

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. 1-95

SUBJECT: Unwarranted Privilege and Appearance of Impropriety.

FACTS: The State employee approved funding applications for an individual with whom he had a personal business involvement.

RULING: The Commission determined that there were indications of violations of sections 23(e)(3) and (e)(7) of the Conflicts Law and the Department's Code of Ethics and that the State employees' conduct rose to the level of willful and continuous disregard of the statute and the code of ethics.

REASONING: The Commission reviewed the facts of the situation under sections 23(e)(3), which addresses the issue of unwarranted privilege and section 23(e)(7), the appearance section of the statute.

The Commission's investigation revealed that there were a number of irregularities in connection with the funding applications of the individual in question. The State employee became acquainted with the individual through his State employment and engaged in a business transaction with the individual while were applications pending on which the State employee acted. The State employee had received advice from the Department regarding ethics issues on two prior occasions and thus was aware of the existence of the

Conflicts Law and the Department's Code of Ethics.

COMMISSION CASE NO. 3-95

SUBJECT: Post Employment Request.

FACTS: The State employee held the position of Administrator and requested an opinion from the Commission as to whether she could accept the position of Program Director for an organization that contracts with her division.

RULING: The Commission determined that since the State employee was not substantially and directly involved in the negotiation of the contracts with the agency and is not responsible for the administration of the contracts, her acceptance of the position was not prohibited by the post-employment restriction.

REASONING: The Commission reviewed the facts of the situation under section 17 and determined that the State employee's involvement with the organization in question was not substantial and direct. The employee's involvement with the actual contract was limited to a one time situation when she was involved as a member of a negotiating team. The contract in question was for one of seven services provided by the organization. The State employee did not sign the contract and has not been involved in any contract negotiations since that time. The contract has been renewed annually. The Commission also considered the fact that the State employee has no oversight responsibilities in connection with the contract.

COMMISSION CASE NO. 5-95

SUBJECT: Unwarranted Privilege, Appearance of Impropriety and Representational Activity.

FACTS: The special State officer is a member of a Board that awards grants to a number of entities with which he is affiliated. The special State officer asked whether he is permitted to accept grant monies, directly or indirectly from his own agency or any other State agencies for activities performed personally, as Director of private organization, and/or as an employee of another State agency.

The special State officer also asked whether he was permitted to donate his time and have the organization with which he was affiliated receive payment for activities performed under the organization's sponsorship.

A third issue concerned representation on behalf of another State agency and/or a private organization before State agencies.

A fourth issue involved the performance of consulting services for State agencies that have representatives on the Council on which the special State officer sits.

The final issue was under what circumstances Council members were required to recuse themselves.

RULING: The Commission determined that under Commission precedent and the Council's code of ethics, the special State officer is prohibited from accepting compensation, directly or indirectly, where the funds are provided by the Council. However, he is permitted to accept grant monies, directly or indirectly, from other

State agencies provided that as a Council member he has no involvement in the approval of such grants.

As to the second issue, the Commission determined that the special State officer was permitted to donate his time and have the organization with which he was affiliated receive payment for activities performed under the organization's sponsorship.

As to the third issue, the Commission determined that under section 16(a), the special State officer is prohibited from representing any party other than the State in connection with any matter pending before his own agency.

As to the fourth issue, the Commission determined that the special State officer could perform consulting services for State agencies that have representatives on the Council.

Finally, as to recusal, the Commission determined that Council members cannot be involved in the preparation of a grant application to be submitted to the Council and must recuse himself/herself as a member of the Council from discussions and voting on a grant application for any organization with which he/she is affiliated.

REASONING: Under Commission precedent, State officers and employees are prohibited from accepting compensation where the funds are provided by their own agency. Volunteer activities on behalf of an organization are permitted since no monies flow directly or indirectly to the State officer or employee personally.

Under section 16(a) of the Conflicts Law, a special State officer is prohibited from representing a party other than the State before his/her own agency. While representation of another State agency is not prohibited by section 16(a), the Commission determined such representation would be problematic under sections 23(e)(3) and (e)(7), the unwarranted privilege and appearance sections of the statute.

COMMISSION CASE NO. 7-95

SUBJECT: Post-Employment Request.

FACTS: The State employee is Director of a State Board and requested an opinion from the Commission regarding proposed post-employment activity as Executive Director of a lobbying group. The proposed post-employment activity involves four areas of lobbying in connection with legislation and regulations not yet enacted in which the State employee was involved in his official capacity.

RULING: The Commission determined that the State employee was prohibited from performing any of the proposed lobbying activities since he was substantially and directly involved in the matters in question in his State employment.

REASONING: The Commission reviewed the facts of the situation under section 17, which 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. All of the lobbying activities proposed by the State employee were representational in

nature. The matters in question were determined to be, the pending revisions to legislation and pending regulations. The State employee acknowledged that he was substantially and directly involved in both the revisions to the legislation and the pending regulations during his State employment.

COMMISSION CASE NO. 21-95

SUBJECT: Contracting with a State agency, appearance of impropriety.

FACTS: The special State officer has an interest in a company that responded to a Request for Qualification ("RFQ") issued by the Board of which he is a member. The special State officer participated in meetings, in his official capacity at which the subject of the RFQ was discussed.

RULING: The Commission determined that under section 19(a), the special State officer was prohibited from contracting with his own agency since the contract in fall within one of the exceptions enumerated in section 19(b) and the individual has received prior approval from the Commission.

In addition, even if the contract in question fell within the exception, the special State officer's involvement in his official capacity raised the issue of the appearance of impropriety.

REASONING: The Commission reviewed the RFQ and determined that it did not qualify under the competitive bid exception. In addition, the special State officer did not seek or receive the prior approval of the Executive Commission prior to responding to the RFQ. The purpose of obtaining prior approval by the

Commission is to ensure that the State officer's involvement does not violate any other section of the statutes.

The Commission determined that even if the RFQ did fall within the competitive bid exception, the special State officers participation was problematic under section 2(e)(7) since both prior to and subsequent to acquiring an interest in the company in question, the special State officer participated in Board actions involving the subject of the RFQ.

COMMISSION CASE NO. 27-95

SUBJECT: Political Activity.

FACTS: The State employee who is employed at a County Superintendent of Elections Office requested an opinion from the Commission as to whether she is permitted to run for a Council seat in a partisan municipal election.

RULING: The Commission determined that the employee is permitted to run for the Council seat.

REASONING: The Commission reviewed the facts of the situation and determined that since the employee's official responsibilities involved areas unrelated to the election process, she is permitted to run for the Council seat. In her official capacity the State employee is involved only with student voter registration the planning of education programs and the handling of pres releases and correspondence. The Commission did advise the State employee, however, that she should refrain from any involvement with Student Voter Registration activities in the municipality in which she is a Council candidate.

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.

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