

Legal Basics for Social Services Boards

Social Services Institute
August 2023

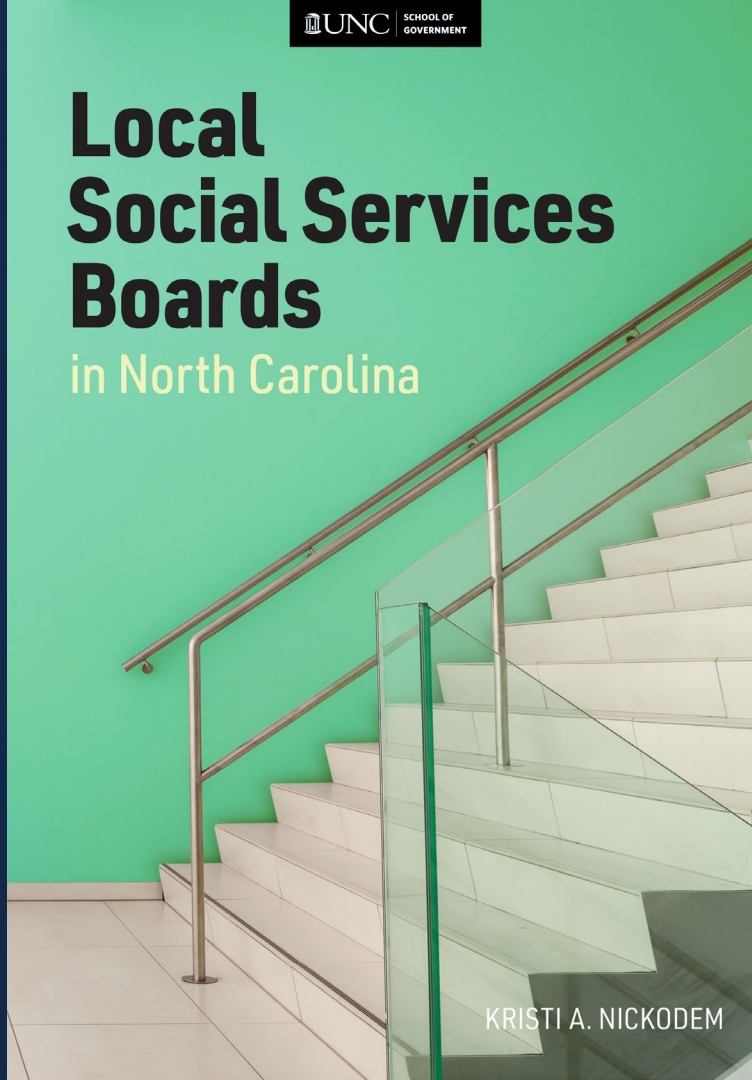
Kristi Nickodem, Assistant Professor of Public Law and Government

Local Social Services Boards

in North Carolina

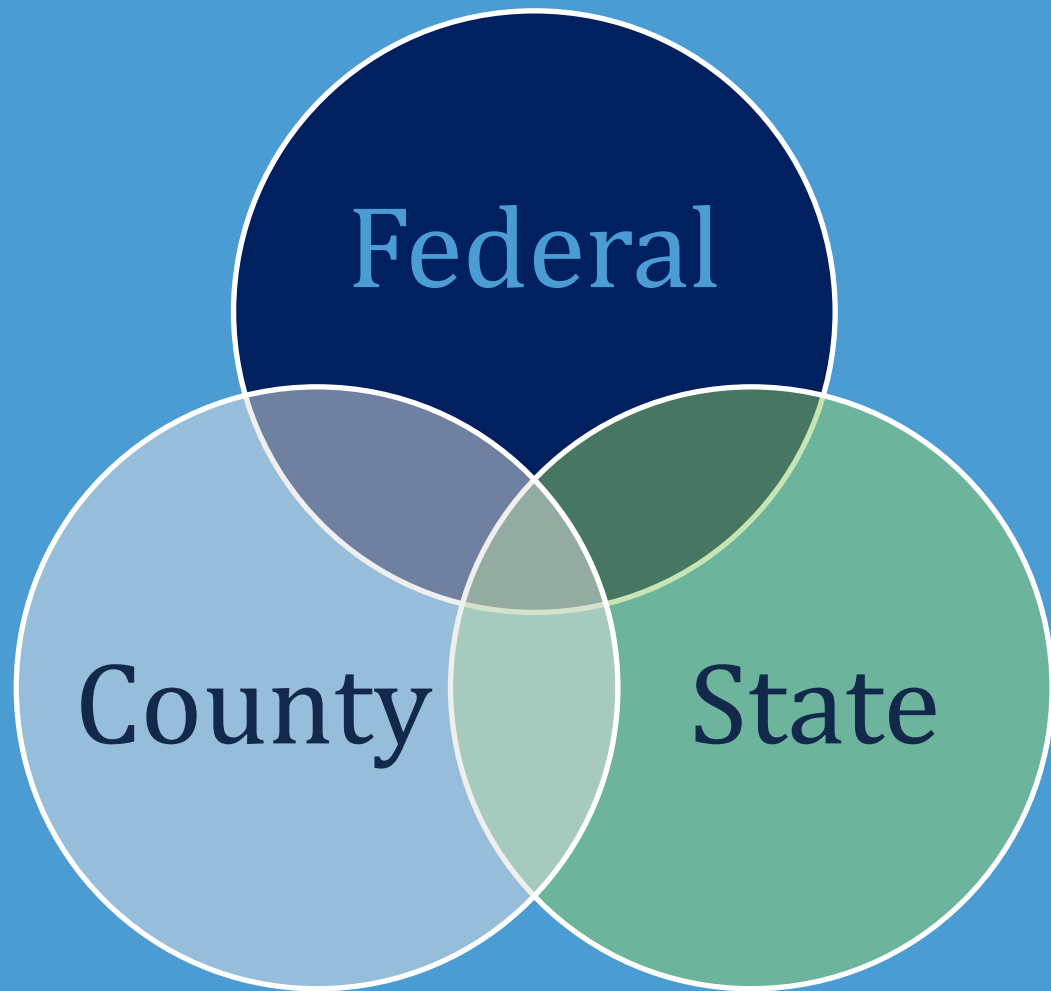
**New book
available
August 4!**

KRISTI A. NICKODEM





Legal Framework for Social Services



Federal

County

State

Sources of Law

Federal

- The U.S. Constitution
- Funding-related program requirements
- Confidentiality laws
- Employment – Title IV of the Civil Rights Act, ADA, ADEA, FLSA, FMLA

State

- The N.C. Constitution
- *G.S. 108A* (social services)
- G.S. 7B (child welfare)
- Title 10A of the NCAC
- Public Records Law
- Open Meetings Law
- Conflicts of interest
- State Human Resources Act

Sources of Law



Social Services Boards:
G.S. § 108A-1 through 108A-11



Appointment and duties of DSS
director:

G.S. § 108A-12 through 108A-15

***Many other laws apply!**

Sources of Funding



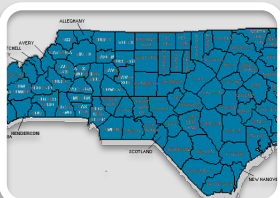
Federal

- Federal-state programs
- Grants to states



State

- Accepts federal grants
- Appropriates state and federal funding

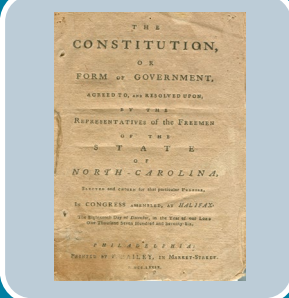


County

- Levy property tax sufficient to pay county share of mandated programs
- Non-mandated programs



Why do we have social services boards?



State Constitution

- State must establish agencies and institutions to serve the “public good” and respond to the “needs of humanity”
- State must provide “beneficent” care for “poor, the unfortunate, and the orphan”



State Statutes

- “Every county shall have a governing board for social services.... The governing board shall establish policies for the programs established” by state law (G.S. 108A-1)
- Create a state-supervised, county-administered social services system

State-Supervised, County-Administered

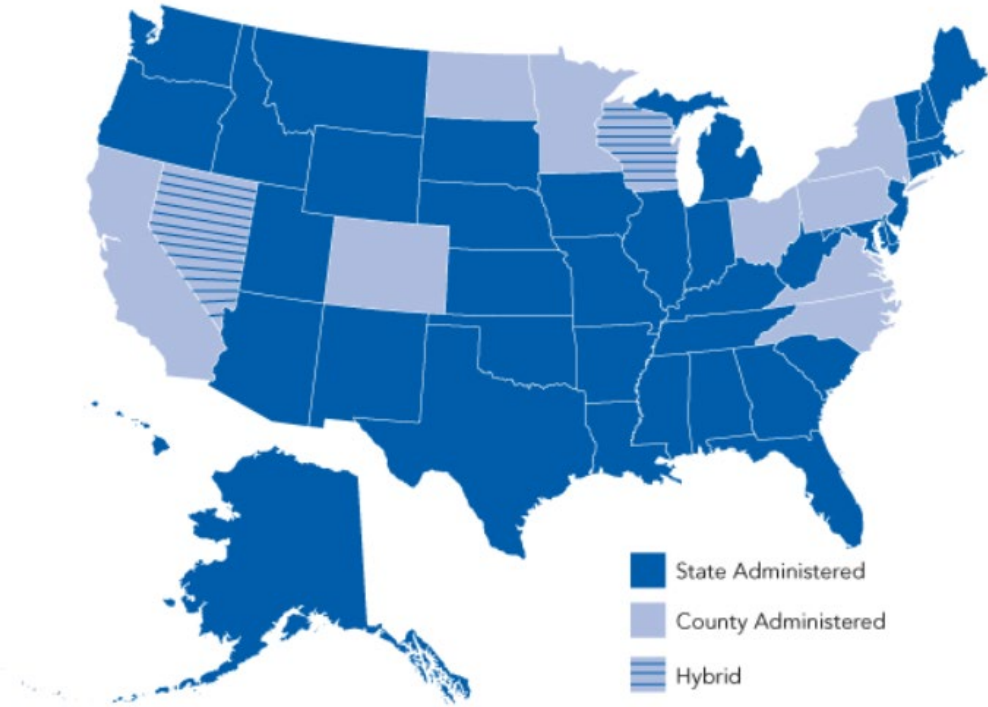
State

- Accepts federal funding
- Develops law and policy to shape programs
- Transmits federal and state funding to counties
- Supervises county administration

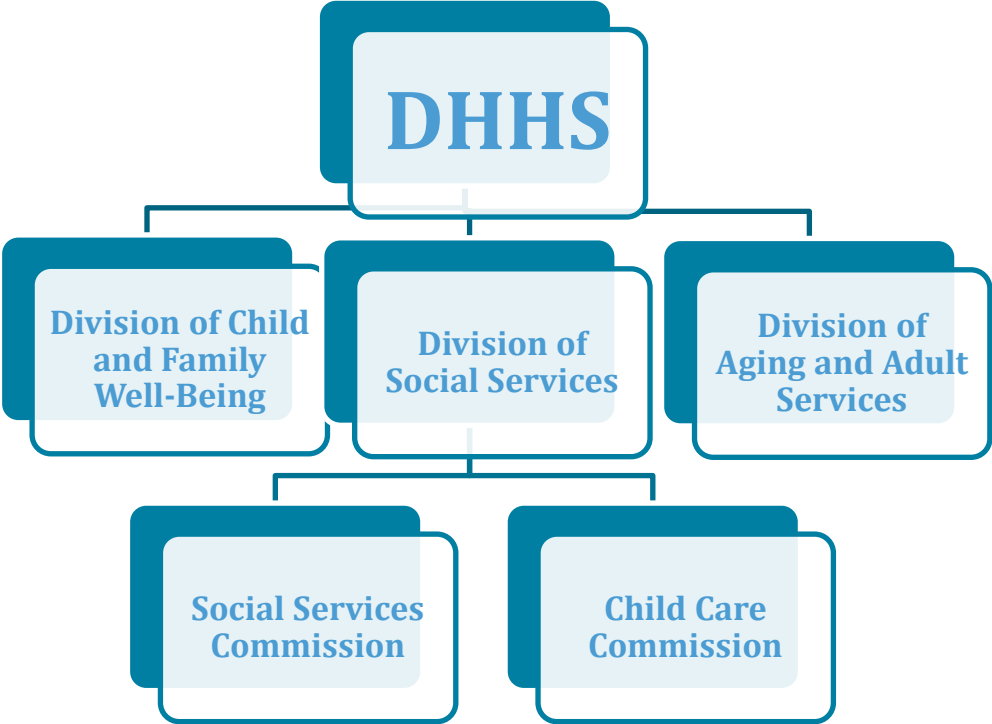
County

- Establishes agency and governing board
- Appoints director
- Administers programs
- Allocates funding
- Supervises staff
- Develops some county-specific programs

Comparing Child Welfare Systems



State Oversight and Rulemaking



State Oversight - G.S. 108A-74

MOU Required

- “[DHHS] shall require all counties...to enter into a written agreement each year that specifies mandated performance requirements and administrative responsibilities with regard to all social services programs other than medical assistance.”

Corrective Action Process for MOU

- Out of compliance w/ MOU or applicable law for 3 consecutive months or 5 out of 12 months—leads to a joint corrective action plan
- Can lead to DHHS takeover w/ 30 days’ notice

Emergency Takeover Authority

- Applies only to Child Welfare (CPS, Foster Care, Adoption)
- Federal funding may be withheld

What are the county commissioners' roles?

Establish agency

- County DSS
- Consolidated Human Services Agency (CHSA)
- Regional DSS

Establish board

- DSS board (can increase or decrease size of the board)
- Consolidated human services board
- BOCC serves as board

Appropriate funds

- Approve budget; appropriate



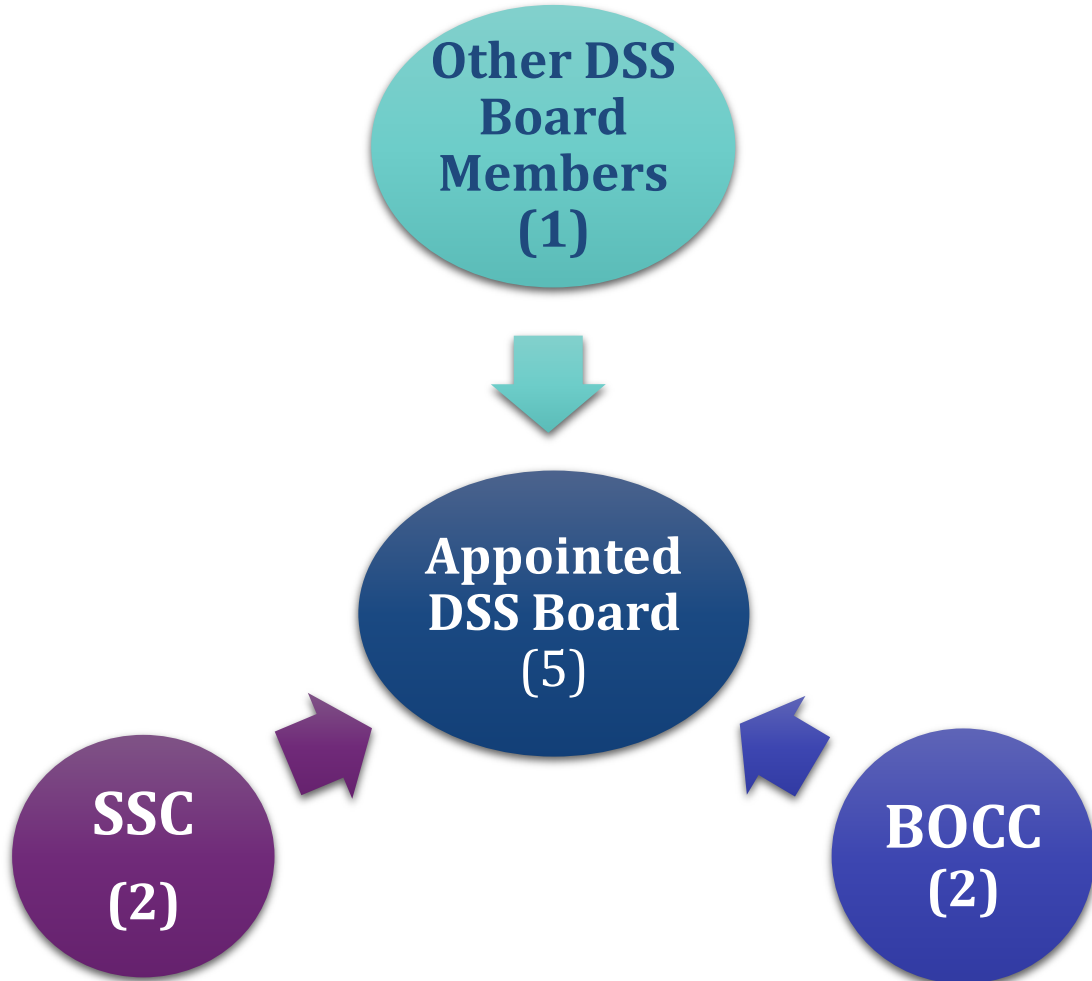
Composition of the Social Services Board

Multiple Choice

A county's social services governing board may be:

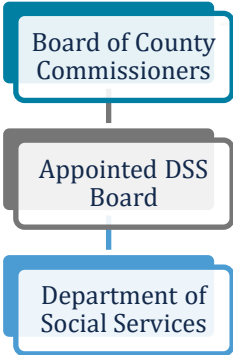
- County board of social services
- Consolidated human services board
- Board of county commissioners
- Regional DSS board
- Any of the above



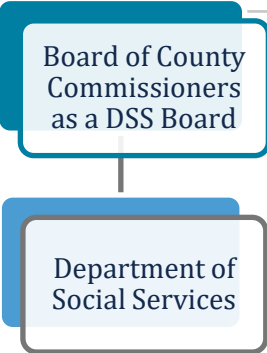


Organization and Governance Models

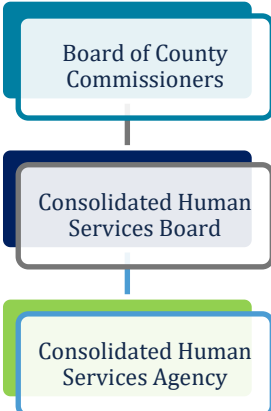
OPTION A



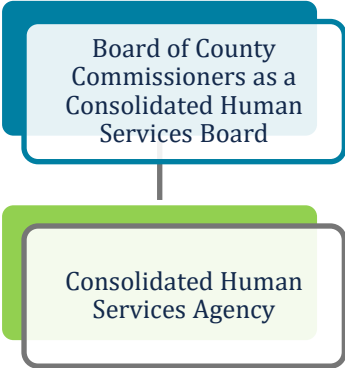
OPTION B



OPTION C



OPTION D



Key Differences

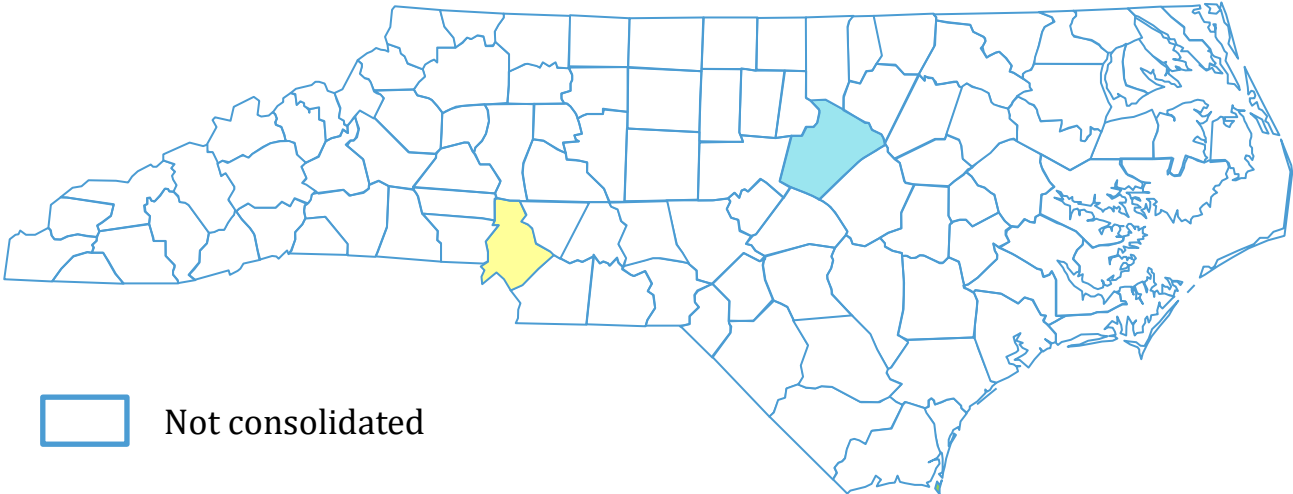
Traditional Model




Options Available Since 2012

	BOARD	DIRECTOR	EMPLOYEES
DSS w/ DSS Board	Appointed; 3-5 members	Board hires	SHRA
Health Dept. w/ Board of Health	Appointed; 11 members	Board hires	SHRA
BOCC as DSS and/or PH Board	Elected*	BOCC hires	SHRA
CHSA with CHS Board	Appointed; up to 25 members	County manager hires with advice & consent of CHS board	SHRA Optional
CHSA with BOCC as CHS Board	Elected*	County manager hires with advice & consent of BOCC	SHRA optional

PH and SS Organization and Governance

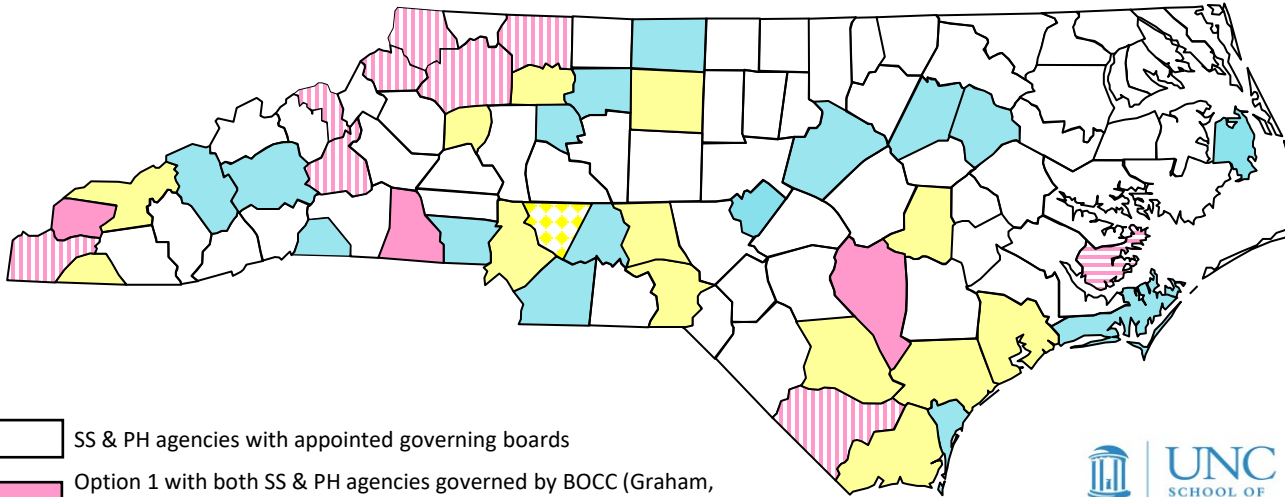
June 2012










-  Not consolidated
-  Consolidated human services agency (CHSA) with a consolidated human services board (Wake)
-  CHSA with BOCC as governing board (Mecklenburg)

Social Services and Public Health Organization and Governance

As of July 2023



-  SS & PH agencies with appointed governing boards
-  Option 1 with both SS & PH agencies governed by BOCC (Graham, Cleveland, Sampson)
-  Option 1 with SS agency governed by BOCC, PH agency with appointed governing board (Cherokee, Ashe, McDowell, Mitchell, Watauga, Wilkes, Surry, Columbus)
-  Option 1 with PH agency governed by BOCC, SS agency with appointed governing board (Pamlico)
-  Option 2 with consolidated HS agency including SS & PH, appointed CHS board (Haywood, Buncombe, Polk, Gaston, Davie, Union, Forsyth, Stanly, Rockingham, Wake, Nash, Edgecombe, Carteret, Dare, New Hanover, Lee)
-  Option 3 with consolidated HS agency including SS & PH, governed by BOCC, health advisory committee (Clay, Swain, Alexander, Yadkin, Mecklenburg [no advisory comm.], Guilford, Montgomery, Richmond, Bladen, Brunswick, Pender, Onslow, Wayne)
-  Option 3 with consolidated HS agency including SS & PH, governed by BOCC, health advisory committee (Wayne)



Where Are We Now?

Organization Changes

- **Thirty counties now have CHSAs**
 - Twenty-nine include both public health and social services
 - 16 counties have appointed CHS boards, while 14 counties have CHSAs governed directly by the BOCC.
 - 27 counties have opted to remove CHSA employees from the coverage of the SHRA.

Governance Changes

- **In 25 counties, the BOCC now acts as the governing board for social services.**
 - In 11 of those counties, the BOCC is governing a standalone department of social services.
 - In 14 of those counties, the BOCC is acting as the governing board for a CHSA that includes social services.

Who serves? Who appoints?



Traditional

3 or 5 members

2 appointed by BOCC;
2 by Social Services Commission;
1 by members

No composition requirements

3-year terms



CHS Board

Up to 25 members

All appointed by
BOCC

Composition
requirements for
some positions

4-year terms



Regional

Up to 18 members

Members appointed by
BOCCs, SSC and other
members

No composition requirements

3-year terms

**True or
False?**

Each social services board
must include at least one
county commissioner

Board Member Qualifications

- **Legal resident of county**
 - No minimum length of residency required
- **Additional legal qualifications**
 - May be established by board of county commissioners, but not by SSC or DHHS
- Establishing qualifications vs. judging between qualified candidates



Term Limits

- **Three-year terms**
 - But, incumbent holds over
 - Includes commissioners appointed “ex officio”
- **No more than two *consecutive* terms**
 - Partial terms to fill vacancies—don’t count against limit
 - Special exception for county commissioner in limited circumstances
 - What does “consecutive” mean?



Multiple Office Holding Limits



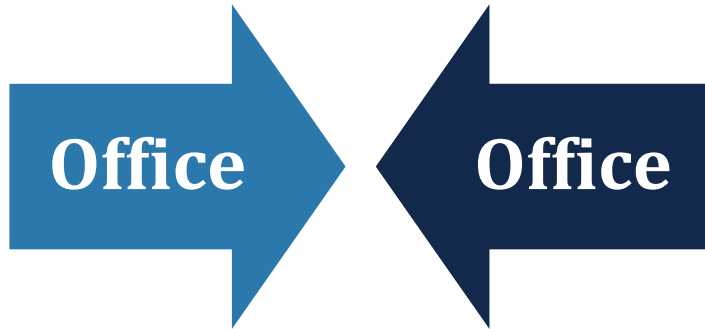
No person may *concurrently* hold more than

- Two appointive public offices *or*
- One elective and one appointive public office



Appointment of county commissioner by BOCC is “*ex officio*”

Incompatible Office Holding



- May not hold two incompatible offices
- Incompatible if:
 - Conflict between functions or duties
 - One is subservient to other

May a board member serve as acting or interim director?

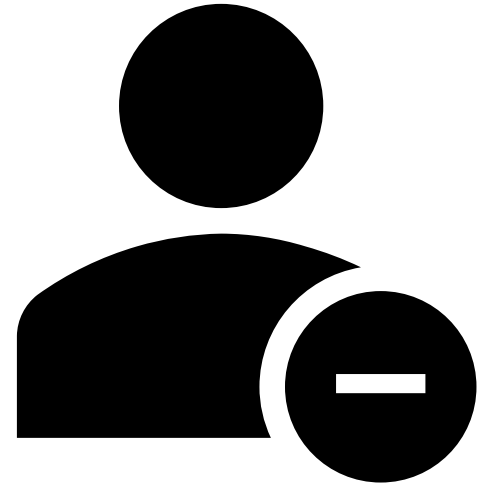
Other Potential Conflicts

- **Board member who is a licensed foster parent**
 - May not be supervised by or accept placements from resident county
- **Board member (or spouse) who owns or operates nursing or adult care home**
 - May not receive Medicaid or Special Assistance payments
- **Prior removal from public office by impeachment**
- **Being found guilty of corruption or malpractice in public office**



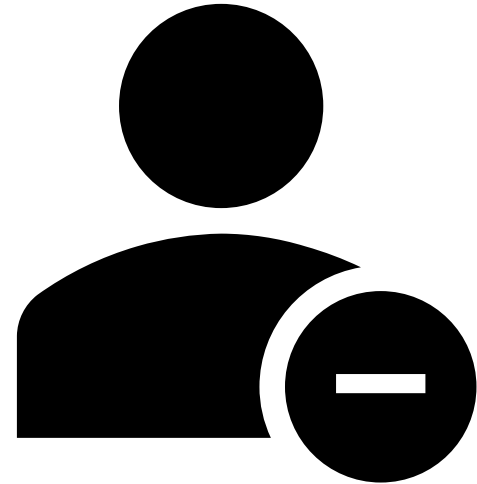
Removal of a Board Member

- Must be done by appointing authority
- Grounds not specified in state law (but should be for good cause)
 - Look to G.S. 153A-77 for examples (in CHS board context)



State Law - Grounds for Removal of Public Officials

1. Failure to take the oath of office
2. Willful failure to discharge the duties of the office.
3. Holding office in a manner that is contrary to Article VI, Sec. 9 of the North Carolina Constitution





Powers and Duties of the Social Services Board

Powers and Duties Related to the County DSS Director

Recruit,
select, and
appoint the
director.

Determine
(with the
approval of
the BOCC) the
director's
salary.

Advise the
director
about
problems.

Evaluate the
county DSS
director's
performance.

Discipline or
dismiss the
director.

Responsibilities Related to Director

Comply with state and federal employment laws

- E.g., nondiscrimination (race, sex, age, religion, disability status, etc.)

Comply with SHRA

- E.g., may only dismiss for “just cause” if director is a “career State employee”

Comply with county policies or ordinances

- E.g., travel, leave, etc.



Evaluating the Director

Board should develop policies and procedures that address:

- the purposes of the board’s evaluation of the director,
 - the frequency and timing of evaluations,
 - the board’s expectations of the director,
 - the standards for evaluating the director,
 - the form(s) or method the board will use to evaluate the director, and
 - the process by which the board will evaluate the director.
- Involve director in the evaluation process.
 - Ask director to do a self-evaluation as part of the process.
 - Discussion must take place at an official board meeting but be conducted during a closed session.



Evaluating the Director

- Share perspectives, discuss differences, synthesize
- After completing evaluation, the board should :
 - provide a copy of its final evaluation to the director,
 - discuss the final evaluation with the director,
 - note any areas that are unsatisfactory or need improvement,
 - note any areas that show growth or excellence,
 - agree with the director on any particular actions the board feels the director should take to improve his or her performance and timeframe for those actions,
 - discuss and revise (if necessary) the board’s expectations for the director’s performance in the coming year,
 - ask the director to develop goals for the coming year, and
- **All information gathered and created in evaluation process is confidential**



Evaluating the Director

- Open dialogue, not a one-time event
- Ideally, no surprises
- Be honest!

Board's Relationship to Other DSS Employees

Board has no authority to:

- Hire, supervise, or fire DSS employees
- Establish minimum qualifications
- Establish salary schedule
- Adopt personnel policies
- Hear employee grievances or appeals*



The Board's Responsibility Regarding the Budget

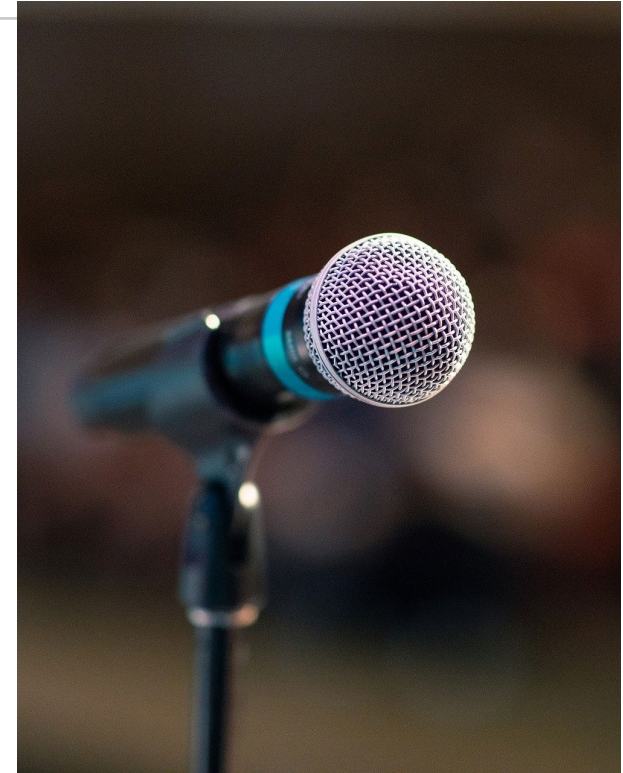
The board is responsible for helping the DSS director in planning the proposed budget.

Proposed budget must include:

- a request for appropriations for the coming fiscal year,
- an estimate of departmental revenues for the coming year,
- actual and estimated expenditures for each category of expenditure included in the county budget ordinance for the current and immediately preceding fiscal years,
- actual and estimated amounts realized for each source of revenue for the current and immediately preceding fiscal years, and
- any additional information requested by the budget officer

Must submit the proposed budget to the county budget officer by April 30 (or other date determined by budget officer).

The Board's Role in Advising Local Public Officials



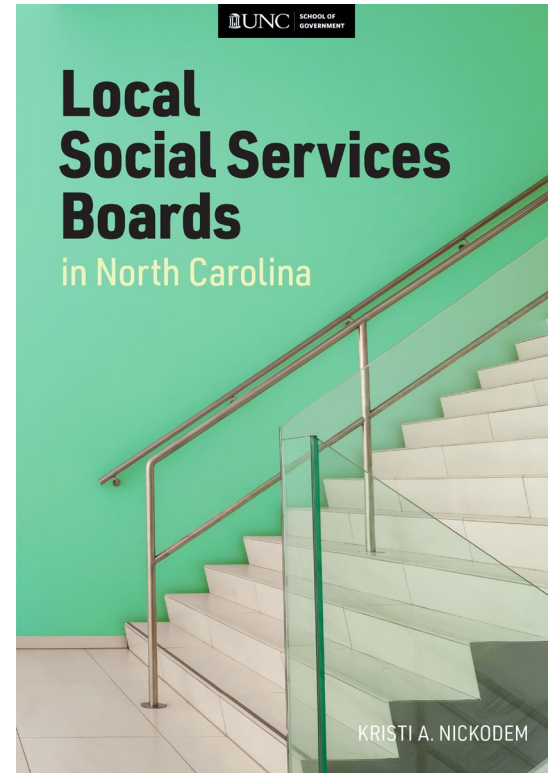
The Board's Role Related to DSS Policies and Programs

- **Board can:**
 - Make a limited set of decisions regarding Social Services Block Grant programs and Work First (see 10A NCAC Chapter 71)
 - Review cases of suspected fraud related to some public assistance programs (*Work First, State-County Special Assistance Program, Crisis Intervention Program (CIP), Low-Income Energy Assistance Program (LIEAP), and Medicaid*) unless authority is delegated to director.



The Board's Role Related to DSS Policies and Programs

**Read Chapter 9 of the
new boards book!**



The Board's Power to Access Records

Access

Board members may inspect records relating to applications for and provision of public assistance and social services

(G.S. 108A-11)

Protect

Board members may **not** disclose or use any information acquired by examining such records

Limits

Right of access is limited by some state and federal confidentiality laws.

Limits on the Board's Power to Access Records

- A 1995 North Carolina Attorney General's opinion concluded that the social services board's right of access does not include CPS case files.



Coates' Canons NC Local Government Law

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Access to Confidential Client Records by Social Services Governing Boards

Published: 04/26/16

Author Name: [Aimee Wall](#)

Print

Coates' Canons Blog:
<https://canons.sog.unc.edu>

Responsibilities Related to the Board Itself

Hold meetings

- Meet at least monthly (or more often if board chair calls a special or emergency meeting)
- Need a quorum to do business (majority of members unless local rules say otherwise)

Elect board chair

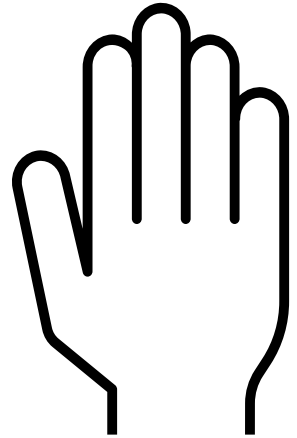
- At July meeting
- One year term (but can be elected again for consecutive terms)

Appoint 3rd or 5th member (depending on board size)

- Also have power to remove 3rd or 5th member

Oath of Office

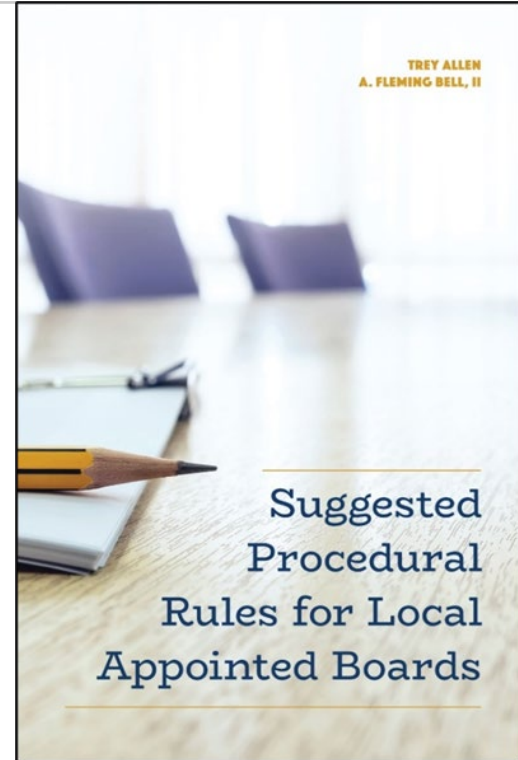
- Any time between the board member's appointment and his or her assumption of office.
- May be administered anywhere in the State by a judge, magistrate, clerk of superior court, state legislator, city or county clerk, mayor, chair of the board of county commissioners, notary public, or other specified public official.
- Written copy of the oath signed by the board member must be filed with the clerk of the BOCC.
- Second term = second oath of office.



Developing Local Rules of Procedures

Topics to Address

- Meeting agendas
- Election of board chair
- Public comment period
- Motions and voting
- Absences
- Remote participation
- Appointment and removal of 3rd or 5th member





Other Legal Requirements

Open Meetings Law

- Applies to “official meetings” of “public bodies”
 - Law requires **NOTICE** and **ACCESS**
- “Official meeting”:
 - A majority of the members
 - Gathering simultaneously in person or electronically
 - To conduct a hearing, deliberate, vote or otherwise conduct public business



Open Meetings Law

Closed Sessions

Motion in open session– must state the purpose of the closed session.

- Special rules for:
 - Preservation of confidential records: Must cite the law that makes the record confidential.
 - Attorney-client privilege: If there is litigation, must identify the parties.

LIMITED AUTHORITY-- only for purposes permitted by law*

- Preserve confidentiality of records
- Preserve attorney-client privilege
- Matters involving alleged criminal misconduct
- Consider performance, qualifications, or appointment of a public employee or public official (not members of the board itself or other boards)
 - Final appointment or termination decision must be made in open session

*See G.S. 143-318.11 for complete list



Open Meetings Law

- Public bodies must create and retain **minutes** of meetings (and general accounts of closed sessions).
- Minutes and general accounts are public records
 - General accounts and minutes from closed sessions may be withheld from public to the extent necessary to avoid frustrating the purpose of the closed session.



Open Meetings - Notice

Type of Meeting	Notice Requirements
Regular	Notice filed, posted, on website
Special	48 hour notice to “sunshine list”; posted on website
Emergency	Notice to news media who have requested it, in same manner as given to members of the public body
Recessed	Post on website

- **Board chair may call special meeting on 48 hours’ written notice** (G.S. 108A-7)
- Notice of a special meeting must also be posted on a bulletin board at DSS or at the door of the board’s usual meeting room, as well as on the county website.

Open Meetings

Key points to remember



- **Notice + Access**
- Do not conduct board business outside of meetings, even in the interest of efficiency
- Closed sessions are only allowed for specific purposes
- Minutes (or general accounts for closed sessions) are always required

True or False?



Messages sent from your private email accounts are not subject to the public records law.



Text messages sent from your personal cell phone are not subject to the public records law

Public Records Law – Chapter 132 of the General Statutes



Any record made or received in the **transaction of public business** is subject to public access unless an exception applies.

It's the **CONTENT** of the record, not its **location**, that determines whether it is a **public record**.

Records created on **personal devices or accounts** are public records if the content involves **public business**.

Records created on government devices or accounts are not public records if the content does **not** involve public business.

Public Records Law

Right of access requires providing records:

- to anyone who requests them
- to inspect or receive a copy
- regardless of why they want them
- in the medium requested if possible
- “as promptly as possible”
- unless an exception applies

Important exception:

- Shall not release records when the law says “confidential”
 - *G.S. 108A-80*: Makes all information “concerning persons applying for or receiving public assistance or social services” confidential.



Public Records Law

What other information is confidential?

- **G.S. 153A-98** (county employee personnel records)
 - Info regarding applicants for the director's position.
 - Info gathered through the application process, the interview process, or the background check process.
 - Info related to the board's evaluation, discipline, or dismissal of the director



Records Retention

- Records retention schedules dictate what must be kept and how long it must be retained.
- Schedules must be approved by the local governing board before they can be used to authorize the destruction of public records.
- Records of “transient” value need not be retained
 - Personal messages (including electronic mail) not related to official business.
 - Records that do not contain information necessary to conduct official business, meet statutory obligations, carry out administrative functions, or meet organizational objectives.



Schedules:

<https://archives.ncdcr.gov/government/local>

Public Records

Key points to remember



- “In connection with the transaction of public business” is the trigger
- Retention requirements apply
- General rule is that the public record must be made available upon request *unless* an exception applies



**True or
False?**



Social services board members cannot be sued for anything related to their work on the board because they are public officials.



Liability: Key Points

Lawsuit against DSS or the Board

- Is a lawsuit against the county
- In some cases, State Tort Claims Act could also involve the state as a defendant

Official v. Individual Capacity

- “Official capacity” = county
- “Individual capacity” = board member (or director)

Public Official Immunity

- Provides protection in “individual capacity” suits for alleged **negligence** under **state** law
- Some exceptions/limitations – not absolute

Liability – Open Meetings

Lawsuit against the board in district or superior court.

Injunction may be issued.

Any action taken by the board in violation of the law can be declared null and void.

If board member *knowingly or intentionally* violated the law, member could be ordered to personally pay all or part of the plaintiff's attorney's fees.

No plaintiff's attorneys' fees owed if board member or the board followed the advice of an attorney regarding the board's actions.

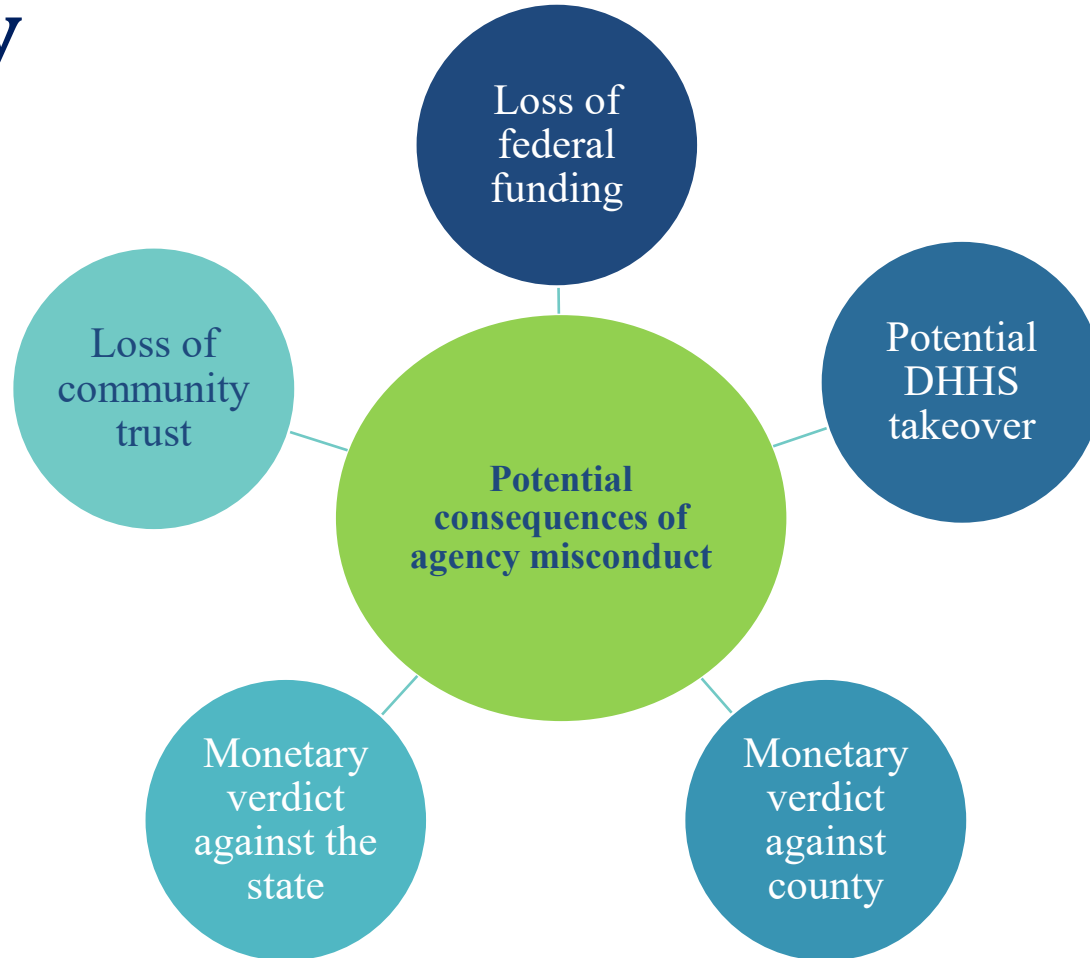


Potential Criminal Liability

- Unlawfully disclosing confidential social services information
- Disrupting an official meeting of the board
- Threatening or assaulting other board members, the DSS director, or DSS employees
- Embezzling county funds
- Willfully failing to discharge duties as a board member
- Unlawfully receiving a direct benefit from a contract that involves DSS



Liability



Liability

Key points to remember



- Boards should be careful when making personnel decisions concerning the director.
- Agency misconduct can have significant consequences—good oversight can help prevent future liability.
- Some forms of immunity are available, but they are not absolute.

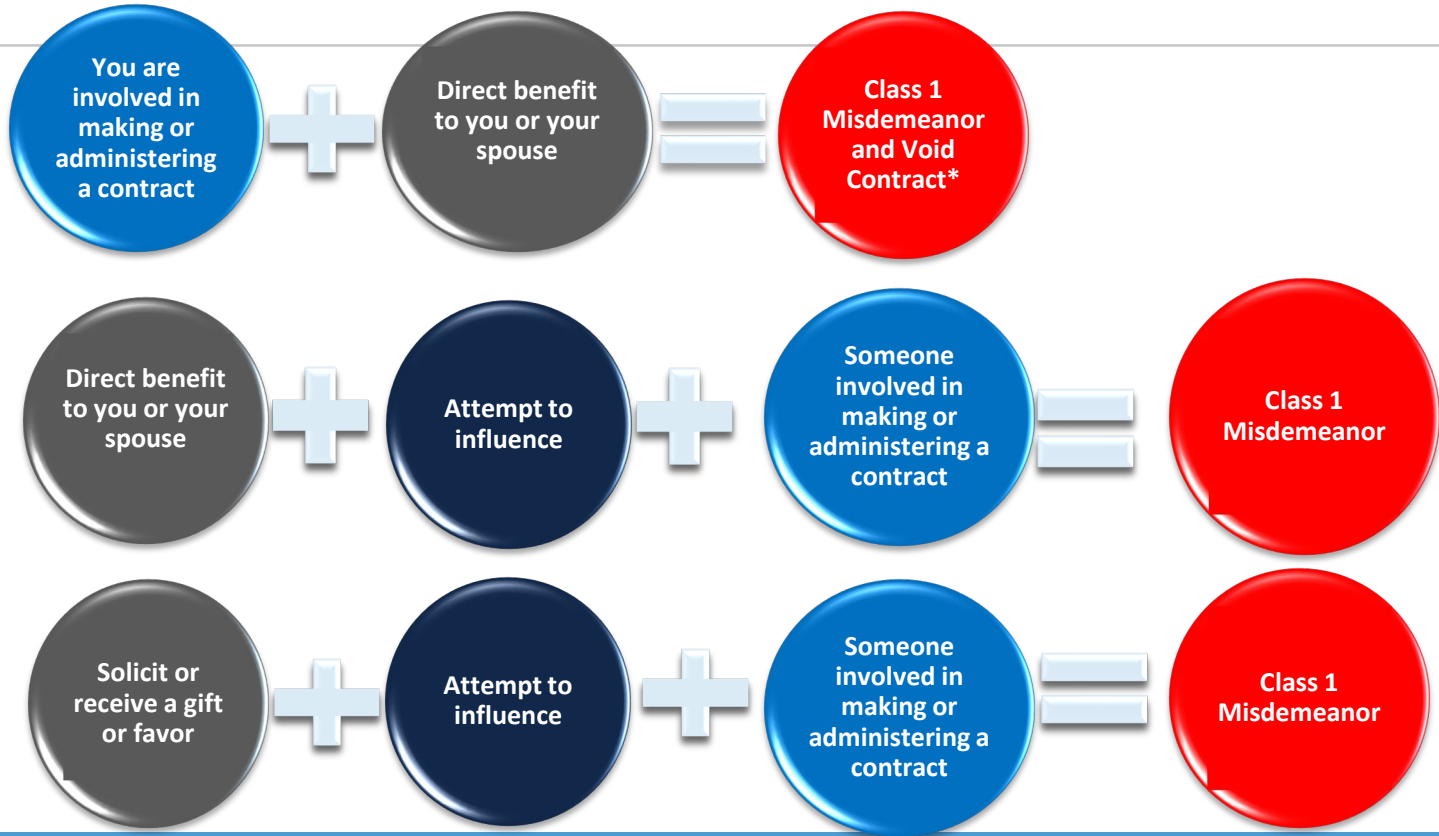
Ethics - Basics

Act in the public interest and for the public good, not for your own private benefit.

- Avoid using position to promote partisan political platforms, parties, or candidates.
- Cannot use position to influence the DSS director to hire, promote, or provide preferential treatment to the board member's spouse or any other relative.



Be Careful with Contracts- G.S. 14-234(a)



Ethics – Key Takeaways

- It is unlawful to:
 - Directly benefit from contract if involved in making or administering contract
 - Attempt to influence person making or administering a contract for benefit of official
 - Solicit or receive a gift or reward for recommending or influencing award of contract by public agency



Want to Explore More?

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The North Carolina Human Services Hub

UNC School of Government Resources for Governing Boards, Directors, and Staff of Departments of Social Services, Public Health Departments, and Consolidated Human Services Agencies



Consolidated Human Services Agency Resources

Find information regarding



Social Services Resources

Explore trainings, publications, conference



Public Health Resources

Explore trainings, publications, legal



Options for Organization and Governance of Human Services Agencies in NC

Questions?

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NC Human Services Hub:
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