

Checklist Notes

The questions and statements below are designed to be answered with a “YES.” “NO” answers indicate possible statutory violations and internal control weaknesses that should be investigated. NO answers should be brought to management's attention and may need to be disclosed in the notes to the financial statements. This checklist should be used only as a guide. It is not intended to be all inclusive. It is not intended to substitute for a full reading and understanding of the relevant General Statute(s). A listing of the NC General Statutes is available on the General Assembly web site, <http://www.ncga.state.nc.us/>. Persons referring to the statutes on this web site should be sure that changes from the latest session laws have been incorporated. If they have not, the web site should list a cross reference guide for those session laws affecting specified general statutes. (Note that this checklist is based upon the revisions in Session Law 2008.) The intent of this Session Law is to consolidate and clarify the various existing conflict of interest statutes.

A unit’s local attorney should be consulted to determine if a NO answer to this checklist actually indicates a statutory violation.)

Note also that this checklist does not address conflict of interest guidelines or prohibitions which may be attached to federal or State grant receipts, nor does it apply to locally adopted policies. The auditor should examine the grant documents, the compliance supplements, and any local policies to determine if additional guidelines or prohibitions on self-dealing and conflicts of interest apply.

Definitions within the context of G.S. 14-234

Public Officer: One who is elected or appointed to serve or represent a public agency. G.S. 14-234(a1)(1)

Employee: One who is employed by the public agency. *This is not defined in the statute, but from the context of the statute it appears that the common understanding of employee status does apply.*

Administering the contract: This applies to a public officer or employee who oversees the performance of the contract or has authority to make decisions regarding the contract or may interpret the contract. G.S. 14-234-(a1)(2)

Making the contract: This applies to a public officer or employee who participates in the development of specifications or terms, or participates in the preparation or award of the contract. Note that a public officer is considered to be involved in making the contract if the public officer’s governing board takes action on the contract, regardless of whether or not the public officer participated in the action. See the “EXCEPTIONS” section below. G.S. 14-234(a1)(3)

A public officer or employee is not considered to be involved in the **making of a contract** or the **administering of a contract** if the public officer or employee only performs ministerial duties related to the contract. G.S. 14-234(a1)(5)

Direct benefit from a contract: A public officer or an employee is considered to have a direct benefit in or from a contract if (1) the public officer or employee or his/her spouse has more than a 10% ownership interest in an entity which is a party to the contract, or, (2) the public officer or employee derives any income or commission directly from the contract, or (3) the public officer or employee acquires property because of the contract. G.S. 14-234-(a1)(4)

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
14-234(a)(1)	Has the public officer or employee involved in making or administering a contract on behalf of the local unit refrained from receiving a direct benefit from the contract? <i>(NO answers should see the “EXCEPTIONS” section below.)</i>				
14-234(a)(2)	If a public officer or employee will receive a direct benefit from a contract involving the public agency he/she serves, has the public officer or employee refrained from making or administering the contract?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	Has the public officer or employee who will receive a direct benefit from a contract involving the public agency he/she serves refrained from influencing or attempting to influence someone who is involved with making or administering the contract?				
	If the public official or employee is to receive a direct benefit from a contract involving the public agency he/she serves, is that direct benefit allowable under the stated exceptions in the statute? (See below)				
14-234(a)(3)	Has a public officer or an employee refrained from soliciting or receiving gifts, rewards or promises of rewards in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he/she serves?				
14-234(f)	Contracts entered into in violation of this section are void. Has a void contract continued in place because (i) immediate termination would result in harm to the public health or welfare and (ii) the public agency has petitioned the proper authority for permission to continue the contract? See (f)(1) and (f)(2) below.				
14-234(f)(1)	If the unit is a local government [G.S. 159-7(15)], public authority [G.S. 159-7(10)], local school administrative unit, or community college, has the chairman of the Local Government Commission approved the governing board's request to continue the contract for the minimum period necessary to protect the public health or welfare?				
14-234(f)(2)	If the unit is a public agency other than listed in G.S. 14-234(f)(1), has the State Director of the Budget approved the governing board's request to continue the contract for the minimum period necessary to protect the public health or welfare?				
EXCEPTIONS					
14-234(b)(1)	If a public officer or employee will receive a direct benefit from a contract between the public agency he/she serves, is the second party of the contract a bank, banking institution, savings and loan association, or a public utility regulated under the provisions of G.S. 62? [See 14-234(b1), below for additional exemption requirements.]				
14-234(b)(2)	If a public officer or employee will receive a direct benefit because the public officer or employee conveys an interest in property to the public agency he/she serves, was that done under a judgment or consent judgment, entered by a superior court judge in a condemnation hearing?				

General Statute Reference	Attribute				Initials/
		Yes	No	N/A	WP ref.
	Was the condemnation hearing initiated by the public agency? [See also 14-234(b1), below]				
14-234(b)(3)	If there is an employment relationship between a public agency and the spouse of a public officer of the agency, have the requirements of G.S. 14-234(b1), below, been followed? (Effective July 1, 2002)				
14-234(b)(4)	If a public officer or employee is to receive remuneration from the public agency he/she serves, for providing services, facilities, or supplies to needy individuals, have the following conditions been observed?				
	Were the services, facilities, or supplies furnished directly to needy individuals?				
	Did the public officer or employee provide services, facilities, or supplies under a program rendered under the laws of North Carolina or the United States?				
	Is the program administered, either in whole or in part, by the public agency?				
	Is program participation open on a nondiscriminatory basis to the practitioners of any given profession or occupation? I.E., can all qualified providers participate on a nondiscriminatory basis?				
	If the beneficiaries of the public assistance are able to select from a pool of qualified providers, is that selection process free from the control of the public agency, its employees, or agents?				
	Is the remuneration for the services, facilities, or supplies paid to the public officer or employee the same as is paid (or would be paid) to any other provider?				
	Did the public officer or employee refrain from taking part in the approval of his/her own invoice or claim for remuneration? (Note that it is allowable for public officers or employees to participate in determining the eligibility of needy persons.)				
14-234(b1)	If a public officer will receive a direct benefit from a contract entered into under 14-234(b)(1) to (b)(4), above, did he/she refrain from deliberating or voting on the contract?				
	Did the public officer refrain from attempts to influence any other person involved with making or administering the contract?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	<p align="center"><i>EXCEPTIONS, allowed for population and dollar amount limits.</i></p> <p>G.S. 14-234(d1) is effective April 1, 2002.</p> <p>Note that all portions of G.S 14-234(d1)(1) through (d1)(4), below, must be met for these exceptions to be valid.</p>				
14-234(d1)	Is the public official receiving a direct benefit an elected official or appointee to an elective position for a municipality of no more than 15,000 people according to the most recent federal census?				
	Is the public official receiving a direct benefit an elected official or appointee to an elective position for a county in which there is not a municipality with more than 15,000 people according to the most recent federal census?				
	Is the public official receiving a direct benefit an elected official or appointee to an elective position for a city board of education with the municipality having a population of no more than 15,000 according to the most recent federal census?				
	Is the public official receiving a direct benefit an elected official or appointee to an elective position for a county board of education in which there is not a municipality with a population of more than 15,000 people according to the most recent federal census?				
	Is the physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health developmental disabilities and substance abuse board receiving a direct benefit serving one or more counties within which there is not a municipality having a population of 15,000 or more according to the most recent federal census?				
	Is the public officer or employee a member of the board of directors of a public hospital?				
14-234(d1)(1)	Was the contract or agreement between the municipality, county, county social services board, county or city board of education, local health board, area mental health, developmental disabilities and substance abuse board, or public hospital, and one of its officials, approved by a special resolution of the governing board?				
	Was that resolution approved in an open public meeting?				
	Was the resolution recorded in the minutes of the governing board?				
	Was the direct benefit to the official equal to or less than the \$12,500 limit for medically related services, in a 12 month period?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	Was the direct benefit to the official equal to or less than the \$25,000 limit for other goods and services, in a 12 month period?				
14-234(d1)(2)	Did the official contracting with the local unit refrain from participating in any way, including voting, on the contract before the governing board?				
14-234(d1)(3)	Is the total annual amount of the contracts with each official specifically noted in the notes to the annual audited financial statements of the local unit?				
14-234(d1)(4)	Has the local unit which has contracted with one of its own officials, posted in a conspicuous place in the city hall, county courthouse, or similar structure, a list of all such officials with whom such contracts have been made?				
	Does the list describe the subject matter of the contract, undertaking, or agreement?				
	Does the list show the total amount of the contracts for each official?				
	Does the list cover the preceding 12 months?				
	Is the list brought up-to-date at least quarterly?				
14-234(d2)	<i>The exceptions under G.S. 14-234(d1) are not applicable to contracts that are subject to Article 8 of Chapter 143, Public Contracts.</i> Has this prohibition has been correctly followed in contracting with public officers?				
14-234(d3)	If a member of a soil and water conservation commission has applied for or received a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control, have the requirements of G.S. 139-4(e) been meet? I.E., the member has not voted on nor tried to influence the actions on this application, and the application is approved by the Secretary of Environment and Natural Resources.				
	If a district supervisor of a soil and water conservation commission has applied for or received a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control, have the requirements of G.S. 139-8(b) been meet? I.E., the district supervisor has not voted on nor tried to influence the actions on this application, and the application is approved by the commission.				
14-234(d4)	This section is applicable to members of the Tobacco Trust Fund Commission; this would not be an entity covered by the Local Government Budget and Fiscal Control Act. See the requirements of G.S. 143-717(h) if applicable.				
14-234(d5)	<i>This section is not applicable to public hospital contracts subject to G.S 131E-14.2.</i> Has this prohibition been correctly applied by the local unit?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	<p>Effective July 1, 2002. See Public Hospitals below.</p> <p>This section does not apply to public hospital authority contracts subject to G.S 131E-21. Has this prohibition been correctly applied by the local unit?</p> <p>Effective July 1, 2002. See Public Hospital Authorities below.</p>				
	<i>PUBLIC HOSPITALS, Conflicts of Interest</i>				
131E-14.2(a)(1)	Have members of the board of directors of a public hospital [(G.S. 159-39(a)], employees of the public hospital, and spouses thereof, refrained from acquiring a direct or indirect interest in any hospital facility?				
	Have members of the board of directors of a public hospital, employees of the public hospital, and spouses thereof, refrained from acquiring a direct or indirect interest in any property included or planned to be included in a hospital facility?				
131E-14.2(a)(2)	<p>Have members of the board of directors of a public hospital, employees of the public hospital, and spouses thereof, refrained from having a direct interest in any contract or proposed contract for materials or services to be furnished to or used in connection with the hospital facility?</p> <p>NO answers should check the exception items below.</p> <p>This restriction does not apply to an employment contract for an employee of the public hospital.</p> <p>May the restriction be avoided because the contract, undertaking, or transaction in which the director, employee, or spouse has a direct or indirect interest, is with a bank, banking institution, savings and loan association, or public utility in the regular course of business? AND</p> <p>The contract, transaction, or undertaking has been authorized by the governing board in a specific resolution? AND</p> <p>Any director having an interest, direct or indirect, has refrained from voting on the resolution?</p>				
131E-14.2(b)	<p>For subsection (a), above, has a person or person's spouse owning 10% or less stock in a corporation or 10% or less ownership in any other business entity having contracts, transactions or undertakings with the public hospital, been exempted from the direct interest restriction, IF the following have been observed?</p> <p>The contract, transaction or undertaking benefiting the person was authorized by the governing board by a specific resolution? AND</p>				

General Statute					Initials/
Reference	Attribute	Yes	No	N/A	WP ref.
	Any director having an interest, direct or indirect, has refrained from voting on the resolution?				
	For subsection (a), above, has a person or person's spouse employed by a corporation or other business entity having contracts, transactions or undertakings with the public hospital, been exempted from the direct or indirect interest restriction, IF the following have been observed?				
	The contract, transaction or undertaking benefiting the person was authorized by the governing board by a specific resolution? AND				
	Any director having an interest, direct or indirect, has refrained from voting on the resolution?				
131E-14.2(c)	If a member of the board of directors of the public hospital, an employee of the public hospital, or the spouse thereof, owns or controls a direct or indirect interest in any property included or planned to be included in the hospital facility, has the director or employee immediately notified the board of directors in writing?				
131E-14.2(c)1	<p>Was this notification entered into the minutes of the board of directors?</p> <p>Subsection (a) of this section shall not apply if the director or employee is not involved in making or administering the contract. A director or employee is involved in administering a contract if the director or employee oversees the performance of or interprets the contract. A director or employee is involved in making a contract if the director or employee participates in the development of specifications or terms or in the preparation or award of the contract. A director or employee is not involved in making or administering a contract solely because of the performance of ministerial duties related to the contract. A director is also involved in making a contract if the board of directors takes action on the contract, whether or not the director actually participates in that action, unless the contract is approved under an exception to this section under which the director is allowed to benefit and is prohibited from voting.</p> <p>Failure to disclose shall constitute misconduct in office and shall be grounds for removal.</p>				
131E-14.2(d)	Does the prohibition in subsection (a) above not apply to any director of a public hospital, because the following have been observed?				
	Has the contract, undertaking, or series of contracts or				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	undertakings between the public hospital and one of its officials been approved by a specific resolution? AND				
	Was this resolution adopted in an open, public meeting? AND				
	Was the resolution recorded in the board's minutes? AND				
	The director who is a party to the contract will receive \$12,500 or less for medically related services in a 12 month period, per terms of the contract? AND				
	The director who is a party to the contract will receive no more than \$25,000 for other goods or services in a 12 month period, per terms of the contract? AND				
	The director contracting with the public hospital has not participated in an official capacity in any way? AND				
	The director contracting with the public hospital has not voted on the contract?				
131E-14.2(e)	The prohibition in subsection (a) above does not apply to an employment relationship between a public hospital and the spouse of a director of the public hospital.				
131E-14.2(f)	A contract entered into in violation of this section shall be void.				
	If a void contract continues in place until an alternative can be arranged, is it because immediate termination would harm the public health or welfare? AND				
	Has the continuation of a void contract been approved by the Chairman of the Local Government Commission?				
	Has the approval for continuation been given for the minimum period necessary to protect the public health or welfare?				
	<i>PUBLIC HOSPITAL AUTHORITIES, Conflicts of Interest</i>				
131E-21(a)(1)	Have commissioners of a public hospital authority, employees of the public hospital authority, and spouses thereof, refrained from acquiring a direct or indirect interest in any hospital facility?				
	Have commissioners of a public hospital authority, employees of the public hospital authority, and spouses thereof, refrained from acquiring a direct or indirect interest in any property included or planned to be included in a hospital facility?				
131E-21(a)(2)	Have commissioners of a public hospital authority, employees of the public hospital authority, and spouses thereof, refrained from having a direct or indirect interest in any contract or proposed contract				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	for materials or services to be furnished to or used in connection with the hospital facility? NO answers should check the exception items below.				
	This restriction does not apply to an employment contract for an employee of the public hospital authority.				
	May the restriction be avoided because the contract, undertaking, or transaction in which the commissioner, employee or spouse has a direct or indirect interest is with a bank, banking institution, savings and loan association, or public utility in the regular course of business? AND				
	The contract, transaction, or undertaking has been authorized by the commissioners in a specific resolution? AND				
	Any commissioner having an interest, direct or indirect, has refrained from voting on the resolution?				
131E-21(b)	For subsection (a), above, has a person or person's spouse owning 10% or less stock in a corporation or 10% or less ownership in any other business entity having contracts, transactions or undertakings with the public hospital authority, been exempted from the direct or indirect interest restriction, IF the following have been observed?				
	The contract, transaction or undertaking benefiting the person was authorized by the commissioners by a specific resolution? AND				
	Any commissioner having an interest, direct or indirect, has refrained from voting on the resolution?				
	For subsection (a), above, has a person or person's spouse employed by a corporation or other business entity having contracts, transactions or undertakings with the public hospital authority, been exempted from the direct or indirect interest restriction, IF the following have been observed?				
	The contract, transaction or undertaking benefiting the person was authorized by the commissioners by a specific resolution? AND				
	Any commissioner having an interest, direct or indirect, has refrained from voting on the resolution?				
131E-21(c)	If a commissioner of the public hospital authority, an employee of the public hospital authority, or the spouse thereof, owns or controls a direct or indirect interest in any property included or planned to be included in the hospital facility, has the commissioner or employee immediately notified the board of commissioners in writing?				
	Was this notification entered into the minutes of the board of the hospital authority?				

General Statute Reference	Attribute	Yes	No	N/A	Initials/ WP ref.
	Failure to disclose shall constitute misconduct in office and shall be grounds for a commissioner's removal under G.S. 131E-22.				
131E-21(d)	Does the prohibition in subsection (a) above not apply to any commissioner of a public hospital authority, because the following have been observed?				
	Has the contract, undertaking, or series of contracts or undertakings between the public hospital authority and one of its officials been approved by a specific resolution? AND				
	Was this resolution adopted in an open, public meeting? AND				
	Was the resolution recorded in the board's minutes? AND				
	The commissioner who is a party to the contract will receive \$12,500 or less for medically related services in a 12 month period, per terms of the contract? AND				
	The commissioner who is a party to the contract will receive no more than \$25,000 for other goods or services in a 12 month period, per terms of the contract? AND				
	The commissioner contracting with the public hospital has not participated in an official capacity in any way? AND				
	The commissioner contracting with the public hospital authority has not voted on the contract?				
131E-21(e)	The prohibition in subsection (a) above does not apply to an employment relationship between a hospital authority and the spouse of a commissioner of the hospital authority.				
131E-21(f)	A contract entered into in violation of this section shall be void.				
	If a void contract continues in place until an alternative can be arranged, is it because immediate termination would harm the public health or welfare? AND				
	Has the continuation of a void contract been approved by the Chairman of the Local Government Commission?				
	Has the approval for continuation been given for the minimum period necessary to protect the public health or welfare?				