

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 259

Short Title: State Ethics Code.

(Public)

Sponsors: Senator Daniel.

Referred to: State Personnel and State Government.

March 25, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE AN ETHICS CODE FOR PUBLIC OFFICERS AND
3 EMPLOYEES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 128 of the General Statutes is amended to add a new
6 Article to read:

7 **“ARTICLE 5.**
8 **“CODE OF ETHICS AND STANDARD OF CONDUCT**
9 **FOR PUBLIC OFFICERS AND EMPLOYEES.**

10 **“§ 128-50. Legislative intent and declaration of policy.**

11 (a) It is essential to the proper conduct and operation of government that public
12 officials be independent and impartial and that public office not be used for private gain
13 other than the remuneration provided by law. The public interest, therefore, requires
14 that the law protect against any conflict of interest and establish standards for the
15 conduct of public officials and employees in situations where conflicts may exist.

16 (b) It is also essential that government attract those citizens best qualified to
17 serve. Thus, the law against conflict of interest must be so designed as not to impede
18 unreasonably or unnecessarily the recruitment and retention by government of those
19 best qualified to serve. Public officials should not be denied the opportunity, available
20 to all other citizens, to acquire and retain private economic interests except when
21 conflicts with the responsibility of such officials to the public cannot be avoided.

22 (c) It is likewise essential that the people be free to seek redress of their
23 grievances and express their opinions to all public officials on current issues and past or
24 pending executive actions at every level of government.

1 (d) It is hereby declared to be the policy of the State that no officer or employee
2 of a State agency or of a county, city, or other political subdivision of the State, shall
3 have any interest, financial or otherwise, direct or indirect; engage in any business
4 transaction or professional activity; or incur any obligation of any nature which is in
5 substantial conflict with the proper discharge of his duties in the public interest. To
6 implement this policy and strengthen the faith and confidence of the people of the State
7 in their government, there is enacted a code of ethics setting forth standards of conduct
8 required of State, county, and city officers and employees, and of officers and
9 employees of other political subdivisions of the State, in the performance of their
10 official duties. It is the intent of the General Assembly that this code shall serve not
11 only as a guide for the official conduct of public servants in this State, but also as a
12 basis for discipline of those who violate the provisions of this Article.

13 (e) It is further declared to be the policy of the State that public officers and
14 employees, State and local, are agents of the people and hold their positions for the
15 benefit of the public. They are bound to uphold the Constitution of the United States
16 and the State Constitution and to perform efficiently and faithfully their duties under the
17 laws of the federal, State, and local governments. Such officers and employees are
18 bound to observe, in their conduct, the highest standards of ethics consistent with this
19 code and the advisory opinions rendered with respect hereto regardless of personal
20 considerations, recognizing that promoting the public interest and maintaining the
21 respect of the people in their government must be of foremost concern.

22 **"§ 128-51. Definitions and exceptions.**

23 Unless provided otherwise or the context otherwise requires, the definitions
24 contained in this section govern the construction of this Article.

25 (a) The term 'officer or employee' includes any person employed, appointed, or
26 elected to a position of the State or local government or to a board or commission of the
27 State or local government or agency thereof. The term excludes members of the
28 General Assembly.

29 (b) The term 'State or local government' includes all departments, agencies,
30 boards, commissions, institutions, bureaus, and authorities of the State or county,
31 municipality or political subdivision thereof.

32 (c) The term 'personal or financial interest' shall include: (i) the affairs of any
33 person in the officer's or employee's immediate household; (ii) the affairs of any
34 corporation, business, firm, or organization in which he is an officer, partner, director,
35 or substantial owner or shareholder; (iii) any matter with the governmental agency by
36 any other person, business, firm, or organization in which the officer or employee, or a
37 person, corporation, business, firm, or organization described in subdivisions (i) or (ii)
38 has or anticipates a contract for the performance of work or other transaction for
39 pecuniary gain with such corporation, business, firm, or organization, arising out of or
40 by reason of the matter with the governmental agency; and (iv) any person, firm, or
41 organization with whom the officer or employee is negotiating or has an arrangement
42 concerning prospective employment.

1 (d) The term 'substantial owner or shareholder' shall mean ten percent (10%) or
2 more of the stock of a corporation or ten percent (10%) or more of the ownership in
3 other business.

4 (e) The term 'person' shall include individuals as well as corporations,
5 businesses, and organizations unless the context clearly shows to the contrary.

6 (f) For the purpose of this Article, the terms 'conflict of interest' and 'personal or
7 financial interest' shall have no application to members of Occupational Licensing
8 Boards while engaged in rule-making activities.

9 **"§ 128-52. Conflict of interest.**

10 (a) Gratuities Prohibited.

11 No officer or employee shall:

12 (1) Solicit or accept, directly or indirectly, any gift, gratuity, honorarium,
13 favor, entertainment, loan, or any other thing of monetary value, from
14 any person or corporation, or indirectly from any industry
15 organization, which (i) has, or is seeking to obtain, contractual or other
16 business or financial relationships with his agency; or (ii) conducts
17 operations or activities which are regulated by his agency; and (iii)
18 interests or activities may be affected by the performance or
19 nonperformance of the duty of the officer or employee;

20 (2) Accept any money, loan, gift, favor, service, travel, entertainment,
21 hospitality, or business or professional opportunity or other thing or
22 promise that could reasonably tend to influence him in the
23 performance of his official duty;

24 (3) Solicit, accept, or agree to accept, any gift, benefit, or anything of
25 value for or because of any official act performed, except as otherwise
26 provided by law for the discharge of official duty.

27 There is excepted from the prohibition of this subdivision, customary gifts or favors
28 between employees or officers and their friends and relatives or the friends and relatives
29 of their spouses, minor children, or members of their household, where it is clear that it
30 is that relationship, rather than the position of the officer or employee concerned, that is
31 the motivating factor for the gift or favor.

32 (b) Donations for Government Meetings Prohibited. Persons, firms and
33 companies, and related industry organizations, doing business with or regulated by the
34 agency shall not be solicited for donations for the purpose of providing entertainment,
35 hospitality, gifts, and meals for conferences or meetings attended by the governmental
36 agency's officers or employees. Persons, firms and companies, and related industry
37 organizations, doing business with or regulated by the governmental agency, are
38 prohibited from sponsoring meals, drinks, and entertainment at professional conferences
39 or meetings of such governmental agency.

40 (c) Restrictions on Outside Employment of Present Employees. No officer or
41 employee may be employed by or contract to do business for any contracting party of or
42 company doing business with the particular governmental body in which the employee
43 is employed, except as authorized by the governmental agency after determining no

1 potential conflict of interest will exist. Each governmental agency shall regulate outside
2 employment for the purpose of eliminating potential conflicts of interest.

3 (d) Contemplated Official Action. No government officer or employee shall
4 engage in any transaction in anticipation of a pecuniary benefit or intentionally aid
5 another in such a transaction, in contemplation of official action by himself or by the
6 governmental unit with which he is associated.

7 (e) Policy Against Representing Adverse Claim. No public officer or employee
8 shall represent outsiders in connection with claims, applications, or other matters or
9 proceedings before the governmental agency in which such public official or employee
10 is employed.

11 **"§ 128-53. Official misconduct.**

12 (c) Use of Position or Influence for Private Gain or Unwarranted Privileges
13 Prohibited. No employee or officer shall use or attempt to use his official position or
14 influence to secure unwarranted privileges or advantages for himself or others or to
15 profit, directly or indirectly, or to otherwise use his position for private gain for himself
16 or others or a company with which he is affiliated or has a personal or financial interest
17 in.

18 (d) Falsification of Records or Reports. No public officer or employee shall
19 knowingly falsify or permit to be falsified, any public record or report or expense
20 account.

21 (e) Participation in Agency Matters. No officer or employee shall participate,
22 either directly or indirectly, in any matter of the agency in which the officer or
23 employee has a personal or financial interest.

24 (f) Receipt of Consideration Prohibited. No officer or employee shall solicit,
25 offer or accept any money or anything of value or or in consideration of (i) obtaining
26 employment, appointment, or promotion of any person with any governmental agency,
27 or (ii) influencing the outcome of any disciplinary action involving any person
28 employed by the State or local government, or (iii) using his public position to obtain a
29 contract for any person or business with any governmental agency.

30 (g) Interest in Agency Contracts Prohibited. Except as expressly authorized by
31 G.S. 128-53(a), no officer or employee of any governmental agency of the State shall
32 have a personal or financial interest in any contract with the governmental agency of
33 which he is an officer or employee, other than his own contract of employment.

34 **"§ 128-54. Disclosure of financial interest.**

35 Each elected and appointed officer of the State and each employee serving in exempt
36 positions as designated pursuant to G.S. 126-5(d), shall file a disclosure statement of his
37 personal interest and other information as specified on forms to be prepared by the
38 Secretary of State and shall thereafter file a statement annually on or before January 31.
39 The disclosure form shall be completed and filed and maintained as a public record for a
40 period of five years in the Office of the Secretary of State.

41 **"§ 128-55. Disqualification from voting.**

42 An officer or employee, who is a member of a board or commission, shall disqualify
43 himself from participating in voting or the discussion of any matter before an agency of
44 the State or local government in which he has a personal or financial interest.

1 **"§ 128-56. Activities of others restricted.**

2 (a) Giving of Gratuities Prohibited - Official Acts. No person shall, except as
3 otherwise provided by law for the discharge of official duty, knowingly offer to, agree
4 to or give to or confer on any present or former officer or employee any benefit or
5 anything of value, for or because of any official act performed or with the intent to
6 influence him in performing his duties.

7 (b) Employment of Consultant With a Potential Conflict of Interest Prohibited.
8 No public agency shall employ, and no consultant or engineering firm shall contract for
9 a public works project in which any director, officer, employee, major creditor, or a
10 substantial owner or shareholder of such firm, has any landholding, options to purchase
11 land, or plans for development or construction which may be affected by the project.
12 Each firm submitting a proposal shall make known to the agency any interest it has that
13 may be affected by the location or design of the proposed project.

14 **"§ 128-57. Fines and penalties.**

15 (a) Any person who knowingly violates any of the provisions of Article 5 of this
16 Chapter shall be guilty of a misdemeanor. A knowing violation under this Article is one
17 in which the person engages in conduct, performs an act, or refuses to perform an act
18 when he knows, or should have reasonably known, that the conduct is prohibited or
19 required by this Article.

20 (b) A State officer or employee shall not be prosecuted for a knowing violation
21 of this Article if the alleged violation resulted from his good faith reliance on a written
22 opinion of the Attorney General, and the opinion was made after a full disclosure of the
23 facts. A local officer or employee shall not be prosecuted for a knowing violation of
24 this Article if the alleged violation resulted from his good faith reliance on a written
25 opinion of the District Attorney, and the opinion was made after a full disclosure of the
26 facts.

27 (c) Any person who knowingly violates any of the provisions of this Article shall
28 be guilty of malfeasance in office or employment. Upon conviction thereof, the judge,
29 in addition to any other fine or penalty provided by law, may order the forfeiture of said
30 office or employment.

31 (d) In addition to any penalty contained in this Article any such officer, member
32 or employee who shall knowingly violate any of the provisions of this Article may be
33 fined, suspended, or removed from office or employment in the manner otherwise
34 provided by law.

35 (e) Any officer or employee found by the agency to have violated any provisions
36 of this Article is subject to disciplinary action including dismissal and restitution of any
37 agency losses resulting from such violation.

38 (f) The fines, remedies, and penalties provided for in this Article are not
39 exclusive and are not intended to preclude any others available or provided for by law."

40 Sec. 2. G.S. 14-234 is recodified as G.S. 128-53(a).

41 Sec. 3. G.S. 14-234.1 is recodified as G.S. 128-53(b).

42 Sec. 4. G.S. 14-235, 14-236, and 14-237 are hereby repealed.

43 Sec. 5. This act is effective upon ratification.