



ATTORNEYS AT LAW

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Ethics for Local Government Officials and Volunteers Local Government Workshop

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May 29, 2019

Agenda



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OVERVIEW LEGAL PERSPECTIVE

- Appearances Matter
- Seek Guidance from an Ethics Officer or JCOPE

TODAY'S GOAL

- Sensitize you to legal issues associated with ethics
- Position you to address those legal issues

Public Officers Law § 74

The Code of Ethics



Intent Covers Actual and Appearance

- The Code of Ethics is intended to prevent you from using your State **job and official position to benefit yourself** or someone else.
- The Code of Ethics not only addresses actual conflicts of interest, but also the **appearance of such conflicts** when performing your State job.

Public Officers Law § 74

The Code of Ethics



The General Rule: Public Officers Law § 74(2)

- New York State officers and employees and Legislative members and employees shall not...
- **“have any interest**, financial or otherwise, direct or indirect, **or engage in any business** or transaction or professional activity or incur any obligation of any nature, which is in **substantial conflict** with the proper discharge of his (or her) duties in the public interest.”

Public Officers Law § 74

The Code of Ethics



Who Does The Code of Ethics Apply To?

- **Officers and employees of any State agency, department, division, board, commission,** or any public benefit corporation or public authority at least one of whose members is appointed by the Governor, including *unpaid and per diem officers and members of such entities.*
- Legislative members and employees
- Officers and employees of Foundations

Public Officers Law § 74

The Code of Ethics

Standards of Conduct

- The Code of Ethics contains nine standards of conduct. Each standard examines the types of conflicts that State officers and employees are prohibited from engaging in while in State service.



Public Officers Law § 74

The Code of Ethics

Standards of Conduct - Impartiality

- Maintaining independent judgement with respect to your State job.



Public Officers Law § 74

The Code of Ethics

Standards of Conduct - Confidentiality

- Understanding the types of information that may be shared with colleagues and members of the public, as well as not disclosing sensitive information to benefit yourself or someone else.



**Confidentiality
of Personal Health
Information**

Public Officers Law § 74

The Code of Ethics

Standards of Conduct - Stewardship of State Resources

- Preventing you from securing unwarranted privileges or favors for yourself or others based on your State job and not utilizing the resources of the State for your own personal use.



Public Officers Law § 74

The Code of Ethics

Standards of Conduct – Financial Conflicts

- Abstaining from personal investments that conflict with your official duties, and avoiding transactions with any entity in which you may have a direct or indirect financial interest.



Public Officers Law § 74

The Code of Ethics

Standards of Conduct – Integrity Standards

- Avoiding situations in which it may appear you could be influenced or would attempt to influence someone else, and conducting yourself in a manner that does not raise suspicion among the public that you're personally benefitting from your official position.



Public Officers Law § 74

The Code of Ethics



Standards of Conduct – Business with the State

- As a State officer or employee, you are restricted from contracting for work and/or providing goods and services to entities that are licensed or regulated by your agency. Circumstances do exist that may allow you to concurrently work for both.

Public Officers Law § 74

The Code of Ethics

Standards of Conduct – Penalties

- **Public Officers Law § 74(3) (a), (b), (c), (d), (e), (g), and (i):**
- Civil penalty of up to \$10,000 and the value of any gift, compensation or benefit received as a result of such violation.
- Violations of §§ 74(3)(f) and (h) carry no monetary civil penalty under the Public Officers Law; however, violators are still subject to disciplinary action by their agency, which may include a fine, garnishment, or termination from State employment.

PENALTY

Public Officers Law § 74

Reverse Two-Year Bar

Reverse Two-Year Bar

- The Commission interpreted Public Officers Law § 74 to contain this “reverse two-year bar” in Advisory Opinion Nos. 98-09 and 07-04.
- If you are entering State service from the private sector, the “reverse two-year bar” may, depending on the circumstances, require you to recuse from matters directly involving your former private sector employer for a two-year “cooling off” period.



Public Officers Law § 74

Reverse Two-Year Bar



Reverse Two-Year Bar

- In practice, the “reverse two-year bar” prevents the appearance that you, in performing your State duties, may give preferential treatment to, or be unduly influenced by, your former private sector employer.
- If your Ethics Officer or JCOPE determines that recusal is appropriate, it runs for two years from the date that you terminated employment with the private sector employer.

Public Officers Law § 74

Negotiations of Future Employment

Future Employment

- As a State officer or employee, there are restrictions on when and if you may negotiate future employment with an entity or individual that has a specific matter pending before you.



Public Officers Law § 74

Negotiations of Future Employment



Future Employment

- If you receive an unsolicited job offer from an entity or individual that has a specific matter pending before you, or if you are interested in soliciting an employment opportunity with such an entity or individual, you may pursue an employment opportunity only after waiting 30 days from:
 - 1. The date the matter before you closed; or
 - 2. The date on which you notified your supervisor and Ethics Officer of your intent to pursue a job offer and recused yourself from the matter and any further contact with the entity or individual.

Public Officers Law § 74

Negotiations of Future Employment



Future Employment

- You have a duty to promptly notify your supervisor and Ethics Officer if you receive an unsolicited job offer or if you intend to solicit a job offer from an entity or individual that has a specific matter pending before you.
- Depending on the circumstances, failure to follow these requirements could result in a violation of Public Officers Law § 74 of the Code of Ethics and/or the gift restrictions found in Public Officers Law § 73(5), since the promise of future employment can be seen as a gift.

Public Officers Law § 73



Who does Public Officers Law § 73 apply to?

- Statewide elected officials
- Legislative members and employees
- Officers and employees of NYS departments, boards, bureaus, divisions, commissions, councils, or other State agencies (**other than unpaid and per diem officers of such boards, commissions, or councils*)
- Members, directors, and employees of NYS public authorities and public benefit corporations (**other than unpaid and per diem members and directors of such entities*)

Public Officers Law § 73



- Outside Activities
- Restrictions on Political Activities
- Nepotism
- Gifts
- Honorarium
- Official Activity Expense Payments (Travel)
- Post-employment Restrictions

Public Officers Law § 73

Outside Activities

What?

- An outside activity is any interest or activity not related to your State employment. An activity may be an occupation, whether paid or unpaid, membership on a board, or volunteer work, etc. An outside activity occurs outside of your regular work hours and without utilizing any government resources.



Public Officers Law § 73 Outside Activities



The Question?

- Evaluate whether the intended outside activity is appropriate under the rules of Public Officers Law § 73; and
- Is not a conflict of interest under the rules of Public Officers Law § 74.

Public Officers Law § 73

Outside Activities



Approval Requirements

- In general, the approval process is based on how much you anticipate earning through your intended outside activity.
- Less than \$1,000 approval not required, but must give written notice before commencing service
- Greater than \$1,000 requires Agency approval
- Greater than \$5,000 requires Agency approval followed by JCOPE approval.

Public Officers Law § 73

Restrictions on Political Activities



Policy Makers

- Policy Makers, *including those in an unpaid or per diem position*, are prohibited from serving as an officer of any political party or political organization. A political organization does not include campaign or fundraising committees. 19 NYCRR Part 932.4(a)
- Policy Makers, *including those in an unpaid or per diem position*, are prohibited from serving as a member of any political party committee. This prohibition covers, for example, serving as a political party district leader or a member of the national committee of a political party. 19 NYCRR Part 932.4(b)

Public Officers Law § 73 Restrictions – Paragraph (4)

State Employees Who Own Their Own Business

- No State officer or employee shall sell any goods or services having a value in excess of \$25 to **any** State agency unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding.



Public Officers Law § 73

Restrictions – Paragraph (7)



Rendering Services for the State

- If you are interested in pursuing an outside activity before any State agency that includes any of the following, you **may not be paid or receive compensation** in any form.
 - The purchase, sale, rental, or lease of real property, or goods or services;
 - Any proceeding relating to rate making;
 - The adoption or repeal of any rule or regulation having the force and effect of law;
 - The obtaining of grants of money or loans;
 - Licensing or permitting; or
 - Any proceeding relating to a franchise provided for in the Public Service Law.

Public Officers Law § 73 Restrictions – Paragraph (7-a)

Restrictions on Influencing Legislation

- Covered persons are prohibited from receiving any compensation, in whatever form, for the rendering of consulting, representation, advisory, or other services in connection with any proposed or pending bill or resolution in the Senate or Assembly.



Public Officers Law § 73

Nepotism

Relative - § 73(1)(m)

- Any person living in the same household as the covered individual or any person who is a direct descendant of that covered individual's grandparents or the spouse of such descendant.



Public Officers Law § 73

Nepotism

Decision - § 73(14)

- State employees are banned from participating in any decision to hire, promote, discipline, or discharge a relative

DECISIONS

Public Officers Law § 73

Nepotism

Contracts - § 73(15)

- State employees are prohibited from awarding contracts to a relative or investing public funds in any security in which a relative has a financial interest.



Public Officers Law § 73

Gifts

What is a Gift?

- Anything of more than “nominal value.”
- “Nominal Value” is not specifically defined. The Commission will generally consider something that has **a fair market value of \$15 or less** to be of nominal value.
- A Gift includes, but is not limited to, money, services, loans, travel, lodging, meals, refreshments, entertainment, forbearance, or a promise having a monetary value.



What is an Interested Source?

- Is regulated by or appears before you or your agency
- Has contracts with, or seeks contracts with, you or your agency
- Is a registered lobbyist or client of a lobbyist that lobbies your agency
- Is the spouse or the minor child of a registered lobbyist or client of a lobbyist that lobbies your agency
- Is involved in ongoing litigation that is adverse to you or your agency
- Has received or applied for funds from your agency at any time during the previous year up to and including the date of the proposed or actual receipt of the gift
- Attempts to influence you or your agency in an official action

Public Officers Law § 73

Gifts

Allowable Gifts - may not violate § 74

- Awards or plaques in recognition of public service;
- Honorary degrees;
- Promotional items with no resale value;
- Discounts available to the general public, or a broad segment thereof, *e.g.*, wireless providers offer discounts to all government employees.



Public Officers Law § 73

Gifts



Allowable Gifts - may not violate § 74 (cont)

- Gifts from those with whom there is a demonstrated familial or personal relationship such that it is clear that the relationship is not being used as a pretext to give an otherwise impermissible gift;
- Contributions reportable under the Election Law;
- Meals and beverages provided to participants at professional and educational programs;
- Local travel payments for tours related to one's official activity; and
- Food or beverage valued at \$15 or less per event.

Public Officers Law § 73 Gifts

Complimentary Attendance – Charitable Event

- **Bona Fide Charitable Event** – event's primary purpose must be to provide financial support to an organization that is either registered as a charity with the Attorney General's Office (unless exempt) or qualified under section 501(c)(3) of the Internal Revenue Code.



Public Officers Law § 73 Gifts

Complimentary Attendance – Political Event

- **Bona Fide Political Event** – event's primary purpose must be to provide financial support to a political organization or a candidate for public office (as defined in the Public Officers Law).



Public Officers Law § 73 Honorarium

What is it?

- An honorarium is a payment or other form of compensation that is offered in exchange for a professional service or activity that is not part of your official duties. Examples include: giving a speech, writing an article, or serving on a panel at a seminar or conference.
- An honorarium may include expenses incurred for travel, lodging, and meals related to the service performed.



Honorarium

www.emmasaying.com

Public Officers Law § 73 Honorarium



Approval

- Request for approval must be submitted in writing to your agency Ethics Officer or other designated person **before** performing the service or activity. Statewide elected officials and State agency heads (including Civil Department Heads) must submit an approval request to JCOPE.

Public Officers Law § 73 Honorarium



Restrictions On

- State personnel, equipment, and time are not used in preparing the service for which an honorarium is offered.
- No State funds are used to pay the Covered Person's attendance, registration, travel, lodging, or meal expenses.
- If the service is to be performed during the Covered Person's official work day, he or she must charge accrued leave (other than sick leave) to perform such service.

Public Officers Law § 73 Honorarium



Restrictions On, continued

- If the honorarium is offered by or on behalf of an Interested Source, it may only be accepted if it is unreasonable to infer that the honorarium was intended or expected to influence the covered person, or intended as a reward.
- The Ethics Officer/approving authority determines that the offeror is not being used to conceal that the honorarium is actually offered or paid by an Interested Source; and
- Neither performing the service or activity for which the honorarium is offered nor accepting the honorarium violates Public Officers Law § 74.

Public Officers Law § 73 Official Activity Expense Payments

Travel Expenses

- A Covered Person may accept payment or reimbursement from third parties for travel and other expenses for an activity that **is part of, and related to**, his or her State job duties, provided certain conditions are met.



Public Officers Law § 73

Official Activity Expense Payments



Approval of Travel Expenses

- Payments/reimbursements for official activity expenses must be approved by the approving authority:
 - For a State officer or employee, submit a request for approval in writing to the agency's Ethics Officer or other designated person.
 - For statewide elected officials and State agency heads, submit request to JCOPE.

Public Officers Law § 73 Official Activity Expense Payments



Interested Source

- Payment or reimbursement from an “Interested Source” is ordinarily impermissible.

Public Officers Law § 73

Post-employment Restrictions

Revolving Door

- Post-employment restrictions, also known as the “revolving door” restrictions, apply to all State officers and employees subject to Public Officers Law § 73.
- Post-employment restrictions also apply to part-time and seasonal employees.
- Types of Restrictions - Two Year Bar and the Lifetime.



Public Officers Law § 73

Post-employment Restrictions

Two-Year Bar: § 73(8)(a)(i)

- The two-year bar creates a "cooling off" period to prevent the appearance that you could inappropriately influence your former agency.
- The two-year bar contains two restrictions, both of which apply for two years immediately following your separation from State service.



Public Officers Law § 73

Post-employment Restrictions



Appearance/Practice Prohibition

- You may not appear or practice before your former agency. This prohibition applies to both paid and unpaid work. Including:
 - negotiating a contract with a former agency;
 - submitting a grant proposal or application to a former agency; and
 - representing a client in an audit before a former agency.

Public Officers Law § 73

Post-employment Restrictions

Backroom Services Prohibition

- You are prohibited from being paid to perform certain services on behalf of a client that are in relation to a matter before your former agency, even if those activities do not involve appearing or practicing before your former agency.
- This prohibition applies only to paid work. Including:
 - Preparing documents; and
 - Assisting another who will appear.



Public Officers Law § 73

Post-employment Restrictions



Lifetime Bar: § 73(8)(a)(ii)

- No person who has served as a State officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any State agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration.

Public Officers Law § 73

Post-employment Restrictions

What you need to know.

- If you participated in a specific case, proceeding, application, or transaction while in State service:
 - If the same matter is before any New York State agency, you cannot ever participate regardless of compensation.
 - If the same matter is not before a New York State agency, you may perform services on the same matter provided you receive no compensation.



Public Officers Law §§ 73 AND 74



Additional Sources

- JCOPE Plain Language Guide to the Public Officers Law and Other Related Ethics Laws – September 2018
- <https://jcope.ny.gov/system/files/documents/2018/10/jcope-plain-language-guide-ethics-law-91018.pdf>
- Public Officers Law – 2016 Edition
- <https://jcope.ny.gov/sites/g/files/oe746/files/documents/2017/10/2016-public-officers-law-state-officers-and-employees.pdf>



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*Thank
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