



Holiday Edition



November 2021

The State Ethics Commission and its staff wish you and your family Happy Holidays! Ethics staff appreciates your invaluable support during the past year. We enjoy working with all of you and look forward to brighter days ahead.

Kathleen Edwards, Executive Director



****Please Update Your Records with Our New E-Mail Domain @ethics.nc.gov****

****Our website address is now <https://ethics.nc.gov/>****

Ethics Act Gift Ban

The holidays are almost here, and you all know what that means...hot cocoa, holiday lights, fireside family gatherings, and gift ban questions! Whether in person, socially distanced, or on Zoom, holiday celebrations and gift-giving this year are still subject to the gift ban of the Ethics Act and Lobbying Law. This newsletter summarizes the gift ban and provides information to help you navigate gift-giving this holiday season. As always, if you have any questions or doubts about what may or may not be allowed, please contact our office and we will be happy to assist you.

What is the Gift Ban?

The Ethics Act prohibits public servants, legislators, and legislative employees from accepting gifts from lobbyist and lobbyist principals, and public servants from accepting gifts from those doing or seeking to do business with the State, unless a gift ban exception applies. (See G.S. 138A-32). Likewise, the Lobbying Law prohibits lobbyists, lobbyist principals, and liaison personnel from giving gifts to those individuals. (See G.S. 120C-303 and -501).

What is a Gift?

A *gift is anything* of monetary value given or received without valuable consideration. In North Carolina, *there is no allowance for de minimis* or small gifts, so all gifts from givers listed above are prohibited unless an exception applies.



Gift Ban Continued...

Who is Covered?

Not sure if the gift ban applies to you? Names of covered persons and boards can be found at: <https://ethics.nc.gov/coverage>.

Public Servants – Unless an exception applies, members of State boards and covered State employees cannot *accept* gifts from lobbyists, lobbyist principals, or those seeking or doing business with the State, who are regulated by the State, or have financial interests that may be impacted by a public servant's actions.

Legislators & Legislative Employees – Unless an exception applies, cannot *accept* gifts from lobbyists, lobbyists principals, or liaison personnel.

Lobbyists, Lobbyists Principals & Legislative Liaison Personnel – Unless an exception applies, cannot give gifts to legislators, legislative employees. Search for registered lobbyists, lobbyist principals and liaison personnel at:

https://sosnc.gov/online_services/search/by_title/_lobbying





Holiday Gift Ban Q & A

Q: *May I give/receive a holiday greeting card?*

A: Yes, holiday greeting cards are not considered gifts and may therefore be exchanged without violating the gift ban.

Q: *What about gifts from family members?*

A: Gifts to/from extended family members or members of the same household are allowed but may need to be reported if a registered lobbyist is doing the giving.

Q: *I'm a Public Servant/Legislator/Legislative Employee, can I ask my employees to contribute to a local charity instead of giving me a holiday gift?*

A: No, covered persons are generally prohibited from soliciting charitable donations from subordinate State employees, although generic written solicitations sent to all employees are allowed.

Q: *What should I do if I receive a prohibited gift?*

A: Promptly decline or return it, pay fair market value for it, or donate it to a charity or the State. And make sure you get a receipt if you decide to pay for it or donate it to charity.

Q: *What should I do if I'm uncertain about whether I can give/receive a gift?*

A: If you have any questions or doubts, please contact the State Ethics Commission staff and we will be happy to assist you.

Q: *May I attend a holiday party hosted by my neighbor, a lobbyist?*

A: Since the food and beverages are being given by a lobbyist, a gift ban exception must apply before you join in the merriment. One exception allows gifts given as part of a business, civic, religious, fraternal, personal, or commercial relationship if: (1) that relationship is not tied to your public position; and (2) the gift is not given to lobby you. Here, since you were invited the party because you are a neighbor, and not because you are a public servant, and you are being given the same food and beverages as all attendees, you may accept the food and beverages.

Final Words of Wisdom – Don't Forget, You Wear Your "Covered Person" Hat at all Times!

If you are a public servant, legislator, or legislative employee, remember you "wear that hat" 24/7/365, not just during the holidays and not only when you are engaged in your official duties. Before accepting a gift, you should always consider the following 3 questions:

- Is this a "gift" as defined in the Ethics Act? Remember, a "gift" is anything with monetary value, regardless of the amount of the value.
- Who is paying for or funding the gift? In other words, is the gift directly, or indirectly, being paid for or funded by a lobbyist, lobbyist principal, liaison personnel, or interested person?
- If the gift is from a prohibited giver, does the gift fit within a gift ban exception? If no exception applies, you cannot accept the gift. A full list of exceptions is listed in [G.S. § 138A-32\(f\)](#).





Hero Corner
Because Ethics Liaisons are our Heroes!



Did you know...

...that our database system is not automated or linked to outside sources?

When an agency has changes to covered employees or a member joins or leaves a Board or Commission, we rely on the Ethics Liaison to tell us so we can update information and start tracking compliance with the Ethics Act. We are working on an on-line form to enable you to provide us with updates. In the interim, please email your updates to SEI@ethics.nc.gov and include (1) the dates the change is effective and appointment start and end date for board members, (2) the appointing authority and board position, and (3) who the new board member or employee replaces (4) contact information. Tip: send the appointment letter – it's super helpful!

...that you can track your agency's or board members' compliance with filings and education requirements by going to <https://ethicssei.nc.gov/Tools/Report> ?

Your Questions Answered:



Q – When is a public servant no longer a public servant?

A – It can be curiously hard to know. Here's how confusion sometimes arises: Frequently public servants are appointed to State boards or commissions for specific terms. Because North Carolina has thousands of public servants in appointed positions, it can be difficult for appointing authorities to keep up with the volume by making new appointments before the terms of existing board members end. So sometimes gaps can arise between the end of one board member's term and the date that member's replacement is appointed. So if a term expires on say, June 30th, and that member's replacement hasn't been appointed and sworn in, does the board member continue to serve on July 1st and beyond? It can be reasonable for public servants to think that once their terms end, their public service has ended. But if that were the case, it would be easy for membership gaps to emerge across many North Carolina boards and commissions.

As it happens, North Carolina's Constitution has addressed this issue. Article VI, Section 10 says, "In the absence of any contrary provision, all [appointed] officers of this State . . . shall hold their positions until other appointments are made" A North Carolina statute goes further. That law says, "All officers shall continue in their respective offices until their successors are elected or appointed, and duly qualified." G.S. § 128-7. From the North Carolina Supreme Court's perspective, "the statutory framework specifically provided by the General Assembly wisely and plainly avoids this problem of vacancies" *Baxter v. Danny Nicholson, Inc.*, 363 N.C. 829 (2010).

So, board and commission members continue to serve until replaced. Of course, that means that their obligations under the Ethics Act – including SEI filings and ethics education – continue.

