

State of Delaware

State Public Integrity Commission



ANNUAL REPORT

March 1, 2006

P. David Brumbaugh, Chair

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

Commissioners

Barbara A. Remus
Bernadette P. Winston

Dennis L. Schrader
William D. Dailey, Jr.

STATE PUBLIC INTEGRITY COMMISSION

Annual Report - March 1, 2006

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STATE PUBLIC INTEGRITY COMMISSION

I. History and Mission

The State Public Integrity Commission is an independent agency created by law in 1991. 29 *Del. C., Chapter 58, Subchapter I.* At that time, it was named the State Ethics Commission. Its duties were to administer and implement the State ethics law for the Executive Branch. The State Personnel Commission and the Attorney General had administered the law from 1984 until 1991. 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. Rather than have State employees or officials decide if an ethical conflict existed for other State employees and officials, the revised law gave the Ethics Commission, comprised solely of private citizens, the sole authority to interpret the law. In April 1991, seven private citizens were appointed as Commissioners to interpret the Executive Branch's ethics law. The Commission had no dedicated staff. It had jurisdiction over more than 48,000 State personnel.

In 1993, the Commission's jurisdiction grew. It gained responsibility to apply the State ethics law to the employees and officials of the State's 57 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).* While this increased the Commission's jurisdiction by an unknown, it still had no dedicated staff.

In 1994, the "State Public Integrity Act," was passed. The State Ethics Commission became the State Public Integrity Commission. Its jurisdiction increased again. Beginning in January 1995, it was to also interpret and administer the financial disclosure law, which applies to senior level officials in all three State government branches. 29 *Del. C., Chapter 58, Subchapter II.* Previously, disclosure reports were submitted to three different agencies: (1) Secretary of State's office for

Executive Branch filers; (2) Controller General for General Assembly members; and (3) the Clerk of the Supreme Court for Judges. None of those offices had specific authority to issue advisory opinions, so they were essentially filing repositories only. The Attorney General, who must comply with the financial disclosure law, also served as the legal advisor on compliance. Under the 1994 law, the Public Integrity Commission was given the statutory duty to render advise on the law; create forms; serve as the filing repository; and refer suspected violations to the Attorney General for prosecution as a misdemeanor. This increased jurisdiction applied to approximately 300 persons.

The Act also provided that in January 1996, the Commission would begin administering the State lobbying law. 29 *Del. C., Chapter 58, Subchapter IV.* Lobbyists registrations and authorizations had been filed with an administrative assistant on Legislative Council. That office had no authority to issue advisory opinions. The 1994 Act provided that lobbying registrations, authorizations, and expense reports were to be filed with the Commission, and gave express authority for the Commission issue advisory opinions on the entire chapter—ethics, financial disclosure, compensation policy, and lobbying laws. Adding the lobbying law increased jurisdiction by approximately 200 lobbyists representing approximately 300 companies.

It also was to provide training, publish an annual report, issue opinion synopses, etc. None of those duties had been assigned to any agency that had dealt with the laws. 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. As provided in the statute, the Commission hired its own attorney in January 1995. The first training class on financial disclosure was given to Governor Thomas Carper and his Cabinet the following week.

Since 1995, the Commission's main goal has been training to educate those subject to the laws. It achieves that through training not only on the laws, but on the process for obtaining

advisory opinions, filing a complaint, responding to a complaint, etc. Tools used in the educational endeavor include publishing synopses, brochures, ethics bulletins, creating and maintaining a web site. These duties, along with providing guidance on a day-to-day basis, are the statutory duty of the Commission's Counsel.

The Commission is committed to exercising its statutory leadership to prevent conflicts; resolve conflicts; recommend rules of conduct to the General Assembly; issue advice, rule on complaints; prescribe forms and notices; give assistance to State agencies, and if necessary seek assistance from State agencies in discharging its duties. That commitment extends to insuring compliance with reporting requirements under the ethics law, financial disclosure law, 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 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 confirm that 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 part of that term. No member can serve more than one full seven-year term, except a member may continue serving until a successor is appointed and qualified.

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

(B) Commissioners Serving in 2005

Within a 3-month period in 2004, the Commission lost 4 members--a turnover of a majority of its appointees. The Commission stabilized with a full complement of its seven members in 2005.

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. He was re-elected as Chair in 2005. His seven-year term expires on April 11, 2011.

Chairman Brumbaugh received his Doctorate in Ministry from Princeton Theological Seminary, after receiving his Master's from Gordon-Conwell Theological Seminary, in Massachusetts. His Bachelor of 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 a member of the Interfaith Council of Central Delaware and the Presbytery of New Castle, and also chairs the committee responsible for

ministerial credentials in Delaware.

He is a resident of Dover, 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. The Commission members have twice elected him as Vice-Chair for Personnel. His term expires on June 30, 2009.

Mr. Massie was recently promoted to the position of Wells Fargo's Auto Finance Operational Risk Consultant. He has worked in Risk Management for several years, and prior to that was a credit analyst at Wells Fargo's office in Philadelphia. Mr. Massie also has worked in management positions dealing with customer complaints, credit information, training, and counseling associates in performance or conduct problems, etc., in Delaware. He previously served 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 has 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. He resides in Hockessin.

Barbara H. Green, Vice Chair

Commissioner Green was appointed on June 25, 2004 to complete the term of Paul E. Ellis, with the term expiring July 8, 2005. By law, she could be reappointed to serve her own seven-year term, which expires November 8, 2012. She has been twice elected as the Commission's second Vice- Chair. As such, she heads 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 a 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.

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 for 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 Specialists) 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.

She resides in Camden, Delaware.

Dennis L. Schrader

Commissioner Schrader was appointed on June 24, 2004 to complete 6 years of Marla L. Tocker's term after she relocated. His term expires June 30, 2010.

Mr. Schrader earned a law degree from West Virginia University College of Law. He is admitted to practice in both West Virginia and Delaware State and Federal Courts, and is admitted to the U.S. Supreme Court. He presently practices with the 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, and was the County Attorney for Sussex County.

Mr. Schrader has been active in the legal community for many years serving as President of the Delaware State Bar Association, and an officer/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 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, and received the Delaware State Bar Association President's Citation for service in the public interest for his work for 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.

William W. Dailey, Jr.

The newest Commissioner is William W. Dailey, Jr., who was appointed to serve until November 8, 2012.

Mr. Dailey has an extensive engineering and surveying background, through his education and service in the United States Army=s Engineer Corps. After an honorable discharge, he continued his education and has been Certified in Reduction and Flood Hazards, Inshore and Coastal Hydrographic Surveying. He is a licensed Land Surveyor in Delaware, Maryland, New Jersey and Pennsylvania.

Prior to his retirement, he worked for VanDemark & Lynch, Inc., gaining experience in all phases of surveying and land development. He supervised field operations for the company, including property, topographic, construction, geodetic and hydrographic surveys; supervised field crews in those areas; compiled and reviewed field data, conducted legal research where necessary; and was recognized by Courts as a legal expert in the field, and has given expert testimony.

Projects he worked on ranged from small tracts to areas exceeding 5,000 acres, where he gained extensive experience in horizontal and vertical controls for aerial mapping and hydrographic surveys. His work in Delaware has covered projects such as supervising field surveys for the Delaware Army and Air National Guards at the Greater Wilmington Airport; Dover Air Force Base; and Georgetown Airport. His work for the military focused on runway and taxiway extensions and improvements. He also was responsible for field surveys on major shopping centers in Delaware: Christiana Mall, Concord Mall and Brandywine Town Center.

He has taught seminars and classes on various aspects of surveying, including Boundary Law, Surveying Basics, Surveying Issues, Title Insurance, Metes and Bounds Descriptions, etc. For 15

years, he was an instructor at Delaware Technical and Community College, Stanton Campus.

He has served on and been a member of numerous Surveyor Societies, including serving as Chair of the State of Delaware Board of Land Surveyors (1981-1990). In 1993, the Delaware Association of Surveyors selected him as its Surveyor of the Year.

In addition to serving on many boards and committees related to surveyors, he was Youth Chairman, President and Vice President of the Red Clay Kiwanis Club. Although retired, he remains involved with VanDemark & Lynch as its Vice President and Partner. He also is active in the Gull Point Condominium Council, Millsboro, Delaware, where he presently resides.

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 attorney provides legal advice to the Commission, and 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 is the functional equivalent of a Director, in such matters as employing and supervising staff, drafting the Strategic Plan, 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 has served as a moderator on a COGEL Session on lobbying, and conducted 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, the National Business Institute (NBI) asked her to serve as a faculty member and present the ethics portion of "Land Use Planning and Eminent Domain in Delaware." NBI selected her presentation as part of its on-line training program. In 2005, she prepared and presented a section on "Managing Ethical Issues in Your Day-to-Day Practice in Delaware," as part of a CLE course.

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

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 or officials hold two State and/or local government jobs. The Lobbying Law mandates lobbying registration, authorization and expense reports by lobbyists who represent organizations before the General Assembly and State agencies.

In administering these laws, the Commission focuses on assisting government officials and lobbyists 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 opinion synopses.

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

(B) Waivers - 29 Del. C. § 5807(a)

In rare cases there may be a need to deviate 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 a deviation from the standards was permitted.

Any State employee, officer, honorary official, agency, or lobbyist may seek a waiver.

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

Other 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)

The Commission may act on sworn complaints, or 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 has statutory rights of 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 discipline. 29 Del. C. § 5810(d). It

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

may also refer substantial evidence of criminal law violations to appropriate federal or State authorities. 29 Del. C. § 5810(h)(2). Frivolous complaints, or ones that do not state a violation may be dismissed. 29 Del. C. § 5809(3).

The purposes of the laws, the Commission's jurisdiction, and penalties 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 and Commissions). Approximately 48,000 persons are in those three categories. The number of employees, officers and officials in the 52 local governments 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

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

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

Violating the above rules could also lead to administrative discipline. 29 Del. C. § 5810.

Rules where only administrative action may apply are: (1) improperly accepting gifts, other employment, compensation, or anything of monetary value; (2) misuse of public office for private gain or unwarranted privileges; and (3) improper use or disclosure of confidential information. 29 Del. C. § 5806(b), §5806(e) and § 5806(f)and (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: more than 300 "public officers" in the Executive, Legislative, and Judicial branches must file Reports 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.

Reported financial information 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 or with spouses and minor children, even if there is no direct benefit.

Whether the reported financial interests raises 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 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

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.

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 – Subchapter IV

Purpose: Individuals authorized to act for 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 2005, 256 lobbyists were registered to represent 471 organizations. That is 58 more lobbyists representing 52 more organizations than in 2004, when there were 218 lobbyists for 471 organizations.

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 2005, 1,024 reports were filed. That was an increase of 152 over the 872 reports filed in 2004—an increase of 117.4%.

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 2005

The Commission's 2005 goals were continuing emphasis on training in all areas of the law. Additionally, it sought to increase access to services to lobbyists and public officers through its web site. Beyond those goals, the Commission worked to continue meeting or even exceeding performance measures used in its budget request, which was to increase training attendance and increase the number 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 2005, the Commission's Counsel conducted eighteen (18) training seminars; an increase of seven (7) over last year. The number of attendees rose to 509, an increase of 78 over 431 attendees in 2004. The number of attendees exceeded the budget projection of 350 by 145%.

Fourteen (14) classes were on the State Code of Conduct and four (4) were on Financial Disclosure Reporting. While the classes focused on the specific topics in 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 regarding 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.

(1) Ethics Training

The Code of Conduct training classes continued for the Department of Health and Social Services (4 separate sessions). This is the only agency that has mandatory training on the Code of Conduct, and generally a session is given each quarter. The mandatory training resulted from a 1998 recommendation in the State Legislative and Citizen's Investigative Panel of Nursing Homes in the "Marshall Report," which recommended ethics training for DHSS employees who work in long-term care, and for Deputy Attorney Generals.

In 2004, a limited ethics course was given to Family Court employees, and it was decided that a follow-up full session for management level employees would be given in 2005. That course was given, with 42 employees attending.

After a turnover in appointees, the Development Disabilities Council requested an ethics session be provided as the last course was given to DDC in 2003. Sixteen (16) members and staff attended the session.

As is done each year, the Division of Professional Regulation, now part of the Office of Management and Budget (OMB), held an orientation course for new appointees to the more than 30 boards and commissions under that division. A short course was given on ethics to 78 appointees and Division staff members.

One reason for the increase in attendance was because the instructors who had been privately contracting with the Fire School to teach various courses, such as Emergency Medical Training, etc., were to be converted from private contractors to casual/seasonal employees at the beginning of January 2006. The primary focus of the training for 125 attendees was that the State Code of Conduct would apply when they became employees. For those who have contracts with private vendors to provide services for the Fire School, they may need a waiver from the Commission if their private contracts run past January 2006 because with the conversion they would be representing or otherwise assisting a private enterprise on matters related to their own agency, which is precluded by *29 Del. C. § 5805(b)(1)*. Also, as a condition of commencing and continuing employment with the State, they will be required to file a full disclosure of those contracts with private enterprises that do business with their agency. *29 Del. C. § 5806(d)*.

Two local governments, the City of Milton and the Town of Newport, requested ethics training for its employees and officials. Private citizens came to the Milton meeting, resulting in a total of 55 attendees at those two sessions.

Three ethics classes were offered through the former State Personnel Office Training Unit, now the Office of Management and Budget's (OMB) Training Unit. Persons from any agency could attend those sessions. A total of 38 persons (14 rank and file; 24 managers) attended the classes offered through the Career Education Program (CEP) and the Management Development Institute (MDI).

Commission Counsel continued, as in past years, to work with the Delaware State Bar Association's Continuing Legal Education program by preparing and presenting part of the ethics training on "Day-to-Day Management and Ethics." Of the 17 attendees, some were attorneys in private practice who contract for legal services with local governments. Thus, exposure of the State

ethics law in this forum brings to the attention of, or serves as a reminder to, local government attorneys the role that the State ethics law plays at the local government level.

(2) Financial Disclosure Training

As with each year, Financial Disclosure Training was given as part of the orientation for new members of the General Assembly.

Also as in past years, two separate financial disclosure classes were scheduled through OMB's Training Unit in both Wilmington and Dover. The Training Unit scheduled the facilities, prepared the flier, accepted the nomination forms, and prepared the class roster for Commission Counsel to use for these sessions. Shortly before the beginning of the year, the Training Unit sent the flier and form to Commission Counsel to e-mail to those persons who are required to file financial disclosure reports. As a result of the e-mail, which also offered agencies an opportunity to schedule a training session at their agency, the Justice of the Peace Courts in New Castle County and Sussex County scheduled separate training classes for the Justices. The total attendees for all financial disclosure classes was 39.

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 at the request of a State employee, officer, honorary official, or agency, as to the applicability of the law to any particular fact situation. 29 Del. C. § 5809(2). The Commission may grant a waiver to the specific prohibitions if it finds that the literal application of the law is not necessary to serve the public purposes of the chapter or finds an undue hardship on an employee, officer, official or State agency. 29 Del. C. § 5807(a). The Commission met twelve (12) times in 2005 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 2005, sixty-eight (68) matters were submitted for action. This was an increase of 19 more than in 2004, when forty-nine (49) matters were submitted. Of the 68 matters, four (4) were complaints: a reduction of one (1) from 2004. 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.

(A) Advisory Opinions

Examples of situations where a single individual sought an opinion, and that request raised number considerations of ethical issues before the Commission could render a decision were in fourteen (14) cases where the individuals filed a “full disclosure” to comply with the information required whenever a State employee seeks to contract with a State agency, by law the individual must file a “full disclosure.” 29 Del. C. § 5806(d).

The legal issue of whether there was “full disclosure” is determined by whether the Commission can decide from the information disclosure whether there was compliance with all other sections of the Code, which are whether the individual: (1) reviewed and disposed of the contract decision in their official capacity; (2) contracted with their own agency; (3) bid on a contract that was publicly noticed and bid if the amount is for more than \$2,000; (4) can accept the outside employment to provide contract services to the State without impairing their judgment; making officials decisions outside official channels or giving preferential treatment to any person; (5) used public office for their own personal benefit or gain in obtaining the contract; (7) improperly used or disclosed confidential information in obtaining the contract; and (8) whether a reasonable person,

knowledgeable of all the relevant facts would still believe that the conduct would appear to violate any of the above sections of the Code. If the disclosure does not have sufficient information to answer those questions, then there has not been “full disclosure.” When there is “full disclosure” but the conduct would violate the Code, the Commission may decide if a waiver is appropriate.

Aside from those matters, the other requests for advisory opinions related to issues such as nepotism; payment of expenses by a private source; outside employment; dual government employment; post-employment; running for elective office; serving as a Board member of a private organization, etc.

In one instance, the Commission received a request for an advisory opinion from a State agency on whether the conduct of one of its employees was contrary to the Code of Conduct. The Commission found that, based on the facts provided by the agency, there was a conflict. Where a conflict is found, the proceedings become a matter of public record. *29 Del. C. § 5807*. The Commission recommended that the agency take action. *Commission Op. No. 05-57. [Appendix A](#)*.

Ten (10) of the total matters submitted dealt with requests for advisory opinions and/or complaints pertaining to local government officials. Most of those actions questioned whether in certain land use matters, the local officials had conflicts of interest. Where complaints were submitted, the local government officials relinquished their statutory rights that normally arise if a complaint is filed. Because the officials waived the statutory rights, the Commission was able to resolve the matters more promptly as part of the rights that were relinquished were the rights regarding the length of time after notice in which the official must response, etc. Where the individuals also gave up their right to confidentiality when no violation was found, the Commission’s opinions are attached. [Appendix B](#).

(B) 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). Because a waiver may mean that the individual is being permitted to violate a provisions 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).

In 2005, the Commission granted a limited, partial waiver to one State employee to deal directly with her spouse in another State agency where the contact would be on rare occasions and the contact was more ministerial in nature than discretionary. *Commission Op. No. 05-28*. Another waiver was granted to a local government official who fulfilled a Town contract when other contractors were not readily available and Town employees could not perform the contact; and the official fulfilled the contract at costs, rather than seeking any profit. *Commission Op. No. 05-04*.

Waivers are in Appendix C.

(C) 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

Of the four complaints filed in 2005, the Commission found that it lacked jurisdiction over two complaints and dismissed the complaints for failure to State a claim.

Two of the four complaints are still under investigation.

A number of complaints were converted to advisory opinion action where the government officials who allegedly violated the Code relinquished the rights they would have under a complaint regarding such things as length of notice, etc. Those matters are discussed under the section on Advisory Opinions above.

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 2005, the Commission published its Financial Disclosure synopses of opinions, updated through the end of 2005. 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.

Throughout the year, the Commission continued to distribute its Ethics Brochure with updated references to the revised Merit Rules that overlap with Code of Conduct provisions. The next reprint will require changing the State seal, as legislation was passed in 2005 changing the seal which has been used by the Commission on its annual report and Ethics Brochure.

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 2005, New Castle County submitted proposed amendments to its Ethics law. The changes are presently being evaluated by Commission Counsel before being submitted to the Commission for a final rendering of whether the changes meet the “stringency test.”

In other matters related to local governments, Commission Counsel presented ethics training to employees and officials of the Town of Milton and the City of Newport. Additionally, 10 matters were submitted to the Commission from local jurisdictions for decisions on whether the conduct of local government officials complied with the Code of Conduct. In one instance, the official was granted a waiver. *Commission Op. No. 05-04.* [Appendix B.](#) In other instances, where complaints were filed, the complainant and the officials agreed to proceed under the advisory opinion section rather than the complaint section. In instances where no violation was found but the individuals waived their statutory right to confidentiality, the opinions are attached. [Appendix C.](#)

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 143rd General Assembly, which began in January 2005 and will continue through June 2006. [Appendix D](#). The legislation was of particular interest to the Commission.

(A) **Budget Bill** – The Commission received \$174,000 for its budget. It did not request any increase for its operating expenses, which have remained at \$40, 100 for ten (10) fiscal years.

(B) **Senate Bill 24 & House Bill 299** – These bills addressed the reorganization of State agencies which eliminated the Department of Administrative Services, which previously provided support to the Commission. The Senate Bill provided for interim management and the House Bill provided, among other things, that the Public Integrity Commission would be supported by the Department of State, effective July 1, 2005.

(C) **Senate Bill 131** - Provides that open meetings of public bodies in the Executive Branch must be posted online to a statewide central calendar, effective January 1, 2005. This requirement is in addition to the actions already taken by the Commission to post notice of its meeting at its office/meeting location , as required by the Freedom of Information Act. The notice with the agenda that has always been posted at the office/meeting location will be uploaded to the central calendar seven (7) days in advance of meeting, as required by law. The legislation also requires that minutes be published on-line within 5 days of approval. As the majority of items that are on the agenda and covered at the meeting are confidential matters, two sets of minutes will now be required. The copy approved by the Commission will have the name and facts of each request for an advisory opinion, or waiver, or complaint considered. That version, as it has always been, will identify the paragraphs of the minutes that are confidential as a matter of law. The version on the statewide calendar will have any identifying information redacted, as required by law. As a result of having to write two versions, this will take some additional administrative time.

(D) **House Bill 104** – Eliminates the requirement for public officers to have their financial

disclosure reports notarized; permits the Commission to accept electronic filings for lobbyists and public officers. For public officers, the elimination of the notary requirement should make filing their annual financial disclosure reports more convenient whether they file on-line or in hard-copy. The authorization to accept electronic filings from lobbyists and public officers should serve several purposes. First, it gives the “customers” the *option* of electronic filing. Thus, those who do not wish to use this mode still may file a hard copy of the report. Second, for “customers” who choose to file electronically, it will reduce their administrative work in completing the form, then copying and mailing the form. Third, the on-line filers will reduce the costs associated with paper and postage. Fourth, it should prove to be more timely than filing through the mail system. Fifth, it will reduce the amount of paper previously handled by the Commission’s staff, which will aid in reducing the amount of space needed to save the paper documents. Sixth, it should reduce the amount of administrative work required to track who have filed; who is delinquent; etc., as the on-line data system will track that information. Seventh, there should be an increased costs savings for the Commission in terms of paper, postage, and administrative work hours, as has already been seen with the existing database because of the ability to notify filers by e-mail of filing dates, training classes, gifts reported by lobbyists, etc. The expanded database system will automatically confirmation of receipt of reports, generate multiple reports for the Commission’s use that the staff previously performed by hand, etc.

The Commission was able to carry over funds from the prior fiscal year to pay for the design of the database system for on-line filing for public officers, so no additional request for funding was sought for the expansion of the existing system which would permit on-line filing.

F. Administrative Issues

(1) Financial Disclosure Reports - Public officers must file Financial Disclosure reports within 14 days of becoming a public officer and by February 15 of each year thereafter. For the annual filers, the Commission sends its Financial Disclosure synopses, the disclosure form and instructions to more than 300 public officers to notify them of the annual requirement, and provide them with the Commission's most current decisions. 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 2005, only two public officers failed to file by the deadline, and did not file until notified by certified mail. Because they responded after certified mail was sent, the matters were not referred to the Attorney General.

The prompt responses may, in part, be attributed to the computerized system which contains a database of public officers and individual e-mails of notice can be conveniently sent as reminders. As earlier in this report, the system reduces costs and work hours for the customers and the Commission staff, with the original system that allowed notice by e-mail of filing dates, training classes, etc. However, that system did not have the capability for public officers to file on-line. With the legislative change eliminating the requirement for a notary on the report, more time and money should be saved with the new on-line filing system for both the filers and the Commission's staff. That was already illustrated in 2004, when the database was set up just for notices, but could not generate reports needed by the Commission, or track the filings or those required to file. A separate entry had to be made for each filer after the paper document was received in order for the database to know of a filing. With the electronic filing, the database will track those who file electronically and not only save the staff the time of making each entry, but also have the added

feature of notifying the public officer that the filing has been received. That service was not previously available because of the time it would take for the Commission's two person staff to individually notify more than 300 filers that their report had been received. It is expected that future years will show even more time and costs savings as more public officers decide to opt for electronic filing rather than hard copy filing.

(2) Lobbyists' Expenditure Reports

Registered lobbyists must file quarterly expense reports, 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 2005, there were 256 lobbyists representing 471 organizations, registered with the Commission.

Two hundred twenty-five (225) 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. That means that 88% of the lobbyists can promptly receive such notices. This compares to one hundred seventy-nine (179), or 81%, of the 220 registered lobbyists in 2004. Again, this technical ability saves costs and work hours for both the lobbyists and the Commission staff.

The legislation referred to above, which allows the Commission to accept electronic filings, resulted in additional and improved features for lobbyists. Previously, they could submit their registrations, employers' authorizations, and expense reports to the database, but a signed hardcopy was still required. With the change in legislation, they may now just submit the information to the database. When they initially register as a lobbyist, if they provide an e-mail address for their employers,' the database system will send an e-mail to the employer to confirm that the lobbyist represents that entity. Additionally, as no signatures are required, and thus no hard copies, for a

majority of the lobbyists this will reduce time and costs associated with preparing and mailing in signed reports. It also will reduce the amount of paperwork that must be handled and filed by Commission staff.

For example, in the first quarter of 2005, notice was sent to 88 lobbyists regarding their failure to file an expense report. Of those, 78 were notified by e-mail. A second notice was sent to a total of 19 lobbyists, and only 4 had to be sent by regular certified post. Only five (5) lobbyists had their registration cancelled for failure to file a report in that quarter. They are not permitted to lobby until they have filed for the time in which they were delinquent.

In the second quarter of 2005, 22 lobbyists were notified that reports were not timely filed for that quarter. Again, most of them were notified by e-mail: 21 out of 22. No lobbyists had their registrations cancelled that quarter.

In the third quarter of 2005, 12 lobbyists were notified of their reports were not filed by September 20, 2004. Of the 12, only 3 did not have e-mail, so were notified by regular post. No lobbyists had their registration cancelled in that quarter.

After the fourth quarter of 2005, notice was sent to 53 lobbyists. Eighteen (18) were delinquent with the fourth quarter report. The reason for the high number was because a complete review was made of all lobbyists' reports for 2005 calendar year and some delinquent lobbyists had not responded to the first or second notice of delinquency for earlier quarters. If they have not filed by March 9, 2006, their registration will be cancelled until they have completed all delinquent reports.

(3) Lobbying Badges & Homeland Security

With the use of the lobbying database, 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. The Division of Motor Vehicles in conjunction with the Capitol Police is issuing badges, 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 2005, the General Assembly appropriated a total of \$174,400 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. As noted earlier in this report, the costs saved with the on-line filing of financial disclosure reports are part of the future expectations as more public officers use the on-line filing system. The Commission continues to consider ways to stabilize or reduce costs associated with its operations. It is reviewing costs of subscriptions and other costs to ascertain where costs could be saved. While those costs may only be within a few hundred dollar savings range, even a \$400 savings would be 1% of the Commission's operating budget.

For FY 2006, the Commission requested the same appropriations as in FY 2005.

VI. Future Goals

In the coming year, the Commission will continue emphasizing its educational program for State employees, officers, officials and local officials covered by the laws administered by the Commission.

Now that the Commission has completed its goals in the previous years of creating a database and establishing an on-line filing system for lobbyists and public officers, endeavors will be made to improve the media quality of the training programs, and investigate the possibility of an on-line training program to increase the ability of all those who are subject to the law to obtain training, as that ability is now limited because the Commission has only two staff members, and only the Commission Counsel can provide the training.

VII. Appendices

Appendix A – Advisory Op. No. 05-57 – Violation Found



STATE OF DELAWARE
DELAWARE STATE PUBLIC INTEGRITY COMMISSION

MARGARET O'NEILL BUILDING
410 FEDERAL STREET, SUITE 3
DOVER, DELAWARE 19901

TELEPHONE: (302) 739-2399
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January 19, 2005

Michael Brown
Delaware Division of Soil and Water Conservation
89 Kings Highway
Dover, DE 19901

Advisory Op. No. 05-57 - "Personal or Private Interest"

Dear Mr. Brown:

The State Public Integrity Commission reviewed your request for an advisory opinion on whether Gene A. Mullen may review or dispose of matters in his government job where his decisions impact on persons and entities against which he has filed legal actions. Based on the following law and facts, the Commission finds it is improper for him to review or dispose of matters related to those persons and entities.

I. Facts

During 2004, the position of Mayor of the Town of Smyrna was open to candidates. Incumbent Mayor Mark Schaeffer sought re-election. Gene A. Mullen, who works for the Kent County Conservation District (KCCD), was one of two opponents for the Mayoral seat. *Commission Op. No. 04-08*. During the campaign, the Town Manager and Mr. Schaeffer contacted Mr. Mullen's supervisor. The Town Manager, David Hugg, expressed concern for a conflict if Mr. Mullen ran for the local office when he reviews and inspects projects inside Smyrna. He asked that another inspector be assigned while Mr. Mullen was running for Mayor, and that if Mr. Mullen were elected that the supervisor review the propriety of his employment with the KCCD. *Id.* Based on information given to the Commission, the Town through its Manager, Mr. Hugg, was asserting that Mr. Mullen would possibly personally benefit from his State decisions on KCCD Smyrna projects in the form of gaining votes. *Id.* According to Mr. Mullen, Mr. Schaeffer called Mr. Mullen's supervisor and demanded that Mr. Mullen be removed from all Smyrna projects. *Id.* According to Mr. Mullen, who was not a party to the conversation, Mr. Schaeffer was "demanding" and "threatening" and wanted to see Mr. Mullen penalized by the Public Integrity Commission. *Id.* Mr. Mullen requested an advisory opinion on whether he had a conflict because he was running for elective office and was a KCCD employee who made

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decisions about Smyrna projects. *Id.* Additionally, he alleged Mr. Schaeffer's conduct, in contacting his supervisor, may be unethical because he was "demanding" and "threatening." *Id.* Mr. Mullen also alleged that Town Council Member William W. Hill, who is a DNREC employee, could possibly have a conflict because he holds dual government positions. *Id.*

None of the facts presented by Mr. Mullen at that time, or in the letter from Mr. Hugg, suggested Mr. Mullen was inspecting any projects in which Mr. Schaeffer, in his private capacity as a developer, was involved. Based on the facts, the Commission answered the issue of whether his running for election when he was a KCCD employee who made decisions about Smyrna projects created a violation at that time.

Mr. Mullen was advised that he was entitled to a strong legal presumption of honesty, and that based on the facts he presented, there was no conflict. *Id.* However, he was to remain aware of his duty to comply with the law, and if necessary, recuse himself. *Id.* He also was advised that if there were any doubt, the Commission could render an advisory opinion. *Id.* Mr. Mullen said he could recuse himself.

Subsequently, the media reported that Mr. Mullen was asked to release the opinion issued by this Commission. He did not do so, and is reported to have stated to the media that his assignments at work were changed so that he would not have a conflict. As that statement would reflect honesty and integrity, it is presumed as true.

Opinions issued by this Commission are confidential if no violation is found. 29 Del. C. § 5807(c). However, the Commission may release the opinion if it has the written permission of the applicant. 29 Del. C. § 5807(c). As the confidentiality is in the applicant's hands, absent Mr. Mullen's authority, this Commission could not release the opinion.

Shortly thereafter, Town elections were held. Mr. Mullen was defeated by two votes. He then sought to have the results overturned, through the Town's Board of Elections, the Attorney General's office, and the Court system. In each challenge he alleged that his opponent, Mark Schaeffer, had improperly handed out absentee ballots; that the Board of Elections improperly accepted those ballots, etc.

While these activities occurred, Mr. Mullen continued to work for the KCCD. You said that on several occasions, Mr. Schaeffer contacted DNREC to complain about Mr. Mullen inspecting sites where Mr. Schaeffer's crews, etc., were working. It was alleged that Mr. Mullen made decisions that had an adverse impact on Mr. Schaeffer's sites, e.g., slowed down the work, etc. You spoke with Mr. Mullen and his supervisor. In some instances, they denied that Mr. Mullen was at the sites. In other instances, it was admitted

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that Mr. Mullen was at the sites, and was not interfering but was very "helpful." DNREC suggested to Mr. Mullen and his supervisor that Mr. Mullen not work on sites related to Mr. Schaeffer. You said the response was that they believed the supervisor could assign Mr. Mullen to work anywhere. You sought an advisory opinion on behalf of DNREC.

By law, State agencies may seek advisory opinions. *29 Del. C. § 5807(a)*. You asked if it was a conflict for Mr. Mullen to inspect/regulate such sites because of the dispute on election results. Commission Counsel contacted Mr. Mullen and asked if he were working on sites where Mr. Schaeffer was involved. In response to a request for a statement that he was not involved in such matters, he responded that he had conferred with his supervisor and his attorneys and was advised not to commit himself to a statement that he was not working on such matters. *Mullen e-mail to Janet A. Wright, Commission Counsel, (attached)*. He said Commission Counsel could identify Mr. Schaeffer's holdings for him so he could avoid working on such projects. *Id.* As he said he had contacted his attorneys for advice, Commission Counsel had no further correspondence or conversations with him.

On December 1, 2005, before your appearance before the Commission on December 13, 2005, the Delaware Superior Court dismissed Mr. Mullen's complaint against Mark Schaeffer (personal capacity), the Town of Smyrna, its Mayor (official capacity), the Town and Council, Dave Hugg, Town Manager, James Markow, Town Systems Manager, and the Town Board of Elections. *Mullen v. Schaeffer, etc., C.A. No. 95C-025-JEB, Del. Super., J. Babiarez, Jr. (December 1, 2005)*. While dismissing the action, the Court said:

"In this case, a writ of *quo warranto* is not only available, the Delaware Supreme Court has stated that it is the exclusive avenue to determine the right to hold public office in the absence of unusual circumstances. There is nothing unusual about the circumstances before this Court."

We take those words literally- -another legal avenue was still available at the time the Commission heard your request. Apparently, the Attorney General would have to seek the *quo warranto*. Mr. Mullen apparently pursued that avenue but the Attorney General's office decline to act several days after the Commission met. Subsequently, there was a Town Council meeting in which changes to the Town election laws were made. According to media reports, at that public meeting, Mr. Mullen was asked if he would lay the election dispute to rest. Those reports indicated that Mr. Mullen rejected such action.

What particular action he may choose to take, if any, is not material to the Commission's decision at this time. Rather, the question is whether he has an existing conflict such that he should recuse himself from matters involving the parties against

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whom he has brought a legal action.

The Code of Conduct prohibits government employees from reviewing or disposing of matters if they have a "personal or private interest" that may tend to impair judgment in performing official duties. The "personal or private interest" of Mr. Mullen is in obtaining a decision on the balloting and the possibility of obtaining a recount of votes, etc. He has indicated that he does not intend to give up pursuit of that objective. In the meantime, he and his supervisor, apparently admitted that he had been reviewing or disposing of matters involving Mr. Schaeffer's projects.

Whether Mr. Mullen has been "helpful" to Mr. Schaeffer's crews when inspecting those sites, or whether he has created work delays, etc., is immaterial under the Code of Conduct in rendering this particular decision¹. He may not review or dispose of matters if there is a "personal or private interest" which *may tend* to impair his judgment. *29 Del. C. § 5805(a)(emphasis added)*. The law does not require that his judgment actually be impaired only that it may "tend" to be impaired. *Id.* The concern is not just whether there is an actual violation of the law, but also if the conduct is such that it "may raise suspicion" among the public that he is acting in violation of the Code and in violation of the public trust. *29 Del. C. §5806(a)*. That is basically an appearance of impropriety test. The test of whether there is an appearance of impropriety is whether a reasonable person,

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You said DNREC delegates its authority to the KCCD, but retains oversight authority or the ability to withdraw that delegation. You also said that while Mr. Mullen and his supervisor were asked about the actions that occurred when Mr. Mullen was on sites related to Schaeffer's projects that none of the working crew were interviewed. Further, you stated that DNREC is not receiving reports from KCCD on the sites and any write-ups, work stoppage, etc., while the projects are underway. You indicated that you used to receive such reports, and still receive such reports from the New Castle and Sussex County Conservation Districts. We have no authority to decide if DNREC should exercise its oversight authority in any manner, such as requesting reports, assume supervisory control over Mr. Mullen's activities, etc. Those are management and personnel issues that we cannot decide.

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knowledgeable of all the relevant facts, would still believe that the person's ability to perform their official duties with honesty and integrity is questionable.

The relevant facts are that Mr. Mullen and Mr. Schaeffer, and the other parties to the lawsuit have been at loggerheads for more than a year. There is no expectation that the tensions will decrease in the immediate future. Mr. Schaeffer is apparently alleging that Mr. Mullen's decisions have had an adverse impact on his projects. Mr. Mullen and his supervisor state that Mr. Mullen has been "helpful" to Mr. Schaeffer's crews when going to the sites. The law does not require that the impairment result in an adverse action. An individual's judgment can be impaired and have a positive result. Thus, even assuming that Mr. Mullen has been "helpful," his decisions could be the result of bending over backwards not to take actions that would have an adverse impact. Thus, regardless of whether his decisions are negative or positive, his judgment may tend to be impaired.

Even assuming that he does not continue to pursue the legal action, based on the information provided by Mr. Mullen in his initial request, the subsequent information that has been a matter of public record not only in the media, but in the legal system, and the information provided by you on behalf of DNREC, we find it reasonable to believe that his judgment may tend to be impaired. Accordingly, he should recuse himself for a reasonable period of time, a cooling off period, on matters related to those persons and entities.

Regarding Mr. Mullen's statement that Commission Counsel should research Mr. Schaeffer's holdings and provide Mr. Mullen with information on which sites to avoid, that is not Counsel's legal duty.²

It is the legal duty of the government employee to comply with the Code of Conduct. See, 29 Del. C. § 5801(1) "*Officers and employee .must avoid conduct....*"; 29 Del. C. § 5805(a) ("*No State employee may participate on behalf of the State...*"). Aside from the consistent use throughout the statute that "*No State employee shall...*," the Code places the burden on the individual to make "full disclosure" to the Commission. See, e.g., 29 Del. C. § 5805(a)(3)(*requirement for employee to file full disclosure if there is a statutory duty they cannot delegate*); 29 Del. C. § 5806(d) (*employee to file full disclosure of certain financial interest*); 29 Del.

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As a practical and administrative matter, this Commission has jurisdiction not only over State employees, officers, and appointees, but also jurisdiction over 52 of the 57 local governments. That means that approximately 155,000 persons are subject to the State Code of Conduct. The Commission's sole attorney could not possibly research all of the details of conflicts related to all of those individuals.

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C. § 5807(a) and (c) (employee entitled to rely on Commission waiver or advisory opinion provided there was "full disclosure to the Commission of all material facts").

The facts related to a conflict are within the control of the individual State employee. The language of the law is clear that: "No State employee may review or dispose of matters if they have a personal or private interest which may tend to impair judgment." The individual is to comport with the law. It is not mandated that they come to the Commission; rather, they must comply with the law. If they chose to seek guidance, they are to "fully disclose" information to the Commission. It is the individual employee who is in the position to know what matters they are assigned to "review and dispose" and to recuse themselves when a conflict arises.

It is unclear why Mr. Mullen states that he cannot identify projects in which Mr. Schaeffer is involved. When Mr. Mullen sought advice previously, he said he could recuse himself where it was appropriate. Further, when asked about his dealings with Mr. Schaeffer's crew on a site, he identified some of the Schaeffer sites as not being ones that he had visited. He identified other specific sites as ones where he was "helpful."

Mr. Mullen's continued participation in matters involving the persons and entities whom he alleges have treated him unfairly in the voting process through his pursuit of the mayoral position is contrary to the letter of the law which requires him to recuse himself. Moreover, it is contrary to the spirit of the law which is to insure that public officials are fair and unbiased in their decision making if they have a conflict of interest. Jones v. The Board of Education of the Indian River School District, C.A. No. 93A-06-003 Del. Super., J. Graves (January 19, 1994) Del Super Lexis 451994 Del. Super. Lexis 45. In Jones, a School Board member stated that he was not biased against a teacher who was facing termination proceedings. The facts showed that two of his children were in her class in prior years and that the experience was negative for him and his children. He participated in the proceedings.

On appeal, the Court held that it was improper for him to participate. The Court said: "It is true, as the Board argues, that there exists a 'strong presumption' of honesty and integrity in administrative adjudicators. Jones, supra, (citing Blinder, Robinson & Co. v. Bruton, 552 A.2d 466, 473 (Del., 1989); Levinson v. Delaware Compensation Rating Bureau, Inc., 616 A.2d 1182, 1191 (Del., 1992). However, in reviewing an official's conduct where a party claims bias, a court employs an objective standard. Quaker Hill Place v. Saville, 523 A.2d 947, 966 (Del Super., 1987), aff'd. on other grounds, 531 A.2d 201 (Del., 1987). Similarly, under the Code of Conduct, the official is entitled to a presumption of honesty and integrity. 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). However, the contentious nature

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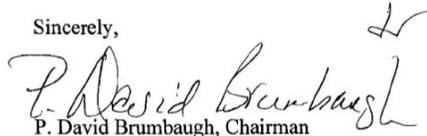
of the events surrounding Mr. Mullen, Mr. Schaeffer, the Town, etc., is clear. This is not just a matter of a difference in politics. Accusations against each other are not only evidenced by the law suit, but in the numerous media articles dealing with this subject, the allegations that have come before this Commission, the allegations that have come before DNREC, etc. The allegations are direct and personal. No facts indicate those tensions will decrease in the immediate future.

Conclusion

For Mr. Mullen to continue to review and dispose of matters related to the persons and entities named in his lawsuit may, at a minimum, raise suspicion among the public that his personal or private interest may tend to impair his judgment in performing his duties relative to those persons and entities. His honesty in performing his duties has been put into question not only by Mr. Schaeffer, but by Town Management. As noted above, it is a no-win situation. If he makes a "helpful" decision, it may appear that he is bending over backwards to avoid showing bias. In the process, he could show preferential treatment. If he makes a "negative" decision, it could be alleged that he is unfair. In other words, he is "between a rock and a hard spot." The only means of release from that position is recusal until a reasonable time after the tensions have decreased.

Pursuant to your authority to authorize the Commission to release this opinion, we are forwarding a copy to Mr. Mullen so that he can consult with his supervisor and his attorneys regarding his conduct. He, like the agency, is also free to seek advice from the Commission. However, as noted, we cannot micro-manage the means by which recusal is obtained, e.g., DNREC exercising its authority over the KCCD and Mr. Mullen, or the KCCD managing Mr. Mullen's work schedule. Those are personnel and management issues.

Sincerely,


P. David Brumbaugh, Chairman
Public Integrity Commission

CC: Mr. Gene A. Mullen
48 Oak Drive
Smyrna, DE 19977

Appendix B – Local Government Advisory Op. Nos. 05-19, 05-22, 05-44 & 05-46



STATE OF DELAWARE
DELAWARE STATE PUBLIC INTEGRITY COMMISSION

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September 6, 2005

Disclosure authorized by Applicant

John W. Paradee, Esq.
Prickett, Jones & Elliott
11 North State Street
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RE: Advisory Op. No. 05-19 & 05-22 - Local Government Conflicts - "Personal or Private Interests" - Nepotism and Outside Employment
Hearing and decision by Chairman David Brunbaugh; Vice Chair: Barbara Green
Commissioners: William W. Dailey, Barbara Remus and Dennis Schraeder

Dear Mr. Paradee:

The State Public Integrity Commission reviewed correspondence from you and citizens of the Town of Leipsic on the allegations that some current and past members of the Town Council and Town Planning Committee have conflicts, or otherwise acted contrary to various laws, on matters related to annexing property known as "the Carey Farm." Based on the following law and facts, we concluded that: (1) we have no subject matter jurisdiction over some matters; (2) some allegations do not rise to the level of a conflict; and (3) Council Members Mohler and Carey and Planning Committee Members Carey and Cornelius have conflicts and should recuse themselves on matters related to the "Carey Farm."

I. BACKGROUND FACTS:

State law requires that local governments adopt a comprehensive development plan. 22 *Del. C. §702*. The plan must contain, "at a minimum, a municipal development strategy setting forth the jurisdiction's position on population and housing growth within the jurisdiction, expansion of its boundaries, development of adjacent areas, redevelopment potential, community character, and the general uses of land within the community, and critical community development and infrastructure issues," etc. *Id.* The comprehensive

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process also requires coordination with other municipalities, the county and State, and is subject to State laws on County comprehensive planning; State comprehensive planning; and Liveable Delaware laws. As part of the plan, annexations must be addressed, and certified by the State. *See, inter alia*, 9 Del. C., 22 Del. C., 19 Del. C., Chapters 41, 91, 92.

One requirement is that the Town document its strategy in text and maps. 22 Del. C. § 702 (b); *see also*, e.g., 29 Del. C. § 9103. The Town hired an engineer to document existing Town areas, possible annexation areas, etc., to address boundary expansion and development of adjacent areas, etc. The engineer's initially planned to include possibly annexing a different farm. However, when submitted to the Town, the engineer said the original farm would not work for annexation, so he included the "Carey Farm" as the annexation feature. The "Carey Farm" is partially owned by John Carey, a Planning Committee member. An employee of Mr. Carey's, Jim Cornelius, also is on the Planning Committee. Mr. Carey's wife, Louise, and his mother-in-law, Norma Mohler, hold elected offices on the Town Council.

After the engineer's draft plan was given to the Planning Committee, a number of Leipsic citizens contacted the Public Integrity Commission, the Town Solicitor, the Governor, General Assembly members, and other State and local officials, identifying a variety of concerns. Some concerns related to potential conflicts. To date, no official action has been taken on the plan, other than accepting the engineer's submission and to have workshops before any decision is made, as required by law. The citizens and the Town's Solicitor, John Paradee, were advised that any Town employee, officer, honorary official, or Town agency could seek an advisory opinion on whether conflicts existed. 29 Del. C. § 5807(c).

By letter of July 11, 2005, Mr. Paradee, requested an advisory opinion on behalf of the Town. At its August 16, 2005 meeting, the Commission ruled on the issues detailed below, and provided Mr. Paradee with a verbal decision. This is the written decision on the issues.

II. JURISDICTION

(A) *Personal Jurisdiction*

Local government employees and officers are subject to the State Code of Conduct, unless the local government adopts its own Code which must be approved by this Commission as being at least as stringent as the State Code. 29 Del. C. § 5802(4). As this Commission has not approved a Code for Leipsic, the State Code applies.

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(B) Subject Matter Jurisdiction

Generally, administrative agencies have only such adjudicatory jurisdiction as is conferred by statute. 2 *Am. Jur. 2d Administrative Law* § 275 (1994). The Commission's jurisdiction is limited to administering and implementing Title 29, Chapter 58 of the Delaware Code. 29 *Del. C.* §§5805 (a), 5809(3) and 5810(a). The correspondence raised some issues not covered by any provision in Title 29, Chapter 58, but may be governed by other Chapters of the Delaware Code and/or the Town Charter. In other instances, even assuming jurisdiction, no facts support the allegation. Delaware Courts have noted how remote and nebulous alleged conflicts can be. Thus, for an alleged conflict to be sufficient to require an official to recuse himself, the claim cannot be merely conclusory. See, e.g., *Camas v. Delaware Board of Medical Practice*, Del. Super., C. A. No. 95A-05-008, J. Graves (November 21, 1995)(allegation based solely on personal relationship without any supporting facts insufficient to support a claim). There must be "articulated facts";(Commission Op. No. 96-75 (citing *Seth v. State*, 592 A.2d 436 (Del., 1991)) (concurrent positions in private sector and with State, in and of themselves, insufficient to establish a conflict); not suspicion or innuendo. *Id.* (citing *CACI, Inc-Federal v. United States*, Fed. Cir., 719 F.2d 1567(1967)(prior working relationship, by itself, insufficient to support claim. The following allegations were dismissed for failure to state a claim due to lack of facts and/or lack of jurisdiction. 29 *Del. C.* §5809 (3).

(1) *Allegations that all Town Council and Planning Board members were coerced by John Carey to vote favorably to annex his property.* No facts were given except the conclusory allegation that because the individuals are on the Town Council and/or Planning Committee that Mr. Carey coerced them to vote favorably to annex his property. In fact, no vote has occurred. Even if there were demonstrative evidence or "hard facts" to show coercion, this Commission has no jurisdiction over whether the acts of a public servant constitute "coercion." To the extent it is alleged that as a public servant Mr. Carey committed "acts constituting coercion," that law is administered and enforced by the Attorney General. See, 11 *Del. C.* §791(7). **Dismissed for failure to state a claim; and, even assuming facts to state a claim, the Commission has no jurisdiction.**

(2) *Allegations of improper Dual Appointments to Town Council and the Planning Committee.* The only provisions in Title 29, Chapter 58 which deal with the holding dual government offices, are in subchapter III. That subchapter recognizes that some individuals do hold dual government office, but if they do, they may not be paid by two tax-funded sources for overlapping hours. 29 *Del. C.* §5822, et. seq. No facts allege that any Town official is being paid from two-tax sources for overlapping hours. In fact, Planning Committee appointees receive no pay. Rather, the allegation is that it is improper under the Town Charter for officials to hold the two offices at all. As the allegations do not entail

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any facts related to subchapter III, the allegations fail to state a claim under Title 29, Chapter 58. Moreover, Town Charters are State laws passed by the General Assembly. Even assuming the facts substantiated conduct violating the Town Charter, this Commission has no jurisdiction to interpret a Town Charter. **Dismissed for failure to state a claim and lack of jurisdiction.** We note whether the conduct was or was not proper, the Town Solicitor recommended that those with dual positions on the Council and Planning Committee resign from one of the positions, and that was done. At present, there are no dual officer holders on the two entities.

(3) *Allegations of improper actions in repealing the Town's referendum requirement.* Again, this Commission has no authority to interpret any provisions of the Town Charter or any Town ordinance on the proper manner of repealing a referendum provision. **Dismissed for lack of jurisdiction.** We note that S. B. 133, amending the Charter so that a majority of Town members voting in a public referendum must first approve annexation of property into the Town, was introduced by Senator Vaughn, adopted by the General Assembly, and signed into law by the Governor on June 30, 2005. 75 Del. Laws, c. 96.

(4) *Allegations of improper appointments/hirings.* It is alleged that Ms. Rose Marie Wilmire was improperly appointed to the Planning Committee because the appointment process was not consistent with 22 Del. C. § 701, and she was the next door neighbor of Planning Committee member Jim Cornelius. The only fact given was that Ms. Wilmire was the next door neighbor of Planning Committee Member Jim Cornelius. This fact is insufficient and conclusory in nature and does not support a finding of a conflict. Further, No provision in Title 29, Chapter 58 addresses the procedures for appointing local officials, and we have no authority to interpret 22 Del. C. § 701. It also is alleged that the Town improperly hired (contracted with) an engineer to develop the plan because the contract was not bid. The only provision in the Code of Conduct dealing with public notice and bidding is that government employees may not seek contracts with their own governments if the contract is for more than \$2,000 unless that contract is publicly noticed and bid. 29 Del. C. § 5805 (c). No facts indicate that the engineer was a government employee seeking to contract with his own government. Thus, no Code of Conduct provision applies. To the extent the allegation is alleging a violation of the State public notice and bidding laws in Title 29, Chapter 67, we have no jurisdiction over that chapter. To the extent, it is an allegation of a violation of any notice and bidding requirements in the Town Charter or local ordinances, we have no authority to interpret those laws. **Dismissed for failure to state a claim and lack of jurisdiction.**

(5) *Non-compliance with requirements to take and/or provide minutes of Town Council meetings; closed or "secret meetings," responsibility to provide transcripts of recordings of meetings, etc.* Issues on when minutes are required; the form they must be in; whether it is

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permissible to have a closed meeting, etc., are governed by the Freedom of Information Act. 29 *Del. C.*, chapter 100. By law, the Attorney General's office, not this Commission has jurisdiction over such matters. **Dismissed for lack of jurisdiction.** We note that the Town Solicitor has been corresponding with Town citizens on that matter.

(6) *Allegations that the Plan may not comply with the Liveable Delaware Plan.* As noted above, multiple provisions of State law cover the requirements for the Comprehensive Plan, including the Liveable Delaware requirements. See, e.g., 9 *Del. C.*; 22 *Del. C.*, 91 *Del. C.*, 92 *Del. C.*, and 93 *Del. C.* As the requirements are not governed by 29 *Del. C.*, Chapter 58, we have no authority to interpret those laws. **Dismissed for lack of jurisdiction.** We note that the review of all Comprehensive Plans is to decide if it comports with any applicable laws, including the Liveable Delaware requirements. Leipsic's plan has not yet been submitted for review.

(7) *Allegations that three Town Council members had "extreme attitudes of disgust and disrespect for the Town residents as a whole," that a citizen was "intimidated" by two council members; that every member told her the annexation was a "done deal," and all should resign and all prior actions by them should be annulled.* Even assuming the allegations as true, this Commission has no authority to make any elected or appointed official resign. It may only recommend to the appointing authority that appointees resign, and may only issue a letter of reprimand or censure to elected officials. 29 *Del. C.*, §5810(h). As far as annulling prior acts, Title 29, chapter 58, does not address such matters. Moreover, it does not address the "attitudes" of public officials, or encompass "intimidation" by such officials. **Dismissed for lack of jurisdiction.** We note that S.B. 145, to amend the Town Charter to allow recalls, was introduced and reported out of the Senate Committee on Community/County Affairs on June 15, 2005. As that was the first of two General Assembly sessions, the Bill is still pending.

(8) *Allegations related to management of the Town's finances and whether it had sufficient funds to hire an engineer to develop the plans.* This Commission has no jurisdiction to decide if the Town has properly managed its funds, and/or had sufficient funds to hire an engineer. Issues of how tax dollars are spent and if they were properly spent is within the purview of the State auditor, or other persons responsible for auditing the Town. **Dismissed for lack of jurisdiction.** We understand that citizens have referred this matter to the State Auditor.

Dismissal of the above allegations leaves the issues of whether specific Planning Committee and Council members have conflicts of interest such that they should recuse themselves from participating in matters related to the "Carey Farm" annexation.

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III. CONFLICTS OF INTEREST ALLEGATIONS

(A) Planning Committee Officials

The Code of Conduct provides that officials should not review or dispose of matters if they have a "personal or private interest" that may tend to impair judgment in performing official duties. 29 *Del. C. § 5805 (a)*. Planning Committee duties include reviewing the Comprehensive Plan and providing recommendations to the Council. Based on their official duties, and the facts below, we find that John Carey and Jim Cornelius, Planning Committee officials, should recuse themselves from matters related to the "Carey Farm."

(1) Planning Committee Member John Carey. Mr. Carey is a 25% owner of the farm. If the property is annexed, it is alleged that he will financially benefit from his own recommendation to include the farm in the comprehensive plan. However, according to the Town Solicitor, it may be argued that his ownership interest could suffer a detriment if the farm is annexed. One reason is because if annexed, both County and City taxes must be paid.

"Financial interest" includes a legal or equitable ownership interest of more than 10%. 29 *Del. C. § 5804(5) (a)*. Moreover, the Code recognizes that a financial interest of that size automatically creates an interest that may tend to impair judgment, whether a "benefit or detriment" may accrue to the official. 29 *Del. C. § 5805(a) (2) (a)*.

The Town Solicitor, even before the Commission meeting, recommended that Mr. Carey not participate in decisions about the "Carey Farm." We agree with that recommendation. He clearly has an interest, as defined by the Code, which is an automatic interest that tends to impair judgment. 29 *Del. C. § 5805 (a) (2) (a)*. Delaware Courts have said that where it is proper for the official to recuse, it is then improper to comment even if the comments are "neutral and unbiased" and even if the participation is "indirect and unsubstantial." *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)* and *Prison Health v. State, Del. Ch., C.A. No. 13,010, V.C. Hartnett, III (June 29, 1993)*.

Also, the Code restricts officials from representing or otherwise assisting a private enterprise before the agency to which they are appointed. 29 *Del. C. § 5805(b) (1)*. The purpose is to insure there is no undue influence and/or that the official will not receive preferential treatment from colleagues. Thus, to the extent Mr. Carey's ownership interest needs to be "represented or otherwise assisted" in the annexing matter, owners who do not have a conflict should represent that interest before the Planning Committee. The

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restriction on "representing and otherwise assisting" was discussed in a federal court decision interpreting a similar federal ethics law. Van EE v. EPA, D.C. Dist. Ct., 55 F. Supp. 2d 1 (1999).

In Van EE, the employee wanted to speak at public meetings regarding the use of certain federal lands. The meetings were not before his own agency. The Court held the government had a compelling interest in restricting a federal employee's speech before federal agencies. It said his speech was not prohibited in all circumstances, only before federal agencies. The government's interest is to insure not only compliance with the law, but also insure that there is no appearance of impropriety. Van EE. The concerns of improper appearances "surely are greater" when an employee addresses their own agency, and when the audience is aware that the speaker is an employee of that agency. Id. Here, the appearance of impropriety is "surely greater" because he would not only be addressing his own agency, but certainly the audience at the Town meetings will know he is a Town official.

Where one purpose of the ethics restrictions is to insure the official does not exercise undue influence on their colleagues, even if the official does not participate at all in the meeting, he cannot "otherwise assist" by using his knowledge to help direct the statements and activities of those participating. United States v. Schaltenbrand, 11th Cir., 922 F.2d 1565(1991). Accordingly, based on the above law and facts, we conclude that Mr. Carey's participation would violate the restrictions on: (1) acting in his official capacity to review or dispose of matters because he has a financial interest which may tend to impair judgment; and (2) acting in his private capacity to represent or otherwise assist a private enterprise before his own agency.

(2) Planning Committee Member Jim Cornelius

In his private capacity, Mr. Cornelius is employed by Mr. Carey. The Town Solicitor has recommended that he recuse himself. The Code defines "financial interest" as including persons associated with an enterprise who received or will receive \$5,000 in a calendar year for services as an employee. 29 Del. C. §5804 (5) (b). The concern is that employees not have their official judgment affected by their relationship with their employer. Delaware Courts have recognized that outside employment may result in a conflict of interest. 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). In Beebe, an unpaid appointee served on a State Board which reviewed applications from hospital. The Board members were advisors to a State agency, which made final decisions after the Board's recommendations. Nanticoke Hospital appeared before the Board seeking approval of an application. The Board member participated in the discussions but recused himself before

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the vote because his employer, Milford Hospital, was in the process of entering a business arrangement with Nanticoke. The details of that business arrangement were unknown to the Court. Also, the Court did not address if the outside employment rose to the level of a "financial interest" as defined by the Code. Despite the lack of such facts, and the Court's finding that his comments were "neutral" and "unbiased," it said he should have recused himself from the outset.

Mr. Cornelius is an appointee to a Committee that will review the Plan and make recommendations to the Council. He would be a direct participant in decisions on his employer's land interest if he reviewed the "Carey Farm" annexation matter. Consistent with the *Beebe* holding, he should not participate in the matter in his official capacity. Similarly, in his private capacity, he should not represent or otherwise assist Mr. Carey's interests before the Committee on that matter.

(B)Town Council Members

(1) Council member and Secretary, Louise Carey. Mrs. Carey is married to John Carey. The Town Solicitor notes that Mrs. Carey will not personally benefit financially from the "Carey Farm" decisions. Mrs. Carey attended the Commission meeting and indicated that neither she nor her mother have a financial interest in, nor would they personally financially benefit if the "Carey Farm" is included in the Comprehensive Plan.

Even if an official would not personally benefit financially from a decision, it is an automatic conflict for an official to review or dispose of matters if a "close relative" has a "financial interest" in the matters pending before the official. *29 Del. C. §5805 (a)(2)(b)*. We have already held that Mr. Carey has a financial interest in the "Carey Farm" annexation. As the Code defines "close relative" as including "spouse," as a matter of law, Mrs. Carey has a conflict and must recuse herself from participating in decisions on the "Carey Farm." Similarly, she should not represent or otherwise assist her spouse's interest before her own agency. *Prison Health Services, Inc. v. State, Del. Ch., C.A. No. 13,010, Hartnett III, V.C. (July 2, 1993)*. In *Prison Health*, a contracting committee had to decide if a contract would be awarded to Prison Health or ARA. A Department of Corrections (DOC) employee, who was not on the committee, provided the Department of Administrative Services a list of DOC employees who could serve. He also met with the committee members. Prison Health did not get the contract and sought an injunction and voiding of the contract on the basis that the DOC employee's conduct violated the provision on having a "personal or private interest" which may tend to impair judgment in performing official duties because his spouse was employed by ARA. The Court noted that his wife was an ARA employee -"albeit a low level employee." It also found that his participation was "indirect" and "unsubstantial," and no facts indicated he had influenced the committee. Despite those

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findings, the Court held that his conduct was "undoubtedly improper." Just as in *Beebe*, there were no findings of a specific "financial interest," rather, the relationship was sufficient to require recusal. *See also, Harvey v. Zoning Board of Adjustment of Odessa, Del. Super., C.A. No. 00A-04-007 CG, Goldstein, J. (November 27, 2000)*. In *Harvey*, the Court specifically found that the spouses of certain Odessa officials did not have a "financial interest" in the pending decision. However, even without the "financial interest," the Court said it would be "prudent" for the officials to recuse themselves because of the familial relationships. In that case, recusal was impossible because if all of the officials recused themselves, no one could make the decision. Accordingly, the Court relied on the "rule of necessity," to permit them to participate.¹ Here, if Mrs. Carey recuses herself and Mrs. Mohler recuses herself, there will still be four members without conflicts who could vote.
Recusal required.

(2) Mayor and Council Member, Norma Mohler. Ms. Mohler is the mother of Mrs. Carey and mother-in-law of Mr. Carey. The Town Solicitor notes that Ms. Mohler will not personally benefit financially from the "Carey Farm" decisions. We have previously noted that in interpreting 29 *Del. C. § 5805 (a)*, Courts did not find a direct financial benefit was necessary to create an actual conflict, or the appearance thereof. *See, e.g. Prison Health Services, Inc. v. State, Del. Ch., C.A. No. 13,010, Hartnett III, V.C. (July 2, 1993); Harvey v. Zoning Board of Adjustment of Odessa, Del. Super., C.A. No. 00A-04-007 CG, Goldstein, J. (November 27, 2000)*. That is because 29 *Del. C. § 5805(a)* is a codification of the common law and whether there is a conflict is a factual issue. *See, Commission Op. Nos. 97-24 & 97-30 and citations therein; See also, Prison Health Services, Inc. v. State, Del. Ch., C.A. No. 13,010, Hartnett III, V.C. (July 2, 1993) (conflict determination is a factual issue); 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)(interpreting only 29 Del. C. § 5805(a))*. While 29 *Del. C. § 5805(a)* requires a factual determination, 29 *Del. C. § 5805(a) (2)* is an automatic conflict if the requisite "close relative" and/or "financial interest" exists.

¹In *Harvey*, the Court said that the State Code of Conduct did not apply, but used the State Code as the measure of a conflict. After the opinion was issued, PIC notified the Court and Counsel for both parties, that as a matter of law, the State Code applies to local governments unless they adopt their own Code approved by PIC, which Odessa had not done. Regarding the "rule of necessity," the State Code provides that if an official has a statutory duty that cannot be delegated, they may participate. 29 *Del. C. § 5805(c)*. Thus, there is basically a "rule of necessity." However, the Code also mandates that the official file a full disclosure with PIC explaining why the duties cannot be delegated. *Id.*

John W. Paradee, Esq.
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Under the Delaware common law, and 29 Del. C. §5805 (a) conflicts of interests for public officials may arise from more than just pecuniary interests. *See, e.g., Shellburne, Inc. v. Roberts*, Del. Super., 238 A.2d 331 (1967) (complaint alleged "personal interest," "conflict of interest," and "use of public office in the furtherance of such personal interest or conflict of interest," because 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 wanted rezoning; and (3) his colleague whose wife was a member of the Church).

The concern under the common law restriction on officials participating where they have a "personal or private interest" is the same as under the State Code restriction on "reviewing and disposing of matters in which they have a personal or private interest that tends to impair independence of judgment." *See, 29 Del. C. §5805(a) (1)*. The concern is that decisions be based on a "fair and unadulterated examination of the merits" and that "any conduct giving the appearance that impropriety is involved therein should be studiously avoided." *See, Kulesza v. Star Services Inc.*, Del. Super., C.A. No. 93A-01-002, n. 8, J. Toliver (December 20, 1993) (expressing the court's concern for any deviation from the administrative process as provided by law or participation in *ex parte* communications between one party and those charged with reviewing the merits for the State agency). Moreover, conflict of interest statutes generally do not abrogate common law conflict of interest principles. 63C Am. Jur. 2d Public Officers and Employees §253 (1997). Thus, the State Code is basically a codification of the common law restrictions which Delaware Courts have recognized as encompassing more than pecuniary interests. *Commission Op. Nos. 97-24 & 97-30*). As Delaware Courts have recognized that personal relationships can be sufficient to require recusal, we follow those decisions.

Here, Mayor Mohler is the mother of a Council member and the mother-in-law of a Planning Committee member, each of whom have a conflict - Mr. Carey because of his financial interest, and Mrs. Carey because of the spousal relationship. Here, as in Harvey, no financial benefit to Mrs. Mohler is factually established; however, as in Harvey it would be "prudent" for her to recuse herself because of the familial relationship. In essence, in Harvey, the Court recognized that the law acknowledges that personal relationships, outside of finances, can create a conflict. These individuals are not "long lost relatives" unknown to one another. They live in a small town, of approximately 193 people. Their status is well known within the public. Beyond their family relationship, they have a working relationship with a public duty that requires that there is not even an appearance of impropriety. Accordingly, to avoid even an appearance of impropriety, Ms. Mohler should recuse herself from decisions on the "Carey Farm." **Recusal Required.**

(C) Former Council Member/ Planning Committee Member

John W. Paradee, Esq.
September 6, 2005

Mark Pugh, who was present at the Commission meeting, said that although he resigned from Town Council and the Planning Committee, he hopes he can return to the Council at its September 12, 2005 meeting. We do not attempt to interpret or decide if that can or will occur. However, to aid him on whether he could return to Council without a conflict on the "Carey Farm" annexation, he asked if his position as a real estate agent with Keller-Williams would create a conflict. The Code of Conduct is meant to serve not only to recognize when there is a conflict of interest, but also to recognize that: "all citizens should be encouraged to assume public office and employment" 29 *Del. C. §5802(3)*. To assist him on any decision he may have on returning to public office, we find that, based on the following facts, his employment at Keller-Williams does not create a conflict, absent any change in circumstances.

First, the law does not automatically preclude real estate agents from holding public office. Rather, persons in that profession, just like any other profession, are subject to the same rules and regulations as any other citizen who holds private employment and public office. Certainly, at the local government level there are more land use issues than one might generally find at the State level. Land use issues will always be a matter that real estate agents must carefully monitor to insure they do not have a conflict while they are a public officer. However, the mere fact they are a real estate agent and that a decision involves land use is not sufficient, alone, to create a conflict. If it were, it would, in effect, bar real estate agents from public office.

As we noted above, the particular facts determine if a conflict exists. *Prison Health Services, Inc. v. State, Del. Ch., C.A. No. 13,010, Hartnett III, V.C. (July 2, 1993)*. Mr. Pugh said he does not work for the Carey's or Carey's Farm; has no pending contracts with the Carey's or related to the Carey Farm; and has never discussed any future contracts related to the Carey's or the farm. He is a "buyer" agent only; and does not list properties. He said his wife has a financial interest of 8% in Keller-Williams and if the property is annexed, and if Keller-Williams gets the listing, he would recuse himself. He is entitled to a "strong legal presumption of 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)*.

The allegation that merely because he is a real estate agent he will derive a financial benefit from any prospective annexation of the Carey Farm is speculative and remote. In order for him to profit from a decision on the Carey Farm, the Comprehensive Plan must be reviewed and approved first by the Planning Committee with participation by citizens at work shops. The citizens also have the referendum right to approve or disapprove any plan adopted by Council. That plan must then be reviewed for compliance with County

John W. Pardee, Esq.
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and State laws. The plan then must be certified by the State before it goes back to Council. Once the final ordinance is adopted, assuming the Carey Farm is annexed and developed, Mr. Pugh or his firm would have to be selected to handle any related real estate deals. No facts suggest he has any "deals" lined up, and to assume that, without any facts, and reaching a conclusion based on suspicion and innuendo, is insufficient to state a claim. **Recusal is not required if these factual circumstances do not change.** Mr. Pugh and the Town Solicitor, are aware that if Mr. Pugh returns to Council, and if the facts change he can return to the Commission for additional guidance.

IV. OTHER MATTERS - Waiver Request, Mediation

The Commission also was asked if it would grant a waiver and let Mrs. Carey or Mrs. Mohler vote because of the possibility that there may not be a quorum. There was some discussion of whether actions on the Comprehensive Plan required a three or four-person quorum. We have no authority to decide which laws would apply to determine the appropriate number for a quorum, nor do we have authority to decide if a recusal would count toward a quorum or not. Those matters were left to the Town's Solicitor to ascertain if necessary. However, as three members do not have a conflict, if only a three-person quorum is required, no waiver for Mrs. Carey or Mrs. Mohler would be required. Similarly, if a recusal counts toward the number to establish a quorum, their two recusals would establish a quorum whether three or four persons were needed, and no waiver would be required. If a four-person quorum and/or vote is required and Mrs. Carey or Mrs. Mohler cannot be counted at all, the three persons on the Council without a conflict would count, and the fourth Council member, not yet identified, but expected to be identified at the September meeting, would give the necessary four members for a quorum and vote, so, again, a waiver would not be required. With all of those possibilities, we decline to grant a waiver, absent some circumstantial evidence that a quorum cannot be achieved.

We note also that the Town Solicitor, Mrs. Carey, and Mr. Pugh said that mediation may help resolve some concerns about the Town official's actions, annexing issues, etc., on the Comprehensive Plan. State law provides for facilitating dispute resolutions on the Comprehensive Plan. 29 *Del. C.* § 9102(3). We have no jurisdiction over that law. However, you may wish to review that law as a possible means to assist the Town as the Plan goes forward.

Finally, we have noted throughout that the conflict arises from the portion of the Comprehensive Plan on annexing the "Carey Farm." Again, we do not attempt to decide if the Comprehensive Plan can be reviewed in parts so that more Town officials can participate in the Comprehensive Plan rather than deprive their constituents of

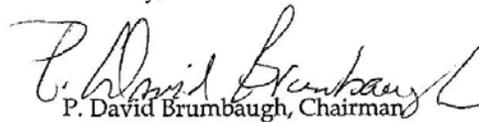
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representation on the entire plan. However, if the Plan can be so divided so that those with conflicts can participate in other matters related to the Plan, we have no objection to such a division.

V. CONCLUSION

Based on the above law and facts, we dismiss the allegations which fail to state a claim or over which we lack jurisdiction. We find that the facts show a potential conflict for Mr. Carey, Mr. Cornelius, Mrs. Carey, and Mrs. Mohler, and they should recuse themselves for decisions related to the "Carey Farm."

Sincerely,



P. David Brumbaugh, Chairman
Public Integrity Commission

PDB:JAW:ab

cc: Norma Mohler (Mayor, Town of Leipsic)
Louise Carey (Secretary, Town of Leipsic Town Council)
The Honorable James T. Vaughn, Sr.
The Honorable Bruce C. Ennis
The Honorable P. Brooks Banta
Constance C. Holland (Office of State Planning Coordination)



STATE OF DELAWARE

DELAWARE STATE PUBLIC INTEGRITY COMMISSION

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September 28, 2005

Timothy G. Willard, Esq.
Fuqua and Yori, P. A.
P. O. Box 250
Georgetown, DE 19947

Advisory Op. No. 05-44 & 05-46 - Personal or Private Interest
Hearing and decision by Chairman David Brumbaugh; Vice Chair: Barbara Green, Vice Chair Foster Massie; and Commissioners: William W. Dailey, Jr., Barbara Remus and Bernadette Winston

Dear Mr. Willard:

The State Public Integrity Commission reviewed the Town's request for an opinion on whether Mr. Dennis Hughes and Ms. Linda Rogers, who are Planning Commission appointees, should recuse themselves if developer Darren Lockwood appears before the Commission. Based on the following law and facts, we find the relationship between the two Planning Commissioners and Mr. Lockwood too remote and speculative to require recusal.

The Code requires recusal if an official has a personal or private interest that may tend to impair judgment in performing official duties. *29 Del. C. § 5805(a)(1)*. Under Delaware law, some personal relationships automatically create conflicts of interest. Where a "close relative" has an interest in a decision to be made by the official, recusal is mandated. *29 Del. C. § 5805(a)(2)(a) and (b)*. "Close relative" means "a person's parents, spouse, children (natural or adopted) and siblings of the whole and half-blood." *29 Del. C. § 5804(1)*.

(a) Mr. Hughes's Relationship with Mr. Lockwood

Here, Mr. Hughes' relationship with Darren Lockwood is not within the confines of the definition of "close relative." Rather, the wife of Mr. Lockwood's uncle is Mr. Hughes' sister. As Mr. Hughes' sister is not appearing before him, the law does not mandate an automatic recusal.

The issue then becomes whether an in-law relationship through an uncle is

Appendix B

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sufficient to create a conflict. Delaware Courts have held, outside of the automatic conflicts,

“The decision as to whether a particular interest is sufficient to disqualify is necessarily a factual one and depends upon the circumstances of the particular case.” *Prison Health Services Inc. v. State, Del. Ch., C.A. No. 13,010, V.C. Hartnett III (July 2, 1993)(citing Van Itallie v. Borough of Franklin Lakes, 146 A.2d 111, 116 N. J. Supr., (1958).*

Based on comments to the Town’s Solicitor, Tim Willard, who represented the Town before this Commission, Mr. Hughes said he has no business ties to Mr. Lockwood, but there are some social interactions between Mr. Lockwood and Mr. Hughes. The example used was that the two may be at a joint family gathering of the Lockwoods and Hughes. Mr. Hughes states that these encounters are infrequent.

Delaware case law provides that there is “a strong legal presumption of honesty and integrity of public officials” in interpreting the Code of Conduct. *Beebe Medical Center, Inc. v. Certificate of Need Appeals Board, Del. Super., C.A. No. 94A-01-004, J. Terry (June 30, 1995) aff’d, Del. Supr., No. 304 (January 29, 1996); Shellburne, Inc. v. Roberts, Del. Supr., 238 A.2d 331(1967 (when acting within scope of authority, there is a rebuttable presumption of good faith and propriety of conduct that inures to all public officers); Mack v. Kent County Vocational-Tech Sch. Dist., Del. Super., C.A. No. 86A-AU-2, J. Bush (May 20, 1987)(There is a presumption that public officials discharge their duties in performing acts required of them by law in accordance with the law and the authority conferred upon them and that they act fairly, impartially and in good faith).*

Leading with that presumption, we note that Delaware Courts have held that even where there is a more direct tie-in both familiarly and with the entity seeking a decision as a result of an official’s relationship, the mere allegation of a relationship without supporting facts is insufficient to support a claim of a conflict of interest. *Camas v. Delaware Board of Medical Practice, Del. Super., C. A. No. 95A-05-008, J. Graves (November 21, 1995)(claim that public official had a conflict because her spouse investigated allegations of malpractice for a private medical facility before the same matter was referred to the Board on which she served were conclusory, with no supporting facts and thus failed to state a claim).*

In *Camas*, there was a direct marital relationship. Here, the in-law relationship is much more remote than in *Camas*. Moreover, while several Town persons contacted the State Public Integrity Commission’s office on this matter, the only alleged facts were that Mr. Hughes was related by marriage to a relative of Mr. Lockwood’s. In other words, any bias as a result of that relationship is conclusory. In fact, unlike Mr. Hughes’ statement that he infrequently sees Mr. Lockwood at family events, no one who brought this situation to the Commission’s attention mentioned any type of events where they had seen Mr. Hughes and Mr. Lockwood socializing.

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We find the relationship too remote and speculative to create a conflict sufficient to require recusal.

(b) Ms. Roger's Relationship with Mr. Lockwood

Ms. Rogers is married to Lynn Rogers who is an elected member of the Sussex County Council. In February 2004, Mr. Lockwood, like other citizens, contributed to the campaign of Mr. Rogers. Some Town's people believed that Mr. Lockwood had been Mr. Rogers' campaign finance advisor. In fact, you provided the Commission with an email you received from Council member Don Post expressing that concern. However, the campaign records filed with the Elections Office show that Mr. Lockwood contributed \$600 to Mr. Rogers' campaign on February 13, 2004. None of the reports indicate that Mr. Lockwood was the campaign manager. In fact, an individual who had believed that and had repeated it to other citizens in Milton, called the Public Integrity Commission to state that he was wrong about those facts.

The amount given to Mr. Rogers is the amount allowed by law for individuals to contribute to non-State candidates for office. It was given to Mr. Rogers; not Ms. Rogers. She is an unpaid appointee, who would not be entitled to any campaign contributions. It has been stated that Mr. Rogers recused himself on matters that came to County Council when Mr. Lockwood appeared. The conclusion drawn from that action was that Ms. Rogers should do the same.

Again, there is "a strong legal presumption of honesty and integrity" in the acts of public officials. The mere fact that she is married to Mr. Rogers who received campaign contributions, without more does not create facts sufficient to require her to recuse herself. See, e.g., *Camas, supra*.

In a New Jersey zoning decision, interpreting a provision similar to Delaware's which prohibited a City's Planning Board member from acting "on any matter in which he has either directly or indirectly any personal or financial interest," the New Jersey Supreme Court noted the balance that must be struck when claims are conclusory or remote and nebulous.

Local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official. If this were so, it would discourage capable men and women from holding public office. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in doing so they must also be mindful that to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials. The determinations of municipal officials should not be approached with a general feeling of

Timothy Willard, Esq.
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suspicion, for as Justice Holmes said, "Universal distrust creates universal incompetency." *Id.* at 269.

This Commission has previously noted cases interpreting the Federal ethics law regarding an alleged appearance of impropriety because of an alleged prior professional or social relationship. *See, e.g., Commission Op. No. 96-75.* In interpreting laws similar to Delaware's Code of Conduct, Federal Courts have held that it is improper to ascribe evil motives solely on the basis of prior professional or social relationships based only on suspicion and innuendo, not on hard facts. *Id.* (citing *CACI, Inc-Federal v. United States, Fed. Cir., 719 F.2d 1567(1967)*)(interpreting Federal ethics law on appearance of impropriety in post-employment context). No "hard facts" have been identified that would require recusal.

Similarly, in interpreting a conflict of interest claim where it was alleged that a lawyer's conduct created an appearance of impropriety arising from his State role and his private employment, 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 which criticized appearances tests because they were "imprecise, leading to ad hoc results." The Court said the rules of conduct may not be used for tactical purposes to disqualify. *Seth v. State of Delaware, 592 A.2d 436 (Del. 1991).*

While *Seth* interpreted the Lawyer's Rules of Professional Conduct, we have held that a decision on statutory construction has relevance as precedent if both statutes are such closely related subjects that consideration of one naturally brings to mind the other. *Commission Opinion 95-20*(citing *See, Sutherland Stat. Constr. §45.15, Vol. 2A (5th ed. 1992)*). The concern is the "appearance of impropriety" in both instances. The cases are similar because no articulated facts support a conflict.

As the facts do not create either an actual conflict, nor are there any articulated facts that would support the appearance of conflict, the Commission finds no recusal is required.

Sincerely,



P. David Brumbaugh, Chairman

Public Integrity Commission

PDB:JAW:ab

Timothy Willard, Esq.
September 28, 2005

cc: Mr. Don Post, Councilman
Mr. Jack Bushey, Mayor
Ms. Lea Betts, Vice Mayor/Councilwoman
Mr. Gene Dvornick, Councilman
Mr. Jerry Hudson, Councilman
Ms. Rhonda Melson, Councilwoman
Mr. Noble Pettyman, Councilman
Mr. Hal Godwin, Town Manager

Appendix C – Waivers Granted – Op. No. 05-04 and 05-28



STATE OF DELAWARE
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January 24, 2006

Tempe Brownell Steen, Esq.
Tunnell & Raysor, P. A.
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Bethany Beach, DE 19930

Advisory Opinion No. 05-04 - Contracting with Local Government

Hearing and decision by Chairman: P. David Brumbaugh; Vice Chairs: Barbara Green and Foster Massie; Commissioners: William W. Dailey, Barbara Remus, Dennis Schrader and Bernadette Winston

Dear Ms. Steen:

The Public Integrity Commission reviewed Selbyville Councilman Jay Murray's disclosure of a contract performed for the Town by a private enterprise, Bunting & Murray, in which he has a financial interest. The Town sought a waiver as the contract did not comply with the Code. Based on the following law and facts, we grant a waiver for this contract.

I. APPLICABLE LAW

For Town officials, or private enterprises in which they have a financial interest, to contract with the Town, the contract must be publicly noticed and bid if it is greater than \$2,000. 29 *Del. C.* § 5805(c). Town officials may not then review or dispose of matters related to the contract if their personal or private interest may tend to impair judgment in performing official duties. 29 *Del. C.* § 5805(a) (1). It is an automatic conflict if an official has a financial interest in a private enterprise and that interest would be affected by any action or inaction on the matter to a lesser or greater extent than like enterprises or other interests in the same enterprise. 29 *Del. C.* § 5805(a) (2) (b). Also, if that private enterprise does business with the Town, a full disclosure must be filed with the Commission. 29 *Del. C.* § 5806(d). In a prior opinion, this Commission concluded that Mr. Murray is to file annual disclosures of dealings with the Town unless the contract "would appear to violate the Code." *Commission Op. No. 98-11*. In that case, the filing is to be immediate, explaining

Appendix C

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the lack of Code compliance. *Id.* The Commission may waive the Code provisions 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 Town or official. 29 *Del. C. §5807(a)*.

II. APPLICATION OF LAW TO FACTS

The contract with Bunting & Murray totaled \$2,358 and was not publicly noticed and bid. The work occurred in late September 2004. Final invoices were submitted in November 2004. In February 2005, the Town sought a waiver, giving several reasons why the contract was not publicly noticed and bid. The Commission reviewed Town meeting minutes, bid proposals; written and oral statements by Mr. Gary Taylor, Town Administrator; statements and invoices from Mr. Murray, Councilman; water use agreements with non-local home owners, etc. We find the facts as follows.

As part of the Town's Comprehensive Development Plan, in 1998, it sent out water use agreements to property owners living outside the town limits to find out how many wanted town water for their property. The Town has authority "to provide an ample supply of potable water for the Town," and "to furnish or refuse to furnish water to places and properties outside the Town limits." *Selbyville Town Charter §4.2.15*.

After receiving many requests, it ran water to territories along the Route 113 Highway. At that time, the Town did not plan to run water mains off the highway, even though it had requests for service. Specifically, four (4) Road 400 property owners, outside the Town limits, asked for service. They claimed the water quality was sub-standard and not fit for consumption. They said the project was just off the road; would not cost much; and signed Water Use Agreements to pay the Town for the water lines.

Years later, on March 5, 2005, the State Division of Highways issued a utility construction permit for the Town to install water mains on the South side of Road 400, and for a qualified subcontractor to install/bore under the road for the four lots on the opposite side.

On April 5, 2004, the Town began plans to provide water to Road 400. At that meeting, the Mayor and Council: (1) approved the annual budget, including \$40,000 for the Water Department's improvements; (2) estimated that the Road 400 connections would be \$10,000 of that amount; and (3) decided the Road 400 homeowners should sign new agreements to pay the Town for the water lines.

At the end of May 2005, Danella Line Services, Inc. submitted a bid of \$27,701.32 to

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perform work on water service for that area. The bid was based on various assumptions, including the assumption that "services across the road to be installed by others." Bunting & Murray, in which Councilman Murray has a financial interest, submitted a subcontractor's estimate for the two bores, at \$1,729.31 each, totaling \$3,459.00 for materials and labor. The bid was apparently based, in part, on a written estimate to the Town by Belair Road Supply of \$2, 253.25 for materials. Mr. Taylor said he also contacted Melvin Joseph Construction. It said the job was too small; workers could not be pulled off larger, more lucrative jobs; and its schedule was not expected to let up so it could bid. No matters related to Road 400 were reviewed or disposed of by Council in May.

At its June meeting, Council was given copies of Danella's proposal, but there was no review or disposal of any Road 400 issues that night.

Thus, for the above period, Councilman Murray, in his official capacity, did not review or dispose of the Road 400 contract matters. The law does not preclude Bunting & Murray from bidding on Town contracts. However, it requires that if a Town official has a financial interest in a private enterprise, that private enterprise may not contract with the Town, "unless such contract is made or let after public notice and competitive bidding" if the contract is for "more than \$2,000." 29 *Del. C. §5805(c)*. At this stage, Mr. Taylor and Mr. Murray knew: (1) estimate just for the materials was more than \$2,000; (2) Bunting & Murray had submitted a subcontractor's bid for more than \$2,000; and (3) the contract was not publicly noticed and bid. That knowledge did not trigger public notice and bidding or a waiver request.

Mr. Murray and Mr. Taylor said there was no intent to have Bunting & Murray actually perform the work. They are entitled to a "strong legal presumption of 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). Thus, we presume there was no intention to use Bunting & Murray on the contract. However, none of the public information we reviewed indicates that Bunting & Murray would not be used. As a result, the conduct could "raise suspicion among the public" that the conduct would appear to violate the Code, which is prohibited by 29 *Del. C. §5806(a)*.

On June 7, 2004, the Town minutes show the Mayor and Council were given the Road 400 proposal to "review." (*emphasis added*). Danella's did not plan to perform the bores as it specifically, in writing, assumed others would do so. The materials to "review" had Bunting & Murray's bid. It was the only estimate; there were no "competitive bids" to compare. Logically, the Mayor and Council had to base decisions on that bid. In other words Mr. Murray was to review the bid from his own firm to make official decisions,

Tempe Brownell Steen, Esq.
January 24, 2006
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which is contrary to the code.

At the July 12, 2004 meeting, Mr. Taylor had prepared an estimate of \$11,180 if the Town used its own employees. His estimate included \$3,460 - - the Bunting & Murray estimate - - to missile two lines. Mr. Taylor said he used that figure as he expected other contractors would charge approximately that amount. However, his waiver request said other contractors would have to come from out of Town and would cost more as they charge for travel, etc. Regardless of whether other contractors would charge the same or more than Bunting & Murray, the only bid was from Bunting & Murray. At this point, Mr. Murray's firm is the only bidder on a Town contract that was not publicly noticed and bid, and he is reviewing that bid to decide if the Town should use a contractor or its own employees. The Code identifies that situation as an automatic conflict and requires recusal. *29 Del. C. §5805(a) (2) (b)*. The concern is that the official's judgment may be impaired. Even assuming there was no plan to use Bunting & Murray, the only information available was which firms *were not* going to perform the work- Danella, Joseph, and Bunting & Murray. How effective would any Council member's judgment be, including Councilman Murray's, if they do not even have a contractor to perform the work?

Without a contractor identified to perform the bores, and using Bunting & Murray's estimate for bores which could be an under estimate if a contractor were brought in from out of Town, the Mayor and Council decided to go with the estimate if Town employees did the work-except for the bores. Council voted to change the Water Use Agreements with the home owners to show the estimated costs would be from \$10,000 to \$12,000, and not exceed \$15,000. Actual costs were to be provided after project completion and all invoices were in. No facts indicate Mr. Murray recused himself, as required.

The Water Use Agreements showed they were amended, and then signed by various owners in July, August and September. By letter of September 20, 2004, the State Office of Drinking Water gave its "Approval for Construction" of the Road 400 water main "to ensure the provision of potable water through proper operations and maintenance." Based on time cards, work began three days later, on Thursday, September 23, 2004.

This means from at least the start of June through September, no action was taken to publicly notice and bid the contract so that Bunting & Murray would have a chance to compete for the work, without violating the requirement for public notice and bidding. Also, during that time, no action was taken to request a waiver when it was clear that no other contractor had been identified to perform the bores. Again, as a minimum, the conduct could "raise suspicion among the public" that Mr. Murray had reviewed and disposed of matters where he had a financial interest, and had contracted with the Water

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Department for more than \$2,000 without public notice and bidding, in violation of the Code.

Mr. Taylor said all was going well with laying the water main until the Town employees reached the point to cut the road. Mr. Taylor said he considered cutting the road rather than boring, but DelDOT wanted it missiled or bored. DelDOT's March 2004 document said DelDOT approved a bore/missile at that time. That document does not refer to a cut as an alternative. Thus, approximately six (6) months before the work began; the Town had a clear indication that DelDOT wanted a missile/bore. The record shows later actions were based on that information: (1) the Town obtained bids on bores as part of Danella's proposal in May; (2) the June review included an estimate for bores; and (3) the July estimate to use Town employees included the estimate for bores. Nothing in these actions addresses a cut.

Regardless of when the cut was considered, Mr. Taylor said DelDOT's standards for a cut restoration were more costly than a bore based on feathering the cut; prepping the area with stone and dirt; and then hot mixing the cut itself and 25' on each side. He also said there was a question of whether a paving company would come in and do the small job because the Town has had difficulty in getting companies to come patch small areas.

The record shows that at least by late May 2004, Mr. Taylor knew Danella did not plan to do road bores; he contacted Melvin Joseph at approximately the same time and knew it could not do the work; his July estimate did not identify a contractor, but was based on using one; and this waiver request, like prior requests, said it is difficult to find contractors to perform small jobs. Despite this knowledge, no efforts were made to publicly notice and bid the contract or seek a waiver in order to use Bunting & Murray.

When the employees got to the "cut," Mr. Taylor said that after turn downs from Danella and Melvin Joseph, he contacted Mr. Murray's company for an estimate. He was given a verbal estimate of \$1,000 to \$1,200 for each crossing. That estimate, unlike the prior estimate, did not include a profit margin for Bunting & Murray. Still, it was clear that the contract was likely to exceed \$2,000. In this instance, Mr. Murray said he "stepped in" because the Town needed help. Apparently, the work was completed in two days, and invoices show actual material costs were \$1631.05 and \$212.15, totaling \$1843.20, as opposed to BelAir's prior estimate of material costs of \$2,253.25. Bunting & Murray submitted an invoice for \$2,358 on November 16, 2004, covering cost and man hours, which was paid on November 30, 2004. Thus, by November 16, 2004, it was absolutely clear that the value exceeded \$2,000; the contract was not publicly noticed and bid; and Bunting & Murray had performed the work. The Commission's prior opinion held that immediate

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filings are required if it "appears" the conduct would violate the Code.

At some point, we assume December 2004 or January 2005, Council approved payments made by the Executive Branch, including the invoice from Bunting & Murray paid in November 2004. Apparently, an omnibus list of payments by the Executive Branch is provided at each Council meeting. The question of whether Mr. Murray should participate in approval/disapproval of those omnibus payments has not been clearly answered in prior opinions because the prior filings indicated Mr. Murray was not participating in decisions related to contracts with his firm. See, e.g., *Commission Op. No. 98-11*.

We are aware that General Assembly members who are State employees, e.g., teachers, vote on such legislation as the Budget bill which may include a pay raise for teachers. First, we have no jurisdiction over General Assembly members, as they have their own Legislative Conflicts of Interest Law. See, 29 *Del. C. §1001, et. seq.* Second, they do not have some provisions that are found in the State Code of Conduct, which applies to the Executive Branch, e.g., no dealings with one's own agency; no public notice and bidding of contracts of more than \$2,000. Third, we do not assume to know all the intricacies of the State Budget process and whether the budget legislation could be split into parts for voting. This situation is different. The Town Manager prepares a list of paid bills for Council to review on a monthly basis. For the most part, Mr. Murray does not have any contracts with the Town that would be listed. For example, in 2004, there was one contract. No facts indicate that any payment to Mr. Murray could not be separated so that he could recuse himself, which would remove any "suspicion" that he is reviewing or disposing of matters where he has a personal or private interest. Mr. Murray said he does not really notice if a payment to Bunting & Murray is on the list because they are such small amounts. We appreciate that some times small things get overlooked, but officials need to always be alert to private payments made to their firms by their own government. Even where Delaware Courts have found no statutorily defined "financial interest," it has been noted that relationships can be such that recusal would still be "prudent." *Harvey v. Zoning Board of Adjustment of Odessa*, Del. Super., C.A. No. 00A-04-007 CG, Goldstein, J. (November 27, 2000); *Beebe, supra*. Here, it should have been noted that Bunting & Murray was being paid for work done for the Town; that the amount was more than \$2,000, etc. Delaware courts have interpreted the restriction on reviewing or disposing of matters where there is a personal or private interest as requiring officials to recuse themselves "from the outset" and avoid even "neutral" and "unbiased" comments. *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). If recusal starts from the outset, it must last all the way through the very last action. It also has been held that where a conflict exists, even "indirect" and "unsubstantial"

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participation is "undoubtedly improper." *Prison Health Services, Inc. v. State, Del. Ch., C.A. No. 13,010, Hartnett III, V.C. (July 2, 1993)*. This action may have been "unsubstantial," but was certainly not "indirect." Again, these facts should have triggered either compliance with the Code with Mr. Murray recusing himself, and at a minimum, triggered the realization that a waiver was needed. Again, no action was taken.

A disclosure was not filed until February 14, 2005.

The February 2005 disclosure said the job could not be done by Town employees due to lack of proper equipment to bore under Road 400, but Town employees did all other installation aspects to supply the property owners with potable water; Bunting & Murray were asked to respond in an emergency when other contractors were not available or the costs were too high to bring in non-local companies because they charge for travel to and from the work site. Mr. Taylor said he considered it an emergency because the homes were being completed and owners were moving in and needed potable water; that DelDOT wants anyone working on State roads to be off those roads in a timely manner once a project is started; and he did not want the Town employees standing around waiting for another contractor to be found to perform the bore work.

Even assuming all those reasons as true, the record is clear that even before the "emergency" when the Town employees reached the "cut," multiple opportunities occurred to either publicly notice and bid the contract so Bunting & Murray could complete, or to take the alternative route and request a waiver if necessary. Even putting those opportunities aside, the requirement for an immediate filing would logically dictate that if the costs were absolutely clear in November 2004, then an "immediate filing" should have occurred before February 2005.

Thus, we find there was non-compliance with the following: public notice and bidding requirement; reviewing and disposing of matters where there is a personal or private interest that tends to impair judgment in performing official duties; and lack of an immediate filing when it would appear that the contract would violate the Code.

III. WAIVER CONSIDERATION

A waiver may be granted 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 employee. 29 *Del. C. §5807(a)*.

(A) *Undue Hardship*

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Regarding any "undue hardship," we previously ruled that "undue" means "more than required" or is "excessive." *See, e.g., Commission Op. No. 97-18.* We have recognized that emergencies may occur; may be the basis for non-compliance with the Code; and may be the basis for a waiver. *See, e.g., Commission Op. No. 98-11.*

To the extent that the term "emergency" is not clear we refer to the common and ordinary meaning: "an unforeseen combination of circumstances or the resulting state that calls for immediate action." *Webster's Collegiate Dictionary, p. 377, 10th ed. (1993).* That is essentially the legal standard in the State Procurement Law which provides:

"An agency head may waive any or all provisions of this [procurement] chapter to meet the critical needs of the agency as required by emergencies or other conditions where it is determined to be in the best interest of the agency. The agency head may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against. An emergency condition creates an immediate and serious need for material and/or nonprofessional services that cannot be met through normal procurement methods for the protection of public health, safety or property." *29 Del. C. § 6907(a).*

The Commission finds the procurement provision persuasive in interpreting its own statute, to the extent it is in *pari materia* with the Code of Conduct. *See, Sutherland Stat. Constr. §45.15, Vol. 2A (5th ed. 1992)* (decision on statutory construction has relevance as precedent if language of one statute is incorporated in another or both statutes are such closely related subjects that consideration of one naturally brings to mind the other). *Commission Opinion 95-20.* First, the State Procurement law specifically incorporates reference to the State Code of Conduct provisions and penalties. *29 Del. C. § 6903(g).* Second, the subject of both the procurement law and certain Code of Conduct provisions deal with contracting with the State. *See, e.g., 29 Del. C. § 5805(c).* Third, the purpose of the Procurement law is to "insure fair and equitable treatment." *29 Del. C. § 6902(2).* Even before the Code of Conduct was enacted, Delaware Courts noted that the public is suspicious of public contracts because of the potential for favoritism, undue influence and conflicts of interest if a government official seeks contracts with his agency. *W. Paynter Sharp & Son v. Heller, 280 A.2d 748, 752 (Del. Ch., 1971).* In passing the Code of Conduct three years later, the General Assembly included specific rules and restrictions on officials seeking government contracts, which also tries to insure fairness in contracts by giving officials the opportunity to contract, but imposes rules to avoid impaired judgment, use of public office for preferential treatment, undue influence, and the like. Like the procurement law, the Code helps insure fairness through public notice and bidding. However, there are differences. Generally, under the Procurement law public notice and

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bidding applies to contracts if the amount exceeds \$50,000. Under the Code of Conduct, it applies to any contract if the threshold exceeds \$2,000. Under the Procurement law, the agency head determines the emergency and may waive the public notice and bidding requirement. Under the Code of Conduct, while the Commission has recognized that an agency head may determine an emergency and waive the procurement requirements, this Commission must review that decision to see if there was an "undue hardship", e.g., emergency, in order for it to waive the Code of Conduct. Having an independent agency review the agency head's decision is double insurance to the public that undue influence, preferential treatment, etc., did not occur. To be an effective stop-gap measure, that review needs to occur in a timely manner.

Based on the record, we cannot say the circumstances requiring a contractor for the bores was "unforeseen." We note again the multiple occasions from May 2004 through September 2004, when normal procurement methods, including those in the Code of Conduct, could have been used. Thus, we do not grant a waiver based on an alleged "emergency" that created an "undue hardship."

(B) Literal Application of the Law is Not Necessary to Serve the Public Purpose

While the threshold for public notice and bidding when public officials seek government contracts may seem extremely low, the General Assembly deemed it the appropriate amount to serve against the potential for preferential treatment, undue influence, etc. Since the \$2,000 was enacted in 1994, the General Assembly had another opportunity to consider the threshold amount in 1998. *See, S.B. 236 (1998)*. That bill would have raised the threshold to \$10,000. It was amended to increase the threshold to \$25,000 if State officials sought contracts with the State, and local governments were to set their own threshold. *S.A. 1 to S.B. 236*. The Senate Community/County Affairs Committee held a hearing on January 21, 1998. At that meeting, the Committee asked for comments on the legislation from the Public Integrity Commission, Common Cause, and procurement officials. To comply with the Freedom of Information Act, the Public Integrity Commission held a hearing on February 9, 1998 to obtain public comments on the proposed legislation and to develop its comments. At that meeting, Sussex County officials expressed concerns that the existing \$2,000 threshold created an excessive burden on its government and discouraged citizens from seeking public employment. Their concerns were the impetus for the proposed legislation. After hearings by the Senate Committee, the Public Integrity Commission, and written input to the Senate Committee, no further action was taken by the General Assembly.

Aside from pointing out the low threshold for public notice and bidding, the Town

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pointed out that the amount by which the contract exceeded the law was minimal—only a little over \$300. That was the end result. At the beginning of the process the amount was \$3,459.00, which was \$1,459 over the \$2,000 threshold. The purpose of a set amount is “to insure propriety and to preserve public confidence officers and employees have the benefit of specific standards to guide their conduct....” 29 *Del. C.* §5802(2). The \$2,000 is a clear measure of compliance and should have been identified by Mr. Murray and Mr. Taylor.

The Town also said that the decision to use Bunting & Murray saved money. No other bids are available on which to validate the statement, but we follow the legal presumption of honesty in their statements. *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). However, even assuming that as true, there are concerns in addition to the dollar amount. Delaware Courts have held that while price aids in judging the fairness of the transaction, it “is not the exclusive test by which a vendor is chosen.” *Heller*, 280 A.2d at 751 (*upholding DNREC decision not to contract with appointee to its Fish and Wildlife Council to avoid allegations of favoritism and undue influence although the contract was publicly noticed and bid; he was lowest bidder; his bid would save taxpayers \$9,000; and no facts indicated any actual undue influence*). In *Heller*, the Court noted that there were no State ethics laws. In 1974, the General Assembly addressed that issue. It enacted an ethics law; set a threshold limit; restricted officials from reviewing or disposing of matters if they had a public or private interest; restricted them from representing or otherwise assisting a private enterprise before their own agency; and required filings of full disclosures. These restrictions are lenient enough to permit government officials to enter contracts with their own government, but also are measures to insure fairness of the transactions. A strict interpretation of the law is the best means of instilling the public trust.

However, we balance that strict approach against other public concerns. First, Delaware Courts have held that statutes dealing with bidding public contracts are to be construed in the light of their primary purpose—to protect the public against the wasting of its money. *Haddock v. Board of Pub. Educ.*, 84 A.2d 157 (*Del. Ch.*, 1951). To the extent Mr. Taylor thought his duties as the Town Administrator were to avoid wasting tax payers’ monies, we recognize that duty. No facts suggest he wasted tax payers’ monies.

Also, we recognize that under the Code of Conduct, “citizens should be encouraged to assume public office and employment, and that therefore, the activities of officers and employees of the State should not be unduly circumscribed.” 29 *Del. C.* §5802(3). We are not trying to discourage Mr. Murray from holding public office. The Code recognizes that a public officer’s private enterprise can seek contracts and is not prohibited from making a profit. Bunting & Murray had only one contract with the Town in 2004; it was not a

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substantial amount; the firm performed the work without any profit; and "stepped in" to help the Town when the employees got to the "cut" by sending his crew out to perform the bores on short notice, which resulted in a quick resolution to the problem. These facts do not show that he used his public office and influence to personally profit.

In balancing the public concern that public officers are not awarded contracts out of favoritism, undue influence, and the like, against the public need to save tax payers' monies and encourage citizens to assume public office and employment, we grant a waiver on the basis that, in this particular instance, a literal application of the law is not necessary because there are sufficient facts showing that the public purpose of insuring public office was not improperly used for personal gain was not abused, and the purpose of insuring that contracts are not awarded out of favoritism, undue influence and the like, and that the public purpose that applies to all contracts—that tax payers' monies were not wasted—were met. Accordingly, we grant a waiver on that basis.

IV. FUTURE PROCEDURES TO INSURE COMPLIANCE

Our concern is that the procedures that would insure the public's confidence in its officials and in the procurement process should be followed, and where they cannot be followed immediate action must be taken to notify the Commission.

Mr. Taylor said it might be possible to publicly notice and bid a contract for the small tasks the Town may need during the year. Mr. Taylor said that when State funds are involved, he follows the State law, which means there should be familiarity with those procurement laws and procedures.¹ If federal funds are used, he follows the applicable federal law.² If neither federal nor State funds are involved, he said he follows the appropriate local procurement laws.³ To the extent those procedures would insure

¹The State Procurement law applies to "covered agencies." "Agency" means "every board, department, bureau, commission, person or group of persons or other authority which directly receives monies under any budget appropriation act or supplemental appropriation act..." 29 *Del. C.* § 6902(1). "Agency" shall include Delaware Technical and Community College and the Delaware State University but shall not include any local government unit or agency receiving only grants-in-aid appropriations from the State and no other appropriations, as described herein, the University of Delaware, volunteer ambulance/rescue companies, volunteer fire departments and the Delaware Transit Corporation. Nothing in this subsection shall be deemed to exempt any entity that is otherwise required to comply with § 6960 of this title. (*Emphasis added*).

²This approach appears consistent with State law that provides that if any provision of the State law conflicts with or is inconsistent with the federal law, and results in jeopardizing federal funds, the State law will not apply. 29 *Del. C.* § 6904(a).

³In the Town Charter, which is a State law because it must be adopted and passed by the General

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compliance with the Code of Conduct, then following the appropriate procurement laws could assist the Town. As previously indicated, we will not micro-manage the Town's decisions about following the appropriate procurement laws, as we have no authority to interpret those laws. *Commission Op. No. 98-11.*

However, even if all of those procurement laws are followed, that will not necessarily mean compliance with the Code. In a prior opinion, the Commission said that it will not micro-manage the Town's procurement procedures, and that its opinions must be based on the particular facts of each case. *Commission Op. No. 98-11.* However, it went on to say that its opinions on each case should be used as guidance. We have tried to identify situations in this opinion where there were actual violations, and noted what should have triggered an action to either comply with the Code or seek a waiver. Further, we have identified situations where even if it could be argued that there was no intent to violate the Code, that the facts are sufficient to establish that the public could well suspect a violation. The law does not require an actual violation; it is sufficient if there appears to be a violation. *Commission Op. No. 92-11.* We enumerate them below.

✓\$2,000 public notice and bidding requirement - This is a clear standard that should immediately trigger caution before act.

✓ "Financial interest" in a private enterprise is a clear definition and triggers an automatic conflict requiring recusal by the official with such interest.

✓The law requires an automatic recusal if an official's private enterprise will be affected "to a lesser or greater extent..." Mr. Murray should recuse himself from the outset, even if Bunting & Murray would not profit—in other words, he is to recuse himself even if Bunting & Murray suffer a detriment compared to similarly situated companies who would charge more.

✓Regardless of which procurement law is followed, if a Town official is involved, the State Code of Conduct still applies, and the official seeking the contract and the official authorizing the contract must be cognizant of that Code in order to comply with the legal

Assembly, there are specific provisions on procurement with Town officials which are consistent with the State Code of Conduct. See, e.g., *Selbyville Town Charter §§ 8.1 and 8.2.*

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duties of the procurement law and the Code of Conduct.

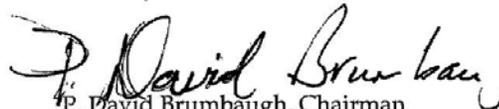
✓ Appearances of Impropriety - Even assuming that an official's private enterprise will not be used, if it submits a bid and there is no public notice and bidding, the public may well suspect a violation because the "financial interest" and "\$2,000 threshold" are so clear.

✓ Appearances of Impropriety - Even assuming an official's private enterprise will not be used, if there is a bid the public may well suspect a violation if the official participates in discussions about the contract as he would be "reviewing or disposing" of matters where he has a personal or private interest. Alternatively, if he participates in discussions with fellow council members, and then recused himself before the vote, the public could suspect that he was "representing or otherwise assisting" his private enterprise before his own agency.

V. Conclusion

Based on all of the above facts, we find several violations of the Code, but grant a waiver, and encourage Mr. Murray and the Mr. Taylor to carefully review the opinion for future guidance.

Sincerely,


P. David Brumbaugh, Chairman
Public Integrity Commission

PDB:JAW:ab



STATE OF DELAWARE

DELAWARE STATE PUBLIC INTEGRITY COMMISSION

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August 3, 2005

Wendy Carey, Ph.D.
Marine Advisory Services
Hugh R. Sharp Campus
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Advisory Op. No. 05-28 - "Personal or Private Interest"- Nepotism

***Hearing and decision by Chairman David Brumbaugh; Vice Chair: Barbara Green and
Vice Chair Foster Massie; Commissioners: Barbara Remus and Bernadette Winston***

Dear Dr. Carey:

The State Public Integrity Commission reviewed the request for an opinion on whether any conflicts arise if you are involved with grants/contracts¹ issued by the Department of Natural Resources and Environmental Control (DNREC), when your spouse, Anthony Pratt, is DNREC's Shoreline and Waterway Management Administrator, and has oversight of contracts you may seek and/or fulfill as a Marine Advisory Service Agent, Coastal Processes Specialist, at the University of Delaware's Sea Grant College Program. Based on the following law and facts, we find some conflicts. However, most can be resolved by working through a DNREC employee or officer whom Mr. Pratt does not supervise. In rare cases, we grant a one-year limited waiver allowing you to work directly with your spouse. After one year, the situation will be reassessed as discussed at the end of this opinion.

The Code bars State employees from reviewing or disposing of State matters if they have a "personal or private interest" that may tend to impair their judgment in

¹DNREC funds for Sea College projects may come in the form of a grant or a contract. The form in which they come does not change the result of this opinion. For ease of reference, we refer to the funding source as a contract.

performing official duties. 29 *Del. C.* § 5805(a). Delaware Courts interpreted that provision when a State employee discussed issuing a State contract with contract committee members before they awarded the contract to a company which employed his wife. *Prison Health Services, Inc. v. State*, Del. Ch., C.A. No. 13,010, Hartnett III, V.C. (July 2, 1993). The Court noted that he did not vote on awarding the contract; his participation was "indirect" and "unsubstantial;" and his spouse was a "low-level" employee in the company. The Court also found no facts showing that he influenced the committee's decision. Finally, no facts indicated his spouse personally and/or financially benefitted from the decision to award the contract to her company. Despite those facts, the Court held that even his limited participation was "undoubtedly improper."

We are confronted with that same issue—whether it is proper for your spouse to participate in decisions related to grants issued to the Sea Grant Program. Just as in *Prison Health*, no facts were presented showing any actual undue influence, favoritism, etc. However, it does not matter that there is no actual undue influence, favoritism, etc. It is an automatic conflict if a State official participates in State matters involving a "close relative." 29 *Del. C.* § 5805(a)(2)(a) and 5804(1). Thus, the law requires State officials to recuse themselves when the "personal or private interest" is a spousal relationship, regardless of the honesty of the individuals and regardless of how much the work of each spouse "complements" the work of the other.

You and Mr. Pratt said your work fits in with, or "complements" the work of his office because both offices have a commitment to coastal matters. His office apparently has the funding but not the staff; you have the scientific expertise his staff lacks, but your program needs funds. His official responsibilities include issuing contracts, overseeing the contracts for completion of contract terms, etc. Your official responsibilities are to perform the administrative functions of seeking such contracts and perform the scientific duties of conducting coastal research, participating in educational and public service efforts to foster the use, conservation, and management of coastal resources. DNREC contracts for research in the very areas in which you are a trained professional. It is logical that the Sea Grant College would seek DNREC contracts. Moreover, if the Sea Grant College has the researchers and outreach staff to address coastal issues on which DNREC needs input, logically, DNREC would consider the Sea Grant College as a source. However, that logical progression does not mean one spouse can participate in decisions impacting on the other.

Unlike in *Prison Health*, where the State employee's participation was "indirect" and "unsubstantial," you and Mr. Pratt have substantial decision making roles. At a minimum, it may raise public suspicion the contracts are awarded out of undue

influence, favoritism, conflict and the like. Delaware Courts have recognized that the public has "long suspected" that State contracts may be awarded out of favoritism, undue influence, conflicts and the like. *W. Paynter Sharp & Son v. Heller*, 280 A.2d 748 (Del. Ch., 1971) (Cabinet Secretary declined to enter into contract where State official had a conflict, even though it meant the lowest bidder was not selected). Subsequently, the General Assembly specifically provided that State employees may not engage in conduct that "may raise suspicion" they are violating the public trust. 29 *Del. C.* § 5806(a). Through recusal, State employees can remove *all* suspicion of any untoward conduct.

You, Mr. Pratt, and Ms. Sarah Cooksey, recognized the very concerns which the Code seeks to address--actual violations and/or the appearance thereof--by not dealing with each other. You conducted business with Ms. Cooksey, who is not supervised by Mr. Pratt. Her office also funds and/or oversees activities that the Sea Grant College and its researchers may seek as a funding source or may participate in as a result of their professional occupation. Thus, Ms. Cooksey has the expertise to review the administrative requirements for contracts and the expertise to work with the researchers when required to insure contract compliance. You both said this approach has worked, but it creates some difficulties if you cannot work directly together. Specifically, you said that you have done work for Mr. Pratt's office for free, and he said there are times when he could have used funds to cover your salary.

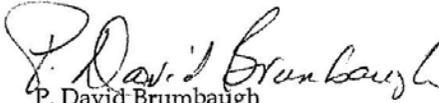
As noted in *Prison Health*, there can be a conflict even if there is no direct financial benefit for the spouse. For example, you both acknowledged that when State funds are used for such purposes as publishing materials and a by-line is given to you as the author, such actions can have a positive impact on your performance evaluation, and hence, your career. Certainly, you should be credited for your work just like any other professional, but when the decision to fund that work, or oversight of the contract, is made by your spouse, the public may suspect undue influence and favoritism. That is just one example of a possible or perceived conflict, even where you do the work for free. Your professional reputation rests on having your accomplishments based on the merits of the work, without any suspicion of favoritism or influence. Similarly, Mr. Pratt's decisions should be free of any suspicion that his judgment was impaired because his spouse submitted the funding application for her employer. Accordingly, to the maximum extent, you should continue working through Ms. Cooksey or any other designated State employee who is not supervised by Mr. Pratt.

The Code does permit the Commission to grant a waiver if there is an "undue hardship" on the State employees or State agency. 29 *Del. C.* § 5807(a). "Undue" means more than is necessary or required. You and Mr. Pratt identified two "hardships." One concern is the awkward or inconvenient method of having Ms. Cooksey, the Division

Director, or some other person not supervised by Mr. Pratt, review or dispose of matters related to you. The very hardship imposed by the statute is that the person who normally makes the official decision must delegate that responsibility. Of necessity, it would be more awkward or inconvenient than going to the person who is most familiar with such decision making. Accordingly, we grant no waiver on that basis, and you should continue to work through Ms. Cooksey or some other DNREC individual not supervised by Mr. Pratt who can make those decisions.

We are cognizant of the fact you are the only person in your office with your particular scientific expertise. Based on the discussion at the Commission meeting, there appear to be very rare and limited instances where you are the only person with sufficient expertise to respond to matters. Obviously, in those cases, the "hardship" is greater. For example, if Mr. Pratt has contracted with or will contract with the Sea Grant College and only you could explain or perform the contract, in those limited instances, we grant a one-year waiver authorizing direct communications between you and Mr. Pratt under those limited circumstances. Because Mr. Pratt has only been an administrator for a limited period of time, during the one-year waiver period, the Commission would like for both of you and Ms. Cooksey to assess any particular hardships beyond mere inconvenience that may arise as a result of the delegation so that the Commission can properly assess if the additional information or changes in circumstances are such that the delegation and/or the limited waiver need to be re-evaluated.

Sincerely,


P. David Brumbaugh
Public Integrity Commission

cc: Anthony Pratt
cc: Sarah Cooksey

Appendix D – Legislation Monitored by Commission

143rd General Assembly – 1st Session – January thru June 2005

SENATE LEGISLATION		REASON FOR MONITORING	STATUS
BILL #	SYNOPSIS		
<u>S.B. 24</u>	Provides for interim management of certain State agencies pending enactment of legislation to provide for the efficient reorganization of State government. See final legislation, H.B. 229	Includes interim management of Public Integrity Commission.	Passed Senate 1/27/05 House/Appropriations Committee 02/04/2005
<u>S.B. 33</u>	Permits members of public bodies to participate in regular meetings using electronic means under certain conditions. Meetings would be in a public place; communication among public body members to be seen or heard by public attendees. This alternative to physical presence of the public body members is not available if a verbatim transcript of the proceeding may be necessary. For example, members of professional regulatory boards could not attend disciplinary hearings by phone. Electronic participation would be permitted at routine meetings which require minutes, but not a verbatim transcript.	Would apply to routine PIC meetings.	Senate Sunset Committee 03/17/2005 Out of Committee – 6/29/05 Amended – Sent back to Sunset Committee 1/24/06.
<u>S.B. 41</u>	Establishes the Division of Human Relations to perform administrative, ministerial, fiscal and clerical functions of the State Human Relations Commission.	Creates new Division; will require updating the financial disclosure computer data base and mail labels when a Division Director is named.	Senate Sunset Committee 3/15/20 Senate Passed - 7/01/05. Out of Committee 1/25/06
<u>S.B. 42</u>	Provides that the Code of Conduct applies to Board of Pharmacy members.	Code has always applied to State Board & Commission appointees. 29 Del. C. § 3804(6) and (12)(a)(2). Cross reference in the Board's enabling law should heighten awareness of the Code.	Senate Sunset Committee 03/15/2005 Substituted 6/29/05

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<p><u>S.B. 116</u></p>	<p>Delaware law prohibits Thoroughbred Racing Commissioners and Harness Racing Commissioners from having any legal or beneficial interest in any firm, association or corporation which races horses in Delaware. Delaware residents involved in horse racing can only serve on the Commissions if they agree not to race their horses in Delaware. Maryland has a less restrictive law, which only mandates that a majority of the Maryland State Racing Commissioners be barred from having a financial interest in racing in that State. This Bill would bring Delaware law in conformity with Maryland law. The Bill prohibits a Commissioner from participating in proceedings in which the Commissioner's interests may be affected. The Bill contains a three-year sunset provision.</p>	<p>The enabling law for the Racing Commission is more stringent than the State Code of Conduct. The proposed legislation would be consistent with the Code of Conduct which prohibits honorary State Officials (appointees to Commissions) from reviewing or disposing of matters where the official or a close relative have a financial interest. See Sec. 29 Del C. § 5805(a).</p>	<p>Defeated on 06/08/2005 05:11:50</p>
<p><u>S.B. 131</u></p>	<p>Amends FOIA to require that open meetings of public bodies in the Executive Branch be posted online to a central calendar of events available to citizens through the State's web portal. Improves citizen access to public information by requiring that approved minutes of open meetings be posted online. This Act applies solely to meetings of agencies in the Executive Branch that are subject to FOIA's open meeting requirements. Meetings of any political subdivision of the State, the Legislative and Judicial Branches are exempt.</p>	<p>Would apply to PIC.</p>	<p>Senate Judiciary Committee - 5/12/05 Passed Senate - 6/07/05 House Administration Committee 06/08/05 House Passed - 6/30/05. Signed 7/12/05</p>

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<i>HOUSE LEGISLATION</i>			
BILL #	SYNOPSIS	REASON FOR MONITORING	STATUS
<u>H.R. 3</u>	Permanent Procedures of the House of Representatives of the 143rd General Assembly of the State of Delaware for Ethics Violations.	To respond to inquiries from the public and from lobbyists on rules of procedure and ethics for General Assembly members. Jurisdiction of ethics for House members, like Senate members, is covered by their rules and the Legislative Conflict of Interest law. Title 29, c. 10.	Resolution Passed 1/11/05. Senate Finance Committee 6/7/05
<u>H.R. 4</u>	Rules of the House. Includes rules that House Members must comply with Financial Disclosure Law, Rule 16(d)(IV)(7); that Lobbyists register as required by the Lobbying Law, Rule 54; and provides rules on lobbyists taking the House floor to speak, Rule 57(a).	To assist House members and lobbyists in complying with the Rules. PIC sent letter to House last year noting that the citation in Rules 54 and 57 on lobbyists should be 29 Del. C., c. 58, subchapter 4, but Rule 57 uses the old citation, 29 Del. C., c. 16.	Resolution Passed - 1/11/05. Citations to Rules 54 & 57 corrected.
<u>H.B. 14</u>	An Act to Amend Chapter 171, Volume 58, Laws of Delaware. If amended, the Cheswold Charter would eliminate the one year waiting period for former council members to be employed by the Town of Cheswold.	The post-employment law, 29 Del. C. § 5805(d), has a two-year waiting period on certain matters. Applies if the individual is hired by a "private enterprise." This apparently is a contract with the Town for an entirely new position.	House Passed. Senate Passed. 1/27/05 Signed 02/09/2005
<u>H.B. 35</u>	Governor's Proposed Budget - See H.B. 300 - Final Budget Legislation	Proposes \$174,400 for the Public Integrity Commission. No increase in appropriation of operating costs. - Approved	See H.B. 300 House Appropriations
<u>H.B. 61</u>	Changes the existing rate of 314 per mile to "the federal reimbursement rate as established in the IRS Code annually."	Would increase PIC operating costs for travel.	House Appropriations Committee 02/15/05
<u>H.B. 72</u>	Provides that the State Code of Conduct applies to all Nursing Home Administrators' Board of Examiners members.	Code has always applied to appointees to State Boards and Commissions 29 Del. C. § 5804(f) and (12)(g)(2). The cross reference in the Board's enabling law should heighten awareness of the Code.	House Policy Analysis & Gov't Accountability Committee 3/16/05 Out of Committee 06/01/2005 Senate Sunset

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<u>H.B. 73</u>	Provides that the State Code of Conduct applies to all members of the State Council on Real Estate Appraisers.	Code has always applied to appointees to State Boards and Commissions. 29 Del. C. § 5804(6) and (12)(a)(2). The cross reference in the Board's enabling law should heighten awareness of the Code.	Committee 6/22/05 House Policy Analysis & Gov't Accountability Committee 03/16/05 Out of Committee 06/01/2005 Senate Passed 06/29/2005 Signed 7/07/05
<u>H.B. 74</u>	Provides that the State Code of Conduct applies to all members of the Board of Pension Trustees.	Code has always applied to appointees to State Boards and Commissions. 29 Del. C. § 5804(6) and (12)(a)(2). The cross reference in the Board's enabling law should heighten awareness of the Code.	House Policy Analysis & Gov't Accountability Committee 03/16/05 Out of Committee 06/01/2005 Senate Sunset Committee - 6/28/05
<u>H.B. 104</u>	Permits PIC to accept electronic filings of lobbying & financial disclosure reports. Includes some technical amendments.	Legislation supported/recommended by PIC.	House Admin. Committee - 4/13/05. Passed House; to Senate Exec. Committee 4/28/05. Passed Senate w/amendment - 6/9/05 Signed 6/23/05 75 Del. Laws, c. 57 Signed 6/23/05.

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<u>H.B. 215</u>	Provides that the State Code of Conduct applies to all members of the Board of Professional Counselors of Mental Health, Chemical Dependency Professionals, and Marriage and Family Therapists.	Code has always applied to appointees to State Boards and Commissions. <i>29 Del. C. §5804(6) and (12)(a)(2)</i> . The cross reference in the Board's enabling law should heighten awareness of the Code.	Passed House 6/16/05 Passed Senate 6/23/05 w/amendment Passed House 6/28/05 Signed 6/30/05.
<u>H.B. 299</u>	Reorganizes State Government to eliminate the Department of Administrative Services and create the Office of Management and Budget.	Assigns PIC to Department of State for administrative and budgetary purposes. Creates new Division level equivalents in OMB. "Public officer" list will need to be updated with new positions and names of appointees.	Passed House & Senate - 30 Jun 2005 Signed 6/30/05
<u>H.B. 300</u>	FY07 Appropriations Bill	Governor proposes \$174,400 for the Public Integrity Commission. No increase in appropriation of operating costs. (H.B. 35) The General Assembly appropriated \$174,200.	Passed House & Senate - 6/30/05 Signed 7/01/05
<u>H.B. 315</u>	Grant in Aid Appropriations	Section 6. (a) No funds appropriated in this Act shall be expended in a political campaign or for partisan political purposes. (b) No funds appropriated in this Act may be used to hire lobbyists	House Passed - 7/01/05 Senate Passed 7/01/05 Signed 7/01/05

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