

Ethics Bulletin

The Newsletter of the New Jersey State Ethics Commission

New Jersey State Ethics Commission
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Web Site: <http://www.nj.gov/ethics>

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:

The cases presented in the Ethics Bulletin are designed to provide State employees with examples of conflicts issues that have been addressed by the State Ethics Commission. Specific questions regarding a particular situation may be addressed directly to the Commission.

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 zero tolerance policy does not apply to gifts between employees, including co-workers, supervisors or subordinates. If you exchange holiday gifts with your officemates, you can continue to enjoy that tradition. However, the Uniform Ethics Code advises that such gifts should not be excessive or inappropriate for a business environment. For more information, see the Uniform Ethics Code, III, Acceptance of Gifts and the Commission's Guideline - Gifts and Favors.

8. 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: June Albanowski
(609)-396-8329

Martin House

794 E. State Street
Trenton, NJ 08606
Contact: Father Brian McCormick
(609)-989-8143

Life Ties

2205 Pennington Road
Ewing, NJ 08638
Contact: Quiana Starr
(609)-771-1600

Good Samaritan Center

325 Market Street
Camden, NJ 08103
Contact: Kevin Moran
(856)-963-0857

Neighborhood Center

278 Kaighns Avnue
Camden, NJ 08103
Contact: Tess Holley
(856)-365-5295

Millhouse Convalescent Center

325 Jersey Street
Trenton, NJ 08611
Contact: Joan Kmiec
(609)-394-3400 ext. 116

Lighthouse Community Services

487 Washington Avenue
Newark, NJ 07102
(609)-802-1802

Trenton Rescue Mission

98 Carroll Street
P.O. Box 790
Trenton, NJ 08605
Contact: Wayne Frascella
(609)-695-1436 ext. 128

Leavenhouse

646 State Street
Camden, NJ 08102
Contact: William Wright, Res. Manager
(856)-254-5991 personal cell

Your Food Shelf

1500 Federal Street
Camden, NJ 08105
Contact: Bonnie White
(856) 365-6475

Cathedral Kitchen

1514 Federal Street
Camden, NJ 08105
Contact: Karen Talarico, Ex. Dir.
(856)-964-6771

Make a Wish Foundation of NJ

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

Lawrenceville Nursing & Rehabilitation Center

Princeton Pike and Franklin corner Road
Lawrenceville, NJ 08648
Contact: Tom Miller
(609)-896-1494

Trenton, Soup Kitchen

2 Escher St
Trenton, NJ 08609
(609) 695-5456

Mercer Street Friends

151 Mercer Street
Trenton, NJ 08611
Contact: Dr. Barry Cole, Ex. Dir.
(609)-396-1506

Atlantic City Rescue Mission

2009 Bacharach Boulevard
Atlantic City, NJ 08401
Contact: Mr. Bill Southrey
(609)-345-5517

Shelter Our Sisters

P.O. Box 217
Hackensack, NJ 07602
Contact: Elaine Meyerson, Ex. Dir.
(201)-836-1075

Hendricks House, Inc.

542 NW Boulevard
Vineland NJ 8360
Contact: Harry Morgan, Dir.
(856) 794-2443

Newark Emergency Services for Families

Victoria Human Services Plaza
982 Broad Street
Newark, New Jersey 07102
(973) 643-5727

Salvation Army Feeding Program

13 Trinity Place
Montclair, NJ 07042
Contact: Anna Marie Goglia, Family Services
(973) 744-3312

Interfaith Caregivers Trenton, Inc.-Faith in Action

229 Lawrenceville Road
Lawrenceville, NJ 08648
Contact: Mary Ann Isaac, Ex. Dir.
(609) 393-9922
(609) 482-3737 Fax

Square Meal

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

Eva's Kitchen

393 Main Street
Paterson, New Jersey 07501
Contact: Sister Gloria Perez, Ex. Dir.
Phone: 973.523.6220

The Children's Home of Burlington County

243 Pine Street
Mount Holly, NJ 08060
Contact: Laura Alfieri
(609) 267-1550 ext. 175
1-877-TLC-KIDS

Food Bank of South Jersey

1501 John Tipton Boulevard
Pennsauken, NJ 08110-2303
(856) 662-4884

Womanspace, Inc.

Administrative Office
1212 Stuyvesant Avenue
Trenton, NJ 08618
Contract: Kevin Centosanti
(609) 394-0136

TRAINING UPDATE

The State Ethics Commission ("Commission") has revised a series of on-line training programs to help ensure that all State officials in the executive branch receive approved ethics training by the end of 2009. Each program includes a slide presentation and a detailed narrative that replicates the substance of the Commission's in-person training program. Revised training programs for State employees, special State officers, State college and university trustees, and State college and university faculty are available on the Commission's website training page. If you are a State employee or special State officer who has not completed on-line or in-person ethics training, you must complete the appropriate on-line training program before the end of 2009. Questions or concerns regarding the Commission's training programs should be directed to Margaret Cotoia, Training Officer, at 609-292-1892.

COMMISSION CASES

The following case summaries are representative of matters considered during the past several months.

Commission Case No. 35-07

Subject: Misuse of Official Position, Unwarranted Privilege, Misuse of State Time and Resources

Facts: The State employee (who has since left State service) used State time and resources to conduct outside legal and real estate related businesses. The employee did not disclose the outside businesses or get department approval for the secondary employment. The employee was counseled by his supervisor about improper use of State resources for his outside business and told to desist from conducting outside business on State time. Despite that directive, the employee continued using his State phone, fax and computer to conduct activities related to the outside employment. In a three month period, the employee used his State phone for over 100 phone calls related to his outside business. The employee's State computer contained legal documents related to his outside business and the employee used the State office fax machine to solicit clients for his outside business. The employee advertised that he was available to conduct his outside business twenty-four hours a day, seven days a week. The employee openly conducted his outside business during the time he reported for duty with his State agency and during the time when he was compensated by the State to perform his official duties.

Resolution: The Commission determined that the employee violated sections 23(e)(3) and (7) of the Conflicts Law. A complaint has been served on the public employee.

Reasoning: The State employee's use of a State-issued computer, telephone and fax to conduct his secondary employment and solicit clients for his outside business on State time are misuses of official position, State time and resources. The employee used State resources in furtherance of personal economic gain. The employee's use of State time and resources to openly and repeatedly conduct his outside business was not insignificant or minimal.

Commission Case No. 15-08

Subject: Misuse of Official Position, Unwarranted Privilege

Facts: The State employee works for a State agency that has regulatory authority over the State's public school districts. In his private capacity, the State employee also acted as an advocate for a family member who is an elementary school student seeking services under section 504 of the Rehabilitation Act of 1973. The Conflicts Law does not *per se* prohibit a State employee from advocating on behalf of a family member and/or attending local school

meetings in a private capacity. However in this case, the State employee did not maintain a private persona in his interactions with school district employees and officials. Instead, he made multiple explicit references to his State position. The school district's officials whom he contacted and with whom he met were made well aware that he was an employee of the State agency that has regulatory authority over the school district. In one of his first contacts with the school district, the employee said he was calling from his State agency regarding a matter concerning his relative, and he requested a return phone call to his State office. The State employee followed up with an e-mail to a school official that was sent from his State e-mail account, with a signature line that included the employee's State title, State office address and State telephone number. In his private capacity, the State employee attended a meeting with the school district officials to discuss his relative, but identified himself as an employee of the State agency. The State employee sent a letter to the school district regarding his relative. Although he used personal stationery, he included his State telephone number in the letter.

Resolution: The Commission determined that the employee violated sections 23(e)(3) and (7) of the Conflicts Law. This case was resolved by a consent order. The employee paid a civil penalty of \$500.

Reasoning: The State employee's use of his State telephone to contact his relative's school district, his use of his official State title and phone number in a voice mail message left for school district officials and contacting school officials from his State e-mail account, which contained his State title and contact information constitutes the use of his official position to provide an unwarranted advantage for his relative and created the impression that the State employee was using his position to improperly influence the school district's decisions regarding his relative.

Commission Case No. 33-09

Subject: Contracting With the State

Facts: At the request of a former State employee, the Commission considered the circumstances under which a State employee may qualify for one of the exceptions to the general prohibition against entering into a contract with the State in section 19 of the Conflicts Law. The former State employee sought approval from his ELO to bid on a grant being awarded by another State agency. The ELO did not believe that any of the exceptions applied and disapproved the request. The former employee left State service in order to pursue this grant/contract opportunity. He sought an opinion because he would like to return to State service, provided he is permitted to pursue future contract opportunities with the State.

The funds for the program the employee sought to bid on were provided through a grant, and a Notice of Available Funding (NOAF) and the format for a proposal were

published on the contract agency's website and in newspapers. The agency awarding the contract created a three member committee and used a pre-established score sheet to evaluate the bids. Although the score sheet criteria were not provided to the applicants, the NOAF set forth the qualifications and criteria needed to perform the services. The State agency received four applications. The former employee was awarded the grant/contract.

Resolution: The Commission concluded that the process used to award the grant satisfied the public notice and competitive bidding requirement for an exception under *N.J.S.A. 52:13D-19b(a)(1)*. Accordingly, so long as future contracts meet with Department of the Treasury's ("Treasury's") criteria for competitive bidding, the applicant can enter into a contract with a State agency with the approval of the Commission, and retain his position as a State employee.

Reasoning: Section 19 prohibits a State officer or employee from entering into a contract valued at \$25.00 or more with any State agency. Section 19(b) exempts only three categories of contracts from this general prohibition: contracts made after public notice and competitive bidding; contracts that may be awarded without public advertising and competitive bidding pursuant to *N.J.S.A. 52:34-10* or similar provisions; and any contract 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*.

The Commission found that the process used to award this contract complied with many of Treasury's criteria for competitive bidding. First, the bid was advertised to the public and any interested party could submit a bid; second, the NOAF had a deadline for submission of bids and set forth performance and submission requirements; third, an evaluation committee was established to review and evaluate the bids; and, finally, the committee used pre-established weighted criteria to evaluate the bids. The Commission concluded that the process used by the agency to award the grant meets the public notice and competitive bidding criteria for an exception under section 19(b).

Commission Case No. 36-07

Subject: Post-Employment Restrictions

Facts: In his State position, the former State employee approved the award of a contract for computers and associated products and supervised the buyers who worked with agencies making purchases under that contract. While employed by the State, the former employee also signed the specifications for the Request for Proposal ("RFP") for a contract for telecommunications systems and equipment. After retiring from State service, the former employee established a consulting firm, represented clients who are authorized vendors under the contracts at issue, and contacted the State on behalf of his clients on matters regarding each of the two contracts. The former State

employee frequently contacted State employees by phone and e-mail regarding both contracts, and sometimes asked for information that was not yet public. He also contacted State employees on behalf of his clients to attempt to expedite amendments to the two contracts at issue.

Resolution: The Commission determined that the employee violated section 17 of the Conflicts Law. This case was resolved by a consent order. The employee paid a civil penalty of \$2,500.

Reasoning: A violation of section 17 of the Conflicts Law requires a finding that a former State employee represented, appeared for or negotiated on behalf of, provided information not generally available to members of the public or services to any person or party other than the State, in a matter in which the former employee was substantially and directly involved. The former employee's approval of the award for one contract and approval of the RFP for the second contract constituted substantial and direct involvement in each matter. The former employee's frequent contacts with staff at his former agency on behalf of his clients regarding matters related to those contracts constituted representational activity on behalf of a party other than the State. Therefore, his representation of clients other than the State on matters with which he was substantially and directly involved during his State service violated the post-employment restrictions of the Conflicts Law.

REVISED PLAIN LANGUAGE GUIDE

In November 2009, the Commission revised the Plain Language Guide to New Jersey's Executive Branch Ethics Standards ("Plain Language Guide").

Revisions include the addition of information concerning the scholarly capacity amendments to the Commission's "attendance at events" regulations, *N.J.A.C. 19:61-6.1 et seq.* The amendments apply to State officials acting in a "scholarly capacity" as that term is defined at *N.J.A.C. 19:61-6.2*. The scholarly capacity rules apply to certain activities undertaken by a State official who is employed or appointed by a State college or university.

The outside employment section has been revised to clarify that the Commission cannot grant a waiver from the Conflicts Law provisions prohibiting a State official or his/her immediate family member from holding an interest in or representing, appearing for or negotiating on behalf of a casino licensee or applicant. A section has been added to the Plain Language Guide to clarify that certain designated State officials including the Governor, the Attorney General, and heads of Executive Branch departments may not accept outside compensation or salary. See *N.J.S.A. 52:13D-24*.

Please review the revised Plain Language Guide at the link below:

<http://nj.gov/ethics/docs/ethics/plainlanguage.pdf>

If you have any questions regarding the Plain Language Guide, please contact your Ethics Liaison Officer or the Commission.

2010 ETHICS LIAISON OFFICERS' MEETING DATES

Commission staff is required to hold quarterly meetings with ethics liaison officers to ensure that the requirements of the Conflicts of Interest Law are understood and followed. The quarterly meetings for 2010 will be held at the Mary Roebling Building, 20 West State Street, Trenton, in room 219-220. The meetings start at 10 a.m. on the following dates:

Wednesday, February 24
Tuesday, May 25
Thursday, September 9
Wednesday, December 1

All Ethics Liaison Officers or their designees should be in attendance at these meetings.

The Commission's newsletters are also available at:

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