

GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

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THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS

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Stephanie Bush, Commissioner Zulima
Farber, Commissioner Barbara
McConnell, and Commissioner Dr. Bruce
Siegel; Acting 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. 26-92

SUBJECT: Secondary Employment

FACTS: The State employee holds an inspector position in a regulatory agency and appealed the Department's ruling that his secondary employment, involving a business repairing items that are an element of the Department's total inspection process, is violative of the Department's Code of Ethics.

RULING: The Executive Commission concurred with the Department's disapproval of the employee's outside business due to the appearance of impropriety that arises when a State inspector has an outside business related to an element included in the State's inspection process.

REASONING: The Commission affirmed the Department's position that should a vehicle that the State employee repaired be presented for inspection, the employee would be acting in an official capacity in regard to a vehicle with whose owner he has had a business relationship. The Department feels that even if the employee performs his duties objectively, there is the strong possibility of the appearance of "impairment or impropriety" especially in the event of a problem arising in regard to the vehicle's passing or failing inspection.

Recusal from inspecting vehicles of the employee's clients is not viewed as a viable alternative by the Department since such disqualification directly interferes with the operation of the Division.

COMMISSION CASE NO. 30-92

SUBJECT: Contracts with State Agencies.

FACTS: The State employee holds a Social Worker position and requested Departmental approval of proposed secondary employment in which he would provide client evaluations for another State agency.

RULING: The Executive Commission ruled that the State employee's proposed secondary employment is not permitted under the operation of N.J.S.A. 52:13D-19.

REASONING: Section 19 of the Conflicts Law prohibits a State employee from undertaking "any contract, agreement, sale or purchase of the value of \$25.00 or more..." with any State agency except under limited circumstances.

Attorney General Opinion No. 18, requested by the Commission in 1976, advises that dual State employment or office holding is not proscribed by the Conflicts of Interest Act and indicates that the Legislature did not intend for the Statute to prohibit a State employee in one department from engaging in an employment relationship with another department of State government. The opinion states that the entire tenure of Section 19 "is directed toward dealings and negotiations with the State for contracts or agreements to supply the State with either commercial, business or the personal services of a person acting in his private capacity."

Although the State employee in question would be entering into a personal service

contract as an independent contractor, rather than an employment relationship, his arrangement does not fall within the exceptions of Section 19(b). While it is a contract that can be awarded without public notice and competitive bidding, the authority for such an award is N.J.S.A. 52:34-9; section 19(b) only allows such contracts which are awarded pursuant to N.J.S.A. 52:34-10. Thus, the Commission concluded that the proposed secondary employment is not permitted under the operation of section 19.

Guidelines promulgated by the Executive Commission will be printed in the newsletter as space permits.

GUIDELINES GOVERNING RECEIPT OF GIFTS AND FAVORS BY STATE OFFICERS AND EMPLOYEES (Revised March 1990)

1. Each department shall require full disclosure by employees to the office of the department head through the Ethics Liaison Officer upon receipt of a gift or any other thing of value, from a person, corporation, or association with whom they have had contact in their official capacity.

2. Each department should designate an Ethics Liaison Officer to monitor compliance with specific procedures under which officers and employees shall proceed upon receipt of a gift or any other thing of value, from a person, corporation, or association with whom they have had contact in their official capacity.

3. All officers and employees should be instructed that any gift or other thing of value received from a person or corporation with whom they have had contact in their official capacity must be reported and remitted immediately to the Ethics Liaison Officer. Similarly, any favor, service, employment or offer of employment from such a person or corporation must be reported immediately.

4. Unsolicited gifts or benefits of trivial or nominal value, such as complimentary articles offered to the public in general, and gifts received as a result of mass advertising mailings to the general business public may be retained by the recipient or the recipient's department for general use if such use does not create an impression of a conflict of interest or a violation of the public trust. An impression of a conflict may be created, for example, if an employee of a regulatory agency uses a pocket calendar conspicuously marked with the name of a company that it regulates or if an office in a State agency displays a wall calendar from a vendor, creating the impression of an endorsement. If circumstances exist which create a reasonable doubt as to the intention with which the gift or benefit was offered, the other paragraphs of these Guidelines govern.

5. The Ethics Liaison Officer shall determine whether the gift, favor, employment, offer of employment, or anything of value was given or offered with the intent to influence or reward the performance of the recipient's public duties and responsibilities, or whether it may be reasonably inferred to have been given or offered with the intent to influence the performance of his or her public duties and responsibilities, or whether the use of the

item will create an impression of a conflict of interest or a violation of the public trust.

6. Upon a determination that there was an intent or it could be reasonably inferred that there was an intent to influence the performance of the recipient's public duties and responsibilities, or that the use of the item will create the impression of a conflict or a violation of the public trust, the Ethics Liaison Officer shall return the gift or thing of value to the donor.

7. The Ethics Liaison Officer will have the responsibility of keeping the records of all such occurrences; names of the employees, individuals, and companies involved, and the final disposition of the gift or thing of value.

8. The assistance of the Director of the Executive Commission will be available to all Ethics Liaison Officers to aid them in the evaluation of individual cases.

ETHICS LIAISON OFFICERS

The Commission maintains a network of Ethics Liaison Officers in the departments and major agencies of the Executive Branch to facilitate the review of employee's requests for approval of outside employment and to provide "local" assistance with regard to conflicts of interest and the administration of department/agency Codes of Ethics.

Below is a list of each Department's Ethics Liaison Officer.

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(609) 292-5530

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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.