

Pennsylvania State Ethics Commission



# ANNUAL REPORT

# 2011







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# 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 a partner of the law firm Conrad O'Brien, PC and has served the community in many leadership capacities in professional, social, and educational positions. Mr. Fryman is a Fellow and was a Regent of the American College of Trial Lawyers and a Fellow of the International Academy 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 Big Brothers/Big Sisters Association of Philadelphia, and now serves on the Board of Big Brothers/Big Sisters of America Foundation, 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 and the Service Award from the CORA Catholic Service Organization. Mr. Fryman was an adjunct faculty member of Temple University's School of Law Masters Program in Trial Advocacy and serves on the Executive Board of the Academy of Advocacy. He has also lectured at Drexel Law School and Villanova Law School. Mr. Fryman was president of the Board of the Walnut Street Theatre in Philadelphia and past chairman of the Episcopal Academy Board of Trustees. He was a member of the Panel of the Senate of the Commonwealth of Pennsylvania for Judicial Selection 1988. Appointed by United States Senators Arlen Specter and Rick Santorum to the Federal Judiciary Nominating Commission of Pennsylvania in 1996, 1997, and 1998. Appointed by then-Governor Ridge to the Judicial Advisory Committee in 1995, 2001, and 2002 and appointed by then-Mayor Rendell of Philadelphia to serve on the Philadelphia Refinancing Task Force, as counsel to the Charter Reform Commission, and as a member of the Election Reform Task Force.

Mr. Fryman also serves on the Board of Directors of numerous community services, healthcare, and arts organizations including Lankenau Hospital Foundation, Main Line Health Board of Governors, and as Past President of the Louis D. Brandeis Law Society 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, Govern-

nor 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.

### **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 Professor and Chair of the Department of Sociology at Saint Joseph's University in Philadelphia, Pennsylvania. She graduated from Saint 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 Saint 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 the 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 anthology, *Violence Against Women: Classic Statements*. She also co-edited the collection *Violence Against Women* with Claire Renzetti. As a result of her research on violence against women, Dr. Bergen was awarded the McShain Chair in Ethics from Saint Joseph's University for 2002-2004.

Dr. Bergen has been involved in various forms of service at Saint Joseph's University. She has served as a member of the Faculty Senate, University College, Gender Studies Committee, the Board of Rank and Tenure, the Institutional Review Board and she served as the Chair of the Sexual Harassment Panel. For the past eighteen years, she has been the faculty moderator for REPP (the Rape Education Prevention Program) at Saint 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 speaks nationally about women's experiences of sexual violence in intimate partnerships. She is currently studying the intersection of physical and sexual violence in women's experiences cross-culturally.

#### **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 Honorable 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.

#### **MARK VOLK, COMMISSIONER**

COL (Ret.) Mark Volk was appointed as a member of the State Ethics Commission on July 2, 2009.

Mark Volk is the Executive Vice President at Lackawanna College, having joined the administration in July, 2004. A retired Army Colonel, he holds both Bachelor's and Master's Degrees in History from the University of Scranton as well as a Master's of Science in National Security Strategy from the National War College. During his 26 year Army career, he served in a variety of staff and command positions in both the United States and Germany. He also trained as a Middle East/North Africa specialist. During the Los Angeles riots in 1992, he was the Joint Task Force liaison officer to Central Bureau, LAPD. COL(Ret) Volk also served as the senior intelligence staff officer for 3rd Infantry Division in Germany and as Commander, 103rd/101st Military Intelligence Battalion. He deployed the 101st MI to Bosnia in September 1996 where it was the intelligence support force for Task Force Eagle in Multi-National District - North.

Since joining Lackawanna College in July 2004, COL (Ret.) Volk has held positions as Special Assistant to the President, Vice President of Operations and Planning and was promoted to his present position in April of 2006. On January 27, 2012, Mr. Volk was appointed as the 8th President of Lackawanna College. His tenure as president will commence on July 1, 2012.

An active community volunteer, he helps coordinate volunteer support for the Children's Advocacy Center of Northeast PA and serves on the boards of The Greater Scranton Chamber of Commerce, Leadership Lackawanna and the Northeast Council of the Boy Scouts of America.

## **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

Esther Estelle, Secretarial Support

**ADMINISTRATIVE DIVISION**

Alecia Peddigree, Administrative Officer  
 Helen Johns, Clerk Typist  
 Stanley G. Weaver, Clerk Typist  
 Sean M. Firestine, IT Generalist

**INVESTIGATIVE DIVISION (HEADQUARTERS)**

Brian D. Jacisin, Assistant Counsel  
 Andrew Petsu, Assistant Counsel  
 Daniel M. Bender, Senior Special Investigator  
 Gregory Curran, Special Investigator  
 Pamela Hicks, Secretarial Support

**INVESTIGATIVE DIVISION (WESTERN REGIONAL OFFICE)**

Jason P. Bricker, Supervising Investigator  
 Daniel Cali, Special Investigator  
 Joseph Grado, Special Investigator  
 Cynthia L. Hershberger, Secretarial Support

**COMMISSION MEMBER AND EMPLOYEE RESTRICTIONS**

The Ethics Act 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](http://www.ethics.state.pa.us). The Commission's e-mail address is [ethics@pa.gov](mailto:ethics@pa.gov).

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**.

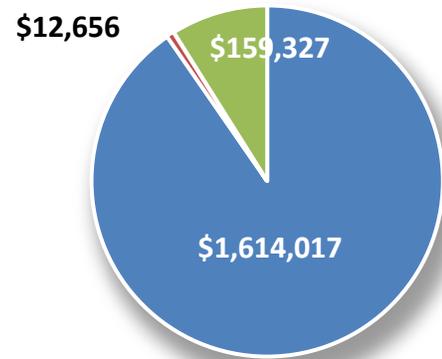
For information on filing and inspections of Statements of Financial Interests, ask for Stanley Weaver or Helen Johns.

**Budget**

**TWO-YEAR BUDGET ANALYSIS**

**APPROPRIATION 2010-2011**

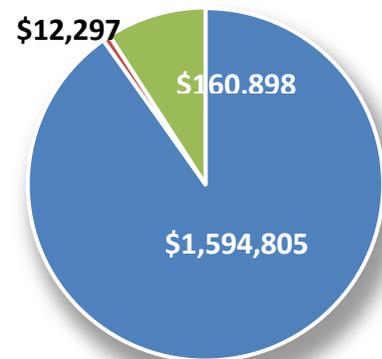
Employee salaries/benefits .....	\$1,614,017
Miscellaneous personnel services* .....	\$12,656
Agency operations .....	\$159,327



Total ..... \$1,786,000

**APPROPRIATION 2011-2012**

Employee salaries/benefits .....	\$1,594,805
Miscellaneous personnel services* .....	\$12,297



Agency operations ..... \$160,898  
 Total ..... \$1,768,000

# Statement of Purpose and Goals

The Preamble to the Public Official and Employee Ethics Act sets forth the legislative intent that generated the enactment of the Act. That Section of the Act 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 Act 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 Act 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 Act.
6. To provide continuing educational services to public officials, public employees, and citizens of Pennsylvania regarding the provisions of the Act 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 Act.

## Powers and Duties

The powers and duties of the State Ethics Commission are statutorily mandated in Section 1107 of the State Ethics Act. These requirements of the Act 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's 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 Act.
- 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 Act.
- 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 Act 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 Act.
- Hold hearings, take testimony, issue subpoenas, and compel the attendance of witnesses.
- Prescribe rules and regulations to implement the provisions of the Ethics Act. (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 Act.

## Restricted Activities

The Public Official and Employees Ethics Act 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 employment 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 asso-

ciated 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 Actor 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.

# Financial Disclosure

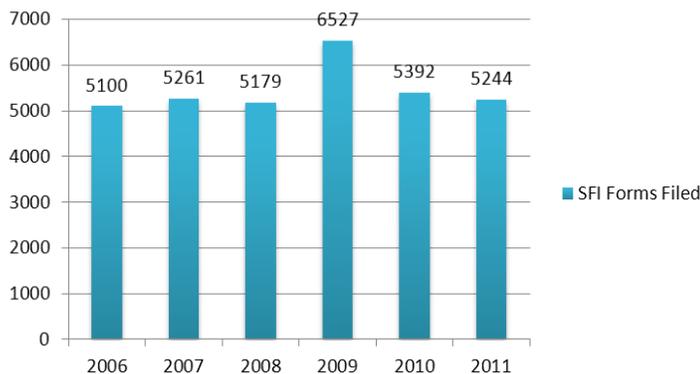
Section 1104 of the Ethics Act (65 Pa.C.S. §1104) requires that public officials, public employees, and candidates for public office file Statements of Financial Interests. Section 1105 of the Ethics Act (65 Pa.C.S. §1105) of the Act describes the information to be reported.

In preparation for the May 1, 2012 filing for calendar year 2011, the annual mailing of the Statements of Financial Interests was initiated December 27, 2011 and completed on January 9, 2012. As mandated by the United States Postal Service (USPS), this year the entire mailing list was run through National Change of Address (NCOA) software. The COA software corrects any addresses that are incorrect and provides a greater delivery success rate. A total of 212,606 forms were mailed to 7,729 state, county, and local government 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 5,244 individuals filed Statements of Financial Interests with the State Ethics Commission for calendar year 2010 (filing year 2011). Of these filings, 356 were candidates for public office; 1,857 were constables and deputy constables (this included candidates); 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 1107(5) of the Public Official and Em-

ployee Ethics Act (65 Pa.C.S. §1107(5)), the State Ethics Commission, upon discovery that an individual who is required to file a Statement of Financial Interests in accordance with the Act 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 calendar year 2011, the Commission's Investigative Division conducted 24 Statement of Financial Interests Compliance Reviews throughout the Commonwealth. These reviews consisted of eight school districts, one borough, three authorities, one city office, and 11 townships. In addition, in conjunction with the Investigative Division, the Commission's Administrative Division also conducted a series of in-house Compliance Reviews of Statements of Financial Interests. These reviews consisted of seven school districts, and one charter school. These reviews resulted in the identification of 118 delinquent filers (individuals who were required to file but failed to do so), and 200 deficient filers (individuals who filed incomplete or deficient forms). As such, 318 civil penalty notices were issued resulting in 260 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 2011, 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 274 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 2011 (for calendar year 2010), 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 1,857 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 2,055 notices of civil penalties for delinquent and/or deficient filers. Of these notices, 1,491 were first notice letters and 564 were second/final notice letters. In summary, there were approximately 1,491 delinquent filers and 564 deficient filers identified via Compliance Reviews. As of year-end 2011, 1,008 individuals have filed as a result of compliance efforts.

## CIVIL PENALTY ORDER—2011

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, 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 Commission Orders.

In 2011, 13 Civil Penalty (“S”) Orders were issued by the State Ethics Commission. All of the Orders were directed to various State and Local Public Officials and employees. A total of \$3,450 in fines was levied by the Commission as a result of these Orders.

## 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 2012 (Rev. 01/12)**

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

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

**MAKE A COPY FOR YOUR RECORDS**

### **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 decline 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.**
- E **Solicitors** - Persons elected or appointed to the office of solicitor for political subdivision(s).

**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.

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 if signature or date 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** Listing a business/governmental address and daytime telephone number is sufficient.
- 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, hold, 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 any time during the calendar year. If you do not have any reportable creditor, 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 do not have ANY reportable source of 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 both the name and address of the business entity for 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.

(2 of 4)

SEC-1 (Rev. 01/12)



# WHO MUST FILE, WHERE TO FILE, AND WHEN TO FILE

WHO MUST FILE	ORIGINAL WHITE COPY	YELLOW COPY	WHEN TO FILE
<b>A. STATUS BLOCK A - CANDIDATES</b>			
Statewide State Senate State House  Supreme Court Superior Court Common Pleas Court Traffic Court Municipal Court Commonwealth Court	<b>State Ethics Commission</b> P.O. Box 11470 Room 309 Finance Building Harrisburg, PA 17108-1470	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
<b>Constables / Deputy Constables</b>	<b>State Ethics Commission</b>	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		
<b>Magisterial District Judges</b>	File with the County in which the Magisterial District is located		
School Director	File in the School District where you are a candidate		
Announced Write-in Unannounced Write-in Winners of Nominations Unannounced Write-in Winners of Elections	For state office file with <b>State Ethics Commission</b> . 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 declines the nomination or office within that time frame.
<b>B. STATUS BLOCK B - NOMINEE</b>			
State Level	<b>State Ethics Commission</b>	File with the Official or Body vested with the power of confirmation	10 days before official or body approves or rejects the nomination.
County/Local Level	Governing authority of political subdivision		
<b>C. STATUS BLOCK C - PUBLIC OFFICIAL</b>			
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.	<b>State Ethics Commission</b> P.O. Box 11470 Room 309 Finance Building Harrisburg, PA 17108-1470	File with <u>each</u> Agency, Board, Commission, Department, or Government Body in which employed or to which appointed. (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.
<b>State House Member</b> <b>State Senate Member</b>		File with the House Chief Clerk or Senate Secretary (whichever applies)	
<b>Local Public Officials serving in/as:</b> Counties; Boroughs; Townships; Home Rule Municipalities; Municipal Authorities; School Districts	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)	
<b>(Incumbent Judges and Magisterial District Judges who are not candidates do not file)</b>			
<b>Constables / Deputy Constables</b>	<b>State Ethics Commission</b>		
<b>D. STATUS BLOCK D - PUBLIC EMPLOYEE</b>			
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		
 EMPLOYEE			
<b>E. STATUS BLOCK E - SOLICITOR</b>			
	File with the governing authority of <u>each</u> political subdivision for which you are Solicitor	Yellow copy is not required to be filed (unless serving in multiple capacities, then file with <u>each</u> entity as required)	

# Opinions and Advices

From January 1, 2011, through December 31, 2011, the State Ethics Commission issued a total of 81 advisories under the Public Official and Employee Ethics Act, consisting of 5 Opinions and 76 Advices of Counsel.

Opinions and Advices are public records. However, a requester 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, opinions, 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.

All Commission Opinions and Advices are available online in the eLibrary free of charge. [www.ethicsrulings.state.pa.us](http://www.ethicsrulings.state.pa.us)

*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 and the requester acts in good faith on the Opinion. The following is a summary of Opinions issued by the Commission during 2011.*

**KILLEN**  
**Decided: March 3, 2011**

**Opinion 11-001**  
**Issued: March 11, 2011**

In this appeal from Advice of Counsel 10-593, the Commission held that Kimberly Killen (“Ms. Killen”), in her former capacity as an Accountant 3 with the Executive Offices, Office of the Budget under job code 03040, would be considered a “public employee” subject to the Ethics Act and the Regulations of the Commission. Ms. Killen would be required to file Statements of Financial Interests pursuant to the Ethics Act. The appeal was denied. Advice of Counsel 10-593 was affirmed.

**JONES-ROLLA/HOY/GABRIEL**  
**Decided: March 3, 2011**

**Opinion 11-002**  
**Issued: March 11, 2011**

In this appeal from Hoy, Advice of Counsel 10-624, the Commission held that South Fayette Township (“Township”) Commissioner J. Deron Gabriel, Esquire (“Mr. Gabriel”) did not have legal standing under Section 13.2 of the Regulations of the State Ethics Commission, 51 Pa. Code § 13.2, to appeal Advice of Counsel 10-624 because he was not the requestor or the subject of the Advice of Counsel or the authorized representative thereof. The Commission granted the Motion to Quash Appeal of Advice of Counsel No. 10-624 filed by Township Commissioner Susan Caffrey (“Ms. Caffrey”). The appeal of Advice of Counsel 10-624 was dismissed due to Mr. Gabriel’s lack of legal standing. The Commission denied the Request for Attorneys Fees

filed by Ms. Caffrey, noting the Commission’s lack of legal authority to award attorneys fees.

**CONFIDENTIAL**  
**Decided: June 23, 2011**

**Opinion 11-003**  
**Issued: June 28, 2011**

As a Member of the [Chamber of the General Assembly], State Legislator A is a public official subject to the provisions of the Ethics Act. Based upon the submitted facts that: (1) State Legislator A, in his private capacity, is a B licensed to [engage in professional activities] in the Commonwealth; (2) State Legislator A has in the past been and is presently engaged in various activities related to his private profession in the C field; (3) before State Legislator A began serving in his current public capacity, he authored a book entitled [title of book] that was published in [year]; (4) State Legislator A also authored a number of articles on C subjects, spoke as a guest at several Ds, served as a faculty member and authored course materials for a number of Es for Bs, appeared on numerous broadcast programs to discuss C issues, and presented many seminars to the public on C matters; (5) at the present time, State Legislator A teaches accredited courses, including a course in F, as an adjunct instructor at a college in Pennsylvania; (6) State Legislator A proposes to co-author a book entitled [title of book] (hereinafter referred to as “the Guidebook”); (7) the Guidebook would be a [type of guide] to [certain subject matter] and would contain [certain content] accompanied with C analysis and generalized C counsel; (8) State Legislator A would not include any confidential information received through his holding public office in the Guidebook, and he would not use legislative resources such as personnel, equipment, supplies, or facilities to write or market the Guidebook; (9) the publishing contract for the Guidebook would provide for payment to State Legislator A of a modest advance against future royalties from sales of the Guidebook and royalties to be calculated based upon actual sales of the Guidebook as per the customary terms and conditions of the publishing house; and (10) State Legislator A has not accepted any payments for the Guidebook, the Commission advised as follows.

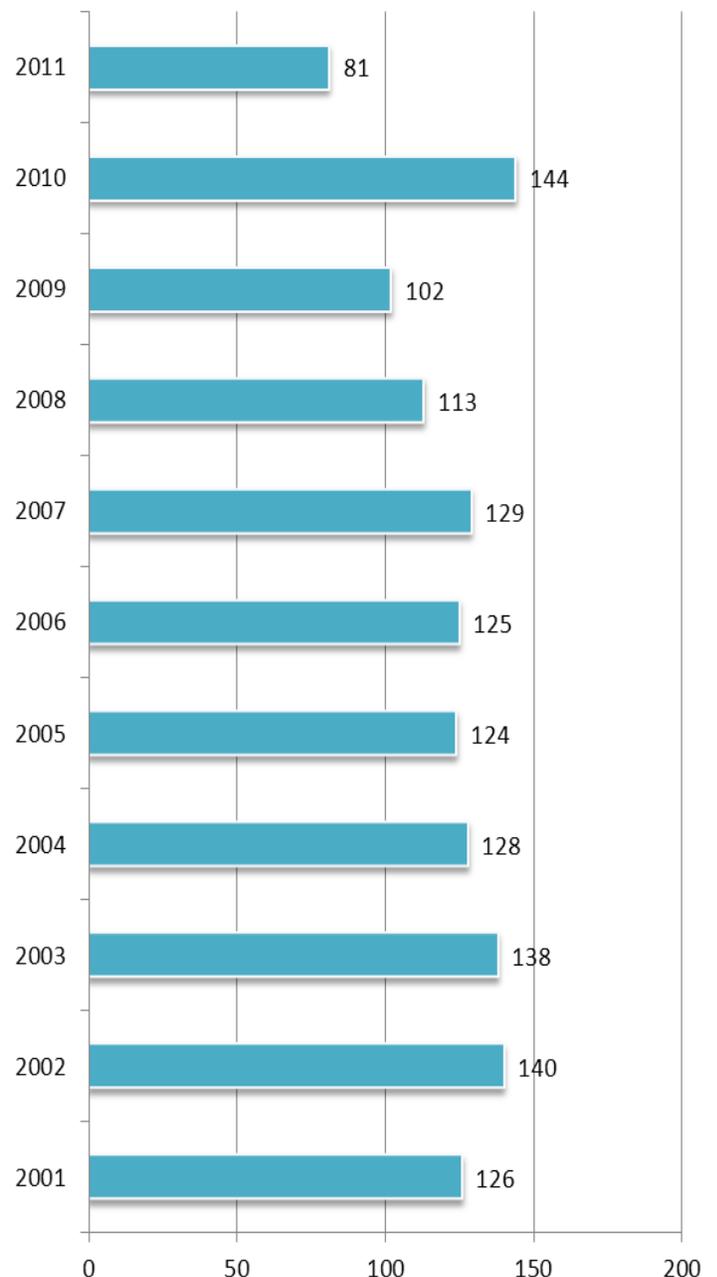
The publication of the Guidebook would be undertaken in State Legislator A’s private professional capacity as a B and not in his public capacity as a Member of the General Assembly. Any payment of an advance against future royalties from sales of the Guidebook or royalties from actual sales of the Guidebook that would be legitimately intended as consideration for the value of the publication of the Guidebook would not constitute an “honorarium” as that term is defined by the Ethics Act, and State Legislator A would be permitted to accept such payment subject to the restrictions of Section 1103(a) of the Ethics Act.

Commonwealth Official A is a public official and executive-level State employee subject to the provisions of the Ethics Act. Based upon the submitted facts that: (1) Commonwealth Official A is the head of Department B (“the Department”); (2) Commonwealth Official A’s current public position is the [quantitative description] public office that he has held; (3) Commonwealth Official A has not accepted honoraria while holding public office; (4) Commonwealth Official A earned an [advanced degree] from Educational Institution 1 and an [undergraduate degree] in [certain majors] from Educational Institution 2; (5) before Commonwealth Official A assumed his current public role, he worked for almost [number] years as a [type of leader] and C; (6) before beginning public service, Commonwealth Official A was a lecturer, teacher, and part of a [type of group], and he often received payment for speeches that he delivered mainly to [type of professionals] on topics including, but not limited to, [particular matters]; (7) Commonwealth Official A also served as a K and L at Educational Institution 1 and at Educational Institution 3; (8) Commonwealth Official A, in his private capacity as a lecturer, continues to receive invitations to deliver speeches and presentations from entities that he developed relationships with prior to entering public service or that are familiar with his reputation; (9) Commonwealth Official A proposes to deliver speeches and presentations to gatherings of [type of professionals] at conferences and seminars primarily held at [certain locations]; (10) the speeches and presentations would not be related to Commonwealth Official A’s position or role as a public official, but rather, would be on subjects such as [particular subjects], and related topics and would draw upon Commonwealth Official A’s years of experience and expertise as a C, paid speaker, and M; (11) the proposed speeches and presentations would not focus upon the Department, Pennsylvania public policy matters, or state government issues and would not draw upon the operations of the Commonwealth or the Department or any information or relationships developed by way of Commonwealth Official A’s role as a public official; and (12) the fees related to the proposed speeches and presentations would be appropriate and market-rate for paid speakers of Commonwealth Official A’s level and would not be merely a token of appreciation for his attendance, the Commission advised as follows.

The proposed speeches and presentations about [specific topics] and related topics would be given in Commonwealth Official A’s private capacity as an experienced C, paid speaker, and M as opposed to his public capacity as the head of the Department. For speeches or presentations that: (1) would be about [specific topics] and related topics; and (2) would be unrelated to Commonwealth Official A’s public office, a payment of engagement fees that would be legitimately intended as consideration for the value of the speech or presentation would not constitute an “honorarium” as that term is defined by the Ethics Act and could be accepted by Commonwealth Official A subject to the restrictions of Section 1103(a) of the Ethics Act.

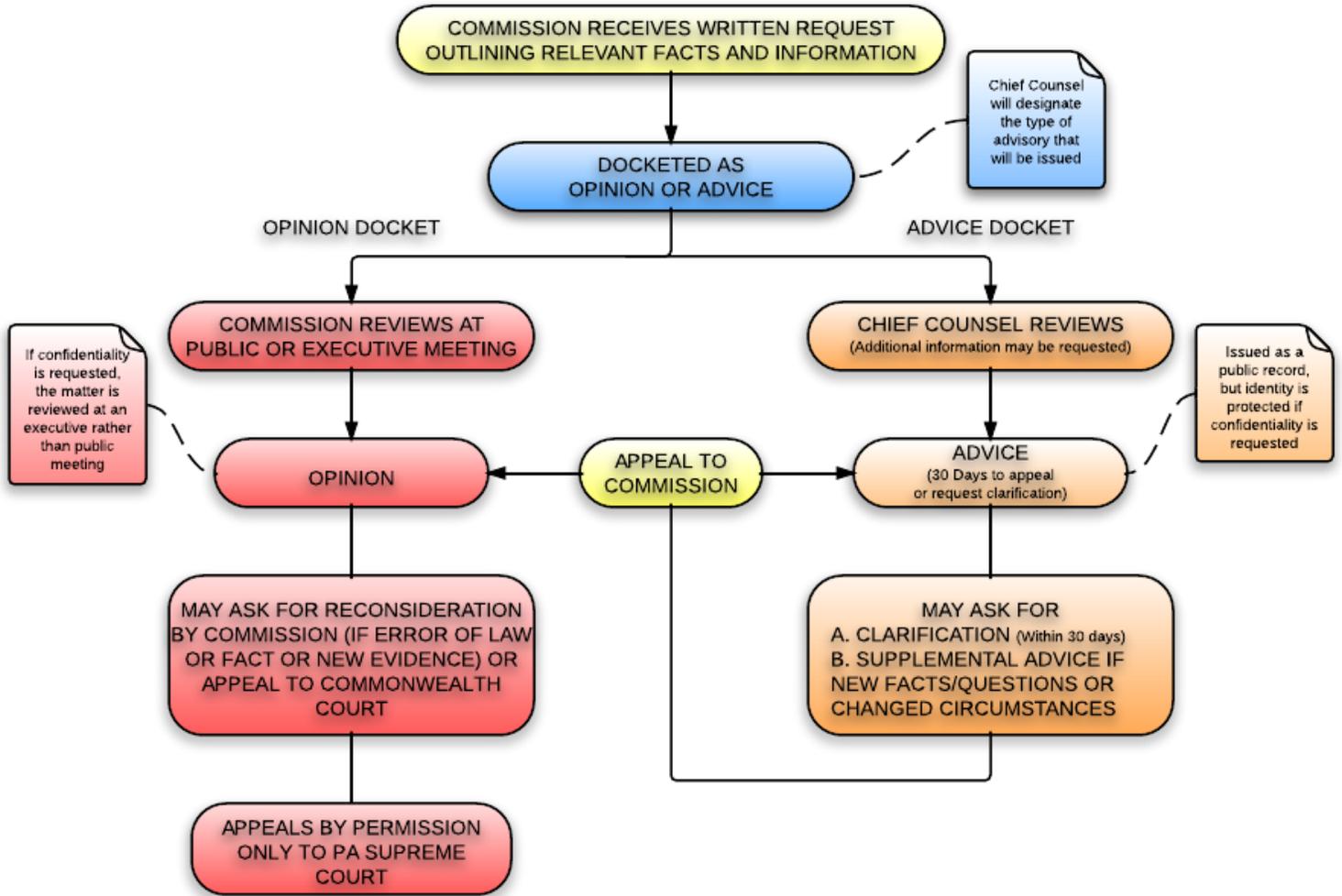
In this appeal from Advice of Counsel 11-542, the Commission held that John E. Fitzgerald (“Mr. Fitzgerald”), in his capacity as an Environmental Engineering Specialist with the Pennsylvania Department of Environmental Protection under job code 14520, is a “public employee” subject to the Ethics Act and the Regulations of the Commission. Mr. Fitzgerald is required to file Statements of Financial Interests pursuant to the Ethics Act. The appeal was denied. Advice of Counsel 11-542 was affirmed.

**Advices/Opinion Statistics 2001-2011**  
**(Advices/Opinions issued by the Ethics Commission under the Ethics Act)**



# Opinion/Advice Flowchart

The following chart depicts the Opinion/Advice process:



## Litigation

### INVESTIGATIVE DIVISION

#### ***Kenneth Kistler v. State Ethics Commission (59 MAP 2009)***

On June 29, 2007, the Commission issued Kistler, Order No. 1441, finding that Kenneth K. Kistler, in his capacity as a board member of the Carbon-Lehigh Intermediate Unit #21 (CLIU), unintentionally violated section 1103(a) of the Ethics Act when he used the authority of his office to award Dale Roth, an individual/business with which Kistler had an ongoing business relationship, the right to pursue the construction of a building for the CLIU. Additionally, Kistler was found to have violated section 1103(f) of the Ethics Act when he subsequently entered into subcontracts with Roth to construct the above-mentioned, plus one additional, building for the CLIU, knowing that the awarding of the initial contracts to Roth were done so absent an open and public process. Despite being found in violation of the Ethics Act, Kistler was not assessed any monetary penalty.

On July 19, 2007, Kistler, through his counsel, filed a Petition for Review with the Commonwealth Court of Pennsylvania ap-

pealing the findings of the Commission. Both parties filed briefs in the matter and on April 8, 2008, the Commission presented oral argument before a panel of judges for the Commonwealth Court. The Court did not issue an immediate opinion in this matter, but rather scheduled en banc argument for September 10, 2008. Following en banc argument, on October 17, 2008, the Commonwealth Court in a six to one (6:1) Opinion reversed the Order of the State Ethics Commission on all findings.

On November 13, 2008, the State Ethics Commission filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania, which was granted on May 19, 2009. The issues before the Supreme Court on appeal are: 1) whether the Ethics Act requires a specific finding of intent in order for one to violate the Act; and 2) whether §1103(f) of the Act requires competitive bidding in meeting the requirements of an open and public process.

On June 30, 2009, the State Ethics Commission filed its initial brief, followed by Appellee, Kistler, on July 28, 2009. On December 1, 2009, this matter was argued before the Supreme Court of Pennsylvania.

On June 22, 2011, the Supreme Court of Pennsylvania issued its opinion upholding the ruling of the Commonwealth Court reversing the order of the Commission. In issuing its ruling, the Supreme Court found that the Commission failed to make a finding that Kistler was aware of a potential private financial benefit concerning his pending contract on the Transportation Facility, when he voted regarding the awarding of a contract on the CLIU Building. The Court also found that § 1103(f) does not mandate use of a competitive bidding process.

Importantly, the ruling of the Supreme Court does not appear to overturn any longstanding Commission precedent, nor impose any substantial hardship upon the Commission regarding findings of violations; rather the Court's ruling simply requires the Commission to find that a Respondent acted with knowledge that his/her actions could have resulted in a private pecuniary benefit when he/she utilized the authority of their office in violation of the Ethics Act.

#### ***GL v. State Ethics Commission, 106 C.D. 2010***

In Lucas, Order No. 1546, the Commission determined that Gary Lucas, in his capacity as a member of the Chalfont Borough Council, Bucks County, Pennsylvania, violated the Ethics Act when, as Borough Council President, he signed the mylar and the development agreement evidencing the Borough's approval of a pizzeria construction project at a time when he was aware of the fact that his company, Lucas Construction, would be performing contractual services for the project. Lucas was directed to make payment of restitution in the amount of \$25,000. On January 27, 2010, Lucas filed a Petition for Review in the Commonwealth Court of Pennsylvania appealing the Commission's adjudication. On appeal, Lucas raised issues regarding the timeliness of the issuance of the Commission's Investigative Complaint. In this respect, Lucas has asserted that the Commission may not issue an amended Investigative Complaint after the passage of 360 days even if the initial Investigative Complaint was timely issued. Lucas further asserted that the Commission has made an error of law in concluding that his actions were violative of the Ethics Act. In this respect, Lucas asserted that the signing of the mylars and development agreement were ministerial acts and do not evidence the use of the authority of his position as Borough Council President.

In June and July of 2010, Lucas filed his brief and reproduced record and the Commission filed a reply brief and supplemental reproduced record. Oral argument was held on October 12, 2010 before a panel of Commonwealth Court judges in Philadelphia, Pennsylvania.

On March 17, 2011, the Court issued a ruling affirming the Commission's finding of a violation of the Ethics Act. Although the Court ruled that the Investigative Division could not amend the complaint after 360 days, they also found that all of the Commission's findings were supported by facts alleged in the initial timely filed complaint. As such, the Court then went on to rule that Lucas' signing of the mylars (plans) and developers agreement was a use of the authority of office in violation of the Act.

On March 31, 2011, Lucas filed an Application for Reargument. The Investigative Division thereafter filed an Answer in Opposition to the Application for Reargument and on May 16, 2011, the Court denied the application.

Lucas subsequently filed a Petition for Allowance for of Appeal in the Supreme Court of Pennsylvania. The Investigative Division filed an Answer in Opposition to the Petition for the Allowance of Appeal. On November 14, 2011, the Supreme Court DENIED the Petition for Allowance of Appeal. As such the decision of the Commonwealth Court is Final.

#### ***David Seropian v. State Ethics Commission (948 CD 2010)***

On December 29, 2009, the Commission issued Seropian, Order No. 1547, finding that David Seropian, a public official/public employee in his capacity as Business Manager for the McKeesport Area School District ("MASD"), Allegheny County, violated Section 1103(a) of the Ethics Act when he utilized the facilities and equipment of MASD for his personal benefit, including but not limited to his candidacy for School Director for West Jefferson Hills School District and his position as a baseball team official. Based upon a finding of an Ethics Act violation, Seropian was directed to make payment of restitution to MASD in the total amount of \$640.11.

On January 27, 2010, Seropian filed a pro se Request for Reconsideration with the Commission. This request was denied by the Commission via Order 1547-R, issued April 21, 2010.

On May 19, 2010, Seropian, through his counsel, filed a Petition for Review with the Commonwealth Court of Pennsylvania appealing what appeared to be both Commission Orders 1547 and 1547-R. On May 24, 2010, counsel for the State Ethics Commission filed a Motion to Quash the Petition for Review—as it related to Commission Order 1547, arguing that the applicable appeal period had expired. The State Ethics Commission's Motion was granted by the Court on June 1, 2010.

The Court subsequently denied Seropian's request for Reconsideration and directed the parties to address within their principal briefs on the merits, the State Ethics Commission's jurisdiction to act on Seropian's Request for Reconsideration filed with the Commission, following the time frame from which Order 1547 became final.

On October 15, 2010, the Court directed that the matter be submitted on Briefs without Oral Argument.

On April 7, 2011 the Commonwealth Court issued a decision in regards to this case, reversing the decision of the Commission.

In issuing its opinion, the Commonwealth Court determined that Seropian was entitled to *nunc pro tunc* relief with regard to his appeal of the Commission's decision, citing a breakdown in the administrative process that unintentionally misled Seropian as to the proper procedure regarding the filing of a request for reconsideration. The court found that the cover letter accompanying the Commission's Order led Seropian to believe that, pursuant to the Commission's procedures and subsequent actions, that the Commission had granted reconsideration and suspended the finality of the order. The court found that the Commission's letter and delay in addressing reconsideration led to the untimely filing of Seropian's petition for review with the Commonwealth Court.

Upon granting *nunc pro tunc* relief, the court further determined that the Commission erred in holding that Seropian violated Section 2201(a) of the Ethics Act, when he used his work computer for non-work-related activities, citing that use of a district-owned computer for approximately two minutes a day

over a period of 15 months fell within the *de minimus* exclusion to the definition of conflict of interest. The court did not note that actual use was substantial time over the course of several days, which when averaged out over a month constituted several minutes a day.

The Commonwealth Court vacated the Commission’s April order, reinstated the December order, and reversed the December order to the extent that it found that Seropian violated the Ethics Act.

***In re: Nomination Petitions Filed by David Howells, Jr. as a Candidate for the Office of Magisterial District Judge in Magisterial District #31-1-04:***

This case involved the question of whether judicial candidates are required to file Statements of Financial Interests under the Ethics Act. The Commission was not a party to this case. However, the Commission filed an *Amicus* Brief.

Procedurally, this case was an appeal from an Order of the Commonwealth Court of Pennsylvania, which affirmed a March 25, 2011, Order of the Court of Common Pleas of Lehigh County (“Trial Court”) denying Appellants’ “Petition Setting Forth Objections to the Nomination Petitions of Candidate David Howells, Jr., for the Office of Magisterial District Judge in Magisterial District No. 31-1-04” (“Petition”). On March 15, 2011, the Objectors filed the aforesaid Petition challenging Appellee Howell’s nominating petitions. The Trial Court held a hearing on the Petition and subsequently issued its decision on March 25, 2011. The Objectors appealed to Commonwealth

Court on March 31, 2011. On April 29, 2011, Commonwealth Court issued its decision affirming the Trial Court’s Order. On May 4, 2011, the Objectors filed a Petition for Allowance of Appeal, which was granted by the Pennsylvania Supreme Court on May 10, 2011.

The issue on appeal was whether a candidate commits a “fatal defect” by failing to timely file his Statement of Financial Interests due to reliance on legal advice from clerical personnel at the local election board. However, the Supreme Court directed the parties to discuss whether the Ethics Act applies to judicial candidates, regardless of incumbency.

The only issue addressed by the Commission’s *Amicus* Brief was whether the Ethics Act applies to judicial candidates, regardless of incumbency.

Subsequent to the filing of the *Amicus* Brief, the Court issued an argument schedule. The Commission thereafter filed an application to Present Oral Argument, which application was granted. Thereafter on September 15, 2011, argument was presented by the Executive Director before the Pennsylvania State Supreme Court sitting in Philadelphia. The argument session was one of the first argument sessions televised by the Pennsylvania Supreme Court. Thereafter on September 29, 2011, the Supreme Court issued a per curiam order affirming the order of the Commonwealth Court of Pennsylvania. The decision did not overrule that part of the Court’s decision which required the filing of Statement of Financial Interests by incumbent judicial candidates. This is the position that was advanced by the Commission. This matter is now final.

## 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/INVESTIGATIVE STATISTICAL SUMMARY

Complaints received in 2011 .....	301
Investigations opened in 2011.....	31
Ethics orders issued in 2011.....	16
Lobbying Orders issued in 2011 .....	6
Order where violations were found .....	16
Restitution ordered.....	\$155,778.80

## INVESTIGATION ORDERS SUMMARY

The State Ethics Commission issued the following Orders based upon alleged violations of the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. §1101, *et seq.* and Lobbying Disclosure Law, 65 Pa.C.S. §13A01, *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.

### PUBLIC OFFICIAL AND EMPLOYEE ETHICS ACT ORDERS—2011

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**Order No. 1580 (Barbisch)****Decided: March 3, 2011****Issued: March 10, 2011**

As a Township Supervisor for East Finley Township, Ralph Barbisch violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), in relation to his participation in discussions of the Township Board of Supervisors resulting in the award of contracts to Rudy Barbisch Remodeling, a business with which Barbisch is associated.

A violation of Section 1103(f) of the Ethics Act, 65 Pa.C.S. §1103(f), occurred when contracts valued at in excess of \$500.00 between the Township and Rudy Barbisch Remodeling, a business with which Barbisch is associated, were awarded without an open and public process.

A violation of Section 1103(a) of the Ethics Act, 65 Pa.C.S. §1103(a), occurred in relation to Barbisch's participation in authorizing payments to Rudy Barbisch Remodeling, including directing that all payments be made and subsequently signing checks.

A violation of Section 1105(b) of the Ethics Act, 65 Pa.C.S. §1105(b), occurred in relation to Barbisch's failure to disclose all direct/indirect sources of income in excess of \$1,300.00 on Statements of Financial Interests filed for the 2005, 2006, 2007 and 2008 calendar years.

Per the Consent Agreement of the parties, Barbisch is directed to make payment in the amount of \$11,649.98 by certified check or money order made payable to East Finley Township and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30<sup>th</sup>) day after the mailing date of the Commission's Order.

To the extent he has not already done so, Barbisch is directed to file with the Township amended SFIs for calendar years 2005, 2006, 2007 and 2008 appropriately disclosing all required information by no later than the thirtieth (30<sup>th</sup>) day after the mailing date of the Commission's Order, and to forward copies of all such filings to the Pennsylvania State Ethics Commission for compliance verification purposes.

Per the Consent Agreement of the parties, Barbisch is directed that he is to neither seek nor hold any position of public office or of public employment in the Commonwealth of Pennsylvania at any time. Compliance will result in the closing of this case with no further action by the Commission.

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**Order No. 1581 (Brink)****Decided: March 3, 2011****Issued: March 10, 2011**

As a Supervisor for Chest Township from January 5, 2004, through December 31, 2009, Leroy Brink violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when he used the authority of his public position for the private pecuniary benefit of his son, Larry Brink, and/or a business with which Larry Brink is associated, "Larry Brink Trucking", when Brink authorized Township contracts with LBT without a vote of the Township Board of Supervisors and when he participated in approving payments to LBT.

Per the Consent Agreement of the parties, a violation of Section 1103(f) of the Ethics Act, 65 Pa.C.S. §1103(f), occurred when Township contracts in excess of \$500.00 were entered into with Brink's son's company, LBT, without an open and public process.

A violation of Section 1104(a) of the Ethics Act, 65 Pa.C.S. §1104(a), occurred when Brink failed to file Statements of Financial Interests for the 2003 and 2004 calendar years.

Per the Consent Agreement of the parties, Brink is directed to make payment in the amount of \$4,000.00 payable to Chest Township and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30<sup>th</sup>) day after the mailing date of the Commission's Order.

To the extent he has not already done so, Brink is directed to file with the Township SFIs for calendar years 2003 and 2004 by no later than the thirtieth (30<sup>th</sup>) day after the mailing date of the Commission's Order and to forward copies of such filings to the Pennsylvania State Ethics Commission for compliance verification purposes.

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

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**Order No. 1582 (Keyton)****Decided: March 3, 2011****Issued: March 10, 2011**

Kenneth G. Keyton, a public employee in his capacities as a Highway Equipment Manager II and III for Pennsylvania Department of Transportation, violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when he solicited and/or accepted items of monetary value from Commonwealth vendors and Commonwealth sub-vendors, when he solicited and/or accepted monetary contributions from Commonwealth vendors, and when he utilized Commonwealth equipment and supplies in furtherance of his private interest in KDH Racing, an entity with which he is associated.

A violation of Section 1105(b)(6) of the Ethics Act, 65 Pa.C.S. §1105(b)(6), occurred when Keyton failed to report gifts valued in the aggregate at \$250.00 or more on his Statements of Financial Interests filed for the 2006, 2007, and 2008 calendar years.

Per the Consent Agreement of the parties, Keyton is directed to make payment in the amount of \$3,500.00 payable to the

Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30<sup>th</sup>) day after the mailing date of the Commission's Order.

Per the Consent Agreement of the parties, Keyton is further directed to not accept any reimbursement, compensation or other payment from the Commonwealth of Pennsylvania representing a full or partial reimbursement of the amount paid in settlement of this matter.

To the extent he has not already done so, Keyton is directed to file with PennDOT complete and accurate SFIs for calendar years 2006, 2007, and 2008—disclosing all gifts—by no later than the thirtieth (30<sup>th</sup>) day after the mailing date of the Commission's Order, and to forward copies of all such filings to the Pennsylvania State Ethics Commission for compliance verification purposes.

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

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**Order No. 1583 (Baker)**

**Decided: May 16, 2011**

**Issued: May 23, 2011**

As a Supervisor of Hopewell Township, Matthew Baker violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when he used the authority of his public position for the private pecuniary benefit of members of his immediate family by participating in actions of the Township Board of Supervisors to hire members of his immediate family to perform labor for the Township.

Baker violated Section 1103(a) of the Ethics Act when he used the authority of his public office by authorizing equipment rentals and participating in the approval of payments for equipment rentals by the Township from Baker's Farm, a business with which he is associated as a partner.

Baker violated Section 1103(f) of the Ethics Act when Baker's Farm entered into equipment rental contracts with the Township that were in excess of \$500.00 without an open and public process.

Baker violated Section 1103(a) of the Ethics Act when he used the authority of his public office by authorizing hauling services and participating in the approval of payments for hauling services provided to the Township by Baker's Hauling, a business with which his brother is associated.

Baker violated Section 1104(a) of the Ethics Act when he failed to file Statements of Financial Interests with the Township for calendar years 2005, 2006 and 2007.

Baker is directed to make payment of restitution in the amount of \$2,281.50 payable to Hopewell Township and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30<sup>th</sup>) day after the mailing date of the Commission's Order.

Baker is directed to not accept any reimbursement, compensation or other payment from the Township representing a full or partial reimbursement of the aforesaid restitution.

To the extent he has not already done so, Baker is directed to file with the Township Statements of Financial Interests for calendar years 2005, 2006 and 2007 and to forward copies of such filings to the Pennsylvania State Ethics Commission by no later than the thirtieth (30<sup>th</sup>) day after the mailing date of the

Commission's Order.

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**Order No. 1584 (Schell)**

**Decided: June 23, 2011**

**Issued: July 6, 2011**

As a Supervisor of Foster Township, Luzerne County, Jonas Schell violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when he participated in the award of contracts to J&A Schell General Contractor, a business with which Schell is associated.

A violation of Section 1103(a) of the Ethics Act, 65 Pa.C.S. §1103(a), occurred in relation to Schell's approving of Township payments to J&A Schell General Contractor, a business with which he is associated.

A violation of Section 1103(f) of the Ethics Act, 65 Pa.C.S. §1103(f), occurred when Schell entered into contracts in excess of \$500.00 between the Township and J&A Schell General Contractor, a business with which he is associated, without an open and public process.

A violation of Section 1105(b) of the Ethics Act, 65 Pa.C.S. §1105(b), occurred when Schell failed to disclose: all direct and/or indirect sources of income; his office, directorship or employment in J&A Schell General Contractor; and his financial interest(s) in J&A Schell General Contractor, on his Statements of Financial Interests filed for the 2005, 2006, 2007 and 2008 calendar years.

Per the Consent Agreement of the parties, Schell is directed to make payment in the amount of \$4,100.00 payable to Foster Township and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30<sup>th</sup>) day after the mailing date of the Commission's Order.

Per the Consent Agreement of the parties, Schell is further directed to not accept any reimbursement, compensation or other payment from the Township representing a full or partial reimbursement of the amount paid in settlement of this matter.

To the extent he has not already done so, Schell is directed to file with the Township, by no later than the thirtieth (30<sup>th</sup>) day after the mailing date of the Commission's Order, amended Statements of Financial Interests for calendar years 2005, 2006, 2007 and 2008 including all direct and/or indirect sources of income, financial interests in any legal entity engaged in business for profit, and any office, directorship, or employment of any nature whatsoever in any business entity, and to forward copies of all such filings to the Pennsylvania State Ethics Commission for compliance verification purposes.

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

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**Order No. 1585 (Grimes)**

**Decided: June 23, 2011**

**Issued: July 6, 2011**

As a Commissioner for North Versailles Township, Allegheny County, Ruth Grimes unintentionally violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when she facilitated her placement on the Township health insurance plan at Township expense without discussion or approval by the Township Board of Commissioners and when she failed to pay costs of the premiums.

An unintentional violation of Section 1105(b) of the Ethics Act, 65 Pa.C.S. §1105(b), occurred in relation to Grimes' failure to disclose all direct/indirect sources of income, her office, directorship or employment in any business, and her financial interest in any legal entity engaged in business for profit on her Statements of Financial Interests filed for the 2008 and 2009 calendar years.

An unintentional violation of Section 1105(b) of the Ethics Act, 65 Pa.C.S. §1105(b), occurred in relation to Grimes' failure to disclose her office, directorship or employment in any business and her financial interests in any legal entity in business for profit on her Statement of Financial Interests filed for the 2007 calendar year.

Per the Consent Agreement of the parties, Grimes is directed to make payment in the amount of \$4,401.05 payable to North Versailles Township and forwarded to the Commission by no later than the thirtieth (30th) day after the mailing date of the Commission's Order.

Grimes is further directed to not accept any reimbursement, compensation or other payment from the Township representing a full or partial reimbursement of the amount paid in settlement of this matter.

To the extent she has not already done so, Grimes is directed to file with the Township, by no later than the thirtieth (30th) day after the mailing date of the Commission's Order, amended Statements of Financial Interests for calendar years 2007, 2008 and 2009, disclosing all required information as appropriate, and to forward copies of said forms to the Commission for compliance verification purposes.

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

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**Order No. 1586 (Dull, Dennis)**

**Decided: June 23, 2011**

**Issued: July 8, 2011**

An unintentional violation of Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), occurred when Dennis Dull, as a Commissioner for North Versailles Township, facilitated his placement on the Township health insurance plan at Township expense without discussion or approval by the Township Board of Commissioners and when he failed to pay costs of the premiums.

An unintentional violation of Section 1104(a) of the Ethics Act, 65 Pa.C.S. §1104(a), occurred when Dull's Statement of Financial Interests for the 2008 calendar year was not on file with the Township.

An unintentional violation of Section 1105(b) of the Ethics Act, 65 Pa.C.S. §1105(b), occurred in relation to Dull's failure to disclose all direct/indirect sources of income in excess of \$1,300.00, and his office, directorship or employment in any business, on his SFI filed for the 2009 calendar years.

Per the Consent Agreement of the parties, Dull is directed to make payment in the amount of \$6,897.10 payable to North Versailles Township and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of the Commission's Order.

Per the Consent Agreement of the parties, Dull is further directed to not accept any reimbursement, compensation or other

payment from the Township representing a full or partial reimbursement of the amount paid in settlement of this matter.

To the extent he has not already done so, Dull is directed to file with the Township an SFI for the 2008 calendar year and an amended SFI for calendar year 2009, disclosing all required information as appropriate, by no later than the thirtieth (30th) day after the mailing date of the Commission's Order and to forward copies of said forms to the Pennsylvania State Ethics Commission for compliance verification purposes.

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

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**Order No. 1587 (Dull, Bryan)**

**Decided: June 23, 2011**

**Issued: July 8, 2011**

An unintentional violation of Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), occurred when Bryan Dull, as a Commissioner for North Versailles Township, facilitated his placement on the Township health insurance plan at Township expense without discussion or approval by the Township Board of Commissioners and when he failed to pay costs of the premiums.

An unintentional violation of Section 1104(a) of the Ethics Act, 65 Pa.C.S. §1104(a), occurred in relation to Dull's failure to file Statements of Financial Interests for the 2005, 2006, 2007, 2008 and 2009 calendar years.

Per the Consent Agreement of the parties, Dull is directed to make payment in the amount of \$2,989.41 payable to North Versailles Township and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of the Commission's Order.

Per the Consent Agreement of the parties, Dull is further directed to not accept any reimbursement, compensation or other payment from the Township representing a full or partial reimbursement of the amount paid in settlement of this matter.

To the extent he has not already done so, Dull is directed to file with the Township SFIs for calendar years 2005, 2006, 2007, 2008 and 2009 disclosing all required information as appropriate, by no later than the thirtieth (30th) day after the mailing date of the Commission's Order and to forward copies of said forms to the Pennsylvania State Ethics Commission for compliance verification purposes.

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

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**Order No. 1588 (Thuy)**

**Decided: June 23, 2011**

**Issued: July 15, 2011**

During the relevant time period from April 17, 2004, forward, Vuong Thuy, a public official/public employee in his capacities as the Chief Administrative Officer/Chief Executive Officer, headmaster and treasurer of the Multi-Cultural Academy Charter School of Philadelphia, did not violate Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), by making MACS rental payments to the Indochinese American Council for properties owned by Thuy and his wife because, at the time such payments were made, sublease agreements

authorizing the rental payments had already been approved by the MACS President, if not the MACS Board.

Thuy did not violate Section 1103(a) of the Ethics Act, 65 Pa.C.S. §1103(a), with respect to the 2004 lease/sublease arrangements involving his wife, Maria Thuy, the IAC, and the MACS for properties owned by Thuy and his wife, based upon an insufficiency of evidence to establish such a violation within the scope of the five year statute of limitations, 65 Pa.C.S. §1108 (m).

Thuy did not violate Section 1103(a) of the Ethics Act, 65 Pa.C.S. §1103(a), with respect to the 2008 lease/sublease arrangements between Thuy and the IAC and between the IAC and the MACS for the properties owned by Thuy and his wife, based upon an insufficiency of evidence.

Based upon a lack of evidence to establish that Thuy entered into either a contract with the MACS or a subcontract with the IAC, Thuy did not violate Section 1103(f) of the Ethics Act, 65 Pa.C.S. §1103(f), as to the allegation that rental contracts with the MACS were awarded without an open and public process.

Thuy violated Section 1105(b)(3) of the Ethics Act, 65 Pa.C.S. §1105(b)(3), when he failed to disclose on his Statements of Financial Interests filed for calendar years 2004 through 2008 his interest in real estate that was leased to the MACS.

Thuy did not violate Section 1105(b)(5) of the Ethics Act, 65 Pa.C.S. §1105(b)(5), as to the allegation that he failed to disclose on Statements of Financial Interests for the years 2004 through 2009 income derived from rent in that Thuy's Statements of Financial Interests satisfied the statutory requirements for such disclosure.

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#### **Order No. 1589 (Graham)**

**Decided: September 27, 2011      Issued: October 4, 2011**

As a School Director for the West Mifflin Area School District, Dr. Albert Graham did not violate Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when WMASD employees and/or materials, supplies and equipment were used to perform services of a personal nature for Graham, as Graham did not use the authority of his office to direct that such services be completed.

A violation of Section 1105(b) of the Ethics Act, 65 Pa.C.S. §1105(b), occurred in relation to Graham's failure to disclose his financial interests in any legal entity in business for profit on his Statements of Financial Interests filed for the 2006 and 2008 calendar years; and his failure to disclose his financial interest in any legal entity in business for profit, and his office, directorship or employment in any business on his Statement of Financial Interests filed for the 2009 calendar year.

Per the Consent Agreement of the parties, Graham is directed to make payment in the amount of \$2,234.45 as follows: (a) \$1,234.45 payable by certified check or money order made payable to the West Mifflin Area School District and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing of the Commission's Order; and (b) \$1,000 in reimbursement representing a portion of the expenses and costs incurred by the Pennsylvania State Ethics Commission in the investigation and administrative prosecution of the instant matter, payable by certified check or mon-

ey order made payable to the Pennsylvania State Ethics Commission, with said payment of \$1,000 tendered upon execution of the Consent Agreement by Graham.

Per the Consent Agreement of the parties, Graham is further directed to not accept any reimbursement, compensation or other payment from the WMASD representing a full or partial reimbursement of the amount paid in settlement of this matter.

Per the Consent Agreement of the parties, Graham is directed to file with the WMASD amended Statements of Financial Interests for calendar years 2006, 2008 and 2009, appropriately disclosing all required information, with copies of all such forms provided to the Pennsylvania State Ethics Commission for compliance verification purposes upon execution of the Consent Agreement.

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

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#### **Order No. 1590 (Buck)**

**Decided: September 27, 2011      Issued: October 4, 2011**

As a Member of Borough Council for Starrucca Borough, Robert Buck violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when he participated in discussions and actions of the Borough Council to authorize repairs and/or improvements to a bridge using Borough funds for the benefit of Buck and/or members of his immediate family and Buck Brothers Farm, a business with which he is associated.

A violation of Section 1104(a) of the Ethics Act, 65 Pa.C.S. §1104(a), occurred when Buck failed to file Statements of Financial Interests for the 2005, 2007, and 2008 calendar years.

A violation of Section 1105(b) of the Ethics Act, 65 Pa.C.S. §1105(b), occurred when Buck failed to list his office, directorship or employment in Buck Brothers Farm on his Statement of Financial Interests filed for the 2004 calendar year; and when he failed to list Buck Brothers Farm as a source of income, and his office, directorship or employment in Buck Brothers Farm, on his Statement of Financial Interests filed for the 2006 calendar year.

Per the Consent Agreement of the parties, Buck is directed to make payment in the amount of \$17,500.00 as follows: (a) \$9,000.00 by certified check or money order payable to the Starrucca Borough State Liquid Fuels Tax account and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of the Commission's Order; and (b) \$8,500.00 by certified check or money order payable to Starrucca Borough and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of the Commission's Order.

Per the Consent Agreement of the parties, Buck is further directed to not accept any reimbursement, compensation or other payment from the borough representing a full or partial reimbursement of the amount paid in settlement of this matter. To the extent he has not already done so, Buck is directed to file with the Borough accurate and complete Statements of Financial Interests for calendar years 2005, 2007, and 2008, and amended Statements of Financial Interests for calendar years 2004 and 2006, appropriately disclosing all required infor-

mation, by no later than the thirtieth (30th) day after the mailing date of the Commission's Order, and to forward copies of all such filings to the Pennsylvania State Ethics Commission for compliance verification purposes.

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

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**Order No. 1591 (Rhone)**  
**Decided: September 27, 2011**      **Issued: October 4, 2011**

As a Member of Borough Council for Starrucca Borough, Wayne County, Kirk Rhone violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when he participated in discussions and actions of the Borough Council to authorize repairs and/or improvements to a bridge using Borough funds for the benefit of Rhone and/or members of his immediate family and Buck Brothers Farm, a business with which he is associated.

A violation of Section 1104(a) of the Ethics Act, 65 Pa.C.S. §1104(a), occurred when Rhone failed to file Statements of Financial Interests for 2005, 2006, 2007, 2008, and 2009 calendar years.

Per the Consent Agreement of the parties, Rhone is directed to make payment in the amount of \$17,500.00 as follows: (a) \$9,000.00 by certified check or money order payable to the Starrucca Borough State Liquid Fuels Tax account and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of the Commission's Order; and (b) \$8,500.00 by certified check or money order payable to Starrucca Borough and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of the Commission's Order.

Per the Consent Agreement of the parties, Rhone is further directed to not accept any reimbursement, compensation or other payment from the Borough representing a full or partial reimbursement of the amount paid in settlement of this matter.

To the extent he has not already done so, Rhone is directed to file with the Borough accurate and complete Statements of Financial Interests for calendar years 2005, 2006, 2007, 2008, and 2009 by no later than the thirtieth (30th) day after the mailing date of the Commission's Order, and to forward copies of all such filings to the Pennsylvania State Ethics Commission for compliance verification purposes.

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

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**Order No. 1592 (Yates)**  
**Decided: September 27, 2011**      **Issued: October 6, 2011**

As a Member of the Pennridge School District Board of Directors, Terri Yates violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), when she participated in discussions and actions of the Board which resulted in contracts being entered into between the School District and DelVal Soil & Environmental Consultants, a business with which a member of her immediate family is associated, and when she subsequently voted to approve payments to DelVal Soil & Envi-

ronmental Consultants.

Per the Consent Agreement of the parties, Yates is directed to make payment in the amount of \$500.00 payable to the Pennridge School District and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of the Commission's Order.

Yates is further directed to not accept any reimbursement, compensation or other payment from the School District representing a full or partial reimbursement of the amount paid in settlement of this matter.

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

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**Order No. 1593 (Kaltenbaugh)**  
**Decided: September 27, 2011**      **Issued: October 6, 2011**

As a Supervisor for Connoquenessing Township, Jack Kaltenbaugh violated Section 103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), in relation to his approval regarding a subdivision/loan development application when his company was performing excavating and construction services in relation to the project that was the subject of the application or when he had a reasonable expectation that his company would be considered for or receive contracts in relation to that project.

Per the Consent Agreement of the parties, Kaltenbaugh is directed to make payment in the amount of \$8,890.31 payable to Connoquenessing Township and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of the Commission's Order.

Per the Consent Agreement of the parties, Kaltenbaugh is further directed to not accept any reimbursement, compensation or other payment from the Township representing a full or partial reimbursement of the amount paid in settlement of this matter.

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

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**Order No. 1594 (Maley)**  
**Decided: September 27, 2011**      **Issued: October 12, 2011**

As the Chief Information Security Officer for the Office for Information Technology within the Commonwealth of Pennsylvania's Office of Administration, Robert L. Maley violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), in relation to his acceptance of gifts and payments for expenses from vendors he recommended and/or approved for contracts with the Commonwealth.

A violation of Section 1103(a) of the Ethics Act, 65 Pa.C.S. §1103(a), occurred when Maley used Commonwealth of Pennsylvania computers for non-official purposes.

A violation of Section 1103(a) of the Ethics Act, 65 Pa.C.S. §1103(a), occurred in relation to Maley's receipt of payments for promoting a vendor's product(s) following Maley's public employment, when—while employed by the Commonwealth—Maley recommended that the same vendor receive State contracts.

A violation of Section 1105(b) of the Ethics Act, 65 Pa.C.S. §1105(b), occurred when Maley failed to file Statements of Financial Interests for the 2006, 2009 and 2010 calendar years; when he failed to disclose on Statement(s) of Financial Interests filed for the 2008 calendar year, payments or reimbursement of expenses of transportation, lodging and/or hospitality received in connection with his public position; and when he failed to disclose on Statements of Financial Interests filed for the 2007 and 2008 calendar years, his interest in Susquehanna Digital Forensics and creditors in excess of \$6,500.

Per the Consent Agreement of the parties, Maley is directed to make payment in the amount of \$10,000 payable to the Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of the Commission's Order.

Per the Consent Agreement of the parties, Maley is further directed to not accept any reimbursement, compensation or other payment from the Commonwealth of Pennsylvania representing a full or partial reimbursement of the amount paid in settlement of this matter.

To the extent he has not already done so, Maley is directed to file: (1) Statements of Financial Interests for calendar years 2006, 2009 and 2010; and (2) amended Statements of Financial Interests for calendar years 2007 and 2008 disclosing all information regarding name and address and sources and amounts of payments for or reimbursement of expenses of transportation, lodging and/or hospitality received in connection with his public position; his office, directorship or employment in Susquehanna Digital Forensics; creditors in excess of \$6,500; and his financial interest in Susquehanna Digital Forensics, by no later than the thirtieth (30th) day after the mailing date of the Commission's Order, and to forward copies of all such forms to the Pennsylvania State Ethics Commission.

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

**Order No. 1595 (Freeland)**

**Decided: September 27, 2011**

**Issued: October 12, 2011**

As a Member of the Board of Directors of the School District of the City of York, Barry Freeland violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. §1103(a), in relation to his participation in discussions as a member of the Board which resulted in contracts being awarded to Community Progress Council, Inc., a business with which he is associated; and when he participated in actions of the Board to approve payments issued to CPC.

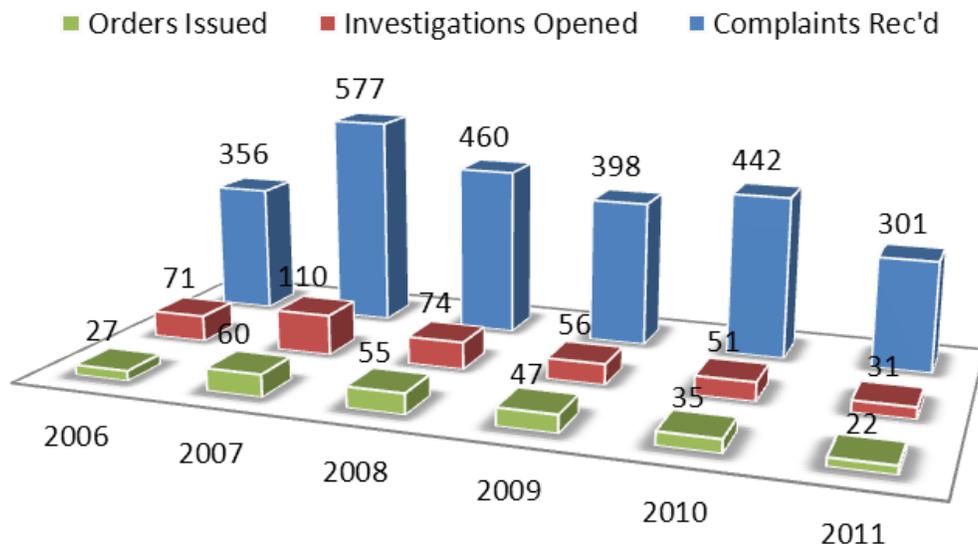
Per the Consent Agreement of the parties, Freeland is directed to make payment in the amount of \$500.00 payable to the York City School District and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of the Commission's Order.

Freeland is directed to achieve compliance as to the parties' agreement set forth in the Consent Agreement that CPC will provide \$10,000.00 worth of free services to the SDCY over the next school year (2011-2012) through the Senior Employment Program, including, but not limited to, providing greeters, classroom aides, lavatory monitors, and custodial and clerical support, and that verification of the total hours and/or value of services provided will be provided to the Pennsylvania State Ethics Commission upon rendering of same.

Freeland is further directed to not accept any reimbursement, compensation or other payment from the SDCY representing a full or partial reimbursement of the amount paid in settlement of this matter.

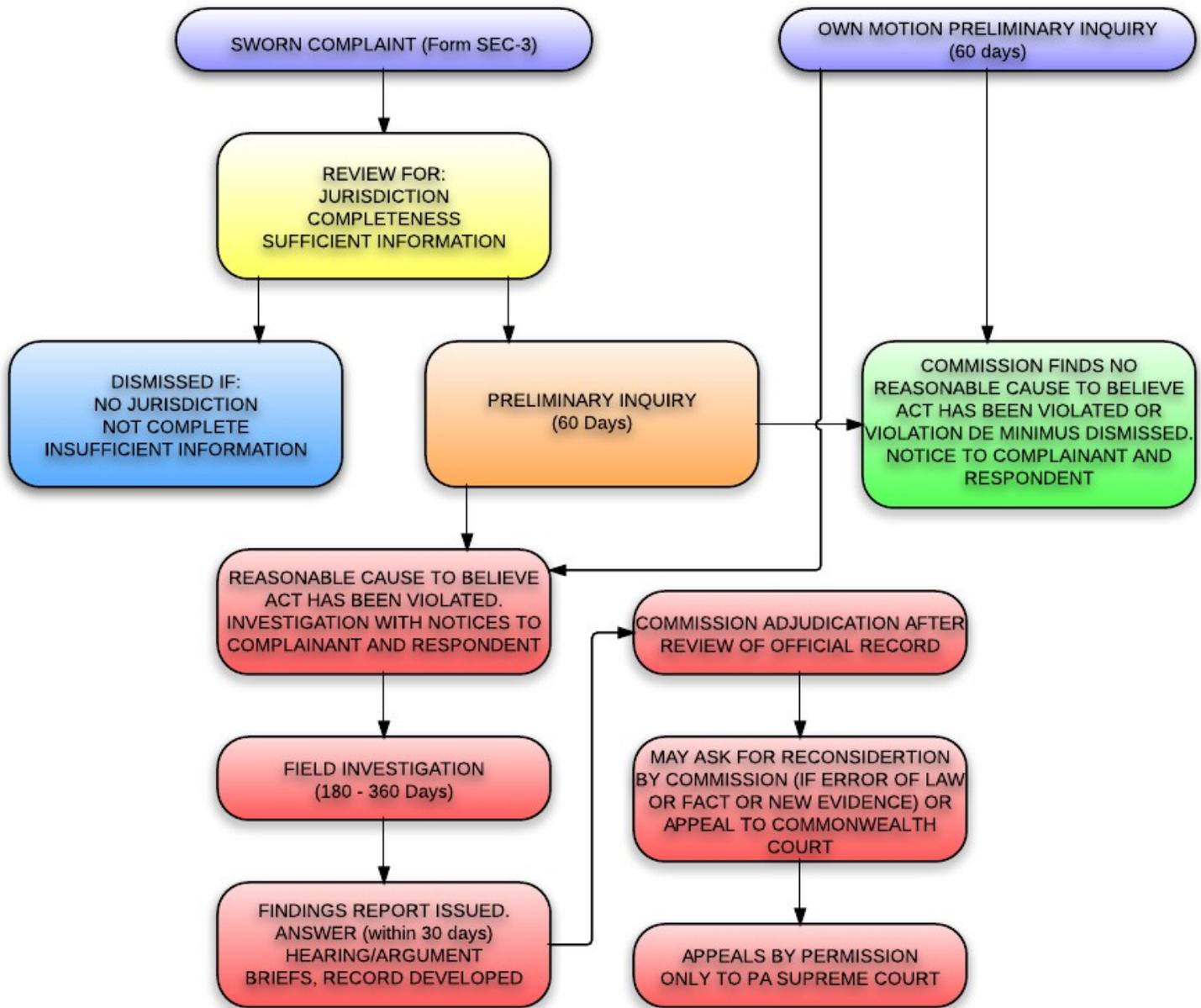
Compliance with the Consent Agreement of the parties and Paragraphs 2, 3, and 4 of the Commission's Order will result in the closing of this case with no further action by the Commission.

**Investigation Statistics**



# Investigative Flowchart

The following chart depicts the investigative process.



# Legislative Proposals

## ETHICS AND LOBBYING

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 Act.

### SENATE:

#### **Senate Bill No. 107, P.N. 164:**

This is a proposal that would amend the Lobbying Disclosure Act and would provide for additional contingent compensation restrictions. The proposal would prohibit contingent compensation for lobbying efforts that are geared towards the receipt or award of a grant, credit, loan, capital funding, contract or any other form of Commonwealth funds awarded by an agency. The bill was introduced on January 20, 2011, and was referred to the State Government Committee.

#### **Senate Bill No. 108, P.N. 273:**

This proposal is an amendment to the Ethics Act and would add additional prohibitions in relation to former executive level employees. These prohibitions would prohibit executive level employees who leave government service from being employed by any entity for a period of two years that has actually entered into a contract with the state agency in addition to the restrictions that are already present regarding the participation in relation to the award of Commonwealth funds to such entities. Additionally, this proscription would prohibit any individual from representing such an employer for a period of two years before any agency or the Governor's Office. Finally, the prohibitions would include participation by a government employee in matters that involve their former employer. This bill was introduced and submitted to the Committee on State Government on January 27, 2011.

#### **Senate Bill No. 518, P.N. 519:**

This is a provision that amend the contracting section of the Ethics Act, Section 1103(f), to eliminate the \$500.00 threshold and the open and public process requirement. In effect, this law would prohibit any contracting between a public official and the governmental body with which they are associated. This bill was introduced and referred to the State Government Committee on February 14, 2011.

#### **Senate Bill No. 560, P.N. 728:**

This proposal would require State Military College Legislative Appointees to be reviewed by the State Ethics Commission for potential conflicts of interest. This bill was introduced and referred to the Education Committee on March 2, 2011.

#### **Senate Bill No. 344, P.N. 1786:**

This is a bill that would provide for public, private transportation partnerships and, in part, would make the Ethics Act applicable to private contractors and public entities that engage in such partnerships. This bill was introduced and considered on three occasions and passed in the Senate on December 14,

2011. The bill is currently in the House of Representatives Transportation Committee.

### HOUSE:

#### **House Bill No. 103, P.N. 56:**

This bill is an amendment to the Lobbying Disclosure Act and would increase the penalties for negligent violations of the registration and reporting requirements of the law to \$10,000.00 per count and a ten year prohibition on conducting lobbying activities for violations of the unlawful acts provisions of the law and would also increase the per diem penalties to \$250.00 for negligent failure to register or report as required by the law. The criminal penalties would also increase to first degree misdemeanors, \$100,000.00 per count and a ten year prohibition on lobbying activities. The bill was introduced and referred to the Committee on State Government on January 19, 2011. The bill was considered three times in the House and passed on February 8, 2011. The bill was thereafter referred to the State Government Committee in the Senate.

#### **House Bill No. 113, P.N. 932:**

This is an amendment to the Ethics Act specifically in relation to the post employment restrictions for former executive level state employees. This provision would amend the Act to provide a restriction on such employees from being employed by any entity or acting in a representative capacity for any entity if the employee was involved in making regulatory or licensing decisions directly relating to the business or the industry of which the business is a part. The bill was introduced on March 2, 2011, and referred to the House Committee on State Government.

#### **House Bill No. 245, P.N. 196:**

This is an amendment to the Lobbying Disclosure Law that would add a provision prohibiting Members of the General Assembly from being employed or affiliated with a lobbying firm during the Member's term of office of the General Assembly. It also prohibits a firm from employing a legislator and it also prohibits a legislator from employing a lobbyist in his office. The bill was introduced and submitted to the Judiciary Committee on January 26, 2011.

#### **House Bill No. 366, P.N. 331:**

This provision is an amendment to the Ethics Act that would prohibit a former Member of the General Assembly from being employed by the Commonwealth for a period of five years following the end of the legislator's term of office. The bill would not apply to appointments of such individuals made by the Governor, which are subject to the consent of the Senate. The bill was introduced and submitted to the State Government Committee on February 1, 2011.

#### **House Bill No. 381, P.N. 345:**

This proposal is an amendment to the Ethics Act that would prohibit the Department of Treasury from entering into investor relation contracts with candidates who have made cam-

campaign contributions to Treasurer candidates. This bill was introduced and referred to the Appropriations Committee on February 1, 2011.

**House Bill No. 622, P.N. 623:**

This proposal would amend Section 1103(g) of the Ethics Act regarding the revolving door provisions of the law. This amendment would increase the period of time during which a former public employee may not represent individuals or entities before their former governmental body to a period of two years after leaving that body. This bill was introduced and referred to the Committee on State Government on February 14, 2011.

**House Bill No. 1060, P.N. 1151:**

This proposal is an amendment to the Lobbying Disclosure Law that would add certain penalties for the failure to register and report as required by the law. The provision would require a principal that has realized a financial gain as a result of lobbying by that principal, or the principal has failed to register or report as required by the law to forfeit any financial gain. The amount of the forfeiture would depend upon the findings of the State Ethics Commission. This bill was introduced on March 15, 2011, and referred to the Committee on State Government.

**House Bill No. 1061, P.N. 1152:**

This provision is an amendment to the Ethics Act, restricted activities section. This law would prohibit certain enumerated former public officials from accepting an appointment by the Governor which is subject by approval by the Senate for a period of one year after that individual leaves their public office or employment. The positions subject to this prohibition include Members of the House and Senate as well as executive level state employees. This bill was introduced on March 15, 2011, and referred to the Committee on State Government.

**House Bill No. 1072, P.N. 1163 :**

This bill is an amendment to the Ethics Act that would prohibit Members of the General Assembly from being compensated for service on the Governing Board of a for profit or non-profit corporation, organization or entity. The bill was introduced and referred to the Committee on State Government.

**House Bill No. 1129, P.N. 1231:**

This is a proposal to amend the Ethics Act to ban gifts to public officials who are candidates in excess of \$50.00 from any lobbyist or principal. There are a number of exceptions to the proposal, including awards and gifts of a promotional nature intended to act as a display or otherwise. The bill was introduced and referred to the Committee on State Government on March 21, 2011.

**House Bill No. 1136, P.N. 1238:**

This proposal is an amendment to the Ethics Act that would add a Section (k) to 1103 of the Ethics Act. This section would allow for a divestment of financial interests by any employment or elected department or agency head or deputy of a business interest where the official or deputy's department or agency has regulatory jurisdiction over the particular business or in-

dustry that the official was previously engaged in. This bill was introduced and referred to the Committee on State Government on March 21, 2011.

**House Bill No. 1299, P.N. 1466:**

House Bill No. 1299 would impose a ban on gifts and hospitality for public officials in excess of specific dollar amounts. Gifts would be banned in excess of \$25.00 from any lobbyist and hospitality would be banned in excess of \$500.00. There are a number of exceptions that would be set forth in the provision. It was introduced and referred to the Committee on State Government.

**House Bill No. 1403, P.N. 1662:**

This proposal is an amendment to the Ethics Act and would provide a ban on all gifts in excess of \$650.00 or more in the aggregate from a source during any particular calendar year. The bill was introduced on April 27, 2011, and referred to the Committee on State Government.

**House Bill No. 1501, P.N. 1803:**

This bill is an amendment to the Public Official and Employee Ethics Act and would provide a new restricted activity that would prohibit public officials from serving on the Board of Directors of a Charter School. This proposal was introduced and referred to the Committee on State Government on May 9, 2011.

**House Bill No. 1555, P.N. 1906:**

This proposal would prohibit a lobbyist from serving as a Treasurer or other position on a Political Action Committee. This bill was introduced and referred to the Committee on State Government on May 18, 2011.

**House Bill No. 1814, P.N. 2324:**

This is an amendment to the Public Official and Employee Ethics Act and would prohibit public employees and officials from representing any company engaged in the exploration or extraction of oil or gas within the Commonwealth for two years after the individual leaves public service. The bill was introduced and referred to the Committee on State Government on August 22, 2011.

**House Bill No. 2055, P.N. 2826:**

This proposal is an amendment to the Ethics Act which would add a subsection to the contracting provisions of the law. This subsection would provide that the provisions of Section 1103(f) regarding the open and public process would be applicable to a public official or public employee or their immediate family members (including domestic partners) and would further prohibit contracts for detention services regarding the incarceration of individuals detained for determinations of immigration status. The proposal was submitted on December 6, 2011, and referred to the Committee on State Government.

**House Bill No. 2086, P.N. 2909:**

This proposal would add a provision to the revolving door restrictions of Section 1103(g) that would provide a two year prohibition upon leaving public service for any former public

official or public employee to be employed by or assist in any capacity a business that has received a state contract if that official or employee had influence over the decision to award the contract to that entity. The proposal was introduced on December 16, 2011, and referred to the Committee on State Government.

## MISCELLANEOUS LEGISLATIVE ACTIVITIES

### **The Pennsylvania Public Integrity Commission, House Bill No. 1200, P.N. 1401 and Senate Bill No. 625, P.N.:**

During 2011, the Pennsylvania House of Representatives and Senate introduced measures to create a new agency "The Public Integrity Commission" which would amend the Ethics Act and replace the State Ethics Commission. The following is an outline of the most substantial aspects of the proposal.

#### The Public Integrity Commission would:

- Uncover and investigate public corruption at all levels and in all branches of government within the Commonwealth.
- The Legislation defines the term "public corruption" as follows:  
**"Public corruption."** The unlawful activity, under color of or in connection with any public office or employment, of any individual:  
(1) employed by an agency as defined in the act of February 14, 2008 (P.L. 6, No. 3), known as the Right-to-Know Law; or  
(2) elected by the public, appointed by a governmental body or an appointed official in an agency as defined in the Right-to-Know Law.
- Serve both a law enforcement role (as a criminal justice agency) and an educational role for public officials, public employees, district attorneys, other law enforcement entities, the General Assembly and the public.
- Work cooperatively with other law enforcement entities.
- Take over the current duties of the State Ethics Commission regarding financial interest statements and restricted activities.

Nominating Committee – Purpose is to provide names of potential Public Integrity Commission members to the Governor.

- Each time there is a vacancy (or vacancies) on the Public Integrity Commission, a nominating committee would be created.
- The nominating committee would include a current or former district attorney and two current or former law school deans selected by the Speaker of the House as well as one current or former law school dean and one reform advocate (Common Cause, etc.) selected by the Minority Leader of the House.
- This committee would create a list of 15 nominees.
- The committee members would not receive compensation but would receive expenses from the Commission's budget (not to exceed the U.S. General Services Administration per diem limit).

#### Appointment to Public Integrity Commission

- The current Commissioners of the State Ethics Commission would continue to serve as administrators of the Public Integrity Commission until at least 4 new Commissioners would be appointed under the Legislation.
- The Governor would appoint Commissioner(s) from the list provided by the nominating committee.
- Appointments would be subject to Senate confirmation.
- No more than 3 of the 7 Commissioners could be of the same political party.

#### Public Integrity Commission Operation and Authority

- The original Commissioners of the Integrity Commission would be appointed for one, two, or three year terms, and subsequent appointments would be for three-year terms.
- Upon the expiration of a term, a Commissioner would continue to hold office until the appointment of a successor or for up to six months.
- A Commissioner could be reappointed to serve one three-year term if the Commissioner would be included on a list of current nominees provided by a nominating committee for that vacancy.
- The Chair would be elected by the Commissioners on an annual basis.
- A Commissioner would be entitled to compensation of \$100 per day for every Commission meeting at which the Commissioner participates in person and a quorum of the Commission is present and payment of reasonable travel, hotel, and other expenses as approved by the Commission (not to exceed the U.S. General Services Administration per diem limit).
- A Commissioner who would fail to attend, in person or by teleconference or video conference, three consecutive meetings would forfeit the position on the Public Integrity Commission unless excused by the Chair for good cause.
- The Commission would be required to meet at least once every two months.
- Commissioners could only be removed by the Governor for misfeasance, malfeasance, or neglect of duty and could challenge any removal in court.
- The Governor would have to provide a written statement of reasons for removal.

#### Public Integrity Commission Powers and Duties

- To inquire, as a criminal justice agency, into public corruption and the activities of persons engaged in and associated with public corruption. (This aspect of the Legislation is unclear; it appears that for conduct not falling within the parameters of the Ethics Act, the Commission's authority may be limited to conducting inquiries and making reports and referrals.)
- To make a written report of every completed public corruption investigation, including any recommendations for legislative or administrative action, and annual reports to certain committees of the General Assembly regarding the

status of public corruption in the Commonwealth. Undicted individuals named in reports would have an opportunity to respond, with response being made part of the report.

- To refer criminal violations for prosecution.
- To subpoena witnesses and documents (subpoenas would require the signatures of the Chair, one other Commissioner, and the Chief Counsel).
- To seek immunity orders from the Commonwealth Court to obtain testimony from individuals who invoke or are likely to invoke their right against self-incrimination (see below).
- To continue the duties of the Pennsylvania State Ethics Commission.

#### Immunity Orders

- Prior to requesting an immunity order, the Chief Counsel of the Public Integrity Commission would seek input from relevant prosecuting agencies so as not to interfere with ongoing investigations/prosecutions.
- Those same agencies would be authorized to appear as a party in any immunity proceeding to request a delay or denial of a grant of immunity to prevent interference.
- Individuals who failed to testify pursuant to an order of immunity would be subject to both criminal and civil sanctions.

#### Public Integrity Commission Law Enforcement Authority (Criminal Justice Agency)

Designated investigative employees would be trained law enforcement officers with authority to possess and use firearms and would have law enforcement authority to enforce the Legislation as well as the Legislative Code of Ethics and a portion of the Public Employee Pension Forfeiture Act.

#### Additional

- Public Integrity Commissioners and employees would be subject to limitations on political activity.
- Commissioners and employees would be required to disclose various personal economic interests. The disclosure requirements for a Commissioner would include the economic interests of members of the Commissioner's household.
- The Public Integrity Commission would be entitled to an equitable share, as determined by the court, of any assets seized/forfeited, costs of prosecution or other fees/costs awarded as a result of Public Integrity Commission investigations.

#### Differences from the current Pennsylvania State Ethics Commission

- The Public Integrity Commission would have trained, certified law enforcement personnel with the authority to enforce laws related to public corruption. This law enforcement authority would provide access to law enforcement

records and investigative information. Currently, the Pennsylvania State Ethics Commission investigators are not able to access criminal history and other relevant information on the Commonwealth Law Enforcement Assistance Network (CLEAN).

- The proponent(s) assert that the new appointment process, utilizing a nominating commission to select a list of potential nominees, would provide even greater insulation from the political process.
- The Public Integrity Commission would have additional authority to enforce laws related to public corruption and would not be limited to conflicts of interest, honoraria and other specific items found in the Pennsylvania State Ethics Act.
- The Public Integrity Commission would have the authority to seek immunity orders to obtain testimony necessary to public corruption investigations.

#### Status of the Pennsylvania State Ethics Commission and its Employees

All of the existing functions and duties of the State Ethics Commission would be transferred to the new Pennsylvania Public Integrity Commission. The proponent(s) assert that this would include personnel, appropriations, equipment, files, records, and contracts.

#### Public Hearing

Public hearings were held by the House of Representatives State Government Committee on November 16, 2011. Individuals testifying during these proceedings included State Representative Kurt Schroder (prime sponsor), Allen Hornblum (former Member of the Pennsylvania Crime Commission), Olivia Thorne (President of the League of Women Voters for Pennsylvania), Gregory M. Harvey (Senior Counsel, Montgomery, McCracken, Walker & Rhoads), and Mr. Fryman, as Chairman of the Pennsylvania State Ethics Commission. Present with Mr. Fryman were Vice Chairman Bolger and Commission Member Colafella, as well as the Executive Director. Mr. Fryman's presentation was also provided, in writing, along with an attachment identifying twenty-nine (29) potential amendments to the Ethics Act. After presentation of the prepared statement, the Commission received numerous questions from Members of the State Government Committee. The basis of the Commission's presentation was the position that there was no need to create a new bureaucratic system or agency to perform the same functions currently being conducted by the Ethics Commission. The Commission proposed that amendments could be made to the current law to strengthen the Ethics Commission and close certain loopholes that would be more cost effective.

Subsequent to the hearing, a number of bills were introduced in the House of Representatives encompassing some of the Commission's suggested amendments.

# 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 Lobbying Disclosure Law, 65 Pa.C.S. § 13A01 et seq., 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 Lobbying Disclosure Law took effect January 1, 2007.

## ADVISORIES

The Commission issues advisories under the Lobbying Disclosure Law to persons with standing (legal authority) to submit such requests. 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 13A04 and 13A05) and, to some extent, the "prohibited activities" section (Section 13A07) of the Lobbying Disclosure Law.

With regard to enforcement of the registration and reporting requirements, the Lobbying Disclosure Law provides a process (see, Section 13A09) 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 of Pennsylvania ("Disciplinary Board") as discussed 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 13A07, 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. § 13A07(d)(1).

The 10 categories of "unlawful acts" listed in Section 13A07 (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 13A07 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 13A08(g). Such prohibited activities are listed in Section 13A07, 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. § 13A09(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 relevant information to the Office of Attorney General and, if the lobbyist or principal is an attorney, to the Disciplinary Board. 65 Pa.C.S. § 13A09(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. § 13A07(d)(8).

An alleged violation of the “unlawful acts” provision by an attorney would be referred to the Disciplinary Board. 65 Pa.C.S. § 13A07(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. §§ 13A09(b)(2)-(3), (c)(3).

## LOBBYING COMPLIANCE ACTIVITIES

During calendar year 2011, the State Ethics Commission commenced continued compliance reviews of lobbying disclosure registration statements and quarterly expense reports filed with the Pennsylvania Department of State.

## DEFICIENT REGISTRATIONS

The following summarizes compliance activities with regards to deficient registrations:

### REGISTRATION PERIOD 2011-2012

Lobbyists failing to pay registration fee and to submit photo .....	27
Lobbyists submitting photo, but failing to pay registration fee .....	9
Lobbyists paying fee, but failing to submit photo .....	35
Lobbying firms failing to pay registration fee .....	0
Principals failing to pay registration fee .....	4

TOTAL WARNING NOTICES SENT .....75

### FEES COLLECTED AS A RESULT

#### OF REGISTRATION-RELATED COMPLIANCE ACTIVITIES

12 registrations totaling \$2,400 in delinquent fees collected

\*in accordance with Department of State procedure, 19 of 31 entities failing to submit the required fee, “deleted” their registrations and were not required to submit a fee.

## DEFICIENT/DELINQUENT QUARTERLY EXPENSE REPORTS

### Lobbying Notices of Alleged Noncompliance

As with preceding years, the Investigative Division continued conducting compliance reviews of Lobbying Registrations and Quarterly Expense Reporting. Upon deficient and non-filers being identified by the Pennsylvania Department of State, Warning Notices were forwarded to individuals and entities who failed to timely comply with registration and reporting requirements. In all, during the 2011 calendar year, approximately 213 instances of incomplete Registration and/or failures to file Quarterly Expense Reports were identified. Per the Lobbying Disclosure Law and Lobbying Regulations, delinquent and non-filers are afforded an opportunity to file outstanding reports without assessment of a penalty. Of the approximate 213 instances of non/delinquent filings, a vast majority complied within the stated cure period. Of those who did not, the Investigative Division filed Notices of Noncompliance against six (6) Registered Principals for non-filing of Quarterly Expense

Reports, and negotiated \$45,781.00 in penalties.

### Lobbying Enforcement Orders

During 2011, the Commission issued the following adjudications as a result of its enforcement activities:

#### Order No. 002-SL (R&J Properties Group, LLC)

**Decided: March 3, 2011**

**Issued: March 7, 2011**

R&J Properties Group, LLC, in its capacity as a principal registered with the Pennsylvania Department of State (“Department of State”) under principal registration number “P16477,” failed to timely file a quarterly expense report with the Department of State for the second quarter of 2009 by July 30, 2009, in accordance with Section 13A05 of Pennsylvania’s lobbying disclosure law (“Lobbying Disclosure Law”), 65 Pa.C.S. § 13A05.

R&J Properties Group, LLC, in its capacity as a registered principal, failed to timely file a quarterly expense report with the Department of State for the third quarter of 2009 by October 30, 2009, in accordance with Section 13A05 of the Lobbying Disclosure Law, 65 Pa.C.S. § 13A05.

R&J Properties Group, LLC, in its capacity as a registered principal, failed to timely file a quarterly expense report with the Department of State for the fourth quarter of 2009 by February 1, 2010, in accordance with Section 13A05 of the Lobbying Disclosure Law, 65 Pa.C.S. § 13A05.

The transgressions of the Lobbying Disclosure Law outlined immediately above are deemed to be negligent in nature.

The Commission hereby levy one administrative penalty against R&J Properties Group, LLC, in the total amount of \$15,036.00 for its delinquent quarterly expense reports for the second, third, and fourth quarters of 2009.

In that R&J Properties Group, LLC has already made payment of the aforesaid administrative penalty in the total amount of \$15,036.00 in accordance with the Consent Agreement of the parties, and has now filed quarterly expense reports for the second, third, and fourth quarters of 2009 and statements of failure to meet the reporting threshold for all four quarters of 2010, no further action is required in this case and this case is closed.

#### Order No. 003-SL (The Goldenberg Group)

**Decided: March 3, 2011**

**Issued: March 7, 2011**

The Goldenberg Group, in its capacity as a principal registered with the Pennsylvania Department of State (“Department of State”) pursuant to Pennsylvania’s lobbying disclosure law (“Lobbying Disclosure Law”), 65 Pa.C.S. § 13A04, failed to timely file quarterly expense reports pursuant to 65 Pa.C.S. § 13A05, for the first, second, third, and fourth quarters of 2007 and the first quarter of 2008.

The transgressions of the Lobbying Disclosure Law outlined immediately above are deemed to be negligent in nature.

The Commission hereby levies one administrative penalty against The Goldenberg Group in the total amount of \$8,250.00 for its delinquent quarterly expense reports for the first, second, third, and fourth quarters of 2007 and the first quarter of 2008.

In that The Goldenberg Group has already made payment of the aforesaid administrative penalty in the total amount of \$8,250.00 in accordance with the Consent Agreement of the parties, and has now filed quarterly expense reports for the quarters at issue in this case, no further action is required in this case and this case is closed.

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**Order No. 004-SL (International Facilities Group, LLC)**  
**Decided: June 23, 2011** **Issued June 24, 2011**

International Facilities Group, LLC, in its capacity as a principal registered with the Pennsylvania Department of State ("Department of State") under principal registration number "P06016," failed to timely file quarterly expense reports with the Department of State for the third and fourth quarters of 2009 as required by Section 13A05 of Pennsylvania's lobbying disclosure law ("Lobbying Disclosure Law"), 65 Pa.C.S. § 13A05.

The transgressions of the Lobbying Disclosure Law outlined immediately above are deemed to be negligent in nature.

The Commission hereby levies one administrative penalty against International Facilities Group, LLC, in the total amount of \$6,930.00 for its delinquent quarterly expense reports for the third and fourth quarters of 2009.

In that International Facilities Group, LLC, has already made payment of the aforesaid administrative penalty in the total amount of \$6,930.00 in accordance with the Consent Agreement of the parties, and has now filed quarterly expense reports for the third and fourth quarters of 2009 and all quarters of 2010, no further action is required in this case and this case is closed.

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**Order No. 005-SL (Crane Institute Certification)**  
**Decided: June 23, 2011** **Issued: June 24, 2011**

Crane Institute Certification, in its capacity as a principal registered with the Pennsylvania Department of State ("Department of State") under principal registration number "P22914," failed to timely file quarterly expense reports with the Department of State for the third and fourth quarters of 2010 as required by Section 13A05 of Pennsylvania's lobbying disclosure law ("Lobbying Disclosure Law"), 65 Pa.C.S. § 13A05.

The transgressions of the Lobbying Disclosure Law outlined immediately above are deemed to be negligent in nature.

The Commission hereby levies one administrative penalty against Crane Institute Certification in the total amount of \$8,800.00 for its delinquent quarterly expense reports for the third and fourth quarters of 2010.

In that Crane Institute Certification has already made payment of the aforesaid administrative penalty in the total amount of \$8,800.00 in accordance with the Consent Agreement of the parties, and has now filed quarterly expense reports for the third and fourth quarters of 2010 as well as the second quarter of 2010, no further action is required in this case and this case is closed.

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**Order No. 006-SL (Laser Northeast Gathering Company, LLC)**

**Decided: September 27, 2011** **Issued: September 28, 2011**

Laser Northeast Gathering Company, LLC, in its capacity as a principal registered with the Pennsylvania Department of State ("Department of State") under principal registration number "P24357," failed to timely file a quarterly expense report with the Department of State for the fourth quarter of 2010 as required by Section 13A05 of Pennsylvania's lobbying disclosure law ("Lobbying Disclosure Law"), 65 Pa.C.S. § 13A05.

The transgression of the Lobbying Disclosure Law outlined immediately above is deemed to be negligent in nature.

The Commission hereby levies one administrative penalty against Laser Northeast Gathering Company, LLC in the total amount of \$1,995.00 for its delinquent quarterly expense report for the fourth quarter of 2010.

In that Laser Northeast Gathering Company, LLC has already made payment of the aforesaid administrative penalty in the total amount of \$1,995.00 in accordance with the Consent Agreement of the parties, and has now filed a quarterly expense report for the fourth quarter of 2010, no further action is required in this case and this case is closed.

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**Order No. 007-SL (Mid Atlantic Public Insurance Adjusters)**  
**Decided: September 27, 2011** **Issued: September 28, 2011**

Mid Atlantic Public Insurance Adjusters, in its capacity as a principal registered with the Pennsylvania Department of State ("Department of State") under principal registration number "P22681," failed to timely file quarterly expense reports with the Department of State for the second, third, and fourth quarters of 2010 as required by Section 13A05 of Pennsylvania's lobbying disclosure law ("Lobbying Disclosure Law"), 65 Pa.C.S. § 13A05.

The transgressions of the Lobbying Disclosure Law outlined immediately above are deemed to be negligent in nature.

The Commission hereby levies one administrative penalty against Mid Atlantic Public Insurance Adjusters in the total amount of \$4,770.00 for its delinquent quarterly expense reports for the second, third, and fourth quarters of 2010.

In that Mid Atlantic Public Insurance Adjusters has already made payment of the aforesaid administrative penalty in the total amount of \$4,770.00 in accordance with the Consent Agreement of the parties, and has now filed quarterly expense reports for the second, third, and fourth quarters of 2010, no further action is required in this case and this case is closed.

## PARTICIPATION ON THE LOBBYING DISCLOSURE REGULATORY COMMITTEE

The Commission through its representative actively participates in the work of the Lobbying Disclosure Regulatory Committee (see, 65 Pa.C.S. § 13A10(d)). The Committee has published a Manual for Accounting and Reporting and promulgated regulations under the Lobbying Disclosure Law.

## OPINIONS AND ADVICES

From January 1, 2011 through December 31, 2011, the State

Ethics Commission issued no advisories under the Lobbying Disclosure Law.

Opinions and Advices are public records. However, a requester 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](http://www.ethics.state.pa.us).

*Pursuant to Section 13A08, subsection (a) of the Lobbying Disclosure Law, 65 Pa.C.S. § 13A08(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 requester 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. § 13A08(a); 51 Pa. Code § 59.2(a). Advisories may only be issued as to prospective (future) conduct.*

*Pursuant to Section 13A08(a) of the Lobbying Disclosure Law, a requester 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 requester 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.*

## 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. § 13A03.

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 13A09(g) of the Lobbying Disclosure Act provides:

### § 13A09. 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 13A05(b)(3)(iv).
- (3) The respondent or defendant did not receive notice under section 13A05(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

Pursuant to the Pennsylvania Race Horse Development and Gaming Act ("Gaming Act"), 4 Pa.C.S. § 1101 et seq., the Commission has responsibilities for:

- (1) Biennially publishing a list of all state, county, municipal, and other government positions meeting the definitions of the terms "public official" set forth in Section 1512(b) of the Gaming Act or "executive-level public employee" set forth in Section 1103 of the Gaming Act, for the purpose of enabling the identification of persons who would be subject to certain prohibitions of Section 1512 of the Gaming Act;
- (2) Biennially publishing a list of all positions of employment with the Gaming Control Board or with independent contractors to the Board that are subject to the "revolving door/post-termination" restrictions of Sections 1201(h)(13) and (13.1) of the Gaming Act;
- (3) Biennially publishing a list of all positions within the Pennsylvania State Police, the Office of Attorney General, and the Pennsylvania Department of Revenue that are subject to the "revolving door/post-termination" restrictions of Section 1512.1(a) of the Gaming Act;
- (4) Making a determination, upon request, as to whether a particular individual/person would be subject to various prohibitions or "revolving door/post-termination" restrictions within the Gaming Act (see, 4 Pa.C.S. §§ 1201(h)(14), 1512(a.5)(1), 1512.1(e)(1)); and
- (5) 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 prohibit-

ed from holding under Section 1512 of the Gaming Act.

## GAMING ACT DETERMINATIONS

From January 1, 2011 through December 31, 2011, no Determinations 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). Determinations under Sections 1201 (h)(13)-(14) of the Gaming Act are public records.

Paper copies of Commission determinations 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](http://www.ethics.state.pa.us).

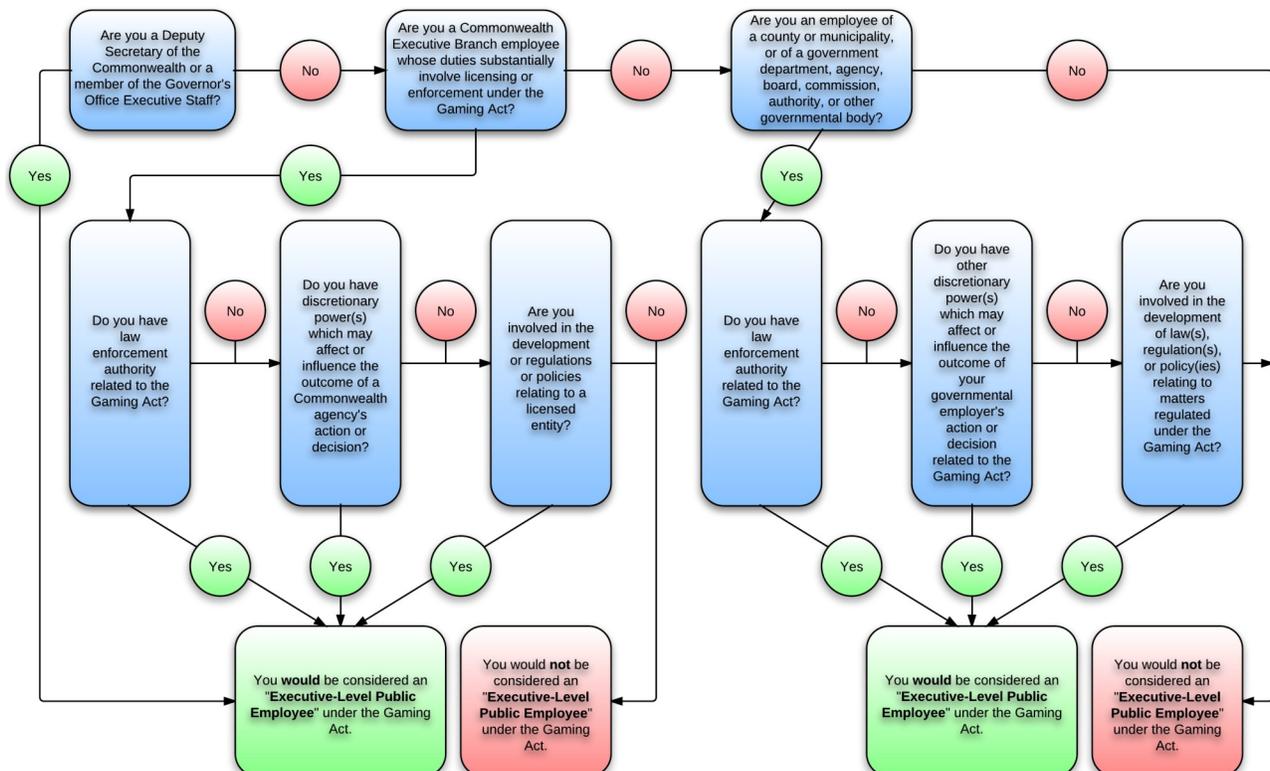
## GAMING LISTS

Lists developed by the Commission pursuant to the Gaming Act are published biennially in the Pennsylvania Bulletin, and they are also accessible via the Commission's Website within its e-Library at [www.ethics.state.pa.us](http://www.ethics.state.pa.us) and via the PA Gaming Control Board's Website at [www.pgcb.state.pa.us](http://www.pgcb.state.pa.us), which features a link to the Commission's e-Library.

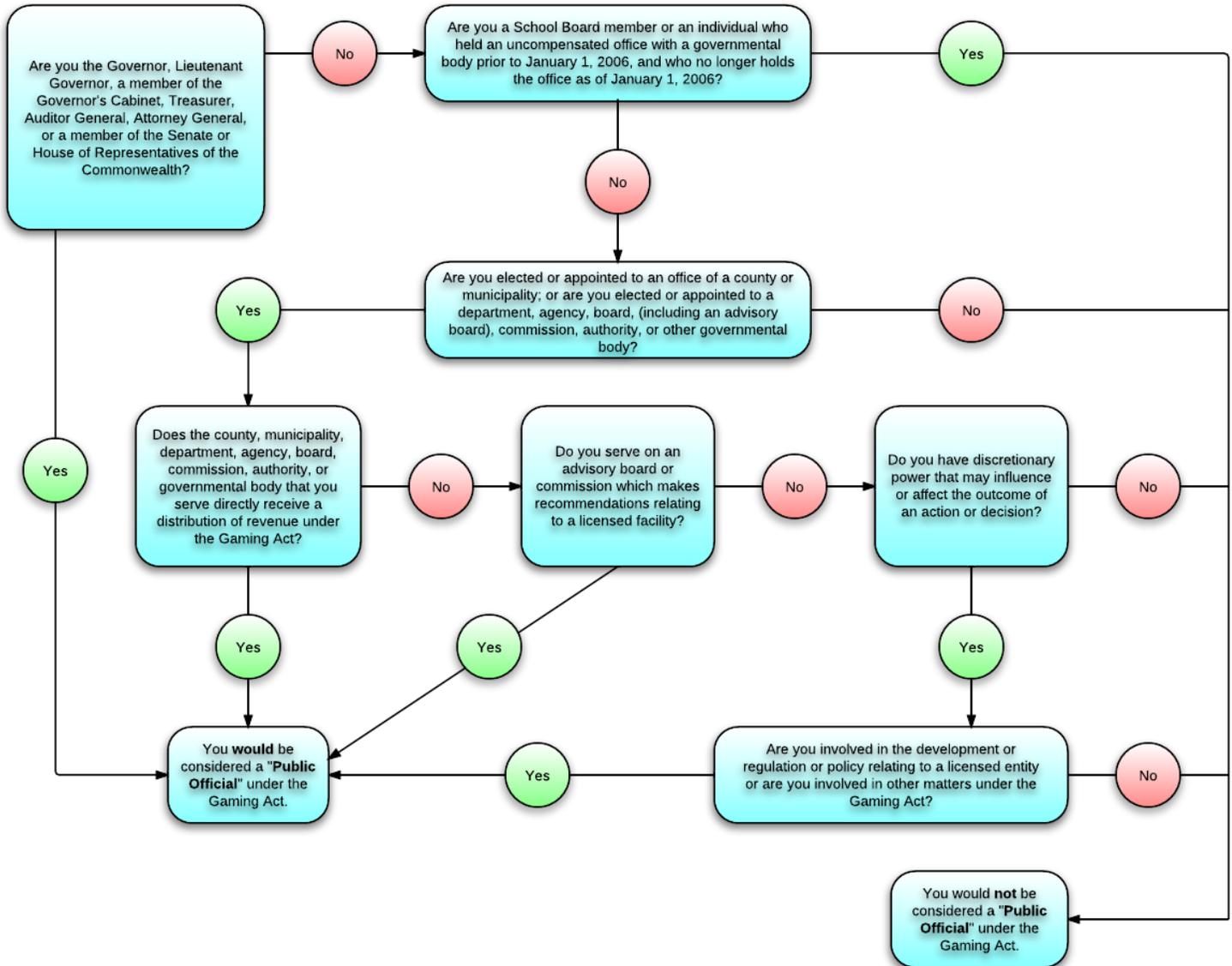
## STATUS AS AN EXECUTIVE-LEVEL PUBLIC EMPLOYEE OR PUBLIC OFFICIAL:

The term "executive-level public employee" is defined in Section 1103 of the Gaming Act. The term "public official" is defined in Section 1512(b) of the Gaming Act.

The following flow chart outlines questions used during 2011 to determine whether an individual would be considered an "executive level public employee" under the Gaming Act:



The following flow chart outlines questions used during 2011 to determine whether an individual would be considered a "public official" under the Gaming Act:



## COGEL: Council on Governmental Ethics Laws

The Commission has continued to be active in the activities of the Council on Governmental Ethics Laws (COGEL). COGEL is an international professional association of agencies, organizations, and individuals with duties and responsibilities relating to conflicts of interest, lobbying registration and reporting, campaign finance reporting and administration, election, and freedom of information laws. The Commission's Counsel Robin M. Hittie is currently a member of the Past President's Committee and Nominating Committee.

More information on the Council on Government Ethics Laws may be found at [www.COGEL.org](http://www.COGEL.org).

# 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 Act.

To reach out to more public officials across the state regarding their duties and responsibilities under the Ethics Act, and to augment the appearances and presentations made at annual events, the Commission expanded its already active educational outreach and training program. 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 2011, 15 presentations were made. Topics included basic Ethics Act instruction; board member training; state government education; ethics training for managers and supervisors; municipal law colloquium; employee standards of conduct, nepotism, financial disclosures, conflicts of interest, official travel, gift acceptance, post government employment restrictions; and Statement of Financial Interests forms for public officials and candidates running for office. Organizations sponsoring presentations included the Pike County Economic Development Authority; Pennsylvania Municipal Authority Association (PMAA); Bureau of Financial Operations, Department of Public Welfare; Pennsylvania State Association of Township Supervisors (PSATS); Government Finance Officers Association of Pennsylvania; Pittsburgh Water & Sewer Authority; Pennsylvania Bar Institute, Western Pennsylvania Housing Directors Association; Pennsylvania State Association of County Controllers (PSACC); Association of Eastern Pennsylvania County Election Personnel; Old Forge School District; and the County Commissioners Association of Pennsylvania (CCAP).

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 Web site at [www.ethics.state.pa.us](http://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 Act
- 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 Act
- Consolidated Rulings Digest 1979–1987
- Consolidated Rulings Digest 1988–1991
- Annual Report
- e-Library Pamphlets

### Statement of Financial Interests Filings:

All Statements of Financial Interests 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](http://www.ethics.state.pa.us).

### Commission Decisions:

Commission decisions, (orders, opinions, and advice of counsel) are available at the offices of the State Ethics Commission and may also be available at county law and public libraries and via the Commission's Web site at [www.ethics.state.pa.us](http://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.



# Ethics and the Right-to-Know Law

During calendar year 2011, the Commission received and responded to 36 requests for documents. Since December 26, 2002, through the end of calendar year 2011, a total of 315 requests have been received and responded to. The most common request received is for Statements of Financial Interests.

## THE NEW RIGHT-TO-KNOW LAW

The Right-to-Know Law, Act 3 of 2008, 65 P.S. § 67.101 et seq., took effect January 1, 2009. The Commission's Web site includes information regarding the law and a link to the Commonwealth's Open Records Office ([www.openrecords.state.pa.us](http://www.openrecords.state.pa.us)). In addition, a specific e-mail address, [ra-ethicsRTKL@state.pa.us](mailto:ra-ethicsRTKL@state.pa.us), is on the Commission's Web site for requests under the new Right-to-Know Law.

## POLICIES OF THE PENNSYLVANIA STATE ETHICS COMMISSION UNDER THE PENNSYLVANIA RIGHT-TO-KNOW LAW

The Pennsylvania State Ethics Commission has established the following policies **effective January 1, 2009**, for providing access to public records of the Commission pursuant to the Pennsylvania Right-to-Know Law, Act 3 of 2008, 65 P.S. § 67.101 et seq.

**Submission of requests for access:** Written requests for access to public records of the Commission shall be submitted using either the form designated as SEC-5 or the request form developed by the Office of Open Records. Requests for access to public records of the Commission must sufficiently identify or describe the requested records so as to enable a determination of which records are being requested. Requests shall be submitted to the following Open-Records Officer at the Commission's Harrisburg Office:

John J. Contino, Esquire, Executive Director  
Pennsylvania State Ethics Commission  
309 Finance Building | P.O. Box 11470  
Harrisburg, PA 17108-1470  
Telephone: (717) 783-1610 or 1-800-932-0936  
FAX: (717) 787-0806  
E-mail: [ra-ethicsRTKL@pa.gov](mailto:ra-ethicsRTKL@pa.gov)

Written requests must be submitted in person, by mail, by e-mail, or by facsimile transmission (FAX). Written requests must provide the name and address of the person to whom the response is to be sent.

**Fees for processing requests for access:** The following fees shall apply to the provision of access to public records of the Commission:

- The fee(s) for duplication will be as established by the Office of Open Records.
- 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.

## CONTACT INFORMATION

### For the Open-Records Officer of the Pennsylvania State Ethics Commission:

John J. Contino, Esquire, Executive Director  
Pennsylvania State Ethics Commission  
309 Finance Building | P.O. Box 11470  
Harrisburg, PA 17108-1470  
Telephone: (717) 783-1610 or 1-800-932-0936  
FAX: (717) 787-0806  
E-mail: [RA-ethicsRTKL@pa.gov](mailto:RA-ethicsRTKL@pa.gov)

### For the Pennsylvania Office of Open Records:

#### PHYSICAL ADDRESS:

Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, Plaza Level  
Harrisburg, PA 17120-0225

#### MAILING ADDRESS:

Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

Telephone: 717-346-9903

Fax: 717-425-5343

E-mail: [openrecords@pa.gov](mailto:openrecords@pa.gov)

Executive Director: Terry Mutchler