

## North Carolina General Statute § 14-234

### § 14-234. Public officers or employees benefiting from public contracts; exceptions.

**(a)**

**(1)** No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.

**(2)** A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.

**(3)** No public officer or employee may solicit or receive 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 he or she serves.

**(a1)** For purposes of this section:

**(1)** As used in this section, the term “public officer” means an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of a public agency.

**(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.

**(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.

**(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.

**(5)** 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.

**(b)** Subdivision (a)(1) of this section does not apply to any of the following:

**(1)** Any contract between a public agency and a bank, banking institution, savings and loan association, or with a public utility regulated under the provisions of Chapter 62 of the General Statutes.

**(2)** An interest in property conveyed by an officer or employee of a public agency under a judgment, including a consent judgment, entered by a superior court judge in a condemnation proceeding initiated by the public agency.

**(3)** Any employment relationship between a public agency and the spouse of a public officer of the agency.

**(3a)** Any employment relationship between a local board of education and the spouse of the superintendent of that local school administrative unit, if that employment relationship has been approved by that board in an open session meeting pursuant to the board's policy adopted as provided in G.S. 115C-47(17a).

**(4)** Remuneration from a public agency for services, facilities, or supplies furnished directly to needy individuals by a public officer or employee of the agency under any program of direct public assistance being rendered under the laws of this State or the United States to needy persons administered in whole or in part by the agency if: (i) the programs of public assistance to needy persons are open to general participation on a nondiscriminatory basis to the practitioners of any given profession, professions or occupation; (ii) neither the agency nor any of its employees or agents, have control over who, among licensed or qualified providers, shall be selected by the beneficiaries of the assistance; (iii) the remuneration for the services, facilities or supplies are in the same amount as would be paid to any other provider; and (iv) although the public officer or employee may participate in making determinations of eligibility of needy persons to receive the assistance, he or she takes no part in approving his or her own bill or claim for remuneration.

**(b1)** No public officer who will derive a direct benefit from a contract entered into under subsection (b) of this section may deliberate or vote on the contract or attempt to influence any other person who is involved in making or administering the contract.

**(c)** through **(d)** Repealed by Session Laws 2001-409, s. 1, effective July 1, 2002.

**(d1)** Subdivision (a)(1) of this section does not apply to (i) any elected official or person appointed to fill an elective office of a village, town, or city having a population of no more than 20,000 according to the most recent official federal census, (ii) any elected official or person appointed to fill an elective office of a county within which there is located no village, town, or city with a population of more than 20,000 according to the most recent official federal census, (iii) any elected official or person appointed to fill an elective office on a city board of education in a city having a population of no more than 20,000 according to the most recent official federal census, (iv) any elected official or person appointed to fill an elective office as a member of a county board of education in a county within which there is located no village, town or city with a population of more than 20,000 according to the most recent official federal census, (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health, developmental disabilities, and substance abuse board serving one or more counties within which there is located no village, town, or city with a population of more than 20,000 according to the most recent official federal census, and (vi) any member of the board of directors of a public hospital if all of the following apply:

**(1)** The undertaking or contract or series of undertakings or contracts between the village, town, city, county, county social services board, county or city board of education, local health board or area mental health, developmental disabilities, and substance abuse board, or public hospital and one of its officials is approved by specific resolution of the governing body adopted in an open and public meeting, and recorded in its minutes and the amount does not exceed twenty

thousand dollars (\$20,000) for medically related services and sixty thousand dollars (\$60,000) for other goods or services within a 12-month period.

**(2)** The official entering into the contract with the unit or agency does not participate in any way or vote.

**(3)** The total annual amount of contracts with each official, shall be specifically noted in the audited annual financial statement of the village, town, city, or county.

**(4)** The governing board of any village, town, city, county, county social services board, county or city board of education, local health board, area mental health, developmental disabilities, and substance abuse board, or public hospital which contracts with any of the officials of their governmental unit shall post in a conspicuous place in its village, town, or city hall, or courthouse, as the case may be, a list of all such officials with whom such contracts have been made, briefly describing the subject matter of the undertakings or contracts and showing their total amounts; this list shall cover the preceding 12 months and shall be brought up-to-date at least quarterly.

**(d2)** Subsection (d1) of this section does not apply to contracts that are subject to Article 8 of Chapter 143 of the General Statutes, Public Building Contracts.

**(d3)** Subsection (a) of this section does not apply to an application for or the receipt of a grant under an exempted public program by a member of the Soil and Water Conservation Commission if the requirements of G.S. 139-4(e) are met, and does not apply to a district supervisor of a soil and water conservation district if the requirements of G.S. 139-8(b) are met. For purposes of this subsection, an exempted public program is any of the following:

**(1)** The Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to Article 72 of Chapter 106 of the General Statutes.

**(2)** The Community Conservation Assistance Program created pursuant to Article 73 of Chapter 106 of the General Statutes.

**(3)** The Agricultural Water Resources Assistance Program created pursuant to Article 5 of Chapter 139 of the General Statutes.

**(4)** The Streamflow Rehabilitation Assistance Program created pursuant to Article 6 of Chapter 139 of the General Statutes.”

**(d4)** Subsection (a) of this section does not apply to an application for, or the receipt of a grant or other financial assistance from, the Tobacco Trust Fund created under Article 75 of Chapter 143 of the General Statutes by a member of the Tobacco Trust Fund Commission or an entity in which a member of the Commission has an interest provided that the requirements of G.S. 143-717(h) are met.

**(d5)** This section does not apply to a public hospital subject to G.S. 131E-14.2 or a public hospital authority subject to G.S. 131E-21.

**(d6)** Repealed by Session Laws 2016-126, 4th Ex. Sess., s. 13, effective January 1, 2017.

**(e)** Anyone violating this section shall be guilty of a Class 1 misdemeanor.

**(f)** A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved as provided

in this subsection. A public agency that is a party to the contract may request approval to continue contracts under this subsection as follows:

- (1) Local governments, as defined in G.S. 159-7(15), public authorities, as defined in G.S. 159-7(10), local school administrative units, and community colleges may request approval from the chair of the Local Government Commission.
- (2) All other public agencies may request approval from the State Director of the Budget.

Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare.

### **N.C. Gen. Stat. § 14-234.1**

#### **§ 14-234.1. Misuse of confidential information.**

(a) It is unlawful for any officer or employee of the State or an officer or an employee of any of its political subdivisions, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information which was made known to him in his official capacity and which has not been made public, to commit any of the following acts:

- (1) Acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit which may be affected by such information or official action; or
- (2) Intentionally aid another to do any of the above acts.

(b) Violation of this section is a Class 1 misdemeanor.

### **N.C. Gen. Stat. § 14-234.2**

#### **§ 14-234.2. Public officers or employees financially benefiting from public position.**

(a) No elected officer of a political subdivision of this State shall solicit or receive personal financial gain from the political subdivision of this State for which that elected officer serves by means of intimidation, undue influence, or misuse of the employees of that political subdivision of this State.

(b) This section shall not apply to financial gain received from a political subdivision of this State for acting in the elected official's official capacity or financial gain received with the approval of the governing board of the political subdivision of this State for which that elected officer serves.

(c) Violation of this section shall be a Class H felony."

**N.C. Gen. Stat. § 14-234.3**

**§ 14-234.3. Local public officials participating in contracts benefiting nonprofits with which associated.**

(a) No public official shall knowingly participate in making or administering a contract, including the award of money in the form of a grant, loan, or other appropriation, with any nonprofit with which that public official is associated. The public official shall record his or her recusal with the clerk to the board, and once recorded, the political subdivision of this State may enter into or administer the contract.

(b) Anyone knowingly violating this section shall be guilty of a Class 1 misdemeanor. The exceptions listed in G.S. 14-234(b) and (d1) through (d5) shall apply to this section.

(c) A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when (i) an immediate termination would result in harm to the public health or welfare and (ii) the continuation is approved as provided in this subsection. A political subdivision of this State that is a party to the contract may request approval from the chair of the Local Government Commission to continue contracts under this subsection.

(d) For purposes of this section, the following definitions shall apply:

**(1) Nonprofit with which that public official is associated.** –A nonprofit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes and of which the public official is a director, officer, or governing board member, excluding any board, entity, or other organization created by this State or by any political subdivision of this State.

**(2) Participate in making or administering a contract.** –Any of the following actions by a public official:

a. Deliberating or voting on the contract.

b. Attempting to influence any other person who is deliberating or voting on the contract.

c. 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 political subdivision of the State with the not-for-profit with which that public official is associated.

**(3) Public official.** –Any individual who is elected or appointed to serve on a governing board of a political subdivision of this State. The term shall not include an employee or independent contractor of that political subdivision of this State.”