



# GUIDELINES

The Newsletter of the New Jersey Executive Commission on Ethical Standards

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## THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS

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### HOLIDAY PARTIES

The staff receives numerous inquiries during the holiday season about the appropriateness of State employees attending parties hosted by individuals or entities that their agencies deal with in an official capacity. The Commission's Attendance Rules, N.J.A.C. 19:61-6.1 et seq., are applicable to the majority of these invitations because most are extended to the State official because of his/her official position. In considering whether approval to attend an event should be granted, the Department head or designee, usually the Ethics Liaison Officer, must determine whether the party's host is an "interested party" and whether a legitimate State purpose will be served by attending. An interested party is defined in N.J.A.C. 19:61-6.2 as:

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 agency 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.

A "person," as used in the definition, is a natural person, association, organization, firm, partnership or corporation.

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

In the case of purely social events sponsored by an interested party, the rule indicates that State officials cannot attend as guests of the sponsor.

### GUIDELINES GOVERNING RECEIPT OF GIFTS AND FAVORS BY STATE OFFICERS AND EMPLOYEES

1. Each department shall require full disclosure by employees to the office of the department head through the Ethics Liaison Officer upon receipt of a gift or any other thing of value from a person, corporation, or association with whom they have had contact in their official capacity.

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.

2. Each department should designate an Ethics Liaison Officer to monitor compliance with specific procedures under which officers and employees shall proceed upon receipt of a gift or any other thing of value from a person, corporation, or association with whom they have had contact in their official capacity.

3. All officers and employees should be instructed that any gift or other thing of value received from a person or corporation with whom they have had contact in their official capacity must be reported and remitted immediately to the Ethics Liaison Officer. Similarly, any favor, service, employment or offer of employment from such person or corporation must be reported immediately.

4. Unsolicited gifts or benefits of trivial or nominal value, such as complimentary articles offered to the public in general, and gifts received as a result of mass advertising mailings to the general business public may be retained by the recipient or the recipient's department for general use if such use does not create an impression of a conflict of interest or a violation of the public trust. An impression of a conflict may be created, for example, if an employee of a regulatory agency uses a pocket calendar conspicuously marked with the name of a company that it regulates or if an office in a State agency displays a wall calendar from a vendor, creating the impression of an endorsement. If circumstances exist which create a reasonable doubt as to the intention with which the gift or benefit was offered, the other paragraphs of these Guidelines govern.

5. The Ethics Liaison Officer shall determine whether the gift, favor, employment, offer of employment, or anything of value was given or offered with the intent to influence or reward the performance of the recipient's public duties and responsibilities, or whether it may be reasonably inferred to have been given or offered with the intent to influence the performance of his or her public duties and responsibilities, or whether the use of the item will create an impression of a conflict of interest or a violation of the public trust.

6. Upon a determination that there was an intent or it could be reasonably inferred that there was an intent to influence the performance of the recipient's public duties and responsibilities, or that the use of the item will create the impression of a conflict or a violation of the public trust, the Ethics Liaison Officer shall return the gift or thing of value to the donor.

7. The Ethics Liaison Officer will have the responsibility of keeping the records of all such occurrences; names of the employees, individuals, and companies involved, and the final disposition of the gift or thing of value.

8. The Commission's rule at *N.J.A.C.* 19:61-6.1 et seq. governs acceptance of benefits in connection with attendance at events.

9. The assistance of the Director of the Executive Commission will be available to all Ethics Liaison Officers to aid them in the evaluation of individual cases.

## **Return of Gifts**

If the Ethics Liaison Officer determines that a gift cannot be accepted, the Commission staff recommends that, in the case of non-perishable items, the gift be returned to the donor along with a brief note thanking the individual and advising that State ethics rules prohibit the acceptance of gifts.

Items of a perishable nature should be donated to a charitable organization. Listed below are the names of organizations that have been provided to the staff by various Ethics Liaison Officers.

If you have an organization that you would like to place on this list, please contact Donna Schmitz at (609) 292-1892 or FAX at (609) 633-9252.

Anchor House  
482 Center Street  
Trenton, NJ 08611  
Contact: David Brown  
(609) 396-8329

Lift Inc.  
225 North Warren Street  
Trenton, NJ 08618  
Contact: Alma Hill  
(609) 695-5456

Martin House  
802 East State Street  
Trenton, NJ 08606  
Contact: Father McCormick  
(609) 989-1040

Triad House  
2205 Pennsylvania Road  
Ewing, NJ 08638  
(609) 771-1600

Good Samaritan Center  
523 Stevens Street  
Camden, NJ 08103

Neighborhood Center  
278 Kaighn Avenue  
Camden, NJ 08103

Millhouse Convalescent Center  
325 Jersey Street  
Trenton, NJ 08611  
Contact: Kelly Steele  
(609) 396-5378

Trenton Soup Kitchen  
72 1/2 Escher Street  
Trenton, NJ 08605  
Contact: Pierine Phayer  
(609) 695-5456

Lighthouse Community Ser.  
487 Washington Avenue  
Newark, NJ  
(973) 802-1802

Trenton Rescue Mission  
P.O. Box 617  
Trenton, NJ 08604  
Contact: Executive Director

Leavenhouse  
644 State Street  
Camden, NJ 08102

Your Food Shelf  
1500 Federal Street  
Camden, NJ 08105

Cathedral Kitchen  
15 N. 7th Street  
Camden, NJ 08102

Make a Wish Foundation of NJ  
P.O. Box 40281034  
Salem Road  
Union, NJ 07083  
Contact: Norma Godwin  
Executive Director  
(908) 964-5055  
1(800) 252-9474  
FAX (908) 964-0082

Tandem Healthcare  
Princeton Pike and Franklin Corner Road  
Lawrenceville, New Jersey 08648  
(609)896-1494

El Centro  
1035 Mechanic Street  
Camden, NJ 08103

## **GUIDELINES GOVERNING OUTSIDE ACTIVITIES**

The Commission staff has revised and expanded the Secondary Employment Guidelines and renamed them Guidelines Governing Outside Activities to reflect the broad scope of the Guidelines.

## **GUIDELINES GOVERNING OUTSIDE ACTIVITIES**

These Guidelines present a comprehensive overview of decisions and policies of the Executive Commission on Ethical Standards concerning outside activities, both compensated and uncompensated. The Commission has addressed outside activities under the application of

standards embodied in the New Jersey Conflicts of Interest Law, *N.J.S.A.* 52:13D-12 et seq.: sections 16, representation, appearance or negotiation regarding a proceeding pending before a State agency; 17.2(b), State employee/family member relationships with casino applicants or licensees; 19, contracts with State agencies; 23(e)(1), interest in substantial conflict with official duties; 23(e)(2), licensed or regulated activities; 23(e)(3), unwarranted privilege; 23(e)(5), employment or service reasonably expected to impair objectivity and independence of judgment; 23(e)(7), appearance of impropriety; 24, receipt of thing of value for service related to official duties; 25, information not generally available to the public; and *N.J.A.C.* 19:61-6.7(b), compensation for published works.

All outside employment/volunteer activities must receive prior approval from the agency Ethics Liaison Officer. The following issues must be examined in determining whether an outside activity can be approved. Does the outside position require representation before a State agency? Does the outside position involve a casino licensee or applicant for a casino license? Does the outside activity involve contracting with a State agency? Is there a significant overlap in the duties and responsibilities of the two positions? Does the State employee's agency have control, supervision, or jurisdiction over the outside entity? Does the outside entity receive grants from or contract with the State employee's agency? Does the outside activity involve a published work? Does the outside interest involve political activity? These Guidelines present summaries of past Commission cases, organized under the questions listed above. The case presentations are solely to provide examples of outside activities that have been addressed by the Commission. Also included are general explanations of the statutory provisions applicable to outside employment/volunteer activities.

**Agency Codes of Ethics.** Pursuant to *N.J.A.C.* 19:61-2.2(a), all State agencies are required to include in their Codes of Ethics a requirement that all employees annually disclose outside employment and/or business interests. The disclosure procedure is to be formulated by each agency with respect to its particular needs and problems. An agency may find it administratively efficient to exempt disclosure of specific kinds of outside employment; for example, part-time work for businesses not related to the position of employment in the agency. All disclosures must be forwarded to the Commission for review.

A number of agency codes of ethics prohibit certain types of outside employment. For example, attorneys employed by the Department of Law and Public Safety are prohibited from engaging in the outside practice of law.

Outside activities disapproved by a State employee's agency may be appealed to the Commission. Appeals should be directed in writing to the Executive Director, Executive Commission on Ethical Standards, 28 West State Street, P.O. Box 082, Trenton, NJ 08625.

**Does the Outside Position Require Representation Before a State Agency?**

Section 16(a) of the Conflicts Law prohibits a special State officer or employee, or any partnership, firm or corporation in which he has an interest, from representing, appearing for, or negotiating on behalf of, or agreeing to perform any of the aforementioned, on behalf of any person or party other than the State in connection with any cause, proceeding, application or other matter pending before the particular agency in which such special State officer or employee holds office or employment.

Section 16(b) of the Conflicts Law prohibits a State officer or employee, or any partnership, firm or corporation in which he has an interest, from representing, appearing for, or negotiating on behalf of, or agreeing to perform any of the aforementioned, on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before any State agency.

“Interest” is defined in section 13(g) of the Conflicts Law as (1) the ownership or control of more than 10% of the profits or assets of a firm, association, partnership, or more than 10% of the stock in a for-profit corporation, other than a professional service corporation or (2) the ownership or control of more than 1% of the stock in any corporation which is the holder of or applicant for a casino license or in any holding or intermediary company with respect thereto. In the case of a professional service corporation, the provisions governing the conduct of individuals are applicable to shareholders, associates or professional employees regardless of the extent or amount of their shareholder interest in such corporation.

Section 16(c) sets forth exceptions to the general prohibitions of sections 16(a) and 16(b). Those exceptions include matters (1) pending before any court of record in the State, (2) in regard to a workers’ compensation claim, (3) in connection with the determination or review of transfer, inheritance or estate taxes, (4) in connection with filing of corporate or other documents in the Office of the Secretary of State, (5) before the Division on Civil Rights, (6) before the State Board of Mediation, (7) before the Public Employment Relations Commission, (8) before the Unsatisfied Claim and Judgment Fund Board, (9) before any State agency on behalf of a county, municipality or school district or any authority, agency or commission thereof except where the State is an adverse party and provided the State employee does not hold office or employment in the State agency where the matter is pending.

**Engineers.** In Case No. 6-93, the Commission was asked to consider the extent of the section 16(b) prohibition in the case of a Department of Transportation Project Engineer. The Project Engineer requested an opinion as to whether his secondary employment performing dam inspections for private land owners and completing reports to be submitted to the Department of Environmental Protection and Energy (“DEPE”) constituted representational activity prohibited

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

In several cases since 1993, the Commission has found that State employees who sign documents, make telephone calls or submit correspondence in connection with matters pending before a State agency are in violation of section 16.

**Tax Preparers.** The Commission has addressed the issue of whether a State employee's outside employment preparing State income tax returns is violative of section 16(b) of the Conflicts Law on a number of occasions (Cases No. 619-77, 830-79, 828-79, 908-80). In these cases, the Commission permitted the State employees to continue their outside employment as tax preparers, but advised them that they had an obligation to inform clients that in the event of a dispute, the State employees could not appear before the Division of Taxation or any other State agency. In 1993, the Commission revisited the issue, determined that the preparer's signature on the State tax return does not constitute representational activity, and confirmed its earlier rulings.

**Attorneys.** In Case No. 48-89, a Member of the Statewide Health Coordinating Council (“SHCC”) requested advice from the Commission as to the applicability of Section 16(a) of the Conflicts Law to her situation. The Member secured employment in the health care department of a New Jersey law firm and asked what effect her employment with the firm would have on the firm and its clients. The firm, a partnership, represented providers of healthcare goods and services before the Department of Health, the SHCC, and other related public bodies. The Member's status with the firm was that of employee; she had no interest in the firm as defined in section 13(g) of the Conflicts Law.

The Commission advised the Member that section 16(a) prohibited her from representing, appearing for, or negotiating on behalf of any party other than the State in connection with any matter pending before the SHCC. This prohibition did not extend to the law firm because the Member had no interest in the firm.

In Case No. 394-76, the Commission considered whether it would be a conflict of interest for a Project Specialist, Department of Health (“DOH”), to maintain a part-time law practice out of his home. In his official capacity, the employee was responsible for developing and evaluating a rate system for payment of hospital costs based on diagnostically related illness. The Commission determined that the DOH employee was permitted to engage in the outside practice of law with the understanding that he refrain from representing any person or party, including

*non-New Jersey governmental agencies, in any case related to rate-setting in health care facilities or other providers of medical care. This would avoid any possibility that decisions or conclusions rendered in such a case could be used to challenge the rate systems in New Jersey. The DOH employee had voluntarily agreed that he would not represent any health care facilities or other providers of medical care within the State while employed by the DOH.*

*In Case No. 355-76, Administrative Assistant, Child Care Licensing Section, Division of Youth and Family Services, Department of Human Services, the Commission determined that no conflict existed between the Administrative Assistant's State position and his private law practice provided that he refrain from offering services in any child, family, or licensing matters in which DYFS was involved or might be involved.*

**Campaign Treasurer.** *In Case No. 29-97, the Commission determined that, under the operation of section 16(b) of the Conflicts Law, State employees are prohibited from acting as campaign treasurers because campaign reports signed by them must be submitted to the Election Law Enforcement Commission ("ELEC"), and, in the event of a complaint to ELEC, a State employee would be required to appear in person or respond in writing to ELEC's inquiry.*

#### **Does the Outside Position Involve a Casino Licensee or Applicant for a Casino License?**

**State Officer or Employee.** A State officer or employee, other than a State officer or employee included in the section 17.2(a) definition of "person," may hold employment with the holder of or applicant for a casino license only if the Commission grants a waiver. A waiver of the prohibition can be granted if, in the Commission's judgment, 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. Waivers may be sought by contacting the Commission.

**Family Members.** Members of the immediate family of a State officer or employee, or of a person, may also hold employment with the holder of or applicant for a casino license by obtaining a waiver from the Commission. An immediate family member is defined as a spouse, child, parent or sibling residing in the same household.

**Does the Outside Activity Involve Contracting With a State Agency?** Section 19(a) of the Conflicts Law prohibits a State officer or employee or from entering into a contract, valued at \$25 or more, with any State agency. A special State officer or employee having any duties or responsibilities in connection with the purchase or acquisition of property or services by the State agency is restricted from contracting with his/her agency. This prohibition also extends to partners or any corporation which the State officer or employee or special State officer or employee controls or in which he owns or controls more than 1% of the stock.

Section 19 exempts only three categories of contracts from this general prohibition: (1) contracts made after public notice and competitive bidding; (2) contracts that maybe awarded without public advertising and competitive bidding pursuant to N.J.S.A. 52:34-10 or similar provisions; and (3) contracts of insurance entered into by the Director of the Division of Purchase and Property, Department of the Treasury, pursuant to N.J.S.A. 52:27(b)-62.

State employees must receive the approval of the Commission prior to contracting under any of the section 19(b) exceptions. The Commission has approved many requests over the years by State employees to bid on contracts that are subject to public notice and competitive bidding. Such requests are generally approved if the contract in question is not with the State employee's own agency. The Commission has relied on section 23(e)(7), the appearance section of the statute, in limiting a State employee's participation in the contracting process when the contract is with his/her own agency.

The Commission has also granted approval for contracts that may be awarded without public advertising and competitive bidding pursuant to N.J.S.A. 52:34-10, where the State employee is the sole source of supply for a particular good or service. N.J.S.A. 52:34-10 also exempts purchases from the federal or any State government or any agency or political subdivision thereof; public exigency; contracts where more favorable terms can be obtained from a primary source of supply; seasonal articles or wearing apparel; where commodities traded on a national commodity exchange are to be purchased and fluctuations of the market require immediate action; or the equipment to be purchased is of a technical nature and procurement without advertising is necessary in order to assure standardization of equipment and interchangeability of parts.

*In Case No. 7-91, the Commission for the Blind and Visually Impaired ("CBVI") requested that the Commission approve an exception to section 19 to permit the CBVI to contract with a State employee for the development of a computer software package. The State employee was identified by the CBVI as the sole source of supply for generating this program. The Commission approved the contract, pursuant to N.J.S.A. 52:34-10, with the understanding that all work would be performed on the State employee's own time and without the use of State resources.*

*In 1992, the Commission considered whether a Department of Human Services caseworker could continue to perform psychosocial evaluations of juvenile inmates for the Department of Corrections ("DOC"), Case No. 30-92. The Commission determined that section 19 permitted dual employment by two different State agencies but did not permit personal service contracts. The Commission determined that the caseworker's arrangement with the DOC was a personal service contract that did not fall within the exception of section 19(b). They noted that, while it was a contract that could be awarded without*

public notice and competitive bidding, the authority for such an award was N.J.S.A. 52:34-9; section 19(b) only allows contracts which are awarded pursuant to N.J.S.A. 52:34-10.

In Case No. 25-94, the Commission considered whether a Statistical Engineer, Bureau of Materials Engineering, Department of Transportation, was permitted, under section 19, to provide photography services to the State Museum and other State agencies. The Commission determined that the Statistical Engineer could not contract with the State Museum to perform photography work because the contracts were not subject to public notice and competitive bidding and did not fall within the exceptions of N.J.S.A. 52:34-10.

In Case No. 15-99, the Commission affirmed a Department of Human Services ("DHS") decision that a DHS employee was prohibited, under section 19 of the Conflicts Law, from serving as a pool attorney for the Office of the Public Defender ("OPD"). The OPD uses the services of licensed New Jersey attorneys to handle "pool" cases, cases that have multiple defendants or cases that employees of the OPD cannot handle because of the volume or backlog of work or a conflict of interest. The DHS employee appealed to the Superior Court, Appellate Division, which upheld the Commission's decision.

**Licensed or Regulated Activities.** Pursuant to section 23(e)(2) of the Conflicts Law, all occupational, trade, business, or professional licenses issued by a State agency must be reported to the Commission. Such licenses include, but are not limited to, attorney, physician, nurse, pharmacist, engineer, real estate, insurance, private detective, and teacher. If the license is inactive, please so note. As is the case with any secondary employment activity, a State employee must receive the prior approval of the agency Ethics Liaison Officer prior to any outside use of a professional license.

**Is There a Significant Overlap in the Duties and Responsibilities of the Two Positions?** In Case No. 40-91, the Commission considered an appeal by the Director of Social Services, Office of Public Guardian ("OPG"), Department of Community Affairs ("DCA"), that her proposed pursuit of a private practice as an "Eldercare Consultant" was incompatible with her State position of Director of Social Services, OPG. The DCA Ethics Committee denied the secondary employment based on the fact that the two positions dealt with the same general area, the duties and responsibilities of the two positions were similar, and the possibility existed that there were individuals, organizations, and entities that the DCA employee might deal with in both positions. The Commission confirmed the ruling of the DCA Ethics Committee. The Commission reviewed the situation under sections 16(b), 23(e)(3), (5) and (7) of the Conflicts Law.

In Case No. 769-79, the Commission considered whether it would be a conflict of interest for the Coordinator, Government and Small Business Aids, Division of

Economic Development, Department of Labor and Industry, to serve as a trustee of a local development corporation designed to help small businesses on a local level. The Commission noted that it appeared that the Coordinator would be providing on a local level the same service that he was authorized to offer in his State position. Moreover, it would not be unreasonable to expect that he would review applications for State aid submitted by the small businesses he had assisted on a local level. The Commission determined that it would be a conflict for the Coordinator to hold his present State position and concurrently serve as a trustee of the local development corporation. The Commission cited section 23(e)(5) in its determination.

In Case No. 1127-82, the Commission considered an appeal by the Assistant Chief of Vital Statistics and Registration, Department of Health ("DOH"), from a determination by the DOH that he should discontinue activities in connection with a company owned by him and a co-worker. The company sold vital records binders to municipalities for use by local registrars for the purpose of filing original vital records. In his official capacity, the State employee was responsible for assisting and instructing local registrars in a number of matters including maintenance of vital records files. His partner had even more contact with local registrars in that he was responsible for supervising and training vital statistics field personnel who provided technical assistance and guidelines to them. He further was responsible for conducting inspections of offices of local registrars to ensure compliance with federal and State laws and to ensure the proper maintenance of records. The Commission upheld the DOH's determination that the sales activity had sufficient relationship to their official responsibilities so as to come within the prohibition of section 23(e)(5).

**Does the State Employee's Agency Have Control, Supervision, or Jurisdiction Over the Outside Employer?** In numerous cases, the Commission has determined that State employees cannot engage in secondary employment when their activities are subject to regulation or inspection by the agency for which they work.

In Case No. 20-92, a Public Health Representative 1, Office of Emergency Medical Services ("OEMS"), Division of Health Facilities Evaluation and Licensing ("DHFEL"), Department of Health ("DOH"), appealed a decision of the DOH Ethics Committee that her secondary employment as a per diem evening shift nursing supervisor at a local hospital constituted a conflict of interest with her Departmental employment. The OEMS is responsible for certifying and conducting routine inspections of hospital-based Mobile Intensive Care Unit programs.

In her capacity as an evening nursing supervisor at the hospital, the DOH employee was the on-site administrator in charge of the hospital during her shift. She had received approval from her supervisor prior to accepting the outside employment. Subsequent to that approval, OEMS was transferred to the DHFEL. The DHFEL is responsible for

*licensing health facilities in the State and for conducting inspections of the facilities to ensure compliance with statutory and regulatory requirements. The Commission found that the DOH Ethics Committee had balanced the integrity of the DOH's inspection system against the employee's ability to pursue part-time employment and affirmed the ruling of the Committee and the policy prohibiting such activities. The Commission reviewed the situation under sections 23(e)(5) and (7) of the Conflicts Law.*

*In Case No. 26-92, the Commission concurred with the Department of Law and Public Safety that a Safety Specialist, Division of Motor Vehicles ("DMV"), could not engage in outside employment repairing small holes, chips and cracks in automobile windshields because his customers would be subject to DMV inspection.*

*In Case No. 24-97, a Conservation Officer III, Division of Fish, Game and Wildlife, Department of Environmental Protection ("DEP"), appealed the DEP's denial of his secondary employment request to participate in the commercial harvest of eels/elvers. The DEP, through the Division, regulates and oversees New Jersey's freshwater fisheries and regulates the commercial harvest of elvers. The DEP employee, in his official capacity, spent between 40 and 60 percent of his enforcement hours working on elvering enforcement during the season. The Commission concurred with the DEP's decision that the employee be denied permission to engage in the commercial harvest of eels/elvers. The Commission reviewed the situation under sections 23(e)(1), (4), (5), and (7) of the Conflicts Law.*

**Does the Outside Entity Receive Grants from or Contract with the State Employee's Agency?** In July 2000, in Case No. 20-00, the Commission determined that, in the absence of enabling legislation, code of ethics or other applicable guidelines, regulations, or policies that prohibit such activity, all outside employment situations involving grant or contractual relationships take into account the following factors, in addition to the other factors set forth in these Guidelines, in determining whether approval may be granted.

Whether the position in question was created as a result of the State grant or contract.

Whether the State employee is in a policymaking or decisionmaking position.

Whether the State employee had any involvement in the drafting or review of the RFP, the award of the grant, negotiation of the contract, or has oversight responsibilities in connection with the grant or contract.

Whether the State employee, in his/her official capacity, has authority to refer clients to the outside entity.

Whether the outside position is in the same geographic area as the employee's State position.

Whether the State employee has had or can be expected to have any official interaction with the grant recipient or contractor in his/her official capacity.

In Case No. 20-00, the Commission noted that its previous decisions regarding special State officers remained unchanged. Board and commission members make policy, establish grant criteria, review proposals, make decisions, oversee grants and can be expected to have official interaction with the grant recipient(s). Thus, special State officers cannot represent parties before their agencies, cannot receive funding, directly or indirectly, from their agencies, and cannot provide services for agency-funded programs.

**Published Works.** Under N.J.A.C. 19:61-6.7(b), section 24 of the Conflicts Law, and Commission precedent, a State employee may accept compensation for published works under the following conditions.

There is no prohibition governing such activity in the Department's enabling legislation or Code of Ethics.

The State employee must obtain prior approval from his/her Department head.

The published work must not use or disclose information not generally available to the public.

The State employee must not use State time or resources in connection with the published work.

The State employee must not use his/her official title in connection with publication or promotion of the published work.

The State employee must indicate that his/her views do not represent those of the State.

The State employee cannot promote, advertise or solicit sales of the published work to co-workers or individuals with whom he/she has official dealings.

The State employee may not contract to sell the published work to the State except in compliance with section 19 of the Conflicts Law.

The published work must not have been prepared as part of the State employee's official duties.

In addition, under the current rule, the receipt of compensation from an "interested party" is not prohibited, but is a factor to be considered in deciding whether to grant approval.

*In Case No. 255-75, the Commission considered whether employees of the Public Broadcasting Authority ("PBA") could receive a compensation fee for journalistic work used on a commercial station. Various journalists employed full-time by the PBA were approached for the use of news items that they wrote during the hours that they were*



*employed by the State. These scripts, films or tapes were being used on commercial TV channels. The commercial stations wished to compensate the journalists for the use of their work. The Commission determined that it would be a violation of section 24 of the Conflicts Law for State employees to receive compensation from any source other than the State for news items created as part of their official duties.*

*In Case No. 3-84, the Commission found that the Supervising Program Development Specialist, Bureau of Research, Division of Youth and Family Services ("DYFS"), Department of Human Services ("DHS"), could not accept a cash award from a gerontological society for a paper prepared by him as a DYFS employee.*

*The DHS was awarded a grant to study abuse of the elderly. Because of his experience in the field of gerontology, the State employee was assigned the task of preparing a paper on the subject as part of his official duties. The paper was prepared entirely on State time with grant monies administered by the State. The State employee then submitted the paper for consideration for an annual research award and was the recipient of that award. The Departmental Ethics Review Board concluded that the acceptance of the cash award was violative of the Department's Code of Ethics. The Commission noted that the employee had solicited the award and affirmed the DHS' determination. The State employee appealed the Commission's decision to the Superior Court, Appellate Division, which upheld the Commission's determination.*

*In 1997, the Department of Law and Public Safety requested an opinion as to whether a Division of Law Deputy Attorney General ("DAG") was permitted to co-author a book about psychics and the paranormal, Case No. 3-97. The DAG wanted to write the book in her private capacity and use her married name (she is known by her maiden name in her employment with the Department). The Commission determined that the DAG was permitted to co-author the book under the following conditions: that she not refer to her status as a DAG or member of the Department; that she not permit the use of her title or employment in connection with publication or promotion of the book; that she not write about an active case or use information not generally available to the public; that she avoid any legal analysis that could be interpreted as Division of Law work product; that she not use State time or resources in connection with her outside activity.*

*In Case No. 34-98, the Commission determined that the Managing Actuary, Division of Life and Health, Department of Banking and Insurance ("DOBI"), was permitted to co-author and market a study guide utilized by students preparing to take the Society of Actuaries ("SOA") professional examination under the Commission's rules, precedent, the Conflicts of Interest Law and the DOBI Code of Ethics. In approving the activity, the Commission took into account the following factors: the study guide is sold nationally and not just to New Jersey exam registrants, the employee co-authored the book while at Temple, uses only his name and not his official title in connection with the study guide and does not directly solicit regulated entities.*

Additional examples of published works situations that have been addressed by the Commission can be found under "Published Works" at [www.state.nj.us/lps/ethics/general.htm](http://www.state.nj.us/lps/ethics/general.htm)

**Political Activity.** The Commission permits involvement in partisan political activities provided that there is no provision in the agency code of ethics prohibiting such activities. (Election Law Enforcement Commission, Executive Commission on Ethical Standards and several other agency codes have specific provisions prohibiting such activities.) State employees, however, may not use State time or State resources in pursuit of such activities and must notify their Departmental Ethics Liaison Officer. The Department of Personnel has issued regulations that address the political activities of State employees. These regulations, which reference the Federal Hatch Act, are not administered or enforced by the Commission.

*In Commission Case No. 435-77, the Commission determined that a Department of Health employee was permitted to serve as chairman or co-chairman of a public employees' committee in support of a gubernatorial candidate. The State employee was cautioned that he must not use or attempt to use his official position to secure unwarranted privileges or advantages for the candidate of his choice. Further, he must be careful not to permit his political activities to conflict with the proper discharge of his duties in the public interest.*

*In Commission Case No. 34-85, two members of the Board of Dentistry were advised that N.J.S.A. 52:13D-24 expressly permits the solicitation and acceptance of campaign contributions for announced candidates for elective public office. The dentists were cautioned, however, about political activities which directly involve persons subject to licensure and review by the Board of Dentistry. The dentists sent letters, on personal stationery, to thousands of New Jersey licensed dentists, to solicit re-election campaign funds for a New Jersey Assemblyman.*

Additional examples of political activity situations that have been addressed by the Commission can be found under "Political Activities" at [www.state.nj.us/lps/ethics/general.htm](http://www.state.nj.us/lps/ethics/general.htm)

**General Caveats.** The Commission generally provides the following advice to individuals with approved outside activities. State time cannot be used for outside activities. State resources, including but not limited to telephones, facsimile machines, e-mail, copy machines, mail service and office supplies, cannot be used for outside activities. Coworkers and/or individuals with whom the State employee comes in contact in his/her official capacity cannot be solicited as clients for outside activities, including but not limited to real estate services, cosmetic sales, consulting services, and legal services. State employees are also prohibited from referring clients to any firm with which they are associated.



**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**

**The Commission's newsletters are also  
available online at :**

**<http://www.state.nj.us/lps/ethics/newsletters.htm>**