

GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

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THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Chairwoman Janice Mitchell Mintz, Vice Chair Jaynee LaVecchia, Commissioner Gregory Adkins, Commissioner Alisha Griffin, Commissioner Deborah Jones, Commissioner Fred Lopez and Commissioner Mark Musser; 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. 28-98

SUBJECT: Post-Employment.

FACTS: The State employee requested an opinion from the Commission as to whether he was permitted, under *N.J.S.A. 52:13D-17*, the post-employment provision, to apply for the position of Project Director of a program at a private nonprofit corporation. The private nonprofit corporation had recently taken over the program in question from the agency at which the State employee is employed. Prior to the transfer of the program to the private nonprofit, the State employee was the Director of the program. He was also involved, in his official capacity, in the transfer of the program.

RULING: The Commission determined that because the State employee was substantially and directly involved in the operation and transfer of the program in his official capacity, he was prohibited from serving in the position of Project Director at the private nonprofit.

REASONING: When reviewing a post-employment matter, the Commission uses a two-pronged analysis:

1. Is the former employee representing, appearing for, negotiating on behalf of, or providing information or services not generally available to a party other than the State?
2. Was the former employee substantially and directly involved in the matter in question?

With regard to the first prong, the State employee's activities on behalf of the private nonprofit would be representational in nature.

As to the second prong of the test, the "matter" in question was the program for which the State employee had overall responsibility during the entire time that the program was under the jurisdiction of his agency. According to the agency's job description for the program, the State employee directed and had overall responsibility for program planning, coordination, control and evaluation of the program. In addition, the State employee participated in meetings at which discussions were held regarding the transfer of the program to the private nonprofit, was a member of the private nonprofit's Board of Trustees at the time the decision was made to transfer the program, and prepared the nonprofit's application for the transfer of the program from his agency.

COMMISSION CASE NO. 29-98

SUBJECT: Unwarranted Privilege/
Appearance of Impropriety.

FACTS: The Commission was asked by the agency to review the circumstances surrounding the former Executive Director's acceptance of employment with an entity with which he had involvement in his official capacity. In his official capacity, the former employee met with local government officials and companies interested in development opportunities.

It was not alleged that the former employee's current employment violated the section 17 post-employment provision. Section 17 prohibits a former State

employee from representing, appearing for, negotiating on behalf of or providing information not generally available to the public in connection with any matter in which the former employee was substantially and directly involved during his/her State employment. The former employee's current job responsibilities do not include any matters with which he was involved during his agency tenure.

While the former State employee was the agency Director, the agency took action on a project involving the former Director's current employer. The former employee had met with representatives of the company on a number of occasions during the six months prior to the agency action. The day after the agency took action, the former Director received an offer of employment from the company.

RULING: The Commission determined that there was no basis on which to proceed under the Conflicts Law.

REASONING: The former employee was involved in several meetings between his current employer, various city officials where the project was proposed and agency employees for six months prior to approval of the project. The selection of the company for the project in question was supported by city officials and the company was first selected for the project by a city agency. The former employee did not attend the meeting at which the company was approved for the project. The former Director had no further involvement in his official capacity with the company subsequent to the job offer. The Commission noted that the timing of the agency's approval of the project and the job offer suggested the appearance of a conflict; however, there was no evidence of a knowing act by the former employee.

COMMISSION CASE NO. 36-98

SUBJECT: Secondary Employment.

FACTS: The State employee appealed his agency's disapproval of his secondary employment as a part-time guidance counselor in the adult high school program at a county technical school. The county technical school at which the State employee held secondary employment had a contract with his agency to provide instruction to juvenile students. The State employee had no involvement in this contract in his official capacity. In his official capacity, the State employee is a site supervisor responsible for evaluating and supervising teachers at juvenile facilities. He has no responsibilities in connection with the county technical school in question.

RULING: The Commission approved the State employee's secondary employment as a part-time guidance counselor at the county institution subject to the following conditions: he must not use State time or resources in connection with his outside employment; he must not be involved in any aspect of the contract between his agency and the county institution; and he must not perform any counseling at the county institution for any of the agency's students.

REASONING: The State employee had no involvement with the contract between his agency and the county institution in his official capacity and would not counsel any agency students in his role at the county institution.

In addition, the county institution is required to maintain separate budgets for the activities of the adult school. The

State employee's services as a guidance counselor fall within the adult regional high school budget and not the budget for the agency contract. No funding received by the county institution from the State agency is used in any way to support the State employee's employment. Under Commission precedent, where a Department provides funds to a program directly or indirectly, and officials or employees of the Department accept compensated positions created as a result of those funds, a conflict of interest exists.

COMMISSION CASE NO. 37-98

SUBJECT: Special State Officer's Outside Activities.

FACTS: The special State officer requested an opinion as to whether his roles with two professional organizations, one State and the other national, conflict with his responsibilities as a member of a State body that regulates the profession. The special State officer is a Director and Past President of the State professional organization. In that capacity, he attends national organization meetings as New Jersey's representative and votes on behalf of the State organization. He is also a member of the national organization's Political Action Committee which supervises funding to pay for lobbyists and decides which candidates for federal offices the national organization will support.

The body on which the special State officer sits administers and enforces professional licensing laws and is a quasi-judicial body that renders decisions on contested license applications and institutes disciplinary actions. It also promulgates rules interpreting and implementing the provisions of the

licensing law and establishes standards of practice for the profession. The body is empowered to conduct investigations, hold hearings, revoke licenses and otherwise sanction individuals and firms for violations of the licensing law or the body's administrative rules.

The State professional organization supports all segments of its membership, in concert with local boards and the national organization, by developing and delivering programs, services, and related products which enhance the ability to conduct business successfully and ethically.

The national professional organization provides a facility for professional development, research and the exchange of information among members, the public and the government. Membership in a local association automatically extends membership to the State association and the national association.

The national association engages in legislative and regulatory lobbying campaigns at all levels of government: local, State and national; political action to support federal candidates at the local, State and national levels; legal advocacy through a legal action committee providing financial support to legal cases that will establish a favorable precedent; information services and business products by providing discount purchase arrangements; professional standards and development by establishing a professional code of ethics and educational and networking opportunities at conventions and trade expositions.

RULING: The Commission advised the special State officer that there is no per se

prohibition against his roles as a Director of the State organization and New Jersey's representative to the national organization, his membership on the national organization's Political Action Committee, and his membership on the State body that regulates the profession. He was advised, however, to recuse himself from any matters involving the New Jersey or national organizations that comes before the body on which he sits.

The Commission also advised the special State officer that he cannot, under the operation of *N.J.S.A. 52:13D-16*, engage in any representational activity on behalf of the New Jersey or national organizations before the body on which he sits.

REASONING: The Commission noted that this question arose because the special State officer is an officer of the New Jersey and national organizations. All of the members of the State body on which he sits hold membership in the professional organization. As a general rule, mere membership in such an organization has not generated conflicts questions, absent some overlap between an individual's membership activities with his/her official duties.

With respect to the *Guidelines for Secondary Employment*, the Commission noted that both of the special State officer's positions deal with his profession but the duties and responsibilities of the position are not similar. The overlap between his positions seems to occur only when the New Jersey and/or national organizations take positions on proposed regulations and articulate those positions in person or in writing to the body on which he sits. In such situations, the special State officer would be required to

recuse himself to avoid any conflict or appearance of conflict so long as he remains an officer of either organization.

COMMISSION CASE NO. 45-98

SUBJECT: Cohabitation/Impairment of Objectivity.

FACTS: The Commission received an allegation that the State employee's relationship with an employee of a regulated entity violated the Division's Code of Ethics regarding cohabitation. For purposes of the Division's Code, "cohabit" means residing in a house, apartment or other living quarters with any other person or persons.

Under the Code, a Division employee who cohabits with an employee of a regulated entity must file a disclosure of the relevant facts with the Division Director in a form to be provided by the Division.

The Code further provides that no Division employee shall act in his/her official capacity in a matter concerning the employer of a cohabitant or relative by blood or marriage when the fact of the employment of the cohabitant or relative might reasonably be expected to impair the objectivity and independence of judgment of said Division employee.

RULING: The Commission dismissed the matter because the preliminary investigation did not establish a factual basis for the allegation.

REASONING: There was no indication that the Division employee and the employee of the regulated entity cohabit as that term is defined by the Code. They each retain their own residences. Thus,

the Division employee would not be required to file a disclosure under the Code. The Commission noted that the Division employee had advised her supervisor of her social and personal relationship with the employee of the regulated entity. The employee's supervisor represented that the employee had always recused herself from any matters involving the regulated entity in question.

Approvals of Disciplinary Action Under Section 23(d) of the Conflicts Law

A State agency may institute disciplinary action against a State employee for violation of its code of ethics subject to the approval of the Executive Commission. The Commission's role in a section 23(d) review is to determine whether a finding of an indication of a violation of the applicable agency code of ethics is supported by the agency's investigative report.

In Case No. 21-98, the Commission authorized the Department to proceed with disciplinary action, removal, for using State property for personal use and unauthorized use of confidential and privileged files. The State employee accessed confidential records and used State letterhead and property to locate the new address of an individual for her personal use.

In Case No. 2-99, the Commission authorized the Department to proceed with disciplinary action, a six-month suspension, for the State employee's personal use of the facilities of a company regulated by the Department and inspected by him. The State employee

also made threatening remarks to the operator of the company.

1999 Financial Disclosure Filing

Financial Disclosure Statements ("FDS") must be filed by May 15, 1999. Executive Order No. 2 does not provide for the granting of extensions.

Your FDS filing is not considered to be in compliance with Executive Order No. 2 if you have been advised by the staff that corrections are necessary and you have not made the corrections.

A separate instruction sheet has been included with the FDSs this year. For the first time, FDS forms and instructions are also available on the Commission's web site: <http://www.state.nj.us/lps/ethics>. If additional forms or instructions are needed, they may be printed from the web site.

Complaints

Allegations come to the Executive Commission from various sources and can be made orally or in writing. The complainant may remain anonymous. If the complainant does identify him/herself, that information remains confidential. It is important to provide as much information as possible regarding the allegation, especially in the case of anonymous complaints.

Forward written complaints to: Executive Commission on Ethical Standards, P.O. Box 082, Trenton, New Jersey 08625.

Oral complaints may be directed to (609) 292-1892. The Commission's

investigative staff is available to assist complainants.

Allegations may also be filed with the State agency employing the State officer or employee in accordance with procedures established by the agency. Upon receipt of an allegation, the State agency is required to file a copy of same with the Commission. It is within the discretion of the Commission to direct the State agency to transfer the allegation to it. (*N.J.A.C. 19:61-3.4*) Notice of all determinations made by State agencies in connection with hearings conducted pursuant to *N.J.A.C. 19:61-3.1* must be filed with the Commission. All determinations with respect to the Conflicts of Interest Law which involve the removal of a State officer or employee or any other disciplinary actions are effective only when approved by the Commission.

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.

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