



GUIDELINES

The Newsletter of the New Jersey State Ethics Commission

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THE STATE ETHICS COMMISSION

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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 with which their agencies deal in an official capacity. The Commission's Attendance Rules, N.J.A.C. 19:61-6 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 any natural person, government entity, association, organization, firm, partnership or corporation. A "supplier" is any 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

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 related in any way to the State officer or employee's or special State officer or employee's public duties.
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 related in any way to their public duties.
3. All officers and employees should be instructed that any gift or other thing of value offered to or by an officer or employee that is related in any way to his/her public duties 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. The Ethics Liaison Officer shall return a gift or thing of value that is related in any way to an officer or employee's public duties to the donor or shall otherwise appropriately dispose of it.

5. 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.

6. 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.

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

Perishable Items

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: Judith Hutton
(609) 396-8329

Martin House

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

Triad House

2205 Pennington Road
Ewing, NJ 08638
(609) 771-1600

Good Samaritan Center

325 Market Street
Camden, NJ 08101

Neighborhood Center

278 Kaighn Avenue
Camden, NJ 08103

Millhouse Convalescent Center

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

Lighthouse Community Services

487 Washington Avenue
Newark, NJ 07102
(973) 802-1802

Trenton Rescue Mission

98 Carroll Street
P.O. Box 617
Trenton, NJ 08604
(609) 695-1436

Leavenhouse

532 State Street
Camden, NJ 08102
(856) 966-4596

Your Food Shelf

1500 Federal Street
Camden, NJ 08105
(856) 365-6475

Cathedral Kitchen

642 Market Street
Camden, NJ 08102
(856) 964-6771

Make a Wish Foundation of NJ

1034 Salem Road
Union, NJ 07083
(908) 964-5055

Tandem Healthcare

Princeton Pike and Franklin Corner Rd.
Lawrenceville, NJ 08648
(609) 896-1494

El Centro

1035 Mechanic Street
Camden, NJ 08103

Trenton Soup Kitchen

72 ½ Escher Street
Trenton, NJ 08605
Contact: Cathy Ann Vandergrift
(609) 695-5456

Mercer Street Friends

151 Mercer Street
Trenton, NJ 08611
(609) 396-1506

Atlantic City Rescue Mission

2009 Bacharach Boulevard
Atlantic City, NJ 08401
(609) 345-5517

Shelter Our Sisters

P.O. Box 217
Hackensack, NJ 07602
(201) 836-1075

Hendricks House, Inc.

542 North West Boulevard
Vineland, NJ 08360
(609) 692-6012

Newark Emergency Services for Families

982 Brad Street
Newark, NJ 07102
(973) 643-5727

Salvation Army Feeding Program

13 Trinity Place
Montclair, NJ 07042
(973) 744-3312

Square Meal

46 Fairview Avenue
Jersey City, NJ 07306
(201) 332-0864

Eva's Kitchen

96 Hamilton Avenue
Paterson, NJ 07505
(201) 526-6220

The Children's Home of Burlington County

243 Pine Street
Mount Holly, NJ 08060
1-877-TLC-KIDS

Food Bank of South Jersey

1501 John Tipton Boulevard
Pennsauken, NJ 08110
(856) 662-4884

Womanspace, Inc.

Administrative Office
1212 Stuyvesant Avenue
Trenton, New Jersey 08618
Phone: 609-394-0136

Commission Case No. 37-05

SUBJECT: Contracting with the State

FACTS: The agency Ethics Liaison Officer ("ELO") requested an opinion from the Commission as to whether a board member, who is a special State officer, is permitted to sell a real estate interest to a nonprofit organization that may subsequently apply to sell the interest to either a county board or the State board on which the member sits.

RULING: The Commission advised the ELO that a board member is permitted to sell a real estate interest to a nonprofit organization that may subsequently sell this interest to either a county board or the State board on which the member sits so long as there is no prior agreement between the parties that the interest will be sold to a county board or the State board or that the member will receive any benefit from such a subsequent sale. However, the member must recuse himself/herself should the organization subsequently sell this interest to the State board of which he/she is a member.

REASONING: The agency code of ethics prohibits a special State officer or employee or any member of his/her immediate family from selling a real estate interest to the State board. Neither the Conflicts Law nor the agency code of ethics prohibits a member from selling the interest to an individual or entity other than the State board. In the absence of any prior agreement between the parties that the interest will be sold to the State board or a county board or that the member will receive any benefit from such a subsequent sale, the type of transaction at issue is permitted.

Commission Case No. 43-05

SUBJECT: Employment of Relatives; Unwarranted Privilege

FACTS: The Commission reviewed an allegation that the State employee used his official position to secure employment with his agency for three relatives.

RULING: The Commission, pursuant to *N.J.A.C.* 19:61-3.1(h), determined that there were indications that the State employee violated sections 23(e)(3), unwarranted privilege, and 23(e)(7), appearance of impropriety, and *N.J.A.C.* 19:61-7.4, the Commission's Recusal Rule, and directed staff and counsel to draft a complaint. The individual in question entered into a consent agreement with the Commission and paid a civil penalty of \$1,000.

REASONING: The Commission's Recusal Rule, adopted in November 2001, clearly establishes that a State employee must recuse himself on any matters affecting a relative. The State employee's actions in referring relatives for employment and approving personnel actions is not permitted by the rule and can be seen to create an impression among the knowledgeable public that the public trust has been violated. In addition, the circumstances surrounding the promotion and hiring of relatives suggests that the State employee used his position to secure unwarranted advantages for each. One relative was placed into and maintained in a title not approved by the Department of Personnel. Another relative was hired in spite of an error-laden resume, which was corrected through the employee's personal involvement. In addition, the State employee requested that a Human Resources employee come to his office to interview the relative.

Commission Case No. 44-05

SUBJECT: Acceptance of Compensation for Outside Employment

FACTS: The State official requested that the Commission review and approve his outside compensated employment, teaching a course, one night per week, at a State college.

RULING: The Commission advised the State official that while he was permitted to teach a course at the college, subject to the restrictions of the Department's Code of Ethics, he was not permitted, under the application of section 24(d) of the Conflicts Law, to accept compensation from the college for teaching the course.

REASONING: Section 24(d) of the Conflicts Law prohibits certain State officials from accepting such compensation. Statutory and Code of Ethics provisions place some restrictions on his outside employment but do not prohibit it. Thus, the State official may teach the course, but not accept payment for his services.

Commission Case No. 55-05

SUBJECT: Outside Activity

FACTS: The special State officer appealed a directive from the agency that he vacate one of two positions that he held. He served as a municipal attorney and was also a member of a County Board of Taxation.

RULING: The Commission deferred to Advisory Opinion No. 490, issued by the Supreme Court's Advisory Committee on Professional Ethics on December 10, 1982. Under the terms of that Opinion, the special State officer may continue to serve as a borough municipal attorney and sit on the County Board of Taxation. The Opinion indicates that he may only counsel the Borough on non-tax matters. He must recuse on any Board matter related to the Borough for which he serves as municipal attorney.

REASONING: The agency's directive was based on Commission precedent regarding individuals who hold positions as County Tax Board members and municipal governing body members. In those cases, dating to the early 1980s, the Commission relied on *Jones v. MacDonald*, 33 N.J. 132 (1960), (Common Law Doctrine of Incompatibility precludes an individual from holding the positions of County Tax Board member and Borough Council member), and Attorney General's Opinion M82-5142 (Positions of Senior Field Representative of County Tax Board and Municipal Council member are incompatible). The special State officer relied on Advisory Opinion No. 490, which advises that there is no inherent conflict of interest for an attorney to represent a municipality, or one of the various arms of a municipality, located in the same county in which he is a member of the Tax Board. The Commission determined that this Opinion was on point and seemed dispositive of the special State officer's situation.

Commission Case No. 23-06

SUBJECT: Attendance at Events

FACTS: The staff received a request for advice concerning a recent amendment to N.J.S.A. 52:13D-24, which now permits State employees to accept reimbursement or payment of travel and subsistence expenditures from any agency of the federal government. The requestor asked whether State employees may be reimbursed for out-of-state travel expenses by a for-profit entity acting on behalf of the federal government.

RULING: The Commission advised that the federal agency exemption of section 24 of the Conflicts Law applies when the payment or reimbursement to or on behalf of the State employee is made by a for-profit corporation that is under contract with or has received a grant from the federal government to administer the out-of-state conference or training program.

REASONING: The Commission determined that it was reasonable to interpret section 24 to permit State employees to receive reimbursement for travel expenses that are made either by or on behalf of the federal government, or an agency of another state or two or more states, or any political subdivision of another state, absent any specific circumstances that raise ethical concerns. As a safeguard, if a for-profit company administers the conference or training program funded by the federal government, the Department Ethics Liaison Officer must review the matter for conflicts and authorize direct payment to or on behalf of the State employee.

New Rules

The Commission's new rules were published in the New Jersey Register on August 21, 2006. The text of those rules follows.

STATE ETHICS COMMISSION

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SUBCHAPTER 1. ORGANIZATION

19:61-1.1 Scope of rules

The rules in this chapter shall constitute the practices and procedures of the State Ethics Commission and shall govern all activities of the Commission pursuant to N.J.S.A. 52:13D-12 et seq.

19:61-1.2 Meetings and offices

The Commission shall meet at the call of its Chair upon not less than three days notice to members thereof. The Commission may maintain offices in such place or places as it may deem advisable.

19:61-1.3 Presiding member

The Chair shall preside, but in case of absence or inability to serve, the Vice Chair shall temporarily preside in his or her stead. In the absence of both, the senior member attending shall preside. Seniority of the members of the Commission shall be determined by the order of their respective appointments to the Commission.

19:61-1.4 Quorum

Four members of the Commission shall constitute a quorum. If a quorum does not attend a session of the Commission, the presiding member may adjourn the Commission, or, in the absence of all the members, the Executive Director or his or her designee may adjourn the Commission from day to day.

19:61-1.5 Executive or open meetings

Meetings of the Commission, including open and executive sessions, shall be conducted in compliance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

19:61-1.6 Majority vote

No determination of the Commission shall be rendered unless supported by the vote of members constituting a majority of the quorum present. Minutes of Commission meetings may be approved by a majority of eligible members. A member is eligible to vote on minutes of meetings that he or she attended.

19:61-1.7 Conflict with agency rules

Any conflict between the rules established by the Commission and those developed by the various State agencies to implement their respective Codes of Ethics shall be resolved in favor of the rules established by the Commission.

19:61-1.8 Enlargement of time

A reasonable extension of time for the taking of any action

for which these rules prescribe a time limitation may be granted by the Commission upon a clear showing of good cause and the absence of prejudice.

19:61-1.9 Administrative head

The Commission may appoint an Executive Director who shall serve as the administrative head of the Commission. In the absence of an administrative head, the Chair may designate an individual to serve as acting administrative head.

19:61-1.10 Definitions

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

“Chair” and “Vice Chair” shall mean the members of the Commission designated by the Governor to serve as the Chair and Vice Chair thereof.

“Cohabitant” shall mean any person, whether related by blood or adoption or not, who is actually residing with the State official.

“Commission” shall mean the State Ethics Commission continued and established in but not of the Department of Law and Public Safety by the provisions of N.J.S.A. 52:13D-12 et seq.

“Financial Disclosure Statement” means a comprehensive statement of assets, liabilities, business interests and sources of income which persons occupying certain positions in State government are required to file annually with the Commission pursuant to statute or Executive Order.

“Person” means any natural person, government entity, association, organization, firm, partnership or corporation.

“Preliminary investigation” means the investigative process undertaken by the Commission and/or its staff and/or a State agency’s ethics liaison officer or State agency’s ethics committee with regard to an allegation prior to review of and final action on the allegation by the Commission at a public meeting, pursuant to either N.J.A.C. 19:61-3.1(h) or (i).

“Relative” shall mean an individual's spouse or the individual's or spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related to the individual or the individual's spouse by blood, marriage or adoption.

“State agency” means any of the principal departments in the Executive Branch of the State government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, and

to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.

“State official” shall mean 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).

SUBCHAPTER 2. JURISDICTION

19:61-2.1 Jurisdiction of the Commission

(a) The jurisdiction of the Commission shall extend to those situations arising under the provisions of N.J.S.A. 52:13D-12 et seq., involving current and former State officials of the Executive Branch of the government, staff of the Governor-elect compensated pursuant to N.J.S.A. 52:15A-3, and as granted under the provisions of Executive Orders and any other statutes; and the Commission shall also have jurisdiction to enforce the provisions of N.J.S.A. 5:12-58, 59, and 60.

(b) All determinations made by State agencies with regard to the Conflicts of Interest Law or a Code of Ethics shall be filed with the Commission. It shall be within the discretion of the Commission to review said determinations and affirm, reverse or modify same.

19:61-2.2 Codes of ethics

(a) The Commission shall adopt a uniform ethics code to govern and guide the conduct of State officials. The uniform code shall be the primary code of ethics for State agencies.

1. Each State agency shall put into place a distribution procedure to ensure that each current State official and each new State official receives a copy of the uniform ethics code. Each State official shall sign a receipt indicating the date on which the uniform ethics code was received and an acknowledgment that the State official is responsible for reading the uniform ethics code and is bound by it. The receipt shall be maintained in the State official’s personnel file.

(b) Each State agency shall promulgate a code of ethics to address the particular needs and problems of the agency. The agency code of ethics shall be a supplement to the uniform code and shall recognize the uniform code as the primary code.

1. Each State agency shall submit its code of ethics to the Commission for approval.

2. A State agency code of ethics becomes effective upon approval of the Commission.

3. Each State agency shall put into place a distribution procedure to ensure that each current State official and each

new State official receives a copy of the approved agency code of ethics. Each State official shall sign a receipt indicating the date on which the agency code of ethics was received and an acknowledgment that the State official is responsible for reading the agency code of ethics and is bound by it. The receipt shall be maintained in the State official's personnel file.

19:61-2.3 Plain Language Ethics Guide

(a) The Commission shall prepare a plain language ethics guide which provides a clear and concise summary of the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning ethical standards applicable to State officials. The guide shall be prepared to promote ethical day-to-day decision making, to give general advice regarding conduct and situations, to provide easy reference to sources, and to explain the role, activities and jurisdiction of the Commission.

(b) Each State agency shall put into place a distribution procedure to ensure that each current State official and each new State official receives a copy of the plain language ethics guide, reviews it and understands its provisions.

19:61-2.4 Procedure where Commission is without jurisdiction

Whenever it shall appear that the Commission is without jurisdiction over a matter brought before it, it shall so notify the person bringing the matter. Where possible, the matter shall be forwarded to the proper agency for further action.

19:61-2.5 Access to documents

(a) Every financial disclosure statement accepted for filing by the Commission, pleadings related to a complaint, all final orders, decisions and opinions shall be maintained by the Commission as documents available to the public. Requests for advisory opinions from the Commission and replies to requests for advisory opinions may be made available to the public after consideration by the Commission.

(b) Any person shall, upon request, be afforded opportunity to examine a document, or a photocopy of any document so maintained at the Commission offices between 9:00 A.M. and 4:00 P.M. on business days.

19:61-2.6 Copies of documents; fees

(a) Photocopies of documents maintained by the Commission pursuant to N.J.A.C. 19:61-2.5 shall be provided in accordance with the procedures and fees set forth in N.J.S.A. 47:1A-1 et seq.

(b) Fees for photocopies shall be due and payable at such time as the photocopies have been prepared.

SUBCHAPTER 3. PROCEEDINGS

19:61-3.1 Allegations; procedure

(a) Every allegation, whether written or oral, received by the Commission shall be reviewed by the Commission's staff for an initial determination as to whether the alleged conduct falls within the jurisdiction of the Commission.

1. It shall be within the discretion of the Commission to transfer those allegations involving the alleged violation of the uniform ethics code or a code, rule, or regulation promulgated by a State agency, to that agency for disposition in accord with its procedures.

2. It shall be within the discretion of the Commission to transfer those allegations involving the alleged violation of another State statute to the appropriate enforcing authority.

3. Any preliminary investigation by a departmental ethics liaison officer or a departmental ethics committee shall be confidential.

(b) The Commission shall promptly conduct and complete a preliminary investigation of all allegations; such investigation may include interviews of the complainant, the State official involved, and any other individuals who possess knowledge of the circumstances surrounding the alleged conduct. An investigation regarding a violation committed during service by a former State official shall be initiated by the Commission not later than two years following the termination of service.

(c) At the beginning of the preliminary investigation, the Commission shall assign a case number to the allegation.

1. During the course of the preliminary investigation, the allegation shall be identified only by case number, not by the names(s) of the State official(s) involved.

2. No information regarding the allegation shall be made public until after the Commission action in accordance with (g) or (h) below. After the final determination of a matter before the Commission and the expiration of any time for appeal, the Commission shall consider requests for information related to the completed matter. The contents of the Commission's investigative file, however, are confidential and shall not be released except upon authorization of the Commission. The Commission shall consider and determine whether the requester has a particularized need for the contents of the file and has established an inability to obtain the requested information from other sources. In its consideration, the Commission shall balance the requester's need against the public interest to maintain the confidentiality of the files.

(d) After the conclusion of the preliminary investigation, the Commission shall notify the State official(s) involved and the head of the State agency employing said State official(s) of the date of the meeting at which the Commission shall consider the preliminary investigation.

(e) If a Commission member holds office or employment in the same State agency which employs the State official named in the allegation, he or she shall disqualify himself or herself from participation in any decisional process relating to that particular case.

(f) The Commission may, after review of the preliminary investigation, refer the allegation to the State agency of the State official(s) involved for appropriate action.

(g) If the Commission finds that there has been no violation of N.J.S.A. 52:13D-12 et seq., or any code, rule, or regulation promulgated pursuant thereto, as alleged, it shall dismiss the allegation. The Commission shall have the authority to dismiss a complaint that it determines to be frivolous.

(h) If the Commission determines that there are indications of a violation meriting further investigation, a complaint shall be set down promptly for hearing at the Office of Administrative Law pursuant to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, or the Commission may hold the hearing itself. If the Commission hears the matter, it shall follow the standards of the Administrative Procedure Act.

(i) After the hearing is concluded, a decision shall be issued in accordance with the time frame set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-10.

(j) If the Commission determines that the State official has violated the uniform ethics code, the provisions of N.J.S.A. 52:13D-12 et seq., or any code, rule, or regulation promulgated by any State agency pursuant thereto, it shall fine said State official in accordance with the provisions of N.J.S.A. 52:13D-21(i). An assessed penalty may be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1).

1. The Commission may further order or direct the State agency employing the State official to demote, censure or reprimand said State official, to obtain restitution from said State official, or to suspend said State official for a period not in excess of one year for each violation.

2. Should the Commission find that the conduct of said State official constitutes a willful and continuous disregard of the provisions of the uniform ethics code, N.J.S.A. 52:13D-12 et seq., or any code, rule or regulation promulgated by any State agency pursuant thereto, it may order or direct the State agency employing the State official to remove the State official from his or her office or employment and may further direct that the State agency bar such person from holding any public office or employment in this State in any capacity whatsoever for a period of time not exceeding five years from the date on which he or she was found guilty by the Commission.

19:61-3.2 Subpoena for witnesses

(a) If the Commission shall determine that the testimony of any person or persons is required, it may issue a subpoena in the name of the Commission requiring such person or persons to appear and testify before the Commission, Commission member, or Administrative staff member thereof, from day to day until the examination of such person or persons shall be completed. The Chair or, in his or her absence, the Vice Chair or, in the absence of both, the next-senior member, may make the determination, on behalf of the Commission, to issue a subpoena.

(b) The subpoena may also contain a direction that such person bring with him or her to the examination, any books, papers, or documents designated therein.

(c) If a person subpoenaed to attend any hearing refuses or fails to appear to be examined, or to answer any question or to produce any books, records, accounts, papers and documents when ordered to do so by the Commission, the Commission may apply to the Superior Court to compel the person to comply forthwith with the subpoena, directive or order of the Commission.

19:61-3.3 Allegation by member of Commission

Any member of the Commission may file an allegation with the Commission. Said allegation shall thereafter be treated in accordance with N.J.A.C. 19:61-3.1, except that the Commission member making the allegation shall thereafter be precluded from participating in any decisional processes having to do with that particular cause.

19:61-3.4 Allegation before State agency

An allegation of the violation by a State official of the uniform ethics code or a code, rule, or regulation promulgated by a State agency pursuant to the provisions of N.J.S.A. 52:13D-12 et seq., may be filed with the State agency employing said State official in accord with the procedures established by the agency to process such allegations. Upon receipt of such allegation, the State agency shall file a copy of same with the Commission. It shall be within the discretion of the Commission to direct the State agency to transfer the allegation to it for hearing in accord with N.J.A.C. 19:61-3.1.

19:61-3.5 Determination by State agency

Notice of all determinations made by State agencies in connection with hearings conducted pursuant to N.J.A.C. 19:61-3.1 shall be filed with the Commission. All determinations with respect to the Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq. which involve the removal of a State official or any other disciplinary actions shall be effective when approved by the Commission.

19:61-3.6 Relaxation of rules

The rules set forth in this subchapter regarding the

procedural requirements for the filing of complaints may be relaxed by the Commission in any instance where it shall be manifest to the Commission that a strict adherence to them will work surprise or injustice. In any matter not expressly controlled by these rules or by statute, the Chair shall exercise his or her discretion.

SUBCHAPTER 4. ADVISORY OPINIONS

19:61-4.1 Requests for advisory opinions

Requests for advisory opinions concerning whether a given set of facts and circumstances would in the Commission's opinion constitute possible violations of N.J.S.A. 52:13D-12 et seq., or any code, rules or regulations promulgated pursuant thereto, may be made by any person or persons. Advisory opinions rendered pursuant to this section are only binding as to the facts and circumstances reviewed and considered in the specific request. The Executive Director or designee shall have discretion to determine a format appropriate to the circumstances of each request.

SUBCHAPTER 5. GENERAL PROVISIONS

19:61-5.1 Investigations and hearings

The Commission shall have the power to undertake investigations and hold hearings into matters having relevance to the provisions of N.J.S.A. 52:13D-12 et seq., whether or not an allegation has been filed or request for advisory opinion made, and to this end, the full investigative authority and subpoena power of the Commission shall obtain and be available as required.

19:61-5.2 Publication

(a) The Chair of the Commission shall cause to be filed with the Office of Administrative Law:

1. All advisory opinions of the Commission rendered pursuant to N.J.S.A. 52:13D-21(g); and
2. Notice of any disciplinary action taken by the Commission pursuant to N.J.S.A. 52:13D-21(i).

19:61-5.3 Validity of rules of any portion declared invalid

If any rule, sentence, paragraph or section of these rules or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of these rules.

19:61-5.4 Procedures to request Commission action to promulgate, amend or repeal rules

(a) Persons requesting Commission action to promulgate, amend or repeal rules shall comply with N.J.S.A. 52:14B-4 (f) and any amendments thereto and any implementing rules as adopted by the Office of Administrative Law.

(b) Such persons may obtain forms for petitioning the Commission's Administrative Code Rules from the Commission.

(c) When considering the petition, the Commission shall comply with the time lines and procedures contained in N.J.S.A. 52:14B-4(f).

19:61-5.5 Positions in State government with responsibility for matters affecting casino activity

(a) The Commission has, in consultation with the Attorney General's Office, determined that the following positions in State government have responsibility for matters affecting casino activity and therefore are subject to the restrictions of the Casino Ethics Amendment (N.J.S.A. 52:13D-17.2):

1. Department of Environmental Protection; Land Use Regulation Program; or successor agencies:

i. Bureau of Coastal Regulation or successor agency (One chief and three regional supervisors classified as Supervising Environmental Specialists or successors performing those functions);

ii. Tidelands Resources Council or successor agency (members of the Council);

2. Department of Community Affairs (Division of Codes and Standards) or successor agencies:

i. Bureau of Construction Project Review or successor agency (Chief; assistant chief; supervisor, plans approval or successors performing those functions);

ii. Bureau of Housing Inspection or successor agency (Chief; supervisor, Housing Code Compliance assistant regional supervisor, Housing Code Enforcement or successors performing those functions);

3. State Athletic Control Board or successor agency (Commissioner; three members or successors performing those functions).

(b) The list in (a) above is in addition to the persons identified in N.J.S.A. 52:13D-17.2(a) as being covered by the provisions of the Casino Ethics Amendment.

19:61-5. 6 Financial Disclosure Statements

(a) On an annual basis, each State agency shall, upon request of the Commission, identify each State official within the agency who is required by law or Executive Order to file a financial disclosure statement.

(b) The Commission shall provide instructions for filing the financial disclosure statement to each person identified by a State agency as a person required by law or Executive Order to file a financial disclosure statement.

(c) The Commission shall impose a civil penalty for failure to file a financial disclosure statement. The penalty shall be \$50.00 for each day of the violation, and may be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1).

(d) A financial disclosure statement required to be submitted to the Commission by law, regulation or executive order shall be made available to the public on the Internet site of the Commission promptly after receipt and review by the Commission.

19:61-5.7 Restrictions on Employment

Relatives of persons in the positions in (a) 1 through 6 below in State government are subject to the employment restrictions set forth in this subsection and (b) below.

1. A relative of the Governor shall not be employed in an office or position in the unclassified service of the civil service of the State in the Executive Branch of State government.

2. A relative of a commissioner or head of a principal department in the Executive Branch of State government shall not be employed in an office or position in the unclassified service of the civil service of the State in the principal department over which the commissioner or head of the principal department exercises authority, supervision, or control.

3. A relative of an assistant or deputy commissioner or head of a principal department in the Executive Branch of State government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the assistant or deputy commissioner or head serves, but shall not be assigned to a position over which the assistant or deputy commissioner or head exercises authority, supervision, or control.

4. A relative of a head or assistant head of a division of a principal department in the Executive Branch of State government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the head or assistant head of a division serves, but shall not be assigned to a position over which the head or assistant head exercises authority, supervision, or control.

5. A relative of an appointed member of a governing or advisory body of an independent authority, board, commission, agency or instrumentality of the State shall not be employed in an office or position in that independent authority, board, commission, agency or instrumentality.

6. A relative of an appointed New Jersey member of a governing body of a bi-state or multi-state agency shall not be employed in an office or position in that bi-state or multi-state agency, to the extent permitted by law.

(b) A State official of a State agency in the Executive Branch shall not supervise, or exercise authority with regard to personnel actions over, a relative or cohabitant of the State official.

(c) All State agencies subject to the jurisdiction of the Commission shall develop written procedures that require State officials to disclose information sufficient to determine whether the employment of any individual within the agency is prohibited by (a) or (b) above. A State official shall contact his or her agency ethics liaison officer or the Commission for guidance as necessary to determine whether an employment relationship is prohibited by (a) or (b) above.

SUBCHAPTER 6. ATTENDANCE AT EVENTS, ACCEPTANCE OF HONORARIA, ACCEPTANCE OF COMPENSATION FOR PUBLISHED WORKS, AND ACCEPTANCE OF THINGS OF VALUE

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.

“Allowable entertainment expenses” means the costs for a guest speaker, incidental music and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive, but does not include the costs of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.

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

“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 supplier or a non-State government source and the invitation for which is extended

to the State official because of his or 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.

“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.

“Reasonable expenditures for travel or subsistence” means commercial travel rates directly to and from an event and food and lodging expenses which are moderate and neither elaborate nor excessive.

“Supplier” means any 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.

“Thing of value” includes, but is not limited to, compensation; money; a stock, bond, note or other investment in an entity; employment, offer of employment; gift; reward; honorarium; favor; goods, service; loan; forgiveness of indebtedness; gratuity; property or real property; labor; fee; commission; contribution; rebate or discount in the price of any thing of value; an automobile or other means of personal transportation; entertainment; meal; or any other thing of value offered to or solicited or accepted by a State official in connection with his or her official position.

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 uniform ethics code and the agency 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 and/or 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 and benefits provided by the sponsor, including whether the costs and benefits are comparable to those offered to or purchased by other attendees.

(b) Approval shall be requested in writing on the form provided in N.J.A.C. 19:61-6.8. Such forms shall be retained by the State agency 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 State agency 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 may include the following:

1. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

2. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$500.00 per trip limitation shall not apply if the reimbursement or payment is made by:

i. A nonprofit organization of which the State official is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State;

ii. A nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services; or

iii. Any agency of the federal government, any agency of another state or of two or more states, or any political subdivision of another state.

(d) If an actual conflict or the appearance of a conflict could arise under the application of (c) above, (b) above shall govern.

(e) Approvals granted under (c) above must be forwarded to the Commission for review.

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

(g) 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 program. A copy of the Department head's approval must be forwarded to the Commission.

The Motor Vehicle Commission (MVC) is considering the purchase of new pollution testing equipment. One of the companies that plans to submit a bid invites several MVC

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 MVC, 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.

Three employees from different units of the Department of Transportation are responsible for weekly monitoring of a construction project. Each Friday morning, they meet with the contractor's representative at the site field office to review the week's progress and to assess projected schedules. The meetings generally last one to two hours; coffee is available, but no other refreshments or meals are served or offered. Because no direct or indirect benefits are offered or provided and because the meetings are part of the employees' job responsibilities, the meetings are not "events" for the purposes of this subchapter.

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 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. Direct or indirect benefits may include the following:

1. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

2. Reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$500.00 per trip limitation shall not apply if the reimbursement or payment is made by:

i. A nonprofit organization of which the State official is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State;

ii. A nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services; or

iii. Any agency of the federal government, any agency of another state or of two or more states, or any political subdivision of another state.

(c) 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 shall not 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 the Commerce, Economic Growth and Tourism Commission has been invited, by the Mexican Tourist Bureau, an agency of the Mexican government, to attend a series of meetings on promoting tourism in both countries. The employee will be giving a speech at dinner on the final day of the meetings and has been offered a \$500.00 honorarium. The employee may attend the meetings but is not permitted to accept an honorarium in connection with his speech. 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, not to exceed the statutory limit of \$500.00.

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 Use of official title for private fundraising

A State official shall not permit the use of his or her official title for the purpose of fundraising for a private organization.

19:61-6.7 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 uniform ethics code, the agency 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 administrative policies of the agency, and the following conditions:

1. Whether compensation is being paid by an interested party;
2. Whether the published work(s) uses or discloses information not generally available to the public;

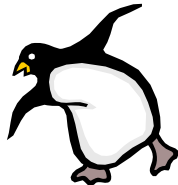
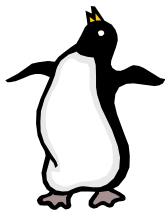
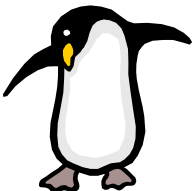
(c) The State official shall prepare the published work(s) on his or her own time, without using the services of other State officials or resources owned by the State.

(d) The State official shall not use his or her official title in any way in soliciting compensation.

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.



(a) State officials shall use the following form to request approval to attend events.

REQUEST FOR APPROVAL FOR ATTENDANCE AT EVENT

DEPARTMENT OF _____

Name _____ Division _____

Title _____ Telephone _____ FAX _____

E-mail address _____

Event _____

Sponsor _____

Is the sponsor an "interested party"? Yes ____ No ____

Is the State official a speaker, panel participant or resource person? Yes ____ No ____

Is the sponsor an agency of the federal government, one or more other states or a political subdivision thereof? Yes ____ No ____

Is the sponsor a nonprofit organization? Yes ____ No ____

If Yes, is the employee or agency a member? Yes ____ No ____

Does the nonprofit organization have any contracts with the State? Yes ____ No ____

Location _____ Date(s) _____

Overnight accommodation required? Yes ____ No ____

Out-of-state travel required? Yes ____ No ____

Estimated cost? \$ _____

Agency to pay cost? Yes ____ No ____

Sponsor to pay cost? Yes ____ No ____

Employee to pay cost? Yes ____ No ____

Reason for attendance: _____

Will sponsor offer an honorarium or fee? Yes ____ No ____

Employee Signature

Date

NOTE: Any substitutions or changes of circumstances must be reported.

Attendance approved Yes ____ No ____ Note: Acceptance of honoraria or fees is not permitted.

Conditions:

Signature

Date

19:61-6.9 Solicitation or acceptance of a thing of value from an interested party

(a) A State official shall not solicit or accept, directly or indirectly, any thing of value from an interested party.

(b) A State official must disclose and remit to his or her Department head any offer or receipt of any thing of value from an interested party.

(c) The Department head shall return the thing of value to the donor or, in the case of a perishable thing of value, transfer it to an appropriate nonprofit entity in the name of the donor.

(d) A State official or his or her agency may retain and use unsolicited gifts or benefits of trivial value, such as complimentary articles offered to the general public, and gifts received as a result of mass advertising mailings to the general business public 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 a State official in 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 endorsement. If circumstances exist which create a reasonable doubt as to the intention with which the gift or benefit was offered, (c) above shall govern.

(e) The Department head shall keep records of all such occurrences, names of the State officials, individuals, and companies involved, and the final disposition of the thing of value.

19:61-6.10 Solicitation or acceptance of a thing of value from an entity other than an interested party

(a) A State official must disclose to his or her Department head any offer or receipt of a thing of value from an entity other than an interested party.

(b) The Department head shall determine whether the thing of value was given or offered with the intent to influence or reward the performance of the State official'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 violation of the public trust.

(c) Upon a determination that there was an intent to influence 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 an impression of a conflict or a violation of the public trust, the Department head shall return the thing of value to the donor or, in the case of a perishable thing of value, transfer it to an appropriate nonprofit entity in the name of the donor.

(d) Upon a determination that a State official may accept a thing of value from an entity other than an interested party, the Department head shall so notify the State official.

(e) A State official or his or her agency may retain and use 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 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 a State official in 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, (c) above shall govern.

(f) The Department head shall keep records of all such occurrences, names of the State officials, individuals, and companies involved, and the final disposition of the thing of value.

SUBCHAPTER 7. RECUSAL PROCESS

19:61-7.1 Purpose

The purpose of this subchapter is to provide State officials with guidance regarding the circumstances under which a State official must recuse himself or herself and procedures as to properly effectuating a recusal.

19:61-7.2 Scope

The rules in this subchapter apply to all State officers and employees and to all special State officers and employees as defined in the Conflicts of Interest Law, N.J.S.A. 52:13D-13(b) and (e), which definitions are incorporated in N.J.A.C. 19:61-1.10.

19:61-7.3 Definitions

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

"Recusal" means the process by which a person is disqualified, or disqualifies himself or herself, from a matter because of a conflict of interest.

"Relative" means a spouse, parent, child, sibling, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, or first cousin, whether in whole or half blood, by marriage, adoption or natural relationship, and the spouse of any such person.

19:61-7.4 Situations where recusal is required

(a) A State official must recuse himself or herself from a

matter if he or she has:

1. Any financial interest, direct or indirect, that is incompatible with the discharge of the State official's public duties; or

2. Any personal interest, direct or indirect, that is incompatible with the discharge of the State official's public duties.

(b) For purposes of (a) above, an incompatible financial or personal interest includes, but is not limited to, outside employment; a debtor/creditor relationship; a fiduciary relationship; a source of income; any matter pertaining to or involving a relative or cohabitant; a relationship with a person providing funds, goods or services without compensation; any matter pertaining to or involving a business associate or business investment; and a leadership role in a professional or trade organization, which interest might reasonably be expected to impair a State official's objectivity and independence of judgment in the exercise of his or her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his or her trust as a State official.

(c) An incompatible financial or personal interest may exist in other situations which are not clearly within the provisions of (a) and (b) above, depending on the totality of the circumstances. A State official should contact his or her agency ethics liaison officer or the Commission for guidance in such cases.

(d) A State official must seek the advice of the State agency's counsel, agency ethics liaison officer or the Commission as to the propriety of participation in a matter if any person requests that a State official recuse himself or herself from that matter. Oral advice, followed up by a writing, may be provided by the agency's counsel, the agency ethics liaison officer or the Commission to avoid delay. Oral advice should subsequently be memorialized by a writing or by inclusion in public minutes.

Examples

The spouse of the Director of the Division of Solid and Hazardous Waste (Division), Department of Environmental Protection, recently became a partner in ABC, an environmental consulting firm that represents clients before the Division. The Director must recuse himself from any involvement with ABC matters that come before the Division. The recusal must be memorialized in writing and conform to the standards of N.J.A.C. 19:61-7.5(b).

The Director of a program that regulates health insurance carriers has been approached about possible employment by a regulated entity. The entity does not currently have any specific cause, proceeding, application or other matter pending.

The solicitation must immediately be disclosed to the Director's supervisor and the Department Ethics Liaison Officer to avoid a situation where the State official may appear to be using his/her official position to gain an unwarranted advantage. The circumstances surrounding the solicitation and the State official's official interactions with the entity must be reviewed before the official proceeds with any job-seeking activities. If it is determined that the State official may respond to the solicitation, he must recuse himself from any involvement with the entity in his official capacity. Such recusal must conform to the standards of N.J.A.C. 19:61-7.5(b).

Pursuant to N.J.A.C. 19:61-3.1(e), if a member of the Commission holds office or employment in the same Department which employs a State official named in an allegation, he or she must disqualify himself or herself from participation in any decisional process relating to that particular case. One of the Commission meeting agenda items is an allegation that a Department of Personnel employee has violated the Conflicts of Interest Law. Because the Commission Chairwoman is the Commissioner of the Department of Personnel, materials associated with this matter would not be forwarded to her. In addition, the Chairwoman would place her recusal and the reason for such recusal on the record at the meeting and leave the room during non-public deliberations.

A member of the Real Estate Commission (REC) is a Director and past President of the New Jersey Association of Realtors (NJAR). The NJAR currently opposes a regulation proposed by the REC, has submitted a letter outlining its position, and plans to attend the REC meeting to express its opposition to the regulation. Because the REC member is an officer of the NJAR, he must recuse himself from discussions and voting on the regulation in question.

19:61-7.5 Procedure for recusal

(a) If a State official finds, or is advised by agency counsel or the agency ethics liaison officer, that an incompatible financial or personal interest exists on a matter, the State official must recuse himself or herself from that matter or seek advice from the Commission. The recusal must be absolute, that is, the State official must have no involvement with the matter from which he or she has recused himself or herself.

(b) All recusals, other than those provided for in (c) below, must be memorialized in writing. See the subchapter Appendix for samples. The writing must:

1. Specify the reason for and the date of the recusal;

2. Specify the duration of the recusal (which may be expressed in terms related to the pendency of the matter in the State agency);

3. Specify the effect of the recusal on the State official and his or her State agency (for example, that the State official is not to be contacted or involved or participate in any manner concerning the matter from which he or she has been recused);

4. Name the person who is to assume responsibility and authority for the matter from which the State official has been recused (if applicable); and

5. Be disseminated to all persons who might be affected by the State official's recusal and to the agency ethics liaison officer, who shall maintain the writing for as long as the State official serves in his or her position.

(c) In the case of a State agency that maintains a public record of a proceeding, that is, a Board or Commission meeting, formal written recusal is not required; however, the following procedures must be followed:

1. To the extent feasible, meeting materials involving a matter from which the State official must recuse himself or herself should not be distributed to the State official;

2. At the subject meeting, the State official must place his or her recusal and the reason for such recusal on the record prior to any discussion of the matter; and

3. The State official must leave the room at a non-public portion of the meeting while the matter in question is under discussion.

APPENDIX

Sample Recusal Statements

Sample Recusal Statement: Seeking Employment

DATE: _____

TO: Agency Ethics Liaison Officer
State Ethics Commission

FROM: Name of Employee

SUBJECT: Recusal – Seeking Employment with
(Name of Outside Organization)

This is to notify you that I am (seriously considering employment with, discussing employment with, or seeking employment with) (Name of Outside Organization).

My seeking employment may present an actual or appearance of a conflict of interest; therefore, I must disqualify/recuse myself from any official duties that involve the above organization. I understand that I may not participate in any way as a State official in any matters regarding the above organization. Furthermore, I understand that it would be appropriate for any matters specifically involving the above-named organization to be referred to my supervisor (or subordinate, if no other option) without consulting me or informing me that such matters are pending. This action is taken with the concurrence of my supervisor (or subordinate), as indicated below.

I understand that this recusal will remain in effect until I inform you in writing that all employment seeking activity has terminated and I receive written permission from the agency ethics liaison officer to resume interactions with the outside organization.

Employee's Name

Recommend:

(Name of Employee's Director/Supervisor)

Date

Approve:

Ethics Liaison Officer

Date

Sample Recusal Statement Conflicts

DATE: _____

TO: Designee(s)

FROM: Name of Employee

SUBJECT: Recusal

Because I may be seen to have a conflict of interest in matters affecting (name of entity or individual) relating to (family relationship, former affiliation with firm, etc.), I am delegating all responsibility and authority for handling any such matters to you. Please ensure that I am screened from any information or communications on any such matters.

By copy of this memorandum, I am instructing (appropriate contacts in office) to ensure that I do not receive any communications on any matters affecting (name of entity or individual). This recusal will remain in effect until (state duration of recusal).

c: subordinates responsible for screening communications
Ethics Liaison Officer
State Ethics Commission

Rule Proposal

The following rule proposal was published in the November 6, 2006 edition of the *New Jersey Register*. The comment period ends on January 5, 2007.

OTHER AGENCIES STATE ETHICS COMMISSION

State Ethics Commission Rules

Solicitation or Acceptance of a Thing of Value; Situations Where Recusal is Required

Proposed Amendments: N.J.A.C. 19:61-6.7, 6.9 and 7.4

Proposed Repeal: N.J.A.C. 19:61-6.10

Authorized By: State Ethics Commission, Rita L. Strmensky, Esq., Executive Director.

Authority: N.J.S.A. 52:13D-12 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2006-366

Submit written comments by January 5, 2007 to:

Rita L. Strmensky, Esq.
Executive Director
State Ethics Commission
P.O. Box 082
Trenton, New Jersey 08625-0082

The agency proposal follows:

Summary

The State Ethics Commission (Commission) has determined that the comment period for this proposal shall be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this proposal is excepted from the rulemaking calendar requirement.

Pursuant to N.J.S.A. 52:13D-23, the State Ethics Commission is required to promulgate a Uniform Ethics Code to govern and guide the conduct of State officials in State agencies in the Executive Branch. The Uniform Ethics Code adopted by the Commission includes a zero tolerance policy on the receipt of gifts, as well as recusal provisions that relate to matters with which a State official was involved prior to the commencement of State service. The proposed amendments and repeal are consistent with the provisions of the Uniform Ethics Code.

The Commission's guidelines on secondary employment is officially entitled "Guidelines Governing Outside Activities." The proposed amendment at N.J.A.C. 19:61-6.7 (b) reflects the correct title of the document.

The proposed amendments at N.J.A.C. 19:61-6.9 incorporate the Uniform Ethics Code's zero tolerance policy for the solicitation or acceptance of a thing of value. Unless a State official is permitted to receive a thing of

value in accordance with the Commission's rules on attendance at events, no State official or his or her spouse, family member, partner or associate shall accept, either directly or indirectly, any gift, favor, service or other thing of value related in any way to the State official's public duties. The proposed amendments clarify that the disclosure, disposition, and recordkeeping requirements of this section do not apply to items of trivial value.

Under the zero tolerance policy, the "interested party" determination is not necessary, nor is it necessary for the Department head to determine the intent with which a gift has been offered; therefore, N.J.A.C. 19:61-6.10 is proposed for repeal.

The proposed amendments at N.J.A.C. 19:61-7.4 codify the recusal requirements set forth in the Uniform Ethics Code. The amendments describe circumstances that compel the exercise of official recusal in matters with which a State official was involved prior to the commencement of State service.

Social Impact

The proposed amendments and repeal will affect employees and appointees of the Executive Branch of State government. The rules will have a beneficial social impact in that a zero tolerance for the acceptance of gifts and things of value eliminates the need for an agency head to determine the intent of the giver. The additional provisions for recusal will help to eliminate actual or perceived conflicts of interest for an official with respect to associations and activities that existed prior to the commencement of State service.

Public officials who violate the public trust or enter into conflicts of interest will be negatively impacted by these rules in that the Commission has a procedural framework under which to investigate and prosecute violations of the Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq.

Economic Impact

The proposed amendments and repeal will have no discernible economic impact on the public, individual State officials or the Commission.

Federal Standards Statement

The proposed amendments and repeal are not subject to Federal requirements or standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed amendments and repeal will not result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments and repeal will have no impact

on agriculture in the State of New Jersey.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impose compliance requirements on State officials. Therefore, no regulatory flexibility analysis is required.

Smart Growth Impact

The proposed amendments and repeal will have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

19:61-6.7 Compensation for published work(s)

(a) (no change.)

(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 uniform ethics code, the agency code of ethics, any applicable Executive Orders, the Commission's Guidelines [for Secondary Employment] **Governing Outside Activities**, any other applicable guidelines or rules of the Commission, any applicable administrative policies of the agency, and the following conditions:

1.- 2. (No change.)

(c)–(d) (No change.)

Examples

(No change.)

19:61-6.9 Solicitation or acceptance of a thing of value from an interested party

(a) **Except in accordance with the Commission's rules on attendance at events, N.J.A.C. 19:61-6.4 and 6.5, [A] no State official, whether by himself or herself or through his or her spouse, or member of his or her family or through any partner or associate shall [not] solicit or accept, directly or indirectly, any thing of value [from an interested party] that is related in any way to the State official's public duties.**

(b) A State official must disclose and remit to his or her Department head any offer or receipt of any thing of value [from an interested party] **that is related in any way to the State official's public duties.**

(c) (No change.)

(d) A State official or his or her agency may retain and use unsolicited gifts or benefits of trivial value, such as complimentary articles offered to the general public, and gifts received as a result of mass advertising mailings to the general business public 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 a State official in 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 endorsement. If circumstances exist which create a reasonable doubt as to the intention with which the gift or benefit was offered, (c) above shall govern. **The provisions of (b), (c) and (e) above do not apply to items of trivial value.**

(e) (No change.)

[19:61-6.10 Solicitation or acceptance of a thing of value from an entity other than an interested party

(a) A State official must disclose to his or her Department head any offer or receipt of a thing of value from an entity other than an interested party.

(b) The Department head shall determine whether the thing of value was given or offered with the intent to influence or reward the performance of the State official'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 violation of the public trust.

(c) Upon a determination that there was an intent to influence 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 an impression of a conflict or a violation of the public trust, the Department head shall return the thing of value to the donor or, in the case of a perishable thing of value, transfer it to an appropriate nonprofit entity in the name of the donor.

(d) Upon a determination that a State official may accept a thing of value from an entity other than an interested party, the Department head shall so notify the State official.

(e) A State official or his or her agency may retain and use 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 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 a State official in 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, (c) above shall govern.

(f) The Department head shall keep records of all such occurrences, names of the State officials, individuals, and companies involved, and the final disposition of the thing of value.]

19:61-7.4 Situations where recusal is required

(a) A State official is required to recuse himself or herself from an official matter that involves any private sector individual, association, corporation or other entity that employed or did business with the State official during the one year prior to the official's commencement of State service. This recusal shall remain in effect for one year after the commencement of the official's State service.

(b) A State official is required to recuse himself or herself on an official matter if he or she had any involvement in that matter, other than on behalf of the State, prior to commencement of his or her State service. The recusal shall remain in effect until the agency no longer has any interest in the matter.

[(a)] **(c)** (No change in text.)

[(b)] **(d)** For purposes of [(a)] **(c)** above, an incompatible financial or personal interest includes, but is not limited to, outside employment; a debtor/creditor relationship; a fiduciary relationship; a source of income; any matter pertaining to or involving a relative or cohabitant; a relationship with a person providing funds, goods or services without compensation; any matter pertaining to or involving a business associate or business investment; and a leadership role in a professional or trade organization, which interest might reasonably be expected to impair a State official's objectivity and independence of judgment in the exercise of his or her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his or her trust as a State official.

[(c)] **(e)** An incompatible financial or personal interest may exist in other situations which are not clearly within the provisions of [(a) and (b)] **(c)** and **(d)** above, depending on the totality of the circumstances. A State official should contact his or her agency ethics liaison officer or the Commission for guidance in such cases.

[(d)] **(f)** (No change in text.)

Examples

(No change.)

Compliance Update

From May 2006 through the end of this year, the Commission's Compliance Officer will have conducted approximately 20 Compliance Audits (reviews) of New Jersey State agencies, mostly Executive Branch Departments. After reviews are completed for all of the Departments in early 2007, the Commission's Compliance focus will shift to State authorities and colleges and universities. Agencies that are scheduled for a review will receive in advance of the review an "Ethics Compliance Review Checklist" (also located on the Commission's Website), which will outline the areas subject to the review, as well as the documents that must be submitted. Questions regarding the Compliance Review Process can be directed to Jeffrey Stoolman, Esq. at 609-826-5542.

Training Update

Ethics training is now mandatory for State employees. Last year, employees of 48 authorities and seven departments received ethics training. Ethics training in 2006 has been concentrated in the principal departments. The following is a list of departments and agencies whose employees have received ethics training from the State Ethics Commission this year.

Ethics Training Completed 2006

Agriculture
Arts Council
Banking and Insurance
Board of Public Utilities
Community Affairs
Corrections – Senior Staff, Financial Disclosure Filers & Trainers
DOLMA (Department of Labor Managers Association)
Education
Education -County Superintendents, Business Administrators & Child Study
Team Supervisors
Environmental Protection – Senior Staff
Governor's Office
Health
Health Care Administration Board
Health Care Facilities Financing Authority
Historical Commission
Individual Health Coverage Program
Labor -Senior Staff, Financial Disclosure Filers & Central Office Staff
Law & Public Safety – Senior Staff, Financial Disclosure Filers & Trainers
Local Finance Board
Lottery Commissioners
Marie Katzenbach School for the Deaf
Military & Veterans Affairs – Senior and Central Office Staff
Office of Administrative Law
Office of Information Technology
Parole Board - Board Members and Senior Staff
Personnel

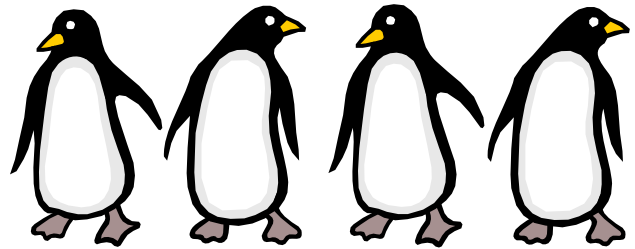
Planning Commission and Office of Smart Growth
Public Defender -Senior Staff and Regional Office
Managers
Real Estate Commission
Rowan University – Board of Trustees and Senior Cabinet
Small Employer Health Benefits Program
State
State Ethics Commission- Commissioners
State Library
State Museum
State Police Command Staff
Transportation – Senior Staff
Treasury – Senior Staff
Thomas Edison State College – Board of Trustees and
Senior Cabinet
UMDNJ
Workers' Compensation Judges - Department of Labor

Questions regarding training should be directed to the
Commission's Training Officer, Margaret Cotoia, at 609-
826-5538.

Ethics Liaison Officers' Meetings

Ethics Liaison Officers' Meetings will be held at the Mary
Roebling Building located at 20 West State Street, 2nd
Floor, Rooms 219/220. The meetings will start at 10:00
a.m.

Monday, November 20, 2006
Tuesday, February 27, 2007
Wednesday, May 23, 2007
Tuesday, August 28, 2007
Wednesday, November 28, 2007



Regarding "Guidelines"

**Please direct any comments or questions
about "Guidelines" to**

**Jeanne A. Mayer, Esq., Deputy Director,
New Jersey State Ethics Commission
P.O. Box 082
Trenton, NJ 08625
(609) 292-1892**

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

<http://www.nj.gov/ethics>