

Ethics Bulletin

The Newsletter of the New Jersey State Ethics Commission

New Jersey State Ethics Commission
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THE STATE ETHICS COMMISSION

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Case Summaries

Commission Case No. 35-07

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

Facts: The State employee 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 used 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.

Ruling: The Commission found indications that the

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

employee violated sections 23(e)(3) and (7) of the Conflicts Law and authorized staff and counsel to draft a complaint.

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 are misuses of official position, State time and State resources. The employee's use of State time and resources to conduct his outside business activities was not insignificant or minimal.

Commission Case No. 43-06

Subject: Misuse of Official Position; Unwarranted Privilege, Nepotism

Facts: The Special State Officer used his official position to pressure and unduly influence State employees to secure a job for a relative. The Special State Officer sent e-mail and made telephone calls to members of his agency's staff inquiring about the availability of a job for his relative, and made calls to check on the status of the relative's employment application. Staff members who received the calls and e-mails felt pressured to find a job for the relative, who was ultimately hired.

Ruling: The Commission found indications that the Special State officer violated sections 23(e)(3) and (7) of the Conflicts Law and issued a complaint. The former Special State Officer entered into a Consent Order requiring payment of a \$10,000 fine.

Reasoning: The State Officer's use of e-mail and

phone calls to secure a job for his relative constituted misuse of official position.

Commission Case No. 34-07

Subject: Misuse of Official Position, Unwarranted Privilege, Recusal

Facts: Upon commencement of State service, the State employee filed a letter recusing herself from any matters relating to her former full-time employer. The employee was permitted to continue a professional affiliation with the former employer, which included secondary employment. Despite the recusal letter, the employee raised issues and asked questions in connection with State funding for her former full-time employer, and continued to discuss other matters relating to that entity where she continued to hold secondary employment.

Ruling: The Commission found indications that the employee violated sections 23(e)(3) and (7) of the Conflicts Law and *N.J.A.C. 19:61-7.4*, the Commission's recusal rule, and authorized staff and counsel to draft a complaint.

Reasoning: A State employee must recuse herself from a matter if she has any direct or indirect personal interest that is incompatible with the discharge of her official duties. Employment relationships that existed during the year prior to State service and secondary employment while in State service are examples of direct personal and financial interests that require recusal. Although the State employee filed a letter recusing herself from any discussion of matters relating to the entity that employed her, her attempts to discuss State matters related to that employer constituted both a misuse of her official position and a violation of the Commission's recusal rule.

Commission Case No. 04-06

Subject: Misuse of Official Position, Unwarranted Privilege

Facts: The State employee misused her official position and went beyond the scope of her official duties to assist another person in obtaining restoration of a professional license. The State employee was asked to assist the acquaintance of a professional with whom she was doing business. The State employee's involvement on behalf of the third party acquaintance resulted in his professional license being restored more quickly and under more favorable circumstances than would have occurred absent the employee's intervention. In turn, the professional who requested assistance obtained a benefit for the State employee that she had previously been unable to secure.

Ruling: The Commission found indications that the employee violated sections 23(e)(3) and (7) of the Conflicts Law and authorized staff and counsel to draft a complaint.

Reasoning: The employee's use of her official position to expedite the restoration of an individual's professional license secured an unwarranted privilege or advantage for that individual and for the person making the request. The employee also received an unwarranted privilege or advantage, since the person making the license restoration request facilitated the employee's receipt of a benefit that she had previously been unable to obtain.

Commission Case No. 06-06

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

Facts: The State employee used State time and resources in connection with his outside employment. The employee had unauthorized software on his State computer that was related to his outside business and installed a cordless telephone and answering machine in his State office to take calls for his secondary employment. The employee used his State printer and copier to duplicate materials for his secondary employment and made and received phone calls regarding his secondary employment during work hours. The employee also certified on a State time sheet that he was at work during the hours he was at the second job.

Ruling: The Commission determined that the employee violated sections 23(e)(3) and (7) of the Conflicts Law.

Reasoning: The State employee's activities on State time in connection with his second job constitute misuse of official position, State time and State resources. The employee's use of State time and State resources to conduct his outside business activity was recurring and intentional. The facts in this case indicate that the employee's actions were deliberate and conceived, rather than negligent, heedless or unintentional. The State employee signed a Consent Order requiring payment of a \$3,000 fine and retirement from State service.

Commission Case No. 02-06

Subject: Misuse of Official Position, Unwarranted Privilege, Recusal

Facts: The State employee signed documents related to the recommendation and awarding of discretionary State grants to two organizations with which her relatives were involved.

Ruling: The Commission determined that the employee violated sections 23(e)(3) and (7) of the Conflicts Law and *N.J.A.C.* 19:61-7.4, the Commission's recusal rule. The former State employee signed a Consent Order requiring payment of a \$750 fine.

Reasoning: The employee should have had no involvement in grant applications from organizations with which her relatives were involved. The employee's involvement in recommending both grants constituted misuse of official position. The employee should have recused herself from any involvement in either grant. Her failure to do so constitutes a violation of the Commission's recusal rule. A State employee must recuse herself from a matter if she has any direct or indirect personal interest that is incompatible with the discharge of her official duties. Matters related to family members are examples of direct personal interests that require recusal. Although the State employee contended that she sought advice on her involvement in the grants process from her supervisor and fellow employees, she did not obtain advice from her Ethics Liaison Officer or the Commission, as required by the Commission's recusal rule.

SEC Employee Ethics Survey - Coming Soon to Your Desktop!

Beginning in the fall of 2008, the State Ethics Commission will be adding an ethics survey component to its process for conducting agency compliance reviews. Employees at an agency subject to a compliance review will be asked to complete an online survey to gauge the effectiveness of their agencies' ethics programs. Employees will also be asked to provide their opinions and attitudes regarding the ethical culture of their agency.

Although the ethics survey will be sent to all employees who have an agency e-mail address, survey responses will be anonymous. Individual employees will not be identified at any stage of the process. Survey responses will be sent only to the State Ethics Commission, and agencies will receive a summary of the survey results. The ethics survey will take about 10 minutes to complete. When you receive the ethics survey in your e-mail inbox, please take a few minutes to respond. Your opinion counts – but we can only count it if we receive your completed survey.

The Ethics Liaison Officer- Your Departmental Source for Ethics Information and Advice

Each department, agency, authority and State college or university is required to appoint an Ethics Liaison Officer, commonly referred to as an ELO. Most ELOs do not handle ethics exclusively. ELOs are often found in legal, regulatory and human resource offices. Although the other responsibilities ELOs handle may vary, there is one constant – your agency ELO is the best source of advice and information within your agency if you have ethics questions or concerns. ELOs attend quarterly meetings conducted by the State Ethics Commission to ensure that they are up-to-date with the most recent ethics developments.

Your ELO should generally be your first source for ethics advice. In addition to receiving training in ethics requirements, your ELO works in the same agency that you do, giving him or her background to provide ethics advice that both follows the law and takes into account the realities of your specific job responsibilities. Remember, the only bad ethics question is the one you don't ask.

Do you Know your ELO? The Commission's website lists contact information (name, phone number, e-mail address and fax number) for each designated agency ELO at <http://nj.gov/ethics/agency/>.

Some common situations that should trigger a call to your ELO are described below.

Gifts

If you receive a work-related gift from an outside source (vendor, lobbyist, advocacy group, grantee, grateful citizen), you should call your ELO to report the gift. If the ELO determines that you are not allowed to accept the gift under the Ethics Commission's zero tolerance policy, the gift will be returned to the donor with a letter explaining the policy and advising the donor to refrain from giving any gifts in the future. In the case of perishable gifts, the gift may be sent to a nearby charity in the name of the donor. The agency must send a letter to the donor, explaining the policy and advising that the gift was donated to the charity in the donor's name. Again, the donor should be advised to refrain from giving any gifts in the future.

Event Invitations

If you receive an invitation to an event (meeting, conference, seminar, training, speaking engagement) because of your State position that will be held outside of the office and is sponsored in whole or in

part by an entity other than the State, call your ELO and ask if you must fill out a Request for Attendance at Events form. Your ELO will tell you if the form is necessary, provide you with assistance if you need help in filling it out and guide you regarding permissible payment of the costs associated with attending the event. It is important to call your ELO as soon as you receive an event invitation, because you must receive written approval from the ELO before you attend.

Second Jobs and Volunteer Activities

If you take a second job or start a new volunteer activity, call your ELO to update your Outside Activity and Secondary Employment form. You must provide your ELO with current information on secondary employment and outside activities. Your supervisor and your ELO will review the information to ensure that there is no conflict with your government employment, and remind you that you cannot use State time or State resources for any second jobs or outside activities.

Contracts with or Representation before State Agencies

If you wish to enter into a contract with a State agency, or want to represent someone other than the State before any State agency, call your ELO. There are broad restrictions against contracting with State agencies or representing anyone other than the State before a State agency, but there are some exceptions to these restrictions. Your ELO will advise you whether the contract or representation at issue is prohibited. Approval of the State Ethics Commission is a prerequisite to a State employee's contract with a State entity.

Political Activities

If you want to engage in political activity, such as running for elected office or volunteering to be a campaign treasurer, call your ELO before committing to the activity. Certain types of political activity may be prohibited, depending on the proposed activity and an employee's specific State job. Consulting your ELO before becoming involved will prevent the embarrassment of commencing a political activity that may not be allowed.

Procurement

If you are involved in procurement at your agency, call your ELO and ask if you have to fill out a Personal and Business Relationships Disclosure Form. This form is designed to detect and prevent conflicts that could arise from employees who make procurement decisions having relationships with parties to the procurement process, such as vendors, contractors or

professionals.

Conflicts of Interest

If there is any overlap between a personal or financial interest in your outside life and anything you are doing, working on, deciding or voting on in the course of your State job, call your ethics officer and report the potential conflict. Your ethics officer will determine if the conflict will impair your ability to do your job independently and objectively, or if the conflict creates even the appearance of impropriety. Getting advice from your ELO regarding potential conflicts of interest may protect you from a potential ethics charge.

Working with Relatives

If you supervise or are supervised by a family member – any relative by blood, marriage or adoption – call your ELO. State Officials are not permitted to supervise their relatives, or exercise any authority with regard to personnel actions involving their relatives. Your ELO will determine if a nepotism issue exists and if so, will work with your personnel department to ensure that there are intervening layers of supervision between family members.

Leaving State Service

If you are leaving State employment, see your ELO for counseling on post-employment restrictions. Your ELO will provide guidance on any restrictions you might have regarding working on specific projects for another employer after you leave State service. Post-employment restrictions are often complicated and fact sensitive. Discussing potential post-employment restrictions with your ELO before leaving State service will smooth your transition to private-sector employment.

Things that don't feel "right"

Not every ethics issue or concern falls into a neat category. Sometimes you may be unsure of something you are thinking of doing. Sometimes you may observe someone doing something that doesn't look or feel right – misusing their official position or disclosing or misusing confidential information. You should also call your ELO to seek advice before doing something you are unsure of or to report something that might be an ethics violation. It is always better and safer to ask before you do something than to be asked to explain something that you have already done.

Compliance Update

The State Ethics Commission's Compliance Officer continues to conduct agency compliance reviews on a regular basis. All of the principal executive branch

departments have been reviewed.

In 2008, the focus of the Commission's compliance reviews has moved to independent commissions, authorities, and State Colleges and Universities. Corrective action plans have been provided to agencies found to be not in compliance with State regulations.

Following the adoption of SEC regulations addressing State college/university employees acting in a scholarly capacity, the Commission's Compliance Officer has also commenced compliance reviews of the colleges and universities. The recently adopted rules require State college and university faculty members to complete an Annual Disclosure Form, identifying benefits received while attending events or engaging in outside activities undertaken in their scholarly capacity.

Please direct any questions on the Commission's Compliance Program to Jeff Stoolman, the SEC Compliance Officer, at 609-826-5542.

Ethics Training Update

Ethics training in the first half of 2008 focused on financial disclosure filers. Training was also provided at authorities, boards and commissions that had yet to receive in-person sessions and retraining was conducted at entities that had been trained in 2005, prior to amendments to the Conflicts Law. Training for the balance of 2008 will focus on the Department of Children and Families and continue in the Department of Human Services.

The following departments, agencies and authorities have received ethics training from the State Ethics Commission in 2008:

Arts Council
Banking and Insurance (financial disclosure filers)
Casino Reinvestment Development Authority
Commerce
Community Affairs (financial disclosure filers)
Corrections (financial disclosure filers)
Education (financial disclosure filers)
Governor's Council on Alcoholism and Drug Abuse
Governor's Office (new financial disclosure filers)
Health Care Facilities Financing Authority
Highlands Council
Individual Health Coverage Program Board
Inspector General
Labor (disability examiners)
Law and Public Safety (new financial disclosure filers)
Real Estate Commission
Schools Development Authority (new employees)
Science and Technology

Small Employer Health Benefits Program Board
South Jersey Transportation Authority (financial disclosure filers)
State Board of Education
State Planning Commission
Water Supply Authority

Please direct any comments or questions about the Ethics Bulletin to

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The Commission's newsletters are also available online at :

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