

STATE PUBLIC INTEGRITY COMMISSION

Annual Report - March 1, 1999

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STATE PUBLIC INTEGRITY COMMISSION

HISTORY AND BACKGROUND

I. Laws Administered and Implemented by the Public Integrity Commission

The State Public Integrity Commission implements and administers the “Laws Regulating the Conduct of Officers and Employees of the State.”¹ Those laws govern the ethical conduct of government officials and employees, require financial disclosure reports from public officers, and establish the registration and expenditure reporting criteria for lobbyists. The purposes of the legislation and a general description of those three areas of the law are detailed below.

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

The State Code of Conduct regulates the ethical conduct of State employees, officers and honorary officials in the Executive Branch. It also regulates the conduct of local government officials, unless those entities adopt a code of conduct at least as stringent as the State statute.² The legislative purpose is to insure the conduct of State employees, officers and officials holds the public's respect and confidence. It sets standards to guide the conduct of employees and officers and sets forth some disciplinary mechanisms to insure uniformity of ethical standards.

¹ 29 Del. C. § 5801, et. seq.

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

The Code of Conduct also provides a mechanism for State employees, officers, officials and agencies to obtain guidance in a particular situation through the issuance of advisory opinions from the State Public Integrity Commission. The Commission also offers training to those covered by the Code of Conduct.

Since its inception as the State Ethics Commission in 1991, the Commission has been responsible for administering this law.

B. Financial Disclosure

The financial disclosure law establishes a requirement for public officers in the Executive, Legislative, and Judicial branches to file a financial disclosure statement within 14 days of becoming a public officer and on February 15 each year thereafter. Public officers must disclose certain assets, debts, income, capital gains, reimbursement of expenses, honoraria and gifts. The legislative purpose of such disclosure is to guard against public officials acting in their official capacity on matters where there is a direct or indirect personal financial interest. Those required to file include: candidates for State office, elected officials, cabinet secretaries, division directors, and members of the judiciary. Approximately 300 persons file these reports with the Commission on an annual basis.

The Commission has administered this law since January 15, 1995.

Besides administering the State financial disclosure statute, the Commission administers Executive Orders No. 5 and 19, which impose additional disclosure requirements on certain persons within the Executive Branch.

The Commission issues advisory opinions interpreting both the statute and the Executive Orders as guidance to those required to file. It also offers training in which the Commission's decisions are

reviewed together with information on proper completion of the reports to avoid technical errors.

C. Registration of Lobbyists

The lobbyists' law requires lobbyists to submit individual registration forms, employer authorization forms, and quarterly reports of expenditures on General Assembly members and employees or members of any State agency. Registration is required if an individual will be acting to promote, advocate, influence or oppose any matter pending before the General Assembly or a State agency by direct communication. Approximately 200 lobbyists file these reports.

Registration by lobbyists informs the public and government officials of the identity of persons seeking access to government officials and the issues the lobbyist represents. Expenditure reports identify what, if any, funds were spent on food, refreshment, entertainment, travel, lodging and gifts made to State officials.

The Commission has administered this law since January 15, 1996.

II. State Public Integrity Commission - Structure

The seven positions on the State Public Integrity Commission are filled by appointment by the Governor, with the Senate's concurrence. At present, there is one vacancy on the Commission.

Members may not hold any elected or appointed office, and may not be a candidate for either federal or State office. They also cannot hold any political party office or be an officer in any political campaign. No more than four members of the Commission may be registered with the same political party.

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

The Commission meets on an "as required" basis, depending upon the number of issues before it. During 1998, the Commission met ten (10) times to consider requests for advisory opinions, waivers, and complaints. Those meetings were conducted at the Tatnall Building, Dover, De., where the Commission's office is located. Notice of meetings was posted at the Commission's office.

During 1998, the following citizens served on the Commission:

John E. Burris, Chair

Commissioner John E. Burris was initially appointed to the Commission on April 2, 1991, for a three-year term, which expired on April 2, 1994. He was reappointed on July 5, 1994, for a seven-year term, which expires on July 5, 2001. He has been selected by Commission members to chair the Commission since its inception as the State Ethics Commission in 1991. In private life, Mr. Burris is the Chairman of Burris Foods, Inc. The corporation, located in Milford, Delaware, distributes and warehouses frozen foods and ice cream for supermarkets and warehouses.

Arthur G. Connolly, Jr., Esq., Vice-Chair

Commissioner Arthur G. Connolly, Jr., was elected as the Commission's Vice Chair in 1998. His initial appointment to the Commission was made on April 2, 1991, and his five-year term expired on April 2, 1996. He was re-appointed by Governor Thomas R. Carper on June 11, 1996, for a 7-year term which will expire on June 11, 2003.

Mr. Connolly is a partner in the law firm of Connolly, Bove, Lodge and Hutz, in Wilmington,

Delaware. He also has served as a member of the Delaware Code of Judicial Conduct Committee of the Delaware Supreme Court and was a member of the Board of Professional Responsibility of the Delaware Supreme Court. He has been an active participant in the legal community, serving in such positions as President of the Delaware State Bar Association, Chairman of the Board of Bar Examiners, and as an Adjunct Professor of Trial Practice at Delaware Law School, now known as Widener University School of Law. He also has participated in many nonlegal activities, including serving on the Board of Trustees for Friends' School and Archmere Academy and was a Board member of the Delaware Trust Company. In the past, he was active as a basketball coach for the Catholic Youth Organization, the American Junior League, and summer high school teams.

Zenaida Otero Keil, Ph. D.

Commissioner Zenaida Otero Keil was appointed to the Commission on September 19, 1994. Her seven-year term expires on September 30, 2001. Dr. Keil, who is a Newark resident and a registered engineer in Delaware, earned her Ph.D and Master of Science Degrees in Chemical Engineering from the University of Delaware and is an active member in many technical societies. She is a Professor of Engineering at Rowan University of New Jersey. She was selected to the 1993 Hispanic Women Leadership Institute at Rutgers University and received the 1992 Excellence in Scholarship Award from the Hispanic Association for Higher Education in New Jersey. She is active in community service, serving on the Advisory Board of the Partners with Students Program and Camden County Community College, and is on the Board of Directors of the YWCA of New Castle County. She also has served on the Board of Girls, Inc. of Delaware (formerly Girls Club). She received the 1989 Girls, Inc. of Delaware award honoring Delaware women of achievement and has worked with the Forum for the Advancement of Minorities in Engineering.

Mary Jane Willis

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

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

Paul E. Ellis

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

Mr. Ellis, a resident of Seaford, Delaware, has been actively involved in the community, where he has served as President of the Seaford Lions Club, the Seaford Democratic Club, and the Seaford District

Library. He also has been an active member of the English-Speaking Union (Delaware Branch); St. Luke's Episcopal Church (Senior Warden of Vestry); and various Masonic organizations. His interest in the Masons resulted in his service as a Grand Master of Masons in Delaware and First Vice President of the George Washington Masonic National Memorial in Alexandria, Virginia. He also has served as a member, Past Master and Secretary of Gethsemane Lodge No. 28 A.F. & A.M. For 20 years, he has been a trustee of the Episcopal Diocese of Delaware.

Arthur V. Episcopo

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

Commissioner Episcopo has had dual careers in the private sector and in the military. For thirty-two years, he worked for E.I. Du Pont De NeMours and Company, Inc., with varied assignments, principally in line management and subsequently in staff positions. His responsibilities included supervisory positions in Personnel, Employee Relations, Site Safety Occupational Health and Fire Protection, Site Engineering Maintenance, Laboratory Maintenance, Site Electrical, and Planning and Scheduling. While pursuing a career at Du Pont, he also was pursuing a career in the Army National Guard. He served in the Army National Guard for more than 42 years where he rose through the enlisted ranks to become the Adjutant General of the State of Delaware. He served in that Cabinet position from February 1989 to April 1993.

Kimber E. Vought, Esq.

Commissioner Vought was appointed to the Commission at its inception in 1991. During that time he served as the Vice-Chair of the Commission. His seven-year term expired on April 2, 1998, and he subsequently moved to Florida.

Mr. Vought is an attorney and was the Mayor of Rehoboth Beach, Delaware from September

11, 1987 to September 14, 1990. Prior to retiring from the practice of law, he was a Senior Partner with the Philadelphia firm of Schnader, Harrison, Segal and Lewis, which also has offices in Washington, D.C., New York City, Atlanta, Georgia and other cities in Pennsylvania. His practice included civil litigation, in which he represented both corporate and non-corporate clients. The practice required extensive travel to represent clients throughout the country. Mr. Vought still serves on a corporate board and is a trustee of several trusts. Also, Mr. Vought, was a long term member of the Board of Directors of Elwyn, Inc., of which he was Chairman of the Board in 1993 and 1994. He also served as Chairman of the Board of Delaware Elwyn in 1995 and the Board of Directors of Jerusalem Elwyn in Israel and the Training School at Vineland, New Jersey.

Christopher A. Bullock, D.Min.

Reverend Bullock was appointed to the Commission on August 29, 1995 for a seven-year term, which was scheduled to expire on August 29, 2002. However, in 1998, he was asked to accept the pastorate of The Progressive Baptist Church of Chicago, Illinois, and therefore resigned his commission on November 4, 1998.

He had served as a Senior Minister at the Historic Eighth Street Baptist Church in Wilmington, Delaware. Reverend Bullock, who holds a Bachelor's degree in Criminal Justice, completed his Master's Degree in Divinity and in 1997 completed his Doctorate in Ministry. Reverend Bullock has been repeatedly recognized for his service to the community, receiving such honors and awards as Outstanding Young Man of America (1987 and 88), Outstanding Community Achiever, Order of the Eastern Star (1992), and Outstanding Community Service as Minister, Eta Sigma Chapter of Sigma Gamma Rho Sorority (1994).

Commission Staff

Janet A. Wright is legal counsel to the Commission. Ms. Wright graduated from Widener

University School of Law (cum laude) in 1989, and was admitted to practice in Delaware that same year. After graduation, Ms. Wright was a judicial clerk for the Honorable Richard S. Gebelein, Delaware Superior Court. After her clerkship, she was an Assistant City Solicitor for the City of Wilmington. Her duties initially included prosecuting Building and Housing Code violations. She subsequently became a civil litigator, defending the City and its employees against civil rights actions and personal injury actions. She also periodically prosecuted criminal matters in the Municipal Court for the City. Ms. Wright is admitted to practice in the Delaware Courts, the U.S. District Court in Delaware and the U.S. Third Circuit Court of Appeals. She received the American Jurisprudence Award for her studies in Professional Responsibility. She is the Chair of the Northeastern Regional Conference on Lobbying (NORCOL), which is comprised of state and local government agencies from Washington, D.C. to New England that regulate lobbying activities. In 1998, she hosted NORCOL's annual meeting in Wilmington, Delaware. That same year, she served on the Site Selection Committee for the Council on Government Ethics Laws (COGEL), which is comprised of representatives from all fifty (50) states, the federal government and the Canadian government who work in the field of law pertaining to ethics, lobbying, financial disclosure, and campaign finance.

Marguerite Y. Rothermel is the Commission's administrative assistant. Prior to working for the Commission, Ms. Rothermel was an Administrative Assistant in the Division of Public Health, Director's Office. As part of her responsibilities, she was responsible for compiling the Board of Health agenda, preparing minutes, arranging appeal hearings, publishing regulations, and composing and preparing correspondence and orders resulting from Board action. She performs similar duties for this Commission. In addition to this experience she was the Senior Secretary of Children's Health Services, Senior Clerk Stenographer for the Bureau of Personal and Family Health Services, and Clerk Stenographer for the Kent County Mental Hygiene Clinic. Prior to her employment with the State, Ms. Rothermel worked for the City of Milford, and was with ILC Industries, Inc., in Dover, which provided space suits for the Apollo Program.

COMMISSION ACCOMPLISHMENTS IN 1998

In 1998, the Commission's goals were to continue emphasizing its statutory responsibility to educate and provide guidelines to those subject to the Code of Conduct, Financial Disclosure and Registration of Lobbyists provisions. The Commission emphasized education of those subject to the laws through courses on the Code of Conduct, Financial Disclosure statute, and the Lobbying law. Its education program was supplemented by issuing synopses of its opinions, and publishing Ethics Bulletins on key topics. The details of its training classes and its publications used to achieve this goal are detailed below.

The Commission also completed the review of nine (9) matters that were carried over from 1997. Those issues were held over until 1998 because some were filed after the Commission's last meeting in 1997 and because the Commission needed more information to decide some issues. Aside from the carry-overs from 1997, the Commission responded to an additional 46 matters which were submitted for the Commission's action in 1998.

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

I. Requests for Advisory Opinions

As noted above, nine matters were carried over from 1997 to 1998. Of those, five (5) were requests for advisory opinions. Three (3) were carried into 1998 because they were filed after the Commission's last meeting in 1997. Two (2) were carried into 1998 because additional information was needed. In addition to those five (5) requests for advisory opinions that were carried over, forty-one (41) requests for advisory opinions were submitted to the Commission in 1998, for a total of forty-six (46) requests for advisory opinions to be considered in 1998. Of those requests, the Commission issued

opinions on all but two (2) requests during calendar year 1998. Those two (2) were considered during a December 1998 meeting; however, the written opinions were not issued until January 1999.

Of the 46 requests for advisory opinions, thirty-nine (39) were requests for interpretations of the State Code of Conduct. Seven (7) were requests for interpretations of both the Financial Disclosure statute and the Code of Conduct. This is because Executive Orders 5 and 19 require that whenever a Senior Official in the Executive Branch receives a gift of more than \$250 they not only must disclose it on the annual Financial Disclosure report if required, but must notify the Commission within 30 days of receipt of the gift so that the Commission can review it to decide if any ethical issues are raised under the State Code of Conduct.

II. Complaints Alleging Violations of the State Code of Conduct

Four (4) complaints were carried forward from 1997 because additional investigatory time was required. In 1998, an additional three (3) complaints were filed. All seven (7) complaints alleged violations of the Code of Conduct. The Commission took the following actions regarding the complaints. One was dismissed for lack of jurisdiction over certain persons named in the complaint, and also dismissed for lack of subject matter jurisdiction. Specifically, the complaint alleged violations by members of the Judiciary. Members of the Judiciary are expressly exempted from the State Code of Conduct. Thus, the Commission has no jurisdiction over such persons. Those officials are subject to the Judicial Code of Conduct. It also alleged violations by current and former police officers of a local government. As that local government had adopted its own Code of Conduct, the Commission had no jurisdiction over those persons. The complaint also alleged violations by former and current Deputy Attorneys' General and Public Defenders.

However, the allegations made against all persons named in the complaint were allegations of denial of Constitutional rights; violations of Delaware and Federal Criminal laws, violations of the Delaware Lawyers' Rules of Professional Responsibility; and violations of Court procedural and evidentiary Rules. As the Commission only has jurisdiction over the provisions in Title 29, Chapter 58, it has no jurisdiction

to interpret any other State or Federal laws or rules. *Commission Op. No. 98-25.*

A second complaint also alleged that certain local government police officers had violated the individual's Constitutional rights. Again, such matters are not within the Commission's jurisdiction. *Commission Op. No. 98-09.*

Two complaints were consolidated because, although they were filed by two separate individuals, they essentially alleged the same complaint against the same person. Although filed in 1996, the Commission was still receiving documentation on these matters into the fall of 1997, thus they were carried over in 1998, when final action was taken. Complainants alleged that an "honorary State official" had violated the State Code of Conduct. An "honorary State official" is one appointed to a public body created by the General Assembly. The Commission found that the individual had not been appointed to a body created by the General Assembly and, therefore, he was not an "honorary State official" under the State Code of Conduct. Moreover, the Commission found that even if he were an "honorary State official," the complaint failed to state a claim because no facts supported the allegations that the individual reviewed or disposed of matters which tended to impair his independent judgment, which is prohibited by the Code of Conduct. Also, the facts did not support the allegation that he represented or assisted a private enterprise before a State agency to which he was appointed, as prohibited by the Code. The complaints also alleged that in his capacity as a State employee the individual had: (1) reviewed or disposed of matters where he had a personal or private interest; (2) represented or assisted a private enterprise before the agency by which he was employed; and (3) used his public office to obtain a financial gain for a private enterprise. No interpretation of the facts supported such claims. However, the Commission granted the complainant an additional thirty (30) days to amend his complaint. Although he indicated that he had documents to support the allegations, he never provided the documents. Accordingly, the allegations were dismissed for failure to state a claim. *Commission Op. Nos. 96-58 and 96-72.*

The Commission reconsidered its actions taken on a complaint in 1997. At that time, the

complainant had filed a motion to voluntarily dismiss the complaint. The Commission granted his motion. He subsequently hired an attorney who argued that the Commission had no authority to grant his motion to dismiss the complaint. As Delaware case law indicated that quasi-judicial bodies have the same authority as courts, and as courts can accept a voluntary request for dismissal, the Commission ruled that it had authority to grant the motion to dismiss. *Commission Op. No. 96-21.*

Moreover, complainant filed a later complaint alleging essentially the same violations by the individual. That complaint was dismissed for lack of jurisdiction over some matters, and failure to state a claim, even assuming jurisdiction. *Commission Op. No. 96-58.*

The fifth complaint was filed at the end of 1998 and therefore was carried over into 1999 for action. *Commission Op. No. 98-42.*

III. Suspected Violations of the Financial Disclosure Statute

The financial disclosure statute provides that willfully failing to file a financial disclosure report shall be a class B misdemeanor. Any suspected violations of the financial disclosure chapter may be referred to the Attorney General for investigation and prosecution. The Commission referred three suspected violations to the Attorney General after three candidates for State office did not file a financial disclosure report after notice of the requirement was sent by both regular mail and certified mail. *Commission Op. Nos. 98-44; 98-45; and 98-46.*

IV. Training Sessions

During 1998, the Commission held seventeen (17) training sessions. Twelve (12) of these were training on the State Code of Conduct, four (4) were on Financial Disclosure, and one (1) was on the Lobbyists' Registration statute.

The Code of Conduct training was given to both full-time State employees and to appointees to

various boards and commissions. A total of 408 people received Code of Conduct training. The majority of those attending were employees of various divisions in the Department of Health and Social Services. The course also was given to employees and appointees of title 23 and title 24 Boards and the Delaware Arts Council.

Attendees at the Financial Disclosure classes included Senior Officials in the Executive Branch, members of the General Assembly, and members of the Judiciary. A total of fifty-nine (29) people attended these classes.

The lobbying training was provided at a Continuing Legal Education seminar sponsored by the Delaware State Bar Association. The seminar was geared to attorneys who deal with banking matters and the training focused on the statutory requirements for registering if an individual is lobbying a State agency, such as the State Banking Commission. Approximately 40 people attended the seminar.

At all of the classes, the attendees were provided with copies of the pertinent statute, synopses of opinions concerning the particular class subject matter, and copies of forms for financial disclosure and lobbying.

The Commission also worked with the Department of Health and Social Services regarding providing ethics training as recommended by the State Legislative and Citizens Investigative Panel of Nursing Homes in the "Marshall Report." The details of that activity are indicated under the heading of "Legislative Matters," on later pages of this report.

V. Publications

The Commission periodically issues Ethics Bulletins to alert agencies to specific issues that arise which the Commission believes should come to the attention of the heads of all agencies. In 1998, it issued Ethics Bulletin 007, which dealt with the post-employment provision and its application to former State employees as compared to situations where the individual leaves State employment but is rehired as a casual/ seasonal employee.

The Commission also published the synopses of its 1998 Financial Disclosure advisory opinions.

The 1998 synopses were incorporated into a bound document containing the 1995-1998 opinions, the Financial Disclosure statute, Executive Orders 5 and 19, instruction sheet, and forms. This publication was sent to the more than 300 people who are required to file the financial disclosure report. It also was provided at three Financial Disclosure training sessions held at the end of 1998, including a presentation to the eight (8) newly elected members of the General Assembly.

The Commission's synopses of its 1998 Code of Conduct opinions, was drafted and sent to the printer in early 1999. The Commission issues more than 500 copies of its ethics synopses each year at its various training sessions, upon requests by individuals, and also issues it with some advisory opinions. Comments on the evaluation forms from the Commission's training classes consistently indicate that this publication is one of the most valuable parts of the training.

VI. Local Government Codes of Conduct

The City of Dover had submitted a Code of Conduct for its employees and officials for the Commission to review and determine if its Code is as stringent as the State Code in 1997. The Commission approved the City's Code, with the exception of three minor areas, which were more procedural than substantive, which needed to be more stringent. The recommended changes were made, and in 1998 the Dover City Council adopted its own Code of Conduct. Appointees to the Dover Ethics Commission were named by the Mayor in late 1998.

VII. Legislative Matters

A number of pieces of legislation were introduced during the 139th General Assembly session which began on January 14, 1997 and ended on June 30, 1998. The final status of the various bills is reflected below. Additionally, after the State Legislative and Citizens' Investigative Panel on Nursing Home Reform issued its report ("The Marshall Report"), the Commission coordinated with the Department of Health and Social Services Department regarding the ethics training recommendations made in the report.

A. State Code of Conduct Legislation

In January 1998, legislation was introduced to repeal a 1997 amendment to the State Code of Conduct. *See, Senate Bill 252, House Bill 467, and House Bill 475.* The amendment was included in the State Bond Bill which was introduced on June 29, 1997; passed on June 30, 1997; and signed into law on July 14, 1997. *71 Del. Laws, c. 150 § 86.* Its effect was to exempt certain former employees from DelDOT from the post-employment provision of the Code of Conduct. The Commission had not provided any legislative comments as it was not aware, nor was it notified, that the Code of Conduct was being amended. The DelDOT amendment was repealed by House Bill 467, which was passed and signed into law on February 5, 1998. The effect is that former DelDOT employees are subject to the same post employment restrictions as are other former State employees.

Also in January 1998, legislation was introduced which would amend the Code of Conduct provision to increase the threshold amount for public notice and bidding when government officials seek a contract with their governmental entity. *See, S.B. 236; Senate Amendment 1 to S.B. 236.* The existing law provides that no State employee, State officer or a private enterprise in which they had a specified ownership interest shall contract with a State agency unless such contract is publicly noticed and bid if the contract amount exceeds \$2,000. Senate Bill 236 proposed to raise the \$2,000 threshold to \$10,000. Amendment 1 to the Senate Bill proposed to raise the \$2,000 to \$25,000 and amend the definition of "State agency." 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 responsive comments on the legislation. 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 its meeting, the Commission wrote to the Senate County/Community Affairs' Committee and provided legislative comments which, in essence, were that: (1) Sussex County's

concerns about the existing threshold were based on an erroneous interpretation of the provision; (2) the proposed legislation might have some unintended results; and (3) without further evidence of a need to increase the threshold, the existing threshold meets the ethical objectives of the Code of Conduct. *Commission Ltr to The Honorable David P. Sokola, Chair, Senate Community/County Affairs Committee, February 20, 1998.* No further action was taken on the legislation.

On March 26, 1998, legislation was introduced to amend Title 3 of the Delaware Code relating to the Delaware Thoroughbred Racing Commission. *H.B. 537.* The existing statute prohibited racing commission members from having a direct or indirect interest in such racing. The proposed legislation would permit “close relatives” of members of the Racing Commission to race horses in Delaware. “Close relative” would have the same meaning as it does in the State Code of Conduct. The synopsis to H.B. 437 noted that Racing Commissioners would remain subject to the State Code of Conduct provision which restricts such officials from participating in matters before the State where a “close relative” is involved. The legislation was stricken on May 12, 1998. The effect is that Racing Commissioners are still prohibited from having a direct or indirect interest in racing Title 3, and are still subject to the State Code of Conduct under Title 29.

During 1998, several bills were introduced regarding some Title 24 boards which regulate various professions and occupations, e.g., Board of Geology, Board of Occupation Therapists. *See, H.B. 429; H.B. 428; H.B. 629.* The legislation said the provisions set forth for “employees” in the State Code of Conduct would apply to appointees to these Boards. The Commission notified the Director, Division of Professional Regulation, and sponsors of the legislation that under the Code of Conduct, the term “employee” has a specific legal definition and that appointees to the types of boards in H.B. 429, et. al., are separately defined under the Code of Conduct as “Honorary State officials.” In some instances, the Code of Conduct has more stringent provisions for “employees” than for “honorary State officials.” The Commission asked if the intent was to make the Code of Conduct more stringent for title 24 appointees than for appointees to other similar boards and commissions. It said if that were not the intent, the language in the bills was superfluous because the Code of Conduct already applies to such appointees.

Subsequently, the language was changed to provide that “Chapter 58, title 29... shall apply to all members of the Board.” *See e.g., House Amendment 1 to H.B. 429.* The resulting language is that the appointees are covered just as they were before the Code was amended.

B. The Marshall Report

On February 9, 1998, the State Legislative and Citizens Investigative Panel on Nursing Home Reform issued a report (“The Marshall Report”) of its recommendations concerning nursing home care. Among other matters, the panel recommended that the Department of Health and Social Services (DHSS) and the Department of Justice (DOJ) conduct workshops for their employees who have oversight responsibilities of nursing homes to apprise them of their obligations under the State ethics guidelines. *Marshall Report, p. 18.*

Under Delaware law, the Public Integrity Commission, rather than the Department of Justice, is explicitly tasked with providing training on the ethics code and guidelines. *29 Del. C. § 5808A(a)(1).* Accordingly, the Commission worked with the Governor’s office and DHSS regarding this recommendation. The Commission notified DHSS of ethics training classes it had given, prior to the issuance of the Marshall Report, to DHSS personnel who have responsibilities regarding nursing home oversight such as: the Long Term Care Advisory Council; the Health Facilities Licensing and Certification Office; two classes for State employees, volunteers and ombudsmen for the nursing home programs; Health Resources Board; DHSS Cabinet Secretary and Division Directors, etc. Additionally, DHSS had video-taped the ethics training presentation to have it available when there was a turn-over in personnel. The Commission has continued to work with DHSS to provide ethics training, including quarterly training sessions scheduled through the DHSS Training Administrators. These quarterly sessions have been scheduled through the second quarter of 1999.

In developing workshops given after the issuance of the Marshall Report, the Commission included in its presentation information regarding the federal conflict of interest provisions which apply to State employees and volunteers who have nursing home oversight responsibilities. *See, 42 U.S.C. § 3058(g).*

While the Commission has no authority to interpret the federal statute, it provided copies of the federal law at the State training sessions, referred the attendees to possible application of that statute; and noted that under the statute, it appeared that the federal agency tasked with operating the program should be able to provide assistance.

C. Financial Disclosure Legislation

The Public Integrity Commission had ruled that the financial disclosure statute's definition of "gift" did not include expenditures made by the State on behalf of a public officer to participate in an officially sanctioned activity, nor did it include expenditures by the private employer for its employee, who also happens to be a public officer, to conduct legitimate business activities which the employer has determined are legitimately related to the employee's duties as an employee. *Public Integrity Commission, Guidelines for Public Officers, January 21, 1998.* Subsequently legislation was introduced to adopt that interpretation. *See, H.B. 371.* After passing the House, it was referred to the Senate Judiciary Committee and two amendments were subsequently introduced. However, no further action was taken. *Senate Amendments 1 and 2 to H.B. 371.* The effect is that the Commission's ruling on its interpretation of "gift" which was essentially the same as the proposed legislation is still in effect.

D. Lobbyists' Law Legislation

House Bill 463, which changed the laws relating to the video lottery and harness racing, had an amendment introduced which would change the lobbyists' registration statute to require persons who lobby for the video lottery and harness racing industry to indicate that affiliation on their lobbyist's registration form filed with the Public Integrity Commission. The existing law already requires lobbyists to identify their affiliation and the types of legislation and/or administrative action in which they are interested. The amendment also would have required the Commission to keep such registrations separate from other lobbyists' registration. The General Assembly did not adopt the amendment in the final legislation passed

on March 26, 1998. The effect is that such lobbyists will continue to register with the Commission, identifying their affiliation and the types of legislation in which they are interested, but the Commission will not have to keep their registration separate from other registered lobbyists.

After the Delaware Solid Waste Authority, a State agency, hired a lobbyist to represent it, legislation was introduced to prohibit such authorities from hiring lobbyists to lobby State Agencies and/or the General Assembly. *S.B. No. 400*. The legislation was referred to the Senate Judiciary Committee. No further action was taken.

VIII. Administrative Issues

A. Lobbyists' Expenditure Reports

Each quarter all registered lobbyists must file expenditure reports with the Commission. The filings for the last quarter of 1997 were due to the Commission by January 20, 1998. Of approximately 200 lobbyists, 45 did not file the report by the due date. Those 45 lobbyists were individually notified by letter that failure to file served as voluntary cancellation of their registration unless the reports are filed. A second notice, by certified mail, was sent to ten (10) of the lobbyists after they failed to respond to the first notice.

The next quarterly filing was due on April 20, 1998. Out of approximately 200 lobbyists, 46 did not file their expenditure reports by the due date. Each of the 46 lobbyists were notified that the code provides that failure to file the reports is considered a voluntary cancellation of their registration. Eighteen (18) of the 46 did not respond to the Commission's initial notice. A second letter was sent by certified mail to those eighteen (18) lobbyists who had not filed the expenditure reports.

After the next quarterly filing date, July 20, 1998, out of approximately 200 lobbyists, again a total

of 46 did not file by the due date. All but six (6) did not respond to the Commission's first notice that failure to file was a voluntary cancellation. Those six (6) were sent a second notice by certified mail.

The final 1998 expenditure report filing was due on October 20, 1998. Out of approximately 200 lobbyists, 53 did not file by the due date. After the first notice, all but 10 filed the reports. Certified letters were sent to those lobbyists.

B. Personnel Issues

In last year's annual report, the Commission reported that before the General Assembly passed legislation authorizing legal counsel for the Commission, the Commission's legal counsel was a Deputy Attorney General and when the Commission hired its attorney, the personnel paperwork indicated that the position was equivalent to a Deputy Attorney General (DAG) III. However, the Commission learned that the position was not comparable to a DAG III in terms of salary. That was because DAG III positions fall under the Selective Market Variation (SMV) program, but the State Personnel Office had decided that the Commission's attorney position was not under the SMV program. As a consequence, the Commission's attorney position was not entitled to comparable pay, and in effect, there was a cap on the Commission's attorney position that was not the same as on a DAG III position. As a result, DAGs received the pay increase authorized by the General Assembly, but the Commission's Counsel had reached the maximum salary and without a change would not receive subsequent raises. A request was made to convert the position to a Selective Market Variation program to make the position equivalent to a DAG III position so it could remain competitive. In 1998, the State Personnel Office, Administrative Services, the Budget Office, and the Joint Finance Committee approved the SMV request.

C. Relocation of Public Integrity Commission

Administrative Services notified the Commission of its plans to relocate the Commission's office

from its present location on the Ground Floor of the Tatnall Building to the Second Floor of the O'Neill Building in 1999. The Commission notified the Secretary of Administrative Services, the members of the House and Senate Legislative Council Committees, and the Governor of its concerns that such a move could seriously impact on the statutorily mandated confidentiality requirements of most of the Commission's activities and could cause grave concern over the Commission's status as an independent agency.

D. Computer Upgrade - Year 2000 or Y2K Compliance

The Commission upgraded its computer operating systems to eliminate possible Year 2000 problems. The Commission's attorney and administrative assistant attended classes on the upgraded systems. While the computer operating systems were upgraded, the Commission is writing to vendors of its software programs program for information on whether the software also needs to be upgraded, to avoid the possibility of an operational shutdown of any of its equipment at the beginning of the Year 2000.

IX. Funding

In Fiscal Year 1999, the General Assembly appropriated a total of \$155,000 for the Commission. Of that total, \$114.9 was for salaries and OEC costs for the Commission's Counsel, the Commission's Administrative Assistant, and for the Commission members who are entitled to receive \$100 per meeting day. The remaining \$40.1 was for operating costs. The Commission's Fiscal Year 1999 Budget request was the same as its budget request for Fiscal Year 1998. The Commission is seeking the same amount of appropriations for its Fiscal Year 2000 Budget.

X. Future Goals

In the coming year, the Commission intends to continue emphasizing its responsibility to educate State employees, officers, officials and local officials covered by the State Code of Conduct and financial

disclosure laws. It has already scheduled training for a number of agencies. It also intends to try to decrease the number of lobbyists who are not timely filing expenditure reports to reduce the amount of correspondence handled by the Commission's two person staff.

The Commission intends to continue publishing summaries of its opinions on an annual basis to aid employees, officers, officials, and lobbyists in understanding the standards of conduct, financial disclosure, and the lobbying laws.