

STATE PUBLIC INTEGRITY COMMISSION

Annual Report - March 1, 2000

TABLE OF CONTENTS

I. Laws Administered by the Public Integrity Commission	1
<i>A. State Employees', Officers' and Officials' Code of Conduct . . .</i>	<i>1</i>
<i>B. Financial Disclosure</i>	<i>2</i>
<i>C. Registration of Lobbyists</i>	<i>3</i>
II. Public Integrity Commission - Structure & Members	4
III. Commission Accomplishments in 1999	11
<i>A. Advisory Opinions, Complaints, and Referrals</i>	<i>12</i>
<i>B. Training Sessions</i>	<i>13</i>
<i>C. Publications and Guides</i>	<i>15</i>
<i>D. Review of Local Government Codes of Conduct</i>	<i>17</i>
<i>E. Legislative Matters</i>	<i>18</i>
(1) <i>Legislation Pertaining to the State Code of Conduct</i>	<i>18</i>
(2) <i>Legislation Pertaining to the Financial Disclosure Law</i>	<i>20</i>
(3) <i>Legislation Pertaining to the Lobbying Law</i>	<i>22</i>
(4) <i>Other Legislation Monitored by the Commission</i>	<i>24</i>
<i>F. Administrative Issues</i>	<i>24</i>
(1) <i>Report on Delaware Disclosure Law</i>	<i>24</i>
(2) <i>Lobbyists' Expenditure Reports</i>	<i>25</i>
(3) <i>Personnel Issues</i>	<i>27</i>
(4) <i>Relocation of Public Integrity Commission</i>	<i>27</i>
(5) <i>Computer Upgrade - Year 2000 or Y2K Compliance</i>	<i>27</i>
IV. Funding	28
V. Future Goals	28

VI. Appendices

Appendix A - 1999 Financial Disclosure Synopses of Opinions

Appendix B - Ethics Bulletin 008

Appendix C - Abstract of Report on Delaware's Disclosure Law

Appendix D - Commission Letter Regarding Report on Disclosure Law

STATE PUBLIC INTEGRITY COMMISSION

HISTORY AND BACKGROUND

I. Laws Administered by the Public Integrity Commission

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

The Code of Conduct provides a mechanism for State employees, officers, officials and agencies to obtain guidance on ethics issues through the issuance of advisory opinions

¹ Delaware Code, Title 29, Chapter 58.

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

from the Public Integrity Commission. The Commission also offers training to those covered by the Code.

The Commission also may grant waivers when the conduct violates the Code if the literal application of the law is not necessary to serve the public purpose or there is an undue hardship of the agency or the employee.

When there is a suspected violation of the Code, the Commission may refer certain matters to the Attorney General for prosecution and/or may take administrative disciplinary action.

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. Approximately 300 people file a disclosure form each year.

The legislative purpose of such disclosure is to guard against public officials acting in their official capacity on matters where there is a direct or indirect personal financial interest. Those required to file include: candidates for State office, State elected officials, cabinet secretaries, division directors, and members of the judiciary. Approximately 300 persons annually file these reports with the Commission.

The Commission was given responsibility to administer this law effective January 15, 1995, and if it determines there is a suspected violation, it may refer the matter to the Attorney General.

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. Those orders provide that in addition to any financial disclosure issues that need to be interpreted, that the Commission determine if any ethical issues arise as a result of the matters which are disclosed.

Thus, the Commission issues advisory opinions interpreting the financial disclosure statute, the Executive Orders, and the ethics law as guidance to the Senior Executive Branch officials who must comply with the Executive orders. It also offers training in which the Commission's decisions are reviewed, together with information on properly completing 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 are registered with the Commission, and each lobbyist files an expense report four times a year, for a total of 800 filings.

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. If a lobbyist fails to file the

required registration or expenditure reports, such inaction serves as a “voluntary cancellation” of their registration under the statute. Additionally, if the Commission finds that there is a suspected violation of the law, it may refer the matter to the Attorney General for prosecution.

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 are no vacancies on the Commission.

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

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

The Commission meets on an "as required" basis, depending upon the number of issues submitted or pending before it. During 1999, the Commission met nine (9) times to consider 54 requests for advisory opinions, waivers, and complaints. Those meetings were conducted at the Tatnall Building, Dover, De., where the Commission's office was located in 1999. Notice of meetings was posted at the Commission's office.

During 1999, the following seven (7) citizens served on the Commission:

John E. Burris, Chair

Commissioner John E. Burris was initially appointed to the Commission on April 2, 1991, for a three-year term, which expired on April 2, 1994. He was reappointed on July 5, 1994, for a seven-year term, which expires on July 5, 2001. He 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 has actively participated in the legal community, serving in such positions as **President of the Delaware State Bar Association, Chairman of the Board of Bar Examiners, and as an Adjunct Professor of Trial Practice at Delaware Law School, now known as Widener University School of Law.** He also has served as a member of the Delaware Code of Judicial Conduct Committee of the Delaware Supreme Court and was a member of the Board of Professional Responsibility of the Delaware Supreme Court. His activities in non-legal areas include having serving on the Board of Trustees for Friends' School and Archmere Academy. In the past, he was active as a basketball coach for the Catholic Youth Organization, the American Junior League, and summer high school teams.

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

Mary Jane Willis

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

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

Having earned her Master's Degree in counseling and guidance from West Virginia University, Ms. Willis has more than 60 post-graduate hours toward her doctorate degree.

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

Paul E. Ellis

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

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

Arthur V. Episcopo

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

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

Clifton H. Hubbard

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

Mr. Hubbard is a resident of Dover, Delaware, and previously served on the Environmental Appeals Board (EAP) as its Chair. The EAP is responsible for hearing appeals of decisions of the Secretary of the Department of Natural Resources and Environmental Control (DNREC) pertaining to enforcement of pollution standards. He served on that Board for approximately 20 years. He also served on the Metropolitan Planning Organization (MPO), which is involved in approving certain Department of Transportation demonstration projects. He served on the MPO for approximately 6 years.

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

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

Commission Staff

Commission Counsel

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 a member, and has served as the Chair, of the Northeastern Regional Conference on Lobbying (NORCOL), which is comprised of state and local government agencies from Washington, D.C. to New England that regulate lobbying activities. In 1998, as Chair, she hosted NORCOL’s annual meeting in Wilmington,

Delaware. That same year, she served on the Site Selection Committee for the Council on Government Ethics Laws (COGEL), which 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.

Administrative Assistant

Marguerite Y. Rothermel has been the Commission's administrative assistant since July 1995. She expects to retire in March 2000. 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.

III. Commission Accomplishments in 1999

In 1999, 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. As part of its on-going efforts to insure that those subject to the law have the information which the Commission publishes, it has designed a web site and converted those documents for access on the Internet. The design and conversion were completed in 1999, and the Commission has contracted with the Office of Information Services (OIS) to have the information published on the Internet. The website should be operational in the early months of 2000.

During 1999, the Commission completed the review and decision on one complaint which had been submitted in 1998. Aside from that carry-over from 1998, the Commission responded to an additional 53 matters which were submitted to it for action in 1999. The 54 matters considered in 1999 was a slight increase in the number of matters considered by the Commission in 1998, when it handled 46 matters.

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

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

The Commission is charged with issuing advisory opinions and waivers, and with investigating and ruling on complaints alleging violation of the Code. 29 Del. C. §§ 5807 and 5810.

Of the 54 matters considered in 1999, forty-eight (48) were requests for advisory opinions. Many of these requests required interpretation of more than one statutory provision. For example, while the Commission received 13 requests for advisory opinions

on whether it was proper to accept a gift, ten (10) of the submitted requests also required an interpretation of the financial disclosure law on such matters as whether the item received would also be reported as a gift under the financial disclosure law. Three (3) other requests that raised multiple issues were situations where a government employee sought to contract with the government. Such requests raise issues of whether the individual is complying with the Code of Conduct provisions for public notice and bidding or arms' length negotiation when a government employee seeks to contact with the government; whether the individual is complying with the concurrent employment provision; whether the individual represented or assisted the private enterprise before their own agency, which is prohibited; etc. Additionally, there were three (3) requests for interpretations of whether specific items, such as life insurance policies, must be reported under the financial disclosure law. Three (3) additional requests sought a decision on whether the State employee or official should recuse themselves from making a State decision because of a "personal or private" interest. The statutory provision which was most frequently required to be interpreted was the post employment law, with sixteen (16) requests for interpretation.

In addition to the complaint which was carried over from 1998, three complaints were filed during 1999. The Commission concluded its investigation and decision on three of those four complaints. The fourth complaint is presently still under investigation. Two of the complaints were filed by prisoners, and alleged facts of overcrowded prisons, improper medical care, etc. The Commission ruled that it had no jurisdiction over those matters, and dismissed the complaints for failure to state a claim pursuant to 29 *Del. C.* § 5809. Another complaint alleged violations of laws and rules administered by other agencies, such as the

Merit Rules which are administered by the State Personnel Office; sexual harassment which is administered by the Equal Employment Opportunity Commission, etc. The complaint was dismissed for lack of jurisdiction.

Two (2) matters were referred to the Attorney General's office as suspected violations of the financial disclosure law. Additionally, several matters which were referred to the Attorney General's office in 1998 as suspected violations of the financial disclosure law were put on track for prosecution by that office, with summons issued by the Attorney General's office in 1999. The matters were resolved without prosecution.

B. Training Sessions

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

During 1999, the Commission held fourteen (14) training sessions. Eleven (11) of these were training on the State Code of Conduct, two (2) were on Financial Disclosure Reporting, and one (1) was on lobbying. **As part of its on-going training efforts, the Commission continued to work with the Department of Health and Social Services (DHSS) to provide ethics training as recommended by the State Legislative and Citizens Investigative Panel of Nursing Homes in the 1998 "Marshall Report." DHSS coordinates with the Commission to provide training at various DHSS locations each quarter in an effort to insure that all of its employees will receive training.** The Commission also coordinated training with

several other agencies to give Code of Conduct training to their employees. This year, training was coordinated with the following agencies: Office of Information Services; Department of Health and Social Services; and Department of Natural Resources and Environmental Control, Division of Air and Waste Management. In addition, the Commission coordinated with the State Personnel Office's (SPO) Training Unit to offer two classes as part of SPO's Career Enrichment Program (CEP) and Management Development Institute (MDI) courses, providing training on the Code of Conduct to State employees from any agency who registered for those courses. Two (2) classes on financial disclosure reporting were also offered through SPO's MDI course. The lobbying seminar was provided at a public meeting of Common Cause, which was open to not only members of Common Cause, but any member of the public and was announced in a number of publications.

A total of 171 State employees received Code of Conduct training. Attendees at the Financial Disclosure classes totaled 11 and 16 Common Cause members attended the lobbying seminar. At all of the classes, attendees were provided with copies of the pertinent statute, synopses of opinions concerning the particular class subject matter, and copies of forms for financial disclosure reporting and lobbying registration and reporting.

C. Publications and Guides

The Commission is to publish synopses of its advisory opinions without disclosing the identify of the applicant, and is to prescribe forms, and publish manuals and guides explaining the duties of individuals covered by the laws the Commission administers. *See, 29 Del. C. § 5807(d)(4); § 5809(8) and (9).*

The Commission published the synopses of its 1999 Financial Disclosure advisory opinions in December 1999. *See, Appendix A.* In addition, the Commission changed the format of Section One of the financial disclosure reporting form in an effort to clarify the assets that public officers must disclose. The new form, the 1999 synopses, and a separate bound document containing the Commission's 1995-1998 opinions, the Financial Disclosure statute, Executive Orders 5 and 19, instruction sheet, and forms, were sent to the more than 300 people who are required to file the financial disclosure report. These materials were also provided at the two (2) Financial Disclosure training sessions held at the end of 1999.

The Commission's synopses of its 1999 Code of Conduct opinions is being drafted and will be sent to Graphics and Printing in early 2000. 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.

The Commission also periodically publishes Ethics Bulletins when a topic arises that the Commission believes Executive Branch officials should be alerted to. In 1999, it published Ethics Bulletin 008, which addressed the issue of whether mere disclosure of a gift received by an Executive Branch employee is sufficient to eliminate any ethical issue. Based on the Code of Conduct restriction on accepting gifts, the Commission concluded that disclosure, by itself, is not sufficient to eliminate ethical issues because the statute requires an evaluation of four criteria and disclosure would be only one fact to be considered in the criteria. *Ethics Bulletin 008, attached, Appendix B.*

As previously noted, the Commission has designed its Web Site and has converted its publications for access on the Internet. It was aided by Legislative Council employees in converting the documents, and is working with the Office of Information Services to have its site published on the Internet in 2000. In the meantime, Legislative Council employees included space on the General Assembly's Web Site during 1999 for the Commission's list of registered lobbyists. This is the document most frequently requested by the public, and having it available on-line has been an asset to the Commission and the public.

Also, when the Washington, D.C. based Center on Public Integrity published its report on the financial disclosure laws of all 50 States and the federal government on its Web Site, it also published a copy of the financial disclosure reporting form. Thus, access to Delaware's financial disclosure form is available on that web site.

D. Review of Local Government Codes of Conduct

Local governments are subject to the State Code of Conduct unless they adopt their own Code which must be approved by the Commission as being as stringent as the State Code. *67 Del. Laws, c. 417 § 2 and 68 Del. Laws, c. 433 § 1.*

The Commission continued to work with local governments on their ethics codes in 1999. It reviewed the Town of Millsboro's Code of Conduct, advised it of several areas where it was not as stringent as the State Code, and after the Town added those matters, it became the sixth local government to have its own Code of Conduct reviewed and approved by the Commission. The Commission previously approved local Codes of Conduct for New Castle County, Dover, Lewes, Newark and Wilmington.

The City of Dover passed its own ethics law which was approved by the Commission in 1998. In 1999, after the City's Ethics Commission members were appointed, the Commission's Counsel met with them to provide them with information on how this Commission interprets the State provisions. In addition to the discussion, they were provided with the Commission's publications, such as its synopses of opinions and its Ethics Bulletins.

New Castle County's Ethics Commission notified the Commission that it is in the process of making some changes to its Code of Conduct, and will submit those changes to the Commission for approval upon completion of its work.

The City of Wilmington's Ethics Commission provided the Commission with several amendments to its ordinance for review. After conducting its review, the Commission concluded that the amendments pertained to financial disclosure reporting requirements for the City. The law giving the Commission authority to review local government codes is specifically limited to review of their ordinances dealing with "subchapter I" of title 29, chapter 58. *68 Del. Laws, c. 433 § 1.* As the review is limited to that subchapter, and the City's ordinances related to matters in subchapter II, the Commission concluded it had no jurisdiction to review the annual financial disclosure reporting ordinances of local governments.

The cities of Lewes and Newark had no changes to their local codes in 1999.

E. Legislative Matters

A number of pieces of legislation which were of interest to the Commission were introduced during the first session of the 140th General Assembly, which ended on June 30, 1999. Legislation that was not passed is carried over into the 2nd Session. Any action taken

by the Commission and the status of the various bills at the end of 1999 is reflected below.

(1) Legislation Pertaining to the State Code of Conduct

The majority of bills pertaining to the State Code of Conduct dealt with appointees to various boards and commissions. The Joint Sunset Committee, in reviewing legislation for a number of boards and commissions, included language in the bills and in the synopses of the bills that appointees were subject to the State Code of Conduct. For example, the synopsis of Senate Bill 157 states that, among other things, the legislation is meant to bring Board members under the mandates of the Public Integrity Act. However, board members have been covered by the act since its passage in 1994, as it applies to all appointees to boards and commissions. 29 *Del. C.* § 5804(11)(a)(2) (*appointees who receive more than \$5,000 in compensation each year*) and 29 *Del. C.* § 5804(13) (*appointees who receive less than \$5,000 per year*). The legislation and the boards or commissions which have such language are as follows: Senate Bill 157, Board of Veterinarians; **Senate Bill 181, Board of Electrical Examiners**; Senate Bill 195, Board of Podiatry; Senate Bill 209, Board of Professional Land Surveyors; Senate Bill 214, Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers; and Senate Bill 220, Board of Professional Counselors. **Status:** Each of these bills were signed into law in July 1999. **Commission Action:** Similar legislation has been passed for other Boards and Commissions, and the Commission has notified the Joint Sunset Committee that even without the language in the specific statute governing those boards and commissions that appointees to Board and Commissions are subject to the State Code of Conduct. However, the Commission recognizes that having the specific language in

the statute for the Boards and Commission would further aid in insuring that board and commission members were on notice of the application of the State Code of Conduct.

Senate Bill 126, among other things, creates a Community Forestry Council, with 13 members to be appointed. Council members will serve without compensation, except reimbursement of expenses. The original bill provided that the provisions set forth for “employees” in the Code of Conduct shall apply to council members, and all agents appointed or otherwise employed by the Council. **Commission Action:** The Commission notified the State agency and the sponsors of the legislation that under the Code of Conduct, appointees who serve for less than \$5,000 per year are “honorary State officials.” In some sections of the Code, “honorary State officials” are treated differently than “employees.” Thus, by making the State Code of Conduct provision for “employees” apply to these appointees, the legal effect would be that appointees to the Forestry Council would have more stringent requirements than those set forth for other similar appointees who are “honorary State officials.” Subsequently, an amendment was introduced to eliminate the term “employee.”

House Amendment 1 to S.B. 126. Final Status: Signed into law with amendment on July 1, 1999. **Commission Action:** The Commission will apply the Code of Conduct to Forestry Council members as it would to other “honorary State officials.”

(2) Legislation Pertaining to the Financial Disclosure Law

A number of bills were introduced which added to the number of persons who would be required to file a financial disclosure statement with the Commission. The financial disclosure law requires that, among others, members of the judiciary, cabinet secretaries and division directors file such statements. Legislation which impacts on that law is as follows:

Bills increasing the number of persons who are members of the judiciary were: Senate Bill 166 which added two new Justices of the Peace for New Castle County; Senate Bill 206 adding two judges to Kent and Sussex County Court of Common Pleas; House Bill 355 adding two judges to Kent and Sussex Family Court. *Status:* All were signed into law on July 27, 1999. *Commission Action:* The Commission is monitoring the nominations for these new positions, so that as the nominations are approved it can notify the new members of the Judiciary of the requirement to file within 14 days and of their annual filing requirement. Additionally, the new members will be added to the Commission's mailing list to annually receive copies of its financial disclosure synopses of opinions, forms, etc.

Legislation impacting on additions to those in the Executive Branch who are required to file was as follows: Senate Bill 108 made Delaware Public Archives a separate Division in the Department of State and House Bill 243 would create the Department of Drug Control with a Cabinet Secretary and three Division Directors. *Status:* Senate Bill 108 was signed into law on June 29, 1999. House Bill 243 was tabled on June 30, 1999. *Commission Action:* The Commission notified the new Division Director of Public Archives of the requirement to file within 14 days of being selected for the position and added him to the mailing list for synopses, etc. The Commission will continue to monitor House Bill 243 and if it passes will take the appropriate actions to notify the Cabinet Secretary and Division Directors of filing requirements.

House Resolution No. 4 provided for the permanent rules of the House of Representatives of the 140th General Assembly. Rule 16 of the Resolution, "Rules of Legislative Conduct" provides that House members shall not fail to comply with the financial

disclosure requirements of Chapter 58, title 29. **Amendment to House Resolution No. 4** was introduced to change the definition of “financial interest” in the House Rules. The purpose of the amendment was to have the House Rules incorporate the definition used in both the Legislative Conflicts of Interest Law, 29 *Del. C.* § 1004, and the State Code of Conduct, 29 *Del. C.* § 5805(c). **Status:** The Resolution and the amendment were passed by the House on March 16, 1999. **Commission Action:** None required.

House Bill 302 amended the financial disclosure to change the title of the “Director of the Administrative Office of the Courts” to “State Court Administrator.” **Status:** Signed into law on July 20, 1999. **Commission Action:** The only action required was the ministerial action of changing the Commission’s financial disclosure mailing list to reflect the new title.

(3) Legislation Pertaining to the Lobbying Law

Senate Bill No. 15 was introduced on January 21, 1999. It prohibits State entities which are “bodies corporate and politic” created by the State or a political subdivision from hiring or contracting with lobbyists. This legislation had been introduced in the 139th General Assembly but no action was taken. The legislation, rather than amending the lobbying statute (title 29, chapter 58), is being placed in title 29, Chapter 6, which is for “Miscellaneous Provisions.” It states that for purposes of the legislation “Lobbyist” means “any person who would be required to furnish a written authority to act ...with the Public Integrity Commission under Subchapter IV of Chapter 58 of Title 29.” **Status:** Referred to the Senate Executive Committee. **Commission Action:** The Commission will monitor the legislation because if passed, it could require the Commission to interpret whether an individual would be a “lobbyist” under Subchapter IV, Chapter 58, Title 29.

House Resolution No. 4 includes Rule 54 dealing with lobbyists' registration. It provides that lobbyists shall be registered by the PIC pursuant to Chapter 58, title 29 and that no lobbyist shall be granted privilege of the floor unless so registered. *Status:* Passed by the House March 16, 1999. *Commission Action:* By statute, the Commission is to maintain a lobbyist docket and promptly furnish copies to the Chief Clerk of the House of Representatives, the Secretary of the Senate, the Governor and the head of any agency upon request of such persons. 29 Del. C. § 5832. Thus, in implementing its rules, if the House needs information on whether an individual is registered, the Commission has it available at its office. Additionally, the Commission worked with Legislative Council to put the list of the General Assembly's website.

Reapportionment Commission legislation was introduced in both the House and Senate to establish a commission to accomplish the task of reapportionment following the 2000 and future censuses. *S.B. No. 79 and H.B. 154.* Both bills provide that persons who are or have been registered as a lobbyists within two years prior to selection cannot qualify as members. It also prohibits them from registering as a lobbyist while a member or employee of the commission or within two years of the effective date of the plan. *Status:* The Senate Bill was referred to the Senate Executive Committee. The House Bill was referred to Administration Committee. *Commission Action:* The Commission will continued to monitor the bills because if the legislation passes, it os expected that the Commission will be asked for information on whether the Reapportionment nominees are or have been lobbyists within the past two years, and insure that the 2 year post-committee restriction on registering

as lobbyists is observed. By statute, documents identifying lobbyists are maintained for four years, so the Commission anticipates that the necessary information will be available.

Senate Bill 205 amends the lobbying statute to require lobbyists to identify any members of the General Assembly or any State employees on whom the lobbyists expend \$15 dollars or more per day. At present, the amount is \$50 per day. *Status:* Referred to Senate Executive Committee. *Action:* We are monitoring the legislation and if passed, will make the required changes to the expenditure report forms; notify lobbyists of the change in the law, and any other action as required.

(4) Other Legislation Monitored by the Commission

House Bill No. 29 would create a Campaign Integrity Commission (CIC). If passed it would become a new subchapter to the chapter administered by the Public Integrity Commission, title 29, chapter 58). The CIC will be responsible for reviewing campaign statements which are believed to be misleading and/or inaccurate and can publicly censure those making such statements. Any resident will be able to submit a record of a candidate's statement to the State Election Commissioner, who will be responsible for contacting CIC members and disseminating the submission to them. There is no statutory language reflecting any role by Public Integrity Commission in administering this law. It is unclear why the legislation will be part of the Commission's chapter instead of Title 15, which deals with election laws, the responsibilities of the State Election Commissioner, and election campaigns. *Status:* The bill was referred to the House Administrative Committee. *Commission Action:* The Commission will continue to monitor the legislation.

F. Administrative Issues

(1) Report on Delaware Disclosure Law

The Center for Public Integrity, located in Washington, D.C., released what it termed an “exhaustive investigation of the ethics, conflict-of-interest, and financial disclosure laws that apply to more than 74, 000 state lawmakers nationwide. The findings were summarized in a State-by-State “report card” of conflict-of-interest rules of all 50 State legislatures, which was posted on the Internet. Delaware received 59 points out of a possible 100 points. *(Abstract of the Report on Delaware Attached - Appendix C.* According to the Center, this ranks Delaware financial disclosure law as number 26, among the 50 states. The Center concluded that this ranking put Delaware’s financial disclosure law in the “failing” category.

The Commission, in reviewing the report, noted that the ranking was based on information that was inconsistent with the actual requirements of the Delaware statute. For example, the report stated that Delaware does not require disclosure of real-property. However, the statute requires public officers to report “instruments of ownership” which includes “deeds,” in its definition. *See, 29 Del. C. § 5812(c).* Moreover, this Commission has held that if public officers have real-property which has a face value of more than \$5,000 or from which they receive annual income of more than \$5,000, then such real-estate holdings are to be reported. *Commission Ltr. Op., April 20, 1995.*

The Commission notified the Center that its report was based on information that was inconsistent with the statute and the Commission’s rulings. *(Ltr., Attached, Appendix D).* Subsequently, the Center changed the information and gave Delaware a “passing” grade on its financial disclosure law.

(2) Lobbyists' Expenditure Reports

Registered lobbyists are required to file expenditure reports on a quarterly basis, identifying the total amount of expenditures made on members of the General Assembly or State employees for such items as food, entertainment, travel, gifts, etc.

The filing for the last quarter of 1998 was due on January 20, 2000. Thirty-six (36) lobbyists did not file by the due date and were notified that, by statute, failure to file would result in a voluntary cancellation of their registration until the reports were filed. After the first notice, all but 14 of those lobbyists submitted reports. A second notice was sent to each of those 14 lobbyists by certified mail. In some instances the individuals indicated they were no longer lobbying, and in other instances some registrations were canceled. The total number of lobbyists deleted for those reasons was seven (7).

The second report to be filed in 1999 was due on April 20, 2000. Notification was made to 70 lobbyists that their report had not been received by the due date, and that, by law, failure to file could result in a voluntary cancellation of their registration. Following that notice, all but thirteen (13) of the lobbyists filed reports. Certified mail was sent to each of them as a second notice. After the period to respond passed, five (5) lobbyists were deleted from the registration list.

The third 1999 file was due on July 20, 1999. Thirty-five (35) lobbyists were sent a first notice of failure to file, with a second notice by certified mail sent to twelve (12) lobbyists. Two lobbyists were deleted from the registration files.

The final 1999 report was due on October 20, 1999. A first notice of failure to file was sent to fifty-two (52) lobbyists. Fourteen (14) lobbyists received a second, certified mail, notice. Seven lobbyist were deleted from the registration files.

(3) Personnel Issues

As previously noted, the Commission's administrative assistant, Marguerite Rothermel, notified the Commission in late 1999 that she would be retiring from State service. The Commission requested that the opening be announced, and Administrative Services obtained a certification list so the Commission can interview qualified candidates.

(4) Relocation of Public Integrity Commission

As indicated in last year's annual report, Administrative Services notified the Commission that it would be moving to the Margaret O'Neill Building. Originally, it was anticipated that the move would occur in 1999. However, the moving date was set for February 15, 2000. Because that date is the day on which financial disclosure reports are to be filed with the Commission, it asked that the date be changed to February 24, 2000. The Commission's new mailing address will be:

Margaret O'Neill Building
410 Federal Street, Suite 3
Dover, DE 19901

(5) Computer Upgrade - Year 2000 or Y2K Compliance

During 1999, the Commission contacted the various contacted software vendors which are responsible for products used by the Commission to ascertain if the software was Y2K compliant. All of the software, except the Commission's word processing program was identified as complying. After the Commission order an updated word processing program, Administrative Service's computer specialists ran Y2K compliance test, and no Y2K problems occurred with the change over to the year 2000.

IV. Funding

For Fiscal Year 2000, the Commission requested \$155,000, which was the same amount appropriated in Fiscal Year 1999. The General Assembly appropriated a total of \$158,400 for the Commission's FY 2000 budget. The appropriated increase of \$3,400 reflected the increase in personnel costs as a result of a Statewide pay increase. Of that total, \$118.0 was for salaries and Other Employment Costs (OEC) 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 operating costs have remained the same for the past five (5) fiscal years. The Commission is seeking the same amount of appropriations, \$158.4 in its Fiscal Year 2001 budget request.

V. Future Goals

In the coming year, the Commission intends to continue emphasizing its responsibility to educate State employees, officers, officials and local officials covered by the State Code of Conduct and financial disclosure laws. It has already scheduled training for a number of agencies. It intends to try to also make its publications available on the Internet, and that process is nearing completion. It will then explore whether it would benefit State employees to also have the materials on the State's Intranet. As the Commission continues publishing hardcopy summaries of its opinions on an annual basis, it will also update its Internet site.