

Pennsylvania State Ethics Commission

*Promoting
public confidence
in government*



2007 Annual Report



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INTRODUCTION

“No man who is corrupt, no man who condones corruption in others, can possibly do his duty by the community.”

— Theodore Roosevelt

Those words once again rang true when, as a response to the widely publicized corruption headlines of the 1970s, the Pennsylvania General Assembly passed the first Pennsylvania Public Official and Employee Ethics Act, Act 170 of 1978, which primarily became effective on January 1, 1979. Since that time the Act was amended and reenacted in 1989 and again in 1998. Despite minor alterations to the Act, throughout its nearly 30-year history the Ethics Commission has continued to enforce the fundamental belief that “public office is a public trust” and that any effort to realize personal financial gain through ones public office is a violation of that trust.

The Ethics Commission is an independent state agency charged with the responsibility of enforcing the Ethics Act, which also carries the responsibility of rendering prospective advisory opinions regarding the Act; enforcing the Act as it relates to Financial Interests Statement forms; filing, receiving, and reviewing Financial Interests Statement forms of persons required to file; investigating alleged violations of the Ethics Act—as well as alleged violations of the Lobbying Disclosure Act regarding registration—and issuing decisions in relation to said investigations.

Most recently the Ethics Commission was charged with the responsibility of generating a public listing of all state, county, municipal, and other government positions meeting the definition of “executive-level” public official and/or public employee pursuant to the Pennsylvania Race Horse Development and Gaming Act—a testament to the Commission’s primary mission of foster-

ing public accountability and greater transparency in government.

In carrying out the prescribed duties of the Ethics Act, the Commission is authorized to hold hearings, take testimony, issue subpoenas, and compel the attendance of witnesses. Although the Commission is relatively small compared to other agencies—it nonetheless takes great care in exercising its authority and ensuring the provisions of the Act are upheld.

In order to keep the public abreast with the Commission’s actions, each year at least two public hearings are held, allowing for input from citizens and organizations subject to the provisions of the Ethics Act. Additionally, by publication of this annual report, special reports, educational materials, and through the conducting of educational seminars, the Commission attempts to further the purposes of the Act—instilling faith of the government in the people.

Contained within the pages of this annual report is information concerning the Commissioners and staff of the Ethics Commission, as well as information regarding the operations of the Commission. Additionally, reports regarding the activities of the Commission over the last year can be found, including information about the Commission’s duties, statistics regarding investigations and compliance efforts, changes in the law affecting the Ethics Commission, as well as information regarding recent Commission activities such as the Commission’s involvement with COGEL and NORCOL—two professional associations dedicated to governmental ethics, of which the Commission belongs.

Therefore in accordance with the provisions of the Public Official and Employee Ethics Act, the Pennsylvania State Ethics Commission is proud to present its annual report for the year 2007.

ORGANIZATION AND STAFFING

CURRENT COMMISSIONERS

There are seven commissioners; one each appointed by the President Pro Tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House, and the Minority Leader of the House, and three appointed by the Governor only two of whom may be of the same political party. All are appointed without confirmation. Commissioners currently serving are:

Louis W. Fryman, Chair

Louis W. Fryman was appointed to the State Ethics Commission on March 9, 1998 by Robert C. Jubelirer, President Pro Tempore of the Senate. He was reappointed March 14, 2001, and was elected Chair of the Commission May 2, 2002.

Mr. Fryman is chairman emeritus of the law firm of Fox Rothschild LLP and has served the community in many leadership capacities in professional, social, and educational positions. Mr. Fryman was a Regent of the American College of Trial Lawyers. He is the past president of the Philadelphia Bar Foundation and

The Lawyers’ Club of Philadelphia and recipient of the Bar Association’s prestigious Obermayer Award for his contribution to education. Mr. Fryman was a commissioner for Lower Merion Township, past president of the Big Brothers/Big Sisters Association of Philadelphia, and now serves on the National Board of the Big Brothers/Big Sisters of America, and was the recipient of its Berwind Lifetime Achievement Award. Mr. Fryman has also been recognized by the State of Israel Bonds with their Heritage Award and has received the Learned Hand Award, presented by the American Jewish Committee, as well as the Villanova Alumni Award for Public Service. Mr. Fryman was president of the Board of the Walnut Street Theatre in Philadelphia, past president of the Pennsylvania Jewish Coalition, past chairman of the Episcopal Academy Board of Trustees, was appointed by then-Governor Ridge to the Judicial Advisory Commission and was appointed by then-Mayor Rendell to the Philadelphia Refinancing Task Force. Mr. Fryman also serves on the boards of the Jewish Community Centers, Main Line Health System, and The Lankenau Hospital Foundation.

John J. Bolger, Vice Chair

John J. Bolger was appointed to the State Ethics Commission on October 2, 1998 by the Honorable Thomas J. Ridge, Governor of the Commonwealth of Pennsylvania, and reappointed by the Honorable Mark Schweiker, Governor of the Commonwealth of Pennsylvania, on March 25, 2002. Mr. Bolger was elected Vice Chair on May 2, 2002.

Mr. Bolger, who is currently retired, served for 28 years with the Pennsylvania Bankers Association in various positions including director of Public Affairs, vice president for Governmental Affairs, and vice president, secretary, and chief administrative officer. Mr. Bolger has also been involved in numerous civic activities including the Holy Spirit Hospital Fund Raising Campaign, the Hospice of Central Pennsylvania, the American Heart Association Jail Bond Program, the Allied Arts Fund Raising Campaign, the United Way Campaign where he served as coordinator, and as a board member of the Harrisburg Rotary Club.

Professionally, Mr. Bolger served as the past president of the Pennsylvania Society of Association Executives. He was named as the Notre Dame Club “Man of the Year” and also served as the past president of the Notre Dame Club of the Harrisburg Area. Mr. Bolger is a graduate of the University of Notre Dame where he received a Bachelor of Science degree in Business Administration.

In 2001, Mr. Bolger received the Award of Excellence from the Pennsylvania Alliance for Association Advancement (PA 3) for his outstanding commitment to profession, service, and community.

Donald M. McCurdy, Commissioner

Donald M. McCurdy was appointed to the Pennsylvania State Ethics Commission on February 22, 2001 by the Speaker of the House, Matthew Ryan.

Mr. McCurdy, an attorney from Springfield, Pennsylvania, is a member of the Delaware County Court, the Pennsylvania Supreme Court, and the U.S. Supreme Court. He is a graduate of Dickinson College and Dickinson School of Law, Carlisle, Pennsylvania. Mr. McCurdy served as the Special Assistant Deputy Attorney General for the Commonwealth of Pennsylvania from 1963 to 1966. Mr. McCurdy was also a Member of the State House of Representatives, 165th District, from 1967 through 1974.

Mr. McCurdy served in active duty as a helicopter pilot for the United States Navy from 1955–1959. He is a retired Commander USNR with 27 years of service.

Paul M. Henry, Commissioner

Paul M. Henry was appointed as a member of the State Ethics Commission on August 27, 2003 by the Honorable Edward G. Rendell, Governor of the Commonwealth of Pennsylvania.

Mr. Henry currently serves as Senior Vice President and Manager of Sales and Trading at Arthurs Lestrangle & Co., Inc. in Pittsburgh, Pennsylvania. Mr. Henry entered the securities business in 1963, after graduating from the University of Pittsburgh. He started his career with the First National Bank of Chicago, spending several years in the Midwest before returning to Pittsburgh to join A.E. Masten and Co.

Over the next 40 years, his career has included tenure with several regional investment banking firms, including two firms that

Mr. Henry owned. Mr. Henry was the youngest general partner at Singer Dean & Scribner, a NYSE firm, which merged with Butcher & Sherred to become Butcher & Singer. Mr. Henry was President of Henry Kearns Municipals and West Penn Municipals. Both firms were actively involved in the distribution of tax exempt municipals and were major market makers in Pennsylvania municipals.

Throughout his career, he has been the leading distributor and underwriter of Pennsylvania municipal bonds and is acknowledged by his peers as the foremost authority in this area.

Mr. Henry is licensed as General Securities Principal, a Financial Operations Principal, and a General Securities Representative.

Mr. Henry has served as the President of the Pennsylvania Bond Club and the Pennsylvania Association of Municipal Traders. He currently is a member of the Stock and Bond Club of Pittsburgh and the Western Pennsylvania Securities Industry Association. He is a former member of Shawnee, a national municipal bond organization. He is a member of FOCA and St. Nicholas Orthodox Church. He is married to Helen Billak and has three daughters and one son.

Raquel Kennedy Bergen, Commissioner

Raquel Kennedy Bergen was appointed as a member of the State Ethics Commission on March 3, 2004, by the Honorable Edward G. Rendell, Governor of the Commonwealth of Pennsylvania.

Raquel Kennedy Bergen, Ph.D. is an associate professor and chair of the Department of Sociology at St. Joseph’s University in Philadelphia, Pennsylvania. She graduated from St. Joseph’s University with a B.S. in Sociology in 1989 and she received her Ph.D. from the University of Pennsylvania in 1994. She has been a member of the faculty at St. Joseph’s University since 1993. Her area of expertise is the Sociology of Gender and specifically, the sociological study of violence against women. She is the author of several scholarly publications and books, including *Wife Rape: Understanding the Response of Survivors and Service Providers*, and *Issues in Intimate Violence*. With Claire Renzetti and Jeff Edleson, she edited *Sourcebook on Violence Against Women* and the forthcoming anthology, *Violence Against Women: Classic Statements*, to be published by Allyn and Bacon. As a result of her research on violence against women, Dr. Bergen was awarded the McShain Chair in Ethics from St. Joseph’s University for 2002–2004.

Dr. Bergen has been involved in various forms of service at St. Joseph’s University. She has served as a member of the Faculty Senate, University College, Gender Studies Committee, the Board of Rank and Tenure, and the Institutional Review Board, and she served as the Chair of the Sexual Harassment Panel. For the past 11 years, she has been the faculty moderator for REPP (the Rape Education Prevention Program) at St. Joseph’s University. This group is responsible for providing educational programs on sexual assault and crisis counseling for survivors of sexual violence within the community. Dr. Bergen volunteers as a crisis counselor for battered and sexually-abused women, and her current work is on sexual violence against women during pregnancy.

Nicholas A. Colafella, Commissioner

Nicholas A. Colafella, Ph.D. was appointed as a member of the State Ethics Commission on December 27, 2004, by the Honor-

able H. William DeWeese, Minority Leader of the Pennsylvania House of Representatives.

Dr. Colafella was a member of the Pennsylvania House of Representatives from 1981 to 2002, serving the 15th Legislative District (Beaver County). As a member of the House of Representatives, Dr. Colafella served as the Democratic Chairman of the House Insurance Committee (1992–1998), and the House Education Committee (1999).

During this time period, Dr. Colafella also served as a member of the Board of Directors of the Pennsylvania Higher Education Assistance Agency, the Pennsylvania State Board of Education, the Council of Higher Education, and the State Board of Vocational Education. From 1969 until 1980, Dr. Colafella served as the Dean of Continuing Education and Community Service for the Community College of Beaver County as well as its Director of Evening Education. He also served as a Business instructor at the same institution, and previously served as a high school Business teacher at Center High School and Northwestern High School.

In 1992, Dr. Colafella was recognized as the Outstanding Legislator of the Year by the College and University Public Relations Association of Pennsylvania, and also was named Man of the Year in 1982 by the Upper Beaver Valley Jaycees.

Dr. Colafella has devoted substantial efforts towards community involvement, including his service as chairman of the Beaver County Drug and Alcohol Commission, the University of Pittsburgh Medical Center Beaver Valley Hospital Advisory Committee, board member of the Pennsylvania State University Beaver Campus Advisory Committee, and the Beaver County Mental Health and Mental Retardation Agency.

From 1956 to 1958, he served in the United States Navy. He received his Ph.D. from the University of Pittsburgh, where he published his dissertation entitled *A Study of Voluntary Support for Pennsylvania Community Colleges*. He received his Masters of Arts in Education from Duquesne University and his Bachelor of Sciences in Education from Youngstown State University.

The Reverend Scott R. Pilarz, S.J., Ph.D., Commissioner

The Reverend Scott R. Pilarz, S.J., Ph.D. was appointed to the State Ethics Commission May 17, 2005, by the Honorable Robert J. Mellow, Democratic Leader of the Pennsylvania State Senate.

Reverend Pilarz entered the Society of Jesus in 1981 and was ordained a priest in 1992. He received his Bachelor's degree in English from Georgetown University and a Master's degree in Philosophy from Fordham University. He received Master's degrees in divinity and theology from the Weston School of Theology, Cambridge, Massachusetts.

He went on to earn a Ph.D. in English at the City University of New York, and his dissertation, *Sacerdotal Self-Fashioning: Priesthood in the Poetry of Robert Southwell, S.J. and John Donne*, won the 1997 CUNY Alumni Achievement Prize for Dissertation Excellence.

While a student at Weston, Father Pilarz served as a lecturer in the Philosophy Department of Ss. Peter & Paul Seminary and the University of Ibadan, Nigeria. While completing doctoral studies, he was appointed to the English faculty of St. Joseph's University in 1994. In 1996, he joined the Georgetown faculty as an assistant professor of English. In 2002, he was appointed interim University Chaplain.

Father Pilarz was recognized by the Georgetown Alumni Association in 2002 with the William Gaston Award for Outstanding Service and was chosen by the graduating class of 1999 to receive the Edward B. Bunn, S.J. Award for Faculty Excellence, which recognizes outstanding teaching and service.

Father Pilarz serves on the boards of Boston College; Loyola University Chicago; the Scranton Preparatory School; and Camden Catholic High School, Cherry Hill, New Jersey, from which he graduated. His professional memberships include the John Donne Society, the Renaissance Society of America, the Shakespeare Association of America, the Medieval and Renaissance Drama Society, the Polish Institute of Arts and Sciences of America, and the Modern Language Association.

Father Pilarz has served as a member of The University of Scranton's Board of Trustees since 2000. In April 2003, The University of Scranton's Board of Trustees completed a national search and announced the selection of Father Pilarz as the next President. He became the 24th President of The University of Scranton July 1, 2003.

STAFF

EXECUTIVE DIVISION

John J. Contino, Executive Director

Robert P. Caruso, Deputy Executive Director/Director of Investigations

Claire J. Hershberger, Executive Secretary

OFFICE OF CHIEF COUNSEL

Robin M. Hittie, Chief Counsel

Martin W. Harter, Senior Assistant Counsel

Mary Fox, Assistant Counsel

Alecia Peddigree, Secretarial Support

ADMINISTRATIVE DIVISION

Cynthia A. Lynch, Director for Administration

Sean M. Firestine, IT Generalist

Helen Johns, Clerk Typist

Stanley G. Weaver, Clerk Typist

Esther Torres Rivera, Clerk Typist

INVESTIGATIVE DIVISION (HEADQUARTERS)

Brian D. Jacisin, Assistant Counsel

Katherine Testa, Assistant Counsel

Daniel M. Bender, Special Investigator

Gregory Curran, Special Investigator

Jennifer Kunkle, Special Investigator

Jonathan Millinder, Special Investigator

Jody Zeiders, Secretarial Support

INVESTIGATIVE DIVISION (WESTERN REGIONAL OFFICE)

Jason P. Bricker, Supervising Investigator

Daniel Cali, Special Investigator

Tamara Lefcowitz, Special Investigator

Janet E. Payne, Secretarial Support

COMMISSION MEMBER AND EMPLOYEE RESTRICTIONS

The Ethics Law places certain obligations upon the Commission and staff members. No individual while a member or employee of the Commission, shall:

1. hold or campaign for any other public office.
2. hold office in any political party or political committee.
3. actively participate in or contribute to any political campaign.
4. directly or indirectly attempt to influence any decision by a governmental body, other than a court of law or as a representative of the Commission on a matter within the jurisdiction of the Commission.
5. be employed by the Commonwealth or a political subdivision in any other capacity whether or not for compensation.
6. no member of the Commission shall have served as an officer in a political party for one year prior to appointment.

The State Ethics Commission has also implemented an internal Code of Conduct to govern the members of the Commission. That code is set forth later in this report as part of the Commission's regulations.

ADDRESSES AND TELEPHONE NUMBERS

The Commission is located in **Room 309 Finance Building, Commonwealth Avenue and North Street, Harrisburg.** The

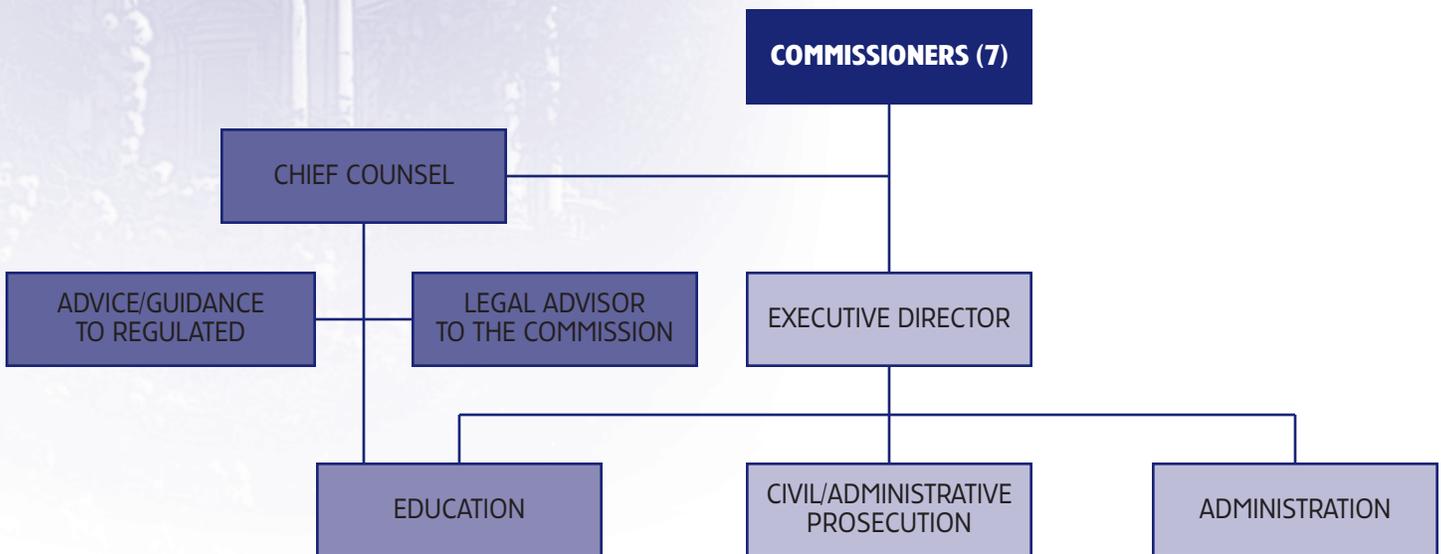
office is open from **8 a.m. to 5 p.m., Monday through Friday.** Mail should be addressed to the **Pennsylvania State Ethics Commission, Room 309 Finance Building, P.O. Box 11470, Harrisburg, Pennsylvania 17108-1470.** Members of the staff may be reached at **(717) 783-1610.** The fax number is **(717) 787-0806.**

The Commission also maintains a **Pittsburgh Regional Office, located at 1 Forestwood Drive, Suite 102, Pittsburgh, Pennsylvania 15237.** Members of the staff may be reached at **(412) 635-2816.** The fax number is **(412) 635-2818.**

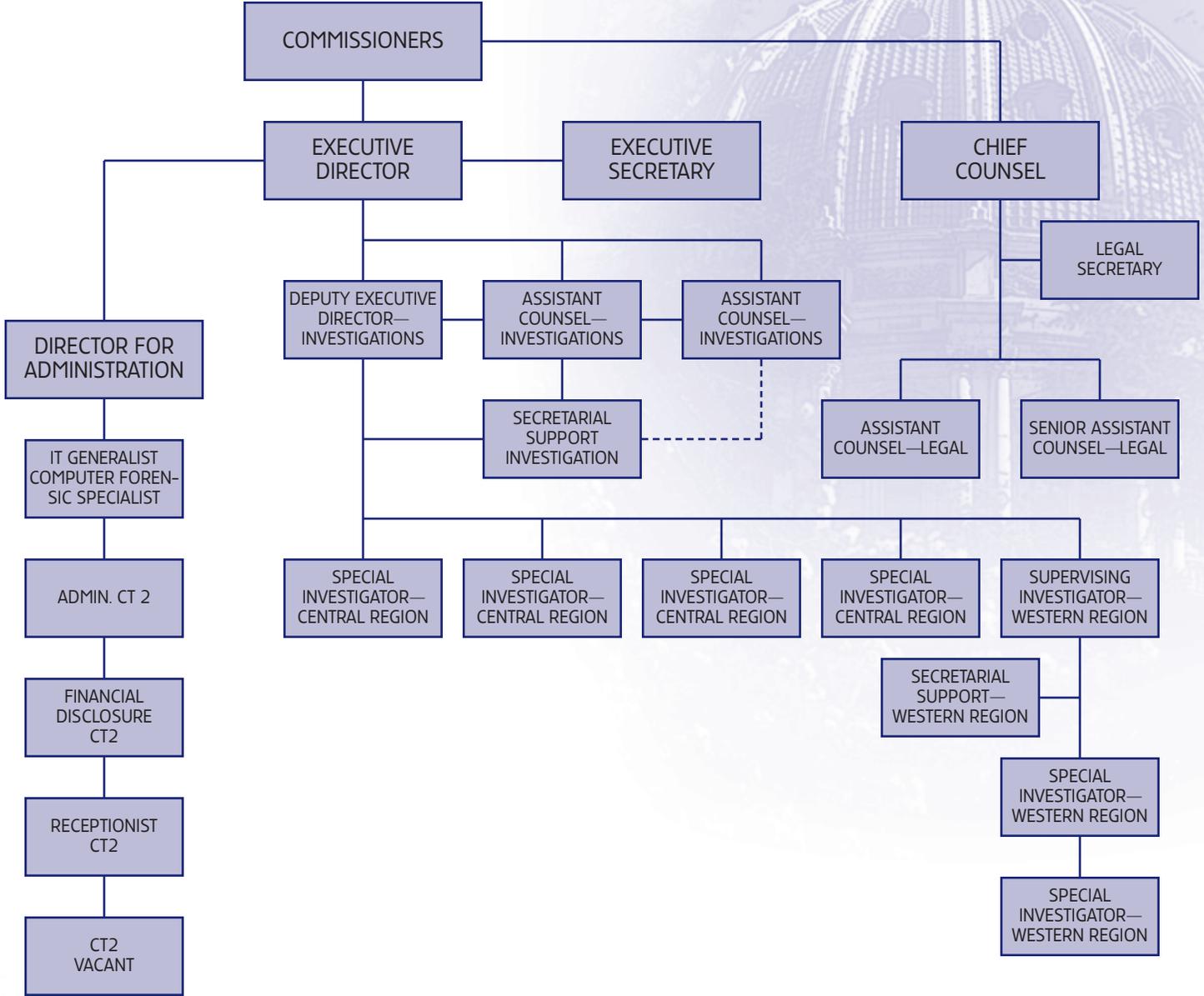
The Commission's Home Page on the Worldwide Web is located at **www.ethics.state.pa.us.** The Commission's e-mail address is **ethics@state.pa.us.**

A toll-free line is available for candidates, public officials, public employees, and citizens who have questions about the Act. The number is **800-932-0936.**

For information on filing and inspections of Statements of Financial Interests, ask for Esther Torres Rivera, Stanley Weaver or Helen Johns.



**PENNSYLVANIA STATE
ETHICS COMMISSION
ORGANIZATIONAL CHART**



BUDGET

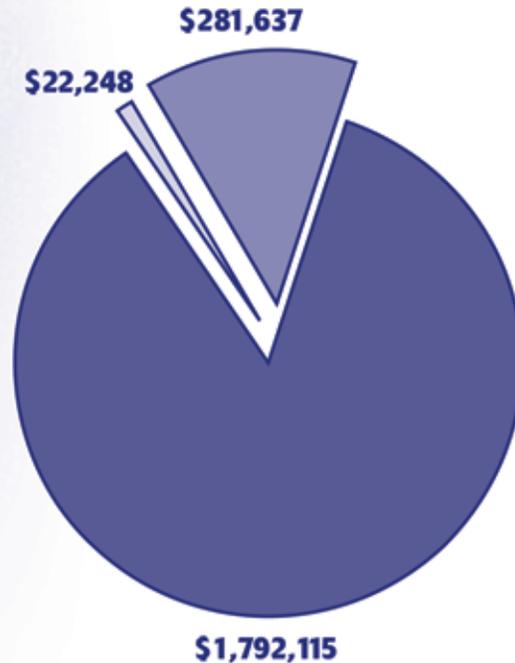
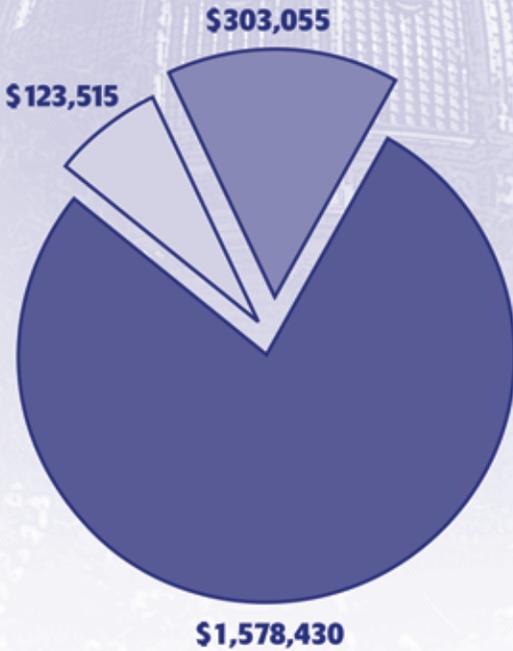
TWO-YEAR BUDGET ANALYSIS

Appropriation 2006–2007

Employee salaries and benefits	\$ 1,578,430
Miscellaneous personnel services*	\$ 123,515
Agency operations	\$ 303,055
Total	\$ 2,005,000

Appropriation 2007–2008

Employee salaries and benefits	\$ 1,792,115
Miscellaneous personnel services*	\$ 22,248
Agency operations	\$ 281,637
Total	\$ 2,096,000



* Miscellaneous personnel services includes Commissioner Per Diems, Training, Conference Fees, and Leave Pay-Outs.

STATEMENT OF PURPOSE AND GOALS

The Preamble to the Public Official and Employee Ethics Law sets forth the legislative intent that generated the enactment of the Law. That Section of the Law provides as follows:

Section 1. Purpose

(a) The legislature hereby declares that public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust. In order to strengthen the faith and confidence of the people of the State in their government, the Legislature further declares that the people have a right to be assured that the financial interests of holders of or nominees or candidates for public office do not conflict with the public trust. Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this act shall be liberally construed to promote complete financial disclosure as specified in this act. Furthermore, it is recognized that clear guidelines are needed in order to guide public officials and employees in their

actions. Thus, the General Assembly by this act intends to define as clearly as possible those areas which represent conflict with the public trust. 65 Pa.C.S. §1101.

- (b) It is recognized that many public officials, including most local officials and members of the General Assembly, are citizen-officials who bring to their public office the knowledge and concerns of ordinary citizens and taxpayers. They should not be discouraged from maintaining their contacts with their community through their occupations and professions. Thus, in order to foster maximum compliance with its terms, this act shall be administered in a manner that emphasizes guidance to public officials and public employees regarding the ethical standards established by this act. 65 Pa.C.S. §1101.
- (c) It is the intent of the General Assembly that this act be administered by an independent commission composed of members who are cognizant of the responsibilities and burdens of public officials and employees and who have demonstrated an interest in promoting public confidence in government.

In an effort to effectuate this mandate and fulfill the statutory duties and responsibilities delegated to the Commission the following precepts are intended to be the operative methods of accomplishing these goals:

1. To provide guidance to public officials and public employees in plain and simple language and in an expeditious manner regarding the provisions of the Ethics Law and their duties and responsibilities thereunder.
2. To offer information, guidance, and direction on issues within the Commission's jurisdictional mandate to any public official, public employee or other person seeking such, and in those instances not within the Commission's jurisdiction, to offer alternative sources of such information, guidance and direction.
3. To conduct the affairs of the Commission in an open and public manner within the parameters of the Ethics Law so as

to afford all citizens of the Commonwealth of Pennsylvania with a public accounting of the Commission's activities.

4. To afford all individuals subject to the Commission's jurisdiction or appearing before the Commission due process of law in the review and adjudication of matters coming before the Commission.
5. To independently and in an apolitical manner evaluate, interpret, and decide issues arising under the law.
6. To provide continuing educational services to public officials, public employees, and citizens of Pennsylvania regarding the provisions of the law and the decisions of the State Ethics Commission.
7. To abide by the highest standard of conduct in carrying out the mandates of the Public Official and Employee Ethics Law.

POWERS AND DUTIES

The powers and duties of the State Ethics Commission are statutorily mandated in Section 7 of the State Ethics Act. These requirements of the law have been delineated in furtherance of the stated purpose of the Act; "to strengthen the faith and the confidence of the people of the State in their government." While the Commission duties as outlined below are a condensed version of those in the Act, they serve to depict the parameters of the Commission's jurisdiction.

- Render prospective advisory opinions to present or former public officials and public employees, their appointing authority or employer regarding such individual's duties and responsibilities under the Ethics Law.
- Receive and review Statements of Financial Interests of persons required to file; inspect such statements to ascertain whether any reporting person has failed to file such statement or has filed a deficient statement.
- Prescribe forms for filing.
- Accept and file information voluntarily supplied that exceeds the requirements of the Law.

- Preserve statements and reports filed with the Commission for a period of five years.
- Make statements available for public inspection and copying.
- Maintain a master index of statements filed with the Commission.
- Instruct other state and local agencies in the maintenance of systems which facilitate public access to such statements.
- Investigate alleged violations of the Ethics Law and issue decisions in relation to said investigations.
- Prepare and publish an annual report, prepare and publish special reports, educational materials, and technical studies to further the purposes of the Law.
- Hold hearings, take testimony, issue subpoenas, and compel the attendance of witnesses.
- Prescribe rules and regulations to implement the provisions of the Ethics Law. (See 51 PA. Code §1.1 et seq.)
- Hold at least two public hearings each year to seek input from persons and organizations who represent individuals subject to the Ethics Law.

RESTRICTED ACTIVITIES

The Public Official and Employees Ethics Law provides certain restricted activities in which public officials and employees may not engage. These restrictions provide the basis upon which Commission rulings are issued.

- (a) No public official or public employee shall engage in conduct that constitutes a conflict of interest. A conflict of interest is defined as use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employ-

ment for the private pecuniary benefit of himself, a member of his immediate family, or a business with which he or a member of his immediate family is associated. "Conflict" or "conflict of interest" does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation, or other group which includes the public official or public employee, a member or his immediate family, or a business with which he or a member of his immediate family is associated.

- (b) No person shall offer or give to a public official, public employee, or nominee or candidate for public office or a member of his immediate family or a business with which he is associated, anything of monetary value, including a gift, loan, political contribution, reward, or promise of future employment based on the offeror's or donor's understanding that the vote, official action, or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.
- (c) No public official, public employee, or nominee or candidate for public office shall solicit or accept, anything of monetary value, including a gift, loan, political contribution, reward, or promise of future employment based on any understanding of that public official, public employee, or nominee that the vote, official action, or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.
- (d) (1) No public official or public employee shall accept an honorarium.
- (e) (1) No person shall solicit or accept a severance payment or anything of monetary value contingent upon the assumption or acceptance of public office or employment.
- (2) This subsection shall not prohibit:
 - (i) Payments received pursuant to an employment agreement in existence prior to the time a person becomes a candidate or is notified by a member of a transition team, a search committee, or a person with appointive power that he is under consideration for public office or makes application for public employment
 - (ii) Receipt of a salary, fees, severance payment, or proceeds resulting from the sale of a person's interest in a corporation, professional corporation, partnership, or other entity resulting from termination or withdrawal therefrom upon the assumption or acceptance of public office or employment.
- (3) Payments made or received pursuant to paragraph (2)(i) and (ii) shall not be based on the agreement, written or otherwise, that the vote or official action of the prospective public official or employee would be influenced thereby.
- (f) No public official or public employee or his spouse or child or any business in which the person or his spouse or child is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official or public employee is associated, unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract. Any contract or subcontract made in violation of this subsection shall be voidable by a court of competent jurisdiction if the suit is commenced within 90 days of the making of the contract or subcontract.
- (g) No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.
- (h) No person shall use for any commercial purpose information copied from Statements of Financial Interests required by this act or from lists compiled from such statements.
- (i) No former executive-level state employee may for a period of two years from the time that he terminates his state employment be employed by, receive compensation from, assist, or act in a representative capacity for a business or corporation that he actively participates in recruiting to the Commonwealth of Pennsylvania or that he actively participated in inducing to open a new plant, facility, or branch in the Commonwealth or that he actively participated in inducing to expand an existent plant or facility within the Commonwealth, provided that the above prohibition shall be invoked only when the recruitment or inducement is accomplished by a grant or loan of money from the Commonwealth to the business or corporation recruited or induced to expand.
- (j) Where voting conflicts are not otherwise addressed by the Constitution of Pennsylvania or by any law, rule, regulation, order, or ordinance, the following procedure shall be employed. Any public official or public employee, who in the discharge of his official duties, would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever a governing body would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of approval unattainable, then such members shall be permitted to vote if disclosures are made as otherwise provided herein. In the case of a three-member governing body of a political subdivision, where one member has abstained from voting as a result of a conflict of interest, and the remaining two members of the governing body have cast opposing votes, the member who has abstained shall be permitted to vote to break the tie vote if disclosure is made as otherwise provided herein.

FREQUENTLY ASKED QUESTIONS

PURPOSE OF THE ETHICS ACT

- Q:** What is the purpose of the Ethics Act?
- A:** The Pennsylvania Public Official and Employee Ethics Act was enacted to strengthen the faith and confidence of the people of the Commonwealth in their government. In promulgating the Ethics Act, the Legislature declared that public office is a public trust, and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust. The Legislature further declared that the people have a right to be assured that the financial interests of holders of, or nominees or candidates for, public office do not conflict with the public trust. The Legislature stated that because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, the Ethics Act is to be liberally construed to promote complete financial disclosure as specified by the Act. See, 65 Pa.C.S. § 1101.1(a).

JURISDICTION

- Q:** Does the State Ethics Commission have jurisdiction over judicial officers or judicial employees?
- A:** No. The Supreme Court of Pennsylvania has exclusive jurisdiction over judicial officers and judicial employees. *L.J.S. v. State Ethics Commission*, 744 A.2d 798 (Pa. Cmwlth. 2000); *Billette*, Opinion 00-005.
- Q:** Substantively, what does the Ethics Act include?
- A:** The Ethics Act includes both requirements and restrictions/prohibitions. The Ethics Act imposes affirmative duties and responsibilities upon public officials, public employees, candidates, and nominees with regard to the filing of financial disclosure statements. Additionally, the Ethics Act restricts/prohibits certain types of conduct that violate the public trust.
- Q:** If a judge presiding over a case is biased resulting in an unfair trial, may a complaint against the judge be filed with the State Ethics Commission?
- A:** No. The State Ethics Commission has no jurisdiction over judges or members of the judicial system, including district justices. Contact the Judicial Conduct Board at 717-234-7911. If the matter involves a district justice, call the President Judge of the Court of Common Pleas in your county.
- Q:** If a private attorney fails to represent a client properly by failing to keep the client apprised of the status of the case, charging an excessive fee, disclosing confidential information related to the client's representation, or representing another client whose interests are directly adverse, will the State Ethics Commission investigate the attorney?
- A:** No. The State Ethics Commission has no jurisdiction over the conduct of attorneys engaged in the private practice of law. Contact the Disciplinary Board of the Supreme Court at 215-560-6296 (Philadelphia); 610-270-1896 (Blue Bell); 717-731-7083 (Lemoyne); or 412-565-3173 (Pittsburgh).
- Q:** Will the State Ethics Commission enforce or interpret the Rules

of Professional Conduct as they apply to private attorneys?

- A:** No. Your inquiry may be directed to the Ethics Committee of the Pennsylvania Bar Association or by calling the PBA Ethics Hotline at 717-238-6715 or 800-932-0311, Ext. 2214.
- Q:** Does the State Ethics Commission investigate the conduct of professionals such as accountants, architects, barbers/hairdressers, dentists, physicians, nurses, psychologists, optometrists, veterinarians, realtors, and pharmacists?
- A:** No. Contact the Department of State Bureau of Professional and Occupational Affairs at 800-822-2113.
- Q:** If someone is fired because of race/gender/age/religion/disability, will the State Ethics Commission investigate the matter?
- A:** No. The State Ethics Commission has no jurisdiction over termination/discharge matters involving discrimination, prejudice and bias. Such matters are handled by the Pennsylvania Human Relations Commission, which also handles housing questions and workplace questions involving discrimination, prejudice, and bias. Contact the PHRC at 717-787-4410 and a private attorney.
- Q:** Who investigates violations of the Sunshine Act?
- A:** Questions and concerns about violations of the Sunshine Act should be directed to the county district attorney.
- Q:** If local officials discuss and vote upon matters not on the agenda, and refuse to hear public comment, may a complaint against the local officials be filed with the State Ethics Commission?
- A:** The State Ethics Commission does not have jurisdiction over matters involving the conduct of government meetings. A private attorney can provide legal assistance in such matters.
- Q:** Does the State Ethics Commission oversee staff members, correctional officers and administrators at State Correctional Institutions with regard to inmate grievances, applications for pre-release, and other matters related to incarceration?
- A:** No.
- Q:** If private property was condemned through eminent domain proceedings, is there any recourse through the State Ethics Commission?
- A:** A private attorney can provide legal guidance. The State Ethics Commission has no jurisdiction over such property disputes.
- Q:** Does the State Ethics Commission have jurisdiction to review court actions pertaining to divorce, child/spousal support, and custody involving court appointed custody evaluators, domestic relations conciliators, hearing officers, and judges?
- A:** No. The State Ethics Commission has no jurisdiction over such matters. A private attorney would be able to provide legal guidance.

ADVISORIES UNDER THE ETHICS ACT

- Q:** What is an "advisory" issued under the Ethics Act?
- A:** An advisory answers hypothetical questions under the Ethics Act. An advisory is issued in response to a written request

received by the State Ethics Commission. Pursuant to Sections 1107(10) and 1107(11) of the Ethics Act, 65 Pa.C.S. §§ 1107(10), (11), an advisory is issued to the requester based upon the facts that the requester has submitted. In issuing the advisory based upon the facts that the requester has submitted, the Commission does not engage in an independent investigation of the facts, nor does it speculate as to facts that have not been submitted. It is the burden of the requester to truthfully disclose all of the material facts relevant to the inquiry. 65 Pa.C.S. §§ 1107(10), (11). An advisory only affords a defense to the extent the requester has truthfully disclosed all of the material facts.

Advisories take two forms: Advices of Counsel, which are issued by the Chief Counsel for the Commission, and Opinions of the State Ethics Commission, which are issued by the Commission itself.

Q: Will the State Ethics Commission issue advisories as to past conduct?

A: No. It is clear from the statutory provisions that authorize the issuance of advisories that such may only be issued as to conduct that has not yet occurred. See, 65 Pa.C.S. §§ 1107(10), (11). See, *Hofrichter*; Opinion 98-003. Past conduct is reviewed by the Commission through investigative proceedings, where it is alleged that the person whose conduct is in question has already taken action in violation of the Ethics Act. Investigative proceedings are conducted pursuant to Section 1108 of the Ethics Act, 65 Pa.C.S. § 1108.

Q: How do “advisories” differ from investigative proceedings under the Ethics Act?

A: An advisory is issued in response to a request and answers hypothetical questions under the Ethics Act regarding possible future conduct. An advisory affords certain defenses to the subject of the advisory as long as all of the material facts have been disclosed truthfully and the subject of the advisory has acted in reliance on the advisory.

In contrast, investigative proceedings review past conduct. Investigative proceedings are initiated based upon allegations that a person has already taken action in violation of the Ethics Act. Investigative proceedings are conducted pursuant to Section 1108 of the Ethics Act, 65 Pa.C.S. § 1108. Investigative proceedings are adversarial, with the Commission determining the facts from evidence such as documents and witness testimony.

Q: Are State Ethics Commission advisories subject to appeal?

A: Advices of Chief Counsel may be appealed to the full Commission.

As for Opinions of the Commission, Section 1108(i) of the Ethics Act states that a Commission Opinion or Order that becomes final may be appealed “in accordance with law and general rules.” 65 Pa.C.S. § 1108(i). There is case law holding that the State Ethics Commission’s advisory Opinions are not subject to appeal because they do not involve an actual controversy between the parties. *Suehr v. State Ethics Commission*, 651 A.2d 648 (Pa. Cmwlth. 1994), *alloc. den.*, 541 Pa. 647, 663 A.2d 697 (1995). However, more recent case law estab-

lishes that at least some Opinions may be appealed. *Shaulis v. State Ethics Commission*, 574 Pa. 680, 833 A.2d 123 (2003).

SECTION 1103(a) CONFLICT OF INTEREST

Q: When a public official’s/public employee’s official action on a matter would result in a financial *detriment* rather than a private pecuniary benefit for the public official/public employee, a member of his immediate family, or a business with which he or a member of his immediate family is associated, would the requisite elements exist to establish a violation of Section 1103(a) of the Ethics Act?

A: No. A violation of Section 1103(a) of the Ethics Act is established by a use of the authority of the public position or confidential information received by being in the public position for the “private pecuniary benefit” of the public official/public employee himself, a member of his immediate family, or a business with which he or a member of his immediate family is associated. 65 Pa.C.S. § 1102 (definition of “conflict” or “conflict of interest”). Where official action would result in a financial detriment and not a “private pecuniary benefit” falling within the parameters of the Section 1103(a) prohibition, Section 1103(a) of the Ethics Act would not prohibit such official action by the public official/public employee. See, *e.g.*, *Gornish*, Advice 05-604.

Q: What is a conflict of interest under the Ethics Act?

A: Under the Ethics Act, a conflict of interest is the use of the authority of public office/employment or confidential information received by holding such a public position for the private pecuniary benefit of the public official/public employee himself, any member of his immediate family, or a business with which he or a member of his immediate family is associated. 65 Pa.C.S. §§ 1102, 1103(a). The term, “business with which he is associated” is defined as “Any business in which the person or a member of the person’s immediate family is a director, officer, owner, employee or has a financial interest. 65 Pa.C.S. § 1102.

Q: Is the particular position of employment of a public official or immediate family member material to the determination of a conflict as to a matter the employer has before the governmental body of the public official?

A: No. *Rubenstein*, Opinion 01-007.

Q: May a public official with a conflict of interest avoid the conflict by delegating his authority to a subordinate?

A: Unless there is a pre-existing mechanism in place specifying how and by whom the public official’s authority is to be exercised in the event of a conflict, the public official’s delegation of such authority to a subordinate is itself a use of authority of office establishing the first element of a conflict of interest. See, *Confidential Opinion*, 02-004.

Q: When a public official/public employee serves in multiple capacities in which he is subject to the Ethics Act, is he restricted from using information to which he has direct and immediate access in one such position to gain an advantage in performing work for compensation in another?

A: Yes. See, *Riley*, Opinion 00-008.

Q: Absent a statutorily declared incompatibility, are there circumstances under which a public official/public employee would have an inherent conflict under the Ethics Act that would prohibit him or her from holding two public positions simultaneously?

A: Yes.

The General Assembly has the constitutional power to declare by law which offices are incompatible, Pa. Const. Art. 6, §2. However, even when there does not appear to be any statutorily declared incompatibility that would preclude simultaneous service in the positions in question, when simultaneous service places the public official/public employee in a continual state of conflict, such as when in one position he is accounting to himself in the other position on a continual basis, there is an inherent conflict making it impossible, as a practical matter, for the public official/public employee to function in the conflicting positions without running afoul of Section 1103(a) of the Ethics Act. See, *McCain*, Opinion 02-009.

Q: What does the 1-year revolving door provision of the Ethics Act prohibit?

A: Substantively, the 1-year revolving door provision of the Ethics Act, Section 1103(g), provides that no former public official/public employee may represent a person, with promised or actual compensation, before the governmental body with which he has been associated for one year after he leaves that body. 65 Pa.C.S. § 1103(g). The term “person” is broadly defined to include individuals, various forms of entities, and governmental bodies. 65 Pa.C.S. § 1102. The term “represent” is also broadly defined to prohibit acting on behalf of any person in *any* activity. *Id.*

However, Section 1103(g) only restricts the former public official/public employee with regard to representation before his former governmental body. The former public official/public employee is not restricted as to representation before other agencies or entities.

Q: When a public employee retires from the Commonwealth of Pennsylvania, is the period of applicability of the revolving door provision at Section 1103(g) of the Ethics Act impacted if the retiree returns to work under the 95-day emergency return-to-state-service provision which allows annuitants to work up to 95 days per fiscal year?

A: Yes.

The revolving door provision at Section 1103(g) of the Ethics Act generally applies for one year after the former public official/public employee leaves his public position. 65 Pa.C.S. § 1103(g). But when a former public employee who is an annuitant returns to State service under the 95-day emergency provision (see, 71 Pa.C.S. § 5706(A.1)), he becomes a “public employee” again. *McGlathery*, Opinion 00-004. Following completion of such service, the one-year period of applicability of Section 1103(g) would begin anew. The restrictions of Section 1103(g) would apply for a full one-year period each time the individual would become a former public employee. *Id.*

Q: Is it permissible under the Ethics Act for public officials and public employees to use data or other information to which

they have access in their public positions for private business purposes?

A: Only if the data/information is publicly available AND the public official’s or public employee’s access is no more financially favorable/advantageous than the access available to the general public.

With regard to confidential information, the Ethics Act expressly prohibits the use of confidential information received as a public official/public employee for a private pecuniary benefit. 65 Pa.C.S. § 1103(a); 65 Pa.C.S. § 1102 (definition of “conflict” or “conflict of interest.”) Recently, in *Herron*, Order 1399, the State Ethics Commission held that the Director of Finance for the City of Erie violated Section 1103(a) of the Ethics Act when he retained confidential information obtained in his public position relative to earned income tax (EIT) collections by the City as well as certain EIT-related work product of City vendors, which information he then used for private business purposes upon leaving City employment.

As for the use of public information, the State Ethics Commission has stated that as a general rule, the Ethics Act was not enacted nor should it be interpreted to preclude a public official/public employee from receiving a benefit otherwise available to him as a citizen. See, *Riley*, Opinion 00-008; *cf.*, *Confidential Opinion*, 03-007; *Woodring*, Opinion 90-001. However, concerns may arise under the Ethics Act if a public official’s or public employee’s access to public information occurs in a financially more favorable or advantageous manner than the access available to others.

In *Riley*, Opinion 00-008, *supra*, the State Ethics Commission determined that a county warrant enforcement bureau administrator who also served as a deputy constable would have a conflict of interest under Section 1103(a) of the Ethics Act with respect to serving county warrants for compensation. As county warrant enforcement bureau administrator, this individual controlled the release of certain relevant information that other constables could not obtain independently, and he also had instant access to all of the county’s outstanding warrants. The Commission concluded that because serving as the county warrant enforcement bureau administrator would give this individual a financial advantage over other constables in serving the county’s warrants, he would have a conflict of interest under Section 1103(a) of the Ethics Act and could not serve the county’s warrants as a deputy constable for compensation.

Q: Can a conflict of interest arise for a public official or public employee regarding a person who, in a different capacity, has authority or control over the public official/public employee?

A: Yes. “Reciprocity of power” may form the basis for a conflict of interest under Section 1103(a) of the Public Official and Employee Ethics Act (“Ethics Act”), 65 Pa.C.S. § 1103(a), as illustrated by the following Opinions of the State Ethics Commission.

In *Confidential Opinion*, 05-004, issued June 17, 2005, the Commission held that a school director would have a conflict of interest pursuant to Section 1103(a) of the Ethics Act in matters pertaining to the appointment/employment of a mid-

dle school principal for the school district when one of the candidates for the position exercised some administrative authority and influence over the school director as to the latter's employment as a teacher in a different school district.

In *Elisco*, Opinion 00-003, the Commission held that where a city council member was an assistant principal and another city council member's spouse was a principal in a certain school district, both council members would have a conflict of interest with regard to voting to invest pension funds through an investment company and its sales representative who was a school director in that school district.

In *Woodring*, Opinion 90-001, where the chairman of a redevelopment authority had applied for a federal rehabilitation grant, and executive director of the redevelopment authority also served as the city community development coordinator with authority to administer the grant program for the city, review applications and determine eligibility, the Commission held, *inter alia*, that the chairman of the redevelopment authority would have a conflict of interest and would be required to abstain as to matters involving such individual if the chairman's grant application would be approved and he would receive benefits under the grant program.

In *Bassi*, Opinion 86-007-R, the Commission held that a county commissioner could not enter into a lease with a municipal authority where one of the members of the authority was a county employee directly responsible to the commissioners of the county, unless the execution of the lease was accomplished after an open and public process with the authority member abstaining from participating in the review and award of the lease and the county commissioner abstaining from participating in any matter relating to the authority member in his position as a county employee.

In each instance of a conflict of interest, the public official/public employee with the conflict is required to abstain from participation and to fully satisfy the disclosure requirements of Section 1103(j) of the Ethics Act.

SECTION 1103(j) VOTING CONFLICT EXCEPTIONS

Q: Under what conditions would a public official with a conflict of interest under the Ethics Act be permitted to vote despite the conflict?

A: There are only two "voting conflict exceptions" recognized by the Ethics Act. They are set forth in the portion of Section 1103(j) that is italicized below:

§1103. Restricted activities

(j) **Voting conflict.**—Where voting conflicts are not otherwise addressed by the Constitution of Pennsylvania or by any law, rule, regulation, order or ordinance, the following procedure shall be employed. Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, *provided that whenever a governing body would*

be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of approval unattainable, then such members shall be permitted to vote if disclosures are made as otherwise provided herein. In the case of a three-member governing body of a political subdivision, where one member has abstained from voting as a result of a conflict of interest and the remaining two members of the governing body have cast opposing votes, the member who has abstained shall be permitted to vote to break the tie vote if disclosure is made as otherwise provided herein.

65 Pa.C.S. § 1103(j) (Emphasis added).

The exception for breaking a tie vote despite a conflict is available exclusively to members of *three-member* governing bodies who first abstain and disclose their conflicts as required by Section 1103(j) of the Ethics Act. The only exception that enables a member of another board to vote despite a conflict requires that the following conditions be met: (1) the board must be *unable* to take any action on the matter before it *because the number of members required to abstain from voting under the provisions of the Ethics Act makes the majority or other legally required vote of approval unattainable*; and (2) prior to voting, such members with conflicts under the Ethics Act must disclose their conflicts as required by Section 1103(j). *Pavlovic*, Opinion 02-005.

SECTIONS 1104, 1105 STATEMENTS OF FINANCIAL INTERESTS

- Q:** If one or more political subdivisions would organize an entity, such as a non-profit corporation, to exercise a basic power of government or perform essential governmental functions, might the entity's board members and employees be considered "public officials" and "public employees" subject to the Ethics Act and Regulations of the State Ethics Commission, and particularly, the requirements for filing Statements of Financial Interests (SFIs)?
- A:** Yes. When one or more political subdivisions (such as, for example, counties, cities, boroughs, townships, school districts, or vocational schools) organize an entity, the newly organized entity is also a political subdivision as that term is defined in the Ethics Act and Commission Regulations. See, 65 Pa.C.S. § 1102; 51 Pa. Code § 11.1. An appointed official of a political subdivision, such as a board member, is a public official subject to the Ethics Act, Commission Regulations, and SFI filing requirements, unless the statutory exclusion for members of purely advisory boards is applicable. See, *Eiben*, Opinion 04-002; 65 Pa.C.S. § 1102 (definition of "public official"). As for employees, depending upon the authority of their respective positions, employees of a political subdivision might be considered "public employees" subject to the Ethics Act, Commission Regulations, and in particular, SFI filing requirements. *Id.* See, *Snyder*, Opinion 05-007 (non-profit 501(c)(3) foundation organized by school district to promote, enhance, and supplement school district programs); *Eiben*, *supra*, (charter school); *Gent*, Opinion 95-006-R (regional planning commission serving as an area loan organization).

Q: In light of the Commonwealth Court ruling in *C.P.C. v. State Ethics Commission*, 698 A.2d 155 (Pa. Cmwlth. 1997), *alloc. den.*, 550 Pa. 686, 704 A.2d 640 (1997), does a solicitor who is retained by as opposed to being an employee of a political subdivision still have to file Statements of Financial Interests pursuant to the Ethics Act?

A: Yes. Section 1104(a) of the Ethics Act provides as follows:
 § 1104. Statements of Financial Interests required to be filed
 (a) Public official or public employee.—Each public official of the Commonwealth shall file a Statement of Financial Interests for the preceding calendar year with the Commission no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Each public employee and public official of the Commonwealth shall file a Statement of Financial Interests for the preceding calendar year with the department, agency, body or bureau in which he is employed or to which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Any other public employee or public official shall file a Statement of Financial Interests with the governing authority of the political subdivision by which he is employed or within which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. *Persons who are full-time or part-time solicitors for political subdivisions are required to file under this section.*

65 Pa.C.S. § 1104(a) (Emphasis added).

Even before the *C.P.C.* case was decided, the State Ethics Commission recognized that the above requirement for all solicitors to file Statements of Financial Interests was specific and did not hinge upon the status of solicitors, that is, whether they would be within the definition of “public official” or “public employee.” See, *Campbell*, Order No. 1024 at 8.

In *Foster*, Opinion 98-002, the State Ethics Commission held that although, per *C.P.C.*, *supra*, the conflict of interest provisions of the Ethics Act do not apply to solicitors who are retained by, as opposed to being employees of, the governmental bodies they serve, all solicitors are required to file Statements of Financial Interests pursuant to Section 4(a), now Section 1104(a), of the Ethics Act, 65 Pa.C.S. § 1104(a). In 1999, in *P.J.S. v. State Ethics Commission*, 555 Pa. 149, 723 A.2d 174 (1999), the Supreme Court of Pennsylvania noted that the clear intent of the requirement that full-time or part-time solicitors file Statements of Financial Interests is to include solicitors who are not employees of the governmental units they serve. Therefore, all solicitors continue to be required to file Statements of Financial Interests providing full financial disclosure as required by Sections 1104 and 1105 of the Ethics Act.

Q: With regard to the filing of a Statement of Financial Interests (SFI) pursuant to the Ethics Act, is there any legal authority allowing a filer to list a work address rather than residence address at Block 2 of the FIS form?

A: Yes. In *Bodo*, Opinion 96-007, the Commission held that an office rather than personal residence address may be listed on

the SFI form. The Commission based this decision on Section 1105(b)(1) of the Ethics Act and the Commission Regulations at 51 Pa. Code § 17.1. These Sections require that the filer list his “address” but do not require that a personal residence address be listed.

Q: After a Statement of Financial Interests has been filed pursuant to the Ethics Act, may the filer withdraw it and replace it with another filing in order to correct errors or delete information that exceeds the requirements of the Act?

A: No. Statements of Financial Interests filed pursuant to the Ethics Act are public documents. The Ethics Act provides that all Statements of Financial Interests filed pursuant to the Ethics Act must be made available for public inspection and copying. 65 Pa.C.S. §§ 1104(e), 1107(6). Additionally, the Ethics Act specifically requires that the State Ethics Commission accept and file any information voluntarily supplied in excess of the Act’s requirements. 65 Pa.C.S. § 1107(4).

Erroneous forms may be amended through the filing of an additional form, but the original filing remains a publicly available document.

Given that a Statement of Financial Interests, once filed, may not be withdrawn, care should be exercised by the filer as to its contents.

The Ethics Act requires that Statements of Financial Interests be preserved by the recipient body/agency for a period of five years from the date of receipt. 65 Pa.C.S. § 1107(9).

Q: Has the State Ethics Commission taken any measures to alleviate the difficulties encountered by persons on active duty with the United States military as to compliance with the Statement of Financial Interests filing requirements of the Public Official and Employee Ethics Act (“Ethics Act”), 65 Pa.C.S. § 1101 *et seq.*, during wartime or post-war activities?

A: Yes. At its public meeting on April 4, 2003, the Commission adopted Resolution 03-001, which directs:

- (1) That enforcement of the requirements of the Ethics Act as to the filing of Statements of Financial Interests shall be deferred as to any person on active service with any branch of the United States military during wartime or post-war activities;
- (2) That the Chair in conjunction with the Executive Director of the Commission shall have full discretionary authority to defer such enforcement proceedings under the circumstances set forth in the Resolution based upon the review of such matters; and
- (3) That any deferral granted under the Resolution shall not extend beyond 90 days after the person required to file concludes active military service during wartime or post-war activities.

Q: In a 2005 edition of the *Newsletter*, it was noted that status as a “public employee” subject to the Ethics Act is determined by an objective test that applies statutory and regulatory definitions and criteria to the powers and duties of the position as established by objective sources, such as the job description, job classification specifications and organizational chart. What

is the outcome if the job classification specifications give broader authority than the job description, or vice versa? Also, is it possible for an individual's status to change, that is, for the individual to either become a "public employee" or to cease being a "public employee," solely as the result of changes to the job description or job classification specifications?

A: In response to the first question, it is sufficient to establish status as a public employee subject to the Ethics Act if one of the objective sources defining the powers and duties of the position establishes such status. This conclusion is based upon the fact that the objective test considers what an individual has the authority to do in a given position, rather than the variable functions that the individual may actually perform in that position. See, *Phillips v. State Ethics Commission*, 470 A.2d 659 (Pa. Cmwlth. 1984); *Shienvold*, Opinion 04-001; *Shearer*, Opinion 03-011. The Commonwealth Court of Pennsylvania has specifically considered and approved the State Ethics Commission's objective test and has directed that coverage under the Ethics Act be construed broadly and that exclusions under the Ethics Act be construed narrowly. See, *Phillips*, *supra*. Because the key factor is the authority ascribed to the position rather than the actual duties performed, it is sufficient if one of the objective sources includes authority establishing status as a "public employee" subject to the Ethics Act. Cf., *Buenaventura*, Opinion 06-005.

In response to the second question, the State Ethics Commission has noted that amendment of a job description may result in a change in status under the Ethics Act. *Spear*, Opinion 04-011 at 5. The same would be true as to amendment of job classification specifications.

Q: To what extent does Act 134 of 2006 amend the Ethics Act?

A: Act 134 of 2006 was signed into law on November 1, 2006. In addition to promulgating Pennsylvania's new lobbying disclosure law, 65 Pa.C.S. § 1301-A *et seq.*, (hereinafter "Lobbying Disclosure Law"), Act 134 of 2006 includes amendments to the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1101 *et seq.* These amendments took effect January 1, 2007. First, the "definitions" section (Section 1102) of the Ethics Act has been amended so that the Ethics Act will use the same definitions for the terms "gift" and "hospitality" that are used in the Lobbying Disclosure Law. The new definitions are as follows:

"Gift." Anything which is received without consideration of equal or greater value. The term shall not include a political contribution otherwise reportable as required by law or a commercially reasonable loan made in the ordinary course of business. The term shall not include hospitality, transportation or lodging.

"Hospitality." Includes all of the following:

- (1) Meals.
- (2) Beverages.
- (3) Recreation and entertainment.

The term shall not include gifts, transportation or lodging.

65 Pa.C.S. § 1303-A.

These new definitions make gifts, hospitality, and transportation/

lodging mutually exclusive categories, so that any given item may only be considered to fall within one of the categories. This change will eliminate questions that previously existed under the Ethics Act as to the differences between these categories and whether a single item could be subject to disclosure under more than one category.

An additional amendment modifies the financial reporting threshold for transportation, lodging or hospitality received in connection with public office or employment under Section 1105(b)(7) of the Ethics Act. Previously, disclosure had to be made if the amount involved exceeded \$650 per event. With the amendments, the threshold will no longer be a per event threshold, but rather, will be an aggregate amount per year like the gift threshold.

Q: I am a school district employee with duties that include recommending equipment purchases. I have been told that I must file Statements of Financial Interests pursuant to the Ethics Act. For school districts, isn't the filing requirement limited to school directors, superintendents and solicitors?

A: No. Although persons in the aforesaid positions certainly would be subject to the filing requirement—as would assistant superintendents, school business managers and principals—the filing requirement would not be limited to these positions. The Ethics Act provides that public officials, public employees, candidates, nominees, and full-time or part-time solicitors for political subdivisions must file Statements of Financial Interests. 65 Pa.C.S. § 1104. Status as a "public official" or "public employee" is determined by applying definitions and criteria set forth in the Ethics Act, 65 Pa.C.S. § 1101 *et seq.*, and State Ethics Commission Regulations, 51 Pa. Code § 11.1 *et seq.*

A public official is a person who is: (1) elected by the public; (2) elected or appointed by a governmental body; or (3) an appointed official in the executive, legislative or judicial branch of the Commonwealth or a political subdivision, such as a school district. *Muscalus*, Opinion 02-007; 65 Pa.C.S. § 1102. Members of purely advisory boards lacking authority to expend public funds other than reimbursement for personal expense or to otherwise exercise the power of the State or a political subdivision are excluded from the definition. 65 Pa.C.S. § 1102.

In order to be a "public employee" subject to the Ethics Act, an individual must: (1) stand in an employer-employee relationship with the Commonwealth or a political subdivision, such as a school district (*Ver Ellen*, Opinion 03-005); and (2) have responsibility for taking or recommending official, non-ministerial action with regard to contracting or procurement; administering or monitoring grants or subsidies; planning or zoning; inspecting, licensing, regulating, or auditing any person; or "any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person." 65 Pa.C.S. § 1102.

Status as a "public employee" subject to the Ethics Act is determined by an objective test. The objective test applies the statutory and regulatory definitions and criteria to the powers and duties of the position as established by objective sources,

such as the job description, job classification specifications, and organizational chart. Thus, the objective test considers what an individual has the authority to do in a given position, rather than the variable functions that the individual may actually perform in that position. *See, Phillips v. State Ethics Commission*, 470 A.2d 659 (Pa. Cmwlth. 1984); *Shienvold*, Opinion 04-001; *Shearer*, Opinion 03-011. The Commonwealth Court of Pennsylvania has specifically considered and approved the State Ethics Commission's objective test and has directed that coverage under the Ethics Act be construed broadly and that exclusions under the Ethics Act be construed narrowly. *See, Phillips, supra*.

Because status as a public employee is determined based upon duties and authority, rather than job titles, and because positions and duties may vary greatly from one school district to another, it is not feasible to create one listing of all school district positions subject to the filing requirement. Rather, the duties and authority of each position must be considered to determine status as a public employee.

An employee with duties including recommending equipment purchases would typically fall within the definition of "public employee" and would be subject to the requirements for filing Statements of Financial Interests.

- Q:** Is a judge who is a candidate for election to a judicial seat required to file the Statement of Financial Interests form required of candidates under Section 1104(b) of the Ethics Act?
- A:** Yes. The Commission addressed this question in *Darlington*, Opinion 07-011, issued June 13, 2007. Historically, incumbent judicial candidates had not been required to file the Statement of Financial Interests form pursuant to the Ethics Act. However, in light of the ruling in *In re: Nomination Petitions of James H. Owen*, 922 A.2d 973 (Pa. Cmwlth. 2007), the Commission held that members of the judiciary who are candidates, in conformance with Section 1104(b) of the Ethics

Act and the Regulations of the Commission, use the form promulgated by the Commission. The Commission made its ruling prospective, such that the application of the financial statement filing requirements to incumbent judges as candidates commenced effective for forms due to be filed July 1, 2007, or thereafter.

- Q:** With regard to the filing of a Statement of Financial Interests pursuant to Sections 1104 and 1105 of the Ethics Act, would Social Security benefits paid to a filer be considered "income" as that term is defined by the Ethics Act?
- A:** No. In *Quinn*, Opinion 07-014, the Commission held Social Security survivor benefits paid to a school director as the representative payee for his children upon the death of his spouse would be considered "governmentally mandated payments or benefits" excluded from the definition of "income" as set forth in Section 1102 of the Ethics Act. The Commission based this decision on the case of *In re: Nomination Petition of Benninghoff*, 578 Pa. 402, 852 A.2d 1182 (2004), wherein the Pennsylvania Supreme Court noted that benefits such as workers' compensation and unemployment compensation benefits, public assistance and the like would be examples of governmentally mandated benefits.

REMEDIAL MEASURES

- Q:** If a public official/public employee violates the Ethics Act, can he "undo" the violation through remedial measures?
- A:** No. The Commission has held that "remedial measures," such as to rescind a prior vote, do not "undo" or negate a violation if such has occurred (see, *Dovidio*, Order 1202; *Peters*, Order 1128; *Hofrichter*, Opinion No. 98-003-R), but may be considered as mitigating circumstances when the Commission considers the imposition of an appropriate penalty or referral for criminal prosecution (see, *Dovidio, supra*); see also, *Keller v. State Ethics Commission*, 860 A.2d 659 (Pa. Cmwlth. 2004).

FINANCIAL DISCLOSURE

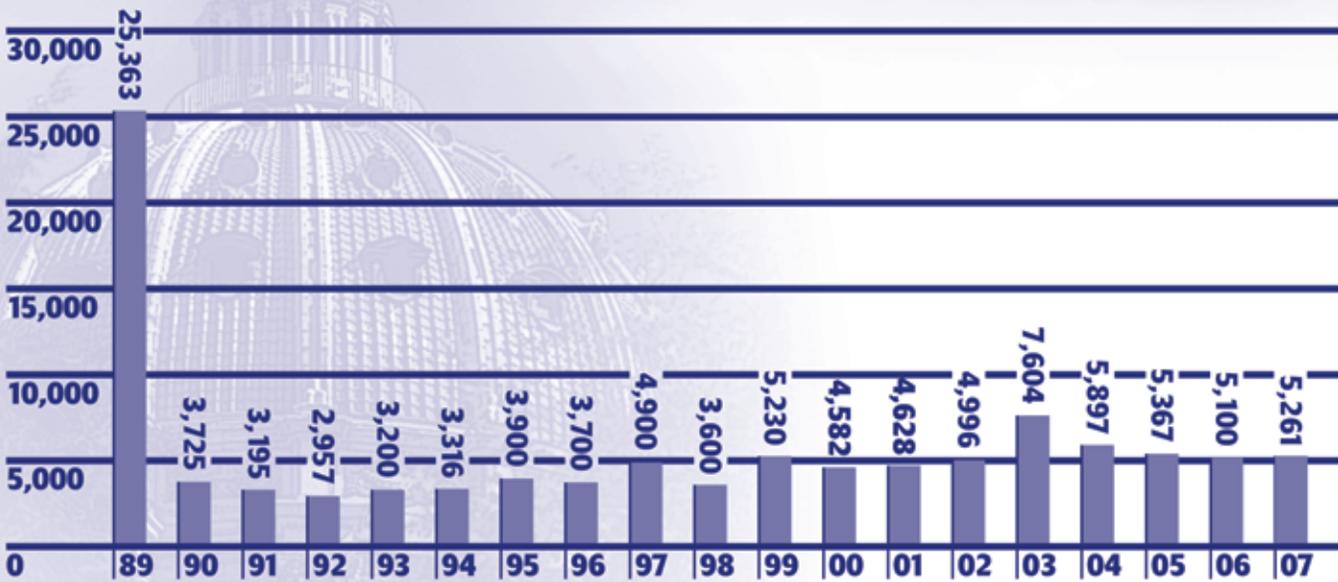
Section 4 of the Ethics Act requires that public officials, public employees, and candidates for public office file Statements of Financial Interests. Section 5 of the Act describes the information to be reported.

In preparation for the May 1, 2008 filing for calendar year 2007, the annual mailing of the Statements of Financial Interests was completed the first week in January 2008. More than 241,000 forms were mailed to 7,502 state, county, and local entities for distribution to public officials, public employees, and candidates required to comply with the State Ethics Act. Individuals who file with the State Ethics Commission are also required to file a Statement of Financial Interests with their respective governmental bodies. Local public officials and public employees file only with their county or local governmental body, and state employees file Statements of Financial Interests with their respective agencies.

Included with the mailings of the Statement of Financial Interests form was an instructional booklet that delineates and explains all of the filing requirements including who needs to file, when and where to file and how to complete the form.

More than 5,000 individuals filed Statements of Financial Interests with the State Ethics Commission for calendar year 2006 (filing year 2007). Of these filings, 344 were candidates for public office; 1,866 were constables and deputy constables; the remaining filings were by public officials such as members of the legislature, cabinet members, deputy secretaries, members of state boards and commissions, and other individuals who filed voluntarily. Since Statements of Financial Interests filed with the State Ethics Commission are public documents, as they are received they are scanned into the Commission's document management system and are subsequently posted to the Commission's web site in the e-Library.

STATEMENTS OF FINANCIAL INTERESTS



CIVIL CITATIONS

Pursuant to Section 7(5) of the Public Official and Employee Ethics Law, the State Ethics Commission, upon discovery that an individual who is required to file a Statement of Financial Interests in accordance with the law has either failed to file said Statement or has filed a Statement that is deficient, shall notify the individual of the failure or deficiency.

Information regarding deficient and delinquent Statements of Financial Interests is provided to the Commission via letters received from the public as well as Compliance Reviews performed by staff members of the Commission’s Investigative and Administrative Divisions. The Compliance Reviews are randomly conducted throughout the Commonwealth.

The individuals in question receive a notice letter from the Commission which advises that the failure to file or deficiency must be corrected within 20 days.

If such individual fails to correct the failure or deficiency, the Commission, upon a majority vote of its members, may levy a civil fine of not more than \$25 per day up to a maximum of \$250 and order the filing of the Statements of Financial Interests.

Upon the failure of an individual to comply with the notice letters, a Rule to Show Cause is issued requiring the individual to file an answer indicating the reasons, if any, that said filing was not made or deficiency corrected. Individuals may request a hearing on such matters.

After the conclusion of the process, the Commission will issue an order deciding the matter. Enforcement of the order, if necessary, takes place through an original jurisdiction proceeding in Commonwealth Court.

During 2007, the Commission’s Investigative Division conducted and acted upon a total of 18 Statement of Financial Interests Compliance Reviews throughout the Commonwealth. These consisted of nine townships, six boroughs, and three school districts. In addition, in conjunction with the Investigative Division, the Commission’s Administrative Division also conducted in-house Compli-

ance Reviews of Statements of Financial Interests from 69 school districts. These Compliance Reviews resulted in the discovery of 551 delinquent filers and 665 deficient filers. As such, 1,339 civil penalty notices were issued resulting in 1,259 filers.

Other in-house Compliance Reviews were conducted by the Administrative Division on Statements of Financial Interests filed annually with the State Ethics Commission. During 2007, these in-house Compliance Reviews were performed on Statements of Financial Interests filed by members of the House of Representatives and the Senate, and public officials such as the Governor, Treasurer, Attorney General, and Auditor General along with their respective cabinet members. The reviews also included other public officials such as members of the 244 state Boards and Commissions, and public officials within the 27 various agencies under the Governor’s jurisdiction.

In addition to the foregoing, a Compliance Review was conducted with regards to constables and deputy constables. In 2007 (for calendar year 2006), however, very few delinquent filers were identified. The reason for this increase in overall compliance is the result of mailing blank Statement of Financial Interests forms to a listing of constables and deputy constables received from the Pennsylvania Commission on Crime and Delinquency (PCCD). This concerted effort resulted in the aforementioned 1,866 constables/deputy constables filing Statements of Financial Interests.

All of the aforementioned compliance activities along with information obtained from other Investigative and Administrative Compliance Reviews, as well as from members of the public, resulted in the issuance of 2,203 notices of civil penalties for delinquent and/or deficient filers. Of these notices, 1,979 were first notice letters and 224 were second/final notice letters. In summary, there were approximately 1,980 delinquent filers and 768 deficient filers identified via Compliance Reviews. As of year-end 2007, 1,986 individuals have filed as a result of compliance efforts representing a 91 percent compliance rate.

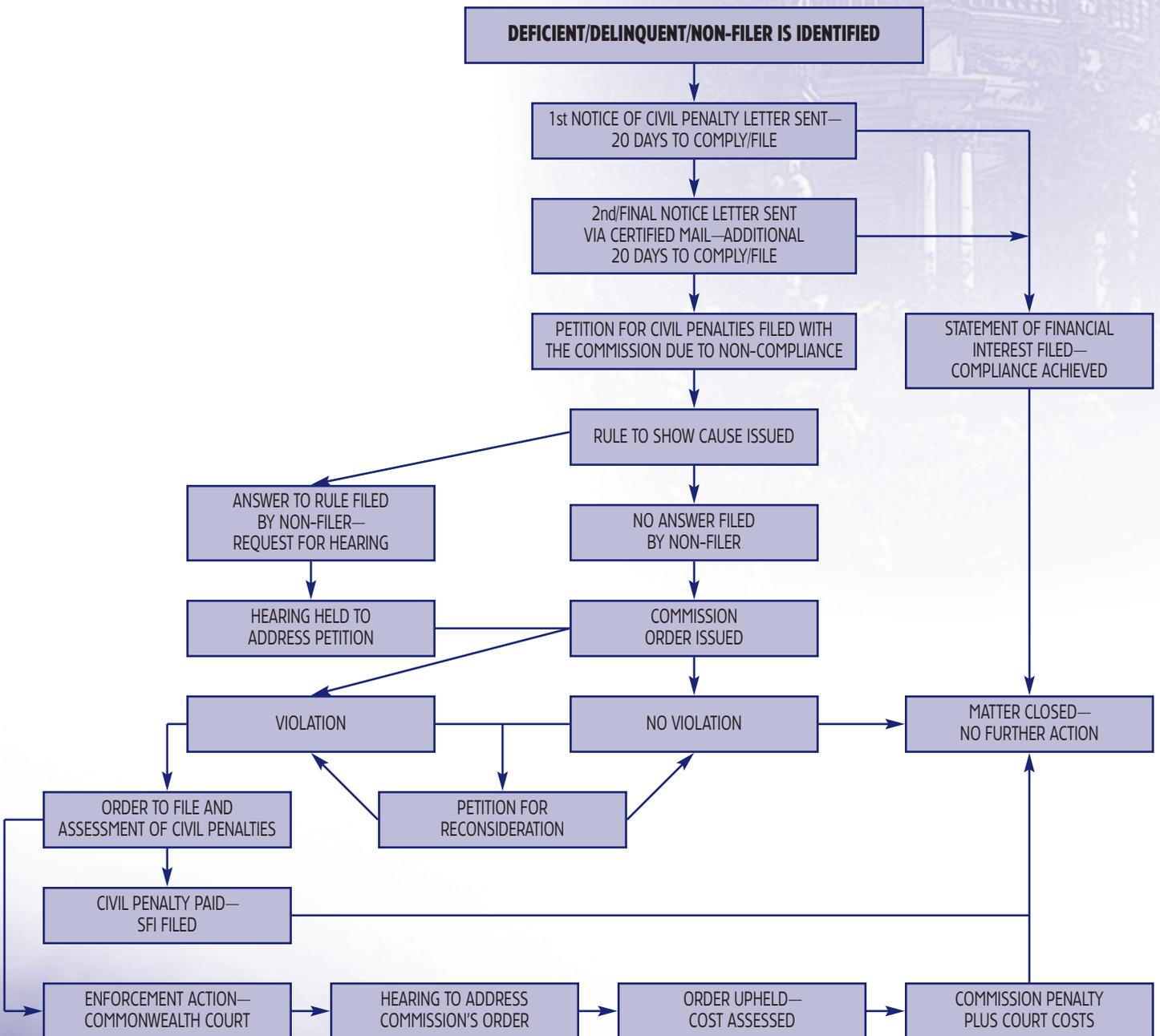
CIVIL PENALTY ORDERS—2007

Pursuant to Section 1109(f) of the Ethics Act, 65 Pa.C.S. §1109(f), the State Ethics Commission has the authority to levy civil penalties upon persons who fail to timely file Statements of Financial Interests as required by the Ethics Act, or who file Statements of Financial Interests which are deficient under the Ethics Act. Civil Penalty Orders are numbered sequentially, and bear the designation “-S” to distinguish them from other Orders.

In 2007, 28 Civil Penalty (S) Orders were issued by the State Ethics Commission. All of the Orders were directed to various State and Local Public Officials. A total of \$7,950 in fines was levied by the Commission as a result of these orders.

Note: In 2007, the Pennsylvania State Ethics Commission filed Petitions for Enforcement of numerous of the above Civil Penalty Orders. See, “*Litigation*,” *infra* page 30.

NOTICE OF NON-COMPLIANCE FLOW CHART





COMMONWEALTH OF PENNSYLVANIA
STATE ETHICS COMMISSION

P.O. BOX 11470
ROOM 309 FINANCE BUILDING
HARRISBURG, PA 17108-1470
(717) 783-1610 or Toll Free 1-800-932-0936
www.ethics.state.pa.us



STATE ETHICS COMMISSION STATEMENT OF FINANCIAL INTERESTS

DO NOT USE FORMS PRINTED PRIOR TO YEAR 2008 (Rev. 01/08)

**THIS FORM IS CONSIDERED DEFICIENT IF ANY BLOCK IS NOT COMPLETED OR
SIGNATURE IS MISSING**

SIGN THE FORM USING THE CURRENT DATE - DO NOT BACK DATE SIGNATURE

THIS FORM MUST BE COMPLETED AND FILED BY:

- A Candidates - Persons seeking elected state, county and local public offices, including first-time candidates, incumbents seeking re-election, and write-in candidates who do not resign nomination/election within 30 days of official certification of same.
- B Nominees - Persons nominated for public office subject to confirmation.
- C Public Officials - Persons serving as current state/county/local public officials (elected or appointed). The term includes persons serving as alternates/designees. The term excludes members of purely advisory boards.
- D Public Employees - Individuals employed by the Commonwealth or a political subdivision who are responsible for taking or recommending official action of a non-ministerial nature with regard to: contracting or procurement; administering or monitoring grants or subsidies; planning or zoning; inspecting, licensing, regulating or auditing any person; or any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person. The term does not include individuals whose activities are limited to teaching.

A former public official or former public employee must file the year after termination of service with the governmental body.

IMPORTANT: Please read all instructions carefully prior to completion of form. Also, **review the filing chart (Page 4) for proper filing location.** Any questions may be directed to the State Ethics Commission at (717) 783-1610 or Toll Free at 1-800-932-0936, or online at www.ethics.state.pa.us.

This Form is required to be filed pursuant to the provisions of the Public Official and Employee Ethics Act, 65 Pa C.S. §1101 et seq.

This form is considered deficient if any block is not completed, or signature is missing.

STATEMENT OF FINANCIAL INTERESTS INSTRUCTIONS

Please print neatly in capital letters. If you require more space than has been provided, please attach an 8 1/2" x 11" piece of paper to the form. Items 01 through 06 are for current information.

- Block 1** Please fill in your last name, first name, middle initial and suffix (if applicable) in the boxes provided. Public office candidates should use the exact name used on official nomination petition or papers.
- Block 2** List your work or residence address and daytime phone number in the space provided.
- Block 3** Please check the block or blocks to indicate your status. See definitions on page 1. If you are correcting a prior filing, please check the block designating an amended form.
- Block 4** Please check the appropriate block (seeking, holding, held) for each position you list in the blocks below. List all of the public position(s) which you are seeking, currently hold or have held in the prior calendar year. Please be sure to include job titles and official titles such as "member" or "commissioner" (even if serving as alternate/designee).
- Block 5** Please list all political subdivision(s)/agency(ies) as to which you either: (1) are presently seeking a public position or public office as a candidate (incumbent or non-incumbent) or nominee; (2) presently hold a public position or public office; and/or (3) previously held a public position or public office during all or any portion of the calendar year listed in Block 7. (The term "political subdivision" includes a county, city, borough, incorporated town, township, school district, vocational school, county institution district, and any authority, entity or body organized by the aforementioned.)
- Block 6** Please list your current occupation or profession. This information may have already been stated in block 4.
- Block 7** List the prior calendar year for which you are filing this form. All information provided in blocks 08 through 15 pertain to the calendar year designated in block 07.
- Block 8** **REAL ESTATE INTERESTS:** This block contains the address of any property which was involved in transactions (leasing, purchasing, or condemnation proceedings of real estate interests) with the Commonwealth or any other governmental body within the Commonwealth. If you have no direct or indirect interests in such a property, then check "NONE."
- Block 9** **CREDITORS:** This block contains the name and address of any creditor and the interest rate of any debt over \$6,500 regardless of whether such debt is held solely by you or jointly by you and any other individual, including your spouse, where each obligor is fully responsible for the obligation. A joint obligation with other persons, for which the filer is responsible only for a proportional share that is less than the reporting threshold, is not required to be reported. Do not report a mortgage or equity loan on your home (or secondary home), or loans or credit between you and your spouse, child, parent or sibling. Car loans, credit cards, personal loans and lines of credit must be listed on the form if the balance owed was in excess of \$6,500 at anytime during the calendar year. If you do not have any reportable debt, then check "NONE."
- Block 10** **DIRECT OR INDIRECT SOURCES OF INCOME:** List the name and address of each source of \$1,300 or more of gross income regardless of whether such income is received solely by you or jointly by you and another individual such as a spouse. "Income" includes any money or thing of value received or to be received as a claim on future services or in recognition of services rendered in the past, whether in the form of a payment, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, reward, severance payment, proceeds from the sale of a financial interest in a corporation, professional corporation, partnership or other entity resulting from termination/withdrawal therefrom upon assumption of public office or employment or any other form of recompense or combination thereof. The term refers to gross income; it includes prize winnings and tax-exempt income but does not include gifts, governmentally mandated payments or benefits, retirement, pension or annuity payments funded totally by contributions of the public official or employee, or miscellaneous, incidental income of minor dependent children. If you did not receive ANY reportable income, check "NONE."
- Block 11** **GIFTS:** For each source of gift(s) valued at \$250 or more in the aggregate, list the following information: the name and address of the source; the circumstances, including a description, of each gift; and the value of the gift(s). Do not report political contributions otherwise reportable as required by law, gift(s) from friends or family members (although the term "friend" does not include a registered lobbyist or employee of a registered lobbyist), or any commercially reasonable loan made in the ordinary course of business. If you did not receive any reportable gift, then check "NONE."
- Block 12** **TRANSPORTATION, LODGING OR HOSPITALITY EXPENSES:** NOTE: Per amendments to the Ethics Act effective 1/1/07, the threshold for disclosure in Block 12 has changed. For forms due to be filed in 2007 or thereafter, the following instructions apply. List the name and address of each source and the amount of each payment/reimbursement by the source for transportation, lodging or hospitality that you received in connection with your public position if the aggregate amount of such payments/reimbursements by the source exceeds \$650 for the calendar year for which you are reporting. Do not report reimbursements made by a governmental body or by an organization/association of public officials/employees of political subdivisions that you serve in an official capacity. If you do not have any reportable expense payments/reimbursements, then check "NONE."
- Block 13** **OFFICE, DIRECTORSHIP OR EMPLOYMENT IN ANY BUSINESS ENTITY:** List any office that you hold (for example, President, Vice President, Secretary, Treasurer), any directorship that you hold (through service on a governing board such as a board of directors), and any employment that you have in any capacity whatsoever, as to any business entity. This block focuses solely on your status as an officer, director or employee, regardless of income.
- Block 14** **FINANCIAL INTERESTS:** List the name and address and interest held in any business for profit of which you own more than 5% of the equity or more than 5% of the assets of economic interest in indebtedness. If you do not have any such financial interest to report, then check "NONE."
- Block 15** **TRANSFERRED BUSINESS INTERESTS:** List the name and address of any business as to which you transferred a financial interest (as defined in Item 14) to a member of your immediate family (parent, spouse, child, brother or sister), as well as the interest held, relationship to the individual, and date of transfer. If you did not transfer any such business interest, then check "NONE."

Please sign the form and enter the current date. Do not back date your signature.

PENNSYLVANIA STATE ETHICS COMMISSION 2007 ANNUAL REPORT

COMMONWEALTH OF PENNSYLVANIA
SEC-1 REV. 01/08

STATEMENT OF FINANCIAL INTERESTS

PENNSYLVANIA STATE ETHICS COMMISSION
(717) 783-1610 • TOLL FREE 1-800-932-0936

PLEASE PRINT NEATLY

01 LAST NAME FIRST NAME MI SUFFIX

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

02 STREET ADDRESS (work or residence) City State Zip Code Area Code Phone

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

NOTE: IF YOU ARE INCLUDING ATTACHMENTS, DO NOT INCLUDE ANYTHING THAT BEARS YOUR SOCIAL SECURITY NUMBER OR FINANCIAL ACCOUNT NUMBERS.

03 STATUS Check applicable block or blocks, more than one block may be marked. (See instructions on page 2)

A Candidate (including write-in) C Public Official (Current) D Public Employee (Current) Check this block if you are amending an original filing

B Nominee C Public Official (Former) D Public Employee (Former)

04 PUBLIC POSITION OR PUBLIC OFFICE (administrator, member, Commissioner, job title, etc.) seeking hold held

A seeking hold held

B seeking hold held

05 GOVERNMENTAL ENTITY in which you are/were an Official, Employee, Candidate or Nominee (e.g., dept, agency, authority, borough, board, commission, county, school district, twp, etc.)

A seeking hold held

B seeking hold held

06 OCCUPATION OR PROFESSION (This may be the same as block 4) 07 YEAR The information in blocks 8 through 15 below represents financial interests for the PRIOR calendar year indicated:

08 REAL ESTATE INTERESTS (See instructions on page 2) If NONE, check this box.

09 CREDITORS (See instructions on page 2). If NONE, check this box.

Creditor	Interest Rate
----------	---------------

10 DIRECT OR INDIRECT SOURCES OF INCOME including (but not limited to) all employment. (See instructions on pg. 2) ONLY IF NONE, check this block.

Name	Address	(OFFICIAL USE ONLY)
------	---------	---------------------

11 GIFTS (See instructions on page 2) If NONE, check this box.

Source of Gift	Value of Gift
Address of Source of Gift	Circumstances (including description) of Gift

12 TRANSPORTATION, LODGING, HOSPITALITY (See instructions on page 2) If NONE, check this box.

Source (Name and Address)	Value
---------------------------	-------

13 OFFICE, DIRECTORSHIP OR EMPLOYMENT IN ANY BUSINESS (See instructions on page 2) If NONE, check this box.

Business Entity	Position Held
-----------------	---------------

14 FINANCIAL INTEREST IN ANY LEGAL ENTITY IN BUSINESS FOR PROFIT (See instructions on page 2) If NONE, check this box.

Name and Address of Business	Interest Held
------------------------------	---------------

15 BUSINESS INTERESTS TRANSFERRED TO IMMEDIATE FAMILY MEMBER (See instructions on page 2) If NONE, check this box.

Business (Name and Address)	Interest Held
Transferee (Name and Address)	Relationship
	Date Transferred

The undersigned hereby affirms that the foregoing information is true and correct to the best of said person's knowledge, information and belief; said affirmation being made subject to the penalties prescribed by 18 Pa.C.S.A. §4904 (unsworn falsification to authorities) and the Public Official and Employees Ethics Act, 65 Pa.C.S. §1109(b).

Signature _____ Current Date _____

THIS FORM IS CONSIDERED DEFICIENT IF ANY BLOCK ABOVE IS NOT COMPLETED.

PENNSYLVANIA STATE ETHICS COMMISSION 2007 ANNUAL REPORT

LOCAL OFFICE CANDIDATES AND LOCAL ELECTED OFFICIALS: LIST THE COUNTY WHERE YOU FILE(D) YOUR NOMINATION PETITIONS, NOMINATION PAPERS OR NOMINATION CERTIFICATE.

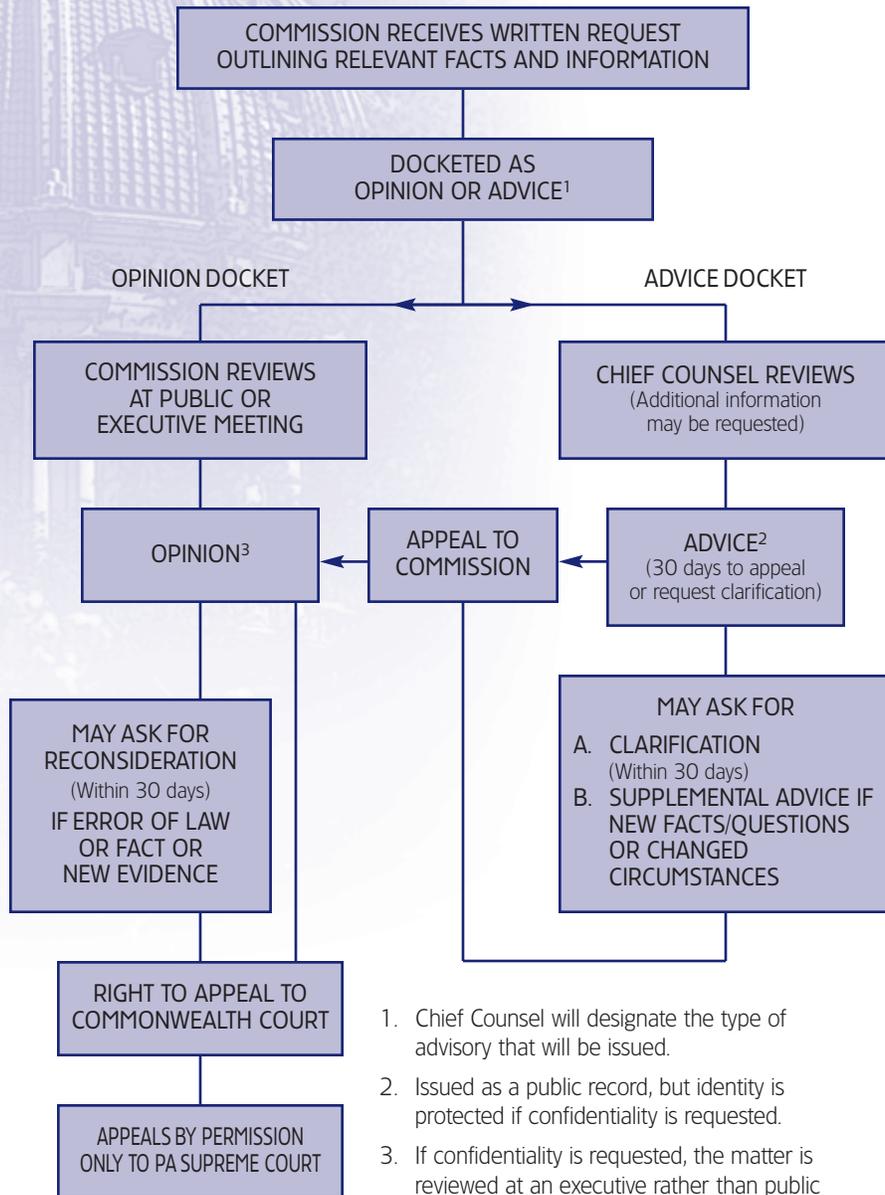
STATEWIDE, STATE SENATE AND HOUSE CANDIDATES, PUBLIC EMPLOYEES, APPOINTED OFFICIALS AND GUBERNATORIAL NOMINEES: LIST THE COUNTY WHERE YOU RESIDE.

WHO MUST FILE	ORIGINAL WHITE COPY	YELLOW COPY	WHEN TO FILE
A. STATUS BLOCK A - CANDIDATES			
Statewide State Senate State House Supreme Court Superior Court Common Pleas Court Traffic Court Municipal Court Commonwealth Court	State Ethics Commission P. O. Box 11470 Room 309 Finance Building Harrisburg, PA 17120-1470	Append to nomination petition when filed with the State Bureau of Elections 210 North Office Building Harrisburg, PA 17120-0029	ON OR BEFORE THE LAST DAY FOR FILING A PETITION TO APPEAR ON THE BALLOT FOR ELECTION
Constables / Deputy Constables	State Ethics Commission	Append to nomination petition when filed with County Board of Elections	
Countywide City Borough Township Municipality (home rule charter)	File with the Clerk/ Secretary in the Municipality in which you are a candidate		
Magisterial District Judges	File with the County in the district in which you are a candidate		
School Director	File in the School District where you are a candidate		
Announced Write-in	For state office file with State Ethics Commission . For county or local office file with governing authority of political subdivision.	This copy is not required to be filed.	Within 30 days of official certification of having been nominated or elected unless such person resigns.
Unannounced Write-in Winners of Nominations			
Unannounced Write-in Winners of Elections			
B. STATUS BLOCK B - NOMINEE			
State Level	State Ethics Commission	File with the Official or Body vested with the power of confirmation	10 days before official or body approved or rejects the nomination.
County/Local Level	Governing authority for political subdivision		
C. STATUS BLOCK C - PUBLIC OFFICIAL			
Commonwealth Public Officials such as: Members of Boards and Commissions (including alternates/designees); Heads of executive, legislative and independent agencies, boards and commissions; and persons appointed to positions designated as offices.	State Ethics Commission P. O. Box 11470 Room 309 Finance Building Harrisburg, PA 17120-1470	File with <u>each</u> Agency, Board, Commission, Department, or Government Body in which employed or appointed to. (make additional copies if needed)	FILE NO LATER THAN MAY 1 OF EACH YEAR A POSITION IS HELD AND OF THE YEAR AFTER LEAVING SUCH A POSITION.
State House Member State Senate Member		File with the House Chief Clerk or Senate Secretary (whichever applies)	
Local Public Officials serving in/as: Counties; Boroughs; Townships; Home Rule Municipalities; Municipal Authorities; School Districts Solicitors (Incumbent Judges and District Justices who are not candidates do not file)	File only with the governing authority of the respective local political subdivision	Yellow copy is not required to be filed (unless serving in multiple capacities, then file with each entity as required)	
Constables / Deputy Constables	State Ethics Commission		
D. STATUS BLOCK D - PUBLIC EMPLOYEE			
Commonwealth PUBLIC EMPLOYEE (Executive, Leg. & Independent Agencies)	File only with your Employer	This copy is not required to be filed	
County City Borough Township Municipal (home rule) Municipal Authority School District	File only with your Political Subdivision		

OPINIONS AND ADVICES

The following chart depicts the Opinion/Advice process:

OPINION/ADVICE FLOWCHART

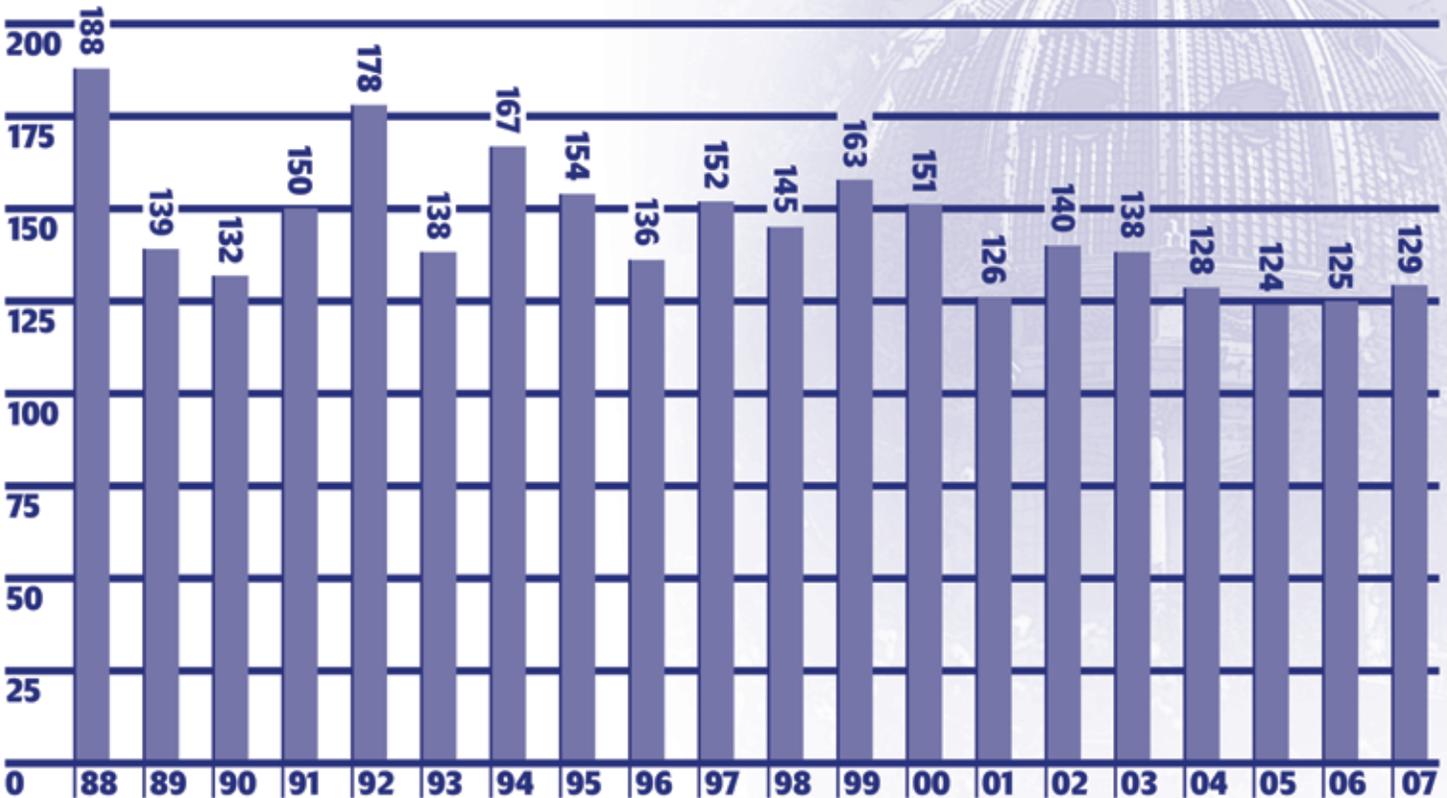


1. Chief Counsel will designate the type of advisory that will be issued.
2. Issued as a public record, but identity is protected if confidentiality is requested.
3. If confidentiality is requested, the matter is reviewed at an executive rather than public meeting.

OPINIONS/ADVICES SUMMARY

The following chart demonstrates the number of advices/opinions issued by the Commission under the Ethics Act during the specified years.

ADVICE/OPINION STATISTICS 1988 – 2007



OPINIONS AND ADVICES

From January 1, 2007 through December 31, 2007, the State Ethics Commission issued a total of 129 advisories under the Public Official and Employee Ethics Act, consisting of 19 Opinions and 110 Advices of Counsel.

Opinions and Advices are public records. However, a requestor may require that the Opinion or Advice contain such deletions and changes as shall be necessary to protect the identity of the person involved.

Pursuant to the Ethics Act, the Commission is required to provide specified libraries throughout the Commonwealth with copies of advices of counsel, rulings, and orders that are a matter of public record. The Commission provides these copies to the libraries on a quarterly basis. Paper copies of opinions and advices are available at cost from the Commission.*

Sections 1107(10)-(11) direct the Commission to provide an Opinion or Advice to any person about his or her duties under the Act. An Opinion or Advice may also be provided to the employer or appointing authority of such person. Opinions and Advices provide a complete defense against enforcement action initiated by the Commission. An Advice of Counsel is evidence of good faith conduct in any other civil or criminal proceeding if the requester

truthfully disclosed all material facts. An Opinion is an absolute defense to any criminal or civil penalty provided all material facts are truthfully disclosed. The following is a summary of Opinions issued by the Commission during 2007.

CONFIDENTIAL
Opinion 07-001

Decided: January 8, 2007
Issued: January 23, 2007

In this appeal from an Advice of Counsel, the Commission held that an A employed by Commonwealth Agency B in its Headquarters Office R would be considered a "public employee" subject to the Ethics Act. Upon termination of service with Commonwealth Agency B, the A would become a "former public employee" subject to Section 1103(g) of the Ethics Act. The former governmental body would be Commonwealth Agency B in its entirety including, but not limited to, Headquarters Office R and all H Offices. The restrictions of Section 1103(g) of the Ethics Act would have to be observed. The appeal was denied. Confidential Advice of Counsel, 06-597 was affirmed.

DOBROWOLSKI
Opinion 07-002

Decided: January 9, 2007
Issued: January 23, 2007

In this appeal from an Advice of Counsel, the Commission held that an individual employed as a school district "transporta-

* Opinions and advices are also available at the Commission's "e-Library," which may be accessed via the Commission's Web site at www.ethics.state.pa.us.

tion coordinator/clerk," whose functions would include making decisions or recommendations as to setting up bus or van routes, assigning students to buses or vans contracted by the school district, preparing contracts for approved transportation routes, and handling day-to-day operations including fielding complaints, would be considered a public employee subject to the provisions of the Ethics Act. Section 1103(a) of the Ethics Act would generally prohibit an individual from being employed as a school district transportation coordinator/clerk while the individual, her immediate family members, or a business with which she or her immediate family members would be associated would contractually provide student transportation services to the school district. However, Section 1103(a) of the Ethics Act would not prohibit such an individual from being employed as the school district's transportation coordinator/clerk where all of the following conditions would be satisfied: (1) the contractual services provided to the school district by the individual, the individual's immediate family members, and/or any business with which the individual or her immediate family members would be associated would be strictly limited to van transportation services for special needs students, such that the services would not be expanded under any circumstances; (2) the school district, through the school board, superintendent, or business manager, would reallocate all matters and work involving van transportation services within the school district to persons who would not be subordinates within the chain of command of the individual in question; and (3) there would be no means by which the individual as school district transportation coordinator/clerk could use the authority of that position or confidential information accessed as a result of being in that position for the private pecuniary benefit of herself, her immediate family members, or any business with which she or her immediate family members would be associated. Advice of Counsel, 06-546-S was affirmed as modified as set forth in the Opinion.

DENNIS Decided: January 9, 2007
Opinion 07-003 Issued: January 23, 2007

A Township Secretary/Zoning Administrator is a public official/public employee subject to the provisions of the Ethics Act. The use of government staff, time, equipment, facilities, or property for non-governmental purposes—including business, personal, or political purposes—is generally prohibited and may form the basis for a violation of Section 1103(a) of the Ethics Act. Generally, Section 1103(a) of the Ethics Act would prohibit a Township Secretary/Zoning Administrator from engaging in conversations regarding her candidacy for public office during her Township work hours or while she is otherwise performing duties for the Township or is present at the Township office property. Section 1103(a) of the Ethics Act would not prohibit a Township Secretary/Zoning Administrator from using government equipment/facilities and time on a very limited basis to reply to unsolicited questions regarding her candidacy for public office under the following conditions: (1) the use of government equipment/facilities and time for non-governmental purposes would have to be so strictly limited as to have a de minimis economic impact; and (2) any such communications on the part of the Township Secretary/Zoning Administrator would have to be limited to merely acknowledging her candidacy and stating that pursuant to the Ethics Act,

public officials and public employees are prohibited from engaging in communications of a non-governmental nature using governmental equipment, facilities or time.

McGILL Decided: January 9, 2007
Opinion 07-004 Issued: January 23, 2007

In this appeal from an Advice of Counsel, the Commission held that a Real Estate Specialist employed by the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT"), would be considered a "public employee" subject to the Ethics Act and Regulations of the State Ethics Commission. The Real Estate Specialist would be required to file Statements of Financial Interests pursuant to the Ethics Act. The appeal was denied. Advice of Counsel, 06-588 was affirmed.

MANN Decided: January 9, 2007
Opinion 07-005 Issued: January 23, 2007

A state legislator is a public official subject to the provisions of the Ethics Act. Under Section 1103(a) of the Ethics Act, a state legislator may not use governmental facilities, such as governmental telephones, postage, equipment, research materials, or other property, or governmental personnel, to conduct private business activities. The state legislator may not, in whole or in part, use his/her public position as a state legislator to solicit business opportunities for himself/herself. The Ethics Act would not preclude a state legislator from engaging in private business activities subject to the restrictions noted above. Section 1103(a) of the Ethics Act would not apply when the state legislator is engaged in legislative actions.

CONFIDENTIAL Decided: March 27, 2007
Opinion 07-006 Issued: April 11, 2007

An individual appointed by an A to serve as a non-voting member of a B board ("the Board Member") is a "public official" subject to the Ethics Act. The Ethics Act does not exclude from the definition of "public official" a non-voting member of a body that itself is not purely advisory. The Board Member would be required to file Statements of Financial Interests pursuant to the Ethics Act. The Board Member's M is a member of the Board Member's immediate family as that term is defined in the Ethics Act. The C company ("the Company") of which the Board Member's M is part-owner is a business with which the Board Member's M is associated. Pursuant to Section 1103(a) of the Ethics Act, the Board Member would generally have a conflict of interest in matters that would financially benefit her M or the Company. In each instance of a conflict of interest, the Board Member would be required to abstain fully from participation. As a practical matter, it would appear to be impossible for the Board Member to serve on a one-member committee that would oversee the work performed by the Company for the B, given that the Board Member would have a conflict of interest in such matters involving the Company. Section 1103(a) of the Ethics Act would restrict the Board Member from making recommendations to the voting Members of the B Board that could result in a private pecuniary benefit to the Company.

CONTI Decided: March 28, 2007
Opinion 07-007 Issued: April 11, 2007

A Pennsylvania State Senator is a "public official" subject to

the provisions of the Ethics Act and Regulations of the State Ethics Commission. Upon termination of service with the Pennsylvania Senate (hereinafter, "Senate"), and commencement of service as Chief Executive Officer of the Pennsylvania Liquor Control Board ("PLCB"), the former State Senator would be considered a former public official as to the Senate and a current public official/public employee as to the PLCB. During the first year following termination of service with the Senate, the former State Senator would be subject to Section 1103(g) of the Ethics Act. The former governmental body would be the Senate in its entirety as well as any Boards, Commissions, Committees and the like upon which the individual served in an official capacity. For the first year after termination of service with the Senate, Section 1103(g) of the Ethics Act would apply and restrict "representation" of "persons" before the Senate and any Boards, Commissions, Committees and the like upon which the former State Senator served in an official capacity. During the one-year period of applicability, Section 1103(g) of the Ethics Act would prohibit the former State Senator from interacting with the Senate or its committees/subcommittees in his official capacity as the Chief Executive Officer of the PLCB in any manner that would constitute "representation." Section 1103(g) of the Ethics Act would not prohibit the former State Senator from socializing with his former colleagues in the Senate or continuing to rent a home with a current Member of the Senate as long as in so doing, he would not engage in conduct that would constitute prohibited representation in contravention of Section 1103(g). Section 1103(g) of the Ethics Act would not restrict the former State Senator from informally discussing with individual Senators matters that would have no relation to the PLCB or any other person that he would represent for promised or actual compensation, in that such discussions by definition would not involve prohibited representation before his former governmental body.

PRESTON Decided: **March 28, 2007**
Opinion 07-008 Issued: **April 11, 2007**

A state legislator is a public official subject to the provisions of the Ethics Act. Pursuant to Section 1103(a) of the Ethics Act, a state legislator may not use governmental facilities, such as governmental telephones, postage, equipment, research materials, or other property, or governmental personnel, to conduct private business activities. The state legislator may not, in whole or in part, use his/her public position as a state legislator to solicit business opportunities for himself/herself. The Ethics Act would not preclude a state legislator from engaging in private business activities subject to the restrictions noted above. Section 1103(a) of the Ethics Act would not apply when the state legislator is engaged in legislative actions.

ADAMS/RENDELL (McGINTY) Decided: **April 30, 2007**
Opinion 07-009 Issued: **May 1, 2007**

ADAMS/RENDELL (DeBERARDINIS) Decided: **April 30, 2007**
Opinion 07-010 Issued: **May 1, 2007**

See: Litigation Section

DARLINGTON Decided: **June 12, 2007**
Opinion 07-011 Issued: **June 13, 2007**

Members of the judiciary who are candidates are required to

file Statements of Financial Interests as candidates in conformance with Section 1104(b) of the Ethics Act and the Regulations of the State Ethics Commission, using the form promulgated by the State Ethics Commission. This decision is effective prospectively, such that the application of the financial statement filing requirements to incumbent judges as candidates shall commence effective for forms due to be filed July 1, 2007, or thereafter. Woelfel, Advice of Counsel 91-525 is overruled.

CONFIDENTIAL Decided: **June 11, 2007**
Opinion 07-012 Issued: **June 29, 2007**

An A employed with Governmental Body B in Unit C would be considered a "public employee" subject to the Ethics Act. Upon termination of service with Governmental Body B, the A would become a "former public employee" subject to Section 1103(g) of the Ethics Act. The former governmental body would be Governmental Body B in its entirety including, but not limited to, Unit C. For the first year after termination of service with Governmental Body B, Section 1103(g) of the Ethics Act would apply and restrict the former A from engaging in any activity that would constitute prohibited representation before Governmental Body B. Section 1103(g) of the Ethics Act would not restrict the former A from engaging in the limited activity of submitting an application for certification as a "Disadvantaged Business Enterprise" to Governmental Body B's J. The restrictions of Section 1103(g) would have to be followed. The spouse of the A, who is an E employed with Governmental Body B, would be considered a "public employee" as that term is defined by the Ethics Act. The requirements of Section 1103(f) of the Ethics Act would have to be observed where the former A or a business with which she would be associated would seek to enter into a subcontract valued at \$500 or more with any person awarded a contract with Governmental Body B. Section 1103(f) of the Ethics Act would require that an "open and public process" be observed as to the main contract, but would not require that an "open and public process" be observed as to such a subcontract.

WAGNER Decided: **June 12, 2007**
Opinion 07-013 Issued: **June 29, 2007**

A Research Analyst with the Pennsylvania House of Representatives (hereinafter "House" or "House of Representatives"), Republican Caucus, would be considered a "public employee" as that term is defined in the Ethics Act. Upon termination of service with the House of Representatives, such individual would become a "former public employee" subject to Section 1103(g) of the Ethics Act. The former governmental body would be the House of Representatives in its entirety including, but not limited to, the House Republican Caucus. The restrictions of Section 1103(g) of the Ethics Act would have to be followed by the former Research Analyst during the first year following termination of service with the House. Under the submitted fact that service in the position of Research Analyst for the House concluded at the end of 2006, the former Research Analyst would not be required by Section 1104(a) of the Ethics Act to file a Statement of Financial Interests in 2008 for calendar year 2007. To the extent that the former Research Analyst's activities in his new employment position would include "lobbying" as that term is defined by the Lobbying Disclosure Law, such individual would be considered a "lobbyist." As a lobbyist, the individual would be required to comply

with Section 1307-A of the Lobbying Disclosure Law for as long as he would remain a lobbyist. As a lobbyist, the individual would also be subject to the registration and reporting requirements of Sections 1304-A and 1305-A of the Lobbying Disclosure Law relative to lobbyists unless the individual would qualify for exemption under Section 1306-A of the Lobbying Disclosure Law.

QUINN
Opinion 07-014

Decided: June 12, 2007
Issued: June 29, 2007

A school director is a “public official” subject to the Ethics Act, including the requirements for filing Statements of Financial Interests. Social Security survivor benefits paid to the school director as a representative payee for his children upon the death of his spouse would be considered “governmentally mandated payments or benefits” excluded from the definition of the term “income” as set forth in the Ethics Act. Accordingly, the school director would not be required under Section 1105(b)(5) of the Ethics Act to list the Social Security Administration as a direct or indirect source of income on his Statement of Financial Interests. Where: (1) a death benefit received by the school director as the beneficiary of a life insurance policy covering the school director’s spouse would be in the amount of \$1,300 or more; and (2) the policy would have been funded totally by the school director, for purposes of financial disclosure under the Ethics Act, the insurer would be considered a reportable direct or indirect source of income of the school director.

FEESE
Opinion 07-015

Decided: June 12, 2007
Issued: June 29, 2007

A Member of the Pennsylvania House of Representatives is a public official subject to the provisions of the Ethics Act, and specifically the financial disclosure requirements of Sections 1104 and 1105 of the Ethics Act. It was the legislative intent for the Ethics Act and Pennsylvania’s Lobbying Disclosure Law to be interpreted consistently to the extent possible. Under the submitted facts that a coalition of trade organizations (hereinafter “Coalition”) presented the Member with a \$500 gift certificate, with some Coalition Members making contributions/donations to the Coalition toward the cost of the gift certificate, but with the Coalition itself providing the gift certificate to the Member as a gift from the Coalition, the Member would be required to disclose the Coalition as the source of the \$500 gift certificate on his Statement of Financial Interests. The Member would not be required to list individual Coalition members as sources of the gift certificate, because the gift certificate was provided by the Coalition, not individual Coalition members. Pursuant to Section 1105(b)(6) of the Ethics Act, the Member’s disclosure as to the Coalition would have to include the name and address of the Coalition; the amount of any gift or gifts received from the Coalition valued in the aggregate at \$250 or more, including but not limited to the \$500 gift certificate; and the circumstances of each gift.

CONFIDENTIAL
Opinion 07-016

Decided: October 23, 2007
Issued: November 7, 2007

As an A with Commonwealth Department B (“the Department”), Unit E, Commonwealth Employee C (hereinafter referred to as “Employee C”) would be considered a “public employee” subject to the provisions of the Ethics Act. Under the submitted facts, as the [title] of Organization P, an organization established by Com-

monwealth Department S and housed at Educational Institution R, Employee C’s sibling is an employee of Organization P and not of Educational Institution R. Absent some basis for a conflict of interest under the Ethics Act other than the sibling’s employment with Organization P, Employee C would not have a conflict of interest with respect to a proposed grant from the Department to Educational Institution R where Organization P would have no involvement with the proposed grant project.

CONFIDENTIAL
Opinion 07-017

Decided: October 23, 2007
Issued: November 7, 2007

As an A with Commonwealth Department B (“the Department”), Unit E, Commonwealth Employee C (hereinafter referred to as “Employee C”) would be considered a “public employee” subject to the provisions of the Ethics Act. Employee C’s spouse is a member of her immediate family. Organization O, a non-profit organization, is a business with which Employee C’s spouse is associated as the organization’s [officer], [officer], and paid staff member. Employee C would have a conflict of interest under Section 1103(a) of the Ethics Act as to prospective grant matters before her that would financially impact Organization O or its clients, even if Organization O would not participate in providing services as to the particular client matters before Employee C. Employee C would have a conflict of interest with regard to prospective Department grants to Organization P and Organization Q, two non-profit organizations that stand in a client relationship with Organization O, and would be required to abstain fully from matters pertaining to those grants or to grant applications of competitors for the same pool(s) of grant monies. In the absence of a pre-existing mechanism providing for the delegation of Employee C’s authority in the event of a conflict of interest, Employee C’s delegation to her subordinate employee of Employee C’s authority to consider the grant applications of Organization P and Organization Q would itself be a use of authority of office contrary to Section 1103(a) of the Ethics Act.

Generally, a public official/public employee could avoid a conflict of interest as to a grant award process by a means that would remove the public official/public employee from the opportunity to influence the process. One means by which Employee C would be able to avoid transgressing Section 1103(a) of the Ethics Act as to the aforesaid prospective grants would be for Employee C’s superior(s) in the Department to designate someone not within Employee C’s chain of command to perform Employee C’s role as to the prospective grants in question, as well as the grant applications of competitors for the same pool(s) of grant monies. Under such a “conflict of interest avoidance mechanism,” Employee C would need to be removed/insulated from any involvement in the grant process in question, as well as any access to confidential/non-public information involving the grant process such as, for example, ratings, evaluations, and recommendations by Department staff members involved in the grant process.

Neither Organization P nor Organization Q would be considered a business with which Employee C or her spouse is associated. However, the restrictions of Section 1103(f) of the Ethics Act would apply as to prospective grant(s) to Organization P or Organization Q if Organization O would enter into a subcontract valued at \$500 or more with Organization P or Organization Q as to such grant(s). Additionally, if the services to be provided under the

prospective grant to Organization O would fall within the definition of the term “contract” under the Ethics Act, and the amount of said prospective grant would be valued at \$500 or more, the restrictions of Section 1103(f) of the Ethics Act would apply as to the prospective grant to Organization O. The Department grant process as outlined in the submitted facts would constitute an “open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded” as is required by Section 1103(f) of the Ethics Act. When applicable, Section 1103(f) would require that Employee C not have any supervisory or overall responsibility for the implementation or administration of a contract for a grant.

See: Litigation Section

CONFIDENTIAL
Opinion 07-018

Decided: October 23, 2007
Issued: November 7, 2007

Commonwealth Employee D (hereinafter referred to as “Employee D”), as A of Unit B within Commonwealth Department C (“the Department”), would be considered a “public employee” subject to the provisions of the Ethics Act. Employee D’s spouse is a member of her immediate family. Organization L, a non-profit corporation, is a “business” with which Employee D’s spouse is associated in his capacity as the [officer] of the corporation’s Board of Directors. Employee D would have a conflict of interest under Section 1103(a) of the Ethics Act with regard to proposed grants from the Department to Organization L and would be required to abstain fully from matters pertaining to the proposed grants to Organization L or to grant applications of competitors for the same pools of grant monies.

Generally, a public official/public employee could avoid a conflict of interest as to a grant award process by a means that would remove the public official/public employee from the opportunity to influence the process. In the absence of a pre-existing mechanism for the delegation of Employee D’s authority in the event of a conflict of interest, Employee D’s delegation to a Unit B G Employee of her authority to consider the grant applications of Organization L would itself be a use of authority of office contrary to Section 1103(a) of the Ethics Act. One means by which Employee D would be able to avoid transgressing Section 1103(a) of the Ethics Act as to the aforesaid prospective grants would be for Employee D’s superior(s) in the Department to designate someone not within Employee D’s chain of command to perform Employee D’s role as to the prospective grants in question, as well as the grant applications of competitors for the same pool(s) of grant monies. Under such a “conflict of interest avoidance mechanism,” Employee D would need to be removed/insulated from

any involvement in the grant process in question, as well as any access to confidential/non-public information involving the grant process such as, for example, ratings, evaluations, and recommendations by Department staff members involved in the grant process.

The restrictions of Section 1103(f) of the Ethics Act would apply as to the proposed grants to Organization L. The Department grant process as outlined in the submitted facts would constitute an “open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded” as is required by Section 1103(f). Section 1103(f) would require that Employee D not have any supervisory or overall responsibility for the implementation or administration of any Organization L grant contract valued at \$500 or more. In the absence of a pre-existing mechanism in place for delegation of Employee D’s supervisory or overall responsibility as to the implementation or administration of grant contracts, Employee D’s delegation to a Unit B G Employee of her supervisory or overall responsibility as to the implementation or administration of a grant contract with Organization L would itself be a use of authority of office contrary to Section 1103(a) of the Ethics Act.

GODDARD
Opinion 07-019

Decided: October 24, 2007
Issued: November 7, 2007

In this appeal from an Advice of Counsel, the Commission held that the requester (hereinafter referred to as “Appellant”), as a Clerical Supervisor I employed with the Commonwealth of Pennsylvania, Department of Transportation (“PennDOT”), would be considered a “public employee” subject to the provisions of the Ethics Act, even if Appellant did not actually supervise any PennDOT employees. Based upon Appellant’s position description and job classification specifications for his subsequent position as a Clerk Typist II employed with PennDOT, Appellant would not in that position be considered a “public employee” subject to the provisions of the Ethics Act. Based upon the submitted facts that within the one-year period prior to termination of Commonwealth employment with PennDOT, Appellant held both of the aforesaid positions, Appellant would, upon termination of Commonwealth employment, be considered a former public employee subject to Section 1103(g) of the Ethics Act as to his former position as a Clerical Supervisor I with PennDOT. The restrictions of Section 1103(g) of the Ethics Act would be applicable for one year following the date that Appellant terminated service in his former capacity as a Clerical Supervisor I. The former governmental body would be PennDOT in its entirety. The appeal was denied. Advice of Counsel 07-554 was affirmed.

LITIGATION

LEGAL DIVISION

Edward G. Rendell, Governor of Pennsylvania v. Pennsylvania State Ethics Commission, and Edward G. Rendell, Governor of Pennsylvania v. Pennsylvania State Ethics Commission, Nos. 268 and 269 M.D. 2007 (consolidated):

These cases were initiated by Petitions for Review filed May

31, 2007, in the Commonwealth Court of Pennsylvania, as to Commission advisory Opinions pertaining to Pennsylvania Secretary of Environmental Protection Kathleen McGinty and Pennsylvania Secretary of Conservation and Natural Resources Michael DiBerardinis. The Petitions for Review combined appeals from the Commission Opinions with declaratory judgment actions. On June 4, 2007, Petitioners filed Applications for consolidation and for a

stay pending judicial review. On June 5, 2007, the Commonwealth Court consolidated the two cases. On June 18, 2007, the Commission filed an Answer to Petitioners' Application for a Stay. Subsequently, the parties reached an amicable settlement as to Petitioners' Application for a Stay.

On June 29, 2007, the Commission filed Motions to Quash the appeal portions of the Petitions for Review and Preliminary Objections to the declaratory judgment portions of the Petitions for Review.

Petitioners filed answers/responses to the Commission's Motions to Quash and Preliminary Objections. Briefs were filed. Argument was held October 31, 2007.

By Order dated December 19, 2007, Commonwealth Court granted the Commission's Motions to Quash and sustained in part and overruled in part the Commission's Preliminary Objections. The Court directed that the case would move forward on the following two issues:

- (1) Whether non-profit organizations may be included by the definition of "business" in Section 1102 of the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1102; and
- (2) Whether, when a department head is affected by a conflict of interest, the Ethics Act requires the Governor to appoint a person outside that head's chain of command in order for the conflict to be avoided.

These matters are pending.

Pennsylvania Department of Conservation and Natural Resources v. Pennsylvania State Ethics Commission, No. 586 M.D. 2007:

This case was initiated by a Petition for Review filed December 7, 2007, in the Commonwealth Court of Pennsylvania as to a Commission advisory Opinion, Confidential Opinion, 07-017. The filing of the Petition for Review resulted in the Commission file, including the Opinion, becoming public. (*See, 51 Pa. Code §13.1(j)*).

The Commission Opinion pertained to Carolyn Wallis, a Recreation and Parks Supervisor employed with the Pennsylvania Department of Conservation and Natural Resources ("DCNR"). The Petition for Review, filed by Petitioners DCNR and Ms. Wallis, combined an appeal from the Commission Opinion with a declaratory judgment action.

On December 21, 2007, the Commission filed a Motion to Quash the appeal portion of the Petition for Review and Preliminary Objections to the declaratory judgment portion of the Petition for Review. This matter is pending.

INVESTIGATIVE DIVISION

GSG (George Gobel) v. State Ethics Commission, No. 724, C.D. 2006:

On or about April 13, 2006, a Petition for Review was filed in the Commonwealth Court of Pennsylvania by George S. Gobel appealing the State Ethics Commission Order (No. 1395) issued to him on March 13, 2006. By way of that order, which was the result of a consent agreement, Gobel, who served as a solicitor for various municipalities, was determined to have violated the Ethics Law on several occasions when he failed to file Statements of Financial Interests in his position as solicitor. The Commission

imposed a penalty of \$500.00 to be paid to the Commission. As noted, the foregoing order was issued as a result of a consent agreement. By way of background, Gobel, through his attorney, and after negotiations with the Investigative Division, entered into a consent agreement which was subsequently forwarded to the Commission for approval. Several days prior to the Commission's consideration of the consent agreement, Gobel attempted to revoke the consent agreement. The Commission, however, refused to allow Gobel to do so and issued the order as noted above. In his appeal to the Commonwealth Court of Pennsylvania, Gobel raised several issues, including the following:

The Investigative Division has no authority to enter into a consent agreement; and

The State Ethics Commission has no legal authority to issue civil penalties; and

Prior to the issuance of civil penalties, if permitted, an individual must be permitted the opportunity to comply with the filing requirements.

There is no regulatory process allowing the Commission to enter into, approve or disapprove of consent agreements; and

That there was a commingling of adjudicatory and investigatory functions; and

Gobel, as Respondent, did not sign the consent agreement which was executed by his counsel.

On April 9, 2007, the court issued its decision remanding the matter back to the State Ethics Commission for further proceedings. As part of this decision, the court determined that the Commission did in fact have the power and authority to enter into Consent Agreements settling matters pending before it. The court further determined that there was no inappropriate commingling of adjudicatory and prosecutorial functions evidenced by the facts of the case. Further, the court held that part-time Municipal Solicitors are required to file Statements of Financial Interests in accordance with the Ethics Law. In relation to Petitioner's argument regarding his ability to withdraw from the Consent Agreement, the court determined that Petitioner should be permitted to withdraw from a Consent Agreement prior to the time that it was accepted by the Members of the State Ethics Commission, as the agreement itself contained no prohibitions on such withdraw. As a result, this matter was referred back to the Commission for further proceedings.

Kenneth Kistler v. State Ethics Commission, (1352 C.D. 2007):

On June 29, 2007, the Commission issued its Order concerning *in re Kenneth Kistler* (Order No.: 1441), whereby following an evidentiary hearing, Kistler was found to have unintentionally violated section 1103(a) of the Ethics Act by using the authority of his office, as a Carbon-Lehigh Intermediate (CLIU) Board Member, to vote to award a contract to an individual/business with which Kistler had a prior business relationship to pursue the construction of a school building for the CLIU. Kistler was also found to have violated section 1103(f) of the Ethics Act when Kistler entered into subcontracts, with the business awarded such contracts, to construct both a transportation facility and an additional school building for the CLIU, when the CLIU had not awarded the

contracts through an open and public process.

On July 19, 2007, Kistler, through his counsel, filed a Petition for Review, with the Commonwealth Court of Pennsylvania, appealing the findings of the Commission. On appeal, Kistler argues that the Commission improperly found him in violation of the Ethics Act in that at no time was he a subcontractor, nor did he receive the subcontracts from the business absent an open and public process. Lastly Kistler argues that he has a complete defense in that the Commission did not grant his request for an advisory opinion.

On November 2, 2007 Kistler filed both his brief and a reproduced record with the Commonwealth Court. The Commission thereafter filed its brief. The decision is pending.

CIVIL PENALTY ENFORCEMENT ACTIONS

The Public Official and Employee Ethics Act provides a mechanism for the enforcement of Commission orders. Upon issuance of a final order, the Respondent is provided with 30 days to either request reconsideration or to comply with the order. Should a Respondent fail to comply with an order issued by the Commission, the Commission, through the Investigative Division, may file a petition for enforcement with the Commonwealth Court. Once an enforcement action is filed, notice must be served upon the Respondent by the sheriff of their respective county. After service, the court will schedule a hearing to address the enforcement petition; this usually results in the Commonwealth Court issuing an order enforcing the Commission's order. Should the Respondent fail to comply with the Commonwealth Court's order, the Commission may seek further compliance efforts through filing a petition for contempt. If the Respondent is held in contempt of court,

he/she may be ordered incarcerated until such time as they fully comply with the court's order.

For calendar year 2007, the Investigative Division filed enforcement actions against 39 Respondents for failing to comply with prior orders of the Commission to pay their respective fines and file their required Statements of Financial Interests forms. Of those 39 cases, 21 Respondents have complied in full with the Commission's Order, either before or shortly after the issuance of a Commonwealth Court Order.

Of the remaining 18 cases, two were discontinued after verification that the Respondent(s) were deceased. An additional eight cases were discontinued due to the fact that Respondent(s) either could not be located for service, despite an exhaustive search, or sufficient evidence was presented to indicate that the Respondent was not a public official/public employee during the disputed calendar year. One case was discontinued after the Respondent's timely filed Statement of Financial Interests.

Of those enforcement actions filed in calendar year 2007, seven remain active. In one case, Respondent is making timely, monthly payments, regarding their outstanding obligations. Of the remaining six cases, one has been enforced by the Commonwealth Court and awaiting compliance; one is continued pending service; one is awaiting the re-issuance of an arrest warrant following Respondent's failure to comply with a payment arrangement; and one has been found in contempt of court and sentenced to incarceration—however, the sentence has been suspended pending compliance; and in two matters the Commonwealth Court has ordered the arrest and incarceration of Respondent(s) and the execution of those warrants are pending.

REGULATIONS

(The following regulations became effective April 23, 1993. All amendments are incorporated herein.)

RULES AND REGULATIONS

TITLE 51. PUBLIC OFFICERS

PART I. STATE ETHICS COMMISSION

CHAPTER 1. (RESERVED).

§ 1.1. (Reserved).

CHAPTER 2. (RESERVED).

§§ 2.1–2.6. (Reserved).

§ 2.11. (Reserved).

§ 2.12. (Reserved).

§ 2.14–2.16. (Reserved).

§ 2.31–2.38. (Reserved).

§ 2.51. (Reserved).

CHAPTER 3. (RESERVED).

§ 3.1. (Reserved).

CHAPTER 4. (RESERVED).

§§ 4.1–4.7. (Reserved).

§ 4.10. (Reserved).

§ 4.11. (Reserved).

CHAPTER 5. (RESERVED).

§§ 5.1–5.9. (Reserved).

§§ 5.12–5.16. (Reserved).

CHAPTER 7. (RESERVED).

§§ 7.1–7.3. (Reserved).

§§ 7.11–7.18. (Reserved)

CHAPTER 11. GENERAL PROVISIONS.

Sec.

11.1. Definitions.

11.2. Construction.

11.3. Statute of limitations.

§11.1. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise. Additional definitions are set forth in the act.

Act – The act of June 26, 1989 (PL. 26, No. 9)(65 P.S. §§401–413), known as the Public Official and Employee Ethics Law (65 P.S. §§401–413).

Administering or monitoring grants – Directing, supervising or approving the expenditure or reimbursement of grant funds or monitoring another person's or organization's administering of grant funds. The term does not include compiling expenditures, comparing actual to planned expenditures or reimbursements, preparing comparative reports or completing grant proposals or reimbursement forms under specific direction.

Advice – A directive of the Chief Counsel of the Commission issued under Section 7(11) of the act (65 P.S. §407(11)) and based exclusively on prior Commission

opinions, the act, regulations promulgated under the act and court opinions which interpret the act. See section 402 of the act (65 P.S. §402).

Appointing authority – The person who is vested with the power to appoint, hire, or terminate; if the power is vested in a governmental body, a majority vote of a quorum of that body constitutes the appointing authority.

Audit – A review of Statements of Financial Interests to determine compliance with the act and to provide technical assistance in its administration.

Chairperson – The Chairperson of the Commission.

Child – The term includes adopted and biological children.

Clear and convincing proof – To a degree which requires more than a preponderance of the evidence but less than beyond a reasonable doubt.

Commission – The State Ethics Commission of the Commonwealth.

Commissioner – An appointed and seated member of the Commission.

Confirmation – The power vested in a person or governmental body to approve the nomination of persons.

Contracting or procurement – Awarding a contract or making a decision to purchase by the preparation of requests for bids and proposals, the solicitation and evaluation of proposals or the selection of a vendor. The term does not include contracting or purchasing through master contracts or purchasing schedules already awarded.

De minimis economic impact – An economic consequence which has an insignificant effect.

Director – An officer acting as an agent for a business who is authorized to regulate, manage and direct alone or in conjunction with other officers.

Docket – The official assignment of a file number to a matter submitted to the Commission.

Election – The term includes primary, special, or general elections.

Employed by – Used in any capacity, with or without compensation. This definition is only used in the context of section 6(d)(5) of the act (65 P.S. §406(d)(5)).

Employer – One who uses the services of others and pays their wages, salaries or other compensation.

Filed – Official papers are filed on the date they are physically received at the Commission Office whether delivered by United States mail, express carrier, hand delivery or by Facsimile Service (FAX). See §19.1 (relating to forms; filing) for additional requirements when filing a Statement of Financial Interests by Facsimile Service (FAX).

Governing authority – The body empowered to enact ordinances, appropriations and resolutions or to otherwise govern a subordinate body.

Gross negligence – The failure to perform a manifest duty in reckless disregard of the consequences or a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness.

Inspecting, licensing, regulating or auditing – The normal meanings of the terms apply, but the terms do not include activities which are exclusively internal in nature, such as auditing the internal process of an organization, and clerical and procedural activities in issuing permits and licenses.

Local – Governmental units other than the Commonwealth or counties.

Office – The position of president, vice president, secretary, treasurer and other positions designated as an office in the bylaws of the business.

Opinion – A directive of the Commission issued pursuant to section 7(10) of the act setting forth a public official's or public employee's duties under the act.

Planning or zoning – An action which is directed by a planning commission, zoning board, department, agency or governmental body which involves the regulation of real property.

Political subdivision – A county, city, borough, incorporated town, township, school district, vocational school, county institution district and an authority, entity or body organized by the aforementioned.

Public employee –

- (i) The term includes an individual who is employed by the Commonwealth or a political subdivision and who is responsible for taking or recommending official action of a nonministerial nature with regard to one or more of the following:
 - (A) Contracting or procurement.
 - (B) Administering or monitoring grants or subsidies.
 - (C) Planning or zoning.
 - (D) Inspecting, licensing, regulating or auditing a person.
 - (E) Other activities in which the official action has greater than a de minimis economic impact.
- (ii) The following criteria will be used, in part, to determine whether an individual is within the definition of "public employee":
 - (A) The individual normally performs his responsibility in the field without onsite supervision.
 - (B) The individual is the immediate supervisor of a person who normally performs his responsibility in the field without onsite supervision.
 - (C) The individual is the supervisor of a highest level

field office.

- (D) The individual has the authority to make final decisions.
- (E) The individual has the authority to forward or stop recommendations from being sent to the person or body with the authority to make final decisions.
- (F) The individual prepares or supervises the preparation of final recommendations.
- (G) The individual makes final technical recommendations.
- (H) The individual's recommendations or actions are an inherent and recurring part of his position.
- (I) The individual's recommendations or actions affect organizations other than his own organization.
- (iii) The term does not include individuals who are employed by the Commonwealth or a political subdivision of the Commonwealth in teaching as distinguished from administrative duties.
- (iv) Persons in the following positions are generally considered public employees:
 - (A) Executive and special directors or assistants reporting directly to the agency head or governing body.
 - (B) Commonwealth bureau directors, division chiefs or heads of equivalent organization elements and other governmental body department heads.
 - (C) Staff attorneys engaged in representing the department, agency or other governmental bodies.
 - (D) Engineers, managers and secretary-treasurers acting as managers, police chiefs, chief clerks, chief purchasing agents, grant and contract managers, administrative officers, housing and building inspectors, investigators, auditors, sewer enforcement officers and zoning officers in all governmental bodies.
 - (E) Court administrators, assistants for fiscal affairs and deputies for the minor judiciary.
 - (F) School superintendents, assistant superintendents, school business managers and principals.
 - (G) Persons who report directly to heads of executive, legislative and independent agencies, boards and commissions except clerical personnel.
- (v) Person in the following positions are generally not considered public employees:
 - (A) City clerks, other clerical staff, roadmasters, secretaries, police officers, maintenance workers, construction workers, equipment operators and recreation directors.
 - (B) Law clerks, court criers, court reporters, probation officers, security guards and writ servers.
 - (C) School teachers and clerks of the schools.

Public official – A person elected by the public or elected or appointed by a governmental body, or an appointed official in the Executive, Legislative or Judicial Branch of the Commonwealth or a political subdivision thereof. The term does not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense, or to exercise otherwise the power of the Commonwealth or a political subdivision thereof.

- (i) The following criteria will be used to determine if the exception in this paragraph is applicable:
 - (A) The body will be deemed to have the power to expend public funds if the body may commit funds or may otherwise make payment of monies, enter into contracts, invest funds held in reserves, make loans or grants, borrow money, issue bonds, employ staff, purchase, lease, acquire or sell real or personal property without

the consent or approval of the governing body and the effect of the power to expend public funds has a greater than de minimis economic impact on the interest of a person.

- (B) The body will be deemed to have the authority to otherwise exercise the power of the Commonwealth or a political subdivision if one of the following exists:
 - (I) The body makes binding decisions or orders adjudicating substantive issues which are appealable to a body or person other than the governing authority.
 - (II) The body exercises a basic power of government and performs essential governmental functions.
 - (III) The governing authority is bound by statute or ordinance to accept and enforce the rulings of the body.
 - (IV) The body may compel the governing authority to act in accordance with the body's decisions or restrain the governing authority from acting contrary to the body's decisions.
 - (V) The body makes independent decisions which are effective without approval of the governing authority.
 - (VI) The body may adopt, amend and repeal resolutions, rules, regulations or ordinances.
 - (VII) The body has the power of eminent domain or condemnation.
 - (VIII) The enabling legislation of the body indicates that the body is established for exercising public powers of the Commonwealth or a political subdivision.
- (ii) The term does not include judges and inspectors of elections, notary publics and political party officers.
- (iii) The term generally includes persons in the following offices:
 - (A) Incumbents of offices filled by nomination of the Governor and confirmation of the Senate.
 - (B) Heads of executive, legislative and independent agencies, boards and commissions.
 - (C) Members of agencies, boards and commissions appointed by the General Assembly or its officers.
 - (D) Persons appointed to positions designated as officers by the Commonwealth or its political subdivisions.
 - (E) Members of municipal, industrial development, housing, parking and similar authorities.
 - (F) Members of zoning hearing boards and similar quasi-judicial bodies.
 - (G) Members of the public bodies meeting the criteria in paragraph (i)(A).

Requestor – The person seeking an advice or opinion from the Commission.

Respondent – The person who is the subject of a complaint, inquiry or investigation.

Service – Official papers are deemed served on the date of United States postmark if delivered by United States mail, the pickup date if delivered by express carrier, or the date received from the Commission if hand delivered or transmitted by FAX.

Staff – The Executive Director, the chief counsel, investigators, and other personnel as may be employed by or assigned to assist the Commission.

Sworn complaint – A complaint on a form promulgated by the Commission or its equivalent which is notarized and contains the provision that the complaint is signed under the penalty of perjury.

Unannounced write-in-candidate – An individual who is not a "candidate" as defined in the act and who

received sufficient write-in votes on election day to be elected to or nominated for an office.

Vice Chairperson – The Vice Chairperson of the Commission.

§11.2. Construction.

Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this title shall be liberally construed to promote complete financial disclosure as specified in the act.

§11.3. Statute of limitations.

The Commission may investigate a violation of the act within 5 years of its occurrence. The occurrence transpires when an act is complete or requires no further action. This title does not apply to violations committed prior to the effective date of the act, and causes of action initiated for the violations shall be governed by the prior law and title, which are continued in effect for that purpose as if this title were not in force. For the purposes of this title, a violation was committed prior to the effective date of the act if any elements of the violation occurred prior thereto.

CHAPTER 13. OPINIONS AND ADVICES OF COUNSEL

Sec.

- 13.1. General provisions.
- 13.2. Advice of counsel.
- 13.3. Opinions.
- 13.4. Intervention.
- 13.5. Public access.

§13.1. General provisions.

- (a) An advice or an opinion may be requested by a public official or public employe as to his own conduct or by the authorized representative of the person, his present employer, or appointing authority of the person through majority action of the appointing authority, if applicable.
- (b) The requestor shall provide the following information in writing:
 - (1) The name, address and phone number of the person who is the subject of the request and if different, the name, address and phone number of the person initiating the request.
 - (2) The name of the governmental body with which the subject serves and the name or title of the person's public office or position.
 - (3) If the requestor is the appointing authority, employer or representative of the subject of the request, the nature of the relationship.
 - (4) The nature and duties of the subject's office or job. Include an organization chart, bylaws of the organization, if available, and a job description.
 - (5) List the relevant facts and circumstances surrounding the request.
- (c) The requestor may ask that an opinion or advice be issued under either section 7(10) or (11) of the act (65 PS. §407(10) and (11)).
- (d) The Commission will decide, within 14 days, whether an opinion or advice should be issued and will so advise the requestor.
- (e) If a requestor seeks an opinion and is advised that an advice should be issued or if the requestor seeks an advice and is advised that an opinion should be issued, the requestor may either withdraw the request by notifying the Commission within 14 days of the date of receiving notice under subsection (d) or may elect to have the opinion or advice issued as docketed by the Commission.
- (f) Advices and opinions are matters of public record except as provided in this section.
- (g) A requestor may seek a confidential advice or opinion in writing at the time of the request or within 7

days of notification of docketing as an advice or opinion.

- (h) A confidential advice or opinion will be publicly filed but will contain deletions and changes to preserve the confidentiality of the requestor's or subject's identity.
- (i) The files relating to a confidential advice or opinion will not be public and will so remain unless released by the requestor or the public official or public employe who is the subject of the advisory.
- (j) If a Petition for Review or other legal pleading is filed in a court of law regarding a confidential advice or opinion, the files will become public on the date that the Commission record is transmitted to court or on the date the responsive pleading, motion, application or other legal document is filed by the Commission, whichever date comes first, unless the court directs otherwise.
- (k) Documents and submissions to the Commission relating to a request for an opinion or an appeal of an advice shall be made at least 7 days prior to the meeting of the Commission during which the appeal or opinion will be reviewed.

§13.2. Advice of counsel.

- (a) Advice of counsel will be based exclusively on one or more of the following authorities:
 - (1) Prior Commission opinions.
 - (2) The act.
 - (3) This title.
 - (4) Court opinions interpreting the act.
- (b) The Chief Counsel will issue the advice on behalf of the Commission within 21 working days after receipt of the request, but the time may be extended for good cause.
- (c) Clarification of an advice may be requested in cases where the original advice was incomplete, inconsistent or unclear.
- (d) Requests for clarification shall be filed within the 30-day period normally applicable for appealing an advice to the Commission.
- (e) The timely filing of a request for clarification will toll the applicable period for appealing an advice to the Commission.
- (f) Supplemental advice may be requested in cases in which additional facts are present or circumstances have changed from those in the original request.
- (g) An advice of counsel may be appealed to the Commission by the requestor or the subject of the request.
- (h) An appeal from an advice to the Commission shall be in writing and filed within 30 days of the issuance of the advice.
- (i) An appeal from an advice will be considered by the Commission after which an opinion will be issued either affirming, modifying or reversing the original advice.
- (j) Reconsideration may be requested under §21.29 (relating to finality; reconsideration) of an opinion disposing of an appeal of an advice if the request is filed within 30 days of the issuance of the opinion.
- (k) An advice shall be a complete defense in an enforcement proceeding initiated by the Commission, and evidence of good faith conduct in another civil or criminal proceeding, if the requestor, at least 21 working days prior to the alleged violation, requested written advice from the Commission in good faith, disclosed truthfully the material facts and committed the acts complained of either in reliance on the advice or because of the failure of the Commission to provide advice within 21 days of the request or the later extended time.

§13.3. Opinions.

- (a) Opinions shall be issued under the provisions in section 7(10) of the act (65 PS. §407(10)).
- (b) Requests for Commission opinions will be considered in accordance with the procedures outlined in §§23.1–23.6.
- (c) A party may request that the Commission reconsider an opinion in accordance with §21.29 (relating to finality; reconsideration). The request shall be filed within 30 days of the service of the opinion and contain a detailed explanation of the reasons in support of the request.
- (d) Reconsideration may be granted in the discretion of the Commission under §21.29(e).
- (e) A person who acts in good faith on an opinion issued to him by the Commission will not be subject to criminal or civil penalties for so acting, if the material facts are as stated in the opinion request.

§13.4. Intervention.

- (a) A person who is not a party in an advice or opinion request or reconsideration thereof, may file a petition to intervene if the person has an interest. One or more of the following criteria will be utilized to determine whether a person has an interest:
 - (1) A right conferred by Federal or State law.
 - (2) An interest which may be affected and which is not adequately represented.
 - (3) An issue of public importance.
- (b) A person shall apply for intervention within 14 days prior to the Commission meeting if the opinion will be reviewed or decided. The Commission may grant an application at any time prior to the meeting, but only for good cause shown.
- (c) An application for intervention shall include the facts which establish the nature of the alleged right or interest and the grounds for intervention. The application shall also address the facts if they are deficient or incorrectly stated, and the relevant issues of law. The application may cite authority in support of the advocated position.
- (d) The Commission will review applications for intervention to determine whether a grant of intervention is appropriate.
- (e) A person may file an amicus brief which shall be received within 14 days prior to the Commission meeting.

§13.5. Public access.

- (a) Subject to §13.1(h) and (i) (relating to general provisions), the Commission's advisories, letters requesting advisories, files and information submitted to the Commission relating to a request are public records and will be available for public inspection and reproduction during normal business hours.
- (b) The Commission will transmit, free of charge, copies of each order, advice and opinion which has become a matter of public record quarterly to the law library of each county, one public library in each county, the State Library, the State Senate Library, each authority appointing Commission members under this act, the Pennsylvania Association of County Commissioners, the Pennsylvania Association of Boroughs, the Pennsylvania Association of Township Supervisors, the Pennsylvania State Association of Township Commissioners, the Pennsylvania School Boards Association and the Pennsylvania League of Cities.
- (c) The Commission may charge a fee for additional copies at a rate not to exceed actual cost.
- (d) A digest and index of Commission opinions may be published and disseminated annually.

CHAPTER 15. STATEMENTS OF FINANCIAL INTERESTS, APPLICABILITY

Sec.

- 15.1. Federal officials, employes and candidates.
- 15.2. Public officials and public employes.
- 15.3. Candidates/nominees.

§15.1. Federal officials, employes and candidates.

- (a) Federal officials, employes and candidates are not required to file the Statement of Financial Interests with regard to their Federal position.
- (b) Federal officials, employes and candidates who serve with the Commonwealth or a political subdivision as part of an exchange or comparable program are required to file a Statement of Financial Interests.

§15.2. Public officials and public employes.

- (a) Public officials and employes shall file a Statement of Financial Interests for the preceding calendar year by May 1 of each year during which they hold office or a position and by May 1 for the year after they leave the position.
- (b) A public official may not take the oath of office, continue upon his duties or receive compensation for holding office unless a Statement of Financial Interests has been filed.
- (c) Public officials in State-level offices shall file with the Commission and as follows:
 - (1) Executive branch public officials, board and commission members shall file with the Governor's office.
 - (2) Legislative branch public officials shall file with either the Chief Clerk of the House of Representatives or the Secretary of the Senate, depending upon in which body the official serves.
 - (3) Independent agency public officials and other public officials shall file with their agency.
- (d) Public employes of the Commonwealth shall file with the State agency with which they are employed.
- (e) County and local officials, and employes shall file with the governing body of the political subdivision in which they serve or are employed.
- (f) In an election year, public officials, public employes who are also candidates, shall, in addition, file at the times and locations required by candidates.
- (g) Full- or part-time solicitors are required to file Statements of Financial Interests.
- (h) If a law firm or engineering firm is designated solicitor or engineer, the persons primarily responsible for providing the services in the firm are responsible for filing a Statement of Financial Interests.

§15.3. Candidates/nominees.

- (a) A candidate for State level public office shall file a Statement of Financial Interests with the Commission on or before the last day for filing a petition to appear on the ballot and a copy of the Statement shall be appended to the petition.
- (b) A candidate for county and local public office shall file a Statement of Financial Interests with the governing authority of the political subdivision wherein the candidate is seeking office on or before the last day for filing a petition to appear on the ballot and a copy of the Statement shall be appended to the petition.
- (c) A candidate running for office as a substitute nominee shall file a Statement of Financial Interests on or before the last day for filing a substitute nomination certificate as follows:
 - (1) A nominee for State level office shall file the Statement with the Commission and a copy shall be appended to the substitute nomination certificate.
 - (2) A nominee for county or local-level public office shall file the Statement with the governing authority of the political subdivision wherein the

person is seeking office and a copy of the Statement shall be appended to the substitute nomination certificate.

- (d) An independent candidate not running in a primary election shall file a Statement of Financial Interests on or before the last day for filing a petition to appear on the ballot for election. The filing shall be made in accordance with subsections (a) and (b).
- (e) A write-in-candidate shall file a Statement of Financial Interests within 30 days of having been nominated or elected unless the person declines the nomination or office within that period of time.
 - (1) The Statement shall be filed with the Commission for State level public office and with the governing authority of the political subdivision wherein the person has been elected or nominated for county or local-level office.
 - (2) For the purposes of calculating the 30-day period during which the Statement of Financial Interests shall be filed, the time shall commence on the date that the appropriate board of elections certifies the individual as the winner of a nomination or election.
- (f) A petition to appear on the ballot will not be accepted unless a copy of the Statement of Financial Interests is attached thereto.
- (g) A nominee for public office shall file a Statement of Financial Interests for the preceding calendar year at least 10 days prior to the date of approval or rejection by the confirming body.
 - (1) A nominee for Commonwealth positions requiring Senate confirmation shall file with the Commission and the Secretary of the Senate.
 - (2) A nominee for county or local-level public office shall file with the governing authority of the political subdivision in which the person is a nominee and, if different, with the official or body vested with the power of confirmation.

CHAPTER 17. STATEMENTS OF FINANCIAL INTERESTS, CONTENT

Sec.

- 17.1. General.
- 17.2. Real estate.
- 17.3. Creditors.
- 17.4. Income.
- 17.5. Gifts.
- 17.6. Expense reimbursement.
- 17.7. Office, directorship and employment.
- 17.8. Financial business interest.
- 17.9. Transferred business interests.
- 17.10. Reporting in multiple categories.
- 17.11. Application of lobbying disclosure regulations.

§17.1. General.

The person required to file shall list the following general identification information:

- (1) The full name and address of the public official, public employe or candidate.
- (2) The county of residence.
- (3) The position sought or held, and name of the governmental body associated with the position sought or held.
- (4) An occupation or profession.

§17.2. Real estate.

- (a) The person required to file shall list direct or indirect interests in real estate as follows:
 - (1) Real estate sold or leased to the Commonwealth or its agencies or political subdivisions.
 - (2) Real estate purchased or leased from the Commonwealth, or its agencies or political subdivisions.
 - (3) Real estate which is subject to condemnation proceedings by the Commonwealth or its agen-

cies or political subdivisions.

- (b) Real estate interests include ownership in the form of title, as fiduciary, by option agreement, partnership or corporate share, easement, trustee-beneficiary type interests or other forms of interest in realty.
- (c) An indirect interest in real estate constitutes any business entity, the assets of which are 80% or more in real property.

§17.3. Creditors.

- (a) Each creditor to whom is owed in excess of \$6,500 or the amount as adjusted under 65 Pa.C.S. § 1105(d) (relating to statement of financial interests) and §19.5 (relating to reporting threshold adjustments) shall be reported.
- (b) Mortgages, home equity loans, or other loans secured by a primary or secondary residence of the person filing need not be reported.
- (c) A joint obligation with other persons, for which the filer is responsible only for a proportional share that is less than the reporting threshold, is not required to be reported.
- (d) The joint obligation of a husband and wife shall be reported if within the reporting threshold.
- (e) An obligation within the reporting threshold for which a person acts as a guarantor for the person required to file shall be reported.
- (f) Loans or credit between the person required to file and the person's spouse, parents, children, brothers or sisters are excluded.
- (g) No dollar amounts are required.
- (h) The interest rate for a reportable obligation shall be indicated.
- (i) A reportable creditor shall be identified by name and address.

§17.4. Income.

- (a) The name and address of a direct or indirect source of income, including employers, in the aggregate of \$1,300 or more or the amount as adjusted under 65 Pa.C.S. § 1105(d) (relating to Statement of Financial Interests) and §19.5 (relating to reporting threshold adjustments) shall be reported, unless the disclosure would require the divulgence of confidential information protected by statute or existing professional codes of ethics or common law privileges.
- (b) Income from the securities of a particular business equaling or exceeding the reporting threshold, capital gains and dividends equaling or exceeding the reporting threshold shall be listed.
- (c) If the income generated equals or exceeds the reporting threshold, mutual funds and other financial plans for individuals may be reported as a single source if the individual has no authority to buy or sell particular assets in the fund.
- (d) An individual or an individual and a spouse who has an investment portfolio, with a broker, other than a mutual fund, shall list individually the income from each asset to which subsection (b) applies if the asset may be bought and sold by the individual or by the individual and a spouse.

§17.5. Gifts.

- (a) The name and address of the source of a gift valued in the aggregate at \$250 or more or the amount as adjusted under 65 Pa.C.S. § 1105(d) (relating to Statement of Financial Interests) and § 19.5 (relating to reporting threshold adjustments) shall be reported.
- (b) The amount of the gift as well as the circumstances surrounding it shall be reported.
- (c) A gift from a spouse, parent, parent by marriage, sibling, child, grandchild, other family member or friend is not required to be reported when the circumstances surrounding the gift indicate the motivation for the action was a personal or family

relationship.

- (d) The term "friend," under this section, does not include a registered lobbyist or an employe thereof.

§17.6. Expense reimbursement.

- (a) The name and address of the source and the amount of a payment for or reimbursement of actual expenses for transportation and lodging or hospitality received in connection with public office or employment where the actual expenses for transportation and lodging or hospitality exceed \$650, or the amount as adjusted under 65 Pa.C.S. § 1105(d) (relating to Statement of Financial Interests) and § 19.5 (relating to reporting threshold adjustments), in the course of a single occurrence shall be reported.
- (b) This subsection does not apply to expenses reimbursed by a governmental body, or to expenses reimbursed by an organization or association of public officials or employes of political subdivisions which the public official or employe serves in an official capacity.
- (c) The reporting requirement shall be based upon the actual expense amount.

§17.7. Office, directorship and employment.

A public official, public employe or candidate shall disclose the name and address of the business entity with which he is associated and the position held, whether the person required to disclose is an officer, director, fiduciary or partner – limited or general.

§17.8. Financial business interest.

- (a) A financial interest in a legal entity engaged in business for profit shall be reported. Financial interest means more than either 5% of the equity of the business, or 5% of the assets of the economic interest in indebtedness.
- (b) A financial interest in a business and employment by the same business shall be listed in both categories of the Statements of Financial Interests.

§17.9. Transferred business interests.

- (a) A financial interest in a business with which the reporting person is or has been associated during the preceding calendar year which has been transferred to a member of the person's immediate family; that is, a parent, spouse, child, brother or sister, shall be reported.
- (b) Financial interests comprise more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness.
- (c) Transfer includes a conveyance whether or not written or otherwise recorded.

§17.10. Reporting in multiple categories.

- (a) The required disclosure of information in one category does not excuse the nondisclosure of that information in other categories when so required. Therefore, the same information may be required in more than one category.

§17.11. Application of lobbying disclosure regulations.

See, lobbying disclosure regulations, Chapters 31 and 35, (relating to general provisions; and reporting), as to the differentiation between "gift" and "transportation and lodging or hospitality received in connection with public office or employment" and the determination of the amounts for reporting.

CHAPTER 19. STATEMENTS OF FINANCIAL INTERESTS, MISCELLANEOUS

Sec.

- 19.1. Forms.
- 19.2. Period covered.
- 19.3. Late or deficient filings.
- 19.4. Availability of Statements of Financial Interests.
- 19.5. Reporting threshold adjustments.

§19.1. Forms; filing.

- (a) Public officials, public employes and candidates shall file Form SEC-1, as published and revised by the Commission.
- (b) The Statement of Financial Interests form is available at the Commission, the State Board of Elections, the County Board of Elections and other locations as conditions warrant. The postal address of the Commission is: State Ethics Commission, Post Office Box 11470, Harrisburg, Pennsylvania 17108-1470. The office of the Commission is located in Room 309, Finance Building, Capitol Complex, Harrisburg, Pennsylvania, (717)783-1610, (800)932-0936.
- (c) Additional sheets may be attached to the Statement of Financial Interests form if more space is required.
- (d) A Statement of Financial Interests sent by FAX transmission is filed on the date the Commission receives the faxed copy if the Commission receives the signed original within 5 business days thereafter. If the Commission does not receive the signed original within 5 business days from the date of receiving the faxed copy, the Statement of Financial Interests is filed on the date the Commission receives the signed original.

§19.2. Period covered.

The Statement of Financial Interests requires information for the full calendar year immediately preceding the year in which the Statement of Financial Interests is filed.

§19.3. Late or deficient filings.

- (a) If an audit or inspection determines that a required filing is deficient or that a required filing has not been made, the Commission will provide written notice to the individual required to file, detailing the deficiency and the penalties for deficient filing or failure to file.
- (b) If a complaint is received alleging that a required filing is deficient or has not been made, the Commission may elect to proceed in the matter under this section rather than through the investigative procedures of Chapter 21 (relating to investigations).
 - (1) Upon election, the complainant will be notified of the decision as well as the final resolution of the matter.
 - (2) In determining whether to proceed under this section, the Commission may consider whether:
 - (i) The deficient filing or failure to file was intentional.
 - (ii) The filer had prior notice of the requirements of the act.
 - (iii) The filer has in the past complied with the act.
- (c) The individual notified in accordance with subsection (a) has 20 days from the mailing date of the notice to correct deficiencies or to file a Statement of Financial Interests. If an individual fails to file or to correct his statement within that time, the Commission will review the matter to determine whether a civil penalty is appropriate under the act.
- (d) If the Commission determines that a penalty is appropriate, it will issue a rule to show cause, notifying the individual of his deficiency under the act and of the grounds for the rule and of his opportunity to respond in writing to the rule. If cause is not shown, the rule and penalty therein become absolute.
- (e) The Commission may assess a penalty of not more than \$25 per day for the time a Statement of Financial Interests remains delinquent up to a maximum of \$250 total.
- (f) The penalty in subsection (d) is in addition to other penalties provided by law and the filing of a Statement of Financial Interests in accordance with subsection (a) does not otherwise vitiate the failure to comply with the act.

§19.4. Availability of Statements of Financial

Interests.

- (a) Statements of Financial Interests filed with the Commission under the act are available for public inspection and copying at a charge not to exceed actual cost at the office of the Commission in Harrisburg, Pennsylvania between the hours of 8:00 a.m. and 5:00 p.m., weekdays.
- (b) A governmental body required to maintain Statements of Financial Interests shall make them available for public inspection and copying during regular business hours.
- (c) Statements of Financial Interests more than 1 year old will be made available for public inspection and copying within 2 working days after the request has been made for the Statements. The Statements will be kept on file for 5 years.

§19.5. Reporting threshold adjustments.

- (a) On a biennial basis commencing in January 1991, the Commission will review and may increase the threshold dollar amounts in §§17.3(a), 17.4(a), 17.5(a), and 17.6(a).
- (b) The Commission will base the increases upon a review of the National Consumer Price Index as published by the United States Department of Labor or other relevant indices.
- (c) The Commission may hold a hearing to receive testimony or information regarding the appropriate rate of increases.
- (d) Upon final determination of the appropriate reporting increases, the Commission will publish a schedule of the increases in the Pennsylvania Bulletin in 2 successive months and take other action deemed necessary to disseminate the information.
- (e) The effective date of threshold increases shall be delayed a sufficient period of time to allow publication of the information to afford affected individuals the opportunity to comply therewith and relevant Commission forms shall be revised accordingly.

CHAPTER 21. INVESTIGATIONS

GENERAL

Sec.

- 21.1. Complaints.
- 21.2. Initiation of investigation by the Commission.
- 21.3. Preliminary inquiries.
- 21.4. Frivolous complaints; complaints without probable cause; disclosure of complaints.
- 21.5. Conduct of investigations.
- 21.6. Confidentiality.

HEARINGS

- 21.21. General.
- 21.22. Discovery.
- 21.23. Scope of hearing.
- 21.24. Hearing officer.
- 21.25. Conduct of the hearing.
- 21.26. Motions.
- 21.27. Briefs.
- 21.28. Decision.
- 21.29. Finality; reconsideration.
- 21.30. Effect of order.

GENERAL

§21.1. Complaints.

- (a) A complaint alleging a violation of the act shall contain the name, position or office held by the respondent and the basis of the complaint which would delineate the facts and circumstances of the alleged violation.
- (b) A complaint shall be sworn and signed by the complainant.
- (c) The identity of the complainant will remain confidential unless there is a wrongful use of the act.
- (d) The Commission will acknowledge, in writing, the

receipt of the complaint.

- (e) The Commission through its Executive Director will review complaints and proceed only if the complaint:
 - (1) Contains sufficient information.
 - (2) Is sworn and signed.
 - (3) Is within the Commission's jurisdiction.
 - (4) Concerns an alleged violation of the act having a greater than de minimis economic impact.
- (f) A complaint not meeting the requirements of subsection (e) will be dismissed without prejudice to refile if the requirements are satisfied.
- (g) Upon the receipt of a complaint which satisfies the criteria of subsection (e), the Commission, through its Executive Director, will initiate a preliminary inquiry. If the preliminary inquiry establishes reason to believe that the act was violated, the Commission, through its Executive Director, may initiate a full investigation.
- (h) A complainant will be notified of the dismissal of a complaint under subsection (f).
- (i) In the case of sworn complaints alleging a violation of the Statements of Financial Interests filing requirements, the Commission may elect to proceed under §19.3 (relating to late or deficient filings), in which event this chapter does not apply.
- (j) This section supersedes 1 Pa. Code §35.9 (relating to formal complaints generally).

§21.2 Initiation of investigation by the Commission.

The Commission through its Executive Director may, on its own motion, conduct a preliminary inquiry regarding an alleged violation of the act.

§21.3. Preliminary inquiries.

- (a) A preliminary inquiry will be terminated or opened as a full investigation within 60 days of the initiation thereof. A preliminary inquiry is considered initiated at the time when it is officially docketed.
- (b) The Commission will keep information, records and proceedings relating to a preliminary inquiry confidential. The Commission will, however, have the authority to refer the case to law enforcement officials during a preliminary inquiry or any time thereafter without providing notice to the subject of the inquiry.
- (c) If, after preliminary inquiry, there is reason to believe that the act has been violated, the Executive Director will commence an investigation. An investigation will be considered commenced when the respondent is notified under §21.5(b) (relating to conduct of investigations).
- (d) The Commission, through its Executive Director, will close the preliminary inquiry if:
 - (1) The occurrence giving rise to the complaint is not within the purview of the act as having been committed and completed prior to the act.
 - (2) The occurrence giving rise to the complaint is clearly not within the purview of the act.
 - (3) The respondent is not a person subject to the act.
 - (4) There is no reason to believe that the act has been violated.
 - (5) The violation complained of has a de minimis economic impact.
- (e) If the preliminary inquiry is closed, the Commission will notify the complainant and the respondent.

§21.4. Frivolous complaints; complaints without probable cause; disclosure of complaints.

- (a) If a public official or public employee has reason to believe a complaint is frivolous due to its having been filed in a grossly negligent manner without basis in law or fact, or without probable cause and made primarily for a purpose other than that of

reporting a violation of the act, or that a person has publicly disclosed or caused to be disclosed that a complaint against the public official or public employee has been filed with the Commission, the public official or public employee shall notify the Commission and the Commission, through its Executive Director, will conduct an investigation.

- (b) These matters will be processed by the Commission in accordance with Chapter 25 (relating to wrongful use of the act).

§21.5. Conduct of investigations.

- (a) Within 72 hours of the commencement of an investigation, the complainant will be provided notification thereof by first class mail.
- (b) The respondent will be provided with a general statement of the alleged violation of the act and other applicable statutes under investigation. Service of the notice is complete upon mailing which will be by certified or registered mail.
- (c) The complainant and respondent will be notified of the status of the investigation every 90 days until it is complete.
- (d) The Commission may employ or be assigned staff, including attorneys, investigators, and hearing officers, as may be required to properly investigate, review and dispose of complaints and investigations.
- (e) The Executive Director, staff counsel, director of investigations and special investigators have the authority to conduct interviews, take statements, receive and inspect documents and records and otherwise obtain evidence and gather information by lawful means.
- (f) Commission staff members identified in subsection (e) are designated to administer oaths or affirmations for the purpose of obtaining voluntary sworn statements with regard to matters which may properly come before the Commission.
- (g) A person having possession or control of documents or records deemed relevant to an investigation that the Commission is authorized to conduct may be required to produce the materials for inspection by subpoena served by the members of the Commission staff designated in subsection (e). These Commission staff members have the right to retain or have access to subpoenaed documents and records for a reasonable period, and to make copies thereof.
- (h) The Commission may authorize one or more members of the Commission staff designated in subsection (e) to obtain by subpoena the sworn statement of a person deemed to have information relevant to an investigation that the Commission is authorized to conduct
 - (1) Sworn statements may be conducted by and before one or more of the staff members in subsection (e).
 - (2) Testimony received in the preparation of a sworn statement will be under oath or affirmation administered and recorded by a stenographer.
 - (3) The authority to question a witness appearing for a sworn statement will be limited to staff members taking the sworn statement, the hearing officer, and counsel for the witness.
 - (4) Persons permitted to be in attendance at the preparation of a sworn statement will be limited to staff members of the Commission, the hearing officer, the witness, counsel for the witness, and a stenographer.
 - (5) A witness giving a sworn statement may object to a question if it is irrelevant or privileged.
 - (6) A witness subpoenaed by the Commission is entitled to compensation as fixed by 42 Pa.C.S. §5903 (relating to compensation and expenses

of witnesses).

- (i) Subpoenas issued under subsection (g) or (h) will be authorized by the Commission and signed by the Chairperson or Vice Chairperson. Subpoenas may be served by a person empowered to do so or as designated by the Executive Director.
- (j) Within 180 days of commencing the investigation, the Commission will do one of the following:
 - (1) Terminate the investigation and notify the complainant and respondent.
 - (2) Rule upon a request for an extension by the Executive Director, upon a showing of need, not to exceed 90 days.
 - (i) The granting of or denial of a request for an extension requires a majority vote of a quorum of the Commission.
 - (ii) A maximum of two extensions may be granted.
 - (iii) A findings report will be issued within 180 days after the commencement of an investigation or within the time period of a granted extension.
 - (3) Issue a findings report which sets forth the pertinent facts, and affords the subject of the investigation an opportunity to respond to the findings and to request an evidentiary hearing.
- (k) The respondent shall file a response to the findings report of the Commission within 30 days, unless an application for an extension is made to the Commission and granted for good cause shown.
 - (1) The respondent shall admit or deny the allegations in the findings report by number. Anything not specifically denied or general denials will be deemed an admission of the individual factual finding.
 - (2) New matter raised by a respondent in his answer does not require a reply by the Commission.
- (l) Investigations by the Commission and the information gained therein will be confidential subject to the exceptions in section 8(k)(1)-(8) of the act (65 P.S. §408(k)(1)-(8)).
- (m) If an investigation conducted under the act indicates that no violation has been committed, the Commission will immediately terminate the investigation and send written notice of the determination to the complainant and the person who was the subject of the investigation.
- (n) Subsection (h) supersedes 1 Pa. Code §§35.142-35.145 (relating to subpoenas; and depositions).

§21.6. Confidentiality.

- (a) As a general rule, a person may not disclose or acknowledge, to any other person, any information relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which is before the Commission. However, a person may disclose or acknowledge to another person matters held confidential in accordance with this chapter or 65 Pa.C.S. § 1108 (relating to investigations by commission), when the matters pertain to any of the following:
 - (1) Final orders of the Commission as provided in 65 Pa.C.S. §1108(h).
 - (2) Hearings conducted in public under 65 Pa.C.S. §1108(g).
 - (3) For the purpose of seeking advice of legal counsel.
 - (4) Filing an appeal from a Commission order.
 - (5) Communicating with the Commission or its staff, in the course of a preliminary inquiry, investigation, hearing or petition for reconsideration by the Commission.
 - (6) Consulting with a law enforcement official or

agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency.

- (7) Testifying under oath before a governmental body or a similar body of the United States of America.
- (8) Information, records or proceedings relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which the person is the subject of.
- (9) The publication or broadcast of information legally obtained by the news media regarding a confidential Commission proceeding.
- (10) The divulgence by individuals who are interviewees or witnesses as to confidential Commission proceedings regarding information that was already in their possession or the disclosure of their own statements.

HEARINGS

§21.21. General.

- (a) The Commission will conduct hearings upon the request of a respondent. A respondent shall request a hearing in his answer to the findings report or separately within 30 days of the issuance of the findings report. Failure to request a hearing within the time period will be deemed a waiver.
 - (1) The respondent may be granted an extension for filing an answer upon application to the Chief Counsel and for good cause shown. The Chief Counsel may grant an extension up to 30 days.
 - (2) Further requests shall be made to the Chairperson 2 weeks prior to the extended deadline. The Chairperson may grant a second extension if extraordinary circumstances are demonstrated in writing.
 - (3) Extensions granted will correspondingly advance other deadlines provided for in the act.
 - (4) A hearing will be held within 45 days after the respondent's answer to the Findings Report unless the time is extended upon application for good cause shown.
 - (5) A notice of hearing will be issued to the respondent unless represented by counsel in which case to counsel within a reasonable period of time prior thereto. The notice will advise of the date, time and location of the hearing, and of the hearing rights, privileges, process and procedures in this section.
 - (6) Hearings will be conducted in Harrisburg, Pennsylvania. For cases to which the act applies, a request for a hearing in Philadelphia or Pittsburgh will be granted, if filed with the Commission within 7 days after the notice of hearing is mailed. Failure to request a hearing in those locations within the time period will be deemed a waiver of the right.
- (b) Hearings will be conducted before one or more members of the Commission. The Commission may appoint a hearing officer for the conduct of the hearings.

§21.22. Discovery.

- (a) The respondent will be given access to evidence intended to be used by the Commission at the hearing, as well as exculpatory evidence developed during the investigation.
- (b) Access to evidence does not include the original complaint or the name of the complainant, information which is otherwise privileged or information not within subsection (a).

§21.23. Scope of hearing.

- (a) Hearings may be conducted as follows based upon

the express agreement of the parties:

- (1) Full evidentiary hearing.
 - (2) Oral argument based on stipulated findings.
 - (3) Submission on briefs.
 - (4) Limited hearing based on partially stipulated facts.
- (b) The respondent has the right to a full hearing, if so requested.
 - (c) The Commission and the respondent may stipulate one or more of the facts.
 - (d) Motions for dismissal made by the respondent will be deferred to the full Commission for consideration.
 - (e) This section supersedes 1 Pa. Code §35.126 (relating to presentation by the parties).

§21.24. Hearing officer.

- (a) It is the duty of the hearing officer and he has the power to do one or more of the following:
 - (1) Schedule and conduct a hearing as required to resolve the matter and to provide the parties with proper notice of the hearing.
 - (2) Administer oaths or affirmations to witnesses.
 - (3) Rule on motions, objections or other matters arising during the hearing.
 - (4) Insure that all parties have a full and fair opportunity to be heard.
 - (5) Insure that a record of the proceedings is available for review by the Commission.
 - (6) Advise witnesses and parties to the hearing of the confidentiality requirements of the act.
 - (7) Advise witnesses or the respondents, when not represented by counsel, of their rights as witnesses.
 - (8) Issue subpoenas upon written request for the production of documents, records and persons needed for the proceeding. The hearing officer will be provided with the name and addresses of the persons and a description of the documents or records involved, and will be satisfied that the documents, records or testimony are relevant and are not protected by privilege.
 - (9) Arrange for the payment of witness fees and mileage expenses or pay other related expenses as required by law.
- (b) The presiding officer will make the following available to the Commission to the extent applicable:
 - (1) A transcript of the hearing, including exhibits.
 - (2) Motions, briefs, memorandums or documents filed by a party to the proceeding.
- (c) Subsection (a) supersedes 1 Pa. Code §35.187 (relating to authority delegated to presiding officers).

§21.25. Conduct of the hearing.

- (a) The formal rules of evidence will not apply to hearings. Relevant probative evidence except properly objected-to hearsay will be admitted.
- (b) Testimony shall be given under oath or affirmation and witnesses shall be subject to cross-examination.
- (c) The investigative staff of the Commission will present its case followed by the case of the respondent.
- (d) Each party may make an opening and closing statement.
- (e) Parties to the proceeding will be afforded a full and fair opportunity to be heard and may be represented by counsel.
- (f) The hearing will be closed to the public unless the respondent requests an open hearing.
- (g) Witnesses summoned for hearings shall receive reimbursement for expenses under 42 Pa.C.S. §5903 (relating to compensation and expenses of witnesses).
- (h) Subpoenas may be issued at the request of the parties to the hearing on the approval of the Commission or hearing officer. Information subpoenaed shall be relevant and not privileged.

or hearing officer. Information subpoenaed shall be relevant and not privileged.

- (i) The hearing and papers, records and disclosures therein will be confidential except for the contents of the final order as provided in §21.29 (relating to finality; reconsideration).
- (j) If one or more of the participants in a hearing become disrespectful, disorderly, or disruptive, the hearing officer may continue the hearing to allow the full Commission to rule on the proper limitations or sanctions for the person whose behavior does not conform to minimum standards required for an orderly proceeding.
- (k) Subsection (a) supersedes 1 Pa. Code §35.161 (relating to form and admissibility of evidence). Subsection (b) supersedes 1 Pa. Code §35.137 (relating to oral examination). Subsection (c) supersedes 1 Pa. Code §35.125 (relating to order of procedure).

§21.26. Motions.

- (a) A motion filed prior to the issuance of a notice of hearing will be submitted to the Chairperson, Vice Chairperson or designated hearing officer who will rule on the matter unless in the exercise of his discretion the motion should be submitted to the Commission for a determination at the next scheduled executive session of the Commission.
- (b) A motion filed will correspondingly advance other deadlines provided for in the act by an amount of time equal to the period between the date of filing of the motion and the date of disposition.
- (c) A motion filed immediately prior to or at hearing will be submitted to the hearing officer. The hearing officer will rule on the motion except that which would involve a final determination which will be deferred and submitted to the Commission as part of the record for final disposition of the case.
- (d) This section supersedes 1 Pa. Code §35.177 (relating to scope and contents of motions).

§21.27. Briefs.

- (a) The hearing officer or the parties may request that briefs, proposed findings of fact and conclusions of law be presented. The hearing officer will establish a schedule for the presentation of this material. The parties have the right to request a schedule for the filing of briefs. Failure to comply with this schedule without reasonable excuse, as determined by the hearing officer, shall operate as a waiver of the opportunity to present this material.
- (b) The hearing officer will provide the specifications for briefs which will be in conformity with 1 Pa. Code Chapter 35 (relating to formal proceedings).
- (c) Subsection (a) supersedes 1 Pa. Code §35.191 (relating to proceedings in which briefs are to be filed).

§21.28. Decision.

- At the conclusion of a hearing concerning an alleged violation and in a timely manner, the Commission will deliberate on the evidence to determine whether there has been a violation of the act.
- (1) At least four members of the Commission present at a meeting must find a violation of the act by clear and convincing proof.
 - (2) The names of the members finding a violation and the names of those dissenting and abstaining will be listed in the order.
 - (3) The determination of the Commission, in the form of a final order and findings of fact, will be a matter of public record.

§21.29. Finality; reconsideration.

- (a) An order disposing of an investigation will be a final order when issued. Public release of the order will occur 30 days after the date of issuance, unless

reconsideration is requested within that 30-day time period.

- (b) Any party may ask the Commission to reconsider an order or opinion within 30 days of service of the order or opinion. The requestor shall present a detailed explanation setting forth the reason why the order or opinion should be reconsidered.
- (c) A request for reconsideration filed with the Commission will delay the public release of an order, but will not suspend the final order unless reconsideration is granted by the Commission.
- (d) A request for reconsideration may include a request for a hearing before the Commission.
- (e) Reconsideration may be granted at the discretion of the Commission if:
 - (1) A material error of law has been made.
 - (2) A material error of fact has been made.
 - (3) New facts or evidence are provided which would lead to reversal or modification of the order or opinion and if these could not be or were not discovered by the exercise of due diligence.
- (f) If the Commission grants reconsideration the Commission may do one or more of the following:
 - (1) Order new hearings.
 - (2) Schedule and conduct oral argument.
 - (3) Take other action or issue an order or opinion in final disposition of the case.
- (g) Pending reconsideration or request for reconsideration, an order will remain confidential.
- (h) An order which becomes final in accordance with this section will be available as a public document, but the files and records relating thereto will remain confidential.
- (i) This section supersedes 1 Pa. Code §§35.231–35.233 and 35.241 relating to reopening of record; and application for rehearing or reconsideration.

§21.30. Effect of order.

In addition to deciding the case before it, the Commission may take one or more of the following actions, if appropriate. The Commission may:

- (1) Order the respondent to make restitution or impose a monetary penalty in accordance with the act.
- (2) Order the respondent to cease and desist from engaging in a particular activity deemed to be in contravention of the act.
- (3) Order the respondent to take specified action to bring himself in compliance with the act.
- (4) Refer the matter for review or with a specific recommendation for action to law enforcement, regulatory or other authorities with jurisdiction over the matters.
- (5) Institute restitution order enforcement proceedings through the Office of Attorney General or the Commission's legal staff.

CHAPTER 23. COMMISSION

GENERAL PROVISIONS

Sec.

- 23.1. Meetings.
- 23.2. Quorum.
- 23.3. Presiding officer.
- 23.4. Conduct of meetings.
- 23.5. Records of meetings.
- 23.6. Supplement procedures.
- 23.7. Election of Chairperson and Vice Chairperson.

CODE OF CONDUCT

- 23.21. Code of conduct.
- 23.22. Prohibited activities.
- 23.23. Limitations on voting/recusal.

GENERAL PROVISIONS

§23.1. Meetings.

Meetings of the Commission will be held at the call of the Chairperson or any four members, at a time and location and for a purpose as may be determined by the Chairperson or the four other members.

§23.2. Quorum.

A minimum of four members of the Commission will constitute a quorum. In a meeting, the majority vote of the quorum will constitute official action, except as provided in §§21.28 and §23.22(e) (relating to decision; and prohibited activities).

§23.3. Presiding officer.

- (a) The Commission will elect a Chairperson and a Vice Chairperson. The Chairperson will preside over Commission meetings. If the Chairperson is absent or that position is vacant, the Vice-Chair will preside.
- (b) If the Chairperson and Vice Chairperson will be absent from a Commission meeting, the Chairperson, or the Vice Chairperson if presiding, may designate a Commission member to preside for a scheduled meeting.
- (c) If no designation is made under subsection (b), the Commission will elect from among its members, a presiding officer by a majority vote.
- (d) The presiding officer will rule upon matters at the meeting and take action as may be necessary to ensure that the meeting proceeds in an orderly and proper manner.

§23.4. Conduct of meetings.

- (a) *Statements.* Persons in attendance before the Commission may be given a reasonable time in which to make relevant commentary. A person may be questioned during the presentation. The presentation may be terminated by the presiding officer if a reasonable time has expired or if the statement is irrelevant.
- (b) *Questioning.* The authority to question an individual making a statement will be limited to the presiding officer, other members of the Commission and to the extent permitted by the presiding officer, staff members and the parties.
- (c) *Public meetings.* Meetings of the Commission will be open to the general public at a time and place announced in advance under the Sunshine Act (65 P.S. §§271–286).
- (d) *Executive session.* Executive sessions of the Commission will be announced at public meetings of the Commission, including the time and reason for holding of an executive session.

§23.5. Records of meetings.

Records of public meetings will be kept by the Executive Director and filed within a reasonable time following each Commission meeting. These records will be made available for public inspection during office hours.

§23.6. Supplemental procedures.

The Commission may adopt supplemental procedures or guidelines to govern the administrative and internal operations of the Commission in its discretion by resolution of a majority of a quorum.

§23.7. Election of Chairperson and Vice Chairperson.

- (a) At the first meeting of every year, after the expiration of the term of office of the Chairperson and Vice Chairperson, a quorum of the Commission will elect a Chairperson and Vice Chairperson. Commission members who are nominated for these positions are not precluded from voting.
- (b) The term of office for the Chairperson and Vice Chairperson is 2 years. The officers will remain in office during the interim period between the date when the term of office expires and the next regularly scheduled election.
- (c) The Chairperson and Vice Chairperson are eligible to serve successive terms.

- (d) Notice of the election will be public and announced during the final meeting of the Commission in the year preceding the year in which the terms of office of the serving officers expire.
- (e) In the event of the completion of the term of office and nonreappointment, resignation, removal or incapacity of the Chairperson, the Vice Chairperson will serve the unexpired term of the Chairperson or will serve during the period of incapacity of the Chairperson.
- (f) Upon the resignation, removal, completion of the term and nonreappointment, or in the event that the Vice Chairperson must assume the duties of the Chairperson, a majority of the quorum of the Commission may schedule a special election to elect a Vice Chairperson.
- (g) Notice of a special election will be publicly announced at least 30 days prior to the election. Notice will be forwarded to the members of the Commission.
- (h) The Chairperson, or Vice Chairperson may be removed as officers, but not as Commissioners, for just cause upon a majority vote of the Commission.
- (i) A motion to remove a member of the Commission from the offices mentioned in subsection (h) may be made by a Commission member.
- (j) A member may not be removed unless given reasonable notice and an opportunity to be heard.

CODE OF CONDUCT

§23.21. Code of Conduct.

- (a) Due to their special position, Commissioners have a higher duty than other public officials to avoid conflicts of interests. Respect for the act can be maintained only if Commission members are models of ethical behavior. The purpose of this section and §§23.22 and 23.23 (relating to prohibited activities; and limitations on voting/recusal) is to guide the Commissioners so that their behavior meets the highest of ethical standards.
- (b) The provisions of this section and §§23.22 and 23.23 are in addition to the duties, responsibilities or obligations imposed upon the Commission members as public officials under the act.

§23.22. Prohibited activities.

- (a) A Commissioner may not be employed by the Commonwealth or a political subdivision of the Commonwealth in a capacity with or without compensation, including holding another public office or position.
- (b) A Commissioner may not hold an office in a political party during his tenure or for 1 year prior to his appointment to the Commission, nor may a member hold office in a political committee during his tenure.
- (c) A Commissioner, a spouse of a Commissioner, or a member of a Commissioner's immediate family residing in the Commissioner's household may not actively participate in or contribute to a political campaign.
 - (1) Active participation in a campaign includes attempting to assist a candidate or nominee to obtain public office, soliciting support or information, distributing campaign materials or advertisements, fundraising, publicly supporting a candidate, participating in an organized effort for the purpose of helping a candidate or nominee or attending a fundraiser or dinner on behalf of a candidate.
 - (2) This section does not abridge the right of a Commissioner to vote or attend a debate, speech or similar event that is held primarily for the purpose of communicating a candidate's platform or position on issues of public concern.

- (d) A Commissioner may not directly or indirectly attempt to influence a decision by a governmental body, other than a court of law or as a representative of the Commission on a matter within the jurisdiction of the Commission.
- (e) If a Commissioner violates section 6(d) of the act (65 P.S. §406(d)), a majority of the Commission may declare the seat vacant.
 - (1) A motion to remove a Commissioner will be made by a Commissioner member.
 - (2) A Commissioner may not be removed prior to notice and an opportunity to be heard.

§23.23. Limitations on voting/recusal.

- (a) A Commissioner is required to recuse himself from a matter which involves persons with whom the Commissioner has a direct involvement, personally or financially.
 - (1) A Commissioner is deemed to have a direct personal involvement with members of his immediate family as defined in the act, in-laws and close friends.
 - (2) A Commissioner has a direct financial involvement with an individual who owns a part of or is employed by a business with which the Commissioner is associated within the 2 years prior to the Commission's review of a matter in question if the financial involvement was of more than a de minimis nature.
 - (3) If a Commissioner recuses himself from a matter he will:
 - (i) Remove himself from that segment of the Commission meeting wherein the matter is to be discussed and avoid casual discussion of the matter with other Commissioners.
 - (ii) Receive no further information from the Commission or the Commission staff regarding the matter.
 - (iii) Receive copies of minutes of the meeting containing deletions so as to not disclose the matter to the Commissioner.
- (b) A Commissioner who has a potential conflict not addressed in subsection (a) will take one of the following courses of action:
 - (1) Disclose the matter to the Commission and seek its guidance as to whether it would be proper to participate and vote in a matter before the Commission.
 - (2) Disclose to the parties his potential conflict and solicit their express agreement that he may continue in his official capacity, subject to the approval of the Commission.
 - (3) Recuse himself.
- (c) A Commissioner who recuses himself or is recused by the Commission or at the suggestion of one of the parties is subject to subsection (a)(3).
- (d) A Commissioner's participation involving parties with whom the Commissioner has had substantial prior contact may present a conflict under subsection (b) depending on the totality of the circumstances. Circumstances to be considered include whether the matter involves one or more of the following:
 - (1) A relative of the Commissioner.
 - (2) A former employer or employee.
 - (3) A person or business with which a Commissioner has or had financial dealings of more than a de minimis nature within the 2 years prior to the Commissioner's review of the matter in question.

- (4) A source of income reportable on the Statement of Financial Interests.
- (5) The individual appointing authority of the Commissioner is a respondent.
- (6) A person providing the Commissioner with funds, goods or services without compensation.
- (7) A person with whom the Commissioner has a fiduciary relationship.
- (8) A debtor or creditor of the Commissioner.
- (e) A Commissioner recused from a matter shall direct that the individual recording the minutes at the meeting enter into the minutes the recusal and the reasons therefor.
- (f) If the Commission cannot achieve a quorum because recusals reduce the number of Commissioners available to vote, the matter in question will be deferred until a meeting at which a quorum may be achieved.

CHAPTER 25. WRONGFUL USE OF THE ACT

Sec.

25.1. Wrongful use of the act.

25.2. Initiation of proceedings.

25.3. Disposition.

25.4. Appeal of determination.

§25.1. Wrongful use of the act.

Wrongful use of the act is established by one or more of the following elements:

- (1) The filing of a frivolous complaint which is a complaint filed in a grossly negligent manner without basis in law or fact.
- (2) The filing of a complaint without probable cause, primarily for a purpose other than reporting a violation of the act.
- (3) Disclosing publicly or causing to be publicly disclosed the fact that an individual is the subject of a complaint or Commission investigation.

§25.2. Initiation of proceedings.

- (a) The Commission may initiate proceedings to determine whether there has been a wrongful use of the act through the filing of a notification by a public official/public employe as provided for in section 8(l) of the act (65 P.S. §408(l)), which notification shall contain the following:
 - (1) A reference identifying the complaint/investigation involved.
 - (2) A detailed explanation as to the reasons, information, facts or evidence establishing the elements of wrongful use of act as outlined in §25.1 (relating to wrongful use of the act).
 - (3) If applicable, identification of the person publicly disclosing the existence of Commission proceedings and the specific nature of the disclosure.
 - (4) Additional information necessary to the resolution of the matter.
- (b) Failure to provide information as outlined in this section will be cause for dismissal of the notification.

§25.3. Disposition.

- (a) Pursuant to a notification containing the requisite information outlined in §25.2 (relating to initiation of proceedings), the Commission will initiate proceedings by conducting an investigation to determine whether there has been a wrongful use of act.
- (b) The investigation will be conducted in a confidential manner.
- (c) The investigation may incorporate information which the Commission has already obtained.
 - (1) If the Commission determines a complaint has

been filed in violation of the act, it will release the name and address of the complainant to the respondent after giving the complainant notice and an opportunity to be heard on the issue of whether the complainant wrongfully used the act.

- (2) If the Commission determines that a complaint was proper, it will so notify the respondent who may appeal that determination and the Commission will schedule a hearing.
- (d) Upon completion of the investigation, the Commission will make a preliminary determination as to wrongful use of the act. The Commission will notify the complainant and subject of the preliminary determination.

§25.4. Appeal of determination.

- (a) Both the complainant and the subject have standing and either may appeal the preliminary determination to the Commission.
 - (1) Any appeal shall be filed with the Commission within 30 days of service of the preliminary determination.
 - (2) If there is no timely appeal filed, the Commission's initial determination will become absolute and will become the final determination of the Commission in the matter as to wrongful use of the act.
- (b) The issuance of Orders to Show Cause is governed by the following:
 - (1) If a subject appeals, the Commission will issue an Order to Show Cause requiring the respondent to set forth reasons why the rule should not be made absolute as to a finding of no wrongful use of the act. The answer to the rule shall contain specific factual averments which establish a basis for believing the act was wrongfully used. One or more of the following are inadequate to establish wrongful use:
 - (i) Dismissal of the complaint.
 - (ii) Dismissal for lack of probable cause.
 - (iii) Dismissal on jurisdictional grounds.
 - (2) The Commission will schedule a hearing for the subject's appeal at which the subject shall bear the burden of proving wrongful use of the act by clear and convincing evidence. The investigative staff of the Commission will present the case opposing the subject's appeal.
- (c) If the complainant appeals, the Commission will issue a Rule to Show Cause requiring the complainant to file an answer to the averments in the Rule as to why the Rule should not be made absolute as to a finding of wrongful use of the act. The Commission will schedule a hearing for the complainant's appeal. The investigative staff of the Commission will present the Commission's case and will have the burden of proving wrongful use of the act by clear and convincing evidence.
- (d) If the Commission makes a final determination that the act has been wrongfully used, it will release to the subject the name and address of the complainant solely for the purpose of initiating an action for wrongful use of the act. The complainant's identity will not otherwise be publicly released.
- (e) If the Commission makes a final determination that the act was not wrongfully used, it will issue a final determination setting forth the reasons and evidence for its finding.
- (f) The procedures of §§21.21-21.29 will apply to the hearing to the extent applicable.

COMPLAINTS/INVESTIGATIONS

The State Ethics Commission is mandated to investigate sworn complaints and to initiate investigations on its own motion. A sworn complaint must include full names and addresses of the complainant and respondent, contain allegations related to specific individuals, be signed by the complainant, and be properly notarized.

The Commission's Investigative Division will initially acknowledge receipt of a complaint. If the matter is not within the Commission's jurisdiction or if the complaint lacks sufficient information, it will not be processed and the complainant so notified. The Commission's Investigative Division may initiate either a preliminary or full investigation. A preliminary investigation must be completed within 60 days and either terminated or opened as a full investigation. The complainant will be notified within 72 hours of the commencement of a full investigation and both the complainant and subject of the investigation will be notified every 90 days thereafter of the status of the matter. The subject of an investigation must be notified prior to the initiation of such investigation of

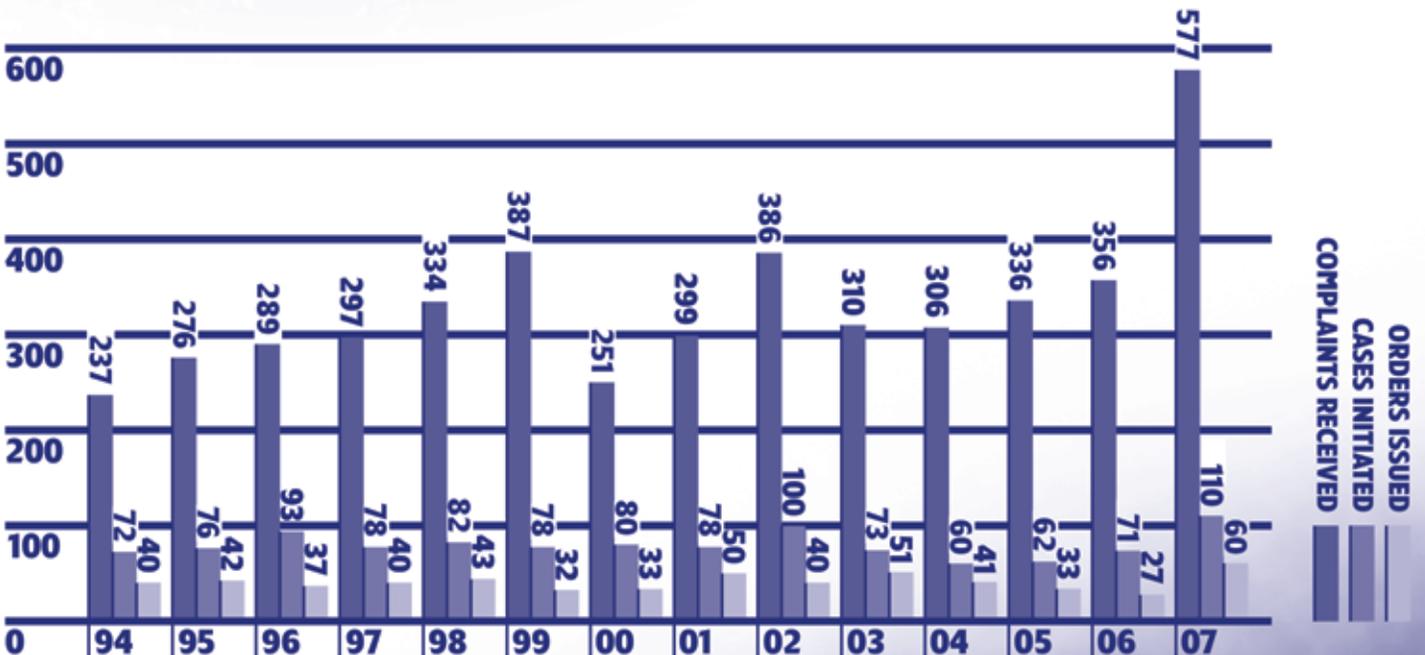
the allegations against said person. If after a preliminary investigation the matter is terminated, both the complainant and subject of the inquiry will be notified. If a complaint is frivolous, the Commission must so state. If a full investigation has been conducted, upon the conclusion of the field investigation the subject of the complaint will be issued a findings report containing the relevant findings of fact. Such reports must be issued within 360 days of the initiation of the full investigation. The subject of the investigation must respond to said report within 30 days after the issuance thereof. Upon completion of the field investigation and the issuance of and response to the findings report, the subject will be afforded a full and fair opportunity to challenge the findings and allegations. Such may include evidentiary hearings and arguments of law. Upon the conclusion of the investigation and all other proceedings, the Commission will issue a final order containing findings of fact and conclusions of law. Final orders issued by the Commission may be appealed to the Commonwealth Court of Pennsylvania.

COMPLAINT/INVESTIGATION STATISTICAL SUMMARY

Complaints received in 2007	577
Investigations opened in 2007	110
Orders issued in 2007	60
Orders where violations were found	30
Restitution ordered	\$209,743.41
Cases referred to law enforcement agencies	4

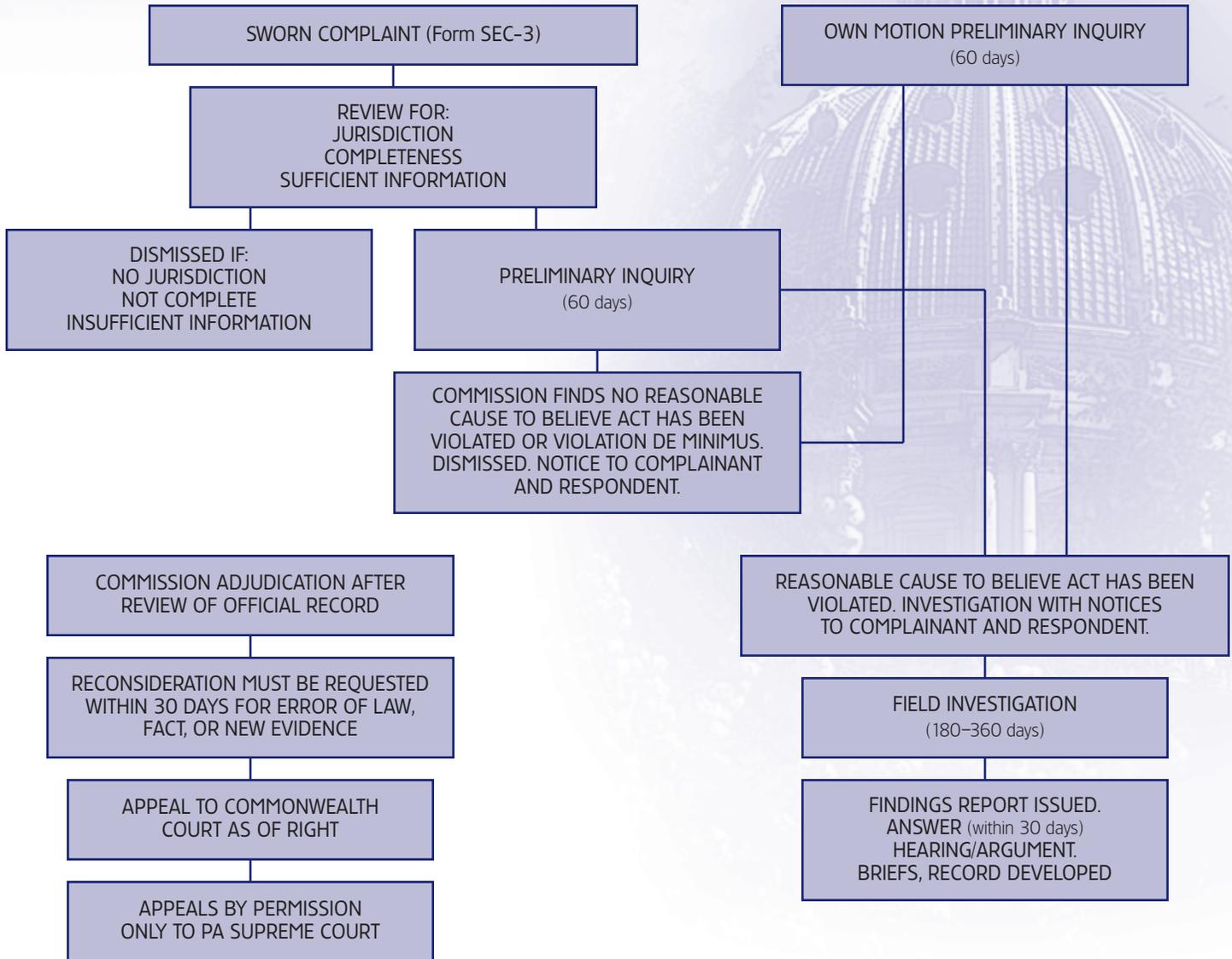
The following chart demonstrates the Commission's investigation statistics during the preceding 14 years.

INVESTIGATION STATISTICS 1994 – 2007



The following chart depicts the investigation process.

INVESTIGATION FLOWCHART



INVESTIGATION ORDERS SUMMARY

The State Ethics Commission issued the following Orders based upon alleged violations of the Public Official and Employee Ethics Law (“Ethics Law”), Act 9 of 1989, P.L. 26, 65 P.S. § 1101 *et seq.* While the following summaries of Orders are pertinent only to the involved individuals and their circumstances, the principles can be used as general guidelines.

Orders—2007

Order No. 1420 (<i>Kravetsky</i>)	Decided: January 8, 2007 Issued: January 23, 2007
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A supervisor for a township from January 2002 until his resignation from office in 2006, did not violate Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1103(a), in relation to his actions regarding the approval of the township emergency ambulance dispatch policy, which included Life-Stat Ambulance Service, Inc., a non-profit corporation with which the

township supervisor’s son is associated, based upon a lack of evidence establishing a prohibited private pecuniary benefit.

Per the consent agreement of the parties, technical violations of Section 1105(b)(8) of the Ethics Act occurred regarding the township supervisor’s failure to report his position on the Life-Stat Board of Directors on his Statements of Financial Interests for calendar years 2000–2005 inclusive.

Per the consent agreement of the parties, technical violations of Section 1105(b)(5) of the Ethics Act occurred when the township supervisor failed to report Kravetsky Enterprises on his Statements of Financial Interests as a source of income for calendar years 2000–2005 inclusive.

The township supervisor is directed to file amended Statements of Financial Interests with the township for calendar years 2000–2005 inclusive, in satisfaction of the terms and conditions of the consent agreement. Compliance will result in the closing of this case with no further action by this Commission.

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Order No. 1421
(Harton)

Decided: January 8, 2007
Issued: January 23, 2007

A supervisor for a township violated Section 1103(a) of the Ethics Act when he submitted hours for compensation as a township road superintendent for time and hours he did not work as a township employee.

The township supervisor violated Section 1103(a) of the Ethics Act when he received compensation as a road superintendent/road master for duties that related to his position as elected township supervisor.

Per the consent agreement of the parties, the township supervisor is directed to make payment in the amount of \$1,200 to the Commonwealth of Pennsylvania through this Commission within 30 days of the issuance of this Order. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1422
(Butler)

Decided: January 8, 2007
Issued: January 23, 2007

A private citizen violated Section 1103(b) of the Ethics Act when he, as President of STM II, Ltd., d/b/a/ TriTech, offered and gave to a public employee for the Governor's Action Team in the Department of Community and Economic Development, a payment in the amount of \$20,000 in return for the public employee's official action in recommending and assisting in TriTech's receipt of an Opportunity Grant from DCED.

Per the consent agreement of the parties, the private citizen is directed to make payment in the amount of \$5,000 payable to the Commonwealth of Pennsylvania and forwarded to this Commission within 30 days of the issuance of this Order. Compliance will result in the closing of this case with no further action by this Commission.

This matter will be referred to the appropriate law enforcement authorities for review and appropriate action.

Order No. 1423
(Gorr)

Decided: January 8, 2007
Issued: January 23, 2007

A supervisor for a township violated Section 1103(a) of the Ethics Act when he used the township credit card to make purchases of a personal nature for himself and his spouse.

The township supervisor did not violate Section 1103(a) of the Ethics Act regarding the allegation that he received compensation for duties not related to any township position based upon an insufficiency of evidence.

The township supervisor technically violated Section 1105(b) of the Ethics Act when he failed to disclose on his Statements of Financial Interests for the calendar years 2001 through 2004 reportable income that he received from the township.

Per the consent agreement of the parties, the township supervisor is directed to make payment in the amount of \$4,000 to the Commonwealth of Pennsylvania through this Commission within 30 days of the issuance of this Order. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1424
(Green)

Decided: January 8, 2007
Issued: January 23, 2007

A mayor of a borough, from January 1994 to the present, unintentionally violated Section 1103(a) of the Ethics Act in relation to his acceptance of money for performing wedding ceremonies, which payments were beyond the compensation provided by law.

The borough mayor unintentionally violated Section 1103(d) of the Ethics Act when he accepted honoraria for performing wedding ceremonies as mayor, which fees were beyond the compensation provided by law.

Per the consent agreement of the parties, the borough mayor is directed to make payment in the amount of \$25,683 in settlement of this matter payable to Jefferson Borough and forwarded to this Commission by no later than the 30th day after the mailing date of this Order. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1425
(Krisher)

Decided: January 8, 2007
Issued: January 23, 2007

A supervisor for a township, from approximately January 1992 to the present, violated Section 1103(a) of the Ethics Act in relation to claiming expenditures and receiving reimbursement from the township for his wife's expenses for attendance at conventions and seminars.

The township supervisor violated Section 1103(a) of the Ethics Act in relation to his utilization of a township credit card to make purchases of a personal nature, including a trip to a symposium in Orlando, boat-related purchases, and a purchase at a hotel gift shop.

Violations of Sections 1103(a) and 1103(f) of the Ethics Act occurred when the township supervisor participated in the awarding of contracts in excess of \$500 without an open and public process to Craico Tree Service, Inc., a business with which his son is associated.

The township supervisor violated Section 1104(a) of the Ethics Act in relation to his failure to file a Statement of Financial Interests for calendar year 2001.

No violation of Section 1105(b)(8) of the Ethics Act occurred when the township supervisor did not disclose Craico, a business owned by his son, on Statements of Financial Interests filed for the 2001 through 2005 calendar years.

No violation of Section 1105(b)(9) of the Ethics Act occurred when the township supervisor did not disclose ownership in Craico on Statements of Financial Interests for the 2001 through 2005 calendar years.

Per the consent agreement of the parties, the township supervisor is directed to make payment in the amount of \$10,000 in settlement of this matter payable to the Commonwealth of Pennsylvania and forwarded to this Commission by no later than the 30th day after the mailing date of this Order. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1426
(Killinger)

Decided: January 8, 2007
Issued: January 23, 2007

A supervisor for a township, from January 2002 to the present, unintentionally violated Section 1103(a) of the Ethics Act when he claimed and participated in actions of the township

collector and borough secretary/treasurer is directed to file with the borough Statements of Financial Interests for calendar years 2002 through 2005 inclusive and an amended Statement of Financial Interests for calendar year 2001, providing full financial disclosure as required by the Ethics Act, and to provide to this Commission copies of all of the aforesaid filings for compliance verification purposes.

Per the consent agreement of the parties, the borough tax collector and borough secretary/treasurer is further directed to make payment in the amount of \$6,000 in settlement of this matter, payable to the Commonwealth of Pennsylvania and forwarded to this Commission within 90 days of the issuance of this Order.

This matter will be referred to the Wayne County District Attorney, the Pennsylvania Attorney General, the U.S. Attorney, the Pennsylvania Department of Revenue, and the Internal Revenue Service for review and appropriate action.

Order No. 1431
(Schweitzer) **Decided: March 27, 2007**
Issued: April 11, 2007

A tax collector and treasurer of a township from July 2000 to December 31, 2005 did not violate Section 1103(a) of the Ethics Act in relation to her alleged utilization, for personal use, of payments made to the township tax office, due to a lack of sufficient evidence to support such an allegation.

The township tax collector and treasurer violated Section 1104(a) of the Ethics Act when she failed to file timely Statements of Financial Interests for calendar years 2002, 2003, 2004, and 2005.

A violation of Section 1104(d) of the Ethics Act occurred in relation to the township tax collector and treasurer's entry into office and/or continued execution of her duties, and receipt of compensation from public funds, despite the fact that she failed to file Statements of Financial Interests for calendar years 2002, 2003, 2004, and 2005.

Per the consent agreement of the parties, the township tax collector and treasurer is directed to file with the township, Statements of Financial Interests for calendar years 2002, 2003, 2004, and 2005, providing full financial disclosure as required by the Ethics Act, and to forward to this Commission copies of all of the aforesaid filings for compliance verification purposes.

Per the consent agreement of the parties, the township tax collector and treasurer is directed to make payment in the amount of \$1,000 in settlement of this matter, payable to the Commonwealth of Pennsylvania and forwarded to this Commission within 30 days of the issuance of this Order. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1432
(Kwitowski) **Decided: March 27, 2007**
Issued: April 11, 2007

A controller for a city since January 8, 2002 did not violate Section 1103(a) of the Ethics Act as to his alleged authorization of his enrollment in the city's 401(a) discretionary pension plan, based upon the fact that there was no use of office by the controller when he was added to the plan by the city administrators.

The city controller is directed to comply with the terms of the

consent agreement of the parties, including the term that he shall not participate in the city's deferred compensation program until implementation of the agreement that was authorized by city council on February 27, 2002. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1433
(Perzel) **Decided: March 27, 2007**
Issued: April 11, 2007

An unintentional transgression of Section 1103(a) of the Ethics Act occurred when a Member and President of a Charter School Board of Directors/Trustees failed to see a potential violation of the Ethics Act by participating in the process of selecting real estate to house the Charter School, which was located on property adjacent to real estate owned jointly by herself and members of her immediate family (siblings), knowing or having reason to believe that future expansion of the Charter School might require acquisition of said property.

A technical transgression of Section 1103(f) of the Ethics Act occurred when the Charter School entered into a contract to purchase property owned by the Member and President of the Charter School Board of Directors/Trustees and members of her immediate family adjacent to property housing the Charter School, where the sale price was greater than \$500 and such sale was not conducted through an open and public process.

A violation of Section 1104(a) of the Ethics Act occurred in relation to the Member and President of the Charter School Board of Directors/Trustees oversight in failing to timely file Statements of Financial Interests forms for calendar years 2000 and 2002.

Per the consent agreement of the parties, the Member and President of the Charter School Board of Directors/Trustees is directed to make payment in the amount of \$2,000 in settlement of this matter, payable to the Commonwealth of Pennsylvania and forwarded to this Commission within 30 days of the issuance of this Order. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1434
(Tancredi) **Decided: March 27, 2007**
Issued: April 11, 2007

A chairman and a member of a municipal authority violated Section 1103(a) of the Ethics Act when he, as an authority board member, received per diem expense payments of \$100 per day for five days attendance at the American Water Works Association annual conference held in New Orleans, Louisiana, in June 2002 (the "New Orleans Conference"), when such per diem expense payments were not officially authorized by the authority.

No violation of Section 1103(a) of the Ethics Act occurred in relation to the municipal authority chairman/member's receipt of expense reimbursement for a conference (the New Orleans Conference) that he did not attend, as his failure to attend the conference sessions was due to illness that occurred after his arrival at the conference location.

The municipal authority chairman/member violated Section 1103(a) of the Ethics Act in relation to his receipt of reimbursement from the authority for meal expenses incurred for his spouse during the New Orleans conference.

An unintentional violation of Section 1105(b)(5) of the Ethics Act occurred in relation to the municipal authority chairman/

member's failure to disclose sources of rental income in excess of \$1,300 on his Statement of Financial Interests forms filed for calendar years 2002 through 2005.

An unintentional violation of Section 1104(a) of the Ethics Act occurred in relation to the municipal authority chairman/member's failure to file a timely Statement of Financial Interests for calendar year 2003 by May 1, 2004.

No violation of Sections 1105(b)(8) and (9) of the Ethics Act occurred as the municipal authority chairman/member did not have a financial interest or employment in any business entity or any office or directorship that was required to be reported on a Statement of Financial Interests.

Per the consent agreement of the parties, the municipal authority chairman/member is directed to make payment in the amount of \$1,615.71 in settlement of this matter as follows: \$615.71 payable to the municipal authority and \$1,000 payable to the Commonwealth of Pennsylvania, with both payments to be forwarded to this Commission within 30 days of the issuance of this Order.

The municipal authority chairman/member is further directed to file with the authority amended Statements of Financial Interests for calendar years 2002 through 2005 inclusive and a Statement of Financial Interests for calendar year 2003, providing full financial disclosure as required by the Ethics Act and specifically including sources or rental income in excess of \$1,300, and to forward to this Commission copies of all filing for compliance verification purposes. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1435
(Roberts) **Decided: March 27, 2007**
Issued: April 11, 2007

A technical violation of Section 1103(a) of the Ethics Act occurred when, during the years 2000 through 2004, vendors occasionally sent to a State Representative's Uniontown District Office address campaign related envelopes, stationery, and flyers.

No violation of Section 1103(a) of the Ethics Act occurred in relation to any alleged utilization of the State Representative's Connellsville District Office for election related purposes, as no such use occurred.

A violation of Section 1103(a) of the Ethics Act occurred when an employee in the State Representative's Capitol Office made arrangements on two separate occasions in 2001 and 2004 to reserve a room at a restaurant for the purpose of conducting a political fundraising event utilizing the Capitol Office facility and telephone as a contact point.

No violation of Section 1103(a) of the Ethics Act occurred in relation to the utilization of a Capitol Office employee assigned to another legislator to notarize several nominating petitions and campaign finance expense reports and in relation to the deliver of nominating petitions and the notarizing thereof, as well as the notarization of campaign finance expense reports inside the State Representative's Uniontown District Office facility, as such activity was de minimis in nature.

Per the consent agreement of the parties, the State Representative is directed to make payment in the amount of \$600 in settlement of this matter, payable to the Commonwealth of Pennsylvania and forwarded to this Commission within 30 days of the

issuance of this Order. Compliance will result in the closing of this case with no further action by this Commission.

NOTE: Commissioners Paul M. Henry and Nicholas A. Colafella did not participate in this matter.

Order No. 1436
(Complainant A) **Decided: March 27, 2007**
Issued: April 11, 2007

Complainant "A," as a resident of a Township "B" who on December 9, 2005 filed complaints with this Commission against Respondent "C" and Respondent "G," violated Section 1108(k) of the Ethics Act when Complainant "A" disclosed or acknowledged, to at least two or more other individuals, information relating to a filed complaint, preliminary inquiry, and /or investigation pending before the State Ethics Commission, by providing information to reporters of Newspaper "H" and Newspaper "I," newspapers of general circulation in Township "B," and by providing information for public review by creating, maintaining, and updating an Internet Web site identified as [Web site address].

Complainant "A" violated Section 1110 of the Ethics Act when Complainant "A," as the individual who signed a complaint alleging a violation of the Ethics Act against Respondent "C" and Respondent "G," publicly disclosed or caused to be disclosed that a complaint against Respondent "C" and Respondent "G" had been filed with the State Ethics Commission by providing information to reporters of Newspaper "H" and Newspaper "I," newspapers of general circulation in Township "B," and by providing information for public review by creating, maintaining, and updating an Internet Web site identified as [Web site address].

Pursuant to the Consent Agreement, Complainant "A" is directed to make payment in the amount of \$500 to the Commonwealth of Pennsylvania within 30 days of the date of mailing of this Order, by forwarding a check in the amount of \$500 made payable to the Commonwealth of Pennsylvania to this Commission for processing.

At such time as this determination becomes a public record, Chief Counsel shall publicly release a copy of this redacted adjudication and Order, and, in conformity with Section 1110(c) of the Ethics Act, 65 Pa.C.S. §1110(c), shall, upon receiving a written request from Respondent "C" or Respondent "G," provide the name and address of Complainant "A" to such Respondent, together with copies of the final determination of this Commission.

Compliance by Complainant "A" with Paragraph 3 or this Order will result in the closing of this case with no further action by this Commission.

Order No. 1437
(Ottoviani) **Decided: March 27, 2007**
Issued: April 11, 2007

A council member for a borough since January 5, 2004 violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when she used the authority of her public position as a borough council member to participate in approving payments to R. Kipp & Associates Municipal Planning Consultants ("Kipp's Company"), a business with which she had a business relationship, which payments included, in part, compensation paid to her.

The borough council member did not violate Section 1103(a) of the Ethics Act with regard to her submission of an invoice

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(Invoice No. 0002) to Borough Engineer Nichols & Slagle for payment for services rendered in making edits to the borough zoning ordinance, in that the resulting pecuniary benefit to her in the amount of \$442 was de minimis.

The borough council member violated Section 1105(b)(5) of the Ethics Act when she failed to disclose both the borough and Kipp's Company as sources of income of \$1,300 or more on Statements of Financial Interests that she filed for calendar years 2004 and 2005.

The borough council member did not violate Section 1105(b)(8) of the Ethics Act when she did not list any office, directorship, or employment on her Statements of Financial Interests filed for calendar years 2004 and 2005, in that the Fact Findings do not establish that she had any such statuses to disclose.

The borough council member is directed to pay restitution to the borough in the total amount of \$3,561.25 within 30 days of the date of mailing of this Order, by forwarding a check payable to the borough in the amount of \$3,561.25 to this Commission for processing.

The borough council member is directed to file amended Statements of Financial Interests for calendar years 2004 and 2005 with the borough within 30 days of the issuance of this Order, providing full financial disclosure as required by the Ethics Act and specifically including sources of income of \$1,300 or more, and to forward to this Commission copies of the aforesaid filings for compliance verification purposes. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1438
(Peak)

Decided: June 11, 2007
Issued: June 29, 2007

A Secretary of a Township, from January 6, 1992 through December 31, 2004, violated Section 1103(a) of the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa. C.S. § *et. seq.*, when she issued checks to herself and/or for her personal benefit from township accounts.

The Secretary violated Section 1103(a) of the Ethics Act when she altered township checks issued to herself to conceal that funds were being paid to her or for her benefit.

No violation of Section 1104(a) of the Ethics Act occurred in relation to the Secretary's alleged failure to file Statements of Financial Interests for the 2003 and 2004 calendar years, based upon an insufficiency of evidence.

Per the Consent Agreement of the parties, the Secretary is directed to pay restitution in the amount of \$15,404.84 payable to the Commonwealth of Pennsylvania and forwarded to this Commission with 30 days of the issuance of the final adjudication in this matter.

To the extent the Secretary has not already done so, she is directed to file amended Statements of Financial Interests for calendar years 2003 and 2004 with the Township within 30 days of the issuance of the final adjudication in this matter, providing full financial disclosure as required by the Ethics Act, and to forward a copy of each of the aforesaid amended Statements of Financial Interests to this Commission for compliance verification purposes.

This case will be referred to the County District Attorney, the Pennsylvania Attorney General, the U.S. Attorney, the Pennsylva-

nia Department of Revenue, and the Internal Revenue Service for review and appropriate action.

Order No. 1439
(Matta)

Decided: June 11, 2007
Issued: June 29, 2007

A public official in his capacity as a member a municipal authority, violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1103(a), when he requested and received per diem expense payments of \$100 per day for 15 days in relation to his travel to attend conferences in the years 2002 through 2004 inclusive when such per diem expense payments were not officially authorized by the Authority Board.

The public official violated Section 1103(a) of the Ethics Act in relation to his travel to a conference, when he requested and received expense reimbursements in excess of the amounts he actually expended for his transportation and when he requested and received reimbursement for alcoholic beverages purchased for himself and others.

The public official violated Section 1103(a) of the Ethics Act in relation to his travel to said conference, when he requested and received expense reimbursement in excess of the amount he actually expended for his own transportation; when he requested and received hotel reimbursement for lodging for four days when he was personally sightseeing and when he requested and received reimbursement for parking charges incurred for a vehicle that was used for personal purposes.

The public official violated Section 1105(b)(5) of the Ethics Act when he failed to disclose source(s) of income on Statements of Financial Interests filed for the 2002, 2003 and 2004 calendar years.

Per the consent agreement of the parties, the public official is directed to pay restitution in the amount of \$4,690 payable to the Commonwealth of Pennsylvania and forwarded to this commission within 30 days of the issuance of this Order.

To the extent the public official has not already done so, he/she is directed to file amended Statements of Financial Interests for calendar years 2002 through 2004 inclusive with the Authority within 30 days of the issuance of this Order, correcting all deficiencies and providing full financial disclosure as required by the Ethics Act, and to forward a copy of each of the aforesaid amended Statements of Financial Interests to this Commission for compliance verification purposes.

Compliance with Paragraphs 6 and 7 of this Order will result in the closing of this case with no further action by this Commission.

Order No. 1440
(Gordnier)

Decided: June 11, 2007
Issued: June 29, 2007

A public official in his capacity as a supervisor for a township, from January 5, 2004 to March 20, 2006, violated Section 1103(a) of the Ethics Act in relation to his actions and participation in actions of the township board of supervisors resulting in purchases being made from a business owned by the public official and/or members of his immediate family.

A violation of Section 1103(f) of the Ethics Act occurred when sales in excess of \$500 were made to the township by the business owned by the public official or his/her spouse, which sales were awarded without an open and public process.

Per the consent agreement of the parties, the public official is directed to make payment in the amount of \$1,200 in settlement of this matter payable to the Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission within 30 days of the date of the mailing of this Order. Compliance with the foregoing will result in the closing of this case with no further action by this commission.

Order No. 1441
(Kistler) **Decided: June 11, 2007**
Issued: June 29, 2007

A public official in his capacity as a Member of an Carbon-Lehigh Intermediate Unit Board of Directors, did not violate Section 1103(a) of the Ethics Act with regard to his official actions prior to March 18, 2002 regarding a new CLIU Transportation facility, based upon an insufficiency of evidence.

The Intermediate Unit Board of Directors Member did not violate Section 1103(a) of the Ethics Act with regard to his possible participation in discussions at the March 18, 2002 executive session of the CLIU Board regarding cost comparison information for the transportation facility, based upon an insufficiency of evidence.

The Intermediate Unit Board of Directors Member did not violate Section 1103(a) of the Ethics Act with regard to his official actions on or after March 15, 2004 in furtherance of the CLIU's purchase of the Transportation facility, based upon the lack of a private pecuniary benefit.

On June 17, 2002, the Intermediate Unit Board of Directors Member unintentionally violated Section 1103(a) of the Ethics Act when he voted in favor of authorizing Dale Roth to pursue the construction of the CLIU Lehigh Learning and Adjustment School facility while the Intermediate Unit Board of Directors Member was actively engaged in seeking a contract to build the CLIU Transportation facility and had a reasonable expectation that he would receive such a contract from Roth/Cornerstone R.E., LLC.

The Intermediate Unit Board of Directors Member did not violate Section 1103(a) of the Ethics Act with regard to his participation in approving CLIU lease payments for the Transportation facility or LLAS facility in that such payments were for pre-determined amounts under lease agreements that had been approved by the CLIU Board without Respondent's participation.

The Intermediate Unit Board of Directors Member violated Section 1103(f) of the Ethics Act on July 12, 2002 when, on behalf of his business, he entered into a subcontract with Cornerstone for the construction of the Transportation facility, where the contract(s) awarded by the CLIU Board to Roth Marz Partnership and subsequently Cornerstone R.E., LLC as to the Transportation facility had been awarded without an open and public process.

The Intermediate Unit Board of Directors Member violated Section 1103(f) of the Ethics Act on June 17, 2004, when on behalf of his business, he entered into a subcontract with Roth and/or Dale and Ruth Roth for the construction of the LLAS facility, where the contract(s) awarded by the CLIU Board to Roth and/or Dale and Ruth Roth as to the LLAS facility had been awarded without an open and public process.

Order No. 1442
(Complainant A) **Decided: June 11, 2007**
Issued: June 29, 2007

Complainant "A," a private citizen and resident of Borough "D"

who, on November 18, 2005 and January 20, 2006, filed certain complaints with this Commission against Respondent "B," Mayor of Borough "D," and Council Person "G," a Member of Borough Council, did not violate Section 1110(a)(1) of the Ethics Act as to the filing of a frivolous complaint with this Commission in that the aforesaid complaints filed by Complainant "A" were not filed in a grossly negligent manner without basis in law or fact.

Complainant "A" did not violate Section 1110(a)(1) of the Ethics Act as to the filing of a complaint without probable cause and primarily for a purpose other than that of reporting a violation of the Ethics Act, in that the complaints were supported by circumstances sufficient to warrant an ordinary prudent person in the same situation to believe that the individuals against whom the complaints were filed had violated the Ethics Act, and the complaints were not filed primarily for a purpose other than that of reporting a violation of the Ethics Act.

Order No. 1443
(Haldeman) **Decided: October 23, 2007**
Issued: November 7, 2007

An Acting Civil Engineer Manager for the Commonwealth of Pennsylvania Department of Transportation's Bureau of Rail Freight, Ports and Waterways from approximately January 2001 to January 27, 2004, and as a Transportation Construction Manager III for the Bureau from January 27, 2004 to March 24, 2006, violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1103(a), in relation to his receipt of a private pecuniary gain when he solicited and accepted tickets to sporting events and items of clothing from companies that were being approved or recommended to receive grants or funds from the Commonwealth of Pennsylvania Department of Transportation.

The Acting Civil Engineer Manager/Transportation Construction Manager III violated Section 1105(b)(6) of the Ethics Act when he failed to disclose receipt of gifts on Statements of Financial Interests filed for the 2002 through 2005 calendar years.

Per the consent agreement of the parties, the Acting Civil Engineer Manager/Transportation Construction Manager III is directed to make payment in the amount of \$3,488 payable to the Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission within 30 days of the issuance of this Order. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1444
(Dombrowski) **Decided: October 23, 2007**
Issued: November 7, 2007

A township supervisor since January 4, 2004, and as a member of a township sewer authority from January 4, 2004 through December 31, 2006, violated Section 1104(a) of the Ethics Act when he failed to file Statements of Financial Interests for the 2003 calendar year by May 1, 2004, and 2004 calendar year by May 1, 2005.

The township supervisor/member of the township sewer authority violated Section 1104(d) of the Ethics Act when he backdated his SFI for the 2004 calendar year (by indicating May 1, 2005), giving the appearance that the form had been timely filed.

Per the consent agreement of the parties, the township supervisor/member of the township sewer authority is directed to make payment in the amount of \$500 payable to the Common-

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wealth of Pennsylvania and forwarded to this Commission within 30 days of the issuance of this Order.

To the extent he has not already done so, the township supervisor/member of the township sewer authority is directed to file amended SFIs for calendar years 2003, 2004, and 2005 with the township and authority, providing full financial disclosure as required by the Ethics Act, specifically disclosing the township as a source of income in excess of \$1,300, and accurately dating such amended filings, and to provide to this Commission copies of all of the aforesaid filings for compliance verification purposes within 30 days of the date of the issuance of this Order. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1445
(Latkanich) **Decided: October 23, 2007**
Issued: November 7, 2007

A supervisor of a township since 1997 and township secretary/treasurer from 1998 through 2005 and from March 15, 2006 to the present, violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), in relation to her approval of payments to herself in excess of annual leave available for herself.

The township supervisor and secretary/treasurer violated Section 1103(a) of the Ethics Act in relation to her authorizing payment to herself for time in excess of actual hours worked, including approving compensation for lunch breaks.

The township supervisor and secretary/treasurer violated Section 1103(a) of the Ethics Act in relation to her approval of payments to herself as township secretary/treasurer for days/hours which she was not entitled to receive.

Per the consent agreement of the parties, the township supervisor and secretary/treasurer is directed to make payment in the amount of \$4,000 payable to the Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission within 30 days of the issuance of this Order. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1446
(Kearney) **Decided: October 23, 2007**
Issued: November 7, 2007

A member of a county housing authority from December 18, 1982 through December 31, 2004, and chairman of the authority board from March 18, 1987 through December 31, 2004, unintentionally violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when he, in his position as a member of the authority board, received compensation not provided for by law when he simultaneously served both as a member of the authority and as an employee/independent contractor thereof.

The member of the county housing authority/chairman of the authority board unintentionally violated Section 1103(a) of the Ethics Act when he, as chairman and a member of the authority and as a director of the authority's subsidiary, the housing corporation, received payments which were not otherwise authorized by the authority.

Per the consent agreement of the parties, the member of the county housing authority/chairman of the authority board is

directed to make payment in the amount of \$5,000, payable to the Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission, to be paid over a period of time to be agreed upon by the parties, commencing within 30 days of the issuance of this Order. Compliance with the consent agreement and this Order will result in the closing of this case with no further action by this Commission.

Order No. 1447
(Daley) **Decided: October 23, 2007**
Issued: November 7, 2007

A borough council member from January 5, 1998 to the present unintentionally violated Section 1103(a) of the Ethics Act when he participated in actions and deliberations of borough council to authorize his inclusion in a borough-paid non-uniformed pension plan, funded in part by borough funds.

The borough council member violated Section 1104(a) of the Ethics Act when he, as a borough council member, failed to file a Statement of Financial Interests with the borough for calendar year 2003 by May 1, 2004.

The borough council member technically violated Section 1105(b)(5) of the Ethics Act when he, as a borough council member, failed to disclose the borough as a source of income in excess of \$1,300 on Statements of Financial Interests for calendar years 2004 and 2005.

Per the consent agreement of the parties, the borough council member is directed to make payment in the amount of \$2,850.54, payable to the Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission within 30 days of the issuance of this Order. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1448
(Propst) **Decided: October 23, 2007**
Issued: November 7, 2007

A borough mayor from January 1998 to December 2005 unintentionally violated Section 1103(a) of the Ethics Act when he, as borough mayor, participated in actions of the borough resulting in his receiving a pension funded, in part, with borough funds.

The borough mayor violated Section 1104(a) of the Ethics Act when he, as borough mayor, failed to file a Statement of Financial Interests with the borough for calendar year 2002 by May 1, 2003.

The borough mayor technically violated Section 1105(b)(5) of the Ethics Act when he, as borough mayor, failed to disclose the borough as a source of income in excess of \$1,300 on his Statements of Financial Interests for calendar years 2003, 2004, and 2005.

The borough mayor violated Sections 1105(b)(5) and 1105(b)(9) of the Ethics Act when he, as borough mayor, failed to disclose Propst Buy-Rite Mini Mart on his Statement of Financial Interests for calendar year 2003.

Per the consent agreement of the parties, the borough mayor is directed to make payment in the amount of \$3,449.66, payable to the Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission within 30 days of the issuance of this Order.

Per the consent agreement of the parties, the borough mayor is further directed to file with the borough amended Statements of Financial Interests for calendar years 2003, 2004, and 2005,

disclosing all required information including but not limited to his receipt of income from and his ownership interest in Propst Buy-Rite Mini Mart, and to forward to this Commission copies of all of the aforesaid filings for compliance verification purposes within 30 days of the issuance of this Order. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1449
(Pierce) **Decided: October 23, 2007**
Issued: November 7, 2007

As a school district director of communications from approximately November 23, 1998 until February 19, 2003, and as the Director of Communications for the Pennsylvania Department of Education from approximately February 20, 2003 until July 17, 2004, violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when, in his position as director of communications for a school district, he utilized his public position to make purchases of a personal nature including meals and other personal items utilizing a school district credit card and when he utilized school district personnel, equipment, and facilities for personal purposes.

No violation of Section 1103(a) of the Ethics Act occurred in relation to the school district director of communications' actions, while he was still employed by PDE, to solicit Pennsylvania school districts to utilize services of a consulting and consulting and communications company that he was forming as there is no evidence that he utilized the authority of his public position in relation to such solicitations or the contracts entered into as a result thereof.

The school district director of communications violated Section 1103(g) of the Ethics Act when he represented a school district before PDE, his former governmental body, for compensation in that district's effort to obtain grant funding, during the one-year period following his termination of Commonwealth service.

The school district director of communications violated Section 1104(a) of the Ethics Act when, in his public position as the director of communications for the school district, he failed to file Statements of Financial Interests for calendar years 2001 and 2002.

The school district director of communications is directed to make payment in the total amount of \$14,200, with \$1,818 made payable to the school district and \$12,382 made payable to the Commonwealth of Pennsylvania, and with both payments forwarded to the Pennsylvania State Ethics Commission within 30 days of the issuance of this Order.

The school district director is directed to file amended Statements of Financial Interests for calendar years 2001 and 2002 with this Commission within 30 days of the issuance of this Order, providing full financial disclosure as required by the Ethics Act, including listing Pierce Communications and/or Pierce Communications LLC as businesses in which the school district director has an office, directorship, employment or financial interest. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1450
(Vaughn) **Decided: October 23, 2007**
Issued: November 7, 2007

A township supervisor from March 29, 1996 to the present,

violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when he, as a township supervisor, participated in soliciting quotes, approving the award of business, and voting to pay bills to a business with which his son, a member of his immediate family, was associated, relating to eight township projects.

The township supervisor committed a technical violation of Section 1103(a) of the Ethics Act when he voted to pay invoices submitted by a business which his son, a member of his immediate family, was associated, relating to the township's construction of a salt shed.

The township supervisor violated Section 1103(f) of the Ethics Act in relation to the award of five contracts to a business owned in part by his son, when such contracts were in excess of \$500 and were not awarded through an open and public process.

No violation of Section 1103(f) of the Ethics Act occurred in relation to the township's award of a contract to a business in which his son was an owner to build a township salt shed, as such contract was awarded through an open and public process.

No violation of Section 1103(f) of the Ethics Act occurred in relation to the award of three township contracts regarding the repair of fire hall gutters, certain electrical work, and installation of shelves in the township garage, to a business owned in part by his son, as all three of these contracts were under \$500.

The township supervisor violated Section 1103(a) of the Ethics Act when he participated in the township's actions to issue a loan in the amount of \$29,800 to a business with which his son, a member of his immediate family, is associated, to complete a project for a municipal authority, at a time when the business was not performing any township services relating to said payment.

The township supervisor violated Section 1104(a) of the Ethics Act in relation to his failure to timely file Statements of Financial Interests with the township for calendar years 2003 through 2005 inclusive.

Per the consent agreement of the parties, the township supervisor is directed to make payment in the amount of \$7,074.80 payable to the Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission, with said amount to be paid over a period of one year based upon a schedule to be arranged after the issuance of this Order.

Per the consent agreement of the parties, the township supervisor is directed to file accurate and complete Statements of Financial Interests with the township for calendar years 2003, 2004, and 2005, if such has not already been done, within 30 days of the date of the issuance of this Order, and to forward copies of such forms to this Commission for compliance verification purposes. Compliance will result in the closing of this case with no further action by this Commission.

Order No. 1451
(Eathorne) **Decided: December 19, 2007**
Issued: December 28, 2007

A member of a Municipal Authority, from July 18, 1996 until December 2006, violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when he authorized advances of expenses from the Municipal Authority for his attendance at conferences and conventions and then claimed expenses in excess of actual expenses incurred.

The member of the Municipal Authority violated Section 1103(a) of the Ethics Act when he used the Municipal Authority expense advancements for expenses incurred by his spouse.

The member of the Municipal Authority violated Section 1103(a) of the Ethics Act when he authorized advance payments of expenses by the Municipal Authority to himself for conferences and convention related events he did not attend.

The member of the Municipal Authority violated Section 1103(a) of the Ethics Act when he authorized the use of a Municipal Authority credit card for the payment of expense and items of a personal nature for himself and his spouse.

The member of the Municipal Authority is ordered to pay a treble penalty in the amount of \$64,475.61, with such payment to be made payable to the Commonwealth of Pennsylvania and forwarded to this Commission within 30 days of issuance of this Order for deposit in the State Treasury.

This case will be referred to the Westmoreland County District Attorney, the Pennsylvania Attorney General, and the U.S. Attorney for review and such action as they may deem appropriate.

UPDATE ON PREVIOUS COMMISSION ORDERS

Habay (Order No. 1313) In March 2004, the Commission issued Order No. 1313 regarding State Representative Habay finding that Habay had violated the Ethics Law when he utilized his legislative staff, equipment, and facilities in aid of re-election campaign fundraising activities as well as other election-related activities. The Commission imposed a restitution requirement of approximately \$13,000 and further referred the matter for potential criminal prosecution. Upon the release of said Order, the District Attorney of Allegheny County announced that a review of the Habay Order would be undertaken by that office. In addition to the foregoing, contact has been received from both the U.S. Attorney's Office in the Western District as well as the Office of Attorney General for the Commonwealth of Pennsylvania also seeking access to the files in the Habay matter for consideration of criminal prosecution.

On September 17, 2004, State Representative Jeffrey Habay was charged with two felony counts, including theft of service and conflict of interest charges under the Ethics Law in relation to his use of his state facilities and employees for purposes of running re-election campaign activities. Habay had been charged by the State Ethics Commission in Order No. 1313 with similar violations and ordered to pay restitution of approximately \$13,000. The matter was referred by the State Ethics Commission to the Office of Attorney General. The charges have been brought by that office and directly relate to the investigation that had been conducted by the State Ethics Commission.

On October 6, 2004, Habay waived his preliminary hearing and the matter was held for court. Trial in the matter was conducted in December 2005 and on December 13 the jury issued a split decision. Habay was convicted of one felony count of violating Section 1103(a) of the Ethics Law. He was acquitted on Title 18, theft of services charges.

On February 8, 2006, Habay was sentenced to six months to 12 months in prison. The Judge also provided that he would be permitted to serve this time in a Halfway House, if he found gainful employment during that period. Further, on this date, prior to

sentence, Habay resigned his seat as a member of the House of Representatives. Service of Habay's sentence was postponed until the conclusion of other charges that are currently pending. See below.

On March 30, 2005, the Allegheny County District Attorney filed an additional 20 counts against Habay. Habay was specifically charged with utilizing his district office staff for political campaign purposes, intimidating and harassing witnesses in the Ethics Commission proceeding, and for false reports to law enforcement authorities for claiming that a political opponent had forwarded to him an envelope containing a suspicious white powder. Much of the activity that had occurred in relation to Habay's continued use of staff for political purposes was during and subsequent to the Ethics Commission proceeding against him. In relation to charges of intimidation and harassment, the affidavit of probable cause filed by the District Attorney of Allegheny County indicates that Habay, in one instance, utilized staff individuals to do research in an attempt to find negative information on State Ethics Commissioner Michael Healey, who had served as the hearing examiner in Habay's proceedings before the Ethics Commission.

On June 16, 2005, a preliminary hearing was conducted in relation to the charges brought by the Allegheny County District Attorney's Office. Habay was held for court on all charges. On May 1, 2007, Habay pled no contest to 21 criminal counts, including threatening witnesses and forcing several legislative staffers to spend governmental time obtaining adverse information on his political rivals. Habay was sentenced to four to eight months in prison followed by 14 months house arrest and two years' probation.

On October 11, 2007, the Pennsylvania State Superior Court denied an appeal by Habay on the original criminal charges of which he was convicted that had been brought by the Office of Attorney General.

McGraw (Order No. 1397) On June 2, 2006, issued Order No. 1397 to Thomas McGraw, a former employee of the Pennsylvania Department of Economic and Community Development. The Commission imposed restitution and penalties on McGraw totaling \$403,660. McGraw was found to have solicited and received approximately \$100,000 in payments from high tech companies that he assisted in getting state grants from DCED to expand operations in Pennsylvania.

McGraw also utilized rewards earned from state-related travel for personal vacations. In relation to this matter, the Commission found that McGraw had received \$20,000 from Michael S. Butler, President of TriTech Consulting, in exchange for a \$200,000 DCED grant. The Commission also found that Dennis L. Smith, President of USTAAD Systems, paid McGraw \$32,500 in return for a \$225,000 grant and that Gerry L. Westerhold, President of MirTech Consulting, Incorporated, paid McGraw \$40,000 in return for a \$200,000 grant. Finally, Andrew Flanagan, of eschoolmall.com, paid McGraw \$4,000 in return for the receipt of a grant. The Commission's investigation was referred to the U.S. Attorney's Office which subsequently charged McGraw, as well as Butler, Smith and Westerhold, with various bribery charges under federal law. On November 21, 2006, McGraw pled guilty to one count of bribery for accepting the noted payments. Butler, Westerhold and Smith also have entered into plea agree-

ments with the U.S. Attorney's Office. On June 18, 2007, McGraw was sentenced to 18 months in prison plus a subsequent period of supervised probation, as well as fines. In addition to the foregoing, Butler, Smith and Westerhold were all sentenced to probation and/or house arrest for a period of approximately six months. Additionally, Butler received a fine of approximately \$30,000.00.

Fiorello (Order No. 1363) On March 14, 2005, the Commission had issued an order in relation to the activities of Stephen Fiorello, a Chief Pharmacist and Director of Pharmacy for the Pennsylvania Department of Public Welfare, Office of Mental Health Substance and Abuse Services. The Commission found that Fiorello had violated the Ethics Law when he participated in actions of the DPW Formulary Committee relating to a pharmaceutical company on the formulary when he had financial relationships with the pharmaceutical company. The Commission further found that he had used his office to obtain private pecuniary benefits for his participation in that pharmaceutical company's advisory board meetings in New York City in 1998, 2000 and 2001 and when he received honoraria for his participation in the advisory board meetings as well as for his presentation at conferences in Orlando, Florida and Dublin, Ireland. The Commission found a number of additional violations of the Ethics Law including his receipt of honoraria from other companies for whom he made presentations in connection with his public employment. Also, he was found to violate the Ethics Law when he obtained a financial gain in the form of fees paid to him by Duquesne University in return for placing pharmaceutical students in an intern program sponsored by DPW. The Commission ordered Fiorello to make restitution in the amount of \$27,268.50 and the matter was referred to the Office of Attorney General. On November 21, 2006, Fiorello was charged by that office in relation to the findings of the State Ethics Commission. Fiorello was specifically charged with two counts of conflict of interests (Section 1103(a)) and one count of accepting honoraria (Section 1103(d)) and one count of failing to disclose income on annual Statements of Financial Interests. In January of 2007, preliminary hearing was waived and the case is currently awaiting trial.

Walters (Order No. 1361) On March 15, 2005, the Pennsylvania State Ethics Commission issued Order 1361 to Cynthia Walters, the former Secretary/Treasurer of Jefferson Borough, Greene County. Walters was found in violation of the Ethics Law when she utilized borough funds that she had acquired from her public position for personal purposes. The Commission determined that Walters had utilized \$120,000 of borough funds for personal purposes. The Commission ordered Walters to make restitution of the foregoing amount to Jefferson Borough and further referred the matter for review by the appropriate law enforcement authorities. The Commission was subsequently notified by the District Attorney of Greene County that the Walters matter would be accepted for prosecution. Walters and her husband, Lonnie Walters, were charged with 194 counts of forging borough checks and 156 counts of receiving stolen property. The counts were based specifically and solely on the Ethics Commission investigation. Additional charges included theft, tampering with public records or information and conflicts of interest under the Ethics Law, as well as criminal conspiracy. All of the charges were

felonies except for receiving stolen property, which is a misdemeanor.

On June 28, 2006, a preliminary hearing was held after which time the defendants were bound over for court in order to be tried on all charges. During the course of the preliminary hearing, State Ethics Commission Investigator Jason Bricker, who was the assigned investigator for the investigation conducted by the Commission, was the primary witness.

During December 2006, Walters' attorney and the District Attorney of Greene County initiated discussions regarding a potential plea agreement whereby Walters and her husband would be sentenced to probation and additional fines pending the completion of the payment of the amount owed and due under the Commission's order.

On January 30, 2007, sentence was imposed upon Walters and her husband. Walters was sentenced to 30 days in Greene County Jail followed by 15 months of house arrest with electronic monitoring. She was granted a work release for her job at the Southwestern Pennsylvania Water Authority. The court also sentenced Walters to 205 concurrent seven-year terms of intermediate punishment as well as a \$2,000 fine and court costs. Lonnie Walters was sentenced to two years' probation and \$1,000 in fines as well as court costs on the charges that were brought against him.

MATTERS INVOLVING STATE ETHICS ACT

In addition to court cases in which the State Ethics Commission is directly involved as a party, various court cases have been initiated or decided from time to time involving the provisions of the State Ethics Act even though the Commission is not a party thereto.

The following is a summary of several such cases of this type in 2007:

Twanda Carlisle On April 11, 2007, Pittsburgh Councilwoman Twanda Carlisle was arraigned on three charges of theft by deception, three charges each of criminal conspiracy, violation of the State Ethics Act, Election Code violations, and charges of failing to file required financial disclosures under the Ethics Law. The charges stemmed from a conspiracy to divert city tax dollars through consultants to Ms. Carlisle. Approximately \$43,160 was diverted through associates of Carlisle. These charges were brought by the Office of the District Attorney of Allegheny County.

On November 14, 2007, Carlisle pleaded no contest to the ethics and theft charges and resigned her office as a City Councilperson for the City of Pittsburgh. She is scheduled to be sentenced on February 4, 2008.

Frank Lagrotta Former State Representative Frank LaGrotta was charged November 14, 2007 with two felony counts of violating Section 1103(a) of the Public Official and Employee Ethics Law for hiring his sister and niece as Legislative Assistants in 2006 and paying them for work never performed. Lagrotta was charged after a grand jury investigation by the Office of Attorney General.

John Green Former Penn/Delco School Board member John Green was charged on December 3, 2007 with voting to allow his employer to supply equipment to handle a series of mold problems at a high school in the school district where he served

as a director. He was also paid more than \$800 in commissions at this time from that company. Green was specifically charged with violations of the Ethics Law, conflict of interest provisions. He subsequently pleaded no contest to one felony count of violating the Ethics Law. He was sentenced to 18 months' probation and 40 hours of community service, and fined \$2,510.

Leslye Abrutyn Leslye Abrutyn, former superintendent of the Penn Delco School District, pleaded no contest to the charges that she violated the Ethics Law in relation to an investment in a day care company that operated in the school district where

Abrutyn served as superintendent. In addition to the foregoing, Abrutyn was charged with failure to disclose her interest in the day care company on Statements of Financial Interests filed with the Penn Delco School District. Abrutyn was subsequently sentenced to serve one month house arrest and 11 months' probation and to perform 120 hours of community service. The plea and sentencing took place December 29, 2007. Also charged in relation to this case was Penn Delco School Board President Keith Charles Crego. Crego was allegedly in charge of the day care program that he established and operated.

LEGISLATIVE PROPOSALS

On January 2, 2007, the General Assembly of Pennsylvania convened the 190th regular session. The following represent legislative proposals that were introduced or acted upon during the course of the legislative session, and which proposals affect the operations of the State Ethics Commission or amend the Public Official and Employee Ethics Law.

SENATE:

Senate Bill No. 1, P.N. 1726 (prior P.N.s 772, 1509, 1553, 1562, 1583, 1646, 1704, 1721)

This bill would allow for access to government records and impose various fines and penalties on governmental entities that fail to comply with requests to produce records that are deemed public. This bill was originally introduced in the Senate March 29, 2007 and was considered on three occasions and finally passed the Senate on November 28, 2007. It was referred to Appropriations on December 3, 2007 in the House and underwent three considerations finally passing in the House on December 12, 2007. It was referred to the Senate on December 12, 2007, and sat until the end of the year. This bill has undergone a number of changes and originally provided for the State Ethics Commission to administer the Open Records Law. Subsequent amendments to the law provided for the Office of Public Records to be located in the Department of Community and Economic Development. House Bill 433 *infra* is a similar proposal that was considered separately.

Senate Bill No. 608, P.N. 659

This bill is an amendment to the Ethics Law regarding Statements of Financial Interests. This bill would relate to the filing of Statements of Financial Interests by candidates for public office. The bill would allow the governing authority in a political subdivision to designate an agency for filing of forms. This bill would also require candidates for district judge positions to file their forms

with the chief clerk of the county wherein the district lies or other agency designated by the county. This bill was introduced on May 21, 2007, and referred to the State Government Committee.

HOUSE:

House Bill No. 1497, P.N. 1860

This bill is a Pennsylvania Gubernatorial Public Financing Act. This bill would establish rules and regulations for the conduct of certain elections and provide for public financing of elections involving the Office of Governor and Lieutenant Governor. The bill would establish a Pennsylvania Fair Campaign Fund and would allow for the use of funds for authorized expenditures and limitations on contributions as well as the return of funds. This bill would vest jurisdiction for administration of the law in its entirety in the Pennsylvania State Ethics Commission. The bill was introduced by State Representative Vitali on June 7, 2007, and was thereafter referred to the Committee on State Government.

House Bill No. 443, P.N. 2000 (prior P.N.s 813 to 688)

This bill, which is entitled The Open Access Law, is a comprehensive Sunshine Law. The bill provides for detailed provisions regarding access to public information maintained by government agencies. The law also establishes the Office of Access to Public Records which is a Freedom of Information Commission established to oversee, enforce and administer the provisions of this law. The bill was introduced on March 13, 2007, and referred to the Committee on State Government. The bill was considered on two occasions by the House and recommitted to Committee on December 3, 2007. The most recent version of this bill would place the Office of Public Records within the administration of the State Ethics Commission. A number of amendments were made to this bill during the course of its consideration in the House, and as of the end of 2007, the bill had not yet been passed.

PENNSYLVANIA LOBBYING DISCLOSURE LAW

OVERVIEW

On November 1, 2006, Act No. 134-2006, the Pennsylvania Lobbying Disclosure Law, was signed into law, following a decision in 2002 by the Pennsylvania Supreme Court invalidating the prior Lobbying Disclosure Act as an unconstitutional regulation of attorneys engaged in the practice of law.

Under the new Lobbying Disclosure Law, 65 Pa.C.S. § 1301-A *et seq.*,¹ the State Ethics Commission's responsibilities include enforcement, issuing advisories and participating on the Lobbying Disclosure Regulatory Committee through the Commission Chair or his designee. Responsibility for the administration of the registration and reporting requirements is vested in the Pennsylvania Department of State.

The substantive provisions of the new Lobbying Disclosure Law took effect January 1, 2007.

ADVISORIES

The Commission began to accept requests for advisories under the Lobbying Disclosure Law. The process for issuing advisories under the Lobbying Disclosure Law is similar to the process under the former lobbying law and under the Ethics Act. Advisories are issued as to prospective conduct only.

ENFORCEMENT

Also as of January 1, 2007, the Commission has authority to enforce the registration and reporting requirements (Sections 1304-A and 1305-A) and, to some extent, the "prohibited activities" section (Section 1307-A) of the Lobbying Disclosure Law.

With regard to enforcement of the registration and reporting requirements, the Lobbying Disclosure Law provides a process (see, Section 1309-A) whereby the Commission is to issue a "Notice of Alleged Noncompliance" to a person (hereinafter referred to as the "non-filer") who has failed to register or report as required. The non-filer is given an opportunity to appeal to the Commission and to request a hearing. Intentional violations are referred to the Office of Attorney General and in some instances to the Disciplinary Board of the Supreme Court as discussed more fully below. For negligent violations, the Commission may impose an administrative penalty of up to \$50 for each late day. The Commission may also prohibit a non-filer from lobbying for economic consideration for up to five years if the non-filer fails to comply after notice of noncompliance and a hearing, if requested.

With regard to enforcement of the "prohibited activities" section of the Lobbying Disclosure Law, Section 1307-A, the Commission has authority to receive complaints, conduct investigations, hold hearings and impose administrative penalties as to: (1) lobbying "conflicts of interest" as described in subsection (d); and (2) 10 categories of "unlawful acts" listed in subsection (f). For violations as to these particular types of "prohibited activities," the Commission has authority to impose financial penalties of up to \$2,000 per violation and to prohibit a lobbyist from lobbying for

economic consideration for up to five years.

Subject to certain statutory exceptions, it is a "conflict of interest" under the Lobbying Disclosure Law for a registrant to lobby on behalf of a principal "on any subject matter in which the principal's interests are directly adverse to the interests of another principal currently represented by the lobbyist or previously represented by the lobbyist during the current session of the General Assembly or the lobbyist's own interests." 65 Pa.C.S. § 1307-A(d)(1).

The 10 categories of "unlawful acts" listed in Section 1307-A(f) involve: (1) instigating the introduction of legislation for the purpose of obtaining employment to lobby against it; (2) knowingly counseling a person to violate the Lobbying Disclosure Law or any other state/federal statute; (3) engaging in or counseling a person to engage in fraudulent conduct; (4) attempting to influence a State official or employee on legislative or administrative action through a loan; (5) refusing to disclose to a State official or employee, upon request, the identity of the principal while lobbying on behalf of the principal; (6) committing a criminal offense arising from lobbying; (7) using coercion, bribery or threat of economic sanction to influence a State official or employee in the discharge of his official duties; (8) extorting or otherwise unlawfully retaliating against a State official or employee because of his position or vote as to legislative action or administrative action; (9) attempting to influence a State official or employee on legislative or administrative action through a promise of financial support or the financing of opposition to the candidacy of the State official or employee at a future election; or (10) engaging in conduct that brings the practice of lobbying or the Legislative or Executive Branches of State government into disrepute.

For all of the other prohibited activities detailed in Section 1307-A of the Lobbying Disclosure Law, the Commission may initiate investigations through the Executive Director and hold hearings pursuant to the Commission's general authority under Section 1308-A(g). Such prohibited activities are listed in Section 1307-A, subparagraphs (a)-(c) and (e) and involve: service by a lobbyist as an officer of a candidate's political committee or a candidate's political action committee where the candidate is seeking a statewide office or the office of state legislator (subsection (a)); fee restrictions where all or a portion of a lobbyist's fee would be converted into a contribution to a candidate or political committee subject to reporting under the Election Code (subsection (b)); falsification in the course of lobbying (subsection (c)); and compensation for lobbying that is contingent upon achieving certain outcomes (subsection (e)).

However, the only penalty the Commission may impose for these types of violations is a prohibition against lobbying for economic consideration for up to five years in the event of an intentional violation. 65 Pa.C.S. § 1309-A(e)(4).

For all of the above types of matters, if the Commission has reason to believe that an intentional violation of the Lobbying Disclosure Law has been committed, the Commission must refer all

¹ Citations within this annual report to sections of the Lobbying Disclosure Law use the section numbers contained within Act 134-2006 as promulgated. Some other publications use a different form, for example, "§ 13A01."

relevant information to the Office of Attorney General and, if the lobbyist or principal is an attorney, to the Disciplinary Board of the Supreme Court of Pennsylvania (“Disciplinary Board”). 65 Pa.C.S. § 1309-A(h). Referrals to the Attorney General and Disciplinary Board would generally not preclude the Commission from conducting its own proceedings. However, matters involving alleged conflicts of interest on the part of attorneys would be handled exclusively by the Disciplinary Board. 65 Pa.C.S. § 1307-A(d)(8).

An alleged violation of the “unlawful acts” provision by an attorney would be referred to the Disciplinary Board. 65 Pa.C.S. § 1307-A(f)(3)(ii). Matters involving an attorney’s failure to register or report would be heard by the Commission with the Commission referring cases involving intentional conduct to the Disciplinary Board as well as the Attorney General. In the event of an attorney’s negligent failure to register/report, the Commission could impose an administrative/civil penalty but would be required to inform the Disciplinary Board of such action. 65 Pa.C.S. §§ 1309-A(b)(2)-(3), (c)(3).

PARTICIPATION ON THE LOBBYING DISCLOSURE REGULATORY COMMITTEE

The Commission through its representative is actively participating in the work of the Lobbying Disclosure Regulatory Committee (see, 65 Pa.C.S. § 1310-A(d)). The Committee has adopted Interim Guidelines for Accounting and Reporting under the Lobbying Disclosure Law. The Committee is in the process of promulgating regulations under the Lobbying Disclosure Law.

OPINIONS AND ADVICES

From January 1, 2007 through December 31, 2007, the State Ethics Commission issued a total of four advisories under the Lobbying Disclosure Law, consisting of four opinions.

Opinions and Advices are public records. However, a requestor may require that the Opinion or Advice contain such deletions and changes as shall be necessary to protect the identity of the person involved.

The Commission provides specified libraries throughout the Commonwealth with copies of advices of counsel, rulings and orders that are a matter of public record on a quarterly basis. Paper copies of opinions and advices are available at cost from the Commission or via the Commission’s “e-Library,” which may be accessed via the Commission’s Web site at www.ethics.state.pa.us.

Pursuant to Section 1308-A, subsection (a) of the Lobbying Disclosure Law, 65 Pa.C.S. § 1308-A(a), in conjunction with Sections 1107(10) and (11) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §§ 1107(10), (11), the Commission will issue an Advice of Counsel (“Advice”) or Opinion of the Commission (“Opinion”) to a requestor with standing who requests an advisory regarding compliance with the Lobbying Disclosure Law. The following have standing to request an advisory under the Lobbying Disclosure Law: a principal, lobbying firm, lobbyist, State official or employee, the Pennsylvania Department of State, the Disciplinary Board of the Supreme Court of Pennsylvania, or the authorized representative of any of the aforesaid. See, 65 Pa.C.S. § 1308-A(a). Advisories may only be issued as to prospective (future) conduct.

Pursuant to Section 1308-A(a) of the Lobbying Disclosure Law, a requestor who truthfully discloses all material facts in a request for an advisory and who acts in good faith based upon a written Opinion or Advice issued to the requestor shall not be held liable for a violation of the Lobbying Disclosure Law. The protection afforded for reliance upon an Opinion or Advice remains in effect until such time as any regulation, statutory enactment, or ruling precludes further reliance upon same.

OPINIONS

CONFIDENTIAL
Opinion 07-1001

Decided: March 27, 2007
Issued: April 11, 2007

Commission A is a governmental entity. To the extent lobbying firms or lobbyists engage in lobbying on behalf of Commission A or Commission A engages in lobbying on its own behalf, Commission A is a “principal” as that term is defined in Section 1303-A of the Lobbying Disclosure Law. Lobbying by Commission A on its own behalf and lobbying by officials or employees of Commission A acting in an official capacity on behalf of Commission A would be exempt from the registration and reporting requirements of the Lobbying Disclosure Law and would not necessitate registration or reporting by Commission A or its aforesaid officials or employees. If other lobbyists or lobbying firms would engage in lobbying on behalf of Commission A, then Commission A would be required to register and report as a principal with respect to those non-exempt lobbying activities, assuming its total expenses for non-exempt lobbying activities would not bring it within the exemption at Section 1306-A(6) of the Lobbying Disclosure Law.

STAFFIERI
Opinion 07-1002

Decided: March 28, 2007
Issued: April 11, 2007

The Southeastern Pennsylvania Transportation Authority (“SEPTA”) is a governmental entity, being an instrumentality of the Commonwealth and a Commonwealth agency. To the extent lobbying firms or lobbyists engage in lobbying on behalf of SEPTA or SEPTA engages in lobbying on its own behalf, SEPTA is a “principal” as that term is defined in Section 1303-A of the Lobbying Disclosure Law. Lobbying by SEPTA on its own behalf and lobbying by officials/employees of SEPTA acting in an official capacity on behalf of SEPTA would be exempt from the registration and reporting requirements of the Lobbying Disclosure Law and would not necessitate registration or reporting by SEPTA or its aforesaid officials or employees. If lobbying firms or lobbyists other than SEPTA officials/employees would engage in lobbying on behalf of SEPTA, then SEPTA would be required to register and report as a principal with respect to those non-exempt lobbying activities, assuming its total expenses for non-exempt lobbying activities would not bring it within the exemption at Section 1306-A(6) of the Lobbying Disclosure Law.

SUROVIEC
Opinion 07-1003

Decided: March 28, 2007
Issued: April 11, 2007

As a non-profit organization that engages in public policy advocacy meeting the statutory definition of “lobbying” set forth in Pennsylvania’s Lobbying Disclosure Law, The Arc of Pennsylvania (“The Arc”) is a “principal” as that term is defined in the Lobbying Disclosure Law. As a principal, The Arc must satisfy the registra-

tion and reporting requirements of the Lobbying Disclosure Law unless it qualifies for an exemption under Section 1306-A of the Lobbying Disclosure Law. The Executive Director and all other staff members of The Arc who engage in lobbying on behalf of The Arc would be required to register as lobbyists to the extent they would not otherwise qualify for exemption under Section 1306-A of the Lobbying Disclosure Law. A biennial registration fee in the amount of \$100 is required for each registrant. Each of the exemptions at Section 1306-A of the Lobbying Disclosure Law is effective independently of the other exemptions.

WAGNER
Opinion 07-1004

Decided: June 12, 2007
Issued: June 29, 2007

A Research Analyst with the Pennsylvania House of Representatives (hereinafter “House” or “House of Representatives”), Republican Caucus, would be considered a “public employee” as that term is defined in the Ethics Act. Upon termination of service with the House of Representatives, such individual would become a “former public employee” subject to Section 1103(g) of the Ethics Act. The former governmental body would be the House of Representatives in its entirety including, but not limited to, the House Republican Caucus. The restrictions of Section 1103(g) of the Ethics Act would have to be followed by the former Research Analyst during the first year following termination of service with the House. Under the submitted fact that service in the position of Research Analyst for the House concluded at the end of 2006, the former Research Analyst would not be required by Section 1104(a) of the Ethics Act to file a Statement of Financial Interests in 2008 for calendar year 2007. To the extent that the former Research Analyst’s activities in his new employment position would include “lobbying” as that term is defined by the Lobbying Disclosure Law, such individual would be considered a “lobbyist.” As a lobbyist, the individual would be required to comply with Section 1307-A of the Lobbying Disclosure Law for as long as he would remain a lobbyist. As a lobbyist, the individual would also be subject to the registration and reporting requirements of Sections 1304-A and 1305-A of the Lobbying Disclosure Law relative to lobbyists unless the individual would qualify for exemption under Section 1306-A of the Lobbying Disclosure Law.

AMENDMENTS TO THE ETHICS ACT WITHIN ACT 134 OF 2006

In addition to promulgating the new Lobbying Disclosure Law, Act 134 of 2006 includes amendments to the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1101 et seq. First, the “definitions” section (Section 1102) of the Ethics Act has been amended so that the Ethics Act will use the same definitions for the terms “gift” and “hospitality” that are used in the Lobbying Disclosure Law. The new definitions are as follows:

“Gift.” Anything which is received without consideration of equal or greater value. The term shall not include a political

contribution otherwise reportable as required by law or a commercially reasonable loan made in the ordinary course of business. The term shall not include hospitality, transportation or lodging.

“Hospitality.” Includes all of the following:

- (1) Meals.
- (2) Beverages.
- (3) Recreation and entertainment.

The term shall not include gifts, transportation or lodging.

65 Pa.C.S. § 1303-A.

These new definitions make gifts, hospitality, and transportation/lodging mutually exclusive categories, so that any given item may only be considered to fall within one of the categories. This change will eliminate questions that previously existed under the Ethics Act as to the differences between these categories and whether a single item could be subject to disclosure under more than one category.

An additional amendment modifies the financial reporting threshold for transportation, lodging or hospitality received in connection with public office or employment under Section 1105(b)(7) of the Ethics Act. Previously, disclosure had to be made if the amount involved exceeded \$650 per event. With the amendments, the threshold will no longer be a per event threshold, but rather, will be an aggregate amount per year like the gift threshold.

AFFIRMATIVE DEFENSES UNDER THE LOBBYING DISCLOSURE LAW AND ETHICS ACT

Section 1309-A(g) of the Lobbying Disclosure Act provides:

§ 1309-A. Penalties.

- (g) Affirmative defense.—Any of the following is an affirmative defense to an action brought under Chapter 11 (relating to ethics standards and financial disclosure) or this chapter:
 - (1) The respondent or defendant relied on advice and opinions of the commission.
 - (2) The respondent or defendant relied on notice under section 1305-A(b)(3)(iv).
 - (3) The respondent or defendant did not receive notice under section 1305-A(b)(3)(iv).

Subsection (g)(1) provides an affirmative defense—under both the Ethics Act and the Lobbying Disclosure Law—to a respondent or defendant who relies on advices and opinions of the Commission. Subsections (g)(2) and (3) provide affirmative defenses to public officials and public employees who fail to disclose on their Statements of Financial Interests reportable items received from a registrant under the Lobbying Disclosure Law if the registrant fails to notify the public official or public employee of the need to make such disclosure.

PENNSYLVANIA RACE HORSE DEVELOPMENT AND GAMING ACT

Amendments to the Pennsylvania Race Horse Development and Gaming Act:

In addition to the Lobbying Disclosure Law, the General Assembly also passed an amendment to the Gaming Act which vested additional duties in the Ethics Commission. Act 135 took effect immediately on November 1, 2006. Previously, the Commission had no responsibilities under the Gaming Act. With the new amendments, the Commission now has responsibilities for:

- (1) Making determinations, upon request, as to whether particular individuals employed by the Gaming Control Board or employed by independent contractors of the Board would be subject to certain "revolving-door" provisions within the Gaming Act. (4 Pa.C.S. §§ 1201(h)(13)-(14));
- (2) Biennially publishing a listing of all state, county, municipal and other government positions meeting the definitions of the terms "public official" or "executive-level public employees" set forth in Section 1512(b) of the Gaming Act, for the purpose of enabling the identification of persons who would be subject to the prohibitions of Section 1512; and
- (3) Determining whether to extend deadlines by which executive-level public employees, public officials, party officers or their immediate family members, would be required to divest themselves of financial interests that they would be prohibited from holding under Section 1512 of the Gaming Act.

GAMING ACT OPINIONS

From January 1, 2007 through December 31, 2007, the State Ethics Commission issued one Opinion under Sections 1201(h)(13)-(14) of the Pennsylvania Race Horse Development and Gaming Act ("Gaming Act"), 4 Pa.C.S. §§ 1201(h)(13)-(14).

Opinions under Sections 1201(h)(13)-(14) of the Gaming Act are public records.

Paper copies of Commission opinions are available at cost from the Commission or via the Commission's "e-Library," which may be accessed via the Commission's Web site at www.ethics.state.pa.us.

The following is a summary of Opinion(s) issued by the Commission during 2007 under Sections 1201(h)(13)-(14) of the Gaming Act.

Opinion 07-2001
Afragola

Decided: March 28, 2007
Issued: April 11, 2007

The duties of the Deputy Director of Regulatory Review for the Pennsylvania Gaming Control Board ("Board") substantially involve the development or adoption of regulations or policy under the Gaming Act. An individual who in January or February 2007 terminated employment as the Deputy Director of Regulatory Review for the Board, and who is an attorney admitted to practice in Connecticut but not in Pennsylvania, would be subject to the prohibitions of Section 1201(h)(13) of the Gaming Act unless such individual would qualify for exclusion from the prohibitions based upon status as an attorney admitted to practice in Connecticut. It is for the Pennsylvania Supreme Court to determine

whether to exclude attorneys from the prohibitions of Section 1201(h)(13) of the Gaming Act. The request for a determination of the State Ethics Commission has only been addressed under Sections 1201(h)(13)-(15) of the Gaming Act.

PREPARATION OF THE LISTING OF PUBLIC OFFICIALS AND PUBLIC EMPLOYEES

Pursuant to the provisions of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. § 1101 *et seq.*, as amended by Act 135-2006, the Pennsylvania State Ethics Commission is required to publish and maintain a list of all state, county, municipal and other government positions that meet the definition of "public official" or "executive level public employee" as these terms are defined in the Gaming Law. This list, once compiled, is to be published in the *Pennsylvania Bulletin* biennially and on the Web site of the Gaming Control Board. The law further provides that upon request, every public official shall have a duty to provide the Ethics Commission with adequate information to accurately develop and maintain said list.

Throughout 2007 staff of the Commission arduously worked to compile lists of statewide and local public officials and public employees. With regard to state government, members of the Commission staff met with representatives from the Office of Administration to elicit their assistance in identifying state-level positions classified under the Gaming Act as public officials and/or public employees. Commission staff also met with representatives from the PA Gaming Control Board, the Department of Revenue and the Department of Community and Economic Development in order to discern which local governmental bodies would statutorily receive proceeds from the gaming facilities. Utilizing this information, the Commission sent correspondence to the local municipalities that would be receiving funds under the Gaming Act, requesting lists of their public officials and public employees along with organizational charts and job descriptions.

After reviewing the information received, additional research and analysis was required in order to determine which positions should be included on the list. Extensive research was conducted utilizing the Internet, administrative codes, home rule charters as well as the information received from the local governments. Lists were then compiled of local public officials and executive-level public employees using the information gleaned from the research. For ease of reference, each position listed is linked to the actual source material used to perform the analysis. The completed lists were reviewed by Commission attorneys for legal accuracy and content.

By the end of calendar year 2007, the aforementioned Gaming Lists were substantially completed and ready for publishing in the *PA Bulletin* and posting to the Commission's Web site. During 2008 the lists will be published in the *PA Bulletin* and will be made available within the Commission's e-Library located at www.ethics.state.pa.us and via the PA Gaming Control Board's Web site at www.pgcb.state.pa.us which will have a link to the e-Library.

These final completed lists of positions (hereinafter "Gaming Act List") will represent a portion of a complete list being compiled by the State Ethics Commission. The Gaming Act List is a work-in-progress and should not be considered a complete listing of positions meeting the definitions that follow. Additionally, even after the Gaming Act List has been substantially completed, it will continue to be subject to change as positions are created, modified, or eliminated.

The key definitions:

Section 1512(b) of the Gaming Act defines the terms "executive-level public employee" and "public official" as follows:

"Executive-level public employee." The term shall include the following:

- (1) Deputy Secretaries of the Commonwealth and the Governor's office executive staff.
- (2) An employee of the Executive Branch with discretionary power which may affect or influence the outcome of a State agency's action or decision and who is involved in the development of regulations or policies relating to a licensed entity or who is involved in other matters under this part. The term shall include an employee with law enforcement authority.
- (3) An employee of a county or municipality with discretionary powers which may affect or influence the outcome of the county's or municipality's action or decision and who is involved in the development of law, regulation or policy relating to a licensed entity or who is involved in other matters under this part. The term shall include an employee with law enforcement authority.
- (4) An employee of a department, agency, board, commission, authority or other governmental body not included in paragraph (1), (2), or (3) with discretionary power which may affect or influence the outcome of the governmental body's action or decision and who is involved in the development of regulation or policy relating to a licensed entity or who is involved in other matters under this part. The term shall include an employee with law enforcement authority.

"Public official." The term shall include the following:

- (1) The Governor, Lieutenant Governor, a member of the Governor's cabinet, Treasurer, Auditor General and Attorney General of the Commonwealth.
- (2) A member of the Senate or House of Representatives of the Commonwealth.
- (3) An individual elected or appointed to any office of a county or municipality that directly receives a distribution of revenue under this part.
- (4) An individual elected or appointed to a department, agency, board, commission, authority or other governmental body not included in paragraph (1), (2) or (3) that directly receives a distribution of revenue under this part.
- (5) An individual elected or appointed to a department, agency, board, commission, authority, county, municipality or other governmental body not included in paragraph (1), (2) or (3) with discretionary power which may influence or affect the outcome of an action or decision and who is involved in the development of regulation or policy relating to a licensed entity or who is involved in other matters under this part.

The term does not include a member of a school board or an individual who held an uncompensated office with a governmental body prior to January 1, 2006, and who no longer holds the office as of January 1, 2006. The term includes a member of an advisory board or commission which makes recommendations relating to a licensed facility. 4 Pa.C.S. § 1512(b).

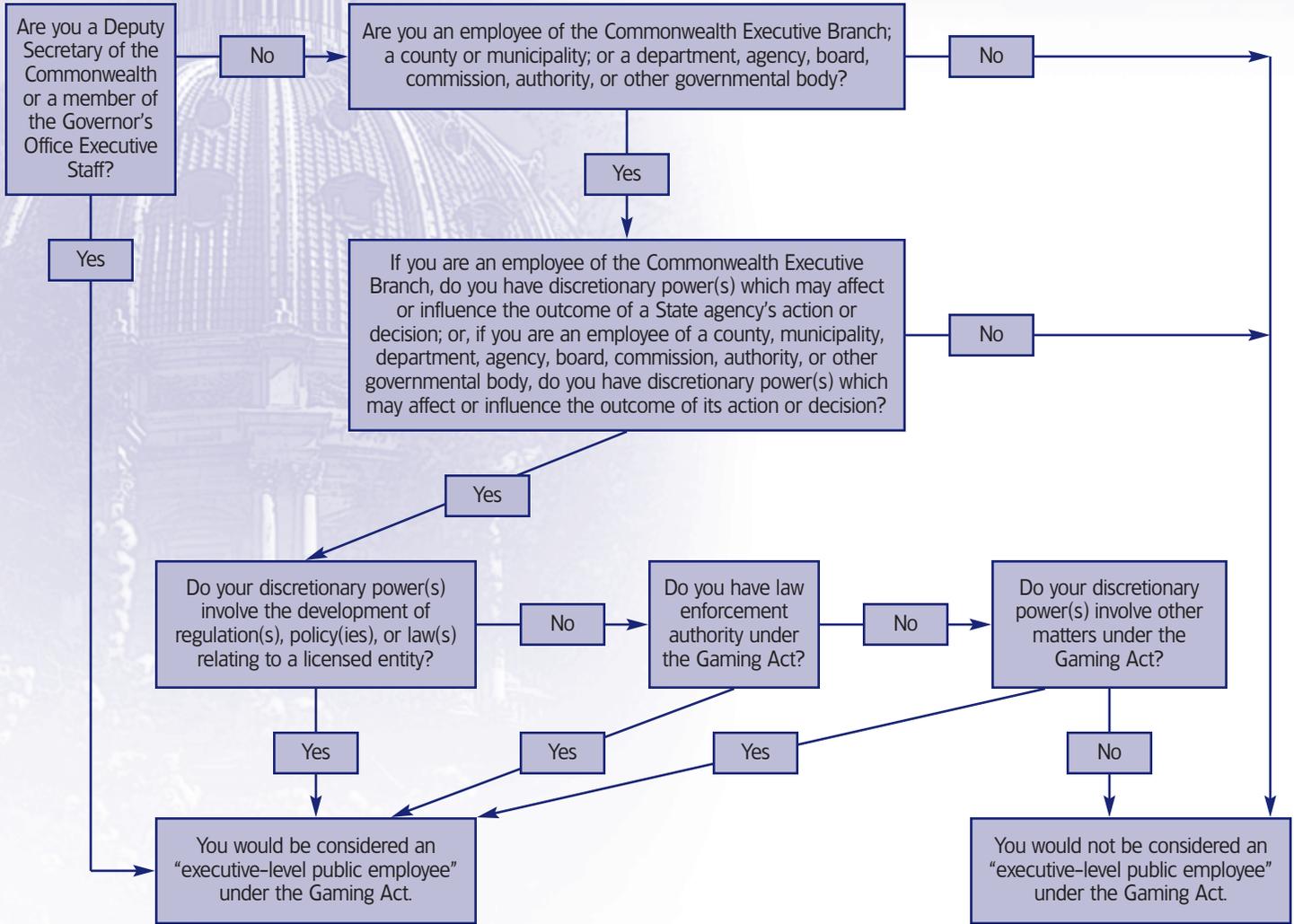
Status as an executive-level public employee or public official:

Status as an executive-level public employee or public official has significance under various provisions of the Gaming Act, including but not limited to Section 1512.

A person who is an executive-level public employee or public official as defined by the Gaming Act, or who is a member of such a person's immediate family (spouse, minor child, or unmarried child), is subject to significant restrictions and may be subject to penalties as set forth in Sections 1512(a), (a.1), (a.2), (a.3), and (a.4) of the Gaming Act.

PENNSYLVANIA STATE ETHICS COMMISSION 2007 ANNUAL REPORT

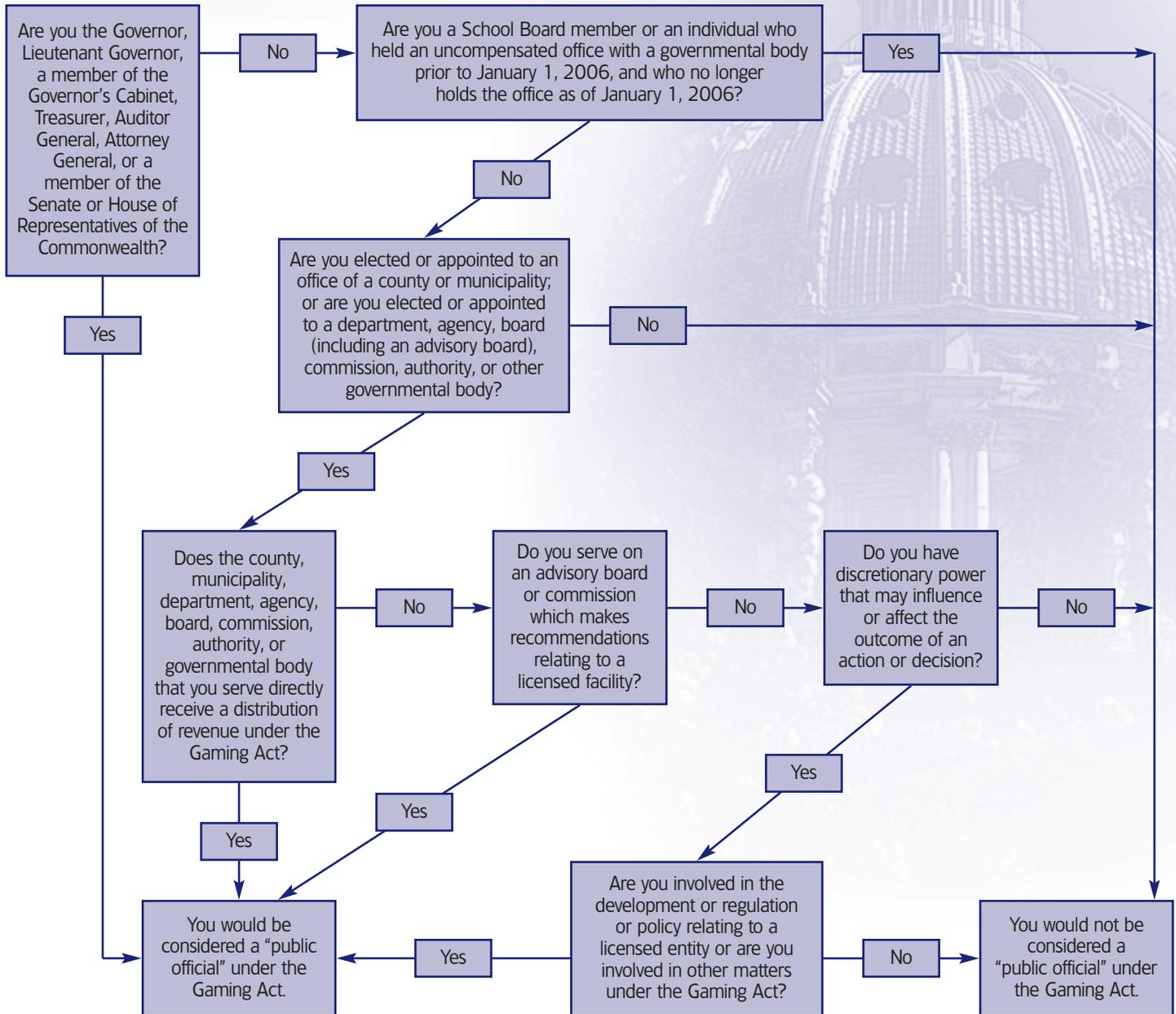
The following flow chart outlines questions used to determine whether an individual would be considered an **“executive-level public employee”** under the Pennsylvania Race Horse Development and Gaming Act (Gaming Act), 4 Pa.C.S. § 1101 *et seq.*:



Executive-level Public Employee

PENNSYLVANIA STATE ETHICS COMMISSION 2007 ANNUAL REPORT

The following flow chart outlines questions used to determine whether an individual would be considered a **“public official”** under the Pennsylvania Race Horse Development and Gaming Act (Gaming Act), 4 Pa.C.S. § 1101 *et seq.*:



Public Official

COGEL: COUNCIL ON GOVERNMENTAL ETHICS LAWS

The Commission's Executive Director is currently a member of the Past President's Committee and Global Affairs Committee. Chief Counsel Robin M. Hittie is currently a member of the Past President's Committee and Nominating Committee.

The Commission's Executive Director also was chair of the COGEL Strategic Plan and Survey Committees, and in this capacity oversaw a review of the organization's five-year strategic plan and the implementation of new initiatives.

The 29th Annual COGEL Conference was held in Victoria, British Columbia on September 16 through September 19, 2007. Representatives of the Commission attending the conference were the Executive Director, Chief Counsel, and Commissioner Donald M. McCurdy. The Commission's Executive Director moderated and participated in a concurrent session entitled "Elements of a Successful Consent/Settlement Agreement." Representatives of the Commission also participated in concurrent sessions on the following topics:

- Ethics Update
- Pay to Play, Contractors and Contributors

- Commissioner's Round Top Leadership Challenges
- Leadership Development—Coaching
- Ethical Issues for Government Attorneys
- Lobby Update
- Bridging the Ethics Gap: From Codes to Compliance
- Ethics Laws and Their Application to Government Contractors

The Executive Director of the Commission nominated this year's COGEL Outstanding Service Award Recipient, Frank Daley, the Executive Director of the Nebraska Disclosure and Accountability Commission, and was a co-nominator for this year's COGEL award winner, David Freel of the Ohio Ethics Commission.

In addition to the foregoing, the Executive Director and Chief Counsel were actively involved in modifying efforts to amend the COGEL bylaws to allow non-governmental entities to play a role in the organization's decision-making processes. This amendment was successfully defeated resulting in the leadership of the COGEL organization remaining solely in the hands of governmental agencies.

INTERNATIONAL ETHICS OUTREACH

APEC ANTI-CORRUPTION TASK FORCE:

On October 29–31, 2007, the Executive Director of the State Ethics Commission traveled to Lima, Peru at the request of the United States Office of Government Ethics to participate in a program being conducted by the Asia-Pacific Economic Cooperation (APEC). The program, which was entitled *The Fight Against High Level Corruption, a Common International Responsibility: Strengthening the Cooperation Mechanisms in the Asia-Pacific*, was attended by delegates from all APEC members. The Director

participated as part of the delegation representing the United States Government. The Task Force meeting addressed various issues of concern to member nations in fighting high-level public corruption. It was funded by a United States Department of State Grant and administered by the American Bar Association. The Director made a presentation as part of a panel addressing specific areas of preventing corruption and promoting public integrity through the development of independent commissions with power to impose various types of civil and administrative penalties.

NORCOL: NORTHEASTERN REGIONAL CONFERENCE ON LOBBYING

The Pennsylvania State Ethics Commission continued to be active in the Northeastern Regional Conference on Lobbying (NORCOL) which includes lobbying regulators from the New England states to Washington, D.C.

The 2007 Annual NORCOL Conference was held at the State House Annex in Trenton, New Jersey. Pennsylvania State Ethics

Commission Chief Counsel Robin Hittie served as guest speaker at the conference, addressing the topic of "Pennsylvania's New Lobbying Law." The NORCOL 25th Anniversary Service Award was presented to Chief Counsel Hittie during the conference.

NORCOL plans to hold its 2008 annual conference in New Jersey.

PUBLIC OUTREACH AND TRAINING

The Ethics Commission strives to fulfill its educational role by providing guidance to public officials and public employees regarding their responsibilities under the Public Official and Employee Ethics Act. The Commission believes that it is important for government officials to always remember that they have been entrusted to serve in the public's best interest. As such, public officials and employees must keep abreast of their duties and responsibilities under the Ethics Law.

In order to reach out to more public officials across the state regarding their duties and responsibilities under the Ethics Law, and to augment the appearances and presentations made at annual events, the Commission expanded its already active educational outreach and training program. In order to facilitate this endeavor, the Commission partnered with organizations such as the PA State Boroughs Association, the PA State Association of Township Supervisors, the PA Commission on Crime and Delinquency, the Department of Community and Economic Development Center for Local Government Services, the State Association of County Commissioners, the PA League of Cities, the PA County Controllers Association, and the Local Government Academy. Meetings were held with representatives of these organizations in order to plan future ethics training sessions that would be

geared towards a variety of local public officials such as Borough Managers and Council members, Township Supervisors, Solicitors, Municipal Authority members, Mayors, Controllers, Commissioners, and Tax Collectors. Typical topics covered during Commission presentations include how to avoid conflicts of interest, financial disclosure, restricted activities, jurisdiction, the intent of the Ethics Act and relevant advisory opinions.

During calendar year 2007, 36 presentations were made. Some of the topics included the new lobbying disclosure act, basic ethics law instruction, local government and school district conflicts of interests. Organizations included the PA Bar Institute, the Philadelphia Chamber of Commerce, the PA Municipal Authorities Association, the PA State Association of Township Supervisors, the County Treasurers Association, the PA State Association of Township Commissioners, the PA Association of Township Solicitors, the PA State Association of Boroughs, the Chester County Library System, the Auditor General, the PA League of Cities, and the PA Recreation and Park Society.

Presentations scheduled for 2008 include the PA State Association of County Controllers, PA State Association of Township Supervisors, the PA Municipal Authorities Association, the Local Government Academy, the PA Recreation and Park Society, the



Allegheny County Bar Association, the Government Finance Officers Association, and the Auditor General.

Those interested in scheduling a speaker or a training session for their particular group, organization or association can contact the PA State Ethics Commission at 1-800-932-0936 or 717-783-1610. There is also a speaker request form available for download on the Commission's Website at www.ethics.state.pa.us that can be completed and forwarded to the Commission.

PUBLIC INFORMATION

Ethics Commission Web site:

<http://www.ethics.state.pa.us>

The following information is available on-line:

- Who is covered by the Ethics Law
- Restricted activities
- Publications
- Regulations
- Filing a Statement of Financial Interests
- Filing a Complaint
- Requesting an Opinion
- Commissioners
- Ethics Staff
- e-Library containing rulings and Statements of Financial Interest
- Statement of Financial Interests (Form)
- Complaint (Form)

Pamphlets and Guides:

- Guide to the Pennsylvania Public Official and Employee Ethics Law
- Consolidated Rulings Digest 1979-1987
- Consolidated Rulings Digest 1988-1991
- Annual Report
- e-Library Pamphlets

Statement of Financial Interests Filings:

All Statements of Financial Interest forms filed with the Commission are available for public inspection and copying. There is a charge of 25 cents per page for copies.

Statements of Financial Interests are also available for public inspection via the Commission's Web site at www.ethics.state.pa.us.

Commission Decisions:

Commission decisions, (orders, opinions, and advice of counsel) are available at the offices of the State Ethics Commis-

ETHICS TRAINING REQUEST FORM

If you are interested in scheduling one of the PA State Ethics Commission's trainers for your association, agency or organization, please complete this form and submit it to:

**PA State Ethics Commission
Attention: Training
PO Box 11470
Room 309 Finance Building
Harrisburg, PA 17108-1470
Fax: 717-787-0806**

List the name of your Agency, Organization or Association:

List the Name and Title of a Contact Person(s):

Street Address (city, state, zip):

Phone number and best time to call:

Fax number: _____ email: _____

Time you would prefer training: (circle one):

9:00am to noon 1:00pm to 3:00pm 6:00pm to 9:00pm

Proposed Dates for Training:

Potential number of attendees:

Are you planning to charge a registration fee for training? Yes No
If answer is yes, what will the cost be? _____

Do you have a facility available to hold training? Yes No

Do you have any specific topics or areas of the Ethics Act you would like covered? Yes No
If answer above was yes, please elaborate on issues you would like covered during training: _____

Note: The Ethics Commission prefers a minimum of 20 attendees per training session

sion and may also be available at county law and public libraries and via the Commission's Web site at www.ethics.state.pa.us.

Opinions and Advices are issued to public officials and public employees at their request.

Orders are issued at the conclusion of an investigation and contain allegations, findings, discussion of the findings, and the conclusion of the Commission.

The Commission may require payment for a large quantity of pamphlets or decisions.

PRESENTATIONS—CALENDAR YEAR 2007

DATE	GROUP	LOCATION	SUBJECT
January 19	PA Bar Institute (PBI)	PBI Conference Center, Mechanicsburg	New Lobbying Disclosure Act
January 25	Public Utility Law Conference	Hilton Harrisburg	New Lobbying Disclosure Act
February 2	PA Bar Institute (PBI)	CLE Conference Center, Philadelphia	New Lobbying Disclosure Act
February 2	Phila. Chamber of Commerce		New Lobbying Disclosure Act
February 24	Perry County Assn. of Twp. Officials	Greenwood Elem. School, Millerstown	Public Official and Employee Ethics Law, Basic Instruction
March 2	PMAA Regional Conference	Pittsburgh	Public Official and Employee Ethics Law, Basic Instruction
March 8	PMAA Regional Conference	Bethlehem	Public Official and Employee Ethics Law, Basic Instruction
March 22	PSATS	Cumberland County PSATS facility	Public Official and Employee Ethics Law, Basic Instruction
March 27	PA Recreation & Park Society	Annual conference, Hershey Motor Lodge	Public Official and Employee Ethics Law, Basic Instruction
March 28	PSATS	Meadville, Crawford County	Public Official and Employee Ethics Law, Basic Instruction
March 29	PSATS	Mars, Butler County	Public Official and Employee Ethics Law, Basic Instruction
March 29	PSATS	West Chester, Chester County	Public Official and Employee Ethics Law, Basic Instruction
March 29	PSATS	Lewisburg, Union County	Public Official and Employee Ethics Law, Basic Instruction
April 11	PA State Assn. of Boroughs TEAM Seminar	Sheraton Hbg/Hershey Hotel, Hershey	Public Official and Employee Ethics Law, Basic Instruction
April 13	PBI Municipal Law Colloquium	Hershey	Public Official and Employee Ethics Law, Basic Instruction
April 18	PA State Assn. of Boros	Sheraton Harrisburg/Hershey Hotel, Hershey	Public Official and Employee Ethics Law, Basic Instruction
April 24	PSATS Annual Conference	Hershey Motor Lodge	Ethics for Public Officials Workshop
May 17	Mgt. & Leadership for Municipal Officials in the 21st Century	Easton	Ethics for Public Officials Workshop
May 31	County Treasurers Convention	Nemacolin	Ethics for Public Officials Workshop
June 5	PSATS/PA Leadership Institute	PSATS Training Center, Enola	Keynote Speaker
June 6	PSATS/PA Leadership Institute	Four Points Sheraton, Mars	Keynote Speaker
June 12	PSATS/PA Leadership Institute	Holiday Inn, Williamsport	Keynote Speaker
June 13	PSATS/PA Leadership Institute	Four Points Sheraton Lehigh Valley, Allentown	PA Keynote Speaker
June 21–24	PA State Assn. of Twp. Commissioners	Lancaster Host	82nd Annual Convention
August 3	PA Assn. of Township Solicitors	Nittany Lion Inn, State College	
August 23	PA State Assn. of Boros	Sheraton Harrisburg/Hershey Hotel Hershey	PSAB's Municipal Law Seminar
September 6	OGC University	Camp Hill	Lobbying Disclosure Act
October 2	Chester County Library System	Springton Manor Farm, Glenmoore	Annual Board Retreat
October 2	Auditor General	King of Prussia	Local Government and School Districts —Conflicts of Interest
October 2	Auditor General	State College	Local Government and School Districts —Conflicts of Interest
October 3	Auditor General	Harrisburg	Local Government and School Districts —Conflicts of Interest
October 4	Auditor General	Pittsburgh	Local Government and School Districts —Conflicts of Interest
October 19	PA Bar Institute	Mechanicsburg	Lobbyist Disclosure Act
October 26	PA League of Cities	Lancaster Host	Professional Development Committee regarding topics for our Association for Municipal Managers Fall Meetings
November 9	PA League of Cities	Radisson Monroeville	Professional Development Committee regarding topics for our Association for Municipal Managers Fall Meetings
November 28 and 29	PA Bar Institue	Mechanicsburg & Philadelphia	Lobbyist Disclosure Act

ETHICS COMMISSION ON THE INTERNET

The State Ethics Commission maintains an Internet site located at <http://www.ethics.state.pa.us> that provides useful information on the Ethics Act and Regulations. Visitors can also find guidance with regards to Statements of Financial Interests, who is covered by the Ethics Act, how to request an advisory, and how to file a complaint. Other sections include general information about the Commission such as biographies of the Commissioners, a listing of staff members, and public meeting dates and agendas. Using the latest technologies, the Commission strives to continually enhance its Web site so that visitors will find it easy to navigate and obtain the information they are searching for. 2005 brought the addition of taped recordings of the Commission's public meetings to the Web site. With this latest enhancement, individuals interested in seeing first-hand the business conducted by the Commission can do so at their leisure via their own computer. Also new to the Web site in 2005 was a Training section featuring a calendar listing dates and locations of Ethics training provided by Commission staff members. The Commission has received the Pennsylvania Destination of the Day Award from Kessler-Freedman, Inc., an organization that highlights the best of Pennsylvania's Web sites.

In addition to meeting notices and agendas, as well as employment opportunities with the Commission, visitors to the Web site will find a calendar listing important filing dates and deadlines and direct links to printable forms such as the Complaint form and Statement of Financial Interests that can be printed out using Adobe Acrobat Reader. Frequent visitors also have the capability to subscribe to "e-alerts" so that they can be notified of important Commission information, news, and reminders.

The most frequently utilized feature of the State Ethics Commission's Web site is its "e-Library" that includes all of the Commission's rulings. This electronic document management system provides state-of-the-art search and retrieval capabilities of thousands of Commission documents that date back to the Commission's inception in 1979. This initiative involved the scanning and indexing of thousands of documents that were subsequently posted to the Commission's Web site. As future rulings are issued, they will be added to the on-line library.

Prior to the deployment of this new document management system, the State Ethics Commission stored paper copies of rulings in over 100 binders. If an individual wanted a copy of a document, staff would perform the research, make a photocopy of the document requested, and then forward it to the requestor. Keyword indexes were created manually in order to provide an efficient search mechanism for topics, orders, opinions and advices.

With the electronic document management system, anyone can log onto the Commission's Web site and click on the convenient link to the e-Library and type in a name, topic, or date, etc. and the software does the retrieval work in just seconds. Once the keyword is located, the user can easily scan through all of the documents to find the exact information they are looking for as search words are highlighted to show their exact location within a given document. They can then save the image to a file for future reference, print it out in hard-copy form, copy it to a CD, or even

send it to another party via e-mail.

Users will also find with the e-Library a helpful Search Guide and instructions for performing more advanced or complex searches.

With the addition of the e-Library to the Commission's Web site, the Commission realized a long-standing goal of scanning and indexing all of its rulings and making those rulings easily accessible to the public. Public access to the Commission rulings with research capabilities benefits anyone who needs or wants to get answers to Ethics Law issues quickly.

During 2003, the Commission realized another long-standing goal with the addition of Statements of Financial Interests to the Web site and e-Library.

Each year, the Commission receives more than 5,000 Statements of Financial Interests that are required to be filed specifically with the State Ethics Commission by public officials and public employees such as candidates, legislators, cabinet members, deputy secretaries, members of state boards and commissions, constables and deputy constables and other persons who file voluntarily. The Ethics Act requires that these public officials, public employees, and candidates for public office file Statements of Financial Interests by May 1 of every year they hold their position and the year after they terminate their position. (Local public officials and public employees file only with their respective governmental bodies, and state employees file only with their respective agencies.) The Ethics Act stipulates that all Statements be kept on file for five years and must be made available for public inspection.

Instead of calling, writing to or visiting the Commission, now anyone interested in seeing a Statement of Financial Interests that has been filed with the State Ethics Commission can easily have access to the document via the Internet and the Commission's e-Library. Statements of Financial Interests are organized within the e-Library according to filing calendar years. Interested parties select a given year and type the person's name into a template. The system then provides an image of the Statement of Financial Interests that can be printed out, saved to their computer for future reference or e-mailed to another party. The State Ethics Commission provides the most recent five filing years of Statements of Financial Interests on its Web site.

The Commission will continue to look for ways to improve its Web site to make it user-friendly and useful and as such, will take advantage of new and emerging technologies to accomplish this goal.

As part of its technology and Web site initiatives, the State Ethics Commission utilizes a tracking mechanism to monitor activity on the Web site. This tracking mechanism produces monthly statistical information regarding the visitors to the Commission's Web site. The reports detail how many visitors the Web site has, what the average usage is per day, and what the most popular features of the Web site are. During 2007, there were 3,267,466 total visitors to the Commission's Web site, and 256,157 user sessions. The average number of visits per day was approximately 8,860 and the average number of user sessions per day was 699.

ETHICS AND THE RIGHT-TO-KNOW LAW

Effective December 26, 2002, pursuant to the Pennsylvania Right-to-Know Act, as amended by Act 100-2002, the Pennsylvania State Ethics Commission established administrative policies and forms in order to provide access to public records of the Commission. These policies follow the Commonwealth's Management Directive 205-36 dated November 27, 2002.

Requests for access to public records of the Commission must sufficiently identify the requested records so as to enable a determination of which records are being requested. When requests are received, an initial review is performed in order to determine if the records or documents requested are public records under the Right-to-Know Law. Requests are to be submitted to John J. Contino, Esquire, Executive Director, Pennsylvania State Ethics Commission, 309 Finance Building, P.O. Box 11470, Harrisburg, Pennsylvania 17108-1470; Telephone #: (717) 783-1610 or 1-800-932-0936; Fax #: (717) 787-0806. Written requests must be submitted in person, by mail or delivery service, or by facsimile transmission (Fax); e-mail requests and subsequent responses are not permitted. Written requests must provide the name, address, and title, if any, to which the response is to be sent. The fee for duplication of requested records on paper is \$.25 per page. The fee for duplication on computer disk, if available, will be the actual cost of duplication, including the cost of labor. The fee for postage for mailing will be the actual cost of mailing. Prepayment of fees may be required at the discretion of the Executive Director if such fees are expected to exceed \$100.

Per the policy outlined above, all requests for documents, including Statements of Financial Interests, under the Right-to-Know Law must be submitted in writing. Written requests should be submitted using the SEC RTKL Request for Information form. All requests are to be date and time stamped and immediately assigned a tracking number and logged by Commission administrative staff then kept on file in numeric order. All requests, when being filled/responded to, must include a copy of the original written request and an approved State Ethics Commission response letter signed by the Executive Director.

Any questions regarding a request for information and/or documents should be directed to the Executive Director for further disposition. All information concerning

requests must be documented on the tracking log and written information including subsequent telephone conversations must be kept on file with the original written request.

Requests for information/documents may not be received or responded to via e-mail.

During calendar year 2007, the Commission received and responded to 17 requests for documents, and since December 26, 2002 a total of 191 requests have been received. The most common request for documents is for Statements of Financial Interests.

RTKL request SEC tracking number _____	Official use only (date/time stamp) _____
	
Name & Title of Requestor: _____ <small>(please print)</small>	LAST FIRST MI TITLE
Signature of Requestor: _____	
Mailing Address: _____	STREET/PO BOX
CITY _____	STATE ZIP
Telephone Number: _____	Fax Number: _____ <small>OPTIONAL</small>
<p>Please identify each of the documents that is subject to this request. You must identify these documents with sufficient specificity so we may ascertain whether we have these documents and how to locate them.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>Please check one of the following boxes:</p> <p><input type="checkbox"/> I am only requesting access to the documents identified above.</p> <p><input type="checkbox"/> I am only requesting a copy of the documents identified above.</p> <p><input type="checkbox"/> I am requesting access and copies of the documents identified above.</p>	
<p>If you are requesting a copy of the documents identified above, please check one of the following boxes:</p> <p><input type="checkbox"/> I would like a paper copy of the documents</p> <p><input type="checkbox"/> I would like a computer-readable copy of the documents (i.e. diskette or CD)</p> <p><input type="checkbox"/> Other (please specify) _____</p>	



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