



Holiday Edition



December 2022

We are back in the office and gearing up for the New Year. We are thankful for our network of Ethics Liaisons at each agency and board, and look forward each day to assisting liaisons and public officials with Ethics compliance questions. The State Ethics Commission and staff wish you Happy Holidays!

Kathleen Edwards, Executive Director



Ethics Act Gift Ban

Don't you just love the holidays? A few weeks to enjoy friends and family and the sights, sounds, food, and gifts. At the risk of casting Scrooge's shadow over the festivities, remember that 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 restricts public servants (members of State board and covered State employees), legislators, and legislative employees from accepting gifts from lobbyists 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 those gifts. (See G.S. 120C-303 and -501).

What is a Gift?

A gift is anything of monetary value that you didn't pay for. In North Carolina, there is no allowance for *de minimis* or small gifts, even a candy cane is a gift.



Gift Ban Continued...

Who is Covered by the Gift Ban?

Not sure if the gift ban applies to you? Check this list <https://ethics.nc.gov/coverage/covered-persons>

Who are Lobbyists and Principals?

Search for registered lobbyists and lobbyist principals at <https://sosnc.gov/divisions/lobbying>

A Few Exceptions That Allow Gifts



Gifts from friends and family.



Gifts from employers and business associates which are given in connection with that relationship.



Gifts given in connection with a civic, religious, or fraternal relationship and which are not for lobbying.



Holiday Greeting Cards





Holiday Gift Ban Q & A

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

A: No, you are generally prohibited from soliciting charitable donations from particular 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 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. See full list of exceptions at [G.S. § 138A-32\(f\)](#).



Hero Corner



Did you know...

...that a permissible gift may need to be publicly reported by the donor?

Getting gifts is super fun, but with great fun comes great responsibility. That is, if you are subject to the gift ban, an exception *might* allow you to accept a gift from a lobbyist, lobbyist principal, or another person with business interests before your agency. But if the gifts happen, they generally must be reported, usually by the donor. Reports are filed with the Secretary of State's office and include the name of the recipient and a description and value of the item given. These reports are public records, so you should remember that while getting a sock assortment from your lobbyist sister-in-law over the holidays is fun, everybody could know about them by the time she has to document them on her periodic expense reports.

...that you can review expenditure reports filed by lobbyists and lobbyist principals by going to <https://www.sosnc.gov/divisions/lobbying?>



Your Questions Answered:

Q: Hey, I just got a letter out of the blue from the Ethics Commission saying that I have a "potential conflict of interest". Why are you singling me out? You are not alone in receiving an evaluation of your filed SEI—we send thousands of such letters every year. Let us explain the purpose, timing, and effect of the **evaluation letter**.

A: A lesser-known statutory task of the Commission is to evaluate all SEIs not only for completeness, but also public servant SEIs for conflicts of interest. The evaluation letter considers the role a filer fills either as a State employee or a covered board member and financial and personal interests disclosed by a filer. It briefly describes conflicts of interest which may arise, assisting public officials in understanding how those connections may impact their public duties. The types and general timing of evaluation letters include:

Initial Evaluations, done at *the time of appointment* for newly covered state employees and board appointees, usually within days of our receipt of their initial SEI filing, due at the time of appointment.

Annual Evaluations, done annually for members of certain boards who filed SEI long forms during the annual filing period. TAC boards and the UNC Board of Governors are examples of such boards.

Biennial Evaluations, done every *other* year on an alternating cycle for most board members and state employees filing long forms during the current or immediately preceding annual filing period.

The Annual and Biennial Evaluation cycle starts in August and runs several months into the fall.

Additional notes about the evaluation letter:

- The letter does not anticipate all potential conflicts: Each public servant is responsible for identifying conflicts as they arise, even if our evaluation letter did not identify the conflict.
- We generally send the letter to the filer's appointing authority, with the filer and Ethics Liaison copied. Some filers, e.g. TAC filers, receive their letter directly.
- ELs keep copies of the letters and ensure that potential conflicts from each evaluation letter are read into their respective board's minutes.
- If you have questions about your evaluation, the timing of annual or biennial evaluations, or you need advice on a specific potential conflict, please call or email Commission staff and we can assist you.



