Code’s provisions

---

on Medicare and social security withholding if it enters into a contract with an employee that involves work that is substantially the same as the employee's regular work. And finally, it can be awkward at best, and legally messy at worst, if an employee or public official contracts with the unit and things don't work out and the parties end up in a dispute over the contract.

4. **The exception for small jurisdictions only applies to certain types of contracts and certain elected and appointed board members.** Under G.S. 14-234(d1) municipalities, counties, and local school administrative units that are below specified population thresholds may contract with their governing board members, and with appointed members of specified county boards. The exception does not apply to contracts with employees. Contracts made under this exception must meet dollar limitations set out in the statute. The dollar limitations relate to "medically related services" (\$20,000 limit per contract) and "other goods and services" (\$40,000 limit per contract). The statute also specifies that the exception does not apply to contracts that are subject to statutory bidding requirements (formal or informal). There is no indication in the statute that the exception can be used for contracts involving real property transactions, including leases or sales of real property. It's also not clear whether the exception would apply to an employment contract, although that could be considered to be a contract for services. The small jurisdiction exception also comes with its own set of procedural requirements. Contracts must be approved by special resolution with the interested board member not voting, and there are posting and documentation requirements designed to provide transparency about these transactions.
  
5. **A violation of the statute is a Class 1 misdemeanor and renders the contract void.** Prosecutions under this statute are rare, but a violation definitely makes headlines. If the contract is void, the unit has no authority to expend funds under it. The statute allows continuation of a void contract in cases where immediate termination is detrimental to the public health and safety. See G.S. 14-234 (f). An example might be a contract for ambulance services with a company in which a board member acquires a more than 10% ownership interest.

**Defintions:**

Administering a contract [G.S. 14-234(a1)(2)]: 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.

Making a contract [G.S. 14-234(a1)(3)]: A public officer or employee is involved in making a contract if he or she participates 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*, 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.

A public officer or employee is not involved in making or administering a contract solely because of the performance of ministerial duties related to the contract. [G.S. 14-234(a1)(5)]

Deriving a direct benefit [G.S. 14-234(a1)(4)]: A public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract.

**Related blog posts:**

Conflicts of Interest: How Do The Voting Statutes Relate to the Criminal Statute?

Excusing Board Members From Voting

Board Members as Employees



Candidates and Conflicts of Interest – What Happens If You Win?

Boards of Health and Conflicts of Interest

## Links

- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=14-234](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=14-234)
- [thelawdictionary.org/article/parts-of-a-legal-contract/](http://thelawdictionary.org/article/parts-of-a-legal-contract/)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=14-234.1](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=14-234.1)
- [canons.sog.unc.edu/?p=652](http://canons.sog.unc.edu/?p=652)
- [canons.sog.unc.edu/?p=765](http://canons.sog.unc.edu/?p=765)
- [canons.sog.unc.edu/?p=1599](http://canons.sog.unc.edu/?p=1599)
- [canons.sog.unc.edu/?p=5018](http://canons.sog.unc.edu/?p=5018)
- [canons.sog.unc.edu/?p=2709](http://canons.sog.unc.edu/?p=2709)