

STATE PUBLIC INTEGRITY COMMISSION

Annual Report - March 1, 2001

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STATE PUBLIC INTEGRITY COMMISSION

HISTORY AND BACKGROUND

I. Laws Administered by the Public Integrity Commission

The State Public Integrity Commission implements and administers the “Laws Regulating the Conduct of Officers and Employees of the State.”¹ Those laws govern the ethical conduct of government officials and employees, require financial disclosure reports from public officers, and establish the registration and expenditure reporting criteria for lobbyists.

To assist those who are subject to the law in complying, the Commission is charged with offering training classes; preparing and publishing manuals and guides, and prescribing forms for reports, statements, notices and other documents required by law. Further, the law provides a mechanism for State employees, officers, officials and agencies to obtain an interpretation of the law based on the particular facts of their situation through the issuance of advisory opinions from the Public Integrity Commission. The Commission also may grant waivers when the conduct violates the Code if the literal application of the law is not necessary to serve the public purpose or there is an undue hardship on the agency or the employee.

When there is a suspected violation of the law, the Commission may conduct a hearing, and where a violation is found, take administrative disciplinary action, or the Commission may refer certain matters to the Attorney General for investigation and prosecution, if found to be appropriate by the Attorney General.

A general description of the laws, and the purposes of the legislation, are given below.

¹ Delaware Code, Title 29, Chapter 58.

A. State Employees', Officers' and Officials' Code of Conduct

Since its inception as the State Ethics Commission in 1991, the Commission has administered the State Code of Conduct. The Code regulates the ethical conduct of State employees, officers and honorary officials in the Executive Branch. It also regulates the conduct of local government officials, unless the local government adopts a code of conduct at least as stringent as the State statute.² The legislative purpose of the code is to insure that the conduct of State employees, officers and officials holds the public's respect and confidence. It sets standards to guide the conduct of employees, officers and honorary officials, and sets forth disciplinary mechanisms to insure uniform ethical standards.

The standards guiding the conduct of employees, officers and officials, include restrictions on participating in matters where there are personal or private interests which would impair judgment; representing or assisting a private enterprise before the State; contracting with the State; and activities of former employees for two-years after leaving state employment. Further, the Code places some limits on accepting gifts, other employment, compensation, or anything of monetary value. It specifically prohibits using personal office for private gain or unwarranted privileges, and the improper use or disclosure of confidential information.

Disciplinary mechanisms may be imposed by the Commission administratively, or the Commission may refer, by majority vote, certain suspected violations to the Attorney General. Administratively, the Commission may: (1) issue a letter of reprimand or censure to any person who violates the Code of Conduct; (2) remove, suspend, demote, or take other appropriate disciplinary action against a State employee or officer (other than elected officials); or (3) recommend removal from office of an honorary State official. Criminal

² The Commission has reviewed and approved Codes of Conduct for Dover, Lewes, Millsboro, Newark, New Castle County, and Wilmington.

violations of the Code may result in imprisonment of not more than one year and by a fine not to exceed \$10,000.

B. Financial Disclosure

In 1994, the Commission's name was changed from the State Ethics Commission to the State Public Integrity Commission and it was given the additional responsibility of administering and implementing the Financial Disclosure Law, beginning in 1995.

The Financial Disclosure Law requires public officers in the Executive, Legislative, and Judicial branches, to file a financial disclosure statement within 14 days of becoming a public officer and on February 15 each year thereafter. Specifically, those required to file include: candidates for State office, State elected officials, cabinet secretaries, division directors, and members of the judiciary.

Public officers must disclose information regarding their own assets, debts, income, capital gains, reimbursement of expenses, honoraria and gifts. They also must disclose information regarding assets which they hold with another person if they receive a direct benefit, as well as information on the financial affairs of their spouses and minor children. Approximately 300 people file a disclosure form each year.

The legislative purpose of such disclosure is to guard against public officials acting in their official capacity on matters where there is a direct or indirect personal financial interest.

Besides administering the State Financial Disclosure Law, the Commission administers Executive Orders No. 5 and 19, which impose additional disclosure requirements on Senior Level Executive Branch officials. Specifically, they must add an addendum to their annual report, disclosing any gifts valued at more than \$100 from a single source in the preceding calendar year and must notify the Commission within thirty (30) days of receipt of any gift valued at more than \$250. Upon receipt of such notification, the Commission is charged with

not only interpreting any financial disclosure issues relative to the gift, but with determining if any ethical issues arise as a result of accepting the gift.

Willful failure to file such reports is a Class B misdemeanor, and knowingly filing false information is a Class A misdemeanor.

C. Registration of Lobbyists

The 1994 legislation which added the responsibility for interpreting the Financial Disclosure Law, also provided that the Commission would administer and implement the State Lobbying Law, beginning in 1996. That law requires lobbyists to submit registration and authorization forms, and quarterly reports disclosing expenditures on General Assembly members and employees and/or members of any State agency. Registration is required if an individual will be acting to promote, advocate, influence or oppose any matter pending before the General Assembly or a State agency by direct communication. Approximately 200 lobbyists have registered with the Commission, filing both the registration form and employers authorization (approximately 400 filings). Each lobbyist must file a quarterly expense report, resulting in approximately 800 filings each year.

Registration by lobbyists informs the public and government officials of the identity of persons seeking access to government officials and the interests the lobbyist represents. Expenditure reports identify what, if any, funds were spent on food, refreshments, entertainment, travel, lodging and gifts given to members of the General Assembly and/or employees or officials of State agencies.

Any person who knowingly fails to register or knowingly furnishes false information may be found guilty of a misdemeanor. Failure to file an authorization or report results in a cancellation of the lobbyist's registration, and such persons are prohibited from re-registering or acting as a lobbyist until all delinquent authorizations and/or reports are filed with the Commission.

II. State Public Integrity Commission - Structure

The seven positions on the State Public Integrity Commission are filled by appointment by the Governor, with the Senate's concurrence. At present, there are no vacancies on the Commission.

Members may not hold any elected or appointed office, and may not be a candidate for either 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.

While the Code of Conduct does not require that each county be represented on the Commission, the appointments that have been made to the Commission have resulted in appointees from each of the three counties.

Commission members are authorized to receive compensation of \$100 for each day devoted to performing official duties and may be reimbursed for reasonable and necessary expenses incurred in performing official duties.

The Commission meets on an "as required" basis, depending upon the number of issues submitted or pending before it. During 2000, the Commission met twelve (12) times to consider 57 requests for advisory opinions, waivers, and complaints. Two of those meetings were held at the Tatnall Building, Dover, Delaware, where the Commission was located until February 2000. Subsequent meetings were conducted at the Margaret O'Neill Building, Dover, Delaware, which is where the Commission's office was relocated in 2000. When necessary, some meetings were conducted by teleconference. Notice of meetings was posted at the Commission's office.

During 2000, the following seven (7) citizens served on the Commission:

John E. Burris, Chair

Commissioner John E. Burris was initially appointed to the Commission on April 2, 1991, for a three-year term, which expired on April 2, 1994. He was reappointed on July 5, 1994, for a seven-year term, which expires on July 5, 2001. He is not eligible for reappointment. He has been selected by Commission members to chair the Commission since its inception as the State Ethics Commission in 1991. In private life, Mr. Burris is the Chairman of Burris Foods, Inc. The corporation, located in Milford, Delaware, distributes and warehouses frozen foods and ice cream for supermarkets and warehouses. He also has been active as a trustee of the University of Delaware.

Arthur G. Connolly, Jr., Vice-Chair

Commissioner Arthur G. Connolly, Jr., was elected as the Commission's Vice Chair in 1998. His initial appointment to the Commission was made on April 2, 1991, and his five-year term expired on April 2, 1996. He was re-appointed by Governor Thomas R. Carper on June 11, 1996, for a seven-year term which will expire on June 11, 2003.

Mr. Connolly is a partner in the law firm of Connolly, Bove, Lodge and Hutz, in Wilmington, Delaware. He has actively participated in the legal community, serving in such positions as President of the Delaware State Bar Association, Chairman of the Board of Bar Examiners, and as an Adjunct Professor of Trial Practice at Delaware Law School, now known as Widener University School of Law. He also has served as a member of the Delaware Code of Judicial Conduct Committee of the Delaware Supreme Court and was a member of the Board of Professional Responsibility of the Delaware Supreme Court. His activities in non-legal areas include serving on the Board of Trustees for Friends' School and Archmere Academy. In the past, he was active as a basketball coach for the Catholic Youth Organization, the American Junior League, and summer high school teams.

Zenaida Otero Gephardt, Ph. D.

Commissioner Zenaida Otero Gephardt was appointed to the Commission on September 19, 1994. Her seven-year term expires on September 19, 2001. She is not eligible for reappointment. Dr. Gephardt, who is a Wilmington resident and a registered engineer in Delaware, earned her Ph.D and Master of Science Degrees in Chemical Engineering from the University of Delaware and is an active member in many technical societies. She is a Professor of Engineering at Rowan University of New Jersey. She was selected to the 1993 Hispanic Women Leadership Institute at Rutgers University and received the 1992 Excellence in Scholarship Award from the Hispanic Association for Higher Education in New Jersey. She is active in community service, serving on the Advisory Board of the Partners with Students Program and Camden County Community College, and is on the Board of Directors of the YWCA of New Castle County. She also has served on the Board of Girls, Inc. of Delaware (formerly Girls Club). She received the 1989 Girls, Inc. of Delaware award honoring Delaware women of achievement and has worked with the Forum for the Advancement of Minorities in Engineering.

Mary Jane Willis

Commissioner Mary Jane Willis was appointed to the Commission on June 30, 1996 to complete the term of C. Ann Nellius. That term expired on April 2, 1997. Ms. Willis is eligible to be reappointed to a seven-year term and may continue to serve until such time as she is reappointed or another individual is appointed to the position.

In 1999, the Delaware Supreme Court asked Ms. Willis to serve as a non-lawyer member of the Court on the Judiciary's Preliminary Investigatory Committee. As a such, she can be appointed to serve as a panel member to investigative and report on allegations of misconduct or disability involving any judicial officer within the Court's jurisdiction.

Having earned her Master's Degree in counseling and guidance from West Virginia University, Ms. Willis has more than 60 post-graduate hours toward her doctorate degree. She was a counselor in the West Virginia School System, taught in the Smyrna School District, and is active on various boards connected with education, such as the University of Delaware Parents Association Board, and Dartmouth College Parents Board. She has served on the Boards of such organizations as the American Cancer Society, Kent General Hospital, Kent General Foundation, and the Easter Seal Society. She is the Delaware Chair of the United States Olympic Committee (USOC), and serves on the Board of the Children's Beach House and Delaware Children's Fire Safety Foundation. She has served as President of the Delta Kappa Gamma International Honorary Society, the American Association of University Women, and the Alpha Delta Pi Sorority of West Virginia Wesleyan College. She is a member of the Daughters of American Revolution, the Federation Woman's Club in West Virginia and Holly's Women Club in Smyrna, Delaware.

Paul E. Ellis

In 1998, Commissioner Paul E. Ellis was appointed to serve a seven-year term which expires on July 8, 2005. Before his appointment to the Commission, he had already dedicated many years of service to the public sector by serving as Attorney for the State Senate, Assistant Solicitor of Sussex County, Deputy Attorney General, and in 1973 was appointed as a Judge in the Sussex County Court of Common Pleas until his retirement in 1996.

Mr. Ellis, a resident of Seaford, Delaware, has been actively involved in the community, where he has served as President of the Seaford Lions Club, the Seaford Democratic Club, and the Seaford District Library. He also has been an active member of the English-Speaking Union (Delaware Branch); St. Luke's Episcopal Church (Senior Warden of Vestry); and various Masonic organizations. His interest in the Masons resulted in his service as a Grand Master of Masons in Delaware and First Vice President of the George Washington Masonic National Memorial in Alexandria, Virginia. He also has served as a

member, Past Master and Secretary of Gethsemane Lodge No. 28 A.F. & A.M. For 20 years, he has been a trustee of the Episcopal Diocese of Delaware.

Arthur V. Episcopo

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

Commissioner Episcopo has had dual careers in the private sector and in the military. For thirty-two 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 was pursuing a career in the Army National Guard. He served in the Army National Guard for more than 42 years where he rose 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.

Clifton H. Hubbard

Commissioner Hubbard was appointed to complete the term of Christopher E. Bullock, who resigned from the Commission after accepting the pastorate of a church in Chicago, Illinois. Commission Hubbard's appointment to complete Reverend Bullock's term will expire on August 29, 2002.

Mr. Hubbard resides in Dover, Delaware, and previously served on the Environmental Appeals Board (EAP) as its Chair. The EAP hears appeals of decisions of the Secretary of

the Department of Natural Resources and Environmental Control (DNREC) pertaining to enforcement of pollution standards. He served on that Board for approximately 20 years. He also served on the Metropolitan Planning Organization (MPO), which is involved in approving certain Department of Transportation demonstration projects. He served on the MPO for approximately six years.

After receiving his Bachelor of Science in both Chemistry and Biology, he briefly served as a Chemistry Instructor at his Alma Mater, Claflin College, Orangeburg, South Carolina, before accepting a position as a chemical analyst at Rohm-Haas Chemical Company. Subsequently, he accepted employment with International Playtex, Inc., as a chemical analyst. That position resulted in his move to Delaware, where he also attended the University of Delaware for advanced chemistry studies. In 1971, he had a patent approved on the “Method of Making Foraminous Forming Conveyors.” He was Manager of the Elastomers Department when he retired from Playtex.

Mr. Hubbard is a member of Gideons’ International, Alpha Phi Alpha Fraternity, Kent-Sussex Afro American Committee on Education, and is the trustee for Mt. Zion African Methodist Episcopal Church in Dover. Other interests include computer programming, numismatics, model railroading, and karaoke.

Commission Staff
Commission Counsel

As an independent agency, the Commission is charged with appointing its own legal counsel. 29 *Del. C.* § 5809(12). Janet A. Wright was appointed in 1995 as legal counsel to the Commission. Ms. Wright graduated from Widener University School of Law (cum laude) in 1989, and 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. After her clerkship, she was an Assistant City Solicitor for the City of Wilmington. Her duties initially included prosecuting Building and Housing Code, Fire Code violations, and animal

protection laws. She also periodically prosecuted criminal matters in the Municipal Court for the City. She subsequently became a civil litigator, defending the City and its employees against civil rights actions and personal injury actions. Ms. Wright is admitted to practice in the Delaware Courts, the U.S. District Court in Delaware, and the U.S. Third Circuit Court of Appeals. She received the American Jurisprudence Award for her studies in Professional Responsibility. She is a member, and has served as the Chair, of the Northeastern Regional Conference on Lobbying (NORCOL), which is comprised of state and local government agencies from Washington, D.C. to New England that regulate lobbying activities. In 1998, as Chair, she hosted NORCOL's annual meeting in Wilmington, Delaware. That same year, she served on the Site Selection Committee for the Council on Government Ethics Laws (COGEL), which consists of representatives from all fifty (50) states, the federal government and the Canadian government who work in the field of law pertaining to ethics, lobbying, financial disclosure, and campaign finance. Her book review of Alan Rosenthal's Drawing the Line: Legislative Ethics in the States, was published in the "COGEL Guardian." In 2000, at COGEL's annual conference, she hosted a session dealing with how small State agencies can obtain resources necessary to administer and implement ethics laws.

Administrative Assistant

Lisa H. Anderson has been the Commission's administrative assistant since April 2000. Prior to working for the Commission, Ms. Anderson was a secretary in the Division of Public Health, Community Health Care Access Section. As part of her responsibilities, she was responsible for compiling the Weekly Report, preparing minutes, arranging meetings, providing support for the J-1 Visa Waiver Program, and composing and preparing correspondence. She performs similar duties for this Commission. In addition to this experience, she was a typist in the Agent's Licensing Section at the Delaware Insurance Department. Prior to her employment with the State, Ms. Anderson worked for Sussex Printing Corporation/The Guide in Seaford. She attends Delaware Technical and Community College, working on her Associate's Degree in Early Childhood Development.

III. Commission Accomplishments in 2000

In 2000, the Commission continued to emphasize its statutory responsibility to educate and provide guidelines to those subject to the Code of Conduct, Financial Disclosure and Lobbying provisions. The Commission conducted courses on the Code of Conduct and the Financial Disclosure statute. Its education program was supplemented by distributing its synopses of opinions and Ethics Bulletins on key issues. The details of its training classes and its publications used to achieve this goal are detailed below.

In last year's annual report, the Commission also set forth a goal to establish a Web site as part of its on-going efforts to insure that those subject to the law, and members of the public, have the information which the Commission publishes. In 1999, it designed a Web site and converted its publications for access on the Internet. The Web site became operational in March 2000. The Commission's web address is: **www.state.de.us/pic**.

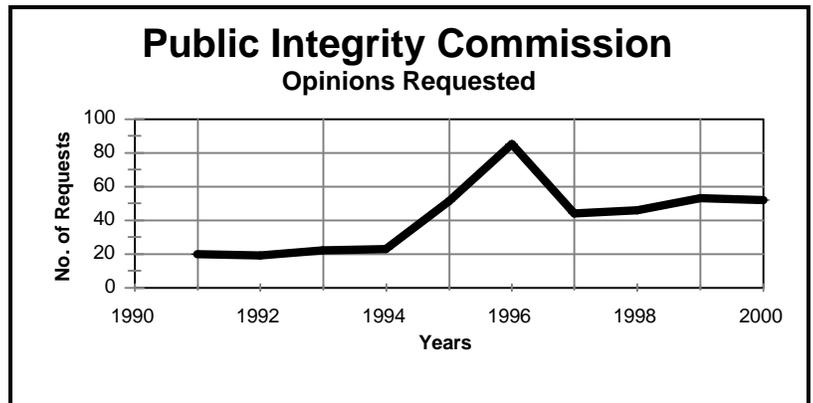
During 2000, the Commission completed the review and decision on one complaint and seven requests for advisory opinions which were submitted in 1999. Aside from that carry-over of eight (8) matters from 1999, the Commission rendered decisions on an additional 49 matters which were submitted for action in 2000. In six instances, the Commission referred suspected violations of the Financial Disclosure law to the Attorney General's office to consider for prosecution.

The total of 57 submissions decided in 2000 was a slight increase over the matters considered by the Commission in 1999, when it handled 54 matters. Three additional matters were received in December 2000, but as they were submitted after the Commission's last meeting of the year, they were carried forward for action in January 2001.

Specific activities in the Commission's areas of responsibility are discussed below.

A. Requests for Advisory Opinions, Actions on Complaints, and Referrals

The Commission is charged with issuing advisory opinions and waivers, and with investigating and ruling on complaints alleging violations of the Code. *29 Del. C. §§ 5807 and 5810*. Almost all of the Commission's rulings are rendered after a hearing, even though hearings are not mandated for advisory opinions and waivers.



In 2000, the Commission completed 10 years of acting on requests for advisory opinions, waivers and complaints requiring interpretation of the Code of Conduct, Financial Disclosure, and Lobbying Laws. During that time it responded to 415 individual requests. While the initial years (1991-1994) showed an average of approximately 20 individual requests per year, there was an upsurge in the requests in 1995-1997 when the Commission gained a staff and could offer much more training, and when it acquired the additional responsibilities of interpreting the Financial Disclosure and Lobbying Laws. More recent years (1998-2000) reflect a steady average of approximately 50-60 individual submissions each year. An overview of that data appears in the above.

One complaint and seven requests for advisory opinions which were submitted in 1999, were decided in 2000. The complaint was carried over into 2000 for further investigation. In the advisory opinion cases, the requests were submitted after the Commission held its last meeting in 1999, and thus carried over to the first meeting in 2000.

Added to those 8 matters carried over from 1999 were 52 individual requests for advisory opinions, waivers, or complaints, for a total of 60 submitted in 2000. The 60 matters break down as follows: (a) 41 requests for advisory opinions; (b) six requests for waivers; (c) six referrals for prosecution; and seven complaints.

(1) Advisory Opinions

Upon the written request of any State employee, State officer, Honorary State official, or State agency, the Commission may issue an advisory opinion as to the applicability of the law to any particular fact situation. 29 Del. C. § 5807(c).

In interpreting the 41 requests for advisory opinions, the Commission frequently found that the interpretation required a decision on the applicability of more than one provision to produce an opinion that completely covered a particular fact situation. For example, while the Commission received three individual requests asking if each individual may accept a particular gift, the Commission, in two instances, had to also determine if the gift fell within the reporting parameters of the Financial Disclosure Law. Similarly, where individuals reported that they had a financial interest in a private enterprise which does business with a State agency, the Commission had to determine whether that business arrangement complied with the restrictions on contracting with the government; whether the individual violated the restriction against reviewing or disposing of matters in which there was a personal or private interest; whether the individual had represented or otherwise assisted the private enterprise before his own agency; etc.

Aside from interpreting a number of provisions as the result of one request, the Commission also deals with situations in which a single request poses a question regarding several different people whose particular fact situation may be similar or where the particular facts may vary from individual to individual. For example, one request for an advisory opinion was submitted by a government attorney seeking a decision dealing with seven (7) different individuals who were similarly situated. In another instance, a local government official submitted a request for three (3) different officials who had contracted with their local

government, but all had different fact situations. Thus, the total number of 41 requests submitted for advisory opinions resulted in interpretations affecting more than 41 individuals.

The majority of requests for advisory opinions were concentrated in two areas: (1) post-employment; and (2) accepting other employment, payment of expenses, gifts, or anything of monetary value. There were fourteen (14) requests in each of those two areas. Seven (7) requests raised issues of whether an individual had a “personal or private interest” which would tend to impair independent judgment in performing official duties; six (6) requests posed questions of whether the individual represented or otherwise assisted a private enterprise before their own agency; five (5) also dealt with appearances of impropriety; four (4) required an interpretation of the Financial Disclosure Law; and three (3) requests dealt with: (a) public notice and bidding requirements; and (b) full disclosure where the individual was doing business with or was regulated by the State.

(2) *Waivers*

The Commission may grant a waiver 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). Six (6) requests for waivers were heard by the Commission in 2000.

In all six (6) instances, the Commission was asked to grant waivers under the “undue hardship” provisions. Waivers were denied in four (4) instances because the objective of the State employee and State agency could be achieved without violating the Code of Conduct. In two (2) instances, waivers were granted.

Where waivers are granted, the proceedings become a matter of public record. Accordingly, the Commission’s opinions issued in granting the two waivers are attached at **Appendix A**. A summary of the two waivers granted is as follows.

In one instance, a State employee sought to contract with his own agency, which is prohibited. However, the agency sought to contract with him to rewrite a history on a Delaware Governor that he wrote years before becoming part of that State agency. As he was the original author, he would be best suited to revise the work based on his having conducted the interviews and having obtained documentation from the former Governor's family which was information used in the initial publication, etc. ([Advisory Op. No. 00-32](#)).

The other waiver was granted to permit a State employee to participate as a hearing officer in a matter where he had recently interviewed for a job with one of the parties. The decision on whether he would be hired was pending at the time he was to serve as the hearing officer. Based on a multitude of facts, e.g., the critical timing of the hearing, finding another hearing officer would result in missing that hearing date, the parties did not object to having him as the hearing officer, etc., the Commission granted a waiver. ([Advisory Op. No. 99-51](#)).

(3) Referrals For Prosecution

Under the Financial Disclosure Law, any public officer who willfully fails to file shall be guilty of a class B misdemeanor. 29 Del. C. § 5815(a). "Public officer" is defined to include any candidate who has filed for any state office. 29 Del. C. § 5812(a)(3). Six (6) candidates for State office did not file Financial Disclosure reports, even after being sent notice of the requirement by both regular and certified mail. The Commission referred those suspected violations of the Financial Disclosure Law to the Attorney General, pursuant to 29 Del. C. § 5815(c).

(4) Complaints

Seven (7) Complaints were disposed of in 2000, as follows:

Two (2) Complaints were dismissed because the State Code of Conduct did not apply to the persons named in the Complaints. One alleged unethical conduct by a School Board member, and the other alleged a conflict of interest of a General Assembly member. Complainants were advised that the Commission had no jurisdiction. In the matter related to the General Assembly member, the Complainant was referred to the statute dealing with

conflicts of interest for General Assembly members, Title 29, Chapter 10, and advised that the General Assembly has House and Senate Ethics Committees which interpret that law.

Three (3) Complaints were dismissed on the basis that the Commission had no jurisdiction over the subject matter. One Complaint alleged violations of numerous laws in Title 11, the Criminal Code, over which the Attorney General has exclusive jurisdiction. Another appeared to allege civil rights violations, (e.g., false arrest, etc.). The third alleged “gross negligence” by a public defender in representing the individual. The Public Defender was subject to the jurisdiction of the Delaware Supreme Court, not the Commission. The Complainant had already submitted his complaint to such entities as the Delaware Bar Association, Legal Services, Corp., and the Lawyers’ Disciplinary Board.

Two (2) Complaints were investigated by Commission Counsel and the Commission found that, as a matter of law, they failed to state a claim under the State Code of Conduct.

One of those Complaints was filed against an elected official of the Sussex County Council alleging that he might have a business interest in a private enterprise which would benefit from a government decision in which he was expected to participate. The other Council officials sought an advisory opinion on whether they would have a conflict of interest because they were similarly situated. However, after investigation and the taking of sworn statements, the Commission found the allegation regarding the business interest was too speculative and remote to constitute a violation of the State Code of Conduct.

Normally, where no violation of the law is found, such matters are confidential, unless the person charged, or person seeking the advisory opinion, authorizes the Commission in writing to release the opinion. *29 Del. C. § 5807 (d)(1) and § 5810 (h)(1)*. As written authorization was permitted, a copy of the Commission’s opinion is attached as [Appendix B](#).

The final Complaint which was dismissed for failure to state a claim, was investigated, and the Complainant and her legal counsel were notified on a number of occasions that to state a claim additional information would be needed. After no additional information was submitted, based on the investigation--including interviews of State employees and review of certain State documents--the Commission found that there was no evidence that the respondent had not comported with the Code of Conduct. For example, the evidence showed that in contracting with the State, the local government official had not used his public office to obtain a State contract, and the official and State employees had complied with the requisite laws dictating how this particular contract would be issued, administered and paid.

B. Training Sessions

Seminars and workshops to educate individuals covered by the laws regulating the conduct of State employees, officers and officials are part of the Commission's mandate. *See, 29 Del. C. § 5808A(a)(1).*

During 2000, the Commission held fifteen (15) training sessions. Fourteen (14) of these were training on the State Code of Conduct and one (1) was on Financial Disclosure Reporting. The Financial Disclosure session was part of the "Orientation Program for New Legislators," and was given to two new members of the General Assembly.

Regarding State Code of Conduct training, the Commission continued to work with the Department of Health and Social Services (DHSS) to provide ethics training as recommended by the State Legislative and Citizens Investigative Panel of Nursing Homes in the 1998 "Marshall Report." DHSS coordinates with the Commission to provide training at various DHSS locations each quarter in an effort to insure that all of its employees will receive training. In 2000, the Commission gave four (4) training sessions to DHSS.

The Commission also coordinated training for three (3) sessions with the Office of the Secretary of State and three (3) sessions with the Department of Corrections. In addition, the Commission coordinated with the State Personnel Office's (SPO) Training Unit to offer two (2) classes as part of SPO's Career Enrichment Program (CEP) and two (2) classes as part of SPO's Management Development Institute (MDI) course, providing training on the Code of Conduct to State employees from any agency who registered for those courses.

To upgrade the quality of its training, the Commission purchased a laptop computer and the Commission's staff created a color slide show on the computer to replace the black and white overheads that had been used in past years.

A total of 206 State employees, officers and officials received Code of Conduct and/or Financial Disclosure training. This was an increase from the 171 persons who attended training in 1999. At all of the classes, attendees were provided with copies of the pertinent statute, synopses of opinions concerning the particular class subject matter, and copies of forms for financial disclosure reporting.

C. Publications and Guides

The Commission is to publish synopses of its advisory opinions without disclosing the identify 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).*

As previously noted, the Commission indicated in its prior annual reports that one of its goals was to make its publications available on a Web site. In March 2000, the Commission's Web site became operational. It contains the statutes administered by the Commission; the Commission's synopses of opinions since its inception in 1991; forms for financial disclosure and lobbying registration; a list of all lobbyists registered with the

Commission; the Commission's annual reports for 1998 and 1999; and the Commission's Rules of Procedures. The Commission's Web site averages approximately 4,000 hits per months.

At the end of 2000, the Commission published the synopses of its 2000 Financial Disclosure advisory opinions. [Appendix C](#). The synopses, the instruction sheet, and requisite forms are annually sent to more than 300 people who are required to file an annual Financial Disclosure report, and they are distributed at the Financial Disclosure training sessions. In the cover letter to the public officers who received the materials, the Commission noted that they could obtain additional forms, etc., from the Commission's Web site. The Commission also has its Financial Disclosure report on the Board of Election's Web site to aid in insuring that candidates for State office have easy access to the forms.

The Commission's synopses of its Code of Conduct opinions issue in 2000 are being drafted and will be sent to Graphics and Printing in early 2001. The Commission distributes more than 500 copies of its ethics synopses each year at its various training sessions, and upon requests by individuals. It also distributes the entire advisory opinion when permitted by the Code's confidentiality provisions. Comments on the evaluation forms from the Commission's training classes consistently indicate that these publications are one of the most valuable parts of the training.

D. Review of Local Government Codes of Conduct

Local governments are subject to the State Code of Conduct unless they adopt their own Code which must be approved by the Commission as being as stringent as the State Code. *68 Del. Laws, c. 433 § 1.*

The Commission has approved local Codes of Conduct for New Castle County, Dover, Lewes, Millsboro, Newark, and Wilmington.

In 1999, the Commission notified New Castle County of some deficiencies in its Code, which were noted during the review of an amendment. Specifically, New Castle County's Code did not apply to all County employees; did not have a post-employment provision; and lacked some clarity in the provision dealing with confidentially.

In 2000, New Castle County's Ethics Commission notified the Commission of a rewrite of its Code of Conduct so that it basically reflects the same language as the State Code of Conduct. The Commission approved the rewrite as being as stringent as the State Code.

E. Legislative Matters

A number of pieces of legislation which were of interest to the Commission were introduced during the second session of the 140th General Assembly, which ended on June 30, 2000. A chart showing legislation introduced and followed by the Commission in 2000, and the status of the various bills at the end of the legislative session can be found at [Appendix D](#). Legislation introduced in 1999, which was carried over into the 2nd session of the 140th General Assembly, is included on the chart. Key legislation affecting the Commission is discussed in more detail below.

(1) Legislation Pertaining to the State Code of Conduct

Just at the close of the 140th legislative session, a bill passed the House, and was under consideration by the Senate Education Committee, which would create a separate Code of Conduct for persons who are elected as local School Board members. ***H.B. 634***. At present, local School Board members are exempt from the State Code of Conduct, even though all other local, elected officials are subject to the Code unless the local government passes its own Code of Conduct which is approved by the Commission to be as stringent as the State Code. *68 Del. Laws, c. 433 § 1*. Because the legislation which would apply to local, elected School Board members was not as stringent as the State law or the local codes which apply to other local, elected officials, and because some of the bill's provisions permitted the School

Board members to exempt themselves from their own Code of Conduct, the Commission wrote a letter/memorandum to the House and Senate Education Committees regarding its concerns about a separate Code of Conduct for School Board members. This letter/memorandum was sent pursuant to the Commission's statutory mandate to recommend to the General Assembly such rules of conduct for public employees and officials as it shall deem appropriate. *29 Del. C. § 5809(1)*.

In response to the Commission's communications, an amendment to the bill was introduced by Senator John C. Still, which would have replaced the proposed legislation with a provision that amended the definitions in the State Code of Conduct to make School Board Members subject to the State Code. **S.A. 1 to H.B. 634**. No further action was taken during the 2nd Session, 140th General Assembly as the legislative session ended. In January 2000, the 1st Session of the 141st General Assembly, legislation was introduced to amend the State Code of Conduct so that it would apply to local, elected school board members. **H.B. 54**.

(2) Legislation Pertaining to the Financial Disclosure Law

The Financial Disclosure Law was amended by legislation signed into law on June 23, 2000, changing the title of the head of the Foster Care Review Board from Administrative Coordinator of the Foster Care Review Board to Executive Director of the Child Placement Review Board. As the head of the Board already was required to file a financial disclosure report, no substantive change was affected. **H.B. 540**.

Title 4, Chapter 3, of the Delaware Code was amended to restructure the Alcoholic Beverage Control (ABC) Commission, replacing the Commission with an ABC Commissioner, and an ABC Appeals Board. The legislation, signed into law on August 4, 2000, contained a provision requiring the ABC Commissioner and the three ABC Appeals Board members to file a financial disclosure report with this Commission. **H.B. 660**. The Commission modified its instruction sheet for financial disclosure reporting to reflect those

additions to the State officers who must file; updated its Web site; and prepared notice of the requirement to file to those persons once they were appointed.

(3) Legislation Pertaining to the Lobbying Law

Several pieces of legislation were introduced in 1999, 140th General Assembly, 1st Session, and carried over to the 2nd Session, which if passed would affect lobbyists. None of the bills were passed in 2000. One bill prohibited State entities which are “bodies corporate and politic” created by the State, or a political subdivision, from hiring or contracting with lobbyists. ***S.B. 15.*** Another bill would have required that lobbyists report the amount and names of members of the General Assembly or State agencies upon whom more than \$15 was expended. ***S.B. 205.*** Existing law sets the threshold at \$50.

Also, reapportionment legislation was introduced in both the House and Senate to establish a commission to accomplish the task of reapportionment following the 2000 and future censuses. ***S.B. No. 79 and H.B. 154.*** Both bills provided that persons who are or have been registered as a lobbyists within two years prior to selection cannot qualify as members. Individuals would also be prohibited from registering as a lobbyist while a member or employee of the commission or within two years of the effective date of the plan. Essentially identical legislation was introduced on January 24, 2001. ***S.B. 36.*** As the results of the 2000 census are expected to be provided to the States in March 2001, the Commission will monitor the bill so that if it passes, the Commission can provide information to the appointing authority on whether the reapportionment nominees are or have been lobbyists within the past two years, and insure that the 2-year post-committee restriction on registering as lobbyists is observed.

(4) Other Legislation Monitored by the Commission

Legislation was signed into law on April 11, 2000, requiring that telephone calls to publicly listed State agency phone numbers are to be answered by a person during State work hours, with a few limited exceptions. ***S.B. 64.*** Because the Commission has a two person staff, compliance with the law required the Commission to purchase a cell phone so that when one staff member is away from the office (e.g., to give training) and the other staff member

must leave (e.g., to go to lunch), the calls can be transferred to the cell phone so that a person will answer. The anticipated annual costs for the cell phone to insure compliance is \$240.

Legislation was introduced that would add a new subchapter to the chapter of the Delaware Code which is administered by the Public Integrity Commission (Title 29, Chapter 58). It would have created a Campaign Integrity Commission to be responsible for reviewing campaign statements which are believed to be misleading and/or inaccurate and can publicly censure those making such statements. Any resident will be able to submit a record of a candidate's statement to the State Election Commissioner, who will be responsible for contacting CIC members and disseminating the submission to them. There is no statutory language reflecting any role by the Public Integrity Commission in administering this law. It is unclear why the legislation would be part of the Commission's chapter instead of Title 15, which deals with election laws, the responsibilities of the State Election Commissioner, and election campaigns.

F. Administrative Issues

(1) Financial Disclosure Reports

Public officers are to file annual Financial Disclosure reports by February 15 of each year. In 2000, the Commission sent copies of its Financial Disclosure synopses, the requisite form and instructions to more than 300 public officers notifying them of the requirement to file by February 15, 2000. After that initial notice, fourteen (14) public officers did not respond. After the second notice, two of the public officers had not responded. They were again notified by certified e-mail, and the reports were submitted.

As public officers must report gifts valued at more than \$250, and as lobbyists must report by name and amount expenditures on individual public officers exceeding \$50 per day, where the lobbyist report reflected expenditures of more than \$250 on a public officer, the reports were compared. Where there was an inconsistency in the reports, the public officer

and the lobbyist were notified of the discrepancies. In some instances, the public officers had not received anything of value from the lobbyist; in other instances, the lobbyist had not affirmed the value with the public officer. Where necessary, the lobbyist and/or the public officer amended their reports for accuracy.

(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.

The filing for the last quarter of 1999 was due on January 20, 2000. Fifty-five (55) lobbyists did not file by the due date and were notified that, by statute, failure to file would result in a cancellation of their registration until the reports were filed. After the first notice, all but ten (10) of those lobbyists submitted reports. A second notice was sent to those ten (10) lobbyists by certified mail. In some instances the individuals indicated they were no longer lobbying, and in other instances some registrations were canceled. The total number of registrations canceled was five (5).

The filing for the first quarter of 2000 was due on April 20, 2000. Notification was made to forty-nine (49) lobbyists that their reports were not received by the due date, and that, by law, failure to file could result in a cancellation of their registration. Following that notice, all but fifteen (15) of the lobbyists filed reports. Certified mail was sent to each of them as a second notice. In some instances the individuals indicated they were no longer lobbying, and in other instances some registrations were canceled. After the period to respond passed, six (6) lobbyists were deleted from the registration list.

The filing for the second quarter of 2000 was due on July 20, 2000. Fifty-one (51) lobbyists were sent a first notice of failure to file, with a second notice by certified mail sent to eleven (11) lobbyists. Six (6) lobbyists were deleted from the registration files, either by request or due to failure to respond.

The filing for the third quarter of 2000 was due on October 20, 2000. A first notice of failure to file was sent to forty-two (42) lobbyists. Eleven (11) lobbyists received a second, certified mail, notice. Out of those eleven, two asked to be deleted, one was deleted at the request of the organization which was represented, and one was “voluntarily canceled” for failure to respond.

The filing for the last quarter of 2000 was due on January 20, 2001. As the annual report went to press shortly after the filing date, the data for that quarter will be included in next year’s annual report.

(3) Personnel Issues

The Commission’s administrative assistant, Marguerite Rothermel, retired from State service in March 30, 2000. The Commission’s new administrative assistant, Lisa Anderson, began working for the Commission on April 3, 2000, after interviews with eleven (11) qualified applicants who were on the State certification list

(4) Relocation of Public Integrity Commission

In February 2000, the Commission moved to the Margaret O’Neill Building. The Commission was advised that it would have 507 square feet at its new location, but the actual size is approximately 480 square feet. The Commission coordinated its move with the Merit Employee Relations Board, and the moving costs were to be shared. Total costs charged by the moving company was \$2117.04. Costs charged to the Commission were \$1,377.00, and costs charged to MERB were \$708.75. As the actual costs for MERB were higher because the mover packed for it, while the Commission packed its own office, the Commission requested that the charges be adjusted, with MERB paying a portion of its actual costs. An Intergovernmental Voucher (IV) was issued, reimbursing the Commission’s budget for the difference.

The Commission’s new mailing address is: Margaret O’Neill Building
410 Federal Street, Suite 3
Dover, DE 19901

(5) Computer Upgrades

The Commission experienced no difficulties with Y2K problems at the beginning of the year 2000, as it had upgraded the needed programs in its computer system. As noted under the training section, the Commission purchased a laptop computer, primarily for use in its training classes. The Commission has been advised that Administrative Services Operating Plan for Fiscal Year 2002 reflects a need to upgrade existing computers because of the State's decision to migrate all Banyan VINES networks to Windows 2000. The estimated costs to the Commission for its share of the costs of an upgrade is \$1,096.30.

IV. Funding

For Fiscal Year 2001, the Commission requested \$158, 200, which was the same amount appropriated for Fiscal Year 2000. The General Assembly appropriated a total of \$162, 500 for the Commission's FY 2001 budget. The increase in the appropriation over the requested amount was to add to the salary line to adjust for pay raises for State employees.

In December 2000, the Commission was notified that the Governor had directed all departments to cut 2.5% from their operating lines for Fiscal Year 2001. The Commission's operating line is \$40,100, which would mean a reduction of \$1,250, bringing it to \$38,850.

For Fiscal Year 2002, the Commission's Strategic Plan requested a total of \$155,000. Of that request, \$115, 000 is for the salary line. The requested decrease reflected a decrease in the salary line as a result of the retirement of the Administrative Assistant and the hiring of a new Administrative Assistant who has fewer years of State service. It also reflected a decrease because the new Administrative Assistant's health care is through her spouse's federal health plan, which means the State should not occur the Other Employment Costs (OEC) for her health care. Excluding that OEC, the \$115,000 covers salaries and Other Employment Costs (OECs) for the Commission's Counsel, the Commission's Administrative Assistant, and for the Commission members who are entitled to receive \$100 per meeting

day. The remaining \$40,000 was for operating costs. A reduction of \$100 from the past six (6) fiscal years.

V. 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 State Code of Conduct and Financial Disclosure Laws. It has already scheduled training for a number of agencies. Additionally, it has scheduled training with various School Boards, even though at present they are not subject to the State Code of Conduct. It will continue to make its publications available on the Internet. In 2001, it will explore whether it would benefit State employees to also have the materials on the State's Intranet.

To provide additional services to the public officers and lobbyists who must file reports with the Commission, it will investigate the costs associated with making electronic filing available.