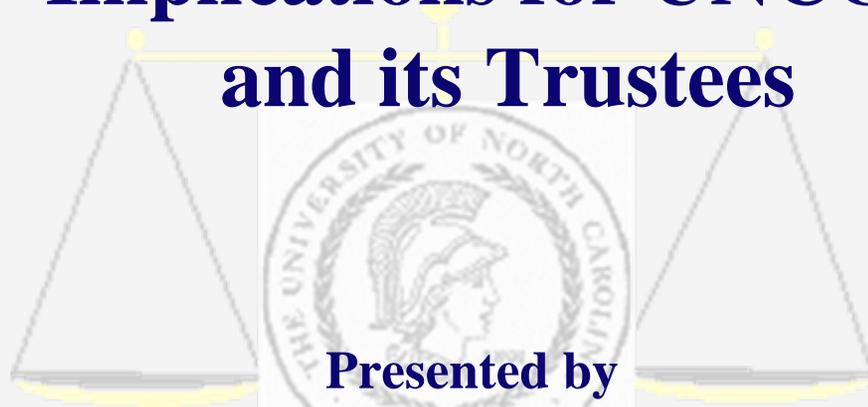


2006 Ethics and Lobbying Act

Implications for UNCG and its Trustees



Presented by
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University Counsel
2 November 2006

S.L. 2006-201

- **Signed into law on August 4, 2006**
- **Effective January 1, 2007**
- **“The most comprehensive and sweeping ethics law in the history of the State”***
- **Two Major parts:**
 - **New “State Government Ethics Act” N.C.G.S. Chapter 138A**
 - **Amendments to the Legislative Ethics Act, N.C.G.S. Chapters 120 and a new 120C**

* N.C. Board of Ethics, Newsletter Vol. 9, Issue 8, August 2006.

Guiding Principles

- 1. A public official shall not use his or her position for personal gain or for the financial benefit of the person's immediate and extended family or a business with which the covered person is associated.*
- 2. Public officials must exercise discretion with sensitive State information.*

Part I:

State Government Ethics Act

Who is covered?

- **Voting members of the Board of Governors**
- **Voting members of the Boards of Trustees**
- **The President and Vice Presidents**
- **The Chancellors and Vice Chancellors**

University Council

Required Education

- **Education must be by or approved by the Ethics Commission**
- **Those in office on 1/1/07 must be trained before 1/1/08**
- **Within 6 months after appointment or reappointment & every 2 years thereafter**
- **In addition to covered persons, all staff who report directly to a covered person**

Duties of Chancellor and Board Chair

- **Actively further ethics and ensure compliance with the Act**
- **Remain knowledgeable about the applications and interpretations of the Act**
- **At beginning of each Board meeting, give the “ethics reminder”**
- **Appoint an ethics liaison (Me)**
- **Notify Commission of new covered people**

Who is your “immediate family”?

- All unemancipated children residing in your household
- Your spouse, if not legally separated
- Any member of your extended family who is actually residing in your household (e.g., your elderly mother)



Who is your “extended family”?



- Your spouse
- Lineal descendants (children, grandchildren, etc.)
- Lineal ascendants (parents, grandparents, etc.)
- Siblings (brothers, sisters)
- Spouse of any of them (son-in-law, brother-in-law)

- Your spouse’s lineal ascendants (parents-in-law)
- Your spouse’s lineal descendants (stepchildren)
- Your spouse’s siblings (brothers- and sisters-in-law)
- The spouse of any of them (e.g., your sister-in-law’s husband)



What is a business with which you are associated?

- An entity organized for profit (corporation, LLC, partnership, trust, joint venture, etc.)
- You or a member of your immediate family
 - Are an employee;
 - Are a director, officer, partner, proprietor, member, or manager of an LLC; OR
 - Own a legal, equitable or beneficial interest of \$10,000 or of 5% (whichever is less)
- Not a widely held investment fund (e.g., a mutual fund or widely diversified pension fund)

Nonprofit with which associated

- **Public or private, incorporated or not, operating in North Carolina**
- **You or a member of your *immediate* family are, as of December 31 of the preceding year:**
 - **A director, officer, governing board member;**
 - **An employee; OR**
 - **An independent contractor**

When do you have an “economic interest”?

You have an economic interest in a matter if it involves either:

- **a business or**
- **a nonprofit corporation or organization**

with which you are associated



University Counsel

Required Disclosures

- **Due before employment or assuming office and on March 15 every year after**
- **It is a public record**
- **IT IS A CRIME**
 - **Failure to disclose is a misdemeanor**
 - **False information is a felony**
- **Information current as of preceding December 31**

Contents of Disclosure

For you and your *immediate* family

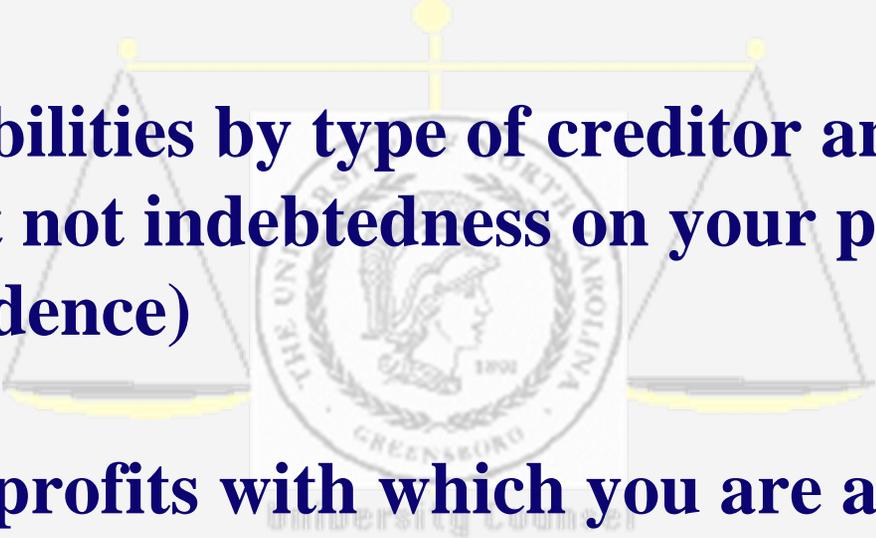
Assets and liabilities valued at least \$10,000

- a. Real estate in NC
- b. Real estate leased to or from State
- c. Personal property bought from or sold to the State
- d. Personal property leased to or from State
- e. Publicly owned companies

More disclosures

- f. Nonpublicly owned companies or businesses**
- g. For these, if known, other companies or businesses in which the company owns more than \$10K in securities or equities**
- h. Nonpublicly owned businesses of which you are an officer, employee, director, partner, owner, or member or manager of an LLC**
- i. For companies listed in f., g., and h., if known, a brief description of any business dealings that company has with or regulation by the State**

Still more disclosures

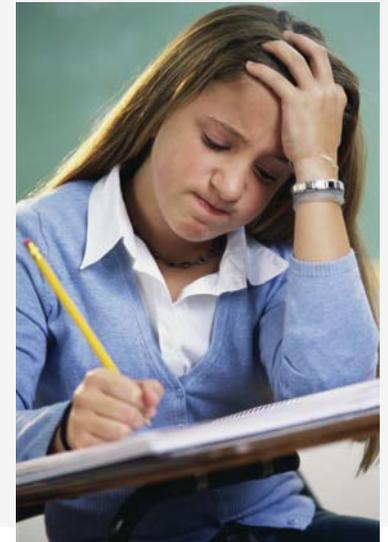
- j. Information about vested trusts you established or control or are the beneficiary**
 - k. Liabilities by type of creditor and debtor (but not indebtedness on your personal residence)**
 - l. Nonprofits with which you are associated, including, if known, whether they do business with or receive funds from the State**
- 

A few more disclosures

- **Each source of more than \$5000 income in past year by business or industry type**
- **If an attorney, the areas of law practiced**
- **If a licensed professional or a consultant, categories of businesses to whom you charged more than \$10,000**
- **Are you, your employer, your spouse, or your spouse's employer licensed by or regulated by or have a business relationship with UNC?**

The last few...

- **Your memberships or affiliations with organizations pertaining to subjects over which the Board may have jurisdiction**
- **Things worth more than \$200 given to you for the purpose of lobbying if given by a person not required to report it by the Lobbying Act**
- **Felony convictions**
- **Any other information necessary to fully disclose a conflict or potential conflict of interest**



ETHICAL STANDARDS

You shall not...

Use your position in an official action that will directly or indirectly result in a financial benefit to you, *your extended family*, or a business with which you are associated. But it is OK if

- You do not benefit more than other citizens generally benefit (e.g., setting tuition)
- Your interest is so remote or tenuous that a reasonable person would conclude your judgment is not compromised

Prohibitions continued

- **Do not mention your covered position or let anyone else mention it in nongovernmental advertising**
 - **Some exceptions: political advertising, news stories, directory or biographical listings, or charitable solicitations. Also, if material, to a prospective customer, supplier, or client**

Be careful about gifts



- do not ask for or accept anything of value in return for being influenced
- do not solicit charitable contributions from subordinate employees (except generic written solicitations to a class of employees)
- do not accept a gift directly or indirectly from a lobbyist or a lobbyist's principal
- do not accept a gift from an entity you know or should know is doing business with, seeking to do business with or regulated by UNC

What is a gift?

Anything of monetary value given without valuable consideration by a lobbyist or lobbyist's principal or someone doing or seeking to do business with UNCG or who is regulated. But there are exclusions...

It is not a GIFT if...

- **You paid fair market value or the face value for it**
- **It is a commercially available loan made on terms not more favorable than generally available and not for the purpose of lobbying**
- **It is a contract or business agreement made in the normal course of business and not for the purpose of lobbying**
- **It is an academic or athletic scholarship**
- **It is a campaign contribution**

The gift is OK if...

it is food or beverages consumed at a public event

What is a public event?

- **For covered people other than legislators**
- **It is open to the public and at least 10 public servants are invited**
- **It is a gathering of a public body that is subject to the Open Meetings Law and at least 10 public servants are invited**
- **A gathering to which at least 10 public servants are invited and at least 10 others actually attend**

More permissible gifts

- **Informational material relevant to your duties**
- **Travel and registration expenses for an educational meeting related to your duties or to enable you to participate as a speaker (if it meets very detailed requirements)**

And the gift is OK if it is...

- A plaque or memento recognizing your service
- Gifts accepted for the State
- Anything distributed to the general public or all State employees
- Anything from a member of your extended family or a member of your household
- Travel expenses associated with industry recruitment, promotion of international trade, etc.
- Gifts worth less than \$100 as part of an overseas trade mission if it is customary protocol

Finally, a gift is OK if...

- It was given or received as part of a relationship that is
 - Business
 - Civic
 - Religious
 - Personal
 - Fraternal, or
 - Commercial
- AND, the relationship is not related to your public service or position
- AND, a reasonable person would conclude that the gift was not given for purposes of lobbying



University Counsel

What if you receive a prohibited gift?

You must:

- **Decline it**
- **Return it**
- **Pay fair market value for it**
- **Immediately donate it to charity**
- **or**
- **Immediately donate it to the State**



University Counsel

Other prohibitions

- **do not accept outside compensation for performing your official duties**
- **do not improperly use or disclose nonpublic or confidential information**
- **do not participate in a discretionary official action if you have a conflict of interest (This covers both voting and participating in the discussion)**

When should you refrain from participation?

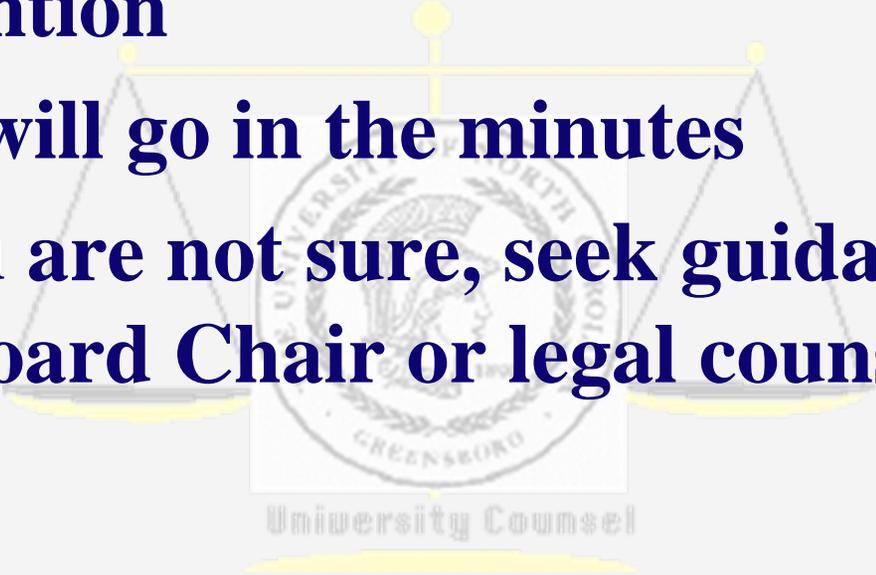
- If you, a member of your extended family, or a business with which you are associated
- Have an economic interest in, or a foreseeable benefit from the matter, or it will be a detriment to a competitor, and
- The interest would impair your independence of judgment or it could be inferred that it would influence your participation

You should also refrain if...

- **You have a familial, personal, or financial relationship with a participant in a proceeding such that your impartiality might reasonably be questioned**
- **For example, if a student appellant is your child's close friend, you should not participate in the appeal**

What to do if you have a conflict

- **Submit in writing the reason for your abstention**
- **This will go in the minutes**
- **If you are not sure, seek guidance from the Board Chair or legal counsel**



University Council

Participation is allowed if...

- You will not benefit more than everyone in a general class
- You get an opinion from the Ethics Commission saying it is OK
- You make a written disclosure to the Board which then determines your interest will not impair your judgment
- The action is ministerial, not discretionary

Limits on Nepotism

- do not *cause* a member of your extended family to be employed in or appointed to a State office
- do not supervise, manage, or participate in an employment decision concerning a member of your extended family without the employing Board's specific authorization

Part II

UNCG and lobbying

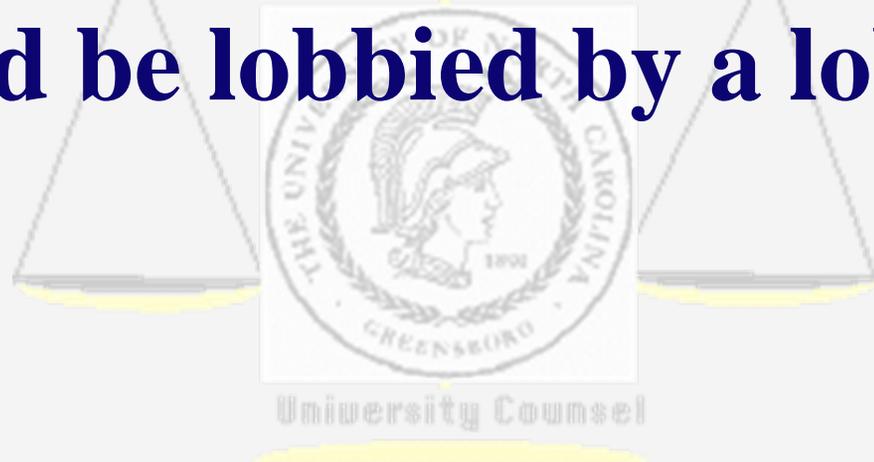
- **What is lobbying?**
 - **Attempting to influence legislative or executive action through direct communication or activities**
 - **Developing goodwill through communication or relationship building with the intent of influencing legislative or executive action**
- **But not, communication or activities that are part of a business, civic or personal relationship not connected to legislative or executive action**

NOT a “lobbyist”

- **If Board members advocate for UNCG that does not make them lobbyists**
- **UNC and constituent institutions appoint legislative liaison personnel who are not “lobbyists,” but are covered by some rules**
- **UNCG is not a lobbyist’s principal**

But UNCG Trustees are covered

Because Trustees are
“designated individuals” who
could be lobbied by a lobbyist



As designated individuals

- You must attend a lobbying education program within 6 months after appointment & every two years thereafter
- You may not accept a gift from a lobbyist or lobbyist's principal. Same exclusions and exceptions apply as under the Ethics Act
- If you accept a gift for the purpose of lobbying from someone outside NC, you will have to report it on your Ethics disclosure form

Expenditures for lobbying

Even though you are not lobbyists, if you make reportable expenditures that a legislator or other designated individual accepts (meals, gifts), for the purpose of lobbying, with a total value of more than either \$200 per calendar quarter or \$10 per day, you must report them. That means you must keep track of them, and their value.

Athletic Tickets

- **Neither UNC nor its constituent institutions nor their liaison personnel may give a designated individual an athletic ticket**
- ***BUT! Trustees are an exception***
- **UNC has decided to implement this effective with winter sports**
- **What about personally owned tickets?**



Questions???
