

FAQs about North Carolina's Ethics and Lobbying Laws

(Revised April 2009)

North Carolina has enacted a series of ethics and lobbying laws that significantly increased the state's regulation of interactions between Duke personnel and "covered" state officials. This document provides general information about one of many important aspects of these laws – the "gift" provisions – as well as general guidance regarding common Duke interactions with state officials that may implicate the ethics and lobbying provisions. In this document, "Duke personnel" refers to faculty, staff and all other persons employed by or representing Duke University or any component of Duke Medicine or Duke University Health System.

Duke personnel must be aware of and comply with state ethics and lobbying laws, including the "gift" provisions, when planning or engaging in any activity with any state official that involves Duke or is undertaken on Duke's behalf. (See http://news.duke.edu/reports/govtrelations_policies.pdf) These FAQs are intended as a general reference and are not comprehensive; are subject to revision as applicable law and related regulatory guidance develops; and do not constitute legal advice.

Duke is required to report certain government relations-related expenses to state regulators, including some items falling within the gift provisions. Your assistance will be required to enable Duke to prepare these reports. (See http://news.duke.edu/reports/gr_questionnaire.pdf)

Accordingly, Duke personnel are strongly encouraged to consult with the appropriate DU or DUHS government affairs office *before* engaging in *any* government relations activities involving Duke or on Duke's behalf. Specific questions regarding North Carolina's "gift ban" and gift reporting requirements should be directed to the DUHS Office of Government Relations (416-8910).

Frequently Asked Questions

1. What do the "gift" provisions say?

The provisions impose two "gift bans." First, any legislator, legislative employee or other "covered" state official is prohibited from knowingly accepting a "gift" from a "lobbyist" or "lobbyist principal" (such as Duke). Second, any "covered" state official is prohibited from knowingly accepting anything of monetary value from any other "person" (including an individual or group, business organization, committee or association) whom the official knows or has reason to know (i) is doing or seeking to do business of any kind with the official's employer; (ii) is engaged in activities that are regulated or controlled by the official's employer; or (iii) has financial interests that may be uniquely *and* substantially or materially affected by the official's performance or nonperformance of their official duties. Both bans prohibit direct gifts as well as indirect gifts through intermediaries.

2. What "gifts" are covered?

"Gifts" are defined as "anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal ... [or other "person" described in the FAQ above]," unless it falls within one of the following exceptions:

1. Anything for which a "covered" state official pays fair market value, or face value if shown;

2. Commercially available loans made on terms not more favorable than generally available to the general public in the normal course of business if not made for the purpose of lobbying;
3. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying;
4. Academic or athletic scholarships based on the same criteria as applied to the public;
5. Campaign contributions properly received and reported under state law;
6. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following: (i) a sympathy card, letter, or note; (ii) flowers; (iii) food or beverages for immediate consumption; or (iv) donations of \$200 or less (per death per donor) to a religious organization, charity, the state or a political subdivision of the state.

3. Which state officials are “covered” by the “gift” provisions?

There are three general categories of “covered” officials:

1. “Legislators” and “legislative employees”;
2. “Public servants,” such as members of the Council of State, the Governor’s Cabinet, voting members of state boards and certain other state employees (including certain UNC and state community college board members and administrators); and
3. “Judicial officers,” such as state justices and judges, district attorneys and clerks of court.

The state’s list of “covered” *positions and boards* may be found online here:

<http://www.ethicscommission.nc.gov/genCatListPersons.htm>

<http://www.ethicscommission.nc.gov/eboards.htm>

The state’s list of “covered” *individuals* currently serving in/on the above positions/boards may be found online here:

<http://www.ethicscommission.nc.gov/specificNamesPositions.htm>

4. Are any “gifts” to “covered” state officials permitted under the state gift provisions?

Yes. Gifts that fall within one of the following categories and meet all requirements of the related statutory exception are permitted:

1. Food and beverages for immediate consumption in connection with any of the following:
 - A Duke gathering with at least 10 or more individuals in attendance open to the general public, provided that a sign which is reasonably designed to convey that the gathering is open to the general public is displayed at the gathering.
 - A Duke gathering to which the entire board of which a public servant is a member, at least 10 public servants, all the members of the House of Representatives, all the members of the Senate, all the members of a county or municipal legislative delegation, all the members of a recognized legislative caucus, all the members of a committee, a standing subcommittee, a

joint committee or joint commission of the House of Representatives, the Senate, or the General Assembly, or all legislative employees are invited, and one of the following applies:

- At least 10 individuals associated with Duke actually attend, other than the covered person or legislative employee, or the immediate family of the covered person or legislative employee.
- All Duke employees, board members, officers, or members, located in North Carolina are notified and invited to attend.

For purposes of this exception only, the term “invited” means that written notice is sent by at least one host or sponsor of the gathering containing the date, time, and location of the gathering at least 24 hours in advance of the gathering to the specific qualifying group listed above. If it is known at the time of the written notice that at least one sponsor is a lobbyist or lobbyist principal (i.e., Duke), the written notice also must state whether or not the gathering is permitted under this exception. *(Note: For further information about the invitation, see FAQ number 5 below.)*

2. Informational materials relevant to the duties of the covered person.
3. Reimbursement for reasonable actual expenditures of the “covered” state official for food, beverages, registration, travel, lodging, other incidental items of nominal value, and entertainment, in connection with (i) their attendance at an educational meeting for purposes primarily related to their public duties and responsibilities; or (ii) their participation as a speaker or member of a panel at a meeting. provided the following conditions are met:
 - The reasonable actual expenditures shall be made by a lobbyist principal (i.e., Duke), and not a lobbyist.
 - Any meeting must be attended by at least 10 or more participants, have a formal agenda, and notice of the meeting has been given at least 10 days in advance.
 - Any food, beverages, transportation, or entertainment must be provided to all attendees or defined groups of 10 or more attendees as part of the meeting or in conjunction with the meeting.
 - Any entertainment must be incidental to the principal agenda of the meeting.
 - If the “covered” state official is participating as a speaker or member of a panel, then he or she must be a bona fide speaker or participant.
4. A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.
5. Gifts accepted on behalf of the State for use by the State or for the benefit of the State.
6. Anything generally made available or distributed to the general public.
7. Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship provided all of the following conditions are met:
 - The relationship is not related to the “covered” state official’s public service or position.
 - The gift is made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying.
8. Food and beverages for immediate consumption and related transportation provided all of the following conditions are met:

- The food, beverage, or transportation is given by a lobbyist principal (i.e., Duke) and not a lobbyist.
 - The food, beverage, or transportation is provided during a conference, meeting, or similar event and is available to all attendees of the same category as the recipient.
 - The recipient of the food, beverage, or transportation is a director, officer, governing board member, employee, or independent contractor of one of the following:
 - The lobbyist principal giving the food, beverage, or transportation.
 - A third party that received the funds to purchase the food, beverages, or transportation.
9. Food and beverages for immediate consumption at an organized Duke gathering to which a public servant is invited to attend for purposes primarily related to the public servant’s public service or position, and to which at least 10 individuals, other than the public servant, or the public servant’s immediate family, actually attend, or to which all Duke employees, board members, officers, or members, who are located in a specific North Carolina office or county are notified and invited to attend.

5. What must I do to comply with the law when “inviting” a “covered” person to a Duke gathering?

For purposes of the law, the term “invited” means a written notice from at least one host or sponsor of the gathering; containing the date, time, and location of the gathering; and given at least 24 hours in advance of the gathering to the specific qualifying group. (See FAQ number 4, exception 1, above.)

The written notice must also state whether or not the gathering is permitted under the gift ban exceptions, for example:

“This gathering is in compliance with our understanding of the requirements and restrictions of the North Carolina Ethics Act and Lobbying Law, NCGS §138A-32(e).”

6. What must I report...and to whom?

For gatherings held at Duke or sponsored by Duke, the names of “covered” persons who participate and any associated expenses must be itemized in monthly or quarterly reports filed by Duke University with the North Carolina Department of State. Expenditures must be reported in the same month that the event takes place.

To assist the Duke University Office of Public Affairs and Government Relations (the office responsible for the preparation of these reports), please complete and submit the questionnaire found at http://news.duke.edu/reports/gr_questionnaire.pdf

For example, you must report:

- The per-person cost of food and beverages served at any gathering attended by one or more “covered” persons
- All expenses related to a “covered” person’s participation in an educational meeting, seminar, conference, panel presentation or similar event

7. What common Duke activities may be affected by the ethics and lobbying laws, and how can they be made to comply?

- Serving food and beverages at events (examples: ribbon cutting, building dedication, opening of a new facility, campus or facility tour). Acceptable in most cases, if offered to everyone for immediate consumption.
- Giving anything of monetary value (examples: sweatshirt, autographed football, book, bathrobe, event ticket, other tangible item). Generally not acceptable, no matter how inexpensive.
- Presenting a plaque, certificate or similar non-monetary memento recognizing the individual's services. Acceptable.
- Providing informational materials (brochure, departmental newsletter, for example). Acceptable, if relevant to the duties of the state official.
- Special services for a "covered" person who seeks medical care at Duke. Not acceptable. No special services that have any monetary value – such as complementary valet parking, flowers, or gifts of any kind – may be offered or provided.
- Refreshments offered at a one-on-one, individual meeting with a "covered" person. Not acceptable. No food or beverages may be offered.
- Refreshments offered at a small group meeting with one or more "covered" persons. Generally acceptable, if within an applicable exception. Food and beverages must be available to everyone for immediate consumption.

8. What about our board members and officers who are "covered" persons? What can we provide for them?

Food and beverage for immediate consumption and related transportation may be offered if these amenities are available to all attendees at the same meeting.

9. Where can I go for further information on state ethics and lobbying laws?

Further information is available on the following DUHS and state government websites:

DUHS Office of Government Relations: http://pubaffairs.duke.edu/govt_relations.html

NC Ethics Commission: <http://www.ethicscommission.nc.gov/>

NC Secretary of State, Lobbying Compliance Division:
<http://www.secretary.state.nc.us/lobbyists/>