

## Potential Conflict Scenarios Due to North Carolina General Statute 14-234

All Workforce Development Board (WDB) Members are considered public officers appointed to serve or represent a public agency under an interpretation of North Carolina General Statute (NCGS) 14-234. Workforce Development Board Members, who are unpaid volunteers, provide oversight to local activities funded with federal Workforce Innovation and Opportunity Act (WIOA) resources.

### *General Comments:*

*Responses below are based on North Carolina Statutes, mainly G.S. 14-234 and 234.1. These scenarios do not address potential conflicts under 14-234.2 and 14-234.3; however, a situation involving elected officials or non-profit entities may be subject to these statutes as well. Since there is federal money involved in this program, you would also want to look at any federal or state regulations that deal with conflicts of interest in contracting and voting. Sometimes they are broader than what we have in state law. Also, some of these scenarios do not involve legal issues but may create ethical or perception issues. In general, it is a good policy to avoid the appearance that businesses have connection to people who are on the board derive some advantage from that connection. It's a good practice to make sure the WDB undertakes steps to avoid that perception, for example, by opening contracting and training opportunities broadly and avoiding board Members voting on matters involving their employers or business associates.*

### **Possible scenarios:**

1. A WDB Member, who is also the owner of a private company, wins the bid through a WDB competitive procurement to provide training services to customers. He has abstained from any discussion or voting on the WDB decisions regarding the procurement.

*If the WDB awards this contract, and it is a contract with that entity, then there would be a violation of G.S. 14-234, since a prohibited contract occurs if a person has a "direct benefit". One definition of direct benefit is that the person owns 10% or more of the company that is contracting with the agency. It is not possible to avoid liability under this statute by abstaining from voting. If there is an exception that applies, then the person with the direct benefit is required to refrain from voting and participation in discussion. I don't know of an exception that would apply here so the contract would be void, and the Member would be subject to prosecution for a misdemeanor. That is not likely to happen but obviously this should be avoided.*

2. During an On-the-Job (OJT) training period, a company providing the training pays wages to the Workforce Innovation and Opportunity Act (WIOA) participant and is then reimbursed by the WDB with WIOA funds. A WDB Member is a senior executive within the company that trains the participant and receives the wage reimbursement.

*I don't see legal violation here. The payment is a reimbursement, and there is no evidence that the WDB Members owns the company or derives income or commission directly from the contract. Indeed, even G.S. 14-234 has an exception that allows reimbursement under public assistant programs if certain protections are in place. (See subsection (b)(4).) Along those lines, I would note that if there was a decision by the WDB regarding the selection of the company to*

*provide the training, this board Member should probably not participate in that process or vote. As noted above, I do not know if these boards have procedural rules or conflict of interest policies, but it might good to consider some rules about participation in these decisions when there is connection, even if it is not a legal conflict.*

DWS Note: NCGS 14-234 (a1)(4) states:

“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”. A local area WDB should determine whether a WDB Member stands to derive a direct benefit as defined in this section (a1)(4) and, if so, any statutory exception applies in determining if the company can engage in an on-the-job training activity.”

3. WDB has staff from a local bank to present at a financial management workshop where customers are allowed to sign up for bank services. A representative from that local bank is a WDB Member.

*This situation might invoke the prohibition in G.S. 14-234.1 if it could be shown that the board Member used his WDB position or information he had because of his service on the WDB to benefit his employer or himself. Even if there is no violation of the statute, it seems to me that this person should not be involved in the process of choosing the bank and that the board should take steps to avoid the appearance of favoritism.*

4. WDB offers a job/health fair and uses a local healthcare provider to provide free screenings to the public. A representative of the local healthcare provider is a WDB Member.

*It is not clear that the Member in this scenario benefits from the arrangement, but it seems possible that the provider might benefit from the exposure to new clients/patients. If that is correct then the issue is whether the Member/representative was involved in the decision to choose the provider in violation of G.S. 14-234.1 and even if not, did the process create an appearance of favoritism.*

5. WDB offers a job/ health fair and uses a local healthcare provider to provide screenings to the public for a minimal fee. A representative of the local healthcare provider is a WDB Member.

*Same as above, although in this case there is a benefit to the provider so again, possible violation of G.S. 14-234.1 or possible appearance of favoritism.*

6. WDB hosts a workforce summit and provides door prizes - free tickets from a well-known amusement park and a complimentary stay at a local resort. Both businesses have Members on the WDB.

*I don't know of any legal problem with this. I suppose some might feel that they are using this opportunity to promote their businesses. The matter might look bad if they are the only ones allowed to provide door prizes. If there are other businesses that provide door prizes, it seems to me there is less of an appearance issue.*

7. WDB has competitively procured the purchase of t-shirts for WIOA program participants. The successful bidder is a WDB Member. He has abstained from any discussion or voting on the WDB decisions regarding the procurement.

*See answer to question #1. It doesn't matter that the contract was competitively bid or that the person didn't participate in voting or discussion. It's still a violation of G.S. 14-234.*

8. WDB Members use the services of public Career Centers (which WDBs oversee) to screen potential employees. (This is a free service provided to all employers).

*I don't see any legal problem with this. It could be awkward if there was a dispute about an employee and the Member ends up in an adversarial position with the WDB, but that seems unlikely.*

9. In which scenario(s) should only a conflict of interest policy be employed; rather than disqualifying the citizen from being a WDB Member?

*None of the statutes require a citizen to be removed, but in some cases, a person might have to make a decision about whether they want to have the contract or be on the board. Scenarios 1 and 8 involve that kind of issue. I do think that it is important to make sure that Members understand the limitations serving on the board might create. It's good to have business people on the board but a good policy and a good understanding of the legal and perception issues will be important to maintain credibility of the board and its work.*

(Responses provided by Frayda S. Bluestein, David M. Lawrence Distinguished Professor of Public Law and Government, University of North Carolina at Chapel Hill, School of Government are italicized.)