

GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

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THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Chairman Jacob C. Toporek, Vice Chairman Scott A. Weiner, Commissioner David Applebaum, Commissioner Anthony Cimino, Commissioner Zulima Farber, Commissioner Dr. Bruce Siegel, and Commissioner Kathy Stanwick; 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. 6-93

SUBJECT: Secondary Employment

FACTS: The State employee requested an opinion from the Executive Commission as to whether his outside employment performing engineering inspections and completing reports to be submitted to a State agency is violative of section 16(b) of the Conflicts Law.

RULING: The Executive Commission determined that, based on prior Commission precedent, the secondary employment activity is violative of section 16(b) of the Conflicts Law.

REASONING: After reviewing past Commission precedent and the interpretation of the term "represent" by

other jurisdictions, the Commission determined that the preparation of the inspection reports, attendance at meetings at a State agency, telephone conversations with State employees at the State agency receiving the reports, and the submission of correspondence to the State agency in question on behalf of clients constitute representational activity prohibited by section 16(b) of the Conflicts Law.

COMMISSION CASE NO. 11-93

SUBJECT: Secondary Employment

FACTS: The Department of Insurance requested an opinion from the Commission as to whether Department employees are prohibited from engaging in selling real estate or insurance or holding active licenses in either field.

RULING: The Executive Commission recommended that the Department follow the procedure outlined below regarding insurance and real estate licenses.

1. Department employees are not permitted to write insurance or function as insurance consultants. Further, employees must surrender their insurance licenses for the term of their departmental employment to avoid the appearance of a conflict of interest.

2. A departmental employee is permitted to sell real estate or function as a real estate broker under the following conditions:

a. Before engaging in any outside employment, the employee must complete the Department's outside employment form and secure departmental approval.

b. Departmental approval can only be granted under the following circumstances.

(1) The employee is not connected to the Real Estate Commission and has no job responsibilities related to real estate matters.

(2) The employee, in his/her role as a real estate salesperson or broker, cannot recommend insurance companies or agents to his or her real estate clients for homeowners and/or title insurance and cannot make any insurance-related arrangements for the clients.

(3) In his/her role as a real estate salesperson or broker, the employee cannot represent any party before any State agency in connection with any matter. (For example, the employee cannot represent a buyer or seller in securing a

permit or an inspection from a State agency.)

(4) Real estate sales or brokers activities cannot take place on State time or with the use of State resources, supplies or equipment.

REASONING: Since the Department of Insurance regulates the entire insurance industry, the Commission determined that the appearance of a conflict would result if departmental employees are permitted to act as insurance consultants or write insurance policies.

The Commission determined that there would not be an appearance of a conflict of interest for departmental employees not connected with the Real Estate Commission and whose job duties have no relationship to real estate matters to engage in real estate sales under the conditions specified above. The Real Estate Commission is a separate division of the Department of Insurance. Real Estate Commission employees are prohibited from engaging in real estate sales.

COMMISSION CASES NO. 13-93 AND 15-93

SUBJECT: Holding employment with the holder of a casino license

FACTS: The Commission staff in reviewing secondary employment forms noted that two State employees reported part-time employment with casino licensees.

RULING: The Executive Commission ruled that the individuals cannot hold

employment with the holder of or applicant for a casino license while they are State employees.

REASONING: Section 17.2 of the Conflicts Law prohibits State employees from holding employment with the holder of or applicant for a casino license. Since both of the employees indicated that they made the necessary disclosure to their Departments, the Commission determined that there would be no referral of these cases to the Division of Criminal Justice. The employees were advised, however, that they must give up either their State employment or casino employment.

COMMISSION CASE NO. 14-93

SUBJECT: Request for Approval of Departmental Disciplinary Action

FACTS: The State employee was paid, on approximately 100 occasions, in return for utilizing her position to obtain permits from the agency where she was employed. The employee's conduct was alleged to have violated six separate sections of the Department's Code of Ethics.

RULING: The Commission approved the Department's request for approval of the disciplinary action.

REASONING: Section 23(d) of the Conflicts Law provides that no action for removal or discipline based on a violation of a Code of Ethics shall be undertaken except with the approval of the Executive Commission. In light of the facts of this particular case, the Commission concurred with the Department that the conduct at issue was grounds for removal from State service.

COMMISSION CASE NO. 17-93

SUBJECT: Secondary Employment

FACTS: The State employee appealed his Department's conditional approval of his request to serve on a local committee that dealt with issues connected to his State employment. The Department granted the employee's request for approval to sit on the local committee; however, the employee was advised that he must refrain from discussing or offering advice, in his role as a committee member, on matter related to his official duties.

RULING: The Executive Commission confirmed the Department's conditional approval of the employee's outside employment.

REASONING: The Commission considered whether the condition imposed on the employee's outside employment is appropriate under section 23(e)(5) and/or 23(e)(7) of the Conflicts Law. Since the employee did not currently perform any inspections in the community, the Commission determined that it is unlikely that his objectivity and independence of judgment in the exercise of his official duties would be impaired by his outside position on the committee.

The Commission concurred with the Department, however, in determining that, given the regulatory role of the State employee's Division, the employee could be seen as being able to exert some influence regarding sites in his local community and an appearance problem could result. The Commission also concurred with the Department that since the employee interacts with employees within his Division from other regions, the

public could conclude that his opinions are based on information garnered in his official capacity that would not be available to members of the general public.

RECONSIDERATION OF DEFINITION OF "PROFESSIONAL EMPLOYEE" IN SECTION 17.2

The Commission was asked to reconsider its interpretation of the term "professional employee of the Office of the Governor," as used in section 17.2(a) of the Conflicts Law.

Section 17.2, the "Casino Ethics Amendment," sets forth prohibitions relating to employment by or representation of casino license holders during State employment and for two years after leaving State service. The two-year post-employment casino restriction only applies to a "person" and members of his/her immediate family. Thus, employees of the Governor's Office who are "full-time professional employees" cannot work for or represent a casino licensee for two years after leaving the Governor's Office.

Section 17.2(a) defines a "person" as follows:

As used in this section "person" means any State officer or employee subject to financial disclosure by law or executive order and any other State officer or employee with responsibility for matters affecting casino activity; any special State officer or employee with responsibility for matters affecting casino activity; the Governor; any member of the Legislature or full-time member of the Judiciary; any full-time professional employee of the Office of the Governor, or the Legislature; members of the Casino Reinvestment Devel-

opment Authority; the head of a principal department; the assistant or deputy heads of a principal department, including all assistant and deputy commissioners; the head of any division of a principal department; any member of the governing body, or the municipal judge or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner, or consultant regularly employed or retained by such planning board or zoning board of adjustment.

In 1983, the Commission interpreted the terminology in section 17.2(a) as meaning an individual involved in basically interpretive, evaluative, analytical and/or creative endeavors requiring knowledge or expertise in a specialized field of knowledge. The definition was very difficult to apply and appeared to be applied unevenly. The Commission voted to adopt the National Labor Relations Act definition of professional employee. That definition is as follows.

a. Any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital,

as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

b. Any employee, who (i) has completed the courses of specialized intellectual instruction and study described in Clause iv of Paragraph a, and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in Paragraph a. (29 U.S.C.A. Section §152 Paragraph 12)

Executive Order No. 95

On June 10, 1993, Governor Florio signed Executive Order No. 95 which affects each State employee and special State officer who is required by law or executive order to submit a Financial Disclosure Statement to the Executive Commission on Ethical Standards. Summarized below are the obligations of State employees and special State officers under the Order.

Trusts

The use of blind trusts is eliminated. No State officer or employee covered by the Order may maintain any assets in a blind trust and may not establish a blind trust during his/her tenure.

Interest in Closely Held Corporations or Similar Entities

Employees: No employee may retain any interest in any closely held corporation, partnership, sole proprietorship or similar business entity doing business with any federal, State, or local government entity.

"Interest" means any ownership or control of any profits or assets of any such business entities. The Order defines "doing business" as meaning any business or commercial transactions involving the sale, conveyance, or rental of any goods or services and does not include such activities as compliance with regulatory procedures. This provision does not apply to contracts awarded after public notice and competitive bid, with the prior approval of the Commission. Doing business with the State of New Jersey is prohibited.

No employee may retain any interest in any closely held corporation, partnership, sole proprietorship or similar business entity without the approval of the Executive Commission.

Officers: No officer may retain any interest in any closely held corporation, partnership, sole proprietorship or similar business entity unless the Executive Commission first determines that the officer is permitted to retain such an interest.

Other Provisions

Under the terms of the Order, each officer or employee is required to amend his/her Financial Disclosure Statement within 30 days of gaining knowledge of (1) his/her or his/her spouse's acquisition of any interest in any closely held corporation, partnership, sole proprietorship or similar business entity or (2) commencement of any business activity covered by the provisions of the Order.

The Order provides limitations on divestitures, definitions of terms, and sanctions for failure to comply.

Regarding "Guidelines"

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