

GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

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THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Chairwoman Linda Anselmini, Vice Chair Elizabeth Randall, Commissioner Arthur Eisdorfer, Commissioner Alisha Griffin, Commissioner Lonna Hooks, Commissioner Fred Lopez, and Commissioner Alan Steinberg; Executive Director Rita L. Strmensky.

The cases presented in "Guidelines" are designed to provide State employees with examples of conflicts issues that have been addressed by the Executive Commission. Specific questions regarding a particular situation should be addressed directly to the Commission.

Commission Case No. 50-96

SUBJECT: Secondary Employment.

FACTS: The State employee performed outside engineering work without the approval of his Department. The employee had previously been advised by the Commission staff that all outside employment must be reported to and approved by his Department. In addition, the engineering work was submitted to a State agency in connection with an application. The employee had previously been cautioned regarding the representational prohibition of section 16(b) of the Conflicts Law.

RULING: The Commission found indications of violations of section 16(b) of the Conflicts Law and two sections of the Department's Code of Ethics.

REASONING: Section 16(b) prohibits a State employee from representing a party other than the State before any State agency. Engineering plans, signed by the State employee, were submitted to a State agency. In 1993, the Commission determined that the preparation of inspection reports, attendance at meetings at a State agency on behalf of clients, telephone conversations with personnel regarding reports and the submission of correspondence to a State agency on

behalf of clients constitute representational activity prohibited by section 16(b). The State employee had been advised in writing of the types of representational activities prohibited by the Conflicts Law.

As to the Department's Code of Ethics, employees are required to report all licenses held and to receive written advance approval prior to undertaking any outside employment. The employee had signed for the Code of Ethics on two occasions and was advised by Commission staff of the necessity of receiving outside employment approval.

Commission Case No. 12-97

SUBJECT: Post Employment.

FACTS: The Department requested an opinion as to whether a former employee would be permitted to sit on a Departmental Committee as a representative of his current private-sector employer. The former employee was involved with drafting the Committee's regulations and the plan of operation developed pursuant to those regulations while he was employed by the Department.

RULING: The former employee's service on the Committee, as a representative of his current employer, is not prohibited by the post-employment restriction.

REASONING: The section 17 post-employment restriction prohibits a former State employee from representing a party other than the State in regard to any "matter" in which he was substantially and directly involved during his State employment.

Section 13(h) of the Conflicts Law provides that "matter" does not include the

preparation or review of legislation which is no longer pending. In 1993, the Commission determined that regulations no longer pending are analogous to legislation. Thus, the former State employee is not prohibited, under the post-employment provision, from serving on the Departmental Committee as a representative of his current employer. However, should any specific matters come before the Committee in which he was involved in his official capacity, he must recuse himself from discussing and voting on such matters.

Commission Case No. 17-97

SUBJECT: Recusal.

FACTS: The special State officer requested advice from the Commission regarding potential conflict of interest situations that may arise in connection with his business interests.

RULING: The Commission provided advice to the special State officer regarding prohibited representational activities before his own agency and situations that would necessitate his recusal.

REASONING: The Commission advised that under the operation of section 16(a), the special State officer and any firm in which he has an interest are prohibited from representing, appearing for or negotiating on behalf of any party other than the State in connection with any matter pending before his particular agency. The representational prohibition applicable to special State officers is not as restrictive as the prohibition affecting State officers and employees. While State officers and employees are prohibited from

representing a party other than the State before any State agency, special State officers are prohibited from representing a party other than the State only before their own agency. They are free to appear before State agencies other than their own.

Representation includes but is not limited to preparing reports or any documents for clients that are submitted to the agency by the preparer or a client, appearing formally or informally at meetings of the agency or with agency staff on behalf of a client, or communicating orally or in writing with the agency on behalf of a client.

The Commission also advised the special State officer that in order to avoid any activity that may be problematic under the operation of section 23(e)(1), interest which is in substantial conflict with the proper discharge of duties; 23(e)(4), actions in one's official capacity in matters wherein there is a direct or indirect personal or financial interest; 23(e)(5), employment which might reasonably be expected to impair objectivity and independence of judgment; and 23(e)(7), the appearance of impropriety, the special State officer should recuse himself from the application of any entity appearing before the agency that is based on or connected with work that he, or any of the firms in which he has an interest, has done or where he or one of the firms could be seen to have an interest in the application pending before the agency going forward or (in the case of a client's competitor) not going forward. The special State officer was advised that he should seek advice on a case-by-case basis whenever he perceives an overlap between his official and his private roles.

Commission Case No. 23-97

SUBJECT: Interaction in official capacity with family member's employer.

FACTS: The State employee, in her official capacity, was the coordinator of a large project overseen by her agency. One of the major contractors on the project was her husband's employer. Her husband had been employed by the contractor for one year. The contractor had been involved in the project in question for ten years. The State employee's spouse had no current involvement on the project.

RULING: The Commission advised the employee that she was prohibited from having any official involvement with any projects that directly or indirectly involved her husband's employer whether or not her husband actually worked on the particular project.

REASONING: The Commission reviewed the specifics of this situation under section 23(e)(1), interest which is in substantial conflict with the proper discharge of duties; 23(e)(3), use of official position to secure an unwarranted advantage; section 23(e)(4), actions in one's official capacity in matters wherein there is a direct or indirect personal financial interest; and section 23(e)(7), appearance of impropriety.

Under Commission precedent, State officials have been required to avoid any involvement with any matters affecting the employer of the official's spouse. The Commission also noted that the State employee's Department had a policy of requiring recusal in these types of situations.

STATE EMPLOYEES' PARTICIPATION IN POLITICAL ACTIVITIES

Summarized below are Commission cases addressing State employees' participation in partisan political activities. The Commission permits involvement in partisan political activities provided that there is no provision in the Departmental code of ethics prohibiting such activities. (Election Law Enforcement Commission, Executive Commission on Ethical Standards and several other agency codes have specific provisions prohibiting such activities.) State employees, however, may not use State time or State resources in pursuit of such activities. As with any outside activity, the State employee must obtain the prior approval of the Departmental Ethics Liaison Officer.

Two sections of the Conflicts Law, *N.J.S.A.* 52:13D-14 and 24, address the acceptance and/or solicitation of campaign contributions.

Section 14 provides:

No State officer or employee, special State officer or employee, or member of the Legislature shall accept from any person, whether directly or indirectly and whether by himself or through his spouse or any member of his family or through any partner or associate, any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with intent to influence him in the performance of his public duties and responsibilities. This section shall not apply to the acceptance of contributions to

the campaign of an announced candidate for elective public office.

Section 24 provides:

No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance or other matter related to his official duties, except reasonable fees for speeches or published works on matters within his official duties and except, in connection therewith, reimbursement of actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State of New Jersey. This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office.

In Commission Case No. 987-81, the Commission affirmed the Department of Labor Ethics Committee determination that the employee's position as a Democratic State Committeeman and Member of the Warren County Democratic Committee as well as his candidacy for the Lopatcong Township Council did not constitute a violation of the Conflicts of Interest Law. The Commission also concurred with the caveats imposed by the Department prohibiting the use of State time, stationery and telephones by the employee for his political activities and further extended this prohibition to include any other State resources.

In Commission Case No. 34-85, two members of the Board of Dentistry were

advised that *N.J.S.A. 52:13D-24* expressly permits the solicitation and acceptance of campaign contributions for announced candidates for elective public office. The dentists were, however, cautioned about political activities which directly involve persons subject to licensure and review by the Board of Dentistry. The dentists sent letters, on personal stationery, to thousands of New Jersey licensed dentists, to solicit re-election campaign funds for a New Jersey Assemblyman.

In Commission Case No. 756-79, the Commission determined that it would not be a conflict of interest for a member of a County Board of Taxation to simultaneously serve as a Commissioner on the County Tax Board and hold the position of County Chairman of a political party in the same county.

In Commission Case No. 972-81, the Commission determined that a Housing Finance Agency ("HFA") employee was permitted to run for municipal office in a municipality where housing projects sponsored by the HFA were located. The employee was cautioned that, if elected, she should not have any dealings with any project located in East Orange as long as she was a member of the Council.

In Commission Case No. 17-95, a County Superintendent of Elections employee was advised that she was permitted to run for a council seat in a partisan political election because her responsibilities as Program Coordinator involved only student voter registration, the planning of educational programs and the handling of press releases and correspondence. The employee had no responsibilities in connection with the election process. She was advised, however, that she should

have no involvement with student voter registration activities in the municipality in which she was a council candidate.

In May 1990, the Casino Control Commission ("CCC") requested an Advisory Opinion from the Commission as to whether certain political activities, if engaged in by members of the CCC, would violate ethical restrictions contained in the Casino Control Act or the CCC's Code of Ethics. Because this request involved a statutory interpretation, the Attorney General's Office was asked to review it. An Opinion was received which stated that, given the directive in the Casino Control Act that the CCC promulgate a code of ethics modeled upon the Code of Judicial Conduct, it appeared that without a legislative change to the Casino Control Act, members of the CCC were prohibited from those political and partisan activities that are prohibited by the Code of Judicial Conduct.

The Department of Personnel has issued regulations that address the political activities of State employees. These regulations, which reference the Federal Hatch Act, are not administered or enforced by the Commission and are printed here for the reader's information and convenience.

N.J.A.C. 4A:10-1.2 Political activity

- a. No employee in the career or senior executive service shall directly or indirectly use or seek to use his or her position to control or affect the political action of another person or engage in political activity during working hours. See *N.J.S.A. 11A:2-23*.

- b. No employee in the career, senior executive or unclassified services whose principal employment is in connection with a program financed in whole or in part by Federal funds or loans, shall engage in any of the following prohibited activities under the Hatch Act (5 U.S.C. 1501 et seq.):

1. Be a candidate for public office in a partisan election. This provision does not apply to the Governor, the mayor of a city, the elected head of an executive department or an individual holding elective office, where that office is the sole employment connection to federally funded programs;

2. Use official authority or influence that interferes with or affects the results of an election or a nomination for office; or

3. Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

- c. The office of the Special Counsel of the United States Merit System Protection Board has responsibility for the investigation of Hatch Act matters.

service who do not serve in policy-making or confidential positions.

Regarding "Guidelines"

Please direct any comments or questions about "Guidelines" to Jeanne A. Mayer, Esq., Deputy Director, Executive Commission on Ethical Standards, P.O. Box 082, Trenton, NJ 08625, (609)292-1892.

N.J.A.C. 4A:2-5.1 General provisions

- b. An appointing authority shall not take or threaten to take any action against an employee in the career service or an employee in the senior executive service with career status based on the employee's permissible political activities or affiliations. This subchapter shall also apply to State service employees in the unclassified