



THE UNIVERSITY of NORTH CAROLINA  
**GREENSBORO**  
Office of General Counsel

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To: Chair and Members of the Compliance, Audit, Risk Management and Legal (CARL) Committee of the UNCG Board of Trustees

Cc: Chancellor Franklin D. Gilliam, Jr., Ph.D.  
Provost and Executive Vice Chancellor Dana L. Dunn, Ph. D.  
Vice Chancellor for Business Affairs Charles A. Maimone, M.B.A, M.Ed.  
Vice Chancellor for Research and Engagement Terri L. Shelton, Ph.D

From: Office of General Counsel  
Office of Research Integrity

Re: Conflict of Interest Rules Applicable to Board of Trustees Members

Date: February 20, 2018

## **I. PURPOSE**

The rules governing conflicts of interest that apply to the University are complex, as they are based on federal and state statutes and regulations, as well as several UNC Board of Governors ("BOG") and University policies. Depending upon the applicable situation, the rules apply to Board Members, senior University administrators, all University employees, or all three groups. The purpose of this memorandum is to: (1) provide an overview of the policies and statutes governing conflicts of interest that pertain to members of the University of North Carolina at Greensboro Board of Trustee (the "Board"), (2) advise the Board Members of their responsibilities thereunder, as required by UNC Policy Manual § 200.1, and (3) to recommend establishing procedures for addressing potential Board Member conflicts of interest.

## **II. BACKGROUND**

Activities of the Board and University executives are governed by the North Carolina State Government Ethics Act (which applies to Board Members, the Chancellor, and all Vice Chancellors), the North Carolina Misconduct in Public Office statute (which applies to public officials, including Board Members, the Chancellor, and most University employees), UNC Policy Manual § 200.1 (which applies to Board Members, the Chancellor, and the Vice Chancellor for Business Affairs), and UNC Policy Manual §

200.7 (which applies to the Board, the Chancellor, and Vice Chancellors). All of these policies and statutes, in some way, relate to potential and actual conflicts of interest of Board Members and University executives.

**A. *Board of Trustee Recent Activity***

BOG policy requires that the Board of Trustees of each Constituent Institution designate a committee to address potential conflicts of interest. The Board in its recent update to its Bylaws took action to authorize its Executive Committee to serve as its standing committee to address conflicts of interest. This action meets the requirement in UNC Policy § 200.1 that the Board appoint “a standing committee to determine whether a potential conflict is permissible or impermissible activity and to make recommended findings as to whether this policy has been violated.” UNC Policy Manual § 200.1(5)(d)(i).

UNC Policy § 200.1 also establishes procedures for reporting potential conflicts of interest, which for UNCG Board Members must be reported to the Vice Chancellor for Business Affairs. The remaining responsibility of the Board under UNC Policy § 200.1 is to establish procedures to review potential conflicts of interest of Board Members or University executives. To this end, the University is preparing procedural recommendations for consideration at the Board's April 2018 meeting. Although the Board has met its obligation to appoint a committee to address potential conflicts of interest, the Executive Committee has not implemented procedures for addressing potential conflicts of interest beyond those described in UNC Policy § 200.1. We recommend the Board consider adding additional reporting requirements for potential conflicts, for example to the Chancellor and the General Counsel, who would be responsible for advising the Vice Chancellor for Business Affairs.

**B. *University Recent Activity***

The Chancellor, in collaboration with the Executive Vice Chancellor and Provost, the Vice Chancellor for Research and Engagement, and the Chancellor's Council, is expected to approved an updated University Conflict of Interest and Commitment Policy and related procedures. These changes are based on the Public Health Services Conflict of Interest Policy (42 CFR Part 50(f) and 45 CFR Part 94) and UNC Policy Manual § 300.2.2. The University policy and procedures apply to all University employees designated as Exempt from the Human Resources Act, as well as external collaborators. Employees subject to the State Human Resources Act are subject to different rules. Policies and procedures for external professional activities for pay, as well as the use of university resources in support of entrepreneurial activities, have also been finalized as part of the update to the Conflicts of Interest and Commitment Policy.

In general terms, a conflict of interest is any situation in which an individual is in a position to exploit a professional or official capacity in some way for their

personal or financial benefit. Having a conflict of interest is not, in and of itself, evidence of wrongdoing, and for many individuals it is virtually impossible to avoid conflicts of interest from time to time. A conflict can, however, become a legal matter if an individual attempts to influence the outcome of a decision for personal or financial benefit.

### **III. POLICIES AND STATUTES**

Generally, conflicts of interest laws, regulations and standards prohibit a Board Member from using his or her position to derive any personal or financial benefit, and Board Members have a duty to avoid any activity in which the Board Member's official involvement would appear to suggest that the Board Member's position is being used for personal or professional gain. For example, the State Government Ethics Act prohibits covered individuals from engaging in any action in their capacity as a public official that would directly or indirectly result in financial gain (or loss) to the covered individual, or a business with which the covered individual is associated. The State Misconduct in Public Office statute makes it a misdemeanor for a covered person to be "involved in making or administering a contract" on behalf of a public agency where he or she may derive a direct benefit from the contract, which would apply if a covered person (Board Member, Chancellor or any University employee) takes any action on the contract. In the case of a Board Member, the Board Member would be considered to have "taken action" on a contract even if the Board Member did not participate in any related Board activities, if *the Board* took any action related to the contract. UNC Policy Manual § 200.1 prohibits Board Members, the Chancellor, or the Vice Chancellor for Business Affairs from using their positions, or appearing to use their positions, to influence the decisions of the University for their personal financial gain. Finally, UNC Policy Manual § 200.7 requires Board Members to (among other things) avoid any personal or business interests that may conflict with the Board Member's responsibilities to the University, and to avoid the appearance of impropriety when conducting the University's business.

As identified above, a number of state laws, both criminal and administrative, as well as the University of North Carolina policies, set various standards for determining whether a conflict of interest exists, and if so how the conflict can be managed. These policies and statutes primarily prohibit, or require disclosure, where a business in which a covered individual has a financial interest enters into a contract with a public agency, or when a covered individual engages in any conduct that may impact the covered individual's financial interests.

Board Members must avoid (1) any action as a member of the Board of Trustees from which the Board Member would financially benefit, (2) any personal or business interest that may conflict with the University, or (3) using any nonpublic information gained as member of the Board in a way that could affect the Member's financial interests. Further, Board Members have an obligation to report any situation where the Board Member or a Board Member's business is considering entering into a contract with the University, if the Board Member's ownership interest exceeds a specific threshold. Moreover, a Board Member (or other covered individual) would commit a criminal

offense if the University were to enter into a contract with the Board Member's business, if the contract required any action, approval or input from the Board, even if the Board Member recuses him or herself from all activities. Generally, potential conflicts of interest must be reported to the Vice Chancellor for Business Affairs, while alleged actual conflicts of interest must be reported to the Chancellor.

**A. *UNC Policy Manual Section 200.1 (Dual Memberships and Conflicts of Interest)***

UNC Policy Manual Section 200.1, which applies to Board Members, the Chancellor and the Vice Chancellor for Business Affairs, provides:

*“is of critical importance that decisions made on behalf of the University ... be in the best interest of the University and not be influenced by any potential financial gain to the decision-makers,” and that “to assure public confidence in the integrity of the University, it is important that the University not appear to be influenced by the personal financial interests of those in decision-making positions*

The purpose of this policy is to assure public confidence in the integrity of the University by preventing members of the governing boards from using their positions, or appearing to use their positions, to influence the decisions of the University for their personal financial gain, while at the same time allowing the University to take advantage of contracts that are advantageous to the citizens of North Carolina.

Under § 200.1 a covered person has an obligation to report to the Vice Chancellor for Business Affairs any situation where the person (or a business in which he or she has a significant financial interest) intends to enter into a contract with the University (in the case of a business interest of the Vice Chancellor for Business Affairs, the report would be to the Chancellor). For purposes of the UNC Policy § 200.1, a “substantial interest” would exist if the covered person (or any member of that person's immediate family) is an employee, director, officer, or partner of the Business, or owns either \$10,000 in the business or more than five percent of the business.

Under § 200.1 the University is prohibited from entering into a contract with a value of \$10,000 or more, or with expected payments of \$10,000 or more per year, with the business if the covered person's interest in the business would be considered a “substantial financial interest.” Exceptions to this restriction exist. For example, contracts resulting from competitive sealed bids, contracts for services provided to the general public at a uniform price or under state contract, or contracts that are approved by the Board of Trustees after disclosure.

This policy also prohibits covered persons from disclosing or using confidential University information or information concerning the University's economic

development plans for financial benefit.

**B. *UNC Policy Manual § 200.7 (Duties, Responsibilities, and Expectations of Board Members)***

In addition to the policies regarding conflicts of interest contained in the UNC Policy Manual § 200.1, in 2015 the Board of Governors adopted a new policy (UNC Policy § 200.7) that sets forth the duties, responsibilities, expectations and standards of conduct for members of the BOG and the Board of Trustees of each constituent institution.

In the context of conflicts of interest, the most relevant requirements of § 200.7 are found in Section III.C, which require Board members to adhere to high standards of ethical conduct by complying with laws, regulations, and University policies, and specifically require Board Members to (among other things): (1) avoid any personal or business interest that may conflict with the member's responsibilities to the University, and (2) to avoid the appearance of impropriety when conducting the University's business.

Avoiding business interests that may conflict with the Board Member's responsibilities to the University should be straightforward but avoiding the appearance of impropriety is a more difficult. Impropriety is a higher standard than simply "obeying the law," and avoiding the "appearance of impropriety" is an even higher standard than that. Essentially, it places a duty on the Board Member to avoid any situation in which the Board Member's official involvement would even appear to suggest that the Board Member's position is being used for personal gain, to ensure trust in all members Board of Trustee actions.

**C. *North Carolina Misconduct in Public Office Statute, N.C.G.S. Article 31***

The North Carolina Misconduct in Public Office statute (N.C.G.S. Chapter 14, Article 3) applies to potential conflicts of interest of Board Members (as well as the Chancellor and all other University employees). Pursuant to N.C.G.S. § 14-234, it is a Class 1 Misdemeanor for a covered person to be "involved in making or administering a contract" on behalf of a public agency where the covered person may "derive a direct benefit from the contract." Under the statute, being "involved in making or administering a contract" includes having the authority to make decisions regarding the contract or to interpret the contract, or "*if the board, commission, or other body of which he or she is a member takes action on the contract, whether or not the public officer actually participates in that action*" (emphasis added). For purposes of this criminal statute, a covered person would derive a direct benefit from a contract if he or she (or spouse): (1) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract, (2) derives *any* income or commission directly from the contract, or (3) acquires property under the contract.

**D. *The North Carolina State Government Ethics Act***

The State Government Ethics Act (N.C.G.S. 163A-150 *et seq.*, formerly Chapter 138A), which applies to Board Members, the Chancellor, and Vice Chancellors, has broader restrictions on a Board Member's activities in that it does not require a that the University enter into a contract or any other financial transaction for a violation to exist. The purpose of the Ethics Act is to ensure that public officials exercise their authority honestly and fairly, free from impropriety, threats, favoritism, and undue influence. The statute specifically prohibits Board Members from engaging in any action in their capacity as a public official that would directly or indirectly result in financial gain (or loss) to the Board Member or a business with which the Board Member is associated. The statute also prohibits Board Members from performing any official action requiring the exercise of discretion if the Member or business may incur a reasonably foreseeable financial benefit, if it would impair the Board Member's independent judgement, or from which it could reasonably be inferred that the financial benefit would influence the Board Member's decisions.

**IX. CONCLUSION**

The Board is required to have a standing committee to determine whether potential conflicts of interest are permissible and to make recommended findings as to whether this policy has been violated. The Board has met this requirement. The University will recommend procedures for reviewing potential conflicts for the Board's consideration, including a recommendation that Board Members have the option of also advising the Chancellor and General Counsel of potential conflicts of interest, who would advise the Vice Chancellor for Business Affairs on the potential conflict. The University is also considering the establishment of an Institutional Conflicts of Interest Policy, which is considered a best practice, and which would be under the purview of the Chancellor and would not require Board approval.

Service as a Member of the Board includes compliance with certain ethical standards and requirements, including avoiding (1) any action as a member of the Board of Trustees from which the Board Member would financially benefit, (2) any personal or business interest that may conflict with the University, or (3) using any nonpublic information gained as member of the Board in a way that would affect the Member's financial interests.

Finally, Board Members have a duty to avoid the appearance of impropriety and follow the process established by the Board (or in the absence thereof, the BOG) to avoid any activity that would appear as if the Board Member's position is being used for personal gain. Determinations as to whether a proposed activity would appear to constitute a conflict is ultimately determined by the Executive Committee of the Board. Such decisions may be informed by the opinion of counsel and may be relied upon by the Board.