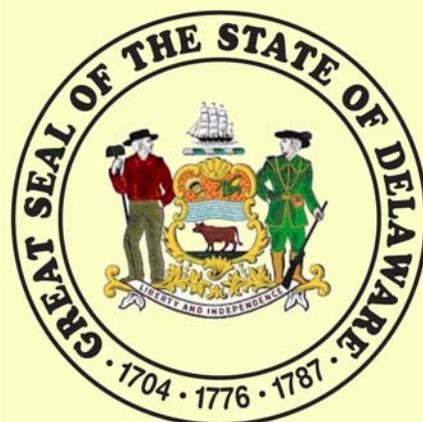


State of Delaware

State Public Integrity Commission



ANNUAL REPORT
March 1, 2005

P. David Brumbaugh, Chair

Foster "Terry" J. Massie and Barbara H. Green, Vice Chairs

Commissioners

Arthur V. Episcopo
Bernadette P. Winston

Barbara A. Remus
Dennis L. Schrader

STATE PUBLIC INTEGRITY COMMISSION

Annual Report - March 1, 2005

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STATE PUBLIC INTEGRITY COMMISSION

I. History and Mission

The State Public Integrity Commission was created in 1991 as an independent agency, and named the State Ethics Commission. Its duties were administering and implementing the State ethics law for the Executive Branch. *29 Del. C., Chapter 58, Subchapter I.* The law had been administered since 1984 by the State Personnel Commission and the Attorney General. Under that arrangement, a Cabinet Secretary was the administrative head; supervised its administrative and technical activities; and developed and put into effect policies and procedures. With the advent of the Ethics Commission the structure was changed so that the Commission was comprised solely of private citizens. In April 1991, seven Commissioners were appointed to interpret the Executive Branch's ethics law. It had no dedicated staff.

In 1993, the Ethics Commission's jurisdiction increased. It gained responsibility for applying the State ethics law to local municipalities, towns and counties, unless they adopted a Code approved by the Commission as being as stringent as the State law. *29 Del. C. § 5802(4).*

In 1994, the "State Public Integrity Act," was passed. The State Ethics Commission was renamed the State Public Integrity Commission. The Act increased the Commission's jurisdiction over other laws and the persons subject to those laws.

Beginning in January 1995, it assumed responsibility for the financial disclosure law, which applies to senior level officials in all three branches of State government. *29 Del. C., Chapter 58, Subchapter II.* Previously, the reports were submitted to three different agencies, and there was no specific authorization for issuing advisory opinions. The Act further provided that in January 1996, the Commission would be responsible for the State lobbying law. *29 Del. C., Chapter 58, Subchapter IV.* The registrations were previously filed by an administrative assistant on Council.

Again, that office had no authority to issue advisory opinions. The 1994 Act provided that lobbying registrations, authorizations, and expense reports be filed and maintained by the Commission, and gave express authority for the Commission issue advisory opinions on the entire chapter--the ethics law, financial disclosure law, dual compensation law, and the lobbying law.

It also was to provide training, publish an annual report, issue opinion synopses, create forms, etc. As the Commission's seven private citizens generally met once a month, and had no dedicated staff, the increased duties required authorization for a Commission Counsel. Its attorney was hired in January 1995. The first training class on financial disclosure was given to the Governor and his Cabinet the following week.

Since 1995, the Commission's has emphasized training to educate those subject to the laws. It achieves that through advisory opinions; training on the laws and the process to obtain advisory opinions. Further educational activities include publishing synopses, brochures, ethics bulletins; creating and maintaining a web site; and having Commission Counsel give interim guidance as part of the day-to-day operations.

The Commission is committed to exercising leadership in the Executive Branch and with local governments to accomplish its duties of preventing conflicts; resolving conflicts if they do occur; recommending rules of conduct the General Assembly rules of conduct; issuing advisory opinions, ruling on complaints; prescribing forms and notices; providing assistance to State agencies, and if necessary seeking assistance of State agencies in discharging its duties. That commitment extends to insuring compliance with reporting requirements in the financial disclosure, dual compensation and lobbying laws through training, advice and enforcement where necessary.

The Commission's commitment is meant to instill the public's confidence in the conduct of government officials through education and compliance, and to regulate, for the public's benefit,

the lobbyists who contact those employees and officers.

II. Structure, Commissioners and Staff - 29 Del. C. § 5808 and 5808A

(A) Commission Appointments, Qualifications, and Compensation

As noted above, the Public Integrity Commission's mission is accomplished by seven private citizens who serve as the "public eye" on the conduct of those subject to the laws. The Governor nominates each member. The Senate must then confirm their nomination. Commission members elect their own Chair.

Commissioners are appointed for a seven-year term. As part of the statutory qualifications, members cannot hold any elected or appointed office, or be a candidate for federal or State office. They also cannot hold any political party office or be an officer in any political campaign. No more than four members of the Commission may be registered with the same political party. Although not required by statute, appointees are routinely appointed from all three counties.

To achieve consistency and continuity in service, the statute is designed to stagger Commissioner's terms. Vacancies occurring before a term expires are filled in the same way as original appointments for the remaining portion of that term. No member can serve more than one full seven-year term, except that a member may continue serving until a successor is appointed and qualified.

Commission members are authorized compensation of \$100 for each day they perform official duties. They may be reimbursed for reasonable and necessary expenses incurred in performing those duties.

(B) Commissioners Serving in 2004

In 2004, the Commission lost four members--a turnover of a majority of its appointees. Mary Jane Willis, Commission Chair from July 2002 through April 2004, resigned when her

Commission expired in April 2004 because of other commitments which precluded her from continuing to serve until her successor was named. Ms. Willis was appointed on June 30, 1996 to complete the term of C. Ann Nellius. Ms. Willis then served her own full term of seven years, which expired on April 2, 2004. Marla L. Tocker, an attorney appointed on June 18, 2003, had to resign in April 2004, as a result of relocating to take a position with a law firm in Boston, Massachusetts. Two long-serving members, Clifton L. Hubbard and Paul E. Ellis, passed away unexpectedly. Commissioner Hubbard served from June 10, 1999 until March 3, 2004. Commissioner Ellis served from July 8, 1998 until May 29, 2004.

The following citizens now serve on the Commission:

P. David Brumbaugh, Chair

The Reverend P. David Brumbaugh was appointed on April 11, 2004, and was almost immediately elected to Chair the Commission, as a result of the significant turnover in Commission members at the time he was appointed. His seven-year term expires on April 11, 2011.

Chairman Brumbaugh received his Doctorate in Ministry from Princeton Theological Seminary, after receiving his Masters from Gordon-Conwell Theological Seminary, in Massachusetts. His Bachelor in Arts degree is from Pennsylvania State University. He has served as pastor and co-pastor in Lakewood and Denver, Colorado; was co-pastor at Islip Presbyterian Church in New York and assistant pastor at Narberth Presbyterian Church, Narberth, Pennsylvania.

Presently the pastor of Dover Presbyterian Church, he has served in that position since coming to Dover from Colorado in 2000. He is also a member of the Interfaith Council of Central Delaware and the Presbytery of New Castle. Chairman Brumbaugh not only chairs the Public Integrity Commission, but also chairs the committee responsible for ministerial credentials in Delaware.

He is a resident of Magnolia, Delaware and has taught as an adjunct at Wesley College.

Foster (Terry) J. Massie, Vice Chair

Foster J. (Terry) Massie was appointed for a seven-year term on July 23, 2002. His term will expire on June 30, 2009. He lives with his family in Hockessin, Delaware. Until a recent promotion to serve as Wells Fargo's Risk Management Consultant, Mr. Massie worked as a credit analyst at Wells Fargo's office in Philadelphia. Mr. Massie has worked in management positions dealing with customer complaints, credit information, training, and counseling associates in performance or conduct problems, etc., in Delaware. He also worked as Operations Manager for Eastern Waste Industries in Maryland, where he dealt with such issues as dealing with government, commercial and residential clients regarding service.

Mr. Massie graduated from Henry C. Conrad High School and completed his Associates Degree in Accounting at Goldey Beacom College, Wilmington, Delaware. He attended Neumann College, Aston, Pennsylvania and a Management Training Institute course. Presently, he is attending Wilmington College. In connection with his assignment as Vice Chair of Personnel for the Commission, he recently attended a State class on performance evaluations.

His community service includes such positions as President, Mendenhall Village Homeowners Association; Board Member, and First Vice President, Greater Hockessin Area Development Association; and Chair, Upper Limestone Road Focus Group.

Barbara H. Green, Vice Chair

Commissioner Green was appointed on June 25, 2004 to complete the term of Paul E. Ellis. Her term expires July 8, 2005. By statute, she can then be reappointed to fill a full seven-year term.

In October of 2004 she was elected as the second Vice- Chair for the Commission. As part of her Vice-Chair role she is leading the Procedures and Orientation Committee. In this role she is

responsible for designing and implementing a procedures and orientation process for the Commission and its staff.

Ms. Green has her bachelor's degree in Medical Technology from the University of Delaware. She is presently retired, but previously worked for Dade Behring, a global diagnostic products company, the Dupont Company, and the Wilmington Medical Center.

In her early career she spent several years in hospital laboratory supervision, before moving into the corporate world. While with Dupont, she worked in research and development and developed new medical diagnostic tests for Dupont chemistry analyzers. The bulk of her career has been spent in management, mostly in the diagnostic products manufacturing environment. Her most recent assignment was with Dade Behring as the Director of Manufacturing for a 500 person medical diagnostics manufacturing organization. She was also responsible for global implementation of corporate level quality and efficiency

Ms. Green is a resident of Wilmington.

Arthur V. Episcopo

Commissioner Arthur V. Episcopo was appointed, in 1998, to a seven-year term which expires this year on July 8, 2005. He previously served as an appointee to the Industrial Accident Board.

Mr. Episcopo has had dual careers in the private sector and the military. For 32 years, he worked for E.I. Du Pont De Nemours and Company, Inc., with varied assignments, principally in line management and subsequently in staff positions. His responsibilities included supervisory positions in Personnel, Employee Relations, Site Safety Occupational Health and Fire Protection, Site Engineering Maintenance, Laboratory Maintenance, Site Electrical, and Planning and Scheduling. While pursuing a career at Du Pont, he also pursued a career in the Army National

Guard. He served in the Army National Guard for more than 42 years, rising through the enlisted ranks to become the Adjutant General of the State of Delaware. He served in that Cabinet position from February 1989 to April 1993. He also served as Acting Chair from April 2004 until July 2004.

He recently completed an accredited course of three hours on Research Protection for Human Services through the University of Medicine and Dentistry of New Jersey.

Barbara A. Remus

Barbara Remus is a resident of Camden, Delaware in Kent County. She was appointed to the Commission on July 23, 2002 for a seven-year term, which expires June 30, 2009.

She is a Senior Consultant in the Dover office of Brokerage Concepts, Inc. (BCI) of Delaware. BCI is part of the largest privately held group and individual insurance brokerage company in the United States. Her employment requires continuing education and ethics classes to maintain insurance licenses. Her professional associations are in the Delaware and National Association of Insurance and Financial Advisors, and the International Foundation of Certified Employee Benefit Specialists.

A graduate of Dover High School, she obtained her Bachelor of Science Degree in Business Administration from Wilmington College. Ms. Remus received a professional designation CEBS (Certified Employee Benefits Specialist) from the International Foundation of Employee Benefit Specialist and the Wharton School of Business. She is also a fellow with the foundation.

Her community service includes: Board member and Vice President, Camden Wyoming Sewer and Water Authority; former appointee to the State Small Employers Reinsurance Board; and member, Delaware State and Central Delaware Chambers of Commerce. She served as Secretary, Dover Century Club; Vice President, Kent County Democrat Committee; and member, 34th District Democrat Committee. She is a member of the Dover Art League and the Dover Century Club.

Dennis L. Schrader

Commissioner Schrader was appointed on June 24, 2004 to complete the six years remaining on the term of Marla L. Tocker. His term expires June 30, 2010. Mr. Schrader obtained his law degree from West Virginia University College of Law. He is admitted to practice in both West Virginia and Delaware State and Federal Court. He also is admitted to the U.S. Supreme Court. He presently is in practice with the law firm of Wilson, Halbrook & Bayard, P.A., in Georgetown, Delaware. In his practice, he has served as the Town Attorney for towns in Southern Delaware. He also has held public office as the County Attorney for Sussex County.

Mr. Schrader has been active in the Delaware legal community for many years serving as President of the Delaware State Bar Association, and as an officer and/or representative of such organizations as the Sussex County Bar Association, Mid-Atlantic Conference of Bar Presidents, National Conference of Bar Presidents, American Bar Association, etc. He is currently serving in the ABA House of Delegates.

He was selected by former Chief Justice Veasey to serve on the Delaware Supreme Court Committee that recently rewrote the Lawyer's Rules of Professional Conduct. He now chairs the Supreme Court Permanent Advisory Committee on Lawyer's Rules of Professional Conduct. He has been highly active in studies of the Delaware Court system,(e.g., Delaware Courts Planning Committee, Chief Justice's Court of Common Pleas Study Committee, Consultant on Alderman's Court, etc.). He received the Delaware State Bar Association President's Citation for service in the public interest for work on behalf of the Professional Guidance Committee. He also was recognized for his work in furtherance of the administration of justice when he received the Andrew D. Christie *Pro Bono Publico* Award.

Bernadette P. Winston

Bernadette P. Winston was the fourth Commissioner appointed in 2004. Her seven-year term expires on May 12, 2011. Ms. Winston is the Associate Executive Director of the Kingswood Community Center, Inc., in Wilmington, Delaware. In that position, she is responsible for developing community awareness and crisis alleviation for residents of Northeast Wilmington, as well as the day-to-day facility operations.

She has had more than 30 years of experience in government and non-profit programs. Among her past activities, she was Board President, West Center City Early-Learning Center; Vice Chair, Interfaith House; Advisory Board Member for Girls Scouts and YMCA; and Second Vice President, NAACP; Treasurer of Monday Majors; and President of Thursday Women's Major League.

She is presently Secretary for the Board of the Food Bank of Delaware; Vice Chair for the Wilmington Housing Authority Board of Commissioners; active with the Junior Board of Christiana Care; and a member of the Order of the Eastern Stars.

Ms. Winston resides in Wilmington.

Commission Staff

The Commission has had a two person staff since 1995. They are responsible for the day-to-day office operations. The Commission's legal counsel serves not only as the Commission's legal counsel, but also is statutorily charged with investigating complaints, prosecuting disciplinary proceedings, providing training and legal guidance to those subject to the law. 29 *Del. C.* § 5808A(a). Commission Counsel also doubles as the functional equivalent of a Director, in such matters as employing and supervising staff, drafting the Commission's Strategic Plan, its Operating Budget, maintaining permanent records, etc.

Commission Counsel - Janet A. Wright

As an independent agency, the Commission appoints its own legal counsel. 29 *Del. C.* §

5809(12). The Commission appointed Janet A. Wright in 1995. A 1989 graduate of Widener University School of Law (cum laude), she was admitted to practice in Delaware that same year. After graduation, Ms. Wright was a judicial clerk for the Honorable Richard S. Gebelein, Delaware Superior Court. She also is admitted to practice in the U.S. District Court in Delaware, and the U.S. Third Circuit Court of Appeals. After her clerkship, she was an Assistant City Solicitor for the City of Wilmington. Initially, she prosecuted violators of the Building, Housing and Fire Codes, animal protection laws, and periodically prosecuted criminal matters in Municipal Court. She later was a civil litigator, defending the City and its employees primarily in federal court against allegations of civil rights violations. She holds an American Jurisprudence Award in Professional Responsibility, and completed the National Institute for Trial Advocacy's skills course. She was the Chair, and is still a member of, the Northeastern Regional Conference on Lobbying (NORCOL). Its members are government representatives who regulate lobbying from Washington, D.C. to New England. She is a member of the Council on Government Ethics Laws (COGEL). Members are government employees and appointees in ethics, lobbying, financial disclosure, and campaign finance offices from all fifty (50) states, the U.S. government and the Canadian government. Ms. Wright has served on COGEL's Site Selection Committee. She also was selected to serve as a moderation on a COGEL Session on lobbying, and in 2003, was asked to conduct a breakfast session on Dual Government employment. Her review of Alan Rosenthal's Drawing the Line: Legislative Ethics in the States, was published in the "COGEL Guardian." She has presented several Government Ethics sessions as part of the Delaware Bar Association's Continuing Legal Education Classes. In 2004, she was asked by the National Business Institute (NBI) to serve as a faculty member and present the ethics portion of a session on "Land Use Planning and Eminent Domain in Delaware," Delaware State Bar Association members and other attendees. Her presentation was selected by NBI to be part of its on-line training

program.

Administrative Specialist III

Aimee Baysinger has been the Commission’s Administrative Specialist since October 15, 2001. Prior to working for the Commission, she worked for CorpAmerica, Inc., as a Specialist, preparing and filing incorporation documents with the office of the Secretary of State. Ms. Baysinger moved to Delaware from Dallas, Texas in 2000. While in Texas, she worked for Rockwell International as an Administrative Assistant and as a Meeting Planner and Customer Service representative. Following her Rockwell employment, she was a paralegal for Locke Liddell & Sapp, LLP and Martin, Farr, Miller & Grau, LLP, in the areas of civil and commercial litigation. She received her paralegal certificate from the Professional Development Institute at North Texas University, Denton, Texas.

III. Laws Administered by the Commission

As noted in the history section, the Commission administers the four subchapters of Title 29, Delaware Code, Chapter 58, the “Laws Regulating the Conduct of Officers and Employees of the State.” The Code of Conduct sets the ethical standards of State Executive Branch and most local governments officials and employees. The Financial Disclosure Law requires public officers in the Executive, Legislative and Judicial Branches to disclose financial interests, such as assets, creditors, income, and gifts. The Compensation Policy subchapter creates procedures to monitor for and prevent “double-dipping” when State employees and officials hold dual State and/or local government jobs. The State Lobbying Law mandates lobbying registration, authorization and expense reports by lobbyists authorized to represent organizations before the General Assembly or any State agencies. In administering these laws, Commission’s activities focus on assisting government officials in understanding and complying with the law through advisory opinions,

waivers, training sessions, and publications. Where necessary, the Commission enforces compliance through the complaint process.

(A) Advisory Opinions - 29 Del. C. § 5807(c)

Advisory opinions serve several purposes: (1) give individual guidance on how to comply in a particular situation; (2) protect those who comply from disciplinary action; (3) serve as the basis for case examples in training classes; and (4) provide guidance through publication as the Commission's opinion synopses.

Any employee, officer, honorary official, or State agency may seek an opinion.

(B) Waivers - 29 Del. C. § 5807(a)

In extreme circumstances there may be deviations from the laws. The Commission may grant waivers if: (1) the literal application of the law is not necessary to serve the public purpose; or (2) there is an undue hardship on the agency or the employee. Waivers become public records so the public knows why there was a deviation from the standards.

As with advisory opinions, any employee, officer, honorary official or agency may seek a waiver.

(C) Training and Publications - 29 Del. C. § 5808(A)(a)(1)

Further aids to complying with the law are training classes; publication of opinion synopses; Ethics Bulletins; brochures; and other materials. As the Commission normally meets once a month, the day-to-day work of providing instruction and facilitating compliance with the laws, conducting seminars and workshops, publishing materials, training etc., are the Commission Counsel's statutory duties. *Id.* An additional duty related to providing information to the public and to those subject to the laws is maintaining the Commission's web site.

(D) Complaints - 29 Del. C. § 5810(a)

Aside from issuing advice, waivers, training, publishing, etc., the Commission may act on sworn complaints or on its own initiative on allegations of violations. A majority (4) must find “reasonable grounds to believe”¹ a violation occurred. 29 Del. C. § 5808(A)(a)(4). If probable cause is found, the Commission may conduct a hearing. 29 Del. C. § 5810(a). The person charged then accrues legal rights to notice and due process. Violations must be proven by clear and convincing evidence. *Commission Rules, “Hearings and Decisions,”* ¶ 11. If a violation is found, the Commission may impose administrative disciplinary action. 29 Del. C. § 5810(d). Further, it may refer substantial evidence of any criminal law violation to appropriate federal or State authorities. 29 Del. C. § 5810(h)(2). Frivolous complaints, or those that fail to state a violation may be dismissed. 29 Del. C. § 5809(3).

The purposes of the laws, the Commission’s jurisdiction and possible penalties for violations are discussed below.

A. Code of Conduct - Subchapter I

Purpose and Jurisdiction: Subchapter I sets the standards of ethical conduct for State employees, officers and honorary officials in the Executive Branch and local government, unless the local government has a Code as stringent as the State law.² The purpose is to instill the public’s respect and confidence that employees and officials will base their actions on fairness, rather than bias, prejudice, favoritism, etc., arising from a conflict of interest. 29 Del. C. § 5802(1).

The Code applies to all Executive Branch employees (rank and file), officers (elected and appointed Senior level Executive Branch officials), and honorary State officials (appointees to Boards

¹ “Reasonable grounds to believe” means “probable cause.” Coleman v. State, 562 A.2d 1171, 1177 (Del. Supr., 1989).

² Six local government have had their Codes approved: Cities of Dover, Lewes, Millsboro, Newark, Wilmington, and New Castle County.

and Commissions). Approximately 48,000 persons fall within those three categories. The number of local government employees, officers and officials over which the Commission has jurisdiction for purposes of the Code of Conduct is unknown.

If the conduct exceeds the rules, disciplinary actions may taken. *29 Del. C. § 5802(2)*.

Penalties:

(A) Conduct that may result in criminal prosecution: Four (4) rules of conduct carry criminal penalties of up to a year in prison and/or a \$10,000 fine. *29 Del. C. § 5805(f)*. Those rules are that employees, officers, and honorary officials may not: (1) participate in State matters if a personal or private interest would tend to impair judgment in performing official duties; (2) represent or assist a private enterprise before their own agency; (3) contract with the State absent public notice and bidding/arm's length negotiations; and (4) represent or assist a private enterprise before the State on certain matters for two years after leaving State employment. *29 Del. C. § 5805(d)*.

(B) Conduct That May Result In Administrative Discipline

Violation of the above rules may result in administrative discipline. *29 Del. C. § 5810*.

Administrative action may also be applied for improperly accepting gifts, other employment, compensation, or anything of monetary value. *29 Del. C. § 5806(b)*. Similarly, administrative discipline may occur for use of public office for private gain or unwarranted privileges, and improper use or disclosure of confidential information. *29 Del. C. § 5806(e) thru § 5806(g)*.

Administrative discipline may be: (1) a letter of reprimand/censure; (2) removal, suspension, demotion, or other appropriate disciplinary action for persons other than elected officials; or (3) a recommendation of removal from office of an honorary official. *29 Del. C. § 5810(h)*.

B. Financial Disclosure - Subchapter II & Other Disclosure Requirements

Purpose: Subchapter II is meant to instill the public's confidence that its officials will not act

on matters where they have a direct or indirect personal financial interest that may impair objectivity or independent judgment. 29 *Del. C.* § 5811. Compliance with that purpose is, in part, insured by the requirement to report financial interests shortly after becoming a public officer, and for each year thereafter during which they serve.

Jurisdiction: Reports must be filed by more than 300 public officers in the Executive, Legislative, and Judicial branches within 14 days of becoming a public officer and on February 15 each year thereafter. Those who must file include: State elected officials; cabinet secretaries and their equivalents, division directors and their equivalents, and all members of the judiciary. Candidates for State office also are considered “public officers.” Thus, the actual numbers of persons required to file increases beyond the more than 300, depending on the number of State candidates.

Personal financial information to be reported consists of assets, debts, income, capital gains, reimbursements, honoraria and gifts. Aside from the public officer’s own financial interests, they must disclose assets held with another person if they receive a direct benefit, and assets held by spouses and minor children, even if there is no direct benefit.

Whether the financial interests they report raise any ethical issues is decided under the ethics laws applicable to the particular officer.³

Penalties: Willful failure to file a report is a Class B misdemeanor. Knowingly filing false information is a Class A misdemeanor. 29 *Del. C.* § 5815. The Commission may refer suspected violations to the Commission Counsel for investigation and to the Attorney General for investigation and prosecution. *Id.* The penalties are: up to six months incarceration and a fine of up to \$1,150 for a Class B misdemeanor, 11 *Del. C.* § 4206(b); and up to one year and a fine of up to \$2,300 for a

³Executive Branch officers refer to the State Code of Conduct, 29 *Del. C.*, Ch. 58; Legislative Branch officers refer to the Legislative Conflicts of Interest, 29 *Del. C.* Ch. 10; and Judicial officers refer to the Code of Judicial Conduct, Delaware Rules Annotated.

Class A misdemeanor, *11 Del. C. § 4206(a)*. The Court may also require restitution or set other conditions as it deems appropriate. *11 Del. C. § 4206(a) and (b)*.

Other Disclosure Requirements:

(A) Code of Conduct Disclosure Requirements: In the executive branch, all State employees and officers must, as a condition of commencing and continuing employment with the State, file a “full disclosure” if they have a financial interest in a private enterprise that does business with, or is regulated by, the State. *29 Del. C. § 5805(d)*. “Honorary State officials,” appointees to certain State Boards and Commissions, must file a “full disclosure” if they have a financial interest in a private enterprise that does business with, or is regulated by, the agency to which they are appointed. *29 Del. C. § 5805(d)*.

In the context of these filings, “financial interest” includes: (1) ownership or investment interests; (2) receiving \$5,000 or more as an employee, officer, director, trustee or independent contractor; or (3) creditor of a private enterprise. *29 Del. C. § 5804(5)*. “Full disclosure” requires more details than the annual reports filed pursuant to the Financial Disclosure law by Senior Level officials. “Full disclosure” means sufficient information for the Commission to decide if there is any conflict of interest. *Commission Op. No. 98-23*.

(B) Executive Order Disclosure Requirements: Executive Branch officers who must comply with the Financial Disclosure Law, also must notify the Governor’s office of any gift received valued at more than \$250. *E. O. No. 8*. Pursuant to the Executive Order, information on those gifts will be posted on the Governor’s web site.

C. Compensation Policy - Subchapter III

Purpose: Some elected State officials and other paid appointed officials are also employed by State agencies or local governments. The General Assembly believed taxpayers should not pay an

individual more than once for coinciding hours of the workday. 29 Del. C. § 5821(b). To ensure taxpayers do not pay such employees and officials from more than one tax-funded source during overlapping hours--that is, they do not “double-dip”-- those holding dual government positions must have time records verifying the hours worked at the full-time job on any day they miss work due to the elected or paid appointed position. 29 Del. C. § 5821(c) and § 5822(a). The supervisor must verify the records and, where appropriate, the full-time salary will be prorated. *Id.*

Jurisdiction: The number of persons to whom this law applies varies based on how many government employees hold elected office or a paid appointee position to boards or commissions.

For those subject to the Code of Conduct who hold dual positions, the restrictions on “double-dipping” are reinforced by the restriction on holding “other employment.” 29 Del. C. § 5806(b). Complying with that ethics provision is meant to insure that not only is there no “double-dipping,” but that the “other employment” does not raise other ethical issues.

The financial disclosure law also overlaps with the “double-dipping” law. Persons who file financial disclosure reports must identify “any” source of income for services rendered if they are paid more than \$1,000 a year. If the compensation exceeds \$1,000, both positions must be disclosed on the financial disclosure report. 29 Del. C. § 5813(a)(4)(a).

To insure compliance, the State Auditor audits the time records. 29 Del. C. § 5823. Discrepancies are reported to the Commission for investigation as a complaint, and/or the Attorney General for possible prosecution under any appropriate criminal provision. 29 Del. C. § 5823.

D. Registration of Lobbyists -

Purpose: Individuals authorized to act on behalf of another must register with the Commission if they will be promoting, advocating, influencing or opposing matters before the General Assembly or a State agency by direct communication. 29 Del. C. § 5831. The United States

Supreme Court has said that the purpose of lobbying registration and reporting laws is to inform the public and government officials whom they are dealing with so that the voice of the people will not be “drowned out by the voice of special interest groups.” United States v. Harriss, 347 U.S. 612, 74 S. Ct. 808 (1954).

Jurisdiction: At the end of 2004, 218 lobbyists were registered to represent 419 organizations. That is 12 fewer lobbyists than in 2003, but 49 more organizations represented by lobbyists. This trend continues from past years. For example, in 2003 the registered lobbyists decreased by four (4) from 2002, but the represented organizations increased by 43.

Each lobbyist files a quarterly report disclosing all direct expenditures on General Assembly members and/or members of a State agency. 29 Del. C. § 5835. In 2003, 920 reports were filed. In 2004, because the number of lobbyists decreased, the number of individual expense reports filed were 872. While fewer lobbyists filed, the reports were longer because the lobbyists had more clients.

Penalties: Any person who knowingly fails to register or knowingly furnishes false information may be found guilty of a misdemeanor. 29 Del. C. § 5837. Unclassified misdemeanors carry a penalty of up to 30 days incarceration and a fine up to \$575, restitution or other conditions as the Court deems appropriate. 11 Del. C. § 4206(c). Failure to file authorizations or reports serves as a cancellation of the lobbyist’s registration. *Id.* They may not re-register or act as a lobbyist until all delinquent authorizations and/or reports are filed. *Id.*

IV. Commission Accomplishments in 2004

The Commission’s goals for 2004 were to continue emphasizing training in all areas of the law. Additionally, it sought to increase access to services to lobbyists and public officers through its internet site. Beyond those goals, the Commission worked to continue meeting performance measures identified in its budget request, which was to increase the number of training participants and increase the percentage of requests for advisory opinions that were responded to in 45 days or

less.

The details of the accomplishments in those areas and others are given below.

A. Training

Statutory Mandate: The Commission’s Counsel is to “assist the Commission in” [its] activities, such as seminars and workshops, educating individuals covered by the law about its requirements and purposes.” 29 *Del. C.* § 5808A(a)(1).

The statute mandates that the Commission give training, but there is no statutory counterpart that those subject to the laws must attend training. Thus, the number of classes and attendees is based on the Commission staff’s ability to generate interest in the courses. In its budget request, the Commission projected 350 attendees for its training classes.

In 2004, the Commission’s Counsel conducted eleven (11) training seminars. This was four (4) sessions less than in 2003. However, the number of attendees increased by more than 21%. In 2003, 377 persons attended training, while in 2004, 431 attended. This also exceeded the number of attendees projected in the fiscal year budget, 350, by more than 23%.

Eight (8) classes were on the State Code of Conduct and four (4) were on Financial Disclosure Reporting. While those classes focused on the particular topics of those laws, the classes also incorporated references to the dual compensation law when discussing other employment and/or sources of income; and also incorporated references to the lobbying law in discussions pertaining to the restrictions on representing private enterprises before one’s own agency, and discussions pertaining to accepting gifts under both the Code of Conduct and the Financial Disclosure law. Four (4) seminars were canceled due to Commission Counsel’s illness.

The Code of Conduct training classes were given to the Department of Transportation (3 separate sessions); the Department of Health and Social Services (2 separate sessions); the Parole and Probation Office; and Family Court (two separate days of training sessions). Financial

Disclosure Training was given as part of the orientation for new members of the General Assembly; and two separate financial disclosure classes were scheduled through the State Personnel Office's (SPO) Training Unit, and were offered to any person who is subject to the law.

As noted in the Commission's prior annual report, it has established an on-going relationship with a number of State agencies in providing training. In 2004, it continued those relationships. Since 1995, the Commission's Counsel has coordinated training efforts on both the Code of Conduct training and Financial Disclosure Training with the SPO's Training Unit. The Code of Conduct training has been, and continues to be, an annual part of the course curricula in SPO's Career Enrichment Program (CEP), for rank-and-file State employees. Training on the Code of Conduct and Financial Disclosure are annually offered to senior level employees and officials through SPO's Management Development Institute (MDI).

In 2003, SPO and the Commission set up a coordinated distribution system to insure Statewide distribution of a brochure designed and published by the Commission, which also incorporated references to overlapping Merit Rules. The brochures were sent to the Human Resources Representative of each State agency. In 2004, the Public Integrity Commission reprinted the brochure with updates to citations of the re-numbered Merit Rules. As in 2003, almost 10,000 brochures were distributed Statewide. Response to the brochure has been very favorable. It will be reprinted again in 2005, with updated references to the re-numbered definitions in Title 29, Chapter 58.

Also in 2003, SPO started a new mandatory class for all new supervisors. The course, "Supervisory Development Certificate," has a short session on ethics. SPO's trainers do not teach the ethics course, as such training is the statutory duty of the Commission and requires legal training. However, SPO's trainers distribute the Commission's brochure; advise attendees that the

Commission issues advisory opinions and offers a separate course on ethics. SPO's trainers also advise the attendees how to contact the Commission. That program continued in 2004, with approximately 30-50 people at each session. SPO intends to create an additional program in 2005, and incorporate the full ethics training session into the program.

The coordination with SPO fills a critical gap for the Commission. While its Counsel is charged with providing training to all persons subject to the law, there are more than 46,600 employees on the State payroll who are subject to the Code of Conduct. Further, appointees to State Boards and Commissions are also subject to the State Code. There are more than 200 State Boards and Commissions, with an average of 5-7 members for an estimated total of 1,000 to 1,400 people. That means that within the State there are at least 48,000 people who are subject to the State Code. Additionally, all local government employees and officials are subject to the State Code unless they adopt their own Code, which must be found by the Commission to be at least as stringent as the State Code. As only six (6) local governments have done so, all other local governments fall within the Commission's jurisdiction for training. The numbers of employees and officials of local governments are unknown. It would be impossible for the Commission's lone trainer to provide training to all of those who are subject to the Code, especially when turnovers must also be considered. SPO's coordination with the Commission greatly broadens the number of State employees and officials who are exposed to the Code.

In December 2004, SPO designed the nomination for attendance form that it normally distributes through State mail to persons who may be interested in the financial disclosure training. To see if attendance could be increased, Commission Counsel e-mailed the form with a cover letter to each of the more than 300 State officers who file the report. The cover letter included information on how agencies could schedule training at the agency. This opportunity was offered in addition to the

two classes scheduled in Wilmington and Dover.

The e-mail noticed resulted in an increase in the number of Financial Disclosure classes scheduled for January and February 2005. The details will be included in the 2005 annual report.

In addition to coordinating training with SPO, Commission Counsel continued coordinating training with the Department of Health and Social Services (DHSS). This has been occurring since 1995. For the convenience of as many DHSS employees as possible, Commission Counsel travels to various DHSS sites throughout the State to give the training. This continuous DHSS training was re-emphasized in 1998 by the recommendation in the State Legislative and Citizens Investigative Panel of Nursing Homes in the "Marshall Report," which recommended that ethics training be given to DHSS employees that worked in areas related to long-term care and to Deputy Attorney Generals. The DHSS training is coordinated with DHSS's Training Staff and usually is given at least once each quarter. However, due to Commission Counsel's extended illness, two sessions were cancelled in 2004.

An annual training session also has been established with the Department of Administrative Services, Division of Professional Regulation, which has oversight of multiple State Boards and Commissions which regulate occupations and professions.

Appointees to State Boards and Commissions are subject to the Code of Conduct. *29 Del. C. § 5804(6) and § 5804(12)*. The conference orients new appointees to procedural and substantive laws they will administer; public records and meeting laws; and the Code of Conduct. In 2003, sixty (60) people attended. In 2004, Commission Counsel could not attend due to illness. However, Counsel prepared a booklet specifically for the appointees and Professional Regulation's staff which was distributed to all attendees. [Appendix A](#) (*without enclosures*).

Following up on a recommendation by the Federal Highway Authority, in 2003, the Delaware

Department of Transportation (DelDOT) began working with Commission Counsel to develop a training program tailored to DelDOT's needs. That effort began with two classes in 2004. More classes are expected to be scheduled in 2005.

In 2004, at a two-day Family Court conference, Commission Counsel gave an abbreviated ethics class. As a result, Family Court scheduled the full course for its supervisors in 2005.

In past years, the Commission's Counsel has been asked by the Delaware State Bar Association (DSBA) to participate in its Continuing Legal Education (CLE) seminars. That relationship continued in 2004. The National Business Institute (NBI) asked Commission Counsel to be part of its "faculty" for a CLE seminar sponsored by the DSBA. The course was on "Land Use Planning and Eminent Domain in Delaware." In addition to attorney attendees, nine (9) DelDOT employees who work in land use attended. Commission Counsel covered ethics issues related to land use issues. Land use issues are the most common area where local government officials seek advice and the most common area where complaints are filed against them. The course provided an understanding of how alleged conflicts can be resolved by advisory opinions rather than having land use decisions delayed or challenged based on conflicts. *See, e.g., Harvey v. Zoning Board of Adjustment of Odessa, Del. Super., C.A. No. 00A-04-007 CG, Goldstein, J. (November 27, 2004), aff'd, 781 A.2d. 697 (Del. 2001).* Commission Counsel's presentation was selected because of its "high quality" to be part of NBI's on-line training class. [Appendix B.](#)

B. Advisory Opinions, Waivers, Complaints, and Referrals

(1) **Advisory Opinions and Waivers Statutory Mandate:** Powers and duties of the Commission: "To issue written advisory opinions upon the request of any State employee, officer, honorary official, or State agency, as to the applicability of this chapter to any particular fact situation."

29 Del. C. § 5809(2). The Commission "may grant a waiver to the specific [Code] prohibitions if the

Commission determines that the literal application of the law is not necessary to achieve the public purposes of the chapter or would result in an undue hardship on any employee, officer, official or State agency.” 29 Del. C. § 5807(a). The Commission meet eleven (11) in 2004 to act on such matters.

(2) Powers and duties of Commission Counsel: “To provide legal counsel to the Commission concerning any matter arising in connection with the exercise of its official powers or duties,” 29 Del. C. § 5808A(a)(2), and “assist the Commission in drafting waiver decisions and advisory opinions.” 29 Del. C. § 5808A(a)(5).

In 2004, forty-nine (49) matters were submitted for action. This was the exact number submitted in 2003. Of these, five (5) were complaints. Three other complaints from prior years were resolved. For a total of 52 matters. Aside from the complaints, forty-four (42) requests for advisory opinions and two (2) waiver requests were resolved

It should be noted that the number of matters submitted is based on each request or complaint filed by an individual. However, the number of legal issues in each request or complaint may be more than one. For example, where a local government employee’s agency sought an opinion on whether seven private contracts with him would violate the law, the Commission had to decide if his disclosure constituted a “full disclosure” of each contract. Aside from determining if there was “full disclosure” of each contract, the Commission had to decide if any individual contract violated the Code. That could only be decided after a full review of the “particular facts” of each of the seven contracts. In one instance, the contract violated the Code. For that contract, the Commission also had to decide if there were grounds for a waiver. *Commission Op. No. 04-09.* [Appendix C.](#) Thus, multiple legal issues are considered even though the matter is numbered as a single case.

(1) Advisory Opinions

Any State or local government employee, officer, honorary official, State agency may, in writing, seek an advisory opinion on any particular fact situation. 29 Del. C. § 5807(c). In 2004, as in the past, most requests were for interpretations of the rules on accepting employment, whether concurrent employment or post-employment. Both laws restrict employees and officials from “representing or otherwise assisting a private enterprise.” 29 Del. C. § 5805(b) and § 5805(d).

(a) Concurrent Employment

(1) Private Sector Employment: The most frequently sought advice whether a second job in the private sector created a conflict. Of the forty-two (42) requests for advisory opinions, fourteen (14) sought guidance on accepting a second job. It is logical that many requests are in this area as it entails perhaps the most complex and complete analysis of the Code of Conduct. If seeking a second job with a private company while employed by the State, the following restrictions apply:

(1) State employees, State officers, and honorary officials may not, in their private capacity, represent or otherwise assist the company before their own agency. 29 Del. C. § 5805(b)(1).

(2) State officers, senior level Executive Branch officials who file financial disclosure reports, may not represent or otherwise assist private enterprises before any State agency. 29 Del. C. § 5805(b)(1)

(3) In no instance may they review or dispose of matters related to the private enterprise because of their financial interest in the company, even if it is indirect. Beebe Medical Center v. Certificate of Need Appeals Board, C.A. No. 94A-01-004, Terry, J. (Del. Super., June 30, 1995), aff'd, Del. Supr., No. 304 (January 29, 1996)(State appointee should have recused himself from the outset and not have made even “neutral” and “unbiased comments” when his private employer was doing business with an application before his Board).

(4) The private job may not result in preferential treatment for any person. In re: Ridgely, 106 A.2d 527 (Del., 1954)(State officer declined to take official action after a complaint was filed; then referred complainant to his private company).

(5) Result in official decisions outside official channels. In re: Ridgely, 106 A.2d 527 (Del., 1954)(State officer told person charged that he could take care of complaint without the person being charged) .

(6) Even if there are no actual violations in accepting outside employment, the official may not engage in conduct that may “raise suspicion” of a violation. This is essentially an “appearance of

impropriety test.” *Commission Op. No. 92-11*. The test for an appearance of impropriety is if the conduct would create in reasonable minds, with knowledge of *all* the relevant facts that a reasonable inquiry could disclose, a perception that the official’s ability to carry out official duties with integrity, impartiality and competence is impaired. *In re Williams*, 701 A.2d 825 (Del., 1997).

(7) If the second job is with a private enterprise that does business with the State, the restrictions increase. As a condition of commencing and continuing employment or appointment with the State, a “full disclosure” must be filed. 29 Del. C. § 5806(d); *Commission Op. No. 04-09*, [Appendix C](#).

(8) No State employee or officer and no private enterprise in which they have a legal or equitable ownership interest may contract with the State contract if the contract value exceeds \$2,000 unless that contract is publicly noticed and bid. 29 Del. C. § 5805(c).

(9) If the contract is for less than \$2,000 there must be arm’s length negotiations. *Id.*

(10) No government confidential information may be misused to obtain the secondary employment. 29 Del. C. § 5806(f) and (g).

(11) Public office may not be misused to obtain the private job. 29 Del. C. § 5806(e).

A thorough review reminds government officials who hold a State job and a private job, that government duties “must command precedence.” *In re: Ridgely*, 106 A.2d 527 (Del., 1954). In *Ridgely*, the Court noted that the line between proper conduct and the appearance of impropriety could become “blurred” making it difficult for the individual, by themselves, to draw that line. Under the Code of Conduct, the Commission has authority to “draw that line,” and government officials are no longer burdened with blurred vision, particularly if the private employment is connected to the government.

(2) Public Sector Employment: Holding “other employment” in the public sector raises different issues which are addressed in this report under the “Compensation Policy” section.

(b) Post-Employment Law: Ten (10) people sought guidance on this rule. Frequently, people assume government employees may not, in any way, deal with any State agency for two years after leaving government employment. As a result, some see the post-employment law as a stumbling

block to seeking government employment because of that misconception.

The post-employment law, like the concurrent employment law, restricts former government officials from “representing or otherwise assisting a private enterprise.” However, unlike the concurrent employment law, the post-employment law does not ban dealing with the former agency or any other agency, except in three discrete areas: where they (1) gave an opinion; (2) conducted an investigation; or (3) were otherwise directly and materially responsible for the matter.

It is generally easy for former employees to identify areas where they gave an opinion or conducted an investigation. The grey area is on matters where they were “otherwise” directly and materially responsible. This requires more detailed exploration by the Commission into the particular facts and whether the facts establish that the former employee was not only “directly” responsible, but also “substantially” involved.

(c) **Advice on Other Legal Issues:** The remaining advisory opinions were issued on such topics as nepotism; accepting gifts, payment of expenses or other things of monetary value; serving as an unpaid Board member of a non-profit entity; two interpretations of the Financial Disclosure law; and one interpretation of the lobbying law.

(2) **Waivers - Statutory Mandate:** Waivers may only be given if the literal application of the law is not necessary to serve the public purpose, or there is an undue hardship on the State employee or State agency. 29 Del. C. § 5807(a). When they are granted, the proceedings become a matter of public record so that the public knows why the law was violated, and is aware that the conduct was scrutinized. 29 Del. C. § 5807(b)(4). See, e.g., *Commission Op. No. 04-09*, [Appendix C](#). Two waivers were requested in 2004. This compares to three (3) requests for waivers in 2003. Because waivers are an exception to complying with laws which the General Assembly deemed “so vital to government” that violators are

subject to criminal penalties, they are rarely granted. *See*, 29 Del. C. § 5802(b).

(3) Complaints

Statutory Mandate: Commission Counsel's Duties: To investigate information coming to the attention of the Commission that, if true, would violate any provision of the laws administered by the Commission; to provide legal counsel to the Commission on matters connected to its official duties; to make recommendations regarding referral for prosecution; and to prosecute disciplinary proceedings, if a Commission majority finds probable cause to believe a violation occurred. 29 Del. C. § 5808(A)(a)(2), (3) and (4). **Commission Duties:** To recommend such disciplinary action as it deems appropriate as authorized by 29 Del. C. § 5810(d) (*administrative sanctions*) or other Code provisions, or dismiss a complaint that is frivolous or fails to state a violation. 29 Del. C. § 5809 (3).

(a) Failure to State a Violation - Lack of Subject Matter Jurisdiction

Five (5) complaints were filed in 2004. After investigation, three (3) were dismissed because the Commission lacked subject matter jurisdiction, even assuming the allegations to be true. In one case, it was alleged that certain State employees were engaging in improper political activities. *Commission Op. No. 04-13*. Assuming the allegations as true, they would more properly fall within the realm of the State laws restricting political activities and/or federal laws related to political activities of State employees where federal funding is involved (Hatch Act). The agency also had a policy dealing with the political activities of its employees. As the complaint did not allege any facts connected to improper conduct under the Code of Conduct, and the State agency had already started an inquiry into the matter, the allegations were referred to the agency pursuant to the Commission's authority to report to appropriate State authorities matters that may come to its attention in connection with any proceeding, whether advisory or disciplinary. 29 Del. C. § 5809(4). The second case alleged

perjury by a public official. *Commission Op. No. 04-24*. The very issues raised by complainant had been adjudicated by Delaware Courts. The Delaware cases dealing with this allegation found that the complaints failed to state a violation. Perjury claims are not a subject over which this Commission has jurisdiction. Moreover, in this case the claims might legally be within the doctrine of *res judicata*—a legal rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive and constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

The third case, like the first, alleged improper political activities. This claim was against a local government official. Assuming the facts as true, not only was the claim not within the Commission’s jurisdiction because it has no jurisdiction over political activity laws, but to the extent the claims raised Constitutional issues related to free speech in political campaigning, the Commission had no jurisdiction. *Commission Op. No. 04-32*. Courts have recognized that constitutional issues are within the courts' expertise, not the expertise of administrative agencies. *See, e.g., Plano v. Baker, 504 F.2d 595, 599 (2d. Cir., 1974); Matters v. City of Ames, 219 N.W.2d 718 (Iowa, 1974); Hayes v. Cape Henlopen School District, 341 F. Supp. 823, 833 (D. Del. 1972); Commission Op. 95-5.*

(b) Failure to State a Claim - Insufficient Facts

While those cases were dismissed for lack of subject matter jurisdiction, in two cases where the subject of the complaint was within the laws administered by Commission, the allegations, as a matter of law, failed to state a claim. In case alleged that a State employee was violating the post-employment law. *Commission Op. No. 04-41*. However, the post-employment law applies to *former* employees, and the person charged was still a *current* State employee. As he had not terminated State employment, as a matter of law, the complaint lacked a necessary element to state a claim. The

State employee and his agency did seek an advisory opinion on his proposed post-employment activities to ensure that he would avoid violating the Code.

Similarly, another complaint alleged conduct that, as a matter of law, would not violate the Code. It was alleged that a State employee who was running for local office had a conflict because if he were elected some decisions he made in his State job could come before him in the local government position. In essence, the claim was that at some point he *might* review or dispose of matters in which he had a personal or private interest which is prohibited by 29 Del. C. § 5805(a). The alleged personal or private interest was his interest in being elected. At the time the complaint was filed, he had not been elected. As a candidate he would not have authority to review or dispose of any Town matters. Even if elected, issues he worked on in his State job might or might not arise. Assuming that occurred, recusal is generally the cure for a conflict. *Commission Op. No. 02-23*. Federal Courts have held that it is improper to ascribe evil motives solely on the basis of professional relationships based only on suspicion and innuendo, not on hard facts. *Commission Op. No. 00-18*.(citing *CACI Inc-Federal v. United States, Fed. Cir., 719 F.2d 1567(1967)*)(interpreting Federal ethics law on appearance of impropriety). Delaware Courts held similarly in a case alleging a conflict because of the appearance of impropriety where a lawyer held dual positions in a private law firm and also as a part-time State prosecutor. *Seth v. State of Delaware, 592 A.2d 436 (Del., 1991)*. The Delaware Supreme Court said: Absent the existence of a conflict, it would not disqualify the attorney from acting in his State capacity, based on an unarticulated concern for the "appearance of impropriety." The Court cited authorities criticizing appearance tests because they were "imprecise, leading to ad hoc results." *Id.*⁴ The Court said the rules of conduct may not be used for tactical purposes to disqualify. *Id.*⁴

⁴ *Seth* interpreted the Lawyer's Rules of Professional Conduct. However, a decision on statutory construction has relevance as precedent if both statutes are such closely related subjects that consideration of one

Moreover, unsubstantiated claims are sometimes used as a tactical tool to disqualify an official from participating when, in fact, there is no conflict *Id.*

Here, the conflict was merely speculative: he *might* get elected; *if* elected he *might* run into a conflict *if* issues decided by him in his State capacity came before him at the local level; and *if* that occurred he *might* not cure the conflict through recusal. As none of the events had happened, he did not have a conflict. The State employee did seek advisory guidance on conflicts and recusal, with the understanding that if a conflict arose he could seek advice on those particular facts.

In addition to those five (5) complaints which were investigated and disposed of in 2004, a prior complaint was reopened for review and two other complaints under investigation in 2003, and carried over to 2004, were resolved. Those matters arose as the result of inquiries to the State Auditor's office, or audits of State agencies. In each case, the allegations related to government employees holding other employment, either in the State or private sector, that allegedly violated the Code of Conduct.

In one instance, the matter referred to the Commission concerned allegations of a local elected School Board member having a school bus contract with the same School District. The Commission had already investigated the allegation in 2002 and concluded that the conduct violated the Code of Conduct. *Commission Op. No. 02-29*. The statute only permits the Commission to issue a censure or reprimand for elected officials. 29 *Del. C.* § 5810(h). The Commission also referred the matter to the appropriate State agency pursuant to 29 *Del. C.* § 5809(4). By law, only the agency can void a contract entered in violation of the Code. 29 *Del. C.* § 5805(g). After reopening the case and

naturally brings to mind the other. *Commission Opinion 95-20(citing See, Sutherland Stat. Constr. §45.15, Vol. 2A (5th ed. 1992))*. The statutory concern is the "appearance of impropriety" in both instances. The cases have some similarity because in both, the public position and other employment created the alleged appearance problem. Neither articulate facts support the claim. Just as the lawyers' rules of conduct are not to be used for tactical purposes to disqualify officials when there is no conflict, so too the rules of conduct for public officers should not be used for tactical purposes to disqualify officials without substantiating the likelihood of a conflict.

reviewing its jurisdiction and prior opinion, the Commission advised the Auditor's office that it had done all that it was permitted by law to do.

In another complaint, it was alleged that three State employees were conducting business related to their private enterprise during State hours and using State resources. As there were also other allegations, the State Auditor and the Attorney General were investigating at the same time. After lengthy investigations, all three agencies found no substantiating facts. *Commission Op. No. 01-41*.

A complaint was referred by the State Auditor indicating that a State employee was violating the Code of Conduct because she was privately contracting with her own agency as a foster care provider. *Commission Op. No. 03-37*, [Appendix D](#). The individual cooperated in the investigation, which revealed that approximately 30 State employees were contracting with the State to provide foster care for the Department of Health and Social Services (DHSS). The agency confirmed the conduct. In a hearing before the Commission, the agency stated that if violations were found, it could obtain resources other than State employees to contract as foster care providers. The Commission found numerous Code violations. [Appendix D](#). That opinion was rendered in December 2003. In 2004, although the agency had said it could find foster care providers other than State employees, it initially decided to seek waivers so that the foster care providers could continue caring for the individuals in their care. The Commission's Counsel met with DHSS to explain the type of information that would be needed, based on the Commission's prior opinions, to establish a basis for a waiver. Also, Counsel offered to meet with all of the State employees who were providing foster care and assist them in complying with the "full disclosure" mandated by the Code of Conduct as a condition of commencing and continuing employment with the State. 29 *Del. C.* § 5805(d). Subsequently, DHSS began submitting information on the hardship entailed if those providing foster care could not be retained under contract. Then,

again despite the agency's statement that it could find providers who were not State employees, it started providing additional names of State employees that it wanted to add as providers. For a period of time, there was correspondence between the agency and Commission's Counsel, and then communication ceased. Just prior to the FY05 budget being approved, DHSS had legislation drafted to be included in the epilogue language that permitted it to continue the contracts for another fiscal year.

[Senate Bill # 320, Section 188, Appendix E.](#)

The Commission did not learn of the legislation until just before the budget was passed, and did not provide comments to the General Assembly. DHSS said it intended to model its foster care contracts after those of the Department of Services for Children, Youth and Their Families. However, that Department ceased contracting with State employees for foster care because of the Code restrictions and the fact that other sources were available to offer foster care.

C. Publications

Statutory Mandate: Commission Duties: The Commission is to publish synopses of its advisory opinions without disclosing the identity of the applicant, and is to prescribe forms, and publish manuals and guides explaining the duties of individuals covered by the laws the Commission administers. *See, 29 Del. C. § 5807(d)(4); § 5809(8) and (9).* **Commission Counsel Duties:** Assist the Commission in preparing and publishing manuals and guides explaining the duties of individuals covered by the law; give instructions and public information materials to facilitate compliance with, and enforcement of the law. *29 Del. C. § 5808(A)(1).*

In December 2004, the Commission published its Financial Disclosure synopses of opinions, updated through the end of 2004. The latest information was published on the Commission's web site. As in previous years, hard copies were mailed in January to each person who is subject to the

financial disclosure law, to assist them in completing the annual form with the most recent interpretations.

The Commission also republished its Ethics Brochure with updated references to the revised Merit Rules that overlap with Code of Conduct provisions.

The Commission's website continued to be a source of information to the public and those who are subject to the law. In 2004, during an 11 month period (February through December) there were 107,892 hits. That is an average of 9,808 each month. The count is only for 11 months because the data for January 2004 was not available. The use of the site peaks during each quarter when the lobbying quarterly reports are due. Site usage has continued to steadily rise during the past two years. [Website Hits 2002 - 2004, Appendix F](#). The Commission is working with the Department of State's E-Government office to revise the appearance of its web site so it will be part of the State's efforts to obtain a "common look and feel." for all State sites. Commission Counsel conferred with E-Government office representative, Gregory Hughes, in May 2004, to discuss the State plan, and efforts to complete the conversion should be realized in March 2005.

The Commission also republished its Rules in both the Register of Publications and on its web site after the Commission adopted a new rule providing that the Commission would have two (2) vice chairs instead of one.

D. Local Government Codes of Conduct

Statutory Mandate: Local Government Duties: Employees and officials of local governments are subject to the State Code of Conduct unless they adopt their own Code of Conduct. 68 *Del. Laws*, c. 433 § 1. **Commission Duties:** Any local government Code and subsequent amendments must be approved by the Commission as being as stringent as the State Code. *Id.* The Commission has

approved Codes of Conduct for six local governments—Dover, Lewes, Millsboro, New Castle County, Newark, and Wilmington.

In 2004, the City of Lewes submitted an amendment to its Code of Conduct. The amendment pertained to the restriction on use of confidential information gained from a public position for personal gain or benefit. In reviewing the State Code and the Town’s amendment, the Commission found that the language was identical. *Commission Op. No. 04-02*. Thus, it is at least as stringent as the State law.

E. Legislative Matters

Statutory mandate: Commission Duties: The Commission is to recommend to the General Assembly from time to time such rules of conduct for public employees and officials as it shall deem appropriate. *29 Del. C. § 5809(1)*.

The Commission tracked many pieces of legislation during the first session and second session of the 142th General Assembly, which began in January 2003 and ended in July 2004.

[Appendix G](#). The two following pieces of legislation were of particular interest to the Commission.

(A) Budget Bill - As mentioned earlier in the report, the Commission issued an opinion to the Department of Health and Social Services (DHSS) which found that it violated the Code of Conduct to have State employees contract with DHSS. Initially, information was being submitted by the agency to seek waivers. Instead, DHSS decided to have legislation put into the budget bill epilogue that allows the employees to continue in violation of the Code for the next fiscal year.

[Senate Bill # 320, Section 188, Appendix E](#). It is the Commission’s understanding that DHSS wanted to structure its foster care program like the Department of Services for Children, Youth and Their Families. However, that Department ceased contracting with State employees after learning that

the contracts violated the Code of Conduct.

(B) House Bill 337 - The proposed legislation would have eliminated the requirement for public officers to have the financial disclosure reports notarized. At the House Administration Committee Hearing, it was decided that the proposed legislation would be referred back to Legislative Council to permit a re-write that would include authority for the option of electronic filing. However, the legislation was not rewritten before the General Assembly adjourned. It is expected that it will be introduced again in 2005 with the rewrite to permit electronic filing.

[Appendix G.](#)

F. Administrative Issues

(1) Financial Disclosure Reports -Public officers are to file annual Financial Disclosure reports by February 15 of each year. Annually, the Commission sends its Financial Disclosure synopses, the disclosure form and instructions to more than 300 public officers notifying them of the annual requirement. If the report is not received by the deadline, additional notices are sent, including a certified letter stating that failure to file is a misdemeanor and the Commission can refer the matters to the Attorney General for prosecution. In 2004, all public officers filed in a timely manner and no matters had to be referred to the Attorney General.

The prompt responses may, in part, be attributed to the new computerized system which contains a database of public officers and individual e-mails of notice can be conveniently sent as reminders. This also results in costs savings in terms of paper and postage. Moreover, it is cost effective in terms of work hours for the staff because of the ease of notification. Moreover, it is cost effective in terms of work hours for the Commission, which in the past had to review the facts relative

to the failure to file and decide if the matters should be referred to the Attorney General. While 2004, a single year, does not establish a pattern, it is expected that future years will show the same result, and perhaps even better results if electronic filing authority is obtained.

The database also allows the staff to notify public officers of gifts from public offices from lobbyists. As noted last year, the Commission's staff compared, by hand, more than 900 lobbying expenditure reports to the more than 300 financial disclosure reports to insure that any gift of more than \$250 to a public officer from a lobbyist was reported. Moreover, the public officer was not always aware of the value of the gift. For example, the public officer, having attended a dinner, may assume the value was \$20 to \$25 but the actual value was substantially more. Now the public officer receives a list of all gifts prior to the filing through e-mail so they can compare the costs of gifts or events they attended, resulting in fewer notices of discrepancies in gift reporting and fewer amendments to the financial disclosure reports.

(2) Lobbyists' Expenditure Reports -

Registered lobbyists are required to file expenditure reports on a quarterly basis, identifying the total amount of expenditures made on members of the General Assembly or State employees for such items as food, entertainment, travel, gifts, etc. As of the end of 2004, 220 lobbyists representing 378 companies or organizations, were registered with the Commission. One-hundred seventy-nine (179), which is 81% of the 220 registered lobbyists, have now provided e-mail addresses to the Commission so that notices of reminders to file, failure to file, etc., can be sent by e-mail. Again, this is both cost efficient and work hour efficient. For example, in the third quarter of 2004, notices of failure to file quarterly expense reports had to be sent to 41 lobbyists. However, half of those had e-

mail address to which individualized notice could be mass e-mailed. For the 4th Quarter of 2004, failure to file letters had to be sent to only 12 lobbyists, nine of which did not have e-mail addresses. This may indicate that because of the high ratio of lobbyists who can be contacted by e-mail that compliance may be more quickly achieved.

(3) Lobbying Badges & Homeland Security

With the use of the lobbying data base, the Commission's list of lobbyists is update on nearly a daily basis. This continues to aid the Capitol Police in their homeland security measures. Badges are being issued by the Division of Motor Vehicles in conjunction with the Capitol Police, to lobbyist for access to Legislative Hall. With the Commission's web site continuously updated Capitol Police and the Motor Vehicles Division can verify that the lobbyists have registered when they go for their badge. Further, the Commission's staff notifies the Capitol Police when a lobbyist's registration is canceled, so that the cancellations are current.

V. Funding

For Fiscal Year 2004, the General Assembly appropriated a total of \$164,400 for the Commission's budget. In the ten (10) calendar years since the Commission was authorized to hire staff to perform day-to-day operations, its operation budget of \$40, 100 has remained the same except for the years when all State agencies were asked to cut 2.5% from their operating budgets. The Commission is able to operate with the same budget because the earlier years (1995-1996) were years when funds were being used to purchase desks, computers, etc., in establishing the Commission's office. In the years 1996-1998 funds were expended on achieving compliance with the financial disclosure and lobbying laws as the Commission assumed those duties. In 1998, the Commission worked to reduce expenditures of funds by creating its web site so that the costs of

publications and the costs of mailing them or printing them for training purposes was reduced. Costs for web site development were also saved because Commission Counsel designed, developed, and maintained the web site. In the following years, the Commission worked to reduce costs through the data base system now used for most of the lobbying registration, authorization and expense report compliance; for continued distribution of publications; and customer access to financial disclosure forms, ethics disclosure forms, etc. The Commission did obtain a grant from E-government to pay the expense of developing the lobbying base. The Commission continues to consider ways to stabilize or reduce costs associated with its operations.

For FY 2005, the Commission requested the same appropriations as in FY 2004. As of early January 2003, Governor Ruth Ann Minner's proposed budget to the General Assembly, included the Commission's proposed budget of \$164,400 of which \$40,100 is for operating expenses.

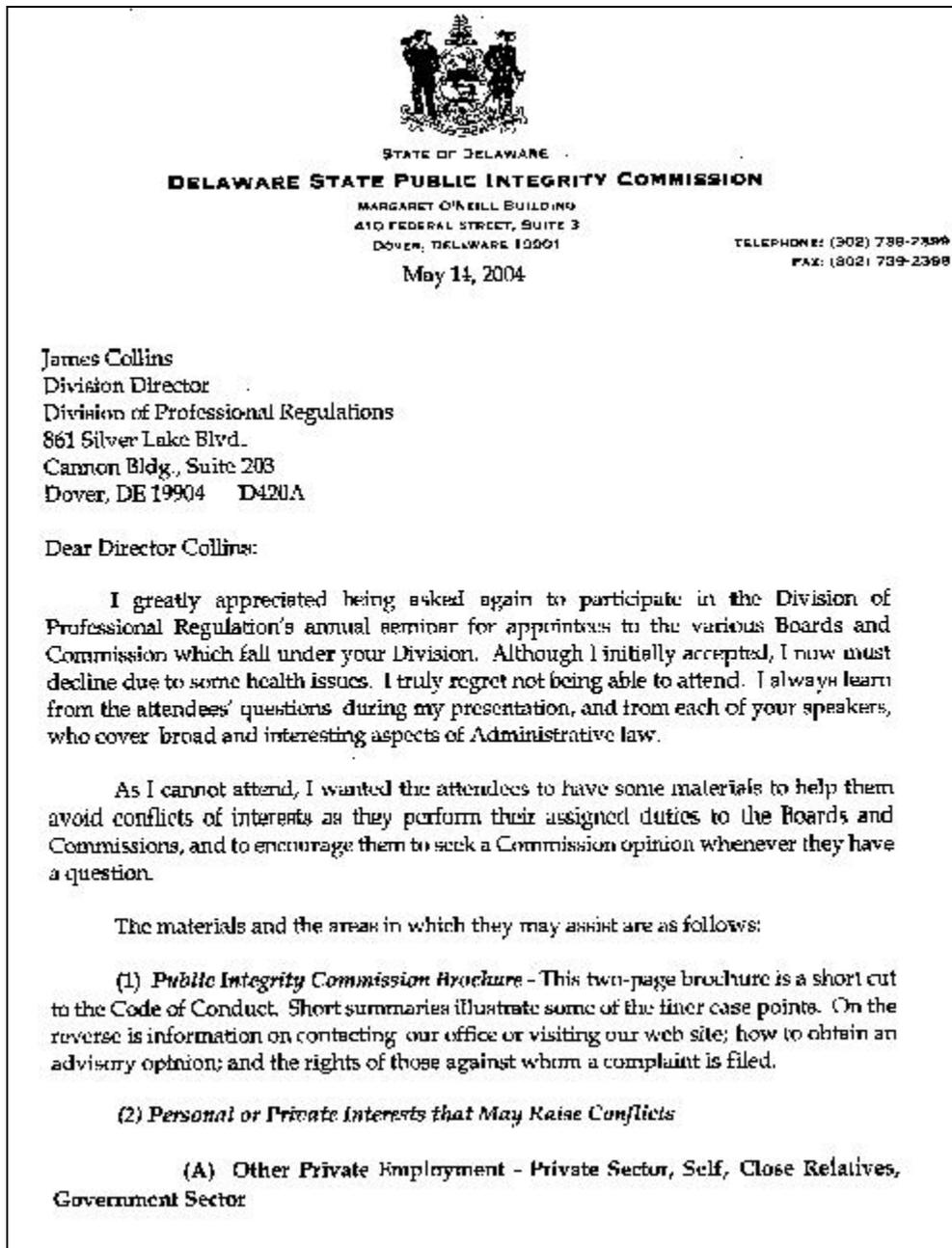
VI. Future Goals

In the coming year, the Commission intends to continue emphasizing its responsibility to educate State employees, officers, officials and local officials covered by the laws administered by the Commission. It has already scheduled training with a number of agencies.

To provide additional services to the public officers and lobbyists who must file reports with the Commission, it will look into the feasibility of making electronic filing available. This may require a cost analysis, and possibly a change in legislation to provide for electronic signatures, rather than original signatures.

VII. Appendices

Appendix A – Training Booklet for Title 23 & 24 Boards



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Beebe Medical Center v. Certificate of Need Appeals Board, Del. Super., C.A. No. 94A-01-004, Terry, J (June 30, 1995), aff'd, Del. Supr., No. 304 (January 29, 1996).

This case interprets two Code of Conduct provisions, Persons regulated by a State Board alleged: (1) a current Board member had a conflict as his private employer was entering a business arrangement with an applicant before the Board; and (2) a former Board member represented a client before the Board when he had just recently left the Board. Beyond discussing how holding a private sector job and serving on a State Board may create a conflict, and discussing the post-employment restrictions when Board members leave their appointed State positions, the case also discusses avoiding a conflict by recusal. Recusals should occur at the outset, not after a discussion with other Board members. Even "unbiased" and "neutral" comments should not be made. The Board need not have final decision making authority for a recusal to be required, as these non-paid Board members gave advice to a Division Director who made the final decision.

As the seminar usually has presentations on Freedom of Information Act (FOIA) procedures, due process issues, etc., the appointees should note that this case also deals with allegations of misconduct in those legal areas.

Prison Health Services, Inc. v. State, Del. Ch., C.A. No. 13,010, Hartnett III, V.C. (July 2, 1993).

Employment of a close relative may create a conflict or the appearance thereof. A State committee had to award a contract to a private firm. A State employee, who was not a committee member, had "limited" and "unsubstantial" discussions with the committee. His spouse worked for a company seeking the contract. It was alleged that the conflict of the non-Committee member may have affected the Committee's decision. This case also illustrates that, conflicts can arise under agency policies, not just the Code of Conduct. Generally, by law, the employee or official must follow the more stringent law or policy, and policies cannot be less stringent than the law. The Court held that even though there was no evidence he influenced the Committee, his limited participation was "undoubtedly improper."

Conflicts from personal or private interests in relationships are not limited to close relatives. See, e.g., *Shulburne, Inc. v. Roberts*, 238 A.2d 331 (Del Super., 1967) (complaint alleged "personal interest," "conflict of interest," and "use of public office in the furtherance of such personal interest or conflict of interest," as the public official allegedly based his decision on other than the merits because he was motivated by: (1) his desire to assist his coreligionists; (2) the close attorney-client and business relationship between the official and the attorney for the civic association which

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wanted rezoning; and (3) his colleague whose wife was a member of the Church); *Brice v. State*, 704 A.2d 1176 (Del., 1998) (improper for uncle to write test and serve on hiring panel when his nephew was applicant); *Ford v. State of Delaware*, 719 A.2d 947 (Del. Supr. 1998); *Ford and Thornlon*, Del. Super., Cr. A. Nos. 95-10-183-0186 and 95-10-0187-0191, J. Graves (March 26, 1996); *Ford v. Dep't of Public Instruction*, Del. Super., C.A. No. 96A-01-009-RSG, J. Gebelein (Nov. 24, 1997) (State employee lost job and was criminally prosecuted for conflict of interest and misusing State position by awarding contracts to her roommate/financer, whom she later married).

W. Paynter Sharp & Son v. Heller, 280 A.2d 748 (Del Ch. 1971).

A State Council appointee bid on a contract with the agency to which he was appointed. The Cabinet Secretary made a policy decision not to contract with him because of the potential conflict or the appearance of a conflict when there was an overlapping relationship between the Council and the agency. Even though the Council member was the lowest bidder and no facts substantiated an actual conflict, there was a concern about the appearance of the dealings. The Court noted that there was no conflict of interest law at the time. However, it upheld the Secretary's decision because of public suspicion of the award of State contracts.

The Code was enacted three years later. It specifically banned State officials from representing or otherwise assisting private enterprises before the agency to which one is appointed, regardless of whether there is an actual conflict. It applies even if there is no financial interest. This avoids even an appearance of improprieties between the official and their agency such as undue influence, preferential treatment, using public office for personal reasons, etc. The Code mandated that disclosure of dealings with, or regulation by, any State agency is a condition of commencing and continuing employment or appointment with the State.

(A) Disclosure of Business dealings with the State. In the context of seeking State contracts, public notice and bidding are required if the State contract which the official seeks is for more than \$2,000; required arms' length negotiations for contracts of less than \$2,000, etc. These dealings must be disclosed. Attached are the restrictions, case examples, and a disclosure worksheet.

(B) Disclosure of Regulation by the State. By law, many Title 23 and Title 24 appointees, must have an occupation or profession that is regulated by their own State Board. Generally, full disclosure of the regulatory relationship is required. However, the Public Integrity Commission granted a limited waiver so Title 23 and Title 24 Board members do not have to file a full disclosure if the only information is that they are in the

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particular occupation or profession, must hold that position to serve on the Board, the relationship is public information, there are no business dealings between the Board member and the agency, etc. *Commission Op. No. 99-34*.

The limited waiver of disclosure does not waive any conflict. Conflicts may arise if Board members are deciding on rules and regulations, if they have a personal or private interest in the rule or regulation. Under the Code, where a Board member participated in a rule-making decision on continuing education requirements necessary for licensing in his professional field, and the rule would reduce the number of continuing education credits, the Board member should not have participated. *Atty Gen. Op. No. 87-1002 (Feb. 3, 1987)*.

"Other Employment" Includes "Dual Government Employment," Commission Op. No. 99-35.

Conflicts can arise when a Board member seeks or holds a second position in the public sector, not just the private sector. *Commission Op. No. 99-35*. As with private sector employment, dual government employment conflicts may generally be avoided by recusal. Just as certain private sector employment may require complying with additional rules, (e.g., full disclosure), dual government positions may require complying with additional rules. In particular, the law seeks to avoid "double-dipping" from such dual government positions. For example if a State employee holds a second position as a paid appointee to State or local Boards or Commissions, they must avoid conflicts and avoid being paid by two government positions for coinciding hours. Such appointees may avoid double-dipping if the hours do not coincide, or if they are in an appropriate leave status during the overlapping hours. For example, if the State employee works from 8:00 a.m. until 4:30 p.m., and the Board meeting is not until 6:00 p.m., then the hours do not overlap. However, if they left their State job at 2:30 to attend a Board meeting at 3:00, the hours would overlap and they must submit time records, verifying by their supervisor showing that they took annual leave, or other appropriate leave during the overlapping hours. The time records are subject to State audits on an annual basis. Discrepancies in time keeping or dual payment are reported to the Public Integrity Commission by the State auditor, to be investigated as a complaint.

Post-Employment Conflicts

When a Board appointee's appointment terminates, there is a two-year restriction on certain dealings with the State. *Heckle Medical Center v. Certificate of Need Appeals Board, Del. Super., C.A. No. 94A-01-004, Terry, J (June 30, 1995), aff'd, Del. Supr., No. 304*

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(January 29, 1996).

The law does not ban all State dealings by the former appointee, but prohibits them from representing or otherwise assisting a private enterprise on State matters if they are matters where the former appointee: (1) gave an opinion; (2) conducted an investigation; or (3) was otherwise directly and materially responsible for the matter. In *Beebe*, an applicant had a former non-paid Board member representing it before the Board for approval of an application. Another applicant appealed the Board's decision on the grounds that due process was violated because the former Board member was allegedly violating the post-employment law. The Court found that while the former Board member had dealt with similar applications as a Board member, he had not worked on this particular application. The Court concluded that he therefore was not "directly and materially responsible" for that particular matter.

Gifts, Payments, Compensation, or Any thing of Monetary Value May Raise Conflicts

When anything of monetary value is offered, particularly from persons who are regulated by the Board, conflicts or the appearance thereof may occur. There is no bright line test for a conflict arising in this area. That is, the law does not say that no gift valued at more than \$25 is acceptable. Rather, the Code requires an evaluation of a number of criteria, including whether accepting such things of value appears improper. In interpreting a similar federal restriction, the appeals court held that if the item of value is from someone doing business with the government, it may appear they are trying to curry favor with government officials. See, *Commission Op. No. 99-20 (citing Santour v. Environmental Protection Agency, 56 F.3d 85, 94 (U.S. Ct. App., D.C., 1995)*. Even if there is no reason to suspect that something is being offered to curry favor, it may appear that the government employees are using public office for private gain if they accept. *Id.*

Because there is no "bright-line" test for accepting things of value, the line between the appearance of compliance and non-compliance may become blurred. *In re Ridgely, 106 A.2d 527 (Del. 1954)*. In *Ridgely*, the thing of value was private compensation. The State officer held a professional position as a lawyer in the private sector, and was seeking to represent private clients before his own agency, before other State agencies, or have a friend/colleague represent the clients after he accepted them as clients. The Court held that as between his professional ethics rules and his duties as a public officer, his State duties must command precedence. The Court also pointed out the difficulty created when a State officer has to, on their own, decide if there is an appearance of impropriety, and that the line may get blurred. Subsequently, more specific ethics laws for State employees, officers, and officials were enacted. Moreover, in creating the Public Integrity Commission, the General Assembly designated an independent agency to issue advisory

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opinions to those subject to the State Code of Conduct, to eliminate the difficulty with self-decided ethics.

Other Delaware gift laws that may apply to public servant officials are identified in the Commission's pamphlet on "Delaware Gift Laws," attached.

Misuse of Public Office

Conflicts may also occur when State employees or officials use their public office to obtain unwarranted privileges, private advancement or gain. The conflict may create an ethical violation, a criminal violation, or both. *Howell v. State*, 421 A.2d 892 (Del. Supr. 1980). In *Howell*, a public official used public employees and public resources for private work on his residence. He argued that his conduct might be an ethical violation, but was not a violation of the criminal law provision against soliciting or accepting any personal benefits, when the public servant is not entitled to any special or additional compensation. 11 Del. C. § 1206. The Court agreed that the conduct might violate the ethics law, but said that did not prevent the conduct from rising to the level of violating the criminal law on misconduct in office. Similarly, Courts have sustained a criminal prosecution under the misconduct in office provision when a State employee awarded State contracts to her boyfriend. *Ford v. Dep't of Public Instruction*, Del. Super., C.A. No. 96A-01-009-RSG, J. Gebelein (Nov. 24, 1997).

Confidentiality

Camas v. Delaware Board of Medical Practice, Del. Super., C.A. No. 95A-05-008, J. Graves (November 21, 1995).

Conflicts from the alleged misuse of government information also are raised by persons regulated by State Boards. In an appeal of Board disciplinary action against a physician, it was alleged that a Board member, who was a physician, had the opportunity to misuse confidential information about the disciplinary action because her spouse, also a physician, had investigated the same allegations that were before the Board on behalf of his medical facility. Other allegations of conflict by other Board members also were alleged. The Court found that no facts were given to support an allegation of misuse of confidential information; that the alleged conflicts were not raised during the Board proceedings; and there was a presumption of honesty and integrity by the Board members. In another Delaware decision, sufficient facts were found to require a Court decision on the improper use of confidential information where a State official did not

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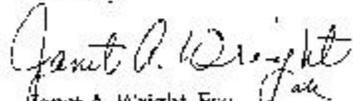
disclose the name of a State applicant, but gave sufficient details to the media so that the applicant was identifiable. Pajewski v. Perry, 363 A.2d 429 (Del., 1976).

Conclusion

Appointees must remain very sensitive to the fact that their decisions may have very significant effects on the occupations and professions of many people. Whether awarding a license or investigating a complaint, the decisions may be vigorously challenged because they affect the individual's livelihood. Whether any allegation of improper ethical conduct by a Board member has or does not have merit, it must still be dealt with by the Board member, other Board members, the Board staff, including the Deputy Attorney General (DAG) assigned, and sometimes the staff of the Division. By seeking assistance from the Public Integrity Commission on any conflict areas, the Commission can focus on the conflict or potential conflict, and the DAG, Board members, staff, etc., can focus on the substantive requirements of the laws administered by the particular Board. Aside from obtaining advice from an independent body, the law also provides protection from disciplinary action and complaints under the ethics laws, if the Commission's advice is followed. That should keep the appointee from crossing the ethical line, as occurred in Ridgely, Ford, and Howell. It also may avoid some of the appeals to the Court alleging conflicts of interest, that may follow a Board decision, as occurred in Beebe, Prison Health, and Comus.

Any individual Board member, staff member, assigned DAG, agency, etc., can seek an advisory opinion from the Public Integrity Commission. Guidance and assistance can be obtained by calling the Commission's staff at 302-739-2399. Final opinions, with the protection against complaints, etc., can be rendered only by the Commission. We hope any question you may have will prompt you to contact the Commission for its services.

Sincerely,


Janet A. Wright, Esq.
Commission Counsel

JAW:ab
Att.

cc: Kay Warren, Deputy Division Director

Appendix B – NBI On-Line Training

From: National Business Institute [info@nbi-sems.com]
Sent: Wednesday, August 25, 2004 11:27 AM
To: Wright Janet (DAS)
Subject: Complimentary coupon from NBI

Dear Janet Wright,

I would like to take this opportunity to thank you for your participation as a speaker for our "Land Use Planning and Eminent Domain in Delaware" seminar.

As you know, National Business Institute, in partnership with West LegalEdCenter, is offering its seminars online. Your seminar was chosen due to the high quality of content and professionalism represented. As always, we strive to provide quality continuing education programs and this is just one more way for us to share these seminars with those who did not attend the live presentation.

We could not be successful in this venture with you - our faculty! To show our appreciation for your professionalism and dedication to education, [click here](#) to receive a coupon for a complimentary NBI online program. Please let us know if there is any way we can be of service to you. Again, Janet, thank you.

Sincerely,

Matt Mickelson
Planning Manager

If you wish to be removed from our e-mail list, please reply to info@nbi-sems.com with REMOVE as your subject.

Appendix C – Waiver Granted – Op. No. 04-09

April 8, 2004

Mr. Gary F. Taylor
Town Administrator
The Town of Selbyville
P. O. Box 106
Selbyville, DE 19975

Advisory Op. No. 04-09 - Full Disclosure/Contracting with Town

*Hearing and decision by: Mary Jane Willis, Chairman; Arthur V. Episcopo, Vice Chair;
Commissioners: Foster Massie, Barbara Remus and Marla Tocker*

Dear Mr. Taylor:

The Public Integrity Commission reviewed Councilman Jay Murray's seven private contracts with the Town of Selbyville, submitted to comply with filing his annual "full disclosure" pursuant to 29 *Del. C.* § 5806(d) and *Commission Op. No. 98-11*. Based on the following law and facts, we find no conflict on six contracts, and grant a waiver for the seventh.

[Note to Reader: Confidential information redacted relative to the contracts where there was no conflict of interest.]

He [Mr. Murray] also fully disclosed the facts related to the seventh contract. That contract was for more than \$2,000 and was not publicly noticed and bid as required by 29 *Del. C.* § 5805(c). The Commission may grant a waiver if the literal application of the law is not necessary to serve the public purpose; or (2) there is an undue hardship on the government agency or the employee.

Public notice and bidding are to insure government contracts are not issued to government officials out of favoritism, undue influence and the like. *W. Paynter Sharp & Son v. Heller*, 280 A.2d

748 (*Del. Ch.*, 1971). Here, the facts diminish any concerns that the contract was awarded out of favoritism, etc. He did not review or dispose of the contract; did not represent or otherwise assist his private enterprise before his own agency; and charged less than what would have been charged by comparable companies. The contract was not publicly noticed and bid because it was an emergency repair of a sewer. The procurement law recognizes that public notice and bidding may not be

possible in emergencies 29 Del. C. § 6907(a). It authorizes government officials to proceed without public notice and bidding when the agency determines there is an emergency. Id. Thus, the Town's action was consistent with legal authority in the face of an emergency.

The facts do not show favoritism, undue influence, etc. He did not engage in self-dealing nor deal with his own agency. As in the other six emergencies, the price was comparable to or less than what similar companies would have charged. Also, some companies would have had a further distance to respond to in an emergency. No facts indicate Mr. Murray used his office for any unwarranted privileges or private advantage. 29 Del. C. § 5806(e). Regarding personal gain: (1) he did not charge the full costs normally associated with such work; and (2) the contract was for \$2,550, a rather *de minimus* amount over the \$2,000 requirement. The facts show he fully complied with the law in the other six other situations, which is evidence supporting the strong legal presumption that public officials will act with honesty and integrity. Beebe Medical Center v. Certificate of Need Appeals Board, C.A. No. 94A-01-004, Terry, J. (Del. Super., June 30, 1995), aff'd, Del. Supr., No. 304 (January 29, 1996).

Finally, when a waiver is granted, the proceedings become public records. 29 Del. C. § 5807(b)(4). The purpose of public records is to let citizens observe the performance of public officials and to monitor their decisions and is broadly construed to serve that purpose. 29 Del. C. § 10001. Such legislation has the effect of instilling the respect and confidence in its public officials, just like the Code of Conduct. See, e.g., Levy v. Board of Cape Henlopen School District, Del. Ch. C.A. No. 1447, V.C. Chandler (October 1, 1990 at 20). By requiring waivers to be public records, the public knows the matters are independently reviewed, and know the factual reasons for the waiver.

Accordingly, we grant a waiver based on the particular facts of the seventh contract.

Sincerely,

Mary Jane Willis, Chair

cc: Councilman Jay Murray
Town Solicitor Tempe Steen, Esq.

Appendix D – Foster Care Contracts Violate Code – Op. No. 03-37

December 30, 2003

Mr. Roy LaFontaine, Deputy Director
Division of Developmental Disabilities Services
Jesse Cooper Building
417 Federal Street
Dover, DE 19901 D320B

RE: Advisory Op. No. 03-37 - Concurrent Employment/Contracting with State/Full Disclosure

Hearing and Decision by: Mary Jane Willis, Chairman; Arthur Episcopo, Vice Chair; Commissioners Paul E. Ellis; Clifton H. Hubbard, Marla Tocker

Dear Mr. LaFontaine:

The State Public Integrity Commission concluded that the contracts with State employees as foster care providers to State clients violates several Code sections. Thus, new contracts should not be entered with State employees, absent compliance with the provisions identified herein. We understand that non-State employees are available to provide the services. Regarding existing contracts with State employees, the law provides that contracts made in violation of the Code may be voided. 29 Del. C. 5805(c). Our findings are based on the following.

I. Facts

As you know, in 1997 you contacted this Commission's office about the Division of Mental Retardation's (DMR's) foster care contracts with seven (7) DMR employees. At that time, among other things, you said: one DMR employee who was a foster care provider was evaluated by a junior DMR employee (three pay grades lower); that the senior State employee had input into the junior employee's State performance evaluation; that some DMR employees who provided foster care serve on the Placement Review Committee (PRC), deciding which homes, including homes of fellow employees, would provide foster care, etc. You also said DMR was being reorganized and that the reorganization may cure some conflicts. DMR was reorganized and renamed as the Division of Developmental Disabilities (DDD). No written request, as required by 29 Del. C. 5807(a) and (c), for an opinion or waiver, was submitted for a ruling on possible conflicts.

Subsequently, the Auditor's office notified this Commission that a DDD employee was receiving two State checks: one for full-time employment and one as a private vendor. The

Auditor's office asked if that was a conflict. The State employee was notified that the Code of Conduct mandates full disclosure to this Commission when a State employee is privately paid for services to the State. The employee responded and said other State employees had such contracts. Commission Counsel then contacted DDD. It was confirmed that 29 State employees contract with DDD as foster care providers. Some are DDD employees; others are from other State agencies. DDD then submitted a written request for an opinion. Based on that information and your comments at our meeting, we found the following provisions were violated.

II. Application of Law to Facts

- (A) State employees may not review or dispose of matters if they have a personal or private interest which may tend to impair judgment. 29 Del. C. 5805(a)(1). A Personal or Private interests may arise from holding other employment. Beebe Medical Center v. Certificate of Need Appeals Board, Del. Super., C.A. No. 94A-01-004, Terry, J. (June 30, 1995) aff'd, Del. Super., No. 304 (January 29, 1996); In re: Ridgely, 106 A.2d 527 (Del. Super., 1954). Such interests may also arise from a State employee's interest in their performance evaluations. *Commission Op. No. 03-29 and citations therein.*

Here, at least two occurrences violated or appear to have violated this provision:

- (1) A junior employee monitored the foster care given by a senior DMR employee who had input into the junior employee's State performance evaluation. Where a State employee makes official decisions about a senior employee's outside activities and the senior employee makes decisions about the junior employee's performance, then a conflict exists. *Commission Op. No. 03-29.* The junior employee has a Personal or Private interest in their performance report. *Id.* In evaluating a senior employee, who gives input into their evaluation, their judgment may be impaired. *Id.* They may give the senior employee a good evaluation as a foster care provider, expecting their performance evaluation input to be favorable. *Id.*
- (2) DDD employees who provide foster care serve on the Placement Review Committee (PRC), deciding which foster homes will provide care. The DDD foster care providers have a Personal and financial interest in whether a client is placed in their home. Thus, participating in the PRC review is contrary to this provision. The statute does not require actual impairment; only that it may tend to impair judgment. *Commission Op. No. 92-11.* Moreover, the law prohibits conduct that may raise suspicion among the public that the Code is being violated. 29 Del. C. 5806(a). That is basically a prohibition on an appearance that the law is being violated. *Commission Op. Nos. 03-29; 92-11.*
The public may well suspect that decisions may be the result of impaired judgment, undue influence, favoritism, etc. *Commission Op. No. 03-29.* We know that DDD changed its procedures so that junior employees are not evaluating senior employees, and that DDD employees being considered as a placement site do not make the placement decision. Not only should they not make the decisions, but Delaware Courts have held that even a Neutral and

Aunbiased@ comments and Aindirect@ and Aunsubstantial@ participation are improper where there is a Apersonal or private interest.@ Beebe Medical Center v. Certificate of Need Appeals Board, Del. Super., C.A. No. 94A-01-004, Terry, J. (June 30, 1995) aff'd, Del. Supr., No. 304 (January 29, 1996; Prison Health Services Inc. v. State, Del. Ch., C.A. No. 13,010, V.C. Hartnett III (July 2, 1993). To the extent DMR employees recommend family members or relatives to their own agency as foster care providers, the Code prohibits the State employee from: (1) reviewing or disposing of State matters where a Aclose relative,@ would receive a financial benefit, 29 Del. C. ' 5805(a)(2)(a), or their Aclose relatives@ financial interest in a private enterprise would be affected, 29 Del. C. ' 5805(a)(2)(b). Delaware Courts have held that even Aindirect@ and Aunsubstantial@ discussions are Aundoubtedly improper@ where a close relative=s private enterprise seeks a State contract. Prison Health, supra.

Even if those conflicts could be avoided, DDD=s procedures do not cure the other conflicts.

- (B) State employees may not represent or otherwise assist a private enterprise before the agency with which they are associated by employment. 29 Del. C. '5805(b). APrivate enterprise@ is: Aany activity conducted by any person for profit or not for profit.@ 29 Del. C. 5804(8).

When a State employee privately contracts with the State, they create a Aprivate enterprise.@ Commission Op. No. 94-10. They represent that enterprise by negotiating and contracting. When it is with their own agency, it violates this section. Id. Similarly, when the PRC considers where to place a client, the State employee provides information about themselves, their residence, etc. Those actions are representations to the PRC and contrary to this provision. When the PRC places a client in a DDD employee=s home, compliance with the foster care rules are evaluated and enforced by their own agency. Those decisions, in part, depend on the DDD employee=s representations of the care they provide. Again, that violates this section.

Even before this section was enacted, Delaware Courts held that when a State official seeks contracts with their own agency, the award of such contracts Ahas been suspect, often because of alleged favoritism, undue influence, conflict and the like.@ W. Paynter Sharp & Son v. Heller, 280 A.2d 748, 752 (Del. Ch., 1971). In Heller, the Court found no facts indicating an actual violation. However it went on to find that: AIt is vital that a public agency have the confidence of the people it serves and, for this reason, it must avoid not only evil but the appearance of evil as well.@ Id. Subsequently, the General Assembly, in 1974, enacted the statutory ban on such activity. In doing so, it made specific findings that : (1) some Code of Conduct standards are Aso vital@ that violation thereof should subject the violator to criminal penalties; (2) State workers should avoid even a Ajustifiable impression@ (appearance) that the public trust is being violated; and (3) the reason is to instill the public=s confidence in its government. 29 Del. C. '5802(1) and (2). The General Assembly deem this provision and the ones in 29 Del. C. 5805(a)and (c), discussed in this opinion, as so Avital@ they carry criminal

penalties. 29 Del. C. 5805(f). The statutory ban insures the public that representation before one's own agency does not even occur, absent a waiver after a review from this Commission. The waivers are then made public so it knows that the waiver decision was not based on impaired judgment, undue influence, preferential treatment, favoritism, etc. The ban not only insures that an actual violation does not occur, but that there is not even a justifiable impression that it could.

For example, if a co-worker provides foster care and allegations arise of non-compliance with the rules or mistreatment, a co-worker's investigation may be influenced by that relationship, may create such an appearance. The General Assembly's specific finding of the Avital's importance of this rule is particularly important here. Assuming all payments were formula driven, it could be argued that favoritism could not occur in that area. However, the ban on dealing with one's own agency, does not even refer to a financial interest. That is because decisions unrelated to money may result in favoritism, undue influence, etc. Foster care providers are entrusted with vulnerable clients. Some clients have limits on their own ability to judge if their care is appropriate. If these vulnerable persons allege mistreatment and the State employees investigate a co-worker, the public may suspect that their judgment may be impaired, or that the foster care provider will use influence within their own agency. There has been at least one instance where a State employee foster care provider was allegedly not properly fulfilling their foster care duties. Whether the allegations are proven or not, the public may well suspect that a critical government service is undermined because of the conflicts in dealings with one's own agency, or acting in violation of any other Code provision.

- (C) State employees may not contract with the State for contracts of more than \$2,000 unless the contract is publicly noticed and bid. 29 Del. C. '5805 (c). This rule applies to any State employee who seeks a State contract, and presumes there is no other conflict. Thus, all State employees must comply with this rule. Here, the contracts are for more than \$2,000 and are not publicly noticed and bid.

As noted above, Delaware Courts have held that the public has long suspected that State contracts are awarded out of favoritism, undue influence and the like. Heller, supra. This rule identifies a low threshold between the State and its employees to instill public confidence in the procurement system. In Heller, the Court held that although the contract was publicly noticed and bid, and the State employee's bid was the lowest by \$9,000, it would still sustain the agency's decision to void the contract because of public suspicion about such dealings. Id. In 1974, the General Assembly adopted the \$2,000 threshold. By requiring public notice and bidding, the General Assembly sought to not only make the dealings available to the public, but set the threshold low so that even a justifiable impression of mis-dealings could be avoided. Here, the foster care contracts are not publicly noticed and bid. Some payments are formula driven, e.g., room/board at a set rate based on the level of care; other payments are discretionary. Such discretion may result in impaired judgment, favoritism, etc.

- (D) It is a condition of commencing and continuing State employment that State employees with a financial interest in a private business that does business with, or is regulated by

the State, must file a full disclosure of such dealings with this Commission. 29 Del. C. '5806(d). Here, none of the State employee foster care providers have filed.

- (E) The Code provides that, in addition to any other penalty provided by law, contracts entered into by a State agency in violation of the Code shall be voidable by the agency. 29 Del. C. '5805 (c). However, in deciding if the contracts should be voided, the agency must consider if innocent 3rd parties may be damaged. *Id.* Accordingly, the agency needs to evaluate the existing contracts to determine if transfers could be made, etc. If not, the agency may seek a waiver based on the particular facts of each case. 29 Del. C. 5805 (c).
- (F) The State Procurement law provides that aside from the rights and remedies under the procurement law, that the provisions and penalties defined in Title 29, Chapter 58 (Code of Conduct) apply. 29 Del. C. '6903(g).

III. Conclusion

We find that foster care contracts with State employees, under these circumstances, violate both the letter and spirit of the law. Therefore: (1) future contracts for the services should not be made with State employees; and (2) existing contracts, which violate the law, should be terminated with a transfer of clients, unless DDD seeks waivers, pursuant to 29 Del. C. '5807(a). Waiver decisions must be based on the particular facts. 29 Del. C. '5807(a). We do not know the details of the particular contracts (e.g., how long a client has resided with a State employee; how many clients in the household; type of care needed; which contracts are with non-DDD State employees, etc.) The request must include a full disclosure, 29 Del. C. '5806(d); detail any damage to the individuals under foster care (3rd parties); 29 Del. C. '5805(c); and identify any undue hardship for a State agency or a State employee; 29 Del. C. '5807(a). As DDD has said that non-State employees are available for contracts, there appears to be no undue hardship in that area.

Sincerely,

Mary Jane Willis, Chairman

MJW:ab

cc: Marianna Smith, Director
Roy S. Shiels, Esq.
Valerie Smith, Chief of Administration
Karen Whitaker, Auditor's Office

Appendix E – Foster Care Epilogue Language

Extract of Senate Bill 350

1 Section 187. In prior fiscal years, Section 1 of this Act appropriated funding to Medicaid State
2 for funding of State-run institutions. This funding had provided a separate line item appropriation, as
3 previously required by the federal government, in order to receive Medicaid matching funds. The same
4 Medicaid matching funds will be received by using the current expenditure of funds that are appropriated
5 to each institution allowing the Medicaid – State appropriation to be eliminated. The elimination of this
6 line item does not represent any reduction of services and only represents accounting for the funds in the
7 most appropriate and efficient manner.

8 Section 188. Anything in 29 Del. C. c. 58, or the Merit Rules of Personnel Administration to the
9 contrary notwithstanding, employees of the State Department of Health and Social Services, including
10 employees within the Division of Disabilities Services, who served as contract foster care providers for
11 the Division of Developmental Disabilities Services shall be eligible to continue to serve as contractual
12 service providers during Fiscal Year 2005. The Director of the Division of Developmental Disabilities
13 Services shall ensure that foster care providers employed by the Department of Health and Social
14 Services are not monitored or reviewed by other Department employees who are more junior to them and
15 that contractual foster care providers do not serve on the Division’s Placement Review Committee.

16 Section 189. Section 1 of this Act makes an appropriation to the Department of Health and Social
17 Services, Division of Developmental Disabilities Services (35-11-00). Of that amount, \$250.0 is to be
18 used to fund day services based on individual support needs (inclusive of adults with extensive personal
19 care needs) and consistent with the Inventory for Client and Agency Planning (ICAP) - based Division of
20 Developmental Disabilities Services rate-setting process.

Appendix F – Public Integrity Commission Web Hits 2002-2004

Month	Year	Hit Count	+/-
December	2004	8,625	1,607
November	2004	10,018	-1,393
October	2004	9,521	497
September	2004	9,081	440
August	2004	10,244	-1,163
July	2004	9,430	814
June	2004	9,204	226
May	2004	8,722	482
April	2004	10,715	-1,993
March	2004	11,781	-1,066
February	2004	10,552	1,229
January	2004	0	10,552
December	2003	6,506	-6,506
November	2003	7,639	-1,133
October	2003	10,003	-2,364
September	2003	7,244	2,759
August	2003	7,424	-180
July	2003	18,690	-11,266
June	2003	7,591	11,099
May	2003	8,603	-1,012

March	2003	7,045	1,558
February	2003	5,267	1,778
January	2003	6,728	-1,461
December	2002	5,619	1,109
November	2002	6,369	-750
October	2002	6,130	239
September	2002	5,694	436
August	2002	6,278	-584
July	2002	5,878	400
April	2002	5,831	47
March	2002	5,687	144
February	2002	4,611	1,076
January	2002	5,190	-579

Appendix G – Legislation Monitored by Commission

<i>SENATE LEGISLATION</i>			
BILL #	SYNOPSIS	REASON FOR MONITORING	STATUS
27	Amends the Charter of the Town of South Bethany. Provides that Council may, by ordinance, adopt a Code of Ethics to govern all Town officers and employees.	Local governments that do not adopt a Code of Conduct are subject to the State Code. <i>68 Del. Laws, c. 433</i> . If they adopt their own Code, the Commission must approve it as being as stringent as State law. <i>Id.</i> The Commission reviewed the Town’s Code in May 2003. It found two areas that were not as stringent as the State Code. Those areas were identified for the Town to consider in amending its Code for approval.	PIC sent letter to Legislators, Mayor and Council members to alert them to State law requirements. Passed House with amendments.
79	Authorizes the Division of State Service Centers to solicit and accept gifts.	The Code of Conduct restricts acceptance of certain gifts , and would still apply, even with this legislation.	PIC wrote to Senate Committee members about the gift restrictions and provided relevant opinions. Legislation was amended to require that any solicitation of gifts comply with Code of Conduct. Amended legislation signed into law - 6/30/03.
83	Would permit use of the Internet for publishing notice of certain State contracts and notice of public meetings by agency when considering adopting, amending, etc., the agency’s rules and regulations, and certain other public meetings under the Administrative Procedures Act (APA).	(1) The Code of Conduct prohibits State employees/officials from seeking State contracts of more than \$2,000, unless there is public notice and bidding. If passed, attendees of PIC training will be advised of the Internet notice so they can avoid seeking any contract that is not on the approved Internet site. (2) PIC is subject to certain APA procedures, and also uses the APA as a guide in areas where PIC is not subject to the law. PIC would comply with Internet notice provisions regarding public meeting, and would comply with Internet notice provisions in appropriate situations.	Referred to Senate Finance Committee - 4/16/03.
97	Requires State agencies web sites to have a policy on	By law, the Commission must collect data on lobbyists. <i>29 Del.</i>	Signed into law - 6/7/03.

	how personal information is obtained on users; what is done with the info; etc. "Personal information" includes names or other identifying information. The bill does not prohibit disclosing the information if it is needed to perform the agency's statutory functions, rather, a disclosure policy must be on the web site. The bill also directs the Department of Technology and Information to develop a model policy for State agencies.	<u>C. §§ 5832, 5833 and 5835.</u> The Commission will follow the model developed by DTI.	
129	Amends State law to require that former employees of Department of Technology and Information (DTI) are subject to the post-employment law.	During the reorganization of the Office of Information Services (OIS) into DTI, legislation was past exempting OIS and DTI employees from the post-employment law which applies to all other Executive Branch employees.	In 2001, the Commission notified legislators and agency representatives of the legislation exempted only certain State employees could have, when all other State employees were subject to the law. In 2003, the application of the post-employment law was reinstated for DTI. Signed into law - 6/11/03.
<i>HOUSE LEGISLATION</i>			
BILL #	SYNOPSIS	REASON FOR MONITORING	STATUS
H.R.3	Contains Temporary Rules of the House and how it will operate. Includes Rule that House Members must comply with Financial Disclosure Law; Lobbyists must register as required by the Lobbying Law; and provides rules on lobbyists taking the House floor to speak.	To assist Public Officers who are House members, and lobbyists in complying with the Rules. Ltr. Sent to House indicating that the citation in Rule 54 and 57 regarding lobbyists should be the same, but Rule 57 gives the old statutory citation.	Resolution Passed - 1/14/03.
H.B. 5	Governor's Proposed Budget - FY04 (See H.B. 300 - Final Budget)	PIC Request for \$164,000 - same as prior budget years	Referred to House Appropriations Comm. 01/30/03
H.B. 88	Amends Title 14 to, among other things, exempt	Violations of the "anti-double dipping" law can be referred to	Signed into Law -

	Professional Standards Board members from the “anti-double dipping” law. That law provides that State employees who are paid appointees to Boards or Commissions cannot be paid as a full-time State employee for hours when they are being paid by the Board. This law appears to permit PSB Board members to be paid by both entities for the same time.	PIC. PIC will check to see if a referral pertains to members of this Board, and dismiss based on lack of jurisdiction.	4/01/03
128	Amends Title 29 of the Delaware Code Relating to the Great Seal of Delaware. Changes the Dates on the State Seal from 1793, 1847 and 1907 to 1704, 1776, and 1787.	Will require change to PIC documents containing the State Seal (e.g., letterhead, annual report)	House Administration Committee 4/3/03. Out of Committee- 5/7/03.
152	Amends the State Constitution to end each legislative session on the last day of May, rather than June.	To assist in PIC’s tracking of legislation.	Referred to House Administration Committee-04/29/2003
165	Would amend Code of Conduct to permit State employees, officers, and officials to participate or volunteer for a not-for-profit entity without violating the Code of Conduct.	Existing law places restrictions on the involvement of State employees, officers and officials with both for profit and non-profit entities. <i>29 Del. C. § 5805(a)</i> . Amendment would have effect of overruling recent commission opinions.	Referred to House Administration Committee . Reported out of Committee- 6/4/03. Governor said she would veto legislation if passed.
300	Budget for FY04	Provides for 164.4 for Commission’s Personnel and Operating Budget. The operating budget is the same as in prior years.	Signed into law - 6/25/03

Appendix H – House Bill No.337

Rep. Smith & Sen. Adams

SPONSOR

:

HOUSE OF REPRESENTATIVES

142nd GENERAL ASSEMBLY

HOUSE BILL NO. 337

AN ACT TO AMEND TITLE 4 AND TITLE 29 OF THE DELAWARE CODE RELATING TO FINANCIAL DISCLOSURE REPORTS FOR CERTAIN PUBLIC OFFICERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §5813(a), Title 29 of the Delaware Code by striking the phrase, “shall be notarized” where it appears in the second sentence of subsection (a).

Section 2. Amend §5812(n), Title 29 of the Delaware Code by striking the phrase, “National Guard,” where it appears at the end of §5812(n)(17) and by substituting in lieu thereof:

“National Guard; and

(18) The Alcoholic Beverage Control Commissioner and the members of the Appeals Commission, pursuant to 4 Del. C. §306(c).”

SYNOPSIS

This bill eliminates the requirement that annual financial disclosure reports be notarized before being submitted by certain public officers (29 Del. C. §5812(n)) to the State Public Integrity Committee.

The bill also places the Alcoholic Beverage Control Commissioner and the members of the Appeals Commission in the list of public officers required to submit financial disclosure reports. That requirement is located in Title 4, but, for public notice purpose, should also be in the Title 29 listing.