



North Carolina Department of Health and Human Services
The North Carolina Medical Care Commission

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To: Kathleen Edwards, JD
Advice Attorney
North Carolina Ethics Commission

From: John A. Fagg, MD
Chairperson
North Carolina Medical Care Commission

Date: March 2, 2015

Re: Interest and Recusal

Introduction

The Medical Care Commission ("MCC") would respectfully ask that the Ethics Commission ("EC") review a previous opinion relating to conflicts of interest and the MCC. This opinion was relayed to the MCC on November 19, 2010 (Opinion attached hereto as Attachment). As stated in the November 19, 2010 opinion, if the MCC would like a determination of whether an actual conflict exists, facts would need to be provided for a specific situation. At this time, the MCC would like to provide the EC with further information so that the EC may be able to make a more concrete determination in relation to actual conflicts and the MCC.

Drexdal Pratt, Secretary

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Applicable Law

The MCC is a commission subject the State Government Ethics Act (G.S. 138A). The MCC also has a specific statute related to conflict of interest within its Health Care Finance Act (G.S. 131A).

As noted in the November 10, 2010 opinion from the EC:

The value of a public servant's interest is just one of the criteria for determining whether the conflicts standards of G.S. 138A-36(a), 31(a), and 36(c) would require that a public servant abstain from the matter.

Once it is determined that an official action could affect a "business with which associated," the public servant must consider whether the business may incur a reasonably foreseeable financial benefit (or detriment to a business competitor) from the matter under consideration, and if so, whether that financial benefit (or detriment to a competitor) would influence or could reasonably be seen to influence the public servant's official actions. Similarly, G.S. 138A-36(c) requires that a public servant "remove himself or herself to the extent necessary" if the public servant's "impartiality might reasonably be questioned" due to a financial relationship with the business.

Although the MCC's decision to hire a bank or financial institution to handle a bond issuance would likely result in a financial benefit to that business, it is unclear whether a member's ownership of a threshold amount of securities in that business would influence the member in the award of a contract to the business. This would depend upon several factors, including the amount of financial benefit to the business relative to its overall size and worth and whether that financial benefit would impact the value of securities owned by the public servant. However, if the financial benefit to the bank or financial institution is relatively insignificant, that benefit would be unlikely to influence the MCC member in awarding a contract.

The MCC also has a Conflict of Interest statute, G.S. 131A-22, within the Health Care Finance Act which states:

If any member, officer, or employee of the Commission she be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly, in any contract with the Commission, such an interest shall be disclosed to the Commission and shall be set forth in the minutes of the Commission, and the member, officer, or employee, having such an interest therein shall not participate on behalf of the Commission in authorization of any such contract.

Question

The MCC would like the Ethics Commission to review the conflict of interest pertaining to issuance of tax-exempt revenue bonds for construction of qualifying health care facilities under the State Government Ethics Act and the Health Care Finance Act. The MCC requests guidance on what would constitute an ownership interest that would create a conflict. The MCC also requests guidance as to the meaning "shall not participate" in authorization of a contract.

Background

The NC Medical Care Commission was initially created to provide a permanent state agency responsible for the maintenance of high standards in NCs hospitals, administering a medical student loan program (no longer a function of the commission) and a statewide hospital and medical care program. Over the years the function of the commission has changed to one primarily to be responsible for the following:

1. Licensure of hospitals,
2. Licensure of outpatient surgical facilities,
3. Licensure of nursing homes,
4. Licensure of adult care homes,
5. Licensure of home health agencies; home care agencies and nursing pools,
6. Licensure of hospice facilities,
7. The establishment of a statewide trauma system and the regulation of ambulances and emergency medical services personnel, and
8. Establishment and operation of a health care personnel registry.

In addition, the MCC is responsible for the governance of the issuance of tax-exempt bonds for the construction of certain health care facilities under the Health Care Facilities Finance Act. The 1975 Session of the General Assembly enacted the Health Care Finance Act (G.S. 131A), which authorizes the MCC to issue tax-exempt revenue bonds and to lend the proceeds from the

sale to finance construction and equipment projects. To be eligible, a borrower must be a non-profit or public entity and be considered a health care provider.

The MCC has two committees (an Executive Committee and the Full Committee). The Executive Committee has seven members – the Chairman, and Vice Chairman of the MCC, two who are appointed by the Chairman and three who are elected by the MCC. The Full Committee is made up of all MCC members.

As stated above, the MCC would like for you to review the conflict of interest pertaining to issuance of tax-exempt revenue bonds for construction of qualifying health care facilities. The MCC discusses in detail the validity of issuing these bonds. The discussion revolves around the need for the facility to expand/renovate, the financial viability of the facility to repay these bonds, whether the project meets requirements of G.S. 131A (Health Care Facilities Act) and historical community benefit the organization has provided.

The information the MCC receives for bond proposals includes the list of financial institutions involved in the transaction. The MCC does not involve itself in the selection of these financial institutions, does not recommend a certain financial institution, and does not approve or turn down a bond proposal based on the financial institution involved. The name of the financial institution involved is simply a matter of information received. The financial institution is not debated and not voted on (except that it is a part of the overall bond proposal).

Many of our members have stock in these institutions and are having to recuse themselves from all discussion concerning the bond proposal because of these holdings. The Executive Committee of the MCC, which meets in between scheduled meetings, can on occasion have a

majority of its members who have to recuse themselves. The recusals interfere with responsibility of the MCC to fully vet these bond proposals.

Example

As a specific example, the minutes of the Executive Committee of the MCC held on December 10, 2014 are enclosed (Minutes attached hereto as Attachment B). This meeting was called to authorize the sale of bonds up to \$16,630,000 for The United Methodist Retirement Homes Inc. and for refunding of \$12,025,000 in bonds for the same institution. You will note that 6 of the seven members of the executive committee were present, one member absent due to a death in the family. Mr. Crocker had to leave the called meeting early, leaving 5 members. Of the five remaining members, 3 had to be recused due to stock ownership leaving only Dr. Binder and Mr. Lockamy to discuss move, second, and vote on the motion. This is not an ideal way to have to handle these important issues.

In addition there are times at the full meeting of the MCC when upwards of 7 learned members must recuse themselves from these important discussions.

Again, the MCC does not believe the financial institution chosen has an influence on the deliberations of the merits of the bond proposal. The MCC has no influence over the financial institution chosen. The MCC believes any financial benefit to an individual member would not be of significant value. Any individual bond issuance taken alone would most likely not have any significant value to the financial institution itself and certainly not filter down to a commission member.

In the example provided above, two commission members recused based on the following amounts:

Commissioner A - \$374,000 (US Bank)

Commissioner B - \$40,000 (BB&T)

Although these amounts may seem large, they represent a miniscule fraction, if any return, to the commission members. The assets of US Bank is \$384.2 billion. The total assets of BB&T is \$184.7 billion.

In a typical situation of recusal, a commissioner would have less than \$100,000 in securities in the financial institution, and the financial institution would have assets totaling upwards of \$200 billion. This estimate is using conservative numbers. The average amount the MCC authorizes for the sale of bonds is \$45.7 million. The MCC requests that the EC analyze any conflicts of interest in relation to the State Government Ethics Act and the Health Care Finance Act using these numbers because this situation would be a usable gauge for measurement of common occurrences.

Conclusion

The MCC believes that a commissioner's ownership of securities would not influence a commissioner in the award of a contract to a business and that the commissioners should not abstain from participation for the following reasons.

The MCC believes the value of the public servant's interest in the financial institution is so insignificant that the commissioner's benefit could not be reasonably seen to influence the public servant's official action. The financial benefit to the bank or financial institution is relatively insignificant. The amount of financial benefit to the financial institution relative to its overall size and worth would create little or no financial benefit impacting the value of securities owned by the public servant. The miniscule interest along with the lack of debate or authority over the

selection of the financial institution supports that the impartiality would not be questioned due to the relationship and that benefit would be unlikely to influence the MCC member in awarding a contract.

In summary, The MCC is comprised of many diverse people representing diverse area of expertise and the MCC needs the input from all in discussing these issues. The MCC does not believe the financial institution involved has any bearing on our discussions or the decisions. The MCC is currently hampered in our discussions because of the many recusals due to stock ownership in financial institutions. We hope the Ethics Commission can give us relief in this instance.

Thank you for your consideration. If any further information is needed from the MCC for the EC to issue a decision please let me know.



STATE ETHICS COMMISSION
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CONFIDENTIAL INFORMAL ADVISORY OPINION

April 20, 2015

John A. Fagg, M.D.
Chairperson
North Carolina Medical Care Commission
2701 Mail Service Center
Raleigh, NC 27699-2701

Re: Conflicts of Interest Arising in Connection with Stock Ownership

Dear Dr. Fagg:

This is in response to your request for an informal advisory opinion submitted on behalf of the North Carolina Medical Care Commission ("MCC"). In that request, you ask whether the State Government Ethics Act ("Ethics Act"), North Carolina General Statutes ("G.S.") Chapter 138A, restricts those MCC members who own stock in a financial institution from approving the issuance of revenue bonds in situations in which the financial institution will provide bond-related services in return for receipt of a fee. You also seek guidance regarding the breadth of any required recusal in the event that those official actions are restricted by the Act's conflict of interest provisions.

This advice is given prospectively and is based upon and limited to the facts set forth below. It represents staff's interpretation of the Ethics Act as authorized by G.S. 138A-13(c). This is not a formal advisory opinion adopted by the State Ethics Commission and thus does not confer immunity.

I. Brief Conclusion.

Although a member's approval of a revenue bond issue would result in a financial benefit to the financial institution(s) selected to service the bond issue, it appears that in most cases those financial benefits would be greatly disproportionate to the total value of the institution in question. Accordingly, a member's approval of a revenue bond issue would have a minimal impact, if any, upon the value of the institution and its stock. It is therefore unlikely that that stock ownership would influence the member's official actions with respect to that bond issue. Accordingly, unless the member otherwise concludes that he/she would be influenced by his/her stock ownership, the Ethics Act would not require the member's recusal.

II. Facts.

The MCC is a covered board subject to the Ethics Act. Therefore, the members of the MCC are public servants governed by the Act's conflict of interest standards. Pursuant to its statutory authority, the MCC is authorized to issue tax-exempt revenue bonds to finance construction and equipment projects for nonprofit and public hospitals, nursing homes, and continuing care facilities for the elderly.

Several MCC members own varying amounts of stock in several financial institutions. Those stock values range from a high of approximately \$85,000 to amounts over the \$10,000 threshold described below. Those financial institutions are generally valued at more than \$200 million. The average value of a bonds issuance is \$45.7 million. During the past two years the average fees earned by financial institutions servicing those bond issues for which fees were earned was .59% of the amount of the bond issue, translating to a total of \$269,630 (gross) in fees, or .13%, on average, of the institution's total value.

In 2010 the MCC requested a formal advisory opinion from the State Ethics Commission ("Commission") on the circumstances in which MCC members who owned stock in the financial institution servicing a bond must recuse themselves from taking official action with respect to the issuance of revenue bonds. In that opinion the Commission established factors to be considered in connection with weighing the degree to which a MCC member would be influenced by that stock ownership, including "the amount of financial benefit to the business relative to its overall size and worth and whether that financial benefit would impact the value of securities owned by the public servant." The Commission concluded that if the financial benefit to the bank was "relatively insignificant, that benefit would be unlikely to influence the MCC member in awarding a contract."

In the MCC's more recent request the MCC clarified that, in approving the issuance of revenue bonds, the MCC is not involved in the selection of the financial institution(s) which will service the bond issuance. Rather, the name(s) of the financial institution(s) providing those services is included along with other information about the proposed bond issuance. The MCC considers whether to approve the issuance of the revenue bonds, considering the need for the funds, the ability of the facility to repay the bonds, the community role of the facility, and other criteria established by the Health Care Facilities Act.

The MCC also notes that the Health Care Facilities Act restricts MCC members from participating in the authorization of a contract with "any firm or corporation" in which the member has an "ownership interest." G.S. 131A-22. It is unclear whether approving a bond issuance would be construed to be "participating in" the authorization of a contract with the servicing financial institution. But the Commission does not have authority to interpret that statute.

III. Applicable Statutory Provisions.

A. G.S. 138A-36(a) and 138A-31(a) Conflicts Standards.

G.S. 138A-36(a) prohibits a public servant from participating in an "official action"¹ if that public servant or a "person with whom the public servant is associated" may incur:

¹ "Official action" includes "[a]ny decision, including administration, approval, disapproval, preparation, recommendation, the 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." G.S. 138A-3(25).

- “A reasonably foreseeable financial benefit”
- Which would impair the public servant’s “independence of judgment” or otherwise influence the public servant’s participation in that official action.

“Financial benefit” includes a “direct pecuniary gain or loss” to the public servant or a “person with which the ... public servant is associated” or a “direct pecuniary loss to a business competitor” of the public servant or a person with which the public servant is associated. G.S. 138A-3(14c).

“Person with which the public servant is associated” includes a “business with which associated,” defined to include a business in which the public servant or his/her immediate family owns an interest or \$10,000 or more or 5% of the business, whichever is less. G.S. 138A-3(3)c and 138A-3(27d). This would include the ownership of securities (including stock) in a particular business if the value of those securities is \$10,000 or more.

G.S. 138A-36(b) requires that a public servant who has a conflict of interest as defined in subsection 36(a):

- “Abstain from taking any verbal or written action”
- “In furtherance of the official action.”

The public servant is also required to submit written “reasons for the abstention” to the employing entity.

G.S. 138A-31(a) similarly prohibits a public servant from taking an “official action” in certain circumstances where the public servant or a “business with which the public servant is associated” would derive a direct or indirect financial benefit from that action. That provision excludes circumstances where the financial benefit is “so remote, tenuous, insignificant, or speculative” that a reasonable person would conclude that the public servant’s ability to perform his or her official duties would not be compromised. Subsection 31(a) does not specify the manner in which the public servant should abstain from taking official action.

B. G.S. 138A-36(c) Conflict of Interest Standard.

G.S. 138A-36(c) also requires that a public servant:

- “Remove himself or herself” from a “proceeding,”²
- “Considering the particular circumstances and type of proceeding involved,”
- “To the extent necessary to protect the public interest and comply with the Ethics Act,”
- If the public servant’s impartiality might reasonably be questioned due to a “familial, personal, or financial relationship” with a participant in the proceeding.

² Defined to include a “quasi-judicial” proceeding or a “quasi-legislative” proceeding.

C. G.S. 138A-38(a)(1) Class Safe Harbor.

G.S. 138A-38(a) lists circumstances under which a public servant may take official action notwithstanding the existence of a conflict of interest. They include situations where the official action is ministerial only or where the public servant is the only person who has legal authority to take an official action. In addition, subsection 38(a)(6) provides that a public servant that abstains from an official action may be counted for purposes of establishing a quorum, but must abstain from taking further action.

G.S. 138A-38(a)(1) also allows a public servant to take an official action, notwithstanding the existence of a conflict of interest, if the financial benefit or detriment that would accrue to the public servant, a "person with which associated," or a "participant" in a proceeding:

- As a member of "a profession, occupation, or general class,"
- Is "no greater" than that which would accrue to "all members of that profession, occupation, or general class."

The Ethics Act specifically allows State agencies to adopt additional or supplemental ethics standards. G.S. 138A-41(b).

IV. Analysis.

Once it is determined that an official action could affect a "business with which associated," the public servant must consider whether that action would result in a direct pecuniary gain or loss to that business,³ and if so, whether that gain or loss would influence or could reasonably be seen to influence the public servant's official actions. Similarly, G.S. 138A-36(c) requires that a public servant "remove himself or herself to the extent necessary" if the public servant's "impartiality might reasonably be questioned" due to a financial relationship with the business.

Although the MCC's decision to approve a revenue bond issuance would clearly result in a direct pecuniary gain to the servicing financial institution, it is unlikely that a member's ownership of stock at the levels described above would influence the member in taking that official action. Therefore, the Ethics Act would not restrict the member from taking that official action because of that stock ownership.

In the circumstances described, the MCC is required to consider a number of statutorily described criteria in deciding whether to issue the bond. However, the MCC does not make decisions as to the selection of the bank that will service the bond. Thus, the official action taken by each MCC member with respect to the bond's approval will be influenced by his/her individualized assessment of the statutory criteria, making it less likely that the identity of the financial institution would influence the member's decision.

In addition, the financial benefit to the institution resulting from fees received for the bond issuance is insignificant relative to the financial institution's value. In the average case described above, a member's approval of a revenue bond issue would have a minimal impact, if any, upon the value of the institution and its stock.

³ Or a "direct or indirect financial benefit" under G.S. 138A-31(a).

Dr. John A. Fagg
North Carolina Medical Care Commission
April 20, 2015
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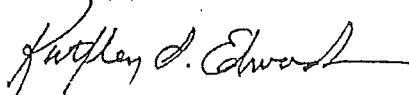
In general, if a conflict of interest exists that would otherwise preclude the public servant's actions, the next step would be to consider whether the G.S. 138A-38(a)(1) "class" safe harbor applies. However, subsection 38(a)(1) would be inapplicable here, since the actions taken by the MCC would apply to an individual financial institution, not a class of those businesses.

V. Closing.

Please contact me if you want to discuss this advice in more detail or have additional questions. In addition, if you would like to request a formal advisory opinion from the Commission, please request that opinion in writing and provide any additional information about your request.

Thank you for contacting the State Ethics Commission.

Sincerely yours,



Kathleen S. Edwards



OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NORTH CAROLINA

1977 N.C. AG LEXIS 92; 46 Op. Atty Gen. N.C. 219

June 9, 1977

SYLLABUS:

Subject:

Public Officers and Employees; Conflict of Interest; Sale of Revenue Bonds by Medical Care Commission; Purchase by Commission Member

REQUESTBY:

Requested by:

I. O. Wilkerson, Jr., Director
Division of Facility Services
Department of Human Resources

QUESTION:

Question:

May a member of the North Carolina Medical Care Commission purchase revenue bonds issued by that commission without giving rise to a conflict of interest?

OPINIONBY:

Rufus L. Edmisten, Attorney General
Marilyn Rich
Associate Attorney

OPINION:

Conclusion:

Although a strict construction of the pertinent statutes does not prohibit such purchases, it is recommended that commission members refrain from purchasing bonds in order to avoid the appearance or impropriety, and the possible criminal penalty of *G.S. 14-234*.

The North Carolina conflict of interest statutes, *G.S. 14-234*, reads as follows:

"If any person appointed or elected a commissioner or director to discharge any trust wherein the State or any county, city or town may be in any manner interested shall become an undertaker, or make any contract for his own benefit, under such authority, or be in any manner concerned or interested in making such contract, or in the profits thereof, either [*2] privately or openly, singly or jointly with another, he shall be guilty of a misdemeanor . . ."

Since the bond itself evidences a contract and since a member of the Medical Care Commission is a commissioner within the meaning of the statute, a violation of *G.S. 14-234* will be established if it appears that a commission member who purchases a bond is contracting for his own benefit.

The Health Care Facilities Finance Act, *G.S. 131A-1* through *131A-25*, authorized the issuance of revenue bonds by the Medical Care Commission. The commission is given the power under *G.S. 131A-11* to issue interim receipts or temporary bonds; to set restrictions governing the disbursement and use of proceeds; to replace lost or destroyed bonds; to determine when bonds mature, whether they are redeemable before maturity, and whether they will be registered or in coupon form; to establish authentication procedures; and to determine the form and manner of execution, the denominations to be issued, and the place at which principal and interest are to be paid. *G.S. 131A-11* also imposes certain duties on the Local Government Commission, including approval of the issuance by the Medical Care Commission, fixing [*3] the interest rate, and determining the manner of sale and price. The same section requires, however, that the sale must be approved by the Medical Care Commission. It appears, therefore, that ultimate authority over every element of a bond issue is vested in the Medical Care Commission. A commissioner who intended to purchase a bond would clearly be in a position to benefit himself by exercising the powers outlined above. He might, for example, withhold approval of an issue with a low interest rate because it would diminish the value of any bonds he intended to buy even though low-interest financing is in the best interests of the commission. This conduct would be prohibited by *G.S. 14-234*.

The Health Care Facilities Finance Act contains its own conflict of interest section. *G.S. 131A-22* provides that, in order to avoid a conflict of interest, a commission member who is interested in a contract with the commission must disclose his interest to the commission and must not participate in the commission's authorization of the contract. However, there are compelling reasons for recommending that, despite *G.S. 131A-22*, commission members should not purchase bonds issued by the [*4] commission. The authorization of bonds, unlike the approval of ordinary purchase contracts, is a long and involved procedure which accounts for a large portion of the commission's responsibilities. Abstention from the commission's deliberations would prevent a commission member from fully performing the duties imposed on him by statute. Furthermore, even if the requirements of *G.S. 131A-22* were met, there would be the appearance of a conflict of interest and possible violation of *G.S. 14-234*.

Legal Topics:

For related research and practice materials, see the following legal topics;

Criminal Law & Procedure
 Criminal Offenses
 Miscellaneous Offenses
 Abuse of Public Office
 Conflicts-of-Interest
 Elements
 Governments
 Local Governments
 Administrative Boards
 Governments
 Local Governments
 Duties & Powers

Medical Care Commission Policy for Recusal, Disclosure and Participation

The Medical Care Commission ("MCC") Policy for Recusal, Disclosure and Participation has been developed from the guidance provided in NCGS §§ 131A-22, 14-234, 138A-31 and 138A-36. The MCC is authorized to issue tax-exempt revenue bonds for the financing, refinancing, acquiring, constructing, equipping and providing of health care facilities. The MCC does not make the decision as to the selection of the banks or financial institutions that will service the bonds. Many commissioners own varying amounts of stock in banks and financial institutions from above \$10,000 to \$100,000. A commissioner's approval of a revenue bond issue would result in a financial benefit to the financial institution selected to service the bond issue. In most, if not all, cases those financial benefits would be greatly disproportionate to the total value of the institution in question. Accordingly, a commissioner's approval of a revenue bond issue would have a minimal impact, if any, upon the value of the financial institution and its stock.

NCGS § 14-234 - Public officers or employees benefiting from public contracts; exceptions

The MCC is subject to NCGS 14-234 and a commissioner is a public official under the law. NCGS 14-234 restricts public officials or employees from benefiting from public contracts when there is self-dealing. No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law. NCGS 14-234(a)(1). Self-dealing results in a void contract and a class 1 misdemeanor. A public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract. NCGS 14-234(a)(4).

There is a direct benefit exception if the contract is between the public agency and a bank, banking institution or savings and loan association. Under this exception, the public officer who will derive a direct benefit from the contract may not deliberate or vote on the contract or attempt to influence any other person who is involved in making or administering the contract.

A commissioner's stock in a financial institution ranging from \$10,000 to \$100,000 would not equate to more than a 10% ownership interest in an entity that is party to the contract; would not result in a direct income or commission from the contract; and would not result in the acquisition of property. A commissioner would not have a direct benefit and may deliberate and vote on the contract under NCGS 14-234. However, if the circumstances involve different facts, additional information, or result in changed outcomes an independent assessment should be conducted.

NCGS § 138A - The Ethics Act

The MCC is subject to the Ethics Act and an MCC commissioner is a public servant under the law. NCGS § 138A-36(a) prohibits a public servant from participating in an official action if the public servant may incur a reasonably foreseeable financial benefit which would impair the public servant's independence of judgment or otherwise influence the public servants participation in the official action. A financial benefit includes a direct pecuniary loss or gain to

the public servant or a person associated with the public servant or a direct pecuniary loss to a business competitor of the public servant or a person associated with the public servant. Person with which the public servant is associated includes a business with which the public servant or his/her immediate family owns an interest of \$10,000 or more or 5% of the business whichever is less. NCGS § 138A-3(3)(c) and NCGS § 138A-3(27d).

NCGS § 138A-36(b) requires the public servant with \$10,000 to \$100,000 of stock in the bank to abstain from taking verbal or written action in furtherance of the official action. NCGS § 138A-31(a) prohibits a public servant from taking an official action where the public servant or business with which the public servant is associated would derive a direct or indirect financial benefit from the action. Circumstances where the financial benefit is so remote, tenuous, insignificant or speculative that a reasonable person would conclude that the ability of the public servant to perform the duties would not be compromised are excluded from the provision.

A decision of the MCC to approve a bond issuance would result in a direct pecuniary gain to the servicing financial institution however it is unlikely that a commissioner's ownership of stock would influence the commissioner's vote in the official action. The Ethics Act would not restrict a commissioner from taking official action because of the stock ownership in a financial institution from above \$10,000 to \$100,000. However, if the circumstances involve different facts, additional information, or result in changed outcomes an independent assessment should be conducted.

NCGS § 131A-22 – The Health Care Finance Act Conflict of Interest

NCGS § 131A-22 states, "If any member, officer or employee of the Commission shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly, in any contract with the Commission, such interest shall be disclosed to the Commission and shall be set forth in the minutes of the Commission, and the member, officer or employee having such interest therein shall not participate on behalf of the Commission in the authorization of any such contract."

Based on NCGS §§ 131A-22, 14-234, 138A-31 and 138A-36, it is the policy of the Medical Care Commission for a member, officer, or employee of the Commission ("interested person") to abstain from participation in authorization of a contract if the interested person or interested person's associates has any interest or interest in an entity involved in a contract. An interested person will disclose the interest and recuse from voting at the start of the agenda item. An interested person may participate in the process and discussion until a motion is made to vote on the contract. At this time, the authorization process begins and the interested person shall not participate.