

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. 29-96

SUBJECT: Secondary Employment.

FACTS: The State employee engaged in undisclosed, unapproved outside employment and business interests. The State employee mailed solicitation letters to and maintained a private business relationship with individuals and entities that he came in contact with as part of his official duties.

RULING: The Commission found indications of violations of the Department's Code of Ethics.

REASONING: Under the Department's Code of Ethics and the Commission's rules, specifically *N.J.A.C.* 19:61-2.2, all outside employment and business interests must be disclosed and approved prior to undertaking such activities. The State employee did not seek or obtain approval prior to initiating his business activities. In addition, the Department's Code, which parallels section 23(e)(5) of the Conflicts Law, prohibits a State employee from undertaking any employment which might reasonably be expected to impair his/her objectivity and independence of judgment.

The Commission determined that engaging in a private business relationship with individuals with whom the employee has regulatory responsibilities raises concerns regarding the impairment of objectivity and independence of judgment in connection with one's official duties.

COMMISSION CASE NO. 40-96

SUBJECT: Post-Employment.

FACTS: The Commission received an allegation that a former State employee's representation of a client in connection with an application pursuant to a program administered by her former agency violated the post-employment restriction.

RULING: The former State employee's representation was not violative of the post-employment restriction because she was not substantially and directly involved in the "matter" in question during her State employment.

REASONING: Under Section 17, the post-employment restriction, a former employee is prohibited from representing, appearing for, or negotiating on behalf of a party other than the State in regard to any "matter" in which he/she was substantially and directly involved during his/her State employment. Under prior cases dealing with this particular State agency, the Commission has viewed the "matter" as a specific project and not an entire program.

In this situation, the Commission noted that the former State employee was a member of the program's conceptual development team but had no involvement with the actual program development, the application process or the ranking system utilized by the agency and she left the agency before any projects were submitted under the program. Because each project is viewed as a "matter" for the purpose of the post-employment restriction, the former employee had no substantial and direct involvement in the "matter."

The Commission advised the former employee that the opinion addressed only applications submitted pursuant to the program in question and that should she desire to represent clients before her former agency in connection with any other matter, she should seek the advice of the Commission.

COMMISSION CASE NO. 46-96

SUBJECT: Financial interest; appearance of impropriety; unwarranted privilege.

FACTS: The State employee assisted an individual that he came in contact with in his official capacity in qualifying for assistance in connection with a program administered by his agency. The State employee then took the client to see a property that he owned and subsequently leased the property to the client.

RULING: The Commission found that there were indications that the State employee violated sections 23(e)(1), (e)(3), (e)(4), and (e)(7) of the Conflicts Law.

REASONING: The State employee came in contact with this individual in his official capacity, assisted the individual in completing forms to qualify for a program administered by his agency; and omitted and misrepresented information relevant to program approval.

Sections 23(e)(1) and (e)(4) prohibit a State employee from acting in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment. In this situation, the State employee had a direct financial interest in the

property in question. That interest could be expected to impair his objectivity or independence of judgment.

Section 23(e)(3) prohibits the use of one's official position to secure an unwarranted privilege or advantage. The State employee solicited the client in the course of his official duties and misrepresented relevant information on program documents regarding the property in question.

Section 23(e)(7) provides that no State employee should engage in conduct violative of the public trust. The Commission found that the State employee's various activities in connection with the rental his property to an individual that he came in contact with in his official capacity violated the public trust.

COMMISSION CASE NO. 51-96

SUBJECT: Post-Employment.

FACTS: The Commission received an allegation that a former State employee, as an independent contractor to the State, performed an appraisal in connection with a project with which he had involvement as a State employee.

RULING: The former State employee's activities were not violative of the post-employment restriction of the Conflicts Law.

REASONING: Section 17 prohibits a former State employee from representing, appearing for, or negotiating on behalf of a party other than the State in regard to any "matter" in which he/she was substantially and directly involved during his/her State employment.

The Commission has used a two-pronged analysis in section 17 cases: (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, and (2) was the former employee substantially and directly involved in the matter in question?

With respect to the first prong, the section 17 post-employment restriction applies to activities performed for a party other than the State. While some of the former employee's activities in connection with the appraisal could arguably be construed as representational, such representation would only be problematic if it was for a party other than the State. In this particular situation, the former State employee was performing services for the State; thus, the post-employment provision was not violated.

Because the first prong was not satisfied, it was not necessary for the Commission to consider whether the former State employee was substantially and directly involved in the "matter" in question.

ETHICS LIAISON OFFICERS

Listed below are the names of the Ethics Liaison Officers for the various departments and agencies. State officers or employees with questions regarding attendance at events, outside employment or any other ethics issue should contact their Departmental Ethics Liaison Officer for guidance.

Department of Agriculture
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**State Agricultural Development
Committee**

Robert J. Baumley

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**Department of Banking and Insurance
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**Department of Community Affairs
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**Department of Commerce
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**Department of Corrections
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**New Jersey State Parole Board
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**Governor's Council on Alcohol and
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**Department of Health
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Department of Human Services

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Department of Labor

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Department of Transportation

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**POST-EMPLOYMENT RESTRICTIONS FOR STATE EMPLOYEES
NEW JERSEY CONFLICTS OF
INTEREST LAW**

As space permits, the staff includes relevant Commission rules and guidelines in the newsletter. Because we frequently receive inquiries regarding the post-employment prohibition, presented below are general explanations of the statutory provisions as well as summaries of past Commission cases.

The case presentations are designed only to provide examples of post-employment issues that have been addressed by the Executive Commission. Specific questions regarding a particular situation should be addressed directly to the Commission.

The sections of the Conflicts Law covering post-employment are *N.J.S.A. 52:13D-17*,

the general prohibition, and 17.2(c), the casino post-employment restriction.

N.J.S.A. 52:13D-17 provides:

No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, or agree to represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered any ruling, given an opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment. Any person who willfully violates the provisions of this section is a disorderly person, and shall be subject to a fine not to exceed \$500.00 or imprisonment not to exceed six months, or both.

N.J.S.A. 52:13D-13(g) defines "interest" as:

"Interest" means (1) the ownership or control of more than 10% of the profits or assets of a firm, association, or partnership, or more than 10% of the stock in a corporation for profit other than a professional service corporation organized under the "Professional Service Corporation

Act," P.L. 1969, c.232 (C. 14A:17-1 et seq.); or (2) the ownership or control of more than 1% of the profits of a firm, association, or partnership, or more than 1% of the stock in any corporation, which is the holder of, or an applicant for, a casino license or in any holding intermediary company with respect thereto, as defined by the "Casino Control Act," P.L. 1977, c.110 (C. 5:12-1 et seq.). The provisions of this act governing the conduct of individuals are applicable to shareholders, associates or professional employees of a professional service corporation regardless of the extent or amount of their shareholder interest in such a corporation.

APPLICATION OF SECTION 17 - GENERAL POST-EMPLOYMENT PROHIBITION

Specific Cause, Proceeding, Application or Other Matter

Section 17 prohibits a former State officer or employee or special State officer or employee from representing, appearing for, negotiating on behalf of, providing information or services not generally available to the public or agreeing to perform any of those activities for any party, other than the State, in connection with those causes, proceedings, applications or other matters in which the officer or employee had made any investigation, rendered any ruling, given any opinion or been otherwise substantially and directly involved while in State employment. There is no time limit on this prohibition.

It is important to note that these restrictions apply to specific causes, proceedings, applications or other matters in which a former State officer or employee or special State officer or employee was

"substantially and directly involved" while in State employment. This restriction does not extend to "determinations of general applicability or the preparation or review of legislation which is no longer pending before the Legislature or the Governor." Whether a cause, proceeding, application or other matter at issue in a post-employment question is categorized as specific or general is a determination made by the Executive Commission on a case-by-case basis. Questions about the nature of matters with which employees had involvement during the course of their official duties should be directed to the Executive Commission.

In certain situations it may be difficult to determine whether a former State officer or employee or special State officer or employee was "substantially and directly involved" in a certain matter or whether such officer or employee had merely been technically or formally involved. Such determinations are made as individual cases arise.

Providing Information Not Generally Available to the Public

Section 17 prohibits former State officers and employees or special State officers or employees from providing information not generally available to the public. The Commission normally solicits input from the former officer's or employee's agency in determining whether the information in question is generally made available to the public.

Application of Restriction to Partnership, Firm or Corporation

The restrictions contained in the Conflicts of Interest Law apply to the partnership,

firm or corporation under the following circumstances: (1) if the former State officer or employee or special State officer or employee is a shareholder, associate or professional employee of a firm organized as a professional service corporation or (2) if the former State officer or employee or special State officer or employee owns or controls more than 10% of the stock of a corporation or more than 10% of the profits or assets of a firm, association or partnership.

The post-employment restrictions extend, therefore, to former State officers or employees and special State officers or employees personally and to any employees or officers of any professional service corporation with which he/she is employed or associated or is a shareholder. In addition, the restriction also extends to those employees or officers of partnerships, firms or corporations in which the former State officer or employee or special State officer or employee has more than 10% ownership or control. If a former State officer or employee or special State officer or employee is employed by a company in which he/she does not have more than a 10% interest, and the company is not a professional service corporation, the restrictions contained in the Conflicts Law pertain to him/her personally but do not extend to the corporation by which he/she is employed.

SAMPLE GENERAL POST EMPLOYMENT CASES ADDRESSED BY THE COMMISSION

Employment With a Firm With Which State Officer or Employee Has Contact in His/Her Official Capacity

The Commission has addressed the issue of employment with a firm with which a State officer or employee or special State officer or employee has contact in his/her official capacity on numerous occasions. Listed below are some examples.

1. The State employee, a Highway Supervisor, Division of Design at the Department of Transportation ("DOT") requested permission to accept a position with a firm with which he came in contact in his official capacity. The Division of Design was responsible for all phases of projects involving bridges, drafted the actual contract agreement, supervised its administration, and acted as liaison between the consultant and the Department. The actual choice of the consulting firm was the responsibility of the Contract Selection Committee which was separate and apart from the Division of Design. The employee was not a member of the Contract Selection Committee.

The Commission determined that it would not be a conflict of interest for the employee to accept a consultant position with a firm with which he came in contact during his State service. He was, however, permanently restricted from representing, appearing for or negotiating on behalf of the firm on any matter in which he had been substantially and directly involved during his State employment. The Commission requested that as a member of the consulting firm, he refrain from working on any bridge projects that were before the DOT while he was a State employee. The employee was advised that there were no restrictions on his participation on behalf of the consulting firm before the DOT on new matters. *In the Matter of Gary Case*, Commission Case No. 763-79.

2. The State employee was offered a position as vice-president of Facilities Maintenance for a construction management and development company. As a State employee, the individual had been an engineer in the Bureau of Lease Construction, Department of the Treasury, and had been involved in monitoring construction at 2 of the 14 properties owned by the company and leased to the State.

The Commission discussed whether there was an improper "revolving door" appearance to the employee being offered the position. Upon learning that the development company had solicited the employee for the vice-president position and that the employee had not sought the position, the Commission considered the appearance issue to be resolved. The Commission then determined that section 17 did not bar the employment with the development company but that the employee could not represent the company with respect to the two properties with which he had involvement as a State employee. *In the Matter of Lewis Ischinger*, Commission Case No. 5-90.

3. A Department of Energy employee received an offer of employment from a subcontractor with whom she had interaction in her official capacity. The interaction included accompanying the subcontractor on "walk throughs" of institutions applying for grants from the Department and auditing and monitoring the status of grant applications.

The Commission reviewed the matter under the section 17 post-employment restriction and also considered whether the employee had exercised an unwarranted privilege prohibited by section 23(e)(3) of the statute. The Commission determined

that although the employee had some involvement and contact with the subcontractor in her official capacity, there did not appear to have been any substantial and direct involvement in a specific matter by the employee during the course of her employment. As to the unwarranted privilege provision, the Commission determined that since the employee did not solicit the position with the subcontractor but rather was approached by the subcontractor and immediately contacted her supervisor regarding the offer of employment, no unwarranted privilege existed. *In the Matter of Frances Kelly*, Commission Case No. 875-80.

Matters Pending Before Former Employee's Former Agency

Former State officers and employees or special State officers or employees are not prohibited from working on matters that originated in their former State departments or agencies subsequent to their leaving State service so long as they had no substantial and direct involvement in those matters.

In 1974, the former Acting Director of the Division of Water Resources in the Department of Environmental Protection requested an opinion from the Commission as to whether he could accept employment with a consulting firm which had several matters before the Division of Water Resources. These matters included a stream encroachment permit, two water pollution control permits, a loan offer and grant offer.

The Commission determined that since the Acting Director's signature appeared as approving the two water pollution control permits, the loan offer and the grant offer,

he was precluded from becoming involved in those matters during his employment with the firm. Because he was not involved with the stream encroachment permit, the Commission found that it did not fall with the section 17 prohibition. *Advisory Opinion No. 23.*

Employment by Entities Receiving Funding from Former Agency

In 1972, the former Chief of the Bureau of Financial Aid at the Department of Community Affairs ("DCA") requested permission to accept employment in and for a municipality whose program he was responsible for coordinating during his tenure at the Department. The employee made the contract arrangements with the city for funding from DCA; however, he did not sign off on the pending contracts.

The Commission determined that the former employee made the contract arrangement for funding by the DCA and that such activity on the part of the employee constituted direct involvement within the meaning of section 17. All monies for administering the municipality's program came from the DCA. *Advisory Opinion No. 2.*

In 1980, the Commission issued two advisory opinions dealing with employment by entities receiving funding from a former agency and distinguished the cases based on the "substantial and direct" involvement criteria articulated in the statute.

In the first instance, the Commission addressed a situation which involved an individual who worked for the State Law Enforcement Planning Agency ("SLEPA") as a Senior Planner. During the course of his employment, he had official associa-

tions with a County Director of a Planning Board who was anxious to participate in a SLEPA Planning Program. The Senior Planner advised the Director to send a letter to SLEPA stating the county's interest in the program, which the Director did. Several months subsequent to receiving information from SLEPA, the Director submitted an application seeking SLEPA funding for his County Planning Program. The Senior Planner then assisted the Director in completing the application by providing data relative to the program and, in particular, to the county's personnel and financial needs. The Senior Planner then became interested in the position which was to be supported by the SLEPA grant.

The Commission determined that since the individual was substantially and directly involved in the awarding of the SLEPA grant, he was precluded from such employment due to the post-employment restriction. *Advisory Opinion No. 37.*

The Executive Commission considered two related requests for advice involving former SLEPA employees who had accepted or desired to accept positions of employment with county agencies receiving SLEPA grants. The individuals, in their capacities as State employees, had no involvement in processing or otherwise acting upon the grant applications of the county agencies that later became their employers.

The Commission determined that the employment was not proscribed as the former State employees were not substantially and directly involved in these matters during the course of their State employment. The Commission determined that, in and of itself, a grantor-grantee relationship between an individual's former State agency and his subsequent non-State employer

normally does not give rise to a prohibited post-employment situation within the framework of section 17. The Commission noted that, of course, the applicability of the post-employment restriction of the Conflicts of Interest Law to any given sets of facts and circumstances ultimately can be determined only by direct inquiry to the Executive Commission on Ethical Standards. *Advisory Opinion No. 39.*

Summary

In summary, the general post-employment restrictions do not prohibit a former State officer or employee or special State officer or employee or any firm in which he/she has an interest from representing a party other than the State concerning:

- Determinations of general applicability.
- Preparation or review of legislation which is no longer pending before the Legislature or the Governor.
- Regulations no longer pending before an agency since these are not specific causes and are analogous to legislation.
- Before any State agency, including the individual's former agency, if the former officer or employee or special State officer or employee was not "substantially and directly" involved in the matter while employed by the State.
- Accepting employment with entities receiving funding from the individual's former agency or any other State agency if the State officer or employee or special State officer or employee was not "substantially and directly" involved in the matter in question.

- Providing information generally available to the public.

- Accepting employment with a firm with which the State officer or employee or special State officer or employee had contact in his/her official capacity.

Seeking Future Employment

In the past, the Executive Commission has determined that employees who have direct and substantial contact with any consultants or vendors doing business with the State must refrain from circulating resumes or in any manner seeking employment with those firms while still in State service. If an employee is solicited for potential employment by a firm with which he/she has direct and substantial contact, that solicitation must be disclosed immediately to the employee's management and to the departmental ethics liaison officer to avoid a situation where an employee may appear to be using his/her official position to gain an unwarranted advantage. Employees who do not have direct and substantial contact with consultants or vendors doing business with the State may circulate resumes and enter into discussions regarding potential employment with those firms as long as they also avoid a situation that may give rise to an unwarranted advantage. All employees are cautioned that discussions, interviews, and negotiations should not take place on State time. *In the Matter of Theodore Fischer*, Commission Case No. 83-88.

In February 1997, the Executive Commission considered the circumstances under which employees of agencies that regulate non-State entities can seek employment with those entities. In an effort to balance the public's interests and a State em-

employee's ability to seek employment in the private sector or with non-State agencies, the Commission determined that solicitation or discussion of employment with regulated entities, or their representatives, that have a specific cause, proceeding, application or other matter before the employee's agency is not permitted.

The following activity would be permitted: solicitation or discussion of employment with respect to regulated entities, or their representatives, where no specific cause, proceeding, application or other matter is pending before the agency as long as the employee (1) discloses the discussions of employment to his/her supervisor and agency ethics liaison officer and (2) recuses him/herself in the event that a specific cause, proceeding, application or other matter comes before the State agency involving a regulated entity, or its representative, that the State employee either solicited for employment or had discussions with regarding an employment opportunity.

SECTION 17.2(c) - CASINO POST-EMPLOYMENT RESTRICTION

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, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, 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. Nothing herein contained shall alter or amend the post-employment restrictions applicable to members and employees of the Casino Control Commission and employees and agents of the Division of Gaming Enforcement pursuant to subsection b.(2) of section 59 and to section 60 of P.L. 1977, c.100 (C.5:12-59b.(2) and C.5:12-60).

Section 17.2(c), the "Casino Ethics Amendment," prohibits a "person" from holding, directly or indirectly, an interest in, or holding employment with, or representing, appearing for, or negotiating 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, application for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino activity. This prohibition extends for a period of two years. Section 17.2(c)

was amended on December 20, 1993 to provide an exception for members of a "person's" immediate family. Under the amendment, a family member is permitted to hold employment with the holder of, or applicant for, a casino license, if the Executive Commission determines that such employment will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest.

Section 17.2(a) defines "person" as:

... 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 Development 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.

Section 13(i) defines "member of the immediate family" as:

... the person's spouse, child, parent or sibling residing in the same household.

Application of Restriction to Partnership, Firm or Corporation

The restrictions contained in section 17.2(c) apply to "persons" and immediate family members not granted a waiver and to any partnership, firm or corporation with which such "person" or family member is associated or in which he/she has an interest. The Conflicts Law defines "interest" as the ownership or control of more than 10% of the stock of a corporation or more than 10% of the profits or assets of a firm.

Effect or Restriction on Employment by Casino Association

In Advisory Opinion No. 41, the Executive Commission determined that, under the application of section 17.2(c), a "person" may not become employed by the Casino Association of New Jersey ("Casino Association") immediately upon leaving State service.

The Casino Association is a non-profit corporation and holder of a non-gaming casino service industry license which operates as a trade association representing the collective interests of Atlantic City casino licensees. Among other things the Association works to promote the common good of the industry and its members and to provide liaison between the industry and other parties, be they governmental, business, labor, social or civic.

In Advisory Opinion No. 41, the Executive Commission noted that section 17.2 is a part of the Conflicts Law which has as its paramount objective to "ensure propriety

and preserve public confidence." N.J.S.A. 52:13D-12(b). Section 17.2 supplements both the Casino Control Act and the Conflicts Law in fostering and maintaining this objective. It represents an additional step "to sanitize casino gambling and its potentially corrupting effect upon government." See Knight v. Margate, 88 N.J. 374, 392 (1981). It is the Commission's view that a technical interpretation of section 17.2(c) which would allow "persons" leaving State service to be employed by the Casino Association would be inconsistent with the overall objectives and purposes of the statute even though the Casino Association is not a casino license holder. Its membership is exclusively casino license holders and it acts to further the aggregate interests of those casino license holders in a number of areas, including interaction with State government. This is exactly the kind of relationship between State "persons" and the casinos which is intended to be regulated by the section 17.2(c) post-employment ban. *Advisory Opinion No. 41.*

SAMPLE CASINO POST EMPLOYMENT CASES ADDRESSED BY THE COMMISSION

In 1982, the Executive Commission interpreted the "associated" language of section 17.2(c) to mean that, regardless of the business structure of the firm, any partnership, ownership or employment by a "person" or immediate family member with a firm that represents, in any capacity in any matter, a casino license holder brings that firm under the two-year restriction of the statute. *In the Matter of a Former Casino Control Commission Accountant*, Commission Case No. C15-80. Although the nature of the "associated" relationship is not defined by the statute, the Commis-

sion adopted the position that it includes partnership, ownership and employment relationships because of the internal sense of the provision which "refers to partners, officers, directors, and employees as those deemed associated with partnerships, firms or corporations within the meaning of its terms." Id.

In 1986, the Commission, building on its 1982 interpretation, determined that "persons" and law firms with which they were associated were prohibited from representing casino licensees or applicants in any circumstances whatsoever. *In the Matter of Irwin Kimmelman*, Commission Case No. C2-86. With regard to representing a holding or intermediary company with respect to a licensee or applicant, the representational prohibition is not so broad, applying only to any matters related to casino activity. Id.

In 1989, the Executive Commission rendered a formal advisory opinion concerning whether an "of counsel" relationship associates a former State employee with a law firm for the purposes of the application of section 17.2(c). The Commission determined that the facts and circumstances of the proposed "of counsel" relationship would constitute an "association" and would subject the law firm to the provisions of section 17.2(c). *Advisory Opinion No. 40.*

In 1991, the Executive Commission restated its interpretation of section 17.2(c) in connection with an analysis of the post-employment section of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The Commission noted that:

Section 17.2(c) restricts not only the representation by a firm in which a ["person"]

has an interest but also prohibits representation by a firm with which the ... "person" ... is "associated." *In the Matter of Division of Gaming Enforcement Request for Advice*, Commission Case No. 18-91.

In 1992, a former Casino Control Commission employee requested an opinion from the Commission regarding the application of the casino post-employment restriction to her situation. The former employee established a private practice and was interested in providing legal services to law firms on an independent contractor basis. Because the possibility existed that she would offer her services to an Atlantic City law firm representing casino licensees, she inquired as to the effect of section 17.2(c) on the arrangements that she would make.

The Executive Commission determined that section 17.2(c) of the Conflicts Law did not preclude the former State employee from establishing the proposed independent contractor relationship with a law firm that represents holders of casino licenses. This ruling was limited to the circumstances of this case. The crucial question in this case was whether the services that the former employee proposed to provide for a law firm created an "association" with that law firm; such an association would subject a law firm as well as the former employee to the section 17.2(c) restriction. *In the Matter of Susan Kessler*, Commission Case No. 5-92.

Members of the Bar

Former State officers and employees who are also members of the bar must also adhere to the ethical standards adopted by the New Jersey Supreme Court:

Except as law shall otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter (1) in which the lawyer participated personally and substantially as a public officer or employee, (2) about which the lawyer acquired knowledge of confidential information as a public officer or employee, or (3) for which the lawyer had substantial responsibility as a public officer or employee. (RPC 1.11 (a)).

The scope of New Jersey's Conflicts of Interest Law is at least as broad as the rules covering attorney ethics. Requests for advice on the application of the Rules of Professional Conduct should be directed to the Supreme Court Advisory Committee on Professional Ethics.

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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