

# ETHICS & LOBBYING EDUCATION FOR PUBLIC SERVANTS

WHAT YOU NEED TO KNOW TO COMPLY WITH NC'S STATE GOVERNMENT  
ETHICS ACT & LOBBYING LAW

# *What if.....*

You arrive at your office and find an ink pen in a box in your chair.

Can you keep it?



## *What if....*

You, a public servant covered under the Ethics Act, have been invited to a symposium related to your public position / duties. The symposium is being hosted/sponsored by a consultant that your agency or board has a service contract with and lunch will be served?

Can you attend?

If so, can you eat?



## *What if....*

You, a public servant covered under the Ethics Act, are invited to speak at a Rotary Club about the issues your Board is addressing this year. The Rotary Club is not a Lobbyist Principal.

The Rotary Club provides lunch and a \$25 check to you thanking you for fitting the presentation to the Club into your schedule.

Can you eat the lunch?

Can you accept the \$25 check?



# *What if....*

You are invited to a reception sponsored by a lobbyist principal where food & beverage will be served.

Can you attend?

If so, can you eat and drink?



## What if....

You, a member of a State board covered under the Ethics Act, are asked to sit on the board of directors for a company that is a lobbyist principal, **does the Ethics Act allow this?**



If allowed, *what if ...* there is a two-day board meeting being held in Asheville and the lobbyist principal company has offered to pay all of your travel expenses to attend the board of director's meeting, including plane ticket, meals, and lodging, and pay for a round of golf. **Can you accept this offer from the lobbyist principal company?**





# What if

You hosted a fundraiser  
at your house for one of your  
friends who was a public official  
running for re-election:

Were you allowed to do this  
under the Ethics Act?

If yes, must this activity be  
disclosed under the Ethics Act?



## *What if....*

You, a member of a State board covered under the Ethics Act, are asked to sit on the board of directors for a company that is a lobbyist principal,

**Does the Ethics Act allow this?**





# *What if...*

You are a public servant and your spouse owns a business which will financially benefit from a proposed rule change or policy that is scheduled to be voted on by the state board you sit on.

Can you participate in the discussion of the proposed rule change?

Can you vote on it?



# ETHICS LAWS & POLICIES...

State Govt. Ethics  
Act & Lobbying  
Law

State & Federal  
Laws



Agency Policies

Executive  
Orders

# GOALS OF THIS ETHICS EDUCATION PRESENTATION

- Give you an **overview** of State Government Ethics Act & Lobbying Law
- Inform you about any **changes to the laws**
- **Refresh** your knowledge about the laws
- Remind you of **your obligations** under these laws
  - **Duties**
  - **Prohibitions**
- Remind you of the **consequences** for violations, and
- Remind you of where & how to get **advice**

# **WHO IS COVERED:**

## **ETHICS ACT & LOBBYING LAW**

# WHO IS COVERED BY THE STATE ETHICS ACT?

## LEGISLATIVE



- Legislators
- Legislative Employees

## JUDICIAL *“Judicial Officers”*



- Supreme Court Justices
- Court of Appeals Judges
- Superior & District Court Judges
- District Attorneys
- Clerks of Court
- ***AOC employees who are covered are “public servants”***

## EXECUTIVE *“Public Servants”*



- **Governor**
- **Lt. Governor**
- **Council of State**
- **Cabinet Secretaries**
- **Governor's office employees**
- **Policy-making positions**  
**chief deputies, confidential assistants**
- **Certain managerial positions**
- **Others designated by Governor**
- **Certain UNC & community college officials, Board of Governors & boards of trustees members**
- **Voting members of State non-advisory boards**

# Who is NOT Covered by the ETHICS ACT?

State Ethics Act does **NOT** apply to

- **All State employees**
  - Other ethical codes of conduct, including executive orders, or laws may apply
- **Local government board members or employees (e.g., county commissioners)**
  - Other laws apply
  - Local governments must adopt their own code of ethics (*G.S. 160A-83*)
- **Members of advisory boards, i.e., those that make only recommendations to a final decision-maker**
  - Other ethical codes, including executive orders, may apply

# WHO IS COVERED BY THE LOBBYING LAW?

**Lobbyists**

Are

Someone who is paid to advocate position of another (lobbyist principal)

**Lobbyist Principals**

Are

Person who hires or contracts with a lobbyist

Are **NOT**

Law firm, consulting firm, or other group hired to represent another's interests.  
*Example: Lawyer in law firm hired as a lobbyist; law firm is NOT a lobbyist principal*

or

Individual members of an association  
*Example: Trade association employs a lobbyist; trade association IS a lobbyist principal, but members of the association are NOT lobbyist principals*

or

State Agency

or

Local Govt. *unless local govt. has contracted with a lobbyist*



# WHO ARE...Governmental Liaisons/ “Liaison Personnel”?

State or local government employees whose principal duties include lobbying legislators or legislative employees.

State Agencies and Boards cannot contract with independent lobbyists to lobby for legislative action unless their statute allows such.

NC House of Representatives



NC Senate



# ETHICS ACT CODE OF CONDUCT

## DUTIES

## You Must:

1. ***File*** a personal and financial interest disclosure form annually (a “Statement of Economic Interest” or “SEI”)
2. ***Attend*** ethics education
3. ***Monitor & avoid*** conflicts of interest
4. ***Agency heads*** have additional duties

# WHO must file a Statement of Economic Interest (SEI)?

- Generally, most everyone covered by the State Ethics Act
- Candidates for election to covered offices
- Former *elected* officials in covered offices must file the year *after* leaving office

## Executive Branch

Public Servants

## Legislative Branch

Legislators

## Judicial Branch

Judicial Officers

## Exceptions:

- Covered State employees making less than \$60,000
- Voting *student members* of university & community college boards of trustees

# WHAT has to be disclosed?

Certain financial, professional, & personal information about you and your *immediate family*:

- Spouse unless legally separated
- Unemancipated children living in your household
- Members of your “extended family” *who live with you*, including
  - You and your spouses lineal ascendants & descendants (great grandparents, grandparents, parents, children, grandchildren, great grandchildren, etc.), siblings, AND the spouse of any of the above

# DISCLOSURE OF CERTAIN CAMPAIGN CONTRIBUTIONS

Appointed to a *covered board*

A board subject to the State Government Ethics Act

By a *Constitutional Officer*

- Must disclose contributions with a *cumulative total of more than \$1,000* during preceding calendar year
- Made by *you* to the *Constitutional Officer who appointed you*

- ✓ **Governor**
- ✓ Lt. Governor
- ✓ Sec. of State
- ✓ Auditor
- ✓ Treasurer
- ✓ Superintendent of Public Instruction
- ✓ Attorney General
- ✓ Agriculture Commissioner
- ✓ Labor Commissioner
- ✓ Insurance Commissioner

# DISCLOSURE OF “CAMPAIGN-RELATED *ACTIVITY*”

If you are a ...

- Justice, Judge
- Head of Principal State Dept. appt'd by Gov., or
- **Member of a Certain Board** appt'd by a Constitutional Officer



- ✓ ABC Commission
- ✓ Coastal Resources Commission
- ✓ State Board of Education
- ✓ State Board of Elections
- ✓ Employment Security Commission
- ✓ Environmental Management Commission
- ✓ Industrial Commission
- ✓ State Personnel Commission
- ✓ Board of Transportation
- ✓ UNC Board of Governors
- ✓ Utilities Commission
- ✓ Wildlife Resources Commission

## **Must disclose if:**

1. “**Bundled**” contributions
2. **Hosted** a fundraiser in your home or business
3. **Volunteered** for campaign-related activities

For the **Constitutional Officer who appointed you**



# WHEN is the SEI filing due?

## INITIAL

SEI must be filed & evaluated **before** begin serving on the covered board or in the covered position

- **Exception: Provisional Appointments by Universities & Community Colleges.** SEI must be filed but not evaluated prior to assuming covered position
- **Exception:** Appointees or employees hired by Constitutional Officers during the first 60 days of Constitutional Officer's term

## ANNUAL

**ANNUAL FILING DEADLINE**  
(Usually **APRIL 15<sup>TH</sup>**)



**\*\*\*2017 FILING  
DEADLINE  
IS APRIL 17<sup>TH</sup>\*\*\***

# HOW do I file?

## ✓ **Electronic Filing** -

obtain an NCID account, use the e-filing link on the website and submit your SEI electronically to the State Ethics Commission.

## ✓ **Manual Filing**

print & fill in your responses, sign, and mail or hand-deliver the original to the State Ethics Commission

- Forms available on website:  
[www.ethicscommission.nc.gov](http://www.ethicscommission.nc.gov)

### Electronic Filing

Type your responses and file your SEI electronically. We **HIGHLY RECOMMEND ELECTRONIC FILING**. It's fast, easy, ensures immediate confirmation of your filing, and saves your information for future filings.

---

[Create NCID Account](#)

[Login](#)

[2017 Long Form](#) or

[2017 No Change Form](#)

### Manual Filing

Print PDF document and handwrite your responses and mail or hand deliver your SEI.

You **MUST** complete the **ENTIRE** form or you will be asked to re-file!! Do not leave answers blank!

---

[2017 Long Form](#) or

[2017 No Change Form](#)

# SEI CONTACT INFORMATION PAGE

- Front (first) page
- REQUIRED INFO
  - full name
  - mailing address
  - daytime phone
  - email address
- HOME ADDRESS NOT REQUIRED EXCEPT if holding or seeking elected office that has a residency requirement
- Will NOT be available on the Commission's website
- IS PUBLIC INFORMATION



## NORTH CAROLINA STATE ETHICS COMMISSION 2017 STATEMENT OF ECONOMIC INTEREST

FOR ETHICS COMMISSION USE ONLY

Date Received:

\_\_\_\_ Checked for Completion

### CONTACT INFORMATION

This contact information page will *not* be available on the Commission's website, but it is a public document.

919-814-3600

[www.ethicscommission.nc.gov](http://www.ethicscommission.nc.gov)

COMPLETE THIS FORM AND SEND SIGNED ORIGINAL TO:

### STATE ETHICS COMMISSION

BY MAIL:  
1324 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1324

HAND DELIVERY:  
CAPEHART CROCKER HOUSE  
424 N. BLOUNT ST.  
RALEIGH, NC 27601-1010


**THIS ENTIRE FORM MUST  
BE COMPLETED TO FULFILL  
YOUR SEI FILING  
OBLIGATION.**

FILER'S NAME (FIRST, MIDDLE, LAST)				
Prefix	First Name	Middle Name	Last Name	Suffix
MAILING ADDRESS (REQUIRED)				
Address			City	State
DAYTIME PHONE NUMBER (REQUIRED)			ALTERNATE PHONE NUMBER	
E-MAIL ADDRESS (REQUIRED)				
HOME ADDRESS:				
PROVIDE YOUR HOME ADDRESS <u>ONLY</u> IF YOU ARE HOLDING OR SEEKING AN ELECTED OFFICE WITH A RESIDENCY REQUIREMENT. This requirement does not apply to Judicial Officers.				
Judicial officer means Justice or Judge of the General Court of Justice, District Attorney, or Clerk of Court, or any individual elected or appointed to any of these positions prior to taking office.				
<input type="checkbox"/> Same as Mailing Address				
Address			City	State

This contact information page is a public record.

# SEI HELPFUL TIPS

- ✓ Read EACH question carefully
- ✓ List COMPLETE name of state board(s) or agency for which you are filing the SEI
- ✓ Pay close attention to the time periods the question is addressing - THEY VARY
- ✓ Answer each question - ALL PARTS - use “No” or “Not Applicable” when appropriate
- ✓ Only list minor children’s INITIALS on the SEI - full names on the Confidential Form
- ✓ FAXED OR EMAILED SEIS CANNOT BE ACCEPTED



**NORTH CAROLINA STATE ETHICS COMMISSION**  
**2017 STATEMENT OF ECONOMIC INTEREST**

**CONTACT INFORMATION**

This contact information page will *not* be available on the Commission's website, but it is a public document.

919-814-3600      www.ethicscommission.nc.gov

COMPLETE THIS FORM AND SEND SIGNED ORIGINAL TO:  
**STATE ETHICS COMMISSION**

**BY MAIL:**  
1324 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1324

**HAND DELIVERY:**  
CAPEHART CROCKER HOUSE  
424 N. BLOUNT ST.  
RALEIGH, NC 27601-1010

**FOR ETHICS COMMISSION USE ONLY**

Date Received: \_\_\_\_\_

\_\_\_\_\_ Checked for Completion

**THIS ENTIRE FORM MUST  
BE COMPLETED TO FULFILL  
YOUR SEI FILING  
OBLIGATION.**

FILER'S NAME (FIRST, MIDDLE, LAST)				
Prefix	First Name	Middle Name	Last Name	Suffix
MAILING ADDRESS (REQUIRED)				
Address			City	State
DAYTIME PHONE NUMBER (REQUIRED)			ALTERNATE PHONE NUMBER	
E-MAIL ADDRESS (REQUIRED)				
HOME ADDRESS:				
PROVIDE YOUR HOME ADDRESS <u>ONLY</u> IF YOU ARE HOLDING OR SEEKING AN ELECTED OFFICE WITH A RESIDENCY REQUIREMENT. This requirement does not apply to Judicial Officers.  Judicial officer means Justice or Judge of the General Court of Justice, District Attorney, or Clerk of Court, or any individual elected or appointed to any of these positions prior to taking office.				
<input type="checkbox"/> Same as Mailing Address				
Address			City	State

This contact information page is a public record.

# CONFIDENTIAL FORM UNEMANCIPATED CHILDREN (attached to the SEI - last page)

- ✓ List the FULL NAMES of those children who were identified by initials on your SEI
- ✓ Manual filing - Sign, Date and file Original
- ✓ NOT A PUBLIC RECORD and it will not be available on the Commission's website

## Confidential Form Unemancipated Children 2017 Statement of Economic Interest

Confidential: Not subject to public disclosure pursuant to N.C.G.S. § 138A-24(a)(1)

Name of Person Filing SEI \_\_\_\_\_

Agency or Board \_\_\_\_\_

Please list the full names of those children who were identified by initials on your Statement of Economic Interest.

Initials	Child's Name

\_\_\_\_\_  
Signature of Person Filing Supplement

Date: \_\_\_\_\_

This Confidential Form is NOT a public record; and the Commission will NOT make it available on the Commission's website.

# CORRECTIONS OR CHANGES TO SEI

## CORRECTIONS

- ▶ If you forget to disclose or need to correct something, notify the Ethics Commission as soon as possible

## CHANGES DURING YEAR

- ▶ Once SEI is properly completed and filed, you are not required to update or supplement during the year
- ▶ Account for any changes on next year's filing

# SEI VIOLATIONS

## CIVIL PENALTY FOR LATE OR NON-FILING

- \$250 civil penalty
- May result in removal from public position



## CRIMINAL PENALTIES

- **Class 1 misdemeanor** for knowingly concealing or failing to disclose
- **Class H felony** for knowingly providing false information





# SEI EVALUATIONS

- ✓ Public servant SEIs are evaluated for “actual & potential conflicts of interest”
- ✓ Having a conflict does not mean you cannot serve
- ✓ May require you to recuse yourself
- ✓ Failing to eliminate a disqualifying conflict of interest or resign
  - ▶ May result in removal from public position
- ✓ *Evaluation letters help you identify areas where you need to exercise caution - they are “red flags”*



STATE ETHICS COMMISSION  
1324 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1324  
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER  
CHAIRMAN

PERRY V. NEWSON  
EXECUTIVE DIRECTOR

July 20, 2010

Appointing Authority  
Main Street  
Raleigh, NC 27699

*Via email*

Re: Evaluation of Statement of Economic Interest filed by Mr. John Smith  
North Carolina State Covered Board

Dear Appointing Authority:

I am in receipt of Mr. John Smith's Jan 26, 2010, Statement of Economic Interest as a member of the North Carolina State Covered Board. I have reviewed it for actual and potential conflicts of interest in accordance with G.S. Chapter 138A, the State Government Ethics Act ("the Ethics Act").

I did not find an actual conflict of interest; however, I did find the potential for a conflict of interest. **The potential conflict identified does not prohibit service on this entity.**

**SEIs & evaluation letters are public records!**

# ATTENDING ETHICS EDUCATION

- **Initial.** All public servants & ethics liaisons must attend an initial ethics education presentation within six (6) months of assuming their position
- **Refresher.** Must attend a refresher presentation at least every two (2) years thereafter
- **Live or Online**
- **Violation Consequences.** Failure to attend is violation of State Ethics Act & may result in disciplinary action

# MONITORING & AVOIDING CONFLICTS OF INTEREST

- Must make due and diligent effort to identify conflicts of interest prior to taking any action or participating in discussions
- Must also continually monitor, evaluate, and manage personal, professional, and financial affairs to avoid conflicts of interest

Periodically review SEI  
Evaluation Letter

Review board's agenda  
prior to meeting

Discuss with legal  
counsel

Review Ethics Act  
Conflict of Interest  
materials in this  
handout

**Duty to ask State  
Ethics Commission if  
unsure**

# ADDITIONAL DUTIES FOR AGENCY HEADS

- ▶ Includes Board chairs
- ▶ Take an active role in furthering ethics & ensuring compliance
- ▶ Be familiar with Commission's opinions, rules, newsletters, etc.
- ▶ Remind board members of their duty to avoid conflicts of interest & ensure conflicts of interest are recorded in the board's minutes ("Ethics Reminder" at beginning of meetings)
- ▶ Ensure that your legal counsel is familiar with the ethics law
- ▶ Consider the need for customized ethics education programs
- ▶ Notify the Commission of changes in public servants
- ▶ Designate an Ethics Liaison

# RESPONSIBILITIES OF ETHICS LIAISONS

Serve as the POINT OF CONTACT for the Ethics Commission and the EL's agency/commission/board.

- ▶ Promptly notify SEI Unit of newly covered employees /appointees/members.
  - ▶ Provide new appointee's name, appointing authority, start date, and end date.
- ▶ Notify the SEI Unit when employees/appointees retire, resign, or otherwise leave their position.
- ▶ Periodically review Commission's website for new information, education opportunities, newsletters, and advisory opinions and rules.

# Ethics Liaisons are Not Required to File an SEI (unless a Public Servant) But Do Have SEI Responsibilities

- ▶ Ensure newly appointed individuals file their SEI prior to taking their position/being sworn.
- ▶ Remind all filers of their annual obligation to file their SEIs by April 15th.
- ▶ Encourage filers to file electronically through the Commission's website.
- ▶ Remind those filing manually;
  - ▶ Must answer every question;
  - ▶ Original signature required;
  - ▶ Can't be faxed or emailed; and
  - ▶ Keep a copy for their records.

# Ethics Liaisons' Education Requirements and Responsibilities

- ▶ Liaisons must attend ethics education and awareness programs as required by G.S. 138A-14(e).
  - ▶ Within 6 months of being assigned or designated
  - ▶ At Least every two years thereafter.
- ▶ Remind filers to complete their education requirement
- ▶ **Remind filers who attend live presentations to provide the Commission with their Certificate of Completion.**
- ▶ Track status and completion of their filers' education requirements.
- ▶ Notice filer of their due date 3 months **prior** to the due date.
- ▶ The Education Unit can provide a status report for your agency/commission upon your request.

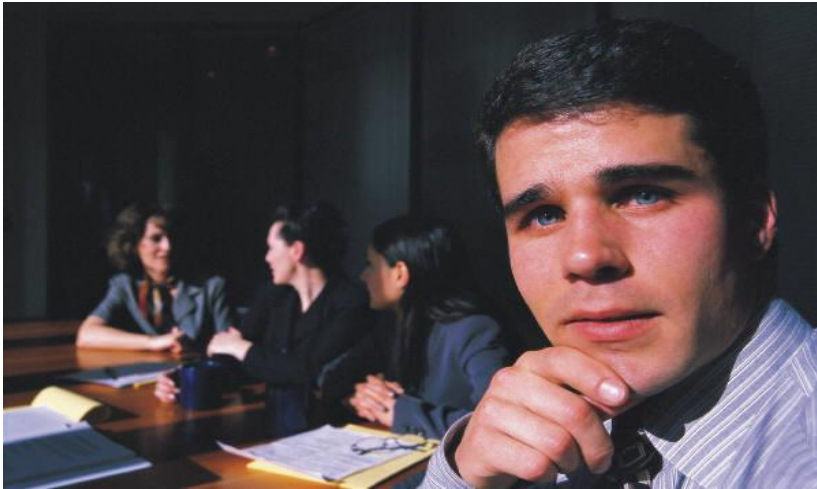


# ETHICS ACT CODE OF CONDUCT

PROHIBITIONS:  
CONFLICTS OF INTEREST

# CONFLICTS OF INTEREST

Personal vs. Public Interest



Two Types of Conflicts  
of Interest Covered  
by the Ethics Act:

- ▶ Financial Benefit
- ▶ Relationships

# CONFLICT OF INTEREST: FINANCIAL BENEFIT -- QUESTIONS TO ASK

## 1. Am I taking an “*official action*”?

Any decision, including administration, approval, disapproval, preparation, recommendation, rendering of advice, and investigation **made or contemplated** in any proceeding, application, submission, request for ruling or other determination, contract, claim, controversy, investigation, charge, or rule-making.



## 2. Who benefits?

- You; or
- “Person with which associated”



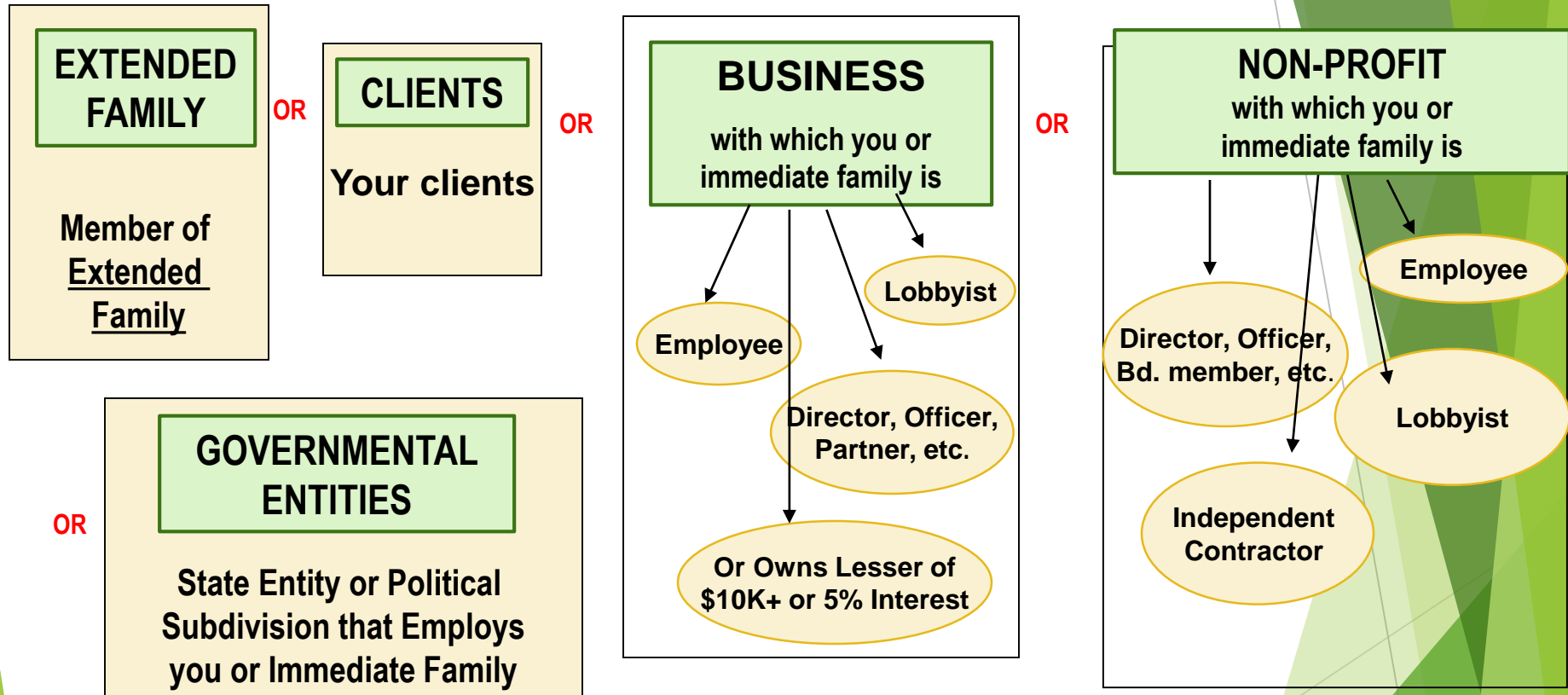
## 3. Is it a “*financial benefit*”?

Direct pecuniary gain or loss to the public servant or a “person with which associated,” or a direct pecuniary loss to a business competitor of the public servant or a “person with which associated.”



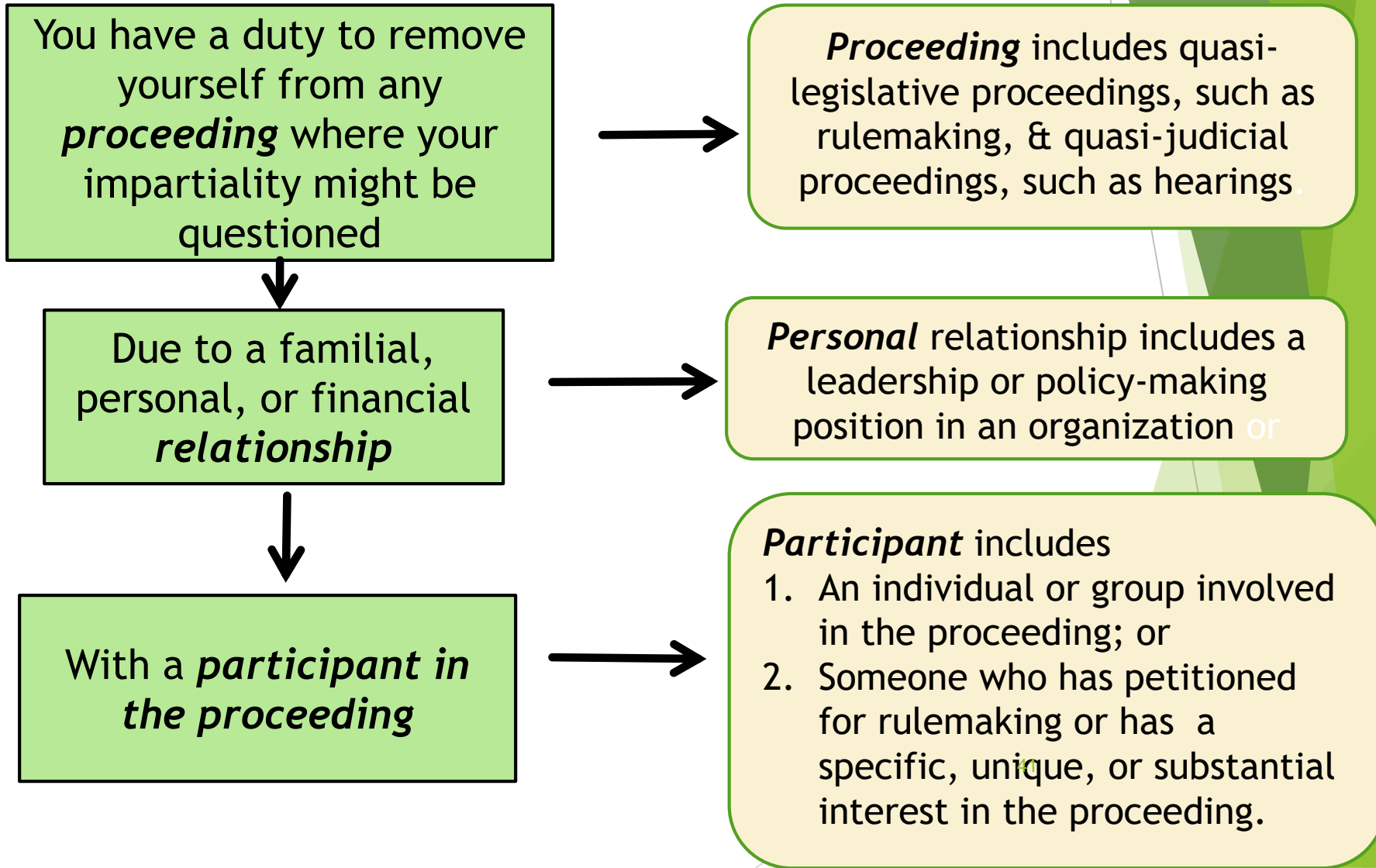
# CONFLICT OF INTEREST: “FINANCIAL BENEFIT”

A Public Servant may not participate in Official Action if the Public Servant Knows that he/she or a Person With Which Associated:



**May** Incur a Reasonably Foreseeable Financial Benefit from the Official Action, which Financial Benefit would Impair the Public Servant's Independence of Judgment **or** It **Could Be Reasonably Inferred** that the Financial Benefit Would Influence Participation.

# CONFLICT OF INTEREST: RELATIONSHIP WITH “PARTICIPANT IN PROCEEDING”



# CONFLICTS OF INTEREST GENERALLY EXCLUDE FINANCIAL BENEFITS THAT ARE...

Available on same terms to  
other citizens of NC; or

Remote, tenuous, or  
speculative; or

Permitted under the “Safe  
Harbors” of G.S. 138A-38

# WHEN CAN YOU TAKE OFFICIAL ACTION?

## “SAFE HARBORS” FOR PUBLIC SERVANTS

### Benefits to Class or Group

The benefit to you, your extended family, or a business or non-profit with which you are associated is no greater than benefit to all members of the profession, occupation, or class

### Compensation

Official actions affecting your compensation

### Quorum

You can be counted to obtain a quorum

### Legal or Ministerial

You are only one having legal authority to act *and* you disclose the interest; or  
Ministerial acts

### Disclosed & Authorized

Received a written advisory opinion from the Commission authorizing participation; or Written disclosure of interest to your board or agency which made written determination that financial benefit or relationship would not influence your judgment

# What Do You Do If You Have a Conflict of Interest

## DISCLOSE

Disclose the conflict in writing to your agency or board



## RECUSE

- Do not take any written or verbal action
- Do not vote; **AND**
  - Do not participate in discussions or deliberations



## RECORD

Record recusal in board minutes



# **ETHICS ACT CODE OF CONDUCT:**

## **OTHER PROHIBITIONS**

# Use of Title or Position in Non-Governmental Advertising

**Cannot** mention or allow another to mention your public position in non-government advertising advancing your or another's private interest

## Exceptions:

- ▶ Political advertising
- ▶ News stories or articles (by media - not self authored)
- ▶ Directories or biographical listings
- ▶ Documents related to a meeting when the disclosure could be considered material by someone attending
- ▶ Charitable solicitation for 501(c)(3)
- ▶ Information listed in meeting agenda

**New Exception** for Use of Title or Position:

# Letters of Character Reference

Covered persons may mention their title or position in a Letter of Character Reference for any of the following:

- ▶ A student seeking admittance to a school or institution of higher education.
- ▶ An individual seeking an academic scholarship.
- ▶ An individual seeking leniency upon sentencing by the courts or other matters related to probation or parole.
- ▶ An individual seeking employment, at the request of that individual or in response to the inquiry of a potential employer as to the qualifications and character of that individual.

# USE OF STATE FUNDS FOR ADVERTISEMENT OR PUBLIC SERVICE ANNOUNCEMENT

Cannot use State Funds for advertisements or public service announcements if it

- ▶ Contains your name, picture or voice; and
- ▶ Appears on radio, TV, billboard or in magazine or newspaper

## Exceptions:

- State or national emergency if the announcement is necessary to your official function
- Does not apply to public TV or radio fundraisers

# MISUSE OF CONFIDENTIAL & NON-PUBLIC INFORMATION

- Cannot use or disclose nonpublic information in order to affect the personal financial interest of
  - You
  - Your extended family
  - Governmental unit with which you are associated
  - Business with which you are associated
  - Person with which you are associated
- Cannot improperly use or disclose confidential information

# HIRING OR SUPERVISING EXTENDED FAMILY MEMBERS

Unless specifically authorized,

- You cannot cause the employment, appointment, promotion, transfer, or advancement of extended family to State office or position which you supervise or manage
- You cannot participate in any disciplinary action relating to an extended family member

# “Quid Pro Quo”

Other than what you receive from the State, you cannot knowingly, directly or indirectly:

- Accept, solicit, agree to receive, or assign anything of value
- For you or another person
- *In exchange for* being influenced in the discharge of your official responsibilities



# Honoraria

*“Payment for services for which fees are not traditionally or legally required.”*

Cannot accept honorarium from **any outside source**, if **ANY** of the following apply:

```
graph TD; A[Cannot accept honorarium from any outside source, if ANY of the following apply:] --> B[Your agency reimburses you for travel, subsistence, or registration]; A --> C[You use your agency's work time or resources]; A --> D[Activity bears a reasonably close relationship to your official duties, i.e., "But for" being a public servant, you would not be performing the activity]; B --- E[or]; E --- C; C --- F[or]; F --- D;
```

Your agency reimburses you for travel, subsistence, or registration

**or**

You use your agency's work time or resources

**or**

Activity bears a reasonably close relationship to your official duties, i.e., “But for” being a public servant, you would not be performing the activity



**Additional Compensation.** Other than what you receive from the State or what is approved by your agency, you are prohibited from soliciting or receiving personal financial gain for acting in your official capacity.

## **Limitations on Charitable Solicitations.**

A public servant cannot solicit charitable donations from subordinate State employees

- **Exceptions:**
  - Generic written solicitations to a class of subordinates
  - Serve as honorary State Employees' Combined Campaign chair.

# LOBBYING LAW

**WHAT IS “LOBBYING” AND  
WHAT DO YOU NEED TO KNOW  
ABOUT IT?**

# WHY THE LOBBYING LAW IS IMPORTANT TO PUBLIC SERVANTS

- ▶ Executive Branch lobbying is regulated
- ▶ State agencies must designate “liaison personnel” to lobby for legislative action
- ▶ “Revolving Door” for certain public servants and State agency employees

# LOBBYING LAW:

## WHAT IS “LOBBYING”?

### Direct

Influencing or attempting to influence *legislative* or *executive* action through direct communications with a legislator, legislative employee, or public servant, or their immediate family.

### Goodwill

Developing goodwill, including building relationships, with a legislator, legislative employee, or public servant or their immediate family *with the intention of influencing* current or future legislative or executive action.



# What is “*Executive Action*”?

## IS “Executive Action”

- Generally, *all* activities associated with making a policy, guideline, RFP, procedure, regulation, or rule by a public servant
- Includes *preparation, research, drafting, development, consideration, modification, amendment, adoption, approval, tabling, postponement, or rejection*

## Is **NOT** “Executive Action”

- ✓ Contested case proceedings
- ✓ Communications involving permits, licenses, eligibility, or certification
- ✓ Inquiries regarding a benefit, claim, duty, etc.
- ✓ Inquiring about or responding to an RFP
- ✓ Ratemaking
- ✓ Internal & ministerial functions
- ✓ Public servant’s communications concerning public comments made at an open meeting or submitted as a written comment, in response to a request for public comment

# LOBBYIST & LOBBYIST PRINCIPAL REQUIREMENTS

## Registration

- ✓ Lobbyists must register with & pay fee to Secretary of State for each principal
- ✓ Principals must file an authorization with & pay fee to Secretary of State

## Reporting

- ✓ Monthly while General Assembly is in session for legislative reportable expenditures
- ✓ Otherwise quarterly

## Identification

- ✓ Lobbyists must identify themselves and their principals prior to lobbying

# GENERAL PROHIBITIONS & RESTRICTIONS ON LOBBYISTS

1. No Contingency Fees
2. Gift Ban
3. No Use of Cash or Credit Unless Paying Lobbyist Is Present
4. Cannot be Appointed by State Official to Serve on Certain Boards & Commissions

# CAMPAIGN RESTRICTIONS ON LOBBYISTS

Lobbyists cannot

- Make campaign contributions to legislators & Council of State members or candidates for those offices
- Serve as Treasurer or Assistant Treasurer for political committee to elect legislator or Council of State member
- “Bundle” campaign contributions

No person (including lobbyist or lobbyist principal) can attempt to influence the action of public servant or legislator by promising financial support to their candidacy or by threatening financial support to the opposition



# Exemptions from Lobbying Law

- Expression of personal opinions
- Appearing before a committee by invitation
- Government officials and employees acting in connection with matters pertaining to their public office and duties
- Performing professional services (such as bill drafting)
- Media publication of news
- Designated individuals (**public servants**, legislators, & legislative employees) acting in their official capacity
- Responding to inquiries

# “COOLING-OFF” PERIODS

Legislators	Constitutional Officers & Principal Dept. Heads	State Agency Employees
<p>Cannot register as a lobbyist:</p> <ul style="list-style-type: none"><li>• While in office</li><li>• Before the later of the close of session in which serving or 6 months after leaving office</li></ul>	<p>Cannot register as a lobbyist</p> <ul style="list-style-type: none"><li>• While in office</li><li>• For 6 months after leaving office</li></ul>	<p>A former State agency employee <u>cannot</u> register to lobby</p> <ul style="list-style-type: none"><li>• the State agency that previously employed him/her</li><li>• for 6 months after leaving the State agency</li><li>• Can register &amp; lobby <i>other agencies</i></li></ul>

# LOBBYING LAW

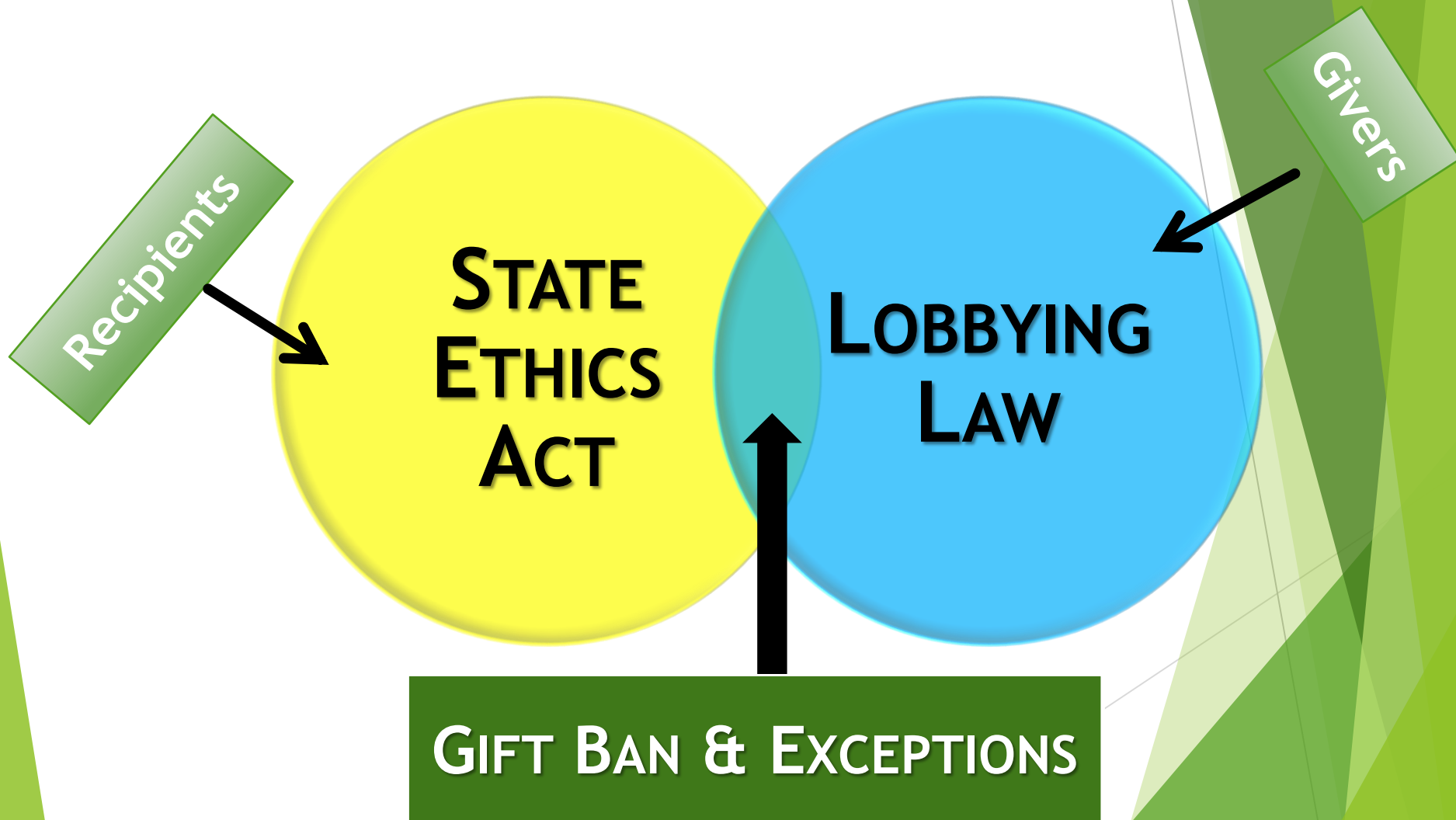
## *VIOLATION CONSEQUENCES*

- ▶ Civil Penalty
- ▶ Depending on **type** of violation, may also be:
  - ▶ Class 1 Misdemeanor
  - ▶ Ban on lobbying for 2 years

# ETHICS ACT & LOBBYING LAW

## NC's "GIFT BAN"

# THE GIFT BAN: INTERSECTION OF ETHICS & LOBBYING LAWS



# NC's GIFT BAN:

- You cannot accept a “*gift*,” directly or indirectly, from a “*prohibited giver*”
  - **Registered Lobbyist**
  - **Registered Lobbyist Principal**
  - **“Interested Person”**
- Unless it is permitted under the State Ethics Act.
- Applies at all times and in all circumstances:

**24/7/365!**

# How do you know if someone is a “Lobbyist” or “Lobbyist Principal”?

- **Must register with the Secretary of State**
- **List available on Secretary of State’s website**

The screenshot displays the official website of the North Carolina Department of the Secretary of State, specifically the Lobbying Compliance section. At the top, the state seal and the name of the Secretary, Elaine F. Marshall, are visible. The main navigation menu on the left includes links such as 'Lobbyist Home', 'Lobbyist Directory', 'Search for a Lobbyist', 'Search for a Principal', 'Search for a Liaison', 'Search for a Solicitor', 'List of Liaisons', 'Download Lobbyists & Principals', 'Report Due Dates', 'Frequently Asked Questions', 'Download Forms', 'Compilation Report of..', 'Lobbyist & Principal Expenses', 'Newsletters', and 'Law and Rules'. A search bar is located at the top right, with a dropdown menu set to 'All' and a 'Lobbyist Search' button. Below the search bar, there are radio buttons for 'All words' and 'Any words', and a checkbox for 'Resigned Lobbyists are included by default'. A red box highlights the 'Search for a Lobbyist' and 'Search for a Principal' links, with an arrow pointing to a red box containing the text 'Click & Search by name'. Another red box highlights the 'Download Lobbyists & Principals' link, with an arrow pointing to a red box containing the text 'Download or view a list'. At the bottom, a red box contains the URL [www.secretary.state.nc.us/lobbyists](http://www.secretary.state.nc.us/lobbyists).

North Carolina  
Elaine F. Marshall  
Secretary  
DEPARTMENT OF THE  
SECRETARY OF STATE  
PO Box 29622 Raleigh, NC 27626-0622 (919)807-2000

Term: All  
Lobbyist Search

☒ All words  
☐ Any words  
☒ Resigned Lobbyists are included by default. Un-click the box on the left to remove resigned Lobbyists from your search

**Click & Search by name**

**Download or view a list**

[www.secretary.state.nc.us/lobbyists](http://www.secretary.state.nc.us/lobbyists)

# How do you know if someone is an “Interested Person”

## Persons who:

- **Business.** Are doing or seeking to do business with your agency or board; or,
- **Regulated.** Are engaged in activities that are regulated or controlled by your agency or board; or,
- **Financial.** Have financial interests that may be substantially & materially affected by the performance or nonperformance of your official duties.



***There is no list of interested persons.  
Duty is on you to determine if someone is an  
interested person as to your board or agency!***



## NC's GIFT BAN :

# WHAT IS A “GIFT”?

- ✓ A gift is **anything of monetary value** that you receive from a prohibited giver
- ✓ ***No de minimis exception!***
- ✓ ***Value does not matter!***
- ✓ ***A cup of coffee can be a gift!***



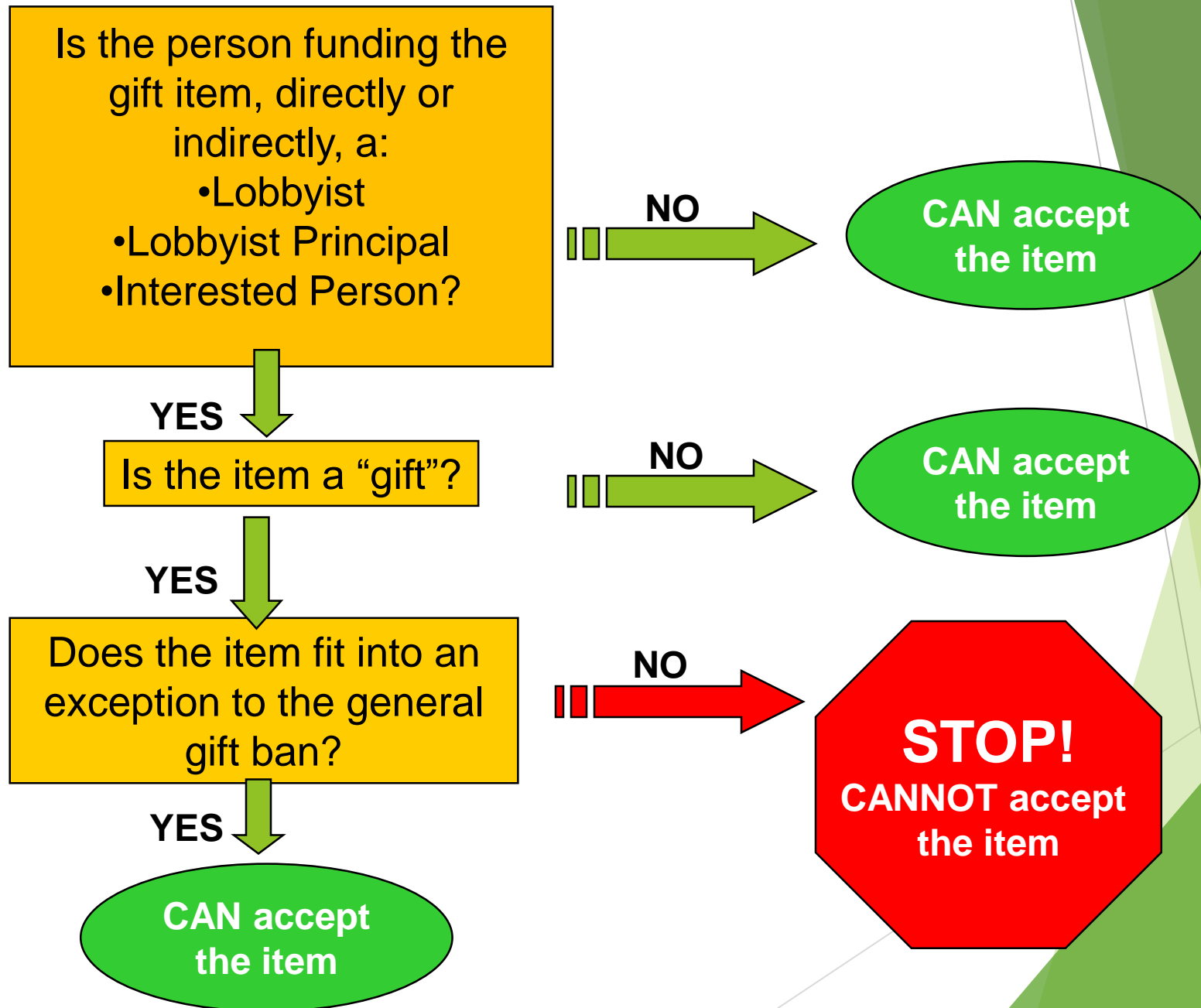
## NC's GIFT BAN:

### *WHAT IS NOT A "GIFT"?*

- ✓ Pay fair market or face value
- ✓ Commercially available loans made on same terms & not for lobbying
- ✓ Contractual or commercial arrangements not made for lobbying
- ✓ Academic or athletic scholarships
- ✓ Campaign contributions properly received & reported
- ✓ Certain expressions of condolence
- ✓ Cards, letters, notes, e-mails, etc (State Ethics Commission determination)



# DECISION TREE FOR GIFTS



# *Are there exceptions?*

**Yes . . . *BUT there are three things to remember:***

- Specific criteria must be met for each one
- Can only accept the items/gift(s) the exception allows
- Even if allowed, the items/gifts generally must be reported, *usually by the prohibited giver*
  - Reports
    - Are filed with the Secretary of State
    - Generally include the name of the recipient & a description & value of the item/gift
    - Are public record

# GENERAL EXCEPTION CATEGORIES

- I. **RECEPTIONS, MEETINGS & CONFERENCES GENERALLY**
  - a) Public Meetings & Gatherings
  - b) Official Duties
  - c) Reimbursable Expenses
  - d) Educational Meetings & the Speaker Exception
- II. **NONPARTISAN AGENCY ORGANIZATIONS**
  - a) Meetings & Conferences
  - b) Gifts Directly to Non-Partisan Organizations
- III. **INFORMATIONAL MATERIALS**
- IV. **BEHALF OF THE STATE OR RELATED TO STATE BUSINESS**
- V. **FAMILY, FRIENDS & OTHERS**
  - a) Family
  - b) Other Relationships
  - c) Relationship with a Lobbyist Principal
  - d) Plaques & Nonmonetary Mementos
- VI. **GENERAL PUBLIC**
- VII. **UNC ATHLETIC TICKETS**

# I. RECEPTIONS, MEETINGS & CONFERENCES:

## *Public Meetings & Gatherings*

- Any prohibited giver can pay for
- Food & beverage for “*immediate consumption*” at



**Open Meeting of  
Public Body**



**Gathering Open to the  
General Public**

- ✓ 10 or more attendees
- ✓ Sign or other communication outside gathering indicating open to the public

# Receptions & Other Gatherings

- Any prohibited giver can pay for
- Food & beverage for immediate consumption when at least one of the groups from each of the boxes below are “invited”:

- ✓ All House or Senate members;
- ✓ All members of county or municipal legislative delegation;
- ✓ Recognized caucus;
- ✓ Committee/commission of General Assembly;
- ✓ All legislative employees; or
- ✓ Public servant’s entire board or at least 10 public servants.

**And**

**At least 10** people associated with host or sponsor actually attend; or all shareholders, employees, bd. members, officers, members, subscribers located in NC **are invited**.

***“Invited” - written; at least 24 hrs in advance; date, time, location; from at least 1 host or sponsor; if sponsored by lobbyist or lobbyist principal, must state whether gathering is permitted by this exception.***



# I. RECEPTIONS, MEETINGS & CONFERENCES:

## *Official Duties*

- Lobbyist, lobbyist principal, interested person can pay for
- Food & beverage for immediate consumption at a
- Gathering where
  - Public servant's attendance is primarily related to his/her public position;
  - AND
  - 10 individuals other than the public servant or immediate family attend.





# I. RECEPTIONS, MEETINGS & CONFERENCES:

## *Reimbursable Expenses*

- Lobbyist, lobbyist principal, interested person
- Can pay for any expense that would otherwise be reimbursable by the State
- **SO LONG AS** you received approval in advance to accept the expense on behalf of the State
- Actual expense may exceed State rate

STATE OF NORTH CAROLINA  
BUDGET MANUAL  
OFFICE OF STATE BUDGET AND MANAGEMENT

Effective Date July 1, 2009

Updated January 1, 2011

### 5.0 TRAVEL POLICIES AND REGULATIONS

#### Table of Contents

5.0 Travel Policies and Regulations .....	<a href="#">123</a>
5.1 Travel Policies for State Employees .....	<a href="#">124</a>
5.2 Travel Policies for State Officials.....	<a href="#">134</a>
5.3 Travel Policies for Members of State Boards, Commissions, Committees, and Councils (Other than Licensing Boards and Members of the General Assembly) .....	<a href="#">135</a>
5.4 Travel Policies for Agency Committees Not Established by G.S. 143B-10(d).....	<a href="#">137</a>
5.5 Travel Policies for Licensing Boards (Other than State Employees) .....	<a href="#">137</a>

# I. RECEPTIONS, MEETINGS & CONFERENCES:

## *Educational Meetings & Speaker Exception*

- ✓ Lobbyist principal ONLY:
- ✓ Can pay reasonable actual expenditures for food & beverage, travel, registration, lodging, incidental items of nominal value, incidental entertainment to attend
  - ✓ 1) “**Educational Meeting**” (primarily related to your public duties); or
  - ✓ 2) Meeting where you are a **speaker or panel member**
- ✓ Meeting has formal agenda, notice given at least 10 days in advance and attended by at least 10 participants.
- ✓ Food, beverage, transportation & entertainment must be
  - ▶ Provided to all attendees or defined groups of 10 or more; and,
  - ▶ Part of or in conjunction with meeting
- ✓ **Entertainment must also be incidental to the principal agenda**

## II. NONPARTISAN AGENCY ORGANIZATIONS:

### *Meetings & Conferences*

- ✓ Lobbyist principal ONLY
- ✓ Can pay reasonable actual expenditures for food & beverage, travel, registration, lodging, incidental items of nominal value, & incidental entertainment for
  - ✓ Attendance at a meeting
    - ✓ As member of board, agency, or committee of
    - ✓ Non-partisan organization of which public servant's agency is a member or public servant is a member because of public position
- ✓ Meeting has formal agenda, notice given at least 10 days in advance and attended by at least 10 participants
- ✓ Food, beverage, transportation & entertainment must be
  - ▶ Provided to all attendees or defined groups of 10 or more; and,
  - ▶ Part of or in conjunction with meeting
- ✓ Entertainment must also be incidental to the principal agenda

## II. NONPARTISAN AGENCY ORGANIZATIONS:

### *Gifts Directly to Nonpartisan Organization*

**Gifts are allowed if they are:**

- Made by a lobbyist or lobbyist principal (not an interested person) to
- Nonpartisan state, regional, national, or international organization of which
- Your agency is a member; or
- You are a member or participant by virtue of your public position

# III. INFORMATIONAL MATERIALS

- ▶ You may accept *informational materials relevant to your public duties* from any prohibited giver



## IV. ON BEHALF OF THE STATE

- Lobbyist, lobbyist principal, or interested person
- May pay for gifts accepted on behalf of the State
- For use by and benefit of the State



# ***RELATED TO STATE COMMERCE***

**Industry & Tourism Related.** Food, beverage, transportation, lodging, entertainment, or related expenses if:

- Gift not otherwise subject to an exception
- Public servant is responsible for conducting industry recruitment, international trade, or tourism promotion
- Gift was not solicited or accepted in exchange for performing public duties; **and**
- Gift is reported to the State Ethics Commission

**Cultural Protocol.** Gift

- Valued at less than \$100
- Given in accordance with cultural protocol
- As part of overseas trade mission

## V. FAMILY, FRIENDS & OTHERS

### *Extended Family*

You may accept gifts from your *extended family* even if the family member is a prohibited giver





# V. FAMILY, FRIENDS & OTHERS:

## *Other Relationships*

Gifts based on business, civic, religious, fraternal, personal, or commercial relationship permitted if:

- ✓ Relationship not based on public position; and
- ✓ Reasonable person would conclude not given for “lobbying”



## V. FAMILY, FRIENDS & OTHERS:

### *Relationship with Lobbyist Principal* *“Eat your own lunch”*

- If **you** are a director, officer, board member, employee or independent contractor of a lobbyist principal *or* a 3<sup>rd</sup> party that received funds from the lobbyist principal
- Lobbyist principal *only* (not lobbyist) may pay for
- Food & beverage for immediate consumption, & related transportation
- At conference, meeting, similar event
- Available to all attendees of same class



## V. FAMILY, FRIENDS & OTHERS:

### *Plaques & Non-Monetary Mementos*

You may accept a plaque or similar **non-monetary** memento recognizing your service in a field or specialty or to a charitable cause



## VI. GIFTS TO THE GENERAL PUBLIC OR ALL STATE EMPLOYEES

You may accept

- ▶ Anything made available to the general public or all State employees
- ▶ By a Lobbyist or Lobbyist Principal

## VII. UNC ATHLETIC TICKETS

- ▶ UNC Board of Governors, UNC constituent institutions, or their legislative liaisons
- ▶ **Cannot** give public servants, legislators, or legislative employees
- ▶ Athletic tickets
- ▶ **For lobbying**

# “UNGIFTING”

## WHAT TO DO IF YOU RECEIVE AN IMPERMISSIBLE GIFT



### PROMPTLY

- Decline it
- Return it
- Pay Fair Market Value for it
- Donate it to charity or to the State

# REMINDER ABOUT REPORTING

- Gifts are reported
- Generally includes name, description & value of the gift
- Generally reports are made by the giver
- **But there are 2 instances when the reporting requirement is on *you*.....**

# REPORTING REQUIREMENTS FOR PUBLIC SERVANTS

<b>What &amp; Value</b>	Reportable expenditure valued over \$200/calendar quarter	Scholarship (grant-in-aid to attend meeting) valued over \$200/calendar quarter
<b>From</b>	Person ■ Outside NC ■ Not required to register	Person ■ Outside NC ■ Not required to register
<b>Why</b>	Made for lobbying	Scholarship related to public service or position
<b>Where Accepted</b>	You were outside NC when accepted	You were either in NC or outside NC
<b>Reporting</b>	You must report date, description, name of person, & estimated FMV either to Secretary of State or on SEI	You must report date, event, name of person granting scholarship, & estimated FMV either to Secretary of State or on SEI



# **ETHICS ACT**

## **COMPLAINTS & CONSEQUENCES**

# COMPLAINTS

- **Anyone** can file an ethics complaint against you
- The complaint must
  - Be in writing
  - State specific facts alleging a violation of law and when the alleged violation occurred
  - Be signed & sworn
  - Be filed within 2 years.



STATE ETHICS COMMISSION

## COMPLAINT FORM

Official Use Only:  
Date Received: \_\_\_\_\_

Case Number: \_\_\_\_\_

Type of Official: \_\_\_\_\_

The State Ethics Commission has the authority to investigate complaints against those persons covered by Chapter 138A, North Carolina General Statutes, "The State Government Ethics Act," for alleged violations of the Act. Please see section 138A-12 of the Act. This complaint must be filed within two years of the date you, the Complainant, knew or should have known of the conduct upon which this complaint is based. Please note that the Ethics Commission does NOT have jurisdiction over all public officials or state employees.

### CONTACT INFORMATION (Please Type or Print clearly)

*The Ethics Act requires that a complaint contain the name, address, and telephone number of the person filing the complaint. The Commission cannot accept anonymous complaints.*

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

#### 4. If possible, check the statutory provision you believe has been violated (*check all that apply*):

Chapter 138A: the State Government Ethics Act

- \_\_\_\_\_ use of public position for private gain -- covered persons and legislative employees (§138A-31)
- \_\_\_\_\_ receipt of a prohibited gift (§138A-32)
- \_\_\_\_\_ receipt of other compensation -- public servants and legislative employees (§138A-33)
- \_\_\_\_\_ use of nonpublic information for private gain -- public servants & leg. employees (§138A-34)
- \_\_\_\_\_ conflict of interest while performing official duties -- public servants (§ 138A-36)
- \_\_\_\_\_ conflict of interest while taking legislative action -- legislators (§ 138A-37)
- \_\_\_\_\_ Other (please explain) \_\_\_\_\_

### SWORN COMPLAINT

I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that the information provided in this complaint is true, correct, complete, and of my own personal knowledge, or if not, I believe the information to be true based upon: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

# NOTICE

- ▶ You will be notified immediately upon the Commission's receipt of a written allegation of unethical conduct

STATE ETHICS COMMISSION  
1324 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1324  
[WWW.ETHICSCOMMISSION.NC.GOV](http://WWW.ETHICSCOMMISSION.NC.GOV)

## CONFIDENTIAL

### Inquiry Notification Form

Upon receipt by the State Ethics Commission of a written allegation of unethical conduct by a covered person or legislative employee, or upon the initiation by the Commission of an inquiry into possible unethical conduct, the Commission must notify the covered person or legislative employee about whom the inquiry was made. North Carolina General Statutes § 138A-12(a1). Pursuant to this law, the Commission is hereby providing you with a copy of such a request or initiation.

At this time, the Commission has *not* made any determination as to the validity of this attempted complaint and has *not* initiated a formal inquiry pursuant to section 138A-12 of the State Government Ethics Act. If the Commission determines that the alleged facts are sufficient to initiate a formal inquiry to determine whether there is probable cause of a violation of the Ethics Act or other applicable laws, you will be so notified.

**THIS CONFIDENTIAL NOTICE IS FOR INFORMATIONAL PURPOSES ONLY. A FORMAL INQUIRY BY THE COMMISSION HAS NOT BEEN INITIATED AT THIS TIME.**

The following is a general summary of the attempted complaint:

Requester: \_\_\_\_\_

Subject: \_\_\_\_\_

# CONFIDENTIALITY

Complaints, responses, and other investigative documents related to the inquiry are **confidential**, *unless*:

- Respondent requests that records be made public, i.e., waives confidentiality
- A hearing commences; or
- Sanctions are recommended without a hearing



# AFTER A COMPLAINT IS FILED

1. Preliminary Inquiry
2. Probable Cause Determination
3. Hearing or Referral.  
If probable cause is found,
  - ▶ For public servants, open hearing before the State Ethics Commission



# CONSEQUENCES

- For State employee public servants, willful noncompliance is considered violation of a written work order permitting disciplinary action, including termination from employment
- For public servant board members, willful noncompliance is considered misfeasance, malfeasance, or nonfeasance justifying removal from the board
- Additional civil and criminal penalties may apply for SEI violations

# ETHICS ACT

## WHERE AND HOW TO GET ADVICE

# WHO CAN ASK FOR ADVICE OR AN ADVISORY OPINION ?

1. You
2. Your supervisor if a covered employee
3. Your appointing authority
4. Your legal counsel
5. Your agency's Ethics Liaison
6. The State Auditor's Office.

State Ethics Commission can also issue advisory opinions on its own motion.

Unless authorized by statute, the Commission does **not** issue advice or advisory opinions to third parties about a covered person's conduct.



# WHAT can you ask for?

- Informal advice from Commission staff
- Formal advisory opinions from the State Ethics Commission
- Both are confidential & not public record
  - ▶ Including your identity, the existence of the request, and any information related to it
  - ▶ Redacted formal advisory opinions are published on the Commission's website

# WHAT ARE THE DIFFERENCES?

INFORMAL ADVICE	FORMAL ADVISORY OPINION
Request can be written or by phone	Request <u>must</u> be in writing
<b>Confidential</b>	<b>Confidential</b>
<ul style="list-style-type: none"><li>■ Issued by Commission staff</li><li>■ <b>No immunity</b></li></ul>	<ul style="list-style-type: none"><li>■ Issued by Commission.</li><li>■ <b>Confers immunity.</b></li></ul>
Not published	Published in redacted form within 30 days of issuance by the Commission.

# WHAT is “Immunity”

By following the advice in a formal advisory opinion, you are immune from:

- ▶ Investigation by the State Ethics Commission.
- ▶ Disciplinary action in your job or removal from your public position
- ▶ Investigation by the Secretary of State’s office

**No immunity for violations of criminal law in the performance of your official duties.**

# WHERE DO YOU SEND YOUR QUESTIONS?

## STATE ETHICS COMMISSION

**Call:** (919) 814-3600

**Fax:** (919) 715-1644

**E-mail:** [ethics.commission@doa.nc.gov](mailto:ethics.commission@doa.nc.gov)

**Mail:** 1324 Mail Service Center  
Raleigh, NC 27699-1324

**Hand Deliver:** 424 N. Blount St.  
Raleigh, NC 27601

# WHEN should you ask?

- ▶ Anytime you are unsure about what you should do
- ▶ Must be before the situation occurs!
- ▶ Requests for advice and formal advisory opinions must relate prospectively to real or reasonably anticipated fact settings or circumstances

# WHY should you ask?

- ▶ Avoid trouble BEFORE it happens - *an ounce of prevention is worth a pound of cure*
- ▶ Obtaining a formal advisory opinion grants you immunity
- ▶ Violations can result in disciplinary action up to and including dismissal or removal from your public position

# ETHICS ACT

AND ONE LAST THING...

# OTHER LAWS, RULES, POLICIES`

## Gifts to & from Contractors

- By law, generally anyone involved in the contracting process cannot accept gifts or favors from contractors or subcontractors
- Executive Order 24 extends prohibition to employees in Cabinet agencies & Governor's Office
- Executive Order 34 extends prohibition to Governor's appointees to boards and commissions



### EXECUTIVE ORDER NO. 24 REGARDING GIFTS TO STATE EMPLOYEES

WHEREAS, those in State government who do the work of the public must continuously ensure that their actions reflect the ethical standards that are essential to maintaining the public's trust; and

WHEREAS, N.C. Gen. Stat. 133-32 makes it unlawful for a State employee to willfully receive or accept any gift or favor from a contractor, subcontractor, or supplier of the State agency if the State employee is involved in (1) preparing plans, specifications, or estimates for public contracts; (2) awarding or administering public contracts; or (3) inspecting or supervising construction; and



### EXECUTIVE ORDER NUMBER 34

#### ETHICS AND ATTENDANCE STANDARDS FOR GUBERNATORIAL APPOINTEES TO BOARDS

WHEREAS, the Governor appoints members to various boards, commissions, committees, councils, and similar entities (hereinafter "boards"); and

WHEREAS, it is essential for the public and the Governor to have confidence in the members of boards and the work done by such boards; and

WHEREAS, gubernatorial appointees to boards must maintain the highest ethical and board attendance standards; and



## ➤ **Prohibition on Self-Dealing**

- ▶ Cannot benefit from or influence public contracting

## ➤ **Other Agency & Departmental Statutes**

- ▶ Some agencies have specific ethical requirements in their statutes

## ➤ **Other Agency & Departmental Policies**

- ▶ State Ethics Act authorizes agencies to adopt additional ethical standards
- ▶ Governor is also authorized to adopt additional ethical standards for State agency employees & gubernatorial appointees

# CONCLUSION

WRAP UP, HYPOTHETICALS AND  
KEY POINTS TO REMEMBER

# WRAP UP...

## Conflicts of Interest



### *Financial Benefit*

- *Official action*
- *Benefits you or person with which associated*
- *Financial benefit*
- *“Safe Harbors”*

### *Relationship w/Participant in Proceeding*

- Impartiality might reasonably be questioned
- Personal, family, financial relationship with
- *Participant in proceeding*

## Gift Ban



- **APPLIES 24/7/365**
- Must be an exception
- Value of gift does not matter

## SEI Filing



Usually  
April 15<sup>th</sup>

In 2017 –  
April 17<sup>th</sup>

## Other Laws EOs, Rules



- Other parts of Ethics Act
- Other laws
- Executive Orders
- Dept. policies

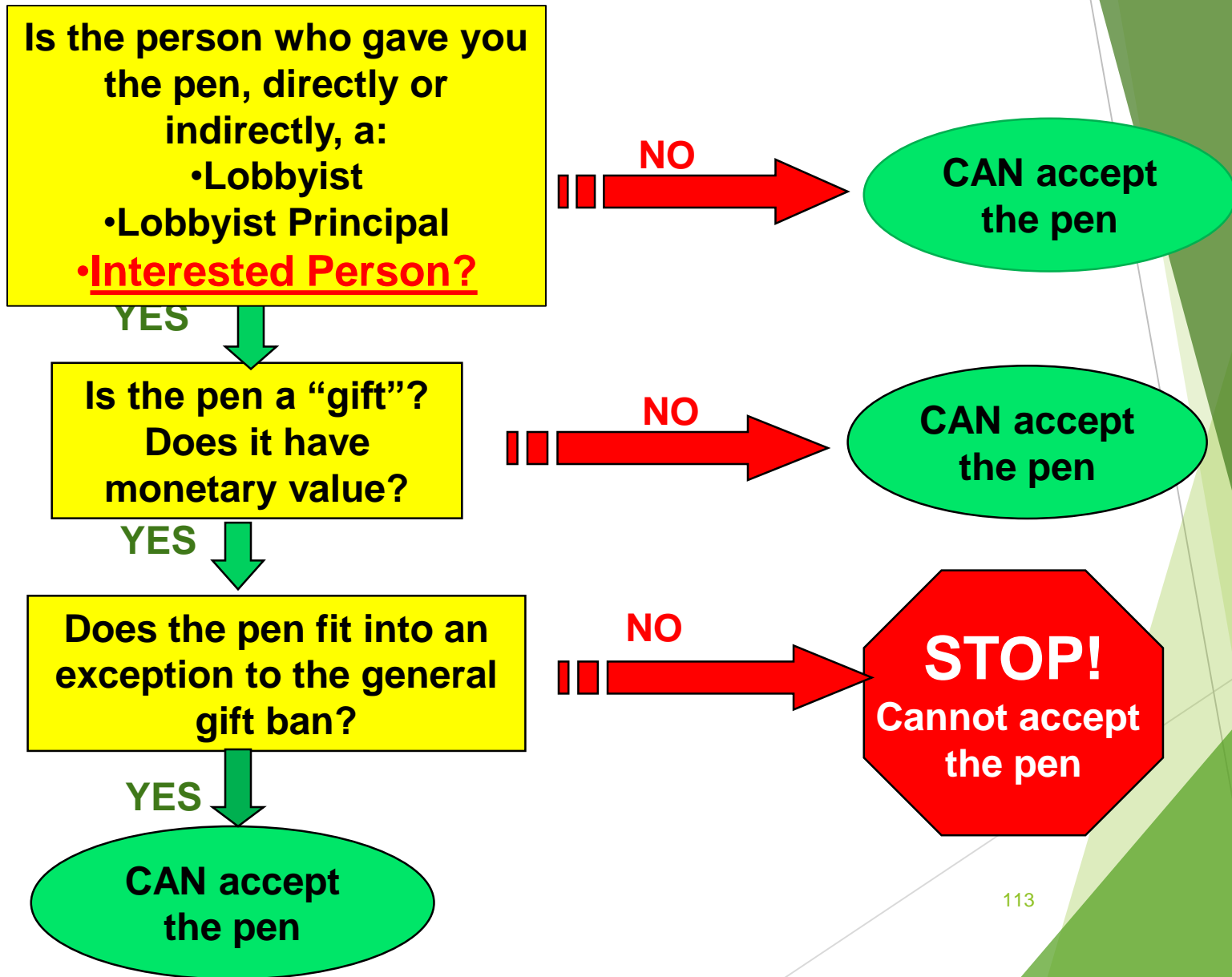
# *What if.....*

- ▶ You arrive at your office and find an ink pen in a box in your chair.
- ▶ Can you keep it?



*Upon opening the box, you find a note enclosed with the pen indicating it is from a company that is licensed by your agency.*

# DECISION TREE FOR ACCEPTING ITEMS/GIFTS



## *What if....*

You, a public servant covered under the Ethics Act, are invited to speak at a Rotary Club about the issues your Board is addressing this year. The Rotary Club is not a Lobbyist Principal.

The Rotary Club provides lunch and a \$25 check to you thanking you for fitting the presentation to the Club into your schedule.

Can you eat the lunch?

Can you accept the \$25 check?



# What is being given here, by whom and can it be accepted?

A Gift is anything of monetary value given by a prohibited giver

## Question to Ask

- ▶ Is the person funding the lunch, directly or indirectly, a:  
Lobbyist;  
Lobbyist Principal; or  
Interested Person?

NO



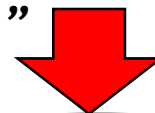
Not from a prohibited giver

**CAN accept the gift of lunch**

*An Honorarium is “payment for services for which fees are not traditionally or legally required.”*

## Question to Ask

*Does speaking to the Rotary Club bear a reasonably close relationship to your official duties? YES - According to the facts, “But for being a member on the State board - you would not be speaking to the Rotary Club”*



**CANNOT accept the honorarium = the \$25 check from the Rotary Club or any other outside source under these facts**

# *What if....*

You've been invited to a reception sponsored by a lobbyist principal where food & beverage will be served.

Can you attend?

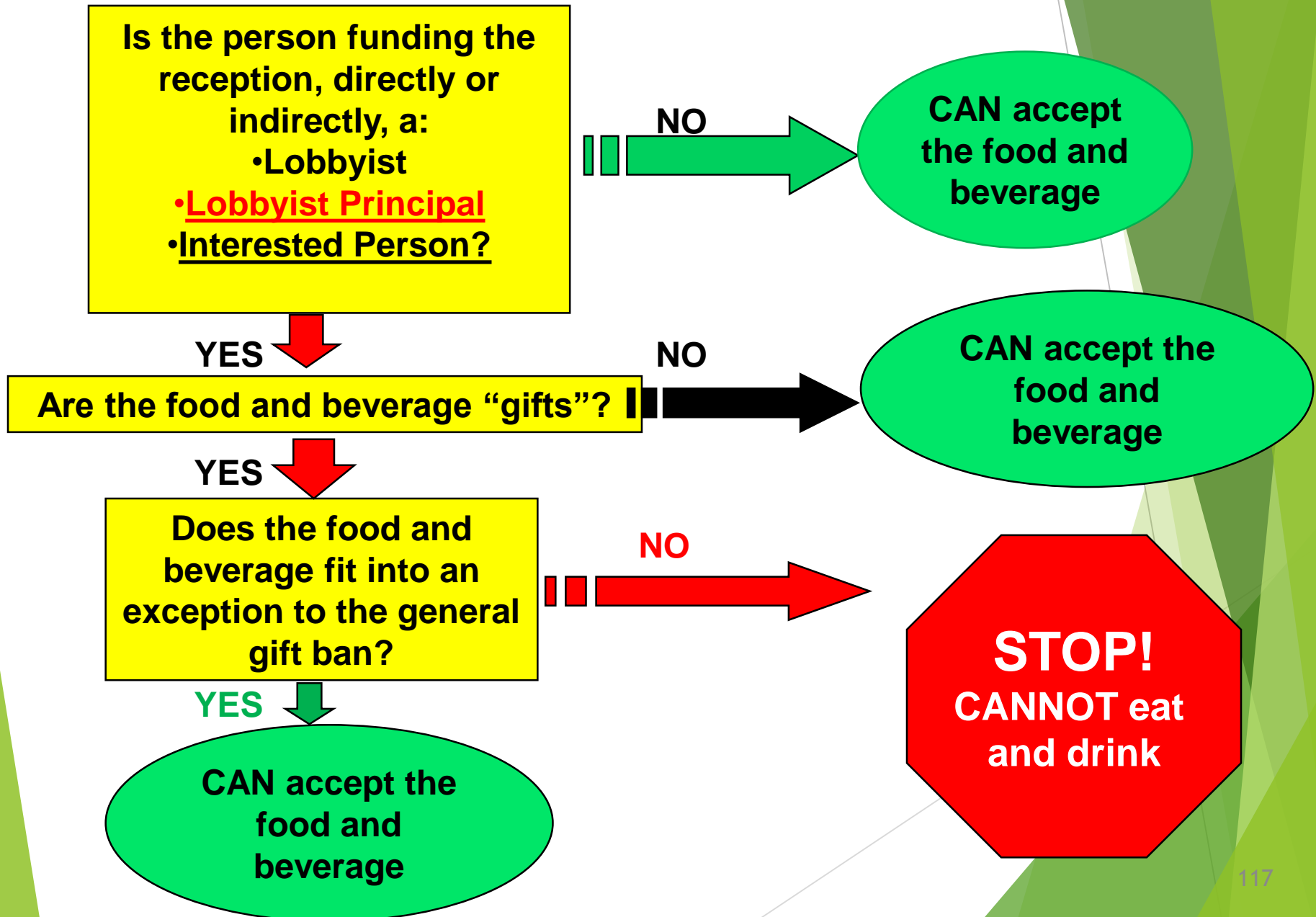
If so, can you eat and drink?



*Upon reading the invitation, you realize the lobbyist principal is not regulated by and has no interests before your agency.*



# DECISION TREE FOR ACCEPTING ITEMS



## ***What if....***

You, a public servant covered under the Ethics Act, have been invited to a symposium related to your public position/duties. The symposium is being hosted/sponsored by a consultant that your agency or board has a service contract with and lunch will be served?

Can you attend?

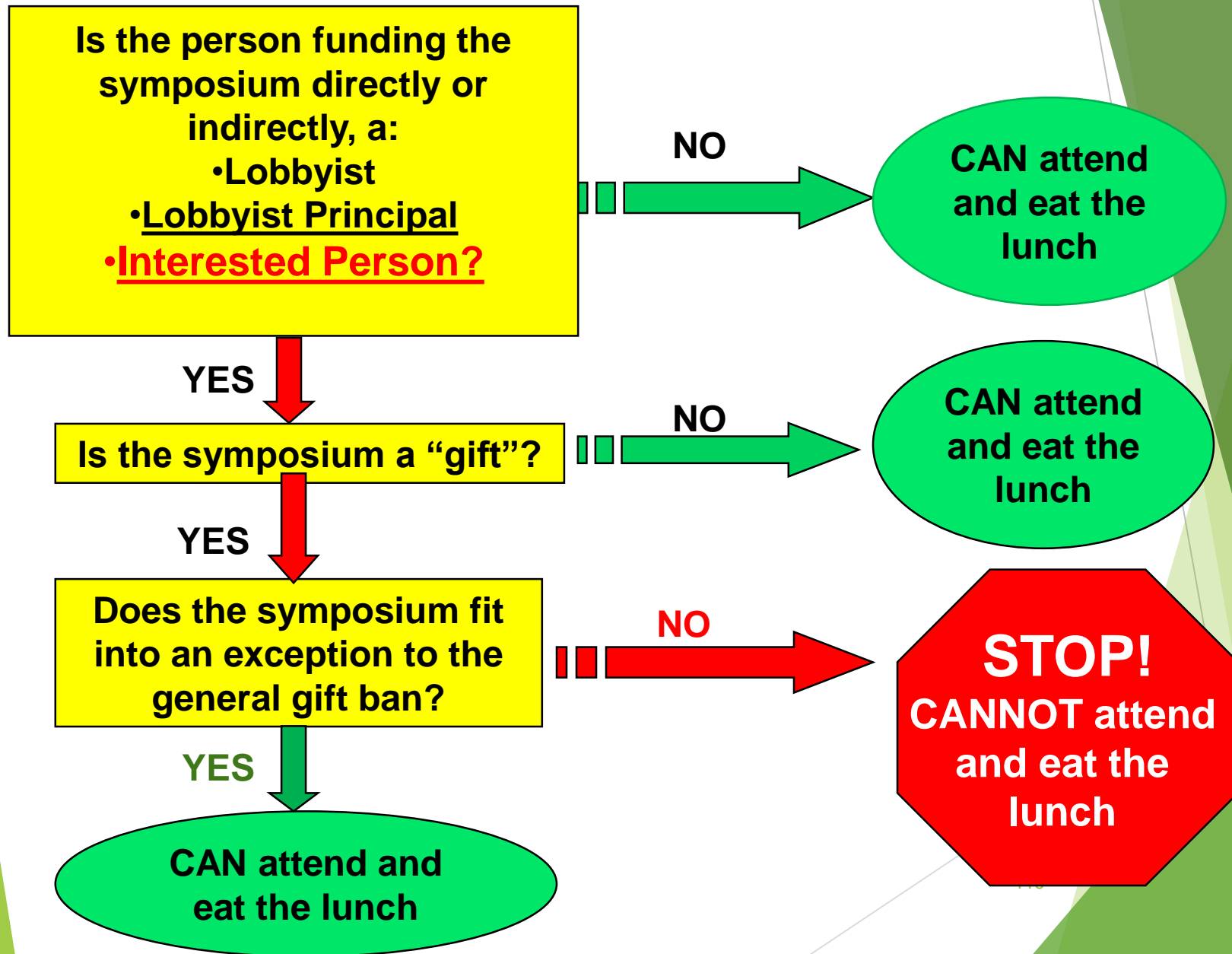
If so, can you eat?



***The consultant has also invited all of their other NC clients, about 200 individuals***

***Many of the others are paying a registration fee to attend, you are not***

# DECISION TREE FOR ACCEPTING ITEMS



## *What if....*

You, a member of a State board covered under the Ethics Act, are asked to sit on the board of directors for a company that is a lobbyist principal, **does the Ethics Act allow this?**

**Yes – unless there would be an actual conflict of interest for you as the State board member.**

**If evaluation letter stated “ potential for conflict of interest” – could still sit on the LPs board of directors but would need to be mindful of what may come before you that is a conflict**

**If conflict arises, then  
Disclose, Recuse and Record**



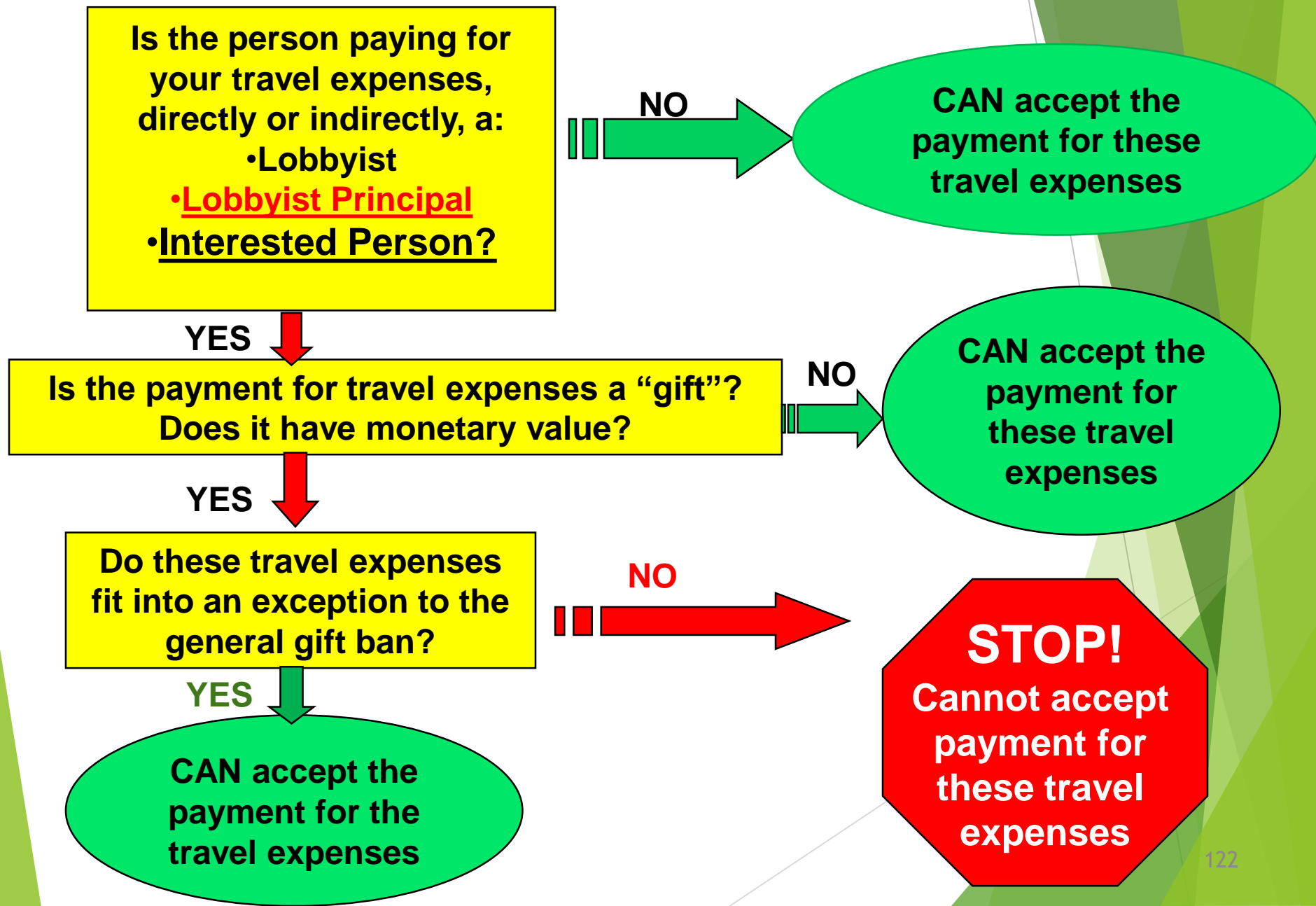
## ***What if ...***

You sit on the board of directors of a lobbyist principal company and the next board meeting is a two-day meeting being held in Asheville, NC, and the lobbyist principal company has offered to pay all of your travel expenses to attend the board of director's meeting, including plane ticket, meals, and lodging ...

**Can you accept this offer from the lobbyist principal company?**



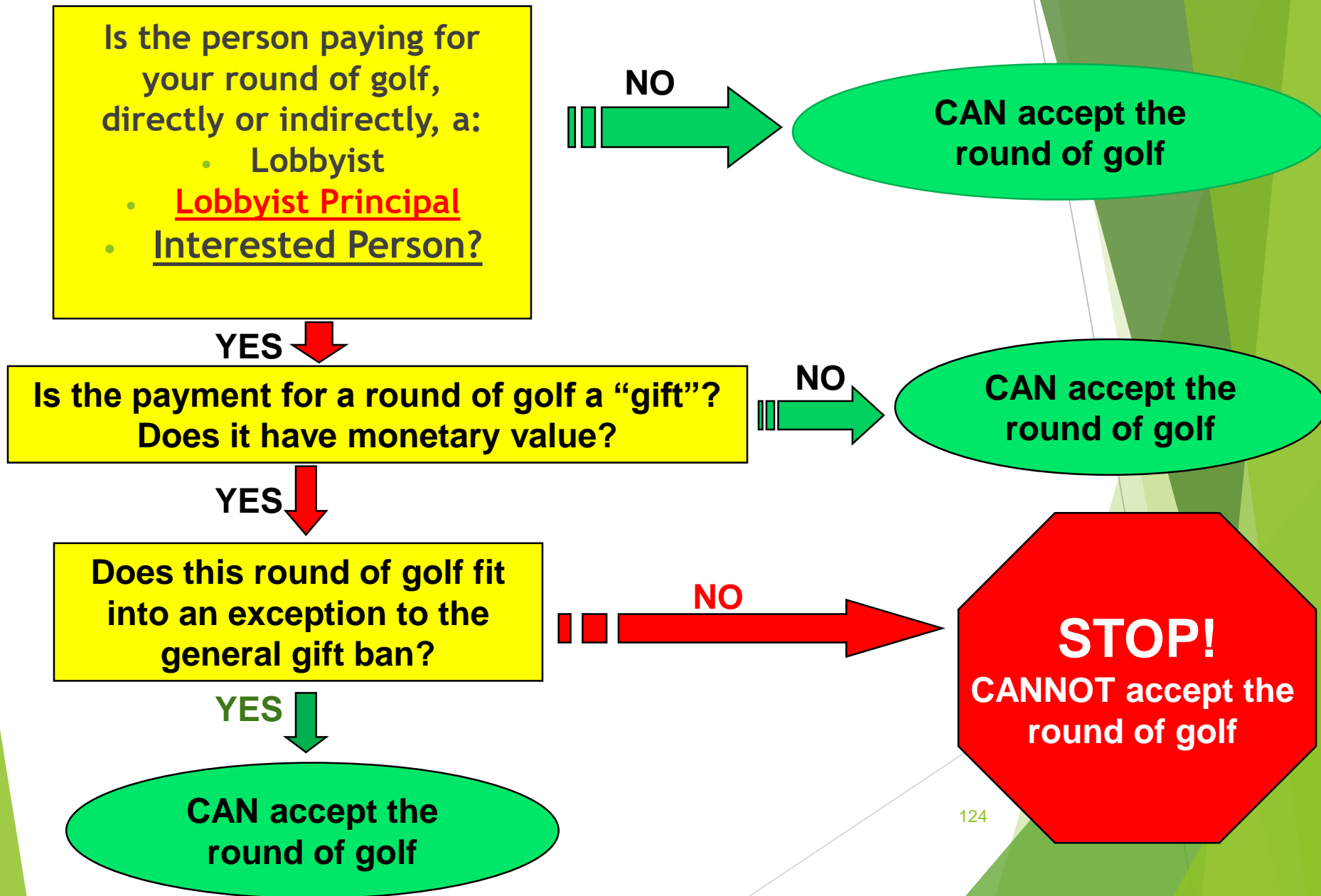
# DECISION TREE FOR ACCEPTING ITEMS



# What About the Round of Golf - Can You Accept It?



# DECISION TREE FOR ACCEPTING ITEMS





# ***What if...***

In 2016 you hosted a fundraiser at your house for one of your friends who was a public official running for an elected office.

Were you allowed to do this under the Ethics Act ?

If yes, are you required to disclose this activity under the Ethics Act?



***Your friend was the Governor who appointed you to the Board of Transportation – does this matter ?***

## You CAN hold the fundraiser – Do you need to disclose it?

1. Were you appointed to your Board by a Constitutional Officer?

Yes



Governor appointed you  
he is a Constitutional Officer

2. Is your Board one of the following Boards?

Yes



- ✓ Coastal Resources Commission
- ✓ State Board of Education
- ✓ State Board of Elections
- ✓ Employment Security Commission
- ✓ Environmental Management Comm.
- ✓ Industrial Commission
- ✓ State Personnel Commission
- ✓ ABC Commission
- ✓ **Board of Transportation**
- ✓ UNC Board of Governors
- ✓ Utilities Commission
- ✓ Wildlife Resources Comm

3. Did you hold a fundraiser at your home or business?

Yes

- At Your home

4. Was it for the Constitutional Officer who appointed you?

Yes



The Governor

**Yes - Must disclose the fundraiser on your 2017 SEI**

# *What if...*

You are a public servant and your spouse owns a business which will financially benefit from a proposed rule change that is scheduled to be voted on by the state board you serve.

Can you participate in the discussion of the proposed rule change?

Can you vote on it?



# DECISION TREE

1. Are you taking  
“official action”?

Yes

Voting & deliberations  
or discussions are  
“official action”

2. Will you or a “person  
with which associated”  
benefit?

Yes

“Person with which associated”  
includes  
“Business with which associated”  
includes a business where your  
spouse is employed, holds a certain  
interest, is an officer, or lobbyist

3. Is it a “financial  
benefit”?

Yes

Direct pecuniary gain  
to “person with which  
associated”

Determine if  
there is a Safe  
Harbor

If not, Disclose,  
Recuse, Record

# KEY POINTS TO REMEMBER:

- ▶ Remember Code of Conduct
- ▶ Remember the gift ban applies at all times!
- ▶ Ask for advice BEFORE taking action you think may be a violation
- ▶ Get to know your Ethics Liaison & agency legal counsel

**If you have questions or need advice, contact the State Ethics Commission!**

# STATE ETHICS COMMISSION CONTACT INFORMATION

- **MAILING ADDRESS**

1324 Mail Service Center  
Raleigh, NC 27699-1324

- **STREET ADDRESS**

424 N. Blount Street  
Raleigh, NC 27601-1010

- **PHONE & FAX**

Phone: 919-814-3600

Fax: 919-715-1644

- **E-MAIL:**

- SEI Questions: [SEI@doa.nc.gov](mailto:SEI@doa.nc.gov)

- Education Questions: [education.ethics@doa.nc.gov](mailto:education.ethics@doa.nc.gov)

- Advice & Advisory Opinion Requests:  
[ethics.commission@doa.nc.gov](mailto:ethics.commission@doa.nc.gov)

- **WEBSITE:** [www.ethicscommission.nc.gov](http://www.ethicscommission.nc.gov)

