

# GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

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## **THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS**

Chairman Jacob C. Toporek, Vice  
Chairman Scott A. Weiner, Commissioner  
David Applebaum, Commissioner Anthony  
Cimino, Commissioner Zulima Farber,  
Commissioner Dr. Bruce Siegel, and  
Commissioner Kathy Stanwick; 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. 20-92**

**SUBJECT:** Secondary Employment

**FACTS:** The State employee appealed the decision of the Departmental Ethics Committee that her secondary employment in an institution regulated by her Division constituted a conflict of interest with her Departmental employment.

**RULING:** The Executive Commission confirmed the ruling of the Department Ethics Committee that the State employee's outside employment at an institution regulated by her Division constituted a conflict of interest with her employment by the Department.

**REASONING:** The Commission affirmed the Department's position that

the State employee's outside position in an institution regulated by her Division creates a situation where there is an appearance of a violation of the public trust. The situation also carries the potential, because of the employee's responsibilities in the secondary employment, that her Division could be required to investigate her actions in the future if her dual employment continued.

### **COMMISSION CASE NO. 22-92**

**SUBJECT:** Financial Interest, Impairment of Objectivity, Appearance of Impropriety

**FACTS:** The State employee alternated between two roles, as an employee of a State regulatory agency (for three months per year) and as a contractor to provide services to a private entity regulated by his

State agency (the remaining nine months of the year).

**RULING:** The Executive Commission ruled that since there was no specific instance of improper action by the State employee either alleged or revealed by the staff's investigation, there was no indication of a violation of sections 23(e) (1), (e)(5) or (e)(7) of the Conflicts Law. Under section 23(e)(1), a State officer or employee cannot have any interest, financial or otherwise, direct or indirect, which is in substantial conflict with the proper discharge of his duties. Section 23(e)(5) prohibits the undertaking of any employment or service by a State employee which might reasonably be expected to impair his objectivity and independence of judgment in the exercise of his official duties. Section 23(e)(7) prohibits a State officer or employee from knowingly acting in any way that might reasonably be expected to create an impression of a violation of the public trust. The Commission did determine, however, that a State employee who works for a regulated entity cannot also be employed by the State regulatory agency responsible for overseeing that entity.

**REASONING:** The Commission determined that the indirect financial interest required by section 23(e)(1) appeared to be present since the State employee has a current contract with the private entity to perform services. In addition under section 23(e)(5), the employment at the private entity could be viewed as a relationship that might reasonably be expected to impair the State employee's objectivity and independence of judgment in the exercise of his official duties since there might be some reluc-

tance to take action in a regulatory role that could cause financial loss in the outside employment. The Commission also found the alternating roles to be troublesome under the appearance section of the statute, section 23(e)(7). The State employee interacted with the same individuals in both roles and in his regulatory role, the State employee was required to make subjective decisions impacting these same individuals. Since the State employee did have a private professional relationship with the same individuals, the public could question his ability to remain unbiased. Another appearance factor considered was that it is possible that the regulatory agency could have occasion to take administrative action against the State employee. If such a situation did occur, the regulatory agency's objectivity could be questioned.

### **COMMISSION CASE NO. 28-92**

**SUBJECT:** Recusal

**FACTS:** The State employee is employed at a State institution of higher education and also sits on a State Board that makes policy decisions which could affect the institution. In his capacity as Board member, the State employee participated in discussions and voting on the delaying of new regulations which affected students in the institution where he held full-time employment.

**RULING:** The Executive Commission ruled that the State employee's conduct did not violate the Conflicts Law and dismissed the allegation. The delaying of the regulation at issue had no impact on

the State employee's position at the institution where he was employed.

**REASONING:** Since the discussions and voting at the Board meeting involved only the issue of delaying the new regulation and not eliminating it, the State employee was not impacted in any way by such a decision and thus no conflict existed.

#### **COMMISSION CASE NO. 29-92**

**SUBJECT:** Refusal

**FACTS:** The special State officer sits on the State Board that makes policy decisions which could affect institutions of higher education. In her capacity as Board member, she participated in discussions and voting on the delaying on a new regulation which affected a category of students that she had occasion to supervise in the past. At the time of the discussions and voting, the special State officer had no involvement with this category of students.

**RULING:** The Executive Commission ruled that the special State officer's conduct did not violate the Conflicts Law and dismissed the allegation.

**REASONING:** Since the special State officer had no direct or indirect financial interest that could have conflicted with or impaired her objectivity in the discharge of her official duties at the time of the Board meeting, there was no violation of the Conflicts Law.

#### **COMMISSION CASE NO. 34-92**

**SUBJECT:** Unwarranted Privilege

**FACTS:** The State employee hired her son apparently with no advertisement or

other attempt to make known to the job-seeking public in the vicinity that there was a position available.

**RULING:** The Executive Commission ruled that there were indications that the State employee had violated *N.J.S.A. 52:13D-23(e)(3)* and *23(e)(7)* by hiring her son.

**REASONING:** Since there was no advertisement or other attempt to make known to the job-seeking public in the vicinity that there was a position available, the State employee exercised an unwarranted privilege in violation of section *23(e)(3)* in hiring her son. The Commission also looked to prior Commission precedent which determined that relatives working for the same agency cannot have a supervisor/subordinate relationship. In the situation under consideration, the State employee supervised her son's work.

#### **COMMISSION CASE NO. 1-93**

**SUBJECT:** Secondary Employment

**FACTS:** The State employee requested approval of his outside activity as an arbitrator. It is possible that the arbitration assignments could include disputes between individuals regulated by the State employee's Department.

**RULING:** The Executive Commission ruled that the State employee could engage in outside employment as an arbitrator subject to specific conditions.

**REASONING:** The Commission determined that since the State employee

does not become involved in the substantive disputes that come to the Department and refers complaints to others in the Department when they are received, his outside employment would not represent a conflict with his State position. The employee can engage in the arbitration activity subject to the condition that should an individual or company with which the employee has dealt in his official capacity come before him in his role as arbitrator, he must recuse himself. In addition, should an individual or company with which the State employee has dealt as an arbitrator come before him in his official capacity, he must also recuse himself. The State employee was also advised that he must use leave time or non-working hours for his arbitration activities and he may not use State resources, supplies or equipment in connection with his outside activities.

### **COMMISSION CASE NO. 5-93**

**SUBJECT:** Relationship with Casino Applicants or Licensees

**FACTS:** The State employee holds a Deputy Commissioner position and requested an opinion on the effect of section 17.2(b) on him, his spouse, who is an employee of a public relations firm that recently acquired a casino licensee as a client, and his spouse's employer.

**RULING:** The Executive Commission advised the State employee that under the application of section 17.2(b) both he and his spouse are prohibited from holding an interest in or employment with or representing, appearing for or negotiating on behalf of the holder of a casino license.

These prohibitions do not affect his spouse's employer because the State employee does not have an interest in the firm.

**REASONING:** Under the plain language of section 17.2(b) the State employee and members of his/her family are prohibited from holding employment with or an interest in or engaging in any representational activity on behalf of a casino licensee. A partnership, firm or corporation is subject to that same prohibition if the State employee is associated with the firm or has an interest in the firm. In this particular instance, the State employee has represented that he has no association with this firm nor does he have any interest in the firm.

### **COMMISSION CASE NO. 8-93**

**SUBJECT:** Secondary Employment

**FACTS:** The State employee works for a regulatory agency and requested permission to engage in outside employment as a consultant advising clients regarding petitions to be presented to an agency in but not of his particular Department. The State employee was previously employed by the in but not of agency.

**RULING:** The Executive Commission ruled that the appearance of a violation of the public trust could not be overcome and denied the secondary employment request.

**REASONING:** The Commission determined that even though the State

employee would not appear for the client and no material written by him or using his name would be submitted to the agency in but not of his particular Department, it is likely that former colleagues would be aware of his consulting work. The Commission was concerned that the consulting work for a client appearing before an agency with an in but not of relationship with his employing agency created an appearance of impropriety.

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

### **GUIDELINES - RETIREMENT GIFTS**

**Promulgated by the Executive Commission on Ethical Standards, February 15, 1989**

These guidelines address the circumstances under which appropriate recognition can be given to retirees from State service without exceeding the bounds of propriety or giving rise to an impression of violation of the public trust.

Typically, retirement functions comprise a get-together, with or without a meal, and the presentation of a gift or monetary token to the retiree, to his/her spouse, and/or to his/her dependent(s). In planning such events, the responsible group or individual must choose between two approved alternatives with regard to funding and the value of any and all gifts to be presented.

1. Gifts may be funded by a maximum contribution of \$5 per person, collected from invitees to the retirement function. If this method of funding is used, no maximum value is set for the cost of the gifts, but contributions of more than \$5 per invitee are not permitted.

Or

2. The maximum value of retirement gifts cannot exceed \$1,000. If this method is used, there is no maximum set on individual contributions, but the total value of retirement gifts and/or monetary tokens to the retiree, spouse, and dependent(s) cannot exceed \$1,000.

If instead of presenting gifts and/or monetary tokens to the retiree, spouse, and dependent(s), a decision is made to make a monetary contribution to a qualified organization (under I.R.S. Code 501(c)(3)), no limit is placed on the maximum value of the contribution.

#### **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.