



GUIDELINES

The Newsletter of the New Jersey State Ethics Commission

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THE STATE ETHICS COMMISSION

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Commission Case No. 16-06

SUBJECT: Recusal; personal relationship

FACTS: The special State officer accepted flights on a private aircraft owned in part by a personal friend. The friend was also a vendor to his agency and the special State officer voted on 20 occasions to approve contracts awarded to the friend's companies. In addition, the special State officer and his friend served together on the Board of Governor's of a private medical facility and had leadership roles with an Arts Foundation. Prior to the Commission considering the matter, the special State officer reimbursed the friend \$7,125 for roundtrip air transportation between New Jersey and Florida for two of his grandchildren and a New Jersey to Florida flight for himself and his wife.

RULING: Although the special State officer reimbursed the friend for the cost of the flights, his voting on 20 occasions to approve contracts for his friend's companies remains problematic. His relationship with the friend is such that he should not have taken action on the contracts, particularly in the period from April 2004 when the grandchildren were on the friend's plane until November 2005 when the State officer wrote the reimbursement check. In that timeframe, the special State officer voted on 9 contracts or change orders with a value of approximately \$52 million.

REASONING: There are no circumstances under which a special State officer is permitted to vote to approve contracts and simultaneously accept things of very substantial value from the contractor. With respect to section 23(e)(1), interest in substantial conflict with proper discharge of official duties, the special State officer's acceptance of the air transportation for himself, his wife and his grandchildren is a series of transactions that conflicts with his public responsibility for approving contracts for goods and services.

With respect to section 23(e)(7), appearance of impropriety, it is likely that a knowledgeable member of the public would regard his actions as a violation of the public trust.

The Commission's recusal rule, at *N.J.A.C. 19:61-7.4*, requires that the special State officer recuse when he has "a relationship with a person providing funds, goods or services without compensation..." a situation that describes the current relationship. In addition, the special State officer's multiple relationships with the individual, as a friend, a colleague on a private entity Board, and a personal appointee to a leadership role on an Arts Foundation Board of Trustees require that he not take official actions that affect the individual.

The special State officer entered into a Consent Order with the Commission and paid a \$50,000 civil penalty.

Commission Case No. 20-06

SUBJECT: Recusal; financial interest

FACTS: The Commission reviewed an allegation that the State employee voted to approve a financial institution, in

which he and his spouse held stock, to manage and disburse funds for a program overseen by his agency.

RULING: The Commission determined, pursuant to N.J.A.C. 19:61-3.1(h), that there were indications that the State employee violated the agency's code of ethics and authorized the drafting of a complaint.

REASONING: The agency's code of ethics reflects the Commission's Recusal Rule, N.J.A.C. 19:61-7.1 et seq., adopted on November 5, 2001. The Rule and the code provision make clear that a source of income and "any matter" pertaining to a business investment or incompatible financial or personal interest require recusal. Stock ownership in a company that is affected by one's official actions clearly falls within the recusal standards. The State employee should not have participated in a vote that ordered monthly deposits into a financial institution in which he and his spouse owned stock.

The State employee entered into a Consent Order with the Commission and paid a \$500 civil penalty, the maximum permitted under the statute at the time of the transgression.

Commission Case No. 30-06

SUBJECT: Financial Disclosure; Executive Order No. 1

FACTS: The Deputy Executive Director of two State Programs requested clarification as to the application of the financial disclosure statement ("FDS") requirement of Executive Order No. 1 ("Order") (Corzine, 2006) to the members of the two Boards in question. Specifically, she indicated that one of the represented organizations questioned whether it is appropriate, when an organization has been elected to designate a member to one of these Boards, that the designee file an FDS.

RULING: The Commission advised the Deputy Executive Director that all organization representatives who serve on the Boards are required to file FDSs under the Order.

REASONING: The statute creating one of the Boards provides that the Board shall consist of nine representatives. Four board members who represent organizations are elected by the members, subject to the approval of the Commissioner. The statute specifies the sectors that must be represented and provides that the Commissioner, in approving the selection of representatives of the Board, shall ensure that all Program members are fairly represented.

Hence, it appears that these members of the Board are not organizations but rather, representatives, individuals designated by the organization to represent it on the Board. It is the Program's administrative practice to elect organizations, rather than individuals, to the Board, thereafter permitting the organization to designate an employee to be its representative on the Board. However, the statute creating the Board contemplates that the actual

membership of the Board comprises individuals, each representing statutorily specified interests. The administrative practice of electing organizations rather than individuals does not alter the statutory framework of a Board consisting of representatives of their respective employers or interests.

The language of the statute creating the second Board is similar. Public members are elected to the Board. The statute provides that certain categories shall be represented among the elected public members. The actual members of the Board, therefore, are representatives of organizations, not organizations themselves. Presumably, the Board members elect organizations, who, in turn, name designees to represent them on the Board. Again, however, the Board consists of individuals, albeit individuals who represent organizations.

The Deputy Executive Director indicated that organizations assign primary and alternate employees to vote on their behalf and tracking these representatives would be burdensome. However, the Commission noted that enabling legislation creating the Boards does not appear to require the appointment of an alternate and that the Boards' codes of ethics provide that organization representatives are special State officers.

Commission Case No. 53-06

SUBJECT: Outside Activity

FACTS: The State employee appealed his agency's denial of his request for approval to hold a seat on the Board of Education of the City of Paterson. The State employee is primarily responsible for providing community outreach and communications expertise to the region to which he is assigned. His region includes Paterson.

The agency's code of ethics provides that individuals in certain enumerated positions are prohibited from seeking or holding elected or appointed offices on a school board or in any school district. The State employee in question did not hold one of the enumerated positions.

RULING: The Commission concurred with the agency's denial of approval for the State employee to hold a seat on the Paterson Board of Education while he had official responsibilities in connection with Paterson.

REASONING: The Commission has reviewed numerous cases in which a State employee has sought approval to engage in outside activity in the same geographic area in which he performs his official duties and has consistently conditioned approval of such situations. For example, in 1974, the Commission advised a Principal Right of Way Negotiator, Department of Transportation ("DOT"), that he could perform real estate appraisals, but not in the geographic area where he negotiated rights of way for the DOT. This same advice was given repeatedly in the 1970s. In 1980, the Commission, relying on an Attorney General Opinion, advised a Principal Field Representative, Police

Training Commission, that he could not engage in outside activity as a private detective. He would have contact with local police departments in both positions, creating the impression of a violation of the public trust.

In the current situation, the agency's senior management has determined that he cannot hold his current position and perform his official duties in the Paterson community while serving on the Paterson Board of Education. That position is consistent with the Commission's precedent.

Commission Case No. 03-07

SUBJECT: Recusal; financial interest

FACTS: The special State officer requested an opinion from the Commission as to whether he is required to recuse himself from matters concerning a specific organization. The special State officer co-founded the organization in 1961 and served as its President from 1965 to 1993. He also served on the organization's Board of Directors from 1961 until he was appointed, in December 2005, to the State Board on which he currently serves. The special State officer remains a dues-paying member of the organization, but no longer attends meetings or exercises any decision-making authority. He receives a pension from the organization based on his years of membership and he and his wife receive health benefits from the organization.

RULING: The Commission advised the special State officer that he must recuse himself, in his State role, from any matter that comes before the State Board on which he serves that involves the organization or on which the organization has taken a position.

REASONING: Because the special State officer receives a pension from the organization and he and his wife receive health benefits from the organization, under the Commission's precedent, the Recusal Rule and sections 23 (e)(4), direct or indirect interest expected to impair objectivity, and (7), appearance of impropriety, of the Conflicts Law, he must recuse himself.

The Commission has always taken the position that the existence of an ongoing financial relationship, such as a pension or annuity, requires recusal (*In the Matter of Michael Barrett*, Case No. 1070-82, *In the Matter of Samuel Fortunato*, Case No 19-90).

Commission Case No. 05-07

SUBJECT: Outside Activity, Executive Order No. 1

The State employee appealed the decision of the Department's Ethics Liaison Officer ("ELO") that his proposed outside employment as a consultant is not approvable. In his current position, the State employee files a Financial Disclosure Statement ("FDS") pursuant to Executive Order No. 1 (Corzine, 2006).

The State employee established the consulting business in 2005; the company has not yet generated any income, pending the outcome of this appeal. The State employee intends to offer public entities and private sector employers training, consulting and/or facilitation of programs on varied human resource topics. The State employee has been accepted as a vendor to the Human Resource Development Institute ("HRDI"), Department of Personnel ("DOP"), but has not yet taught any courses.

In his official capacity, the State employee directs the programs and staff associated with the delivery of human resources and labor relations programs.

RULING: The State employee is an FDS filer; under Executive Order No. 1, he is prohibited from doing business with the State. Thus, he is not permitted to teach courses at the HRDI. As far as performing consulting work for local government entities, he may do so provided that the contract is publicly bid and receives the prior approval of the Commission. His provision of consulting services to private sector entities appears to be approvable under Commission precedent.

REASONING: In the past, the Commission has permitted State employees to teach classes at the HRDI; however, because the State employee is an FDS filer, under Executive Order No. 1, he is prohibited from doing business with the State. Thus, he is not permitted to teach courses at the HRDI as a vendor. As to performing consulting work for local government entities, Executive Order No. 1 permits this type of activity only if the contract in question is publicly bid, as provided by the Local Government Contracts Law or other similar provisions contained in other applicable public bidding laws. Such arrangements must receive the prior approval of the Commission.

As to whether the State employee may provide human resource and labor relations consulting services to private entities, his proposed activities appear to be approvable under Commission precedent. The Commission has approved situations in which a State employee uses his/her general expertise in connection with outside employment. While many of the concepts developed by the State employee may be transferable to private sector situations, it is unlikely that he would be providing the identical training developed in his official capacity.

While the State employee's State position and his proposed outside activity do deal with the same general area, it appears unlikely that he will come in contact with the same individuals, organizations and entities in both positions. In a recent Commission case, the Commission overturned the Department's denial of the State employee's outside employment because, while there was overlap between the duties of the two positions, it was extremely unlikely that the State employee would encounter the same individuals in both capacities. The possibility of interaction with the same individuals and entities has been a factor in the Commission's denial in past cases. The staff and

Commission always condition outside employment approval with the caveat that the State employee cannot solicit individuals with whom he/she comes in contact in his/her official capacity and cannot use State time and resources in connection with the outside activity.

The Commission determined that the current situation is also distinguishable from two prior cases in which the Commission upheld the Departments' denial. While the State employee's Department has regulatory authority over New Jersey businesses, the State employee has no role in this oversight. It is unlikely that the Department's oversight role would have any effect on the State employee's contracts with a private sector business.

Commission Case No. 10-07

SUBJECT: Recusal

FACTS: As a result of questions that arose during ethics training, the State Board requested recusal advice from the Commission in connection with three common scenarios: regulations that have a direct impact on all or a large portion of the regulated community; regulations that have a direct impact on only one sector of the regulated community; and regulations and requests for advice or guidance that have an indirect impact on one or more sectors of the regulated community. The Board also requested Commission advice regarding the applicability of the "Rule of Necessity" to the various scenarios.

RULING: The Commission advised the State Board that Board members may participate in discussions and voting on regulations and requests for advice and guidance so long as the matter does not uniquely affect a Board member.

Whether the Rule of Necessity applies to a particular situation should be addressed by the Deputy Attorney General assigned to the Board as each issue is raised.

REASONING: The Board's enabling legislation mandates that only those individuals engaged in the activity regulated by the Board are eligible for appointment to the Board. Also, four of the members have the additional requirement that they represent the top four commodities produced in New Jersey. Thus, the Legislature had the expectation that Board members intimately involved in the regulated community would make decisions affecting that community. It does not appear to be reasonable to take the position that Board members appointed for that expertise be precluded from providing insight and recommendations on issues that directly or indirectly impact their particular sector or the regulated community as a whole.

In past cases, the Commission has recognized the importance of drawing on the expertise of the various board members in connection with proposed regulations. In addition, *Monmouth Medical Center v. State Department of Health*, 272 N.J. Super. 297 (App. Div. 1994), cited by the Board in its request for advice, appears to be applicable to

the present situation. In *Monmouth*, the Court determined that, in light of the Health Care Administration Board's ("HCAB") enabling legislation that expressly required that the Governor appoint representatives of medical and health care facilities and services, the Conflicts Law could not be reasonably construed to require disqualification of an HCAB member from the consideration of any regulation which might in some way affect the health care provider with which the member is affiliated. An HCAB member would be required to disqualify him/herself from participating in a matter directly affecting a health care provider with which the member is affiliated, such as a Certificate of Need application.

FINANCIAL DISCLOSURE STATEMENTS

Executive Order No. 1, promulgated by Governor Jon S. Corzine on January 17, 2006, requires the annual filing of Financial Disclosure Statements ("FDS") by certain designated State employees. These designated State employees are subject to the casino-related post-employment restriction of N.J.S.A. 52:13D-17.2(c). The Order also requires that designated special State officers file FDSs, including members of 66 boards, commissions and authorities and the New Jersey members of 13 interstate or bi-state agencies. Pursuant to section 21(2)(n) of the Conflicts Law, FDSs required to be submitted to the Commission by law, regulation or executive order must be made available to the public, promptly after receipt, on the Commission's web site.

This year, electronic filing is mandatory for all State employees, but is voluntary for special State officers. In order to file your FDS electronically, you will first need to obtain an Authentication Code by accessing the Commission's website at www.nj.gov/ethics/disclosure/authentication. State officers and employees must provide their State e-mail addresses.

FDS forms are in a fillable PDF format. These PDFs are unique in that they can be saved with Version 6.0 or higher of the free Adobe Reader Program. Please note that, for all FDSs not filed electronically, the Attestation page must contain an original signature and an original notarization. Instructions are available for both the officer and employee forms.

FDSs must be filed by May 15, 2007. A \$50 per day late filing fee will be assessed.

COMMON FDS FILING ERRORS

Below is a list of the common filing errors.

Including personal information that is not required.

Do not include social security numbers anywhere on the form.

Do not list home addresses and phone numbers (page 1).

(If you are a State Officer and do not have a business address, please indicate that you list a home address and Ethics Commission investigators will delete it for public record purposes.)

Do not use the names of spouses or dependent children - use husband, wife, domestic partner, son or daughter (page 1).

Do not list the actual value of assets. Employees should indicate a value class (pages 3, 4, 5, 6 & 8).

Officers should indicate a value class on page 5 and use check marks, not value classes, on pages 3, 4, 6, 7 & 8.

Do not provide brokerage account numbers (Schedules A & D, pages 6 & 9).

Do not attach schedules from your tax returns or brokerage account statements. Fill out the information on the appropriate schedules. You can print additional pages of the schedules if necessary.

Omitting required information.

Include the filing year, which is the current calendar year (page 1).

Employees should list their official State title and employer (page 1).

Officers should list their official State title on page 1, not their private employment.

Identify both the occupation and employer of a spouse or partner listed on page 1.

List the value of your State salary (page 4).

List your date of employment (page 4).

Include the value of your State pension (page 3). (For the value of your State pension, call Pensions at 609-777-1777.)

Include an asset on the corresponding schedule when you list a value class on page 3 as follows:

If you list a value class for notes receivable, list the nature of the account on page 4, item h.5

If you list a value class for accounts receivable, list the nature of the account on page 4, item h.5

If you list a value class for government bonds, itemize on Schedule A, page 6.

If you list a value class for stocks & corporate bonds, itemize on Schedule A, page 6.

If you list a value class for an interest in contracts with government instrumentalities, itemize on Schedule B, page 7.

If you list a value class for real estate interests, itemize on Schedule C, page 8.

Include a value class when you list an asset as follows:

List gifts and gratuities, cash and non-cash, under sources of income on page 4, item h.5.

Specify the size of listed real estate interests - square footage, acres, number of rooms - on Schedule C, page 8.

Answer all questions that require a yes/no response.

Indicate n/a on sections that do not apply to you – do not leave blank fields.

Indicate when and how you completed mandatory ethics training – page 2.

List the duties and responsibilities of your State position on Schedule B when applicable – do not list only your State title or the duties of your private employment.

Date the form on the final page.

Forms filed on paper require an original signature and notarization on the final page.

Repeating the same mistakes.

Review the version of your FDS that was posted on the internet to avoid repeating any errors that were corrected by our investigators and to avoid including any information that was redacted by our investigators.

Do not copy your form verbatim from last year's submission. Be sure to review your form to make any necessary changes such as additional assets, changes in value class or other new information.

Using the wrong form.

Special State Officers and State Employees are required to fill out different forms.

Be sure to use the correct form.

Be sure to use the current version of the form (2007).

State Employees are required to file electronically in 2007.

Special State Officers are encouraged to file electronically, but are not required to do so.

Not reading the directions.

Directions, FAQs and a list of common errors are available on the Commission's website for review.

You may also call your ELO or one of the State Ethics Commission Investigators for assistance with filling out the form.

PERSONAL AND BUSINESS RELATIONSHIPS DISCLOSURE FORM

Pursuant to N.J.S.A. 52:34-10.9, State officers and employees involved in their agencies' procurement process must complete a Personal and Business Relationships Disclosure Form ("Form"). The Form has recently been revised. If you completed the earlier version of the Form, there is no need to complete the new version. Below is a list of Frequently Asked Questions in connection with the Form.

Who is required to file a Personal and Business Relationships Disclosure Form ?

Any State officer or employee who is involved in the procurement process at his/her State agency or in the procurement process of a State agency other than his/her own.

The majority of State officers and employees will only be required to disclose involvement in their own agencies' procurement process. However, there will be situations where State officers and employees will be required to disclose their involvement in the procurement processes of more than one State agency. This will be necessary in the case of Division of Purchase and Property employees because they are involved in the procurement process of most State agencies. This may also be the case for employees of the Department of Law and Public Safety who draft and/or review Requests for Proposals and/or contracts for other agencies.

What does involvement in the procurement process mean?

Involvement in the procurement process means drafting, reviewing, evaluating or making contract awards, substantively assisting in any of those tasks or authorizing payments under those contracts.

What types of relationships must I disclose?

You are required to disclose any interest in a firm, association, partnership, corporation or other business organization that has sought or been awarded a public contract with your agency or any agency with which you have involvement in the procurement process.

You are also required to disclose any professional relationship with any person, firm, association, partnership, corporation or other business organization that has sought or been awarded a public contract with your agency or any agency with which you have involvement in the procurement process.

You are also required to disclose any personal relationship with any principal officer or director of any firm, association, partnership, corporation or other business organization that has sought or been awarded a public contract with your agency or any agency with which you have involvement in the procurement process.

What constitutes an "interest" for the purposes of disclosure?

Interest means any ownership or control of any profits or assets of a business organization. You must disclose the name of the business organization and the nature of your interest (number of shares held, percentage ownership, etc.).

What constitutes a professional relationship for the purposes of disclosure?

Professional relationships include, but are not limited to, your lawyer, accountant, physician, landscaper, or plumber.

What constitutes a personal relationship for the purposes of disclosure?

Friends, family, neighbors you interact with regularly, work colleagues, classmates or members of professional and trade organizations whom you see on a regular basis.

Does the Form cover only my current relationships?

No, you are required to disclose business, personal, or professional relationships for the period covering five years prior to the date of your statement.

How often must I file the Form?

After your initial filing of the Form, you must review it on an annual basis to ensure that it is correct and complete. You must complete a new Form any time there is a material change to any response.

Who is responsible for reviewing the Form?

It is the responsibility of the agency head to determine the procedure for review of the Form.

Does the State Ethics Commission review the Form?

No; however, copies of the Form must be forwarded to the Commission.

What should I do if I have a business, personal, or professional relationship with an entity or individual that is seeking to contract with the State?

You are required to recuse yourself from any involvement in the procurement process involving the entity or individual. Such recusal must be in writing.

How do I obtain a copy of the Form?

The Form is available in a fillable PDF format on the State Ethics Commission's website: <http://nj.gov/ethics/forms>

Ethics Word Search

T P E S U B L M I C O F F I U N F C L C
N E I C C S A P S U B L I C N O I T A O
E R U S N I T S W I J X F O W I N Z S N
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APPEARANCE
ATTENDANCE
CONFLICTSLAW
CONTRACTWITHSTATE
ELO
ETHICS
FINANCIALDISCLOSURE
GIFTS
INVESTIGATION
NEPOTISM
OUTSIDEEMPLOYMENT
POSTEMPLOYMENT
RECUSAL
REPRESENTATION
REQUESTFORADVICE
UNWARRANTEDADVANTAGE

Find the Hidden Message



Regarding "Guidelines"

Please direct any comments or questions about "Guidelines" to

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