

GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

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THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Chairwoman Elizabeth Randall, Vice Chair Janice Mitchell Mintz, Commissioner Alisha Griffin, Commissioner Deborah Jones, Commissioner Jane Kenny, 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. 29-97

SUBJECT: Acting as a Campaign Treasurer for a Political Candidate.

FACTS: The agency requested advice from the Commission regarding whether a State employee's outside activity as Campaign Treasurer for a candidate for the New Jersey Senate is violative of section 16(b) of the Conflicts Law.

RULING: The Commission determined that under the operation of section 16(b) of the Conflicts Law, the employee is prohibited from acting as a Campaign Treasurer because campaign reports signed by her must be submitted to the Election Law Enforcement Commission ("ELEC") and in the event a question arises regarding the reports, she would be required to appear in person or respond in writing to ELEC's inquiry.

REASONING: The Commission reviewed the facts and circumstances and determined that because a Campaign Treasurer is responsible to ELEC for compliance with campaign reporting rules, the holding of this position would be violative of section 16(b). With respect to ELEC, a Campaign Treasurer is primarily responsible for recording and certifying campaign contributions and expenditures. The Campaign Treasurer signs the certification attached to the Campaign Finance Report indicating that the report content is accurate and the candidate has signed it.

Under Commission precedent, signing and submitting documents to a State agency on behalf of a third party are representational activities. In Case No. 6-93, the Commission considered whether a State employee's outside employment

preparing engineering reports submitted to a State agency constituted representational activity. The Commission determined that the preparation of the inspection reports, attendance at meetings regarding the reports, telephone conversations with State employees concerning the reports and the submission of correspondence to a State agency on behalf of clients constituted representational activity prohibited by section 16(b) of the Conflicts Law. The Commission also determined that the submission of the reports by third party clients would not mitigate the violation.

COMMISSION CASE NO. 31-97

SUBJECT: Official Action in Regard to a Family Member.

FACTS: The State employee's son acted in a representational capacity for an entity that was seeking funds from the State employee's agency. The State employee participated in discussions concerning the funding and in decisions to expedite the project. The State employee also signed the action slip recommending the grant and signed the grant agreement on behalf of the State.

RULING: The Commission determined that the State employee's participation in the grant application process for a company represented by his son violated the Conflicts Law.

REASONING: The Commission has a longstanding position of not permitting State employees to take official actions in connection with activities where there is a family member involved. The Commission has always required that State officials recuse themselves from such activities. The State employee did

sign a recusal letter; however, it was after actions had already taken place.

COMMISSION CASE NO. 32-97

SUBJECT: Stock Ownership.

FACTS: After 16 years at the agency in question, the State employee left to become vice-president of a private company regulated by his agency. He remained with the company for approximately 10 months and then accepted an offer to return to the agency where he was previously employed. When the State employee joined the private company, he received a number of shares of restricted common stock. Immediately upon rejoining the agency, the State employee delegated to an appropriate individual in the agency any matters related to his former employer. He also surrendered his stock certificates to the private company's counsel and requested that the stock be sold. (Only a private sale was possible.) When 6 months had passed without a sale, the State employee sought the Commission's advice regarding his conflicted situation.

RULING: The Commission advised the State employee that he should avoid any involvement with matters concerning his former employer, to keep current all formalized delegations of authority and to continue to press the appropriate agents of the private company for the sale of the restricted common stock.

REASONING: Section 23(e)(1) provides that no State employee should have any interest in any business which is in substantial conflict with the proper discharge of his duties in the public interest. The State employee's interest in the company did not rise to the statutory

definition of interest (ownership or control of more than 10% of the stock of a corporation), but the Commission felt it was clear he should not continue to own the stock. The State employee made reasonable efforts to dispose of the stock and expected the sale in the very near future. The recusals that were in place would seem to shield him from acting improperly in the interim period.

Sections 23(e)(4) and (7) prohibit a State employee from taking action in any matter in which he has interest that might reasonably be expected to impair his objectivity or independence of judgment or which would create an impression among the public of a violation of the public trust. The employee had not taken any action with respect to the private company since returning to the agency and advised the agency's management, in writing, of delegations for various matters affecting his former employer.

COMMISSION CASE NO. 43-97

SUBJECT: Ex-Officio Membership.

FACTS: The State agency requested an opinion regarding what restrictions, if any, would apply to a State official in his role as an ex-officio member of the Board of Trustees of a private non-profit entity that receives funding from his agency. The State employee would have no involvement in the day-to-day operations of the private entity but wished to sit on the Board to oversee the use of agency funds and to assist and advise in terms of future growth.

RULING: The Commission advised the agency that the State official was permitted under the Conflicts Law to

serve as an ex-officio member of the Board of Trustees of the private non-profit entity. However, under section 16(b) of the Conflicts Law, the State official is prohibited from representing, appearing for or negotiating on behalf of the private non-profit entity before any State agency.

In addition, for the purposes of the Attendance Rules, the private non-profit entity is an interested party. Thus, the State official cannot accept direct or indirect benefits from the private organization unless the speaker exception is applicable. In addition, the State official is prohibited, under *N.J.A.C. 19:61-6.5(b)*, from using his official title, for the purposes of solicitation and/or fundraising for the private non-profit entity.

Because the State official's participation on the Board of Trustees is part of his official duties, pursuant to *N.J.S.A. 52:13D-24*, he is prohibited from soliciting, receiving or agreeing 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.

REASONING: The Commission reviewed the facts and circumstances of this matter under the Conflicts Law, the Attendance Regulations and Commission precedent. The agency had received an opinion from the Attorney General's office indicating that there is no legal impediment to the State official's participation on the Board of Directors.

The Commission advised that the employee's participation on the Board is a

policy decision and is not addressed per se by the statute.

Section 16 of the Conflicts Law prohibits a State employee from representing, appearing for or negotiating on behalf of any party other than the State before any State agency. Thus, the State official would not be permitted to act in a representative capacity on behalf of the private non-profit.

Under section 24 of the Conflicts Law, a State employee is prohibited from accepting anything of value from any source other than the State for any service, advice, assistance, or other matter related to his official duties.

Because the non-profit organization receives funding from the State official's agency, it is an interested party under the Commission's Attendance Regulations. A State employee can accept a direct or indirect benefit from an interested party only if, pursuant to *N.J.A.C. 19:61-6.4(c)*, the event is designed to provide training, dissemination of information, or the exchange of ideas and a State official is making a speech, is participating in a panel at the event, or is an accompanying resource person for the speaker and/or participant, subject to the reasonable approval of the Department head. The direct or indirect benefit provided to the State official by the sponsor of the event must be identical to the benefits provided to other speakers or panel participants.

COMMISSION CASE NO. 44-97

SUBJECT: Actions Regarding Former Employer.

FACTS: The State agency requested the Commission's advice regarding the involvement of two employees in the review and evaluation of a prospective agency contract. The contractor in question was a wholly owned subsidiary of the company by which the two employees were previously employed.

RULING: The Commission advised the agency that neither employee had an ongoing interest in the prospective contractor or the parent company that would impair their objectivity or independence of judgment in connection with the evaluation of bidders for the agency project and that there did not appear to be a reasonable basis to preclude their monitoring of the company's work if the award was confirmed.

REASONING: There is no pre-employment restriction in the Conflicts Law. In general, when the Commission has considered such situations, it has looked at whether a State employee's objectivity has been impaired because of an ongoing interest in the previous employer, section 23(e)(4), and/or whether an appearance of a violation of the public trust has occurred, section 23(e)(7). One of the employees in question left the potential contractor approximately 7 years earlier. That employee has no financial interest in the company, and none of his immediate family is employed there. The second employee left the potential contractor in 1996. The employee's total investment in the company's stock was transferred into two mutual funds. Thus, the employee had no financial interest in the wellbeing of her former employer. None of her immediate family is employed by the company.

OFFICIAL INTERACTIONS WITH FAMILY MEMBERS OR COHABITANTS

The Executive Commission staff frequently receives inquiries regarding the propriety of State officials interacting in the course of their duties with family members. The majority of the inquiries concern relatives employed by the same State agency or interactions with family members employed in the private sector. Unlike the statutory framework in a number of other jurisdictions, the New Jersey Conflicts of Interest Law, *N.J.S.A. 52:13D-12 et seq.*, does not specifically address nepotism, favoritism shown to a relative on the basis of relationship.

Only the casino-related provisions of the Conflicts Law contain prohibitions that apply to a State official's immediate family members, defined in *N.J.S.A. 52:13D-13(i)* as the person's spouse, child, parent or sibling residing in the same household. *N.J.S.A. 52:13D-17.2(b)* deals with the concurrent casino-related employment of immediate family members while *N.J.S.A. 52:13D-17.2(c)* deals with post-employment situations of immediate family members. These two provisions are discussed below under "Casino-Related Prohibitions."

The Commission has addressed various family member issues over the years, primarily under the application of sections 23(e)(3), unwarranted privilege, 23(e)(4), direct or indirect personal financial interest that might reasonably be expected to impair objectivity and independence of judgment, and 23(e)(7), the appearance of impropriety. Summarized below are sample Commission cases that address a number of common family member scenarios.

STATE EMPLOYMENT

Family Members Employed by the Same Agency. In *Case No. 27-91*, the Commission considered whether the spousal relationship of the Chief of the Department of Labor Appeal Tribunal and her husband, a member of the Department of Labor Board of Review ("Board"), gave rise to a conflict of interest or appearance of a violation of the public trust. The Appeal Tribunal reviews determinations of the Division of Employment Security that are appealed by an aggrieved or dissatisfied claimant. The three-member Board of Review decides appeals of decisions issued by the Appeal Tribunal. The Chief did not decide cases; her job duties consisted of devising strategy and creating administrative policies for the Appeal Tribunal.

The Board adopted a policy precluding the Member from reviewing or having any connection with decisions issued by the Chief on those rare occasions when it was necessary for the Chief to conduct a hearing and function as an Appeals Examiner. The Commission concurred with the Deputy Attorney General who represented the Board that the recusal policy in place at the Board was a sufficient mechanism to avoid a conflict situation.

Supervisor/Subordinate Relationships.

In *Case No. 1161-83*, the Commission considered whether a situation where spouses worked for the same agency and had a supervisor-subordinate relationship constituted a conflict of interest. This situation was reviewed under the application of section 23(e)(4) of the Conflicts Law which prohibits State employees from acting in their official

capacity in a matter wherein they have a direct or indirect personal financial interest that might reasonably be expected to impair their objectivity or independence of judgment.

The Commission determined that one spouse has a direct personal financial interest in the salary and continued employment of the other spouse and thus should not be in a position to provide direct supervision or to take personnel actions such as performance evaluations and salary increases. The Commission advised the agency to take administrative action to resolve the conflict situation, and the agency transferred one of the spouses out of the work unit.

In *Case No. 182-93*, the Department of Community Affairs requested an opinion as to whether Commission precedent prohibiting family members from having supervisor/subordinate relationships should also apply to non-related individuals who share the same household with the same financial interdependence that the Commission viewed as creating a conflict in spousal situations. The Commission determined that where non-related supervisor/subordinate employees share the same household under circumstances where there is financial interdependence, there must be an intermediate supervisory level between the two and the higher placed employee should have no supervisory or signing authority regarding personnel matters affecting the subordinate employee.

In *Case No. 9-94*, the Commission determined that the Conflicts Law was not violated by virtue of the fact that a Manager, Division of Motor Vehicles, Department of Law and Public Safety,

worked in the same facility as his two cousins. Because the cousins were not members of the Manager's immediate family, as defined in section 13(i) of the Conflicts Law, the Commission determined that a supervisor/subordinate relationship was not per se prohibited under Commission precedent. The Commission reviewed the specifics of this particular situation and noted that the Manager did not directly supervise his cousins, complete their PARS or sign their time sheets. Thus, it was unlikely there could be an appearance of impropriety by virtue of his cousins working in the same facility.

Hiring of Family Members. In *Case No. 23-88*, the Commission was asked to approve the Department's removal of an employee from his position due to a number of violations of the Department's Code of Ethics. Among the violations was one that the employee secured employment for his daughter with a private organization that received funding from the Department. The employee directly monitored the organization's performance under the contract. After the employee's supervisor learned of his daughter's employment, the employee was relieved of all monitoring responsibilities. After reviewing the various violations, the Commission concurred with the Department's findings and approved the proposed sanction.

In *Case No. 32-90*, the Commission reviewed an allegation that the Warren County Conservation District ("District") had contracted with the District Manager's wife for financial and bookkeeping services without public announcement or advertisement of the availability of the contractual position. The Commission determined that the

circumstances surrounding the contract were violative of section 23(e)(3), the unwarranted privilege section of the statute. The contract between the District and the District Manager's wife was terminated.

In *Case No. 34-92*, the Commission found indications of violations of sections 23(e)(3), unwarranted privilege, and 23(e)(7), appearance of impropriety, in connection with the Sussex County District ("District") Manager's hiring and supervising of her son. The manager and her son resided in the same household. The Commission ordered that her son's employment with the District be terminated and that a complaint against the District Manager be prepared. The Commission later approved a consent order in this matter.

In *Case No. 2-93*, the Commission found indications of violations of section 23(e)(3), unwarranted privilege, and 23(e)(7), appearance of impropriety, in connection with the Director of the Library of the Blind and Handicapped's hiring and supervision of her daughter for summer employment. The position was never advertised to the job-seeking public and the Director did not use any of the State contractors who normally performed the services in question. The Commission approved a consent order with the Director.

PRIVATE SECTOR SITUATIONS

In *Advisory Opinion No. 33*, issued September 17, 1975, the Commission determined that a Member of a County Board of Taxation must disqualify himself from hearing tax appeals when the assessor of the responding city is his

second cousin or is more closely related to the Board Member. Because Members of the County Boards of Taxation act in a quasi-judicial capacity, the Commission was guided by cases interpreting the Canons of Judicial Ethics as applied to family member situations. It was noted that the need for unquestionable integrity, objectivity and impartiality is just as great for quasi-judicial personnel as for judges.

In *Case No. 344-76*, the Commission considered whether the Chief Engineer, Cable Television Section, Department of Public Utilities, was permitted to become involved in a challenge to the award of a franchise by the cable television company of which his son was President. If a company is denied a franchise in a municipality in favor of another company, it is the duty of the Chief Engineer to pass upon the engineering qualifications of the successful applicant. The Commission determined that it would be an appearance of a conflict if the engineer were to become involved in any way in the challenge of the subject franchise or any future action with respect to the company that employed his son.

In *Case No. 651-78*, a Member of the New Jersey State Council on the Arts, Department of State, requested advice from the Commission regarding actions affecting a grant recipient. The Member's husband was president of an advertising agency which performed public relations work for the grant recipient. The Member asked if it was necessary for the advertising agency that employed her husband to resign from the account. The Commission determined that it did not have the authority to require the private public relations firm to relinquish the account and recommended that the

Member refrain from participation in discussion and voting on any matters pertaining to the grant recipient.

In *Case No. 35-79*, the Division of Youth and Family Services ("DYFS"), Department of Human Services, requested an opinion from the Commission as to whether there was a violation of the Conflicts Law for a DYFS employee to serve as Administrator of Management Operations while his brother was employed as a salesman for a company that sold equipment to DYFS. The Commission determined that to avoid any potential conflict or appearance of a conflict, the Administrator should in no way be involved in contracts negotiated or executed by DYFS or DHS with the company that employed his brother. Further, in his State capacity, the Administrator should not solicit any State business for nor refer any State business to his brother's employer. Also, neither his brother nor any representatives of the company should call on the Administrator and the Administrator should have no involvement with matters pertaining to the company.

In *Case No. 941-80*, the Commission determined that it would not violate the Conflicts Law for the Director, Division of Hazard Management ("DHM"), Department of Environmental Protection, to review and approve contracts with an environmental company which was a subsidiary of the company that employed the Director's father-in-law. The parent organization had more than 30 subsidiary companies segmented into 9 control groups. The control group with which the Director's father-in-law was affiliated had no direct relationship with the environmental company that contracted with DHM. The Commission

determined that the nexus was too remote to suggest that the Director was acting in his official capacity in a matter wherein he had a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment.

In *Case No. 1176-83*, the Commission determined that no conflict would result from the award of the Lottery Commission's advertising contract to the firm that employed the wife of the Deputy Chief of Staff, Office of the Governor, or by her assignment to perform work under that contract. The Commission noted the absence of any indication that the Deputy's spouse's position was offered to her for the purpose or with the intent of influencing him nor was there any evidence that the Deputy had used his position to obtain employment for his spouse with the bidder or to secure her assignment under the proposed contract. There was also no indication of any interest held by the Deputy in the bidder that would bar the contract under section 19, the contracting section of the statute.

As for the appearance of impropriety, the Commission noted that the Deputy's spouse had obtained employment with the bidder prior to their marriage and long before his appointment as Deputy and that the lack of involvement by him in bidding process matters involving the Lottery Commission, on the part of the Governor's Office, would substantially ameliorate any appearance problems. The Commission based its advice on the assumption that he would have no duties concerning this contract or the Lottery Commission in general, such as appointment of members, which might raise impairment of objectivity issues due to his personal

financial interest in his spouse's employment. The Commission also cautioned the Deputy that willful disclosure or use of information not generally available to the public received or acquired in the course of or by reason of official duties is prohibited.

In *Case No. 25-84*, the Commission considered whether it was a conflict of interest for the Ombudsman, Department of Corrections, to handle inmate complaints concerning Corrections Officers represented by the union of which her husband was State President. The Ombudsman was generally responsible for receiving, investigating and making recommendations concerning complaints received from persons incarcerated or on parole. The Commission determined that the Ombudsman and the Department should be advised that it is not consistent with the Conflicts Law for her to have involvement as Ombudsman in handling complaints concerning Correction Officers represented by the Union while her husband served as President. The advice was based on considerations of indirect interest, impairment of objectivity and appearance of impropriety.

In *Case No. 14-85*, the Commission approved the Department of Education's handling of a matter wherein the Program Manager, Gifted Education Contracts, Division of General Academic Education, recommended that her husband be employed as a consultant to the Division. The employee also recommended her husband as a consultant to a school district which received funding from the Department for a project related to the education of gifted students. The Department determined that the manager's recommendation of her husband as a

Division consultant was violative of the Conflicts Law. She was also advised that she should not implicitly or explicitly make recommendations to local districts as to consultants or programs for gifted and talented education with which she has a direct or indirect relationship.

In *Case No. 17-85*, the Commission determined that the Medical Director, Division of Disability Determinations ("DDD"), did not use her official position to advance her husband's private medical practice. As a private practitioner in the field of internal medicine, her husband worked in conjunction with the DDD as a Consultative Examining Physician ("CEP"). The Commission based its determination on the fact that while the Medical Director's responsibilities placed her in direct contact with CEPs, she recused herself from all involvement regarding her husband and/or his specialty of internal medicine. The Medical Director had no direct control over the scheduling of examinations between DDD clients and CEPs. In addition, while it was the Director's responsibility to review a physician's qualifications prior to acceptance as a CEP, her husband became a CEP four years before she became Medical Director.

In *Case No. 25-85*, the Commission determined that the Chief, Bureau of Construction Code Enforcement ("BCCE"), Department of Community Affairs, violated the Conflicts Law by soliciting and receiving, on behalf of his daughter, a scholarship award from an organization whose members were regulated by the BCCE. The Chief's daughter received the award for academic year 1983. In 1984, she applied personally for the scholarship. The

organization's Board of Directors questioned the propriety of awarding the scholarship to the daughter of the Chief of the BCCE and advised the Chief that the award would not be granted until the conflicts issue was resolved. The Commission determined that the Conflicts Law was violated and ordered the Chief to reimburse the organization for the amount of scholarship monies awarded to his daughter.

In *Case No. 9-86*, the Commission considered a request for advice as to whether a nominee to the Racing Commission was in a conflict situation due to his son's business relationship, as an insurance broker, for an organization regulated by the Racing Commission. The Racing Commission does not regulate the selection of insurance brokers but does require that a surety bond be submitted by the track owner's insurance broker. The nominee's son provided this bond to the Racing Commission. The Commission determined that there was no conflict of interest per se; however, the nominee was cautioned to abstain from discussions and voting on any insurance matters that came before the Racing Commission.

In *Case No. 27-89*, the Commission considered whether a Casino Control Commission Member was required to recuse herself on matters where one of the parties was represented by a law firm for whom her father worked as an accountant. The Commissioner had been associated with the same law firm that employed her father prior to entering State service. The Commissioner had recused herself on eight previous occasions. The Commission determined that the Commissioner should continue to recuse herself from all matters related to the law firm in order to support her ability

to render independent decisions and to be so perceived.

In *Case No. 42-90*, the Chairman of the Casino Control Commission ("CCC") requested an opinion as to whether he was required, under the operation of the Casino Control Act, the CCC Code of Ethics or the Conflicts of Interest Law, to recuse himself from matters involving his brother-in-law, a credit executive with a casino hotel, and/or his brother-in-law's employer. The Commission determined that the Chairman should recuse himself from participation in any matter involving his brother-in-law or the credit department of the casino hotel by which he was employed and advised him that his intention, in any matters involving his brother-in-law's employer, to advise the interested parties on the record of his relationship and to provide the opportunity for any interested party to seek his recusal was an adequate measure to protect the public interest.

In *Case No. 245-93*, the Commission reviewed an allegation that the Administrator, Office of Set-Aside and Certification, Department of Commerce, certified a business owned by his son for eligibility to participate in a program administered by his office. The Commission determined that the employee violated section 23(e)(3), the unwarranted privilege provision, section 23(e)(4), the prohibition against acting in one's official capacity if one has a direct or indirect personal financial interest in a matter, and section 23(e)(7), the appearance provision, in regard to certifying a business owned by his son. The Administrator should have delegated another employee in the office to handle his son's application.

In *Case No. 1202-93*, the Commission reviewed an allegation that the Director, Division of Administration, Department of Education, used his position to influence the award of grants and contracts to a school district employing his son. The Commission noted that most of the State funding to local school districts was awarded based on a statutorily mandated formula. Discretionary grants decisions are made by Program Division Heads with the Commissioner. The Division of Administration monitors and verifies the fiscal and statutory accuracy of grants and contracts after award decisions are made. The Commission voted to dismiss the complaint; however, the Director was advised to abstain from involvement in any matter which directly impacted his son's employment.

In *Case No. 23-97*, the Chief Planner, Hackensack Meadowlands Development Commission, requested an opinion regarding her involvement on projects that directly or indirectly involve her husband's new employer. Her husband's employer was the environmental and engineering consultant on a project for which the Planner had been coordinator for ten years. Her husband had no involvement with the project. The Commission determined that the Planner could have no official involvement with projects that directly or indirectly involved her husband's employer regardless of whether her husband actually worked on the project.

CASINO-RELATED PROHIBITIONS

N.J.S.A. 52:13D-17.2(b) provides:

No State officer or employee, nor any person, nor any member of the immediate family of any State officer or employee, or person, nor any partnership, firm or corporation with which any such State officer or employee or person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm, or corporation, shall hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, in connection with any cause, application, or matter, except that (1) a State officer or employee other than a State officer or employee included in the definition of person, and (2) a member of the immediate family of a State officer or employee, or of a person, may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the Executive Commission on Ethical Standards, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not interfere with the responsibilities of the State officer or employee, or person, and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the State officer or employee, or person....

Section 17.2(b) addresses the issue of concurrent employment. Prior to 1993, section 17.2(b) prohibited all State officers and employees and members of their immediate families from holding an interest in, holding employment with, representing, appearing for, or negotiating on behalf of the holder of or applicant for a casino license or any holding or

intermediary company with respect thereto. In December 1993, the Legislature amended the statute to provide that a State officer or employee, other than a State officer or employee included in the definition of "person" set forth in section 17.2(a), or a member of the immediate family of a State officer or employee, or of a person, may hold employment with the holder of or applicant for a casino license if, in the judgment of the Executive Commission on Ethical Standards, such employment will not interfere with the responsibilities of the State officer or employee or person, and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest on the part of the State officer or employee, or person. Since 1994, the Commission has granted numerous waivers pursuant to the authority granted to it under the amendment.

N.J.S.A. 52:13D-17.2(c) provides:

No person or any member of his immediate family, nor any partnership, firm or corporation with which such person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm or corporation, shall, within two years next subsequent to the termination of the office or employment of such person, hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for or negotiate on behalf of, any holder of, or applicant for, a casino license in connection with any cause, application or matter, or any holding or intermediary company with respect to such holder of, or applicant for, a casino license in connection with any phase of casino development, permitting, licensure

or any other matter whatsoever related to casino activity, except that a member of the immediate family of a person may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the Executive Commission on Ethical Standards, ... such employment will not interfere with the responsibilities of the person and will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest, on the part of the person....

Section 17.2(c) deals with post-employment. Under this section, no "person," as defined in section 17.2(a), or any member of his immediate family shall for two years after the termination of State employment hold an interest in, hold employment with, or represent, appear for or negotiate on behalf of, any holder of, or applicant for a casino license in connection with any matter or any holding or intermediary company with respect to any matter related to casino activity. Under the 1993 amendment, a member of the immediate family of a "person" may hold employment with the holder of or applicant for a casino license if in the judgment of the Executive Commission on Ethical Standards such employment will not create a conflict of interest.

CODES OF ETHICS

Codes of Ethics specific to a particular agency may also contain provisions applicable to family members. For example, the Code of Ethics of the Office of Administrative Law ("OAL"), Section IV, Paragraph B, provides that "A conflict of interest exists ... when the employee, the employee's immediate family, or business would derive financial gain as a result of the employee's position in this office. Immediate family includes

spouse, child, parent or sibling. In addition, Section IV, Paragraph C, provides that "No employee shall advocate or recommend for employment at the OAL any member of his or her immediate family."

State officers and employees should review their agency's code of ethics or consult with their agency Ethics Liaison Officer to determine whether the Code contains any provisions applicable to family members.

OTHER STATUTORY PROVISIONS

Statutory provisions and/or administrative regulations specific to a particular agency may also contain prohibitions applicable to family members. In *Case No. 21-72*, the Commission received a request for advice regarding whether an appointee to the Board of Trustees of the Commission for the Blind could hold that position in light of the fact that the appointee's husband was an employee of the Commission for the Blind. The Executive Commission sought an opinion from the Attorney General's Office because the determination turned on the interpretation of *N.J.S.A. 30:40-1* which provides that at least two members of the Board of Trustees of the Commission for the Blind shall themselves be legally blind but shall not be employees or related by blood, marriage or adoption to any employee of the Commission for the Blind. The appointee in question was legally blind; however, the Attorney General's Office advised that *N.J.S.A. 30:4-1* precluded the appointee from serving in such capacity because she was married to an employee of the Commission.

State officers and employees should consult with their agency Ethics Liaison Officer to determine whether there is any statutory provision or regulation that prohibits the agency's employment of or other contractual relationship with family members. The Commission does not have jurisdiction to interpret these provisions and refers such inquiries to the Attorney General's Office.

SUMMARY

In the case of spouses who work for the same agency, the Commission has determined that supervisor/subordinate relationships are not permitted because one spouse has a direct financial interest in the salary and continued employment of the other spouse and thus should not directly supervise or take personnel actions in regard to the spouse. This policy is also applicable to non-related individuals who share the same household with the same financial interdependence that the Commission views as creating a conflict in spousal situations.

In regard to other family members working for the same State agency, the cases are fact sensitive. The Commission considers such factors as whether the individuals reside in the same household; the degree of the relationship; whether there is financial interdependence; the size of the work unit in question; whether there is direct supervision; and whether one family member is responsible for taking personnel actions that affect the other family member.

With respect to the hiring of family members, the Commission looks at the totality of circumstances surrounding the hiring to determine whether any

unwarranted privilege has been afforded the family member.

As to interactions with family members or their private sector employers, the Commission generally recommends recusal from matters involving the relative and/or the relative's employer in order to eliminate any appearance of impropriety.

In regard to the family-member casino-related prohibitions of sections 17.2(b) and 17.2(c), waivers may be requested by contacting the Executive Commission on Ethical Standards. Waivers will be granted if in the judgment of the Commission such employment will not interfere with the responsibilities of the State officer or employee and will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest.

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.