

GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

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P.O. Box 082
Trenton, New Jersey 08625

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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. 20-95

SUBJECT: Post-Employment.

FACTS: The former State employee requested an opinion as to whether he is permitted to provide accounting services in connection with projects regulated by his former agency. The particular service in question involved an audit.

RULING: The Commission determined that the former employee is prohibited, under section 17 of the Conflicts Law, from performing an audit of the particular housing project in question since he was substantially and directly involved in that

project during his tenure at the agency.

REASONING: The Commission reviewed the facts of the situation under section 17, the post-employment provision of the statute, which prohibits a former State employee from representing, appearing for, or negotiating on behalf of a party other than the State in connection with any matter in which he was substantially and directly involved during his State employment.

During his State employment, the former employee had supervisory responsibility for agency audits of the particular project in question; had personally conducted an

audit of the project in 1989; signed several agreements in regard to the project on behalf of the agency; participated in meetings with members of his staff on decisions regarding the project; and had supervisory responsibility for a staff that reviewed and approved all expenditures and contracts for building maintenance and repairs for the project during the period that he was employed at the agency.

The Commission viewed the above activities as substantial and direct involvement in the project in question and thus determined that the proposed audit would be violative of the post-employment provision of the Conflicts Law.

COMMISSION CASE NO. 31-95

SUBJECT: Contracting with a State Agency, Appearance of Impropriety.

FACTS: The special State officer requested an opinion from the Commission as to whether his agency may purchase video products produced by a company owned by him. The contract for the videos is actually between the special State officer's company and a private non-profit entity.

RULING: The Commission advised the special State officer that under the application of sections 19 and 23(e)(7) of the Conflicts Law the agency is permitted to purchase video products produced by a company owned by him.

REASONING: The Commission reviewed the facts of the situation under section 19, the contracting provision, and section 23(e)(7), the appearance provision of the statute. The individual in question is a special State officer for the purposes

of the Conflicts Law; thus, under section 19, he is permitted to contract with any State agency other than his own and is prohibited from contracting with his own agency only if he has any duties and responsibilities in connection with purchasing.

The special State officer, in his official capacity, did not have any duties and responsibilities in connection with purchasing. In addition, the contract in question was actually between the special State officer's company and a private entity. The State agency was planning to purchase the videos from this private entity. Thus, the purchase is permitted under the application of section 19.

The Commission also reviewed the facts under section 23(e)(7) and noted that any appearance problem is mitigated by the fact that the contract is with a private entity, not the State agency, and the purchases are made under the same terms and conditions available to any person or entity that purchases off the contract. In addition, the special State officer would not be approving purchases. The Commission also noted that the special State officer's contract with the private entity predated his appointment to the State agency; the contract had been in existence for approximately 12 years and he had been a member of the agency for only 1 year.

COMMISSION CASE NO. 29-95

SUBJECT: Unwarranted Privilege and Appearance of Impropriety.

FACTS: The Commission received an allegation that the State employee afforded preferential treatment to his former em-

ployer in connection with the approval of a matter pending before his agency.

RULING: In accordance with *N.J.A.C. 19:61-3.1(h)*, the Commission determined that there was no factual basis for a finding of a violation of the Conflicts of Interest Law and dismissed the allegation.

REASONING: The Commission reviewed the facts and circumstances under section 23(e)(3) of the Conflicts Law and determined that there was no indication that the State employee had attempted to influence the review of the matter in question. His role seemed to have been to convey status information to the company when it was requested of him by the company; this role was not out of keeping with his responsibilities in the Department.

There was a second allegation that the employee had materials in his office with the name of his former company on them. The Commission noted that these items were brought with him from his former employment and while this may be a judgment issue, there did not appear to be any facts to support an ethics charge.

A third allegation was that the employee made a comment thanking Department employees at a senior staff meeting for work in connection with his former employer's matter. This was interpreted by some employees as an expression of gratitude on behalf of the company. The Commission noted that there was no record as to what was actually said. The employee indicated that it is his management style to thank people for good work and he did it on that occasion for other matters as well as the matter which involved his former employer. The Commission noted that thanks from a

company to the Department staff for particular work is not uncommon and comes in writing with some frequency.

COMMISSION CASE NO. 30-95

SUBJECT: Unwarranted Privilege.

FACTS: The Commission received an allegation that the State employee used his position to secure items for his own use at his home from a contractor to his agency.

RULING: The Commission, in accordance with *N.J.A.C. 19:61-3.1(h)*, found that there was no factual basis for a finding of a violation of the Conflicts of Interest Law and dismissed the allegation.

REASONING: The Commission reviewed the facts and circumstances surrounding the allegation. The employee produced records showing that the contractor offered surplus materials for sale to workers at the site at the conclusion of the project. The State employee produced a receipt for a cash sale and also receipts for some of the same items purchased by him from another building supplier prior to the project in question. The Commission was advised that this type of sale of surplus materials is not unusual at construction sites. Sales are normally on a cash and carry basis.

The Commission noted that these types of purchases may raise some policy issues about relationships between contractors and State employees who are there to inspect and oversee the projects. However, in this particular situation, there was no evidence of any unwarranted privilege.

COMMISSION CASE NO. 32-95

SUBJECT: Representing a party other than the State before a State agency.

FACTS: The Commission received an allegation that the State employee represented an outside association before a State agency.

RULING: The Commission, in accordance with *N.J.A.C. 19:61-3.1(h)*, found that there was no factual basis for a finding of a violation of the Conflicts of Interest Law and dismissed the allegation.

REASONING: The Commission reviewed the facts and circumstances under section 16 of the Conflicts Law which prohibits a State employee from representing a party other than the State before any State agency. The activity in question was a public meeting held by a State agency seeking input on ways to make government more responsive and efficient and less cumbersome. It was not a decision-making forum, but rather was a public information meeting. The Commission determined that this particular meeting did not appear to be the type of representation that section 16 is intended to prohibit. The employee acknowledged that he did read a statement on behalf of the private association at the meeting.

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**Peter Anderson**

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State Agricultural Development**Committee****Robert J. Baumley**

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Department of Banking and Insurance**Jennifer Zima**

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Department of Commerce**Connie Calisti**

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Department of Corrections**Kathy Wiechnik**

CN 863

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New Jersey State Parole Board**Michael Carlin, Esq.**

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(609) 984-6256

Department of Education**R. Stephen Blaustein**

CN 500

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(609) 292-4444

Election Law Enforcement**Commission****Barbra Fasanella**

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Department of Environmental**Protection****Ida Marie Engelhardt**

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(609) 777-4262

Office of the Governor**Blaine Stanley**

CN 001

Trenton, New Jersey 08625

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Governor's Council on Alcohol and**Drug Abuse****Carolyn Bronson**

CN 345

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Department of Health**James Houston**

CN 360

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(609) 292-6915

Council on Higher Education**Jeanne Oswald**

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Department of Human Services**Barbara Allen**

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Department of Labor**Roberta Altobelli**

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Department of Law & Public Safety**Carol Johnston**

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Department of Personnel**Janet Share Zatz**

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Office of Public Defender**Diana Johnston**

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Board of Public Utilities**Carol Entenza-Artale**

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Department of State**Mary Cudjoe**

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Office of Student Assistance**Laura Rivkin**

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Department of Transportation**Jeffrey Stoolman**

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New Jersey Transit**Albert R. Hasbrouck III**

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ATTENDANCE RULES

As space permits, the staff includes relevant Commission rules and guidelines in the newsletter. Because we frequently receive inquiries regarding the attendance rules, they are reproduced below. Each Department is permitted to design its own form for attendance approvals. These forms may be obtained from the Department's Ethics Liaison Officer.

N.J.A.C. 19:61-6. ATTENDANCE AT EVENTS, ACCEPTANCE OF HONORARIA, AND ACCEPTANCE OF COMPENSATION FOR PUBLISHED WORKS

19:61-6.1 Applicability

The rules in this subchapter apply to all State officials in the Executive branch of State government.

19:61-6.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Approval" for the purposes of N.J.A.C. 19:61-6.4 and 6.5 means written permission from the department head to attend and/or participate in an event; to accept an honorarium or fee; and/or to accept direct or indirect benefits in connection with attendance.

"Commission" means the Executive Commission on Ethical Standards.

"Department head" means the administrative or executive head of the State official's agency or his or her designee.

"Direct benefit" means acceptance by a State official from the sponsor of an event or any other person of travel, meals, accommodation, waiver of conference or event fee or any other costs associated with attending the event for which no payment is made by the State but is not intended to mean nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).

"Event" means a meeting, conference, seminar, speaking engagement, symposium, training course, ground-breaking, ribbon-cutting, meal, open house, cocktail party, fundraiser, holiday party, social function, or similar event that takes place

away from the State official's work location, is sponsored or co-sponsored by a non-State government source and the invitation for which is extended to the State official because of his/her official position.

"Indirect benefit" means acceptance by a State official from the event sponsor or any other person of reimbursement for costs of travel, meals, accommodation, event fees, or any other costs associated with attending the event for which no reimbursement is made by the State but is not intended to mean nominal refreshments such as nonalcoholic beverages and snacks (doughnuts, pastries and cookies).

"Interested party" means: 1. Any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or supervisory authority of the State official's agency; 2. Any supplier, or employee, representative or agent thereof; 3. Any organization that advocates or represents the positions of its members to the State official's agency; or 4. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

"Person" means any natural person, association, organization, firm, partnership or corporation.

"Personal funds" means funds of a State official. It does not include funds that are loaned, advanced, promised or reimbursed to a State official for any purpose by an interested party.

"Published work" means any tangible medium of expression, including but not limited to, literary, pictorial, graphic, and

sculptural matter; sound recordings; and software.

"State official" means any State officer or employee or special State officer or employee as defined in the Conflicts of Interest Law, N.J.S.A. 52:13D-13(b) and (e).

"Supplier" means any private sector person that is providing or is seeking to provide or may reasonably be expected to provide goods and/or services to the State official's agency, including but not limited to, consultants, vendors and lessors.

19:61-6.3 Granting of approval

(a) For the purposes of N.J.A.C. 19:61-6.4 and 6.5, when a department head grants approval to attend an event, the department head shall determine whether a legitimate State purpose will be served by attendance and shall consider the provisions of the Conflicts of Interest Law, the departmental code of ethics, any applicable Executive Orders, the guidelines and rules of the Commission, any departmental administrative policies and any other relevant considerations. Relevant considerations include, but are not limited to:

1. The identity of the sponsor;
2. The purpose of the event;
3. The identity of other expected participants;
4. Whether attendance/participation in the event will assist the State official in carrying out his or her official duties and support the mission of the agency; and

5. The monetary value and character of the costs, benefits and/or honoraria provided by the sponsor including, whether the costs, benefits and/or honoraria are comparable to those offered to or purchased by other attendees.

(b) Approval shall be requested in writing on a form similar to that provided in N.J.A.C. 19:61-6.7. Such forms shall be retained by the department for a period of five years from the date of approval of the form.

(c) When an agency has numerous divisions or similar subunits with very diverse missions, the department head may request that the Commission permit that such divisions rather than the department be treated as agencies for the purposes of this subchapter. The department head shall provide the Commission with information identifying the diversity of the missions of the divisions and justifying their separate treatment as agencies.

19:61-6.4 Attendance at an event sponsored by an interested party

(a) The State official shall secure the prior approval of the department head to attend such an event.

(b) Except as provided in (c) below:

1. The State shall pay the reasonable expenses of the State official associated with attending the event.

2. Neither the State official nor the State shall receive any direct or indirect benefit from any other source.

(c) The requirement and prohibition in (b) above need not apply if the event is designed to provide training, dissemination of information, or the exchange of ideas and the 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. If an actual conflict or the appearance of conflict could arise under the application of this subsection, (b) above shall govern. Approvals granted under this exception must be forwarded to the Commission for review.

(d) The State official may pay his or her own expenses with his or her personal funds.

(e) The State official shall not accept an honorarium or fee for a speech or presentation at an event covered by this section.

Examples

An employee of the Department of Environmental Protection has been invited to attend a conference of the Association of Environmental Authorities and has been asked to present a short program to explain a new series of forms being proposed by the Department. The Association has offered to waive the \$200.00 conference fee; the conference program includes morning and afternoon refreshments and lunch. If the Department head approves the employee's attendance and participation in the conference, the employee may accept the waiver of the fee and the refreshments and meal included in the pro-

gram. A copy of the Department head's approval must be forwarded to the Commission.

The Division of Motor Vehicles is considering the purchase of new pollution testing equipment. One of the companies that plans to submit a bid invites several Division employees to a demonstration of the equipment to be held at a hotel conference center. A seafood buffet will be served after the demonstration. With proper approval, the employees may attend the demonstration, but because the company plans to submit a bid to provide this equipment and is therefore an interested party with respect to the Division, the employees may not partake of the seafood buffet at the expense of the vendor. The employees may, however, pay the cost of the buffet personally.

19:61-6.5 Attendance at an event sponsored by an entity other than an interested party

(a) The State official shall secure the prior approval of the department head to attend such an event.

(b) The State official shall not permit the use of his or her official title for the purpose of fundraising for a private organization.

(c) The State may pay the reasonable expenses of the State official associated with attending the event or may permit the State official to accept direct or indirect benefits. An interested party shall not provide a direct or indirect benefit to the State official in order to facilitate his or her attendance.

(d) A State official making a speech or presentation at the event may accept an honorarium or fee from the sponsor.

(e) Under no circumstances shall a State official accept entertainment collateral to the event, such as a golf outing, or meals taken other than in a group setting with all attendees, or reimbursement therefor.

Examples

An employee of Travel and Tourism at the Department of Commerce has been invited, by the Mexican Tourist Bureau, to attend a series of meetings on promoting tourism in both countries. The employee will be giving a speech at a dinner on the final day of the meetings and has been offered a \$500.00 honorarium. With proper approval, the employee may attend the meetings and may accept an honorarium in connection with his speech. In addition, he may accept, directly or by reimbursement, actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State.

A local non-profit organization would like to hold a dinner/fundraiser honoring a Technical Assistant at the Department of Insurance who has been a long-time supporter of the organization. The organization plans to use the Technical Assistant's picture, name and official title on the promotional literature. The Technical Assistant may attend the event but is prohibited from allowing such use of his official title for fundraising purposes.

19:61-6.6 Compensation for published work(s)

(a) A State official shall not accept compensation for published work(s) created as part of his or her official duties on State time utilizing State resources, but may accept compensation for published works not created as part of his or her official duties.

(b) A State official shall secure the permission of the department head to accept compensation for published work(s) not created as part of his or her official duties. In determining whether such approval can be granted, the Department head shall consider the provisions of the Conflicts of Interest Law, the departmental code of ethics, any applicable Executive Orders, the Commission's *Guidelines for Secondary Employment*, any other applicable guidelines or rules of the Commission, any applicable departmental administrative policies, and the following conditions:

1. Compensation shall not be from an interested party;
2. The published work(s) shall not use or disclose information not generally available to the public;
3. The State official shall prepare the published work(s) on his or her own time, without using the services of other State officials or resources owned by the State; and
4. The State official shall not use his or her official title in any way in soliciting compensation and shall indicate that his or her views do not represent those of the State.

Examples

As part of his official duties, a Department of Transportation employee evaluates surveying equipment and trains Department employees on its use. The employee recently completed an in-depth evaluation of ten different types of surveying instruments and made a recommendation to the purchasing unit. The employee would like to publish the entire report in Transportation Magazine. He has been offered \$500 for the article. The Department must make a policy decision as to whether the article may be published. The employee is prohibited from accepting compensation for the article, even if the Department grants permission for the publication, since it was created as part of his official duties prepared on State time and utilizing State resources.

An Environmental Technician at the Department of Environmental Protection has been asked to write an article for an environmental journal on how New Jersey's automobile emission standards differ from those of Pennsylvania. He has been offered \$500 for the article. The Environmental Technician is permitted to publish the article and receive compensation since it is on a subject matter related to, but not a part of, his official duties, so long as he prepares the article at home, on his own time, without using any State resources.

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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