



PUBLIC OFFICIAL AND EMPLOYEE ETHICS ACT

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**ANNOTATED SUMMARY OF
ETHICS LAW**

PUBLIC OFFICIAL AND EMPLOYEE ETHICS LAW

65 Pa.C.S. §1101 et seq., Act 1978-170, as amended by Act 1989-9, Act 93 of 1998 and Act 134-2006

INTRODUCTION

The Pennsylvania Public Official and Employee Ethics Law, Act 170-1978, as reenacted and amended by Act 9-1989, Act 93 of 1998, and Act 134-2006 was enacted in order to strengthen the faith and confidence of the people of the Commonwealth in their government.

In order to accomplish this task, the law provides for restricted activities in which public officials and public employees may not participate. Additionally, the law creates a governmental entity, the State Ethics Commission, which is an independent Commonwealth agency. The Commission, which is vested with the overall responsibility of administering and enforcing the provisions of the State Ethics Act is composed of seven members. In order to further insure the independence of the agency, its members and its staff, the law provides that individuals serving in positions with the Commission, are prohibited from holding or campaigning for any other public office, holding office in any political campaign, influencing the decision of a governmental body except as a member of the Commission, or being employed by the Commonwealth or a political subdivision in any other capacity.

The Ethics Law vests three main areas of statutory jurisdiction in the State Ethics Commission. The Commission is authorized to administer and enforce the personal financial disclosure requirement. Secondly, the Commission is mandated to provide advice and guidance in the form of written opinions to public officials and employees who have questions regarding their responsibilities and duties under the Ethics Law or to the employers or appointing authority of such individuals. Finally, the Commission has the statutory authority to investigate, either through an "own motion" procedure or the receipt of a sworn complaint, alleged violations of the Sate Ethics Law. The Commission's jurisdiction in all of these areas is uniform in its application to local, county, and State-level public officials and employees.

Comment: On November 1, 2006, the Lobbying Disclosure Law, Act 134-2006, was signed into law. The Lobbying Disclosure Act vests jurisdiction of lobbyist and principal enforcement and advisory functions with the Pennsylvania State Ethics Commission. The Commission has enforcement responsibilities for the new registration and reporting requirements. This article will not deal with the provisions of the Lobbying Disclosure Act.

PURPOSE: 65 Pa.C.S. §1101

The legislature 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 people have a right to be assured that the financial interests of holders of or nominees or candidates for public office do not conflict with the public trust. The law is to be liberally construed to promote complete financial disclosure. The law is intended to define as clearly as possible those areas which represent conflicts of interests.

The 1989 amendments to the law resulted in several changes to the purpose section. One element existing in the prior law has been eliminated and two additional areas of legislative intent have been delineated.

Eliminated from the law is any reference to the "appearance of a conflict."

The Act is to be administered in a manner that emphasizes guidance to public officials and public employees regarding the ethical standards established therein.

The Act is to be administered by an independent commission whose members have demonstrated an interest in promoting public confidence in government.

Comment: The constitutionality of the State Ethics Act has generally been affirmed in Pennsylvania State Association of Township Supervisors v. Thornburgh, 496 Pa. 324, 437 A.2d 1 (1981); Snider v. Thornburgh, 469

Pa. 159, 436 A.2d 593 (1981). See also, In the Matter of Glancey and Chiovero, 515 Pa. 201, 527 A.2d 997 (1987), Ethics Act addresses compelling state interests. The application of the law has been determined to be unconstitutional as applied to judges, Fayette County v. Unemployment Compensation Board of Review, 479 A.2d 1153 (Pa. Cmwlth. 1984), affirmed 509 Pa. 438, 502 A.2d 1232.

Conflict of Interest Law is to be liberally construed to promote complete disclosure. Phillips v. State Ethics Commission, 470 A.2d 659 (Pa. Cmwlth. 1984).

DEFINITIONS: 65 Pa.C.S. §1102

The State Ethics Law contains a substantial number of definitions which must be reviewed when analyzing the Act. The State Ethics Law applies generally to public officials and public employees. Candidates and nominees for public office or employment are also subject to certain provisions in the Law. The Law defines each of the affected categories:

"Public Official" Any person elected by the public or elected or appointed by a governmental body, or an appointed official in the Executive, Legislative or Judicial Branch of the State or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense, or to otherwise exercise the power of the State or any political subdivision thereof.

Comment: Examples of officials within the State Ethics Law Coverage. Jersey Shore Area School District v. Bittner, 472 A.2d 183 (Pa. Cmwlth. 1984), school directors; Forney v. State Ethics Commission, 425 A.2d 66 (Pa. Cmwlth. 1981), municipal authority members; Pennsylvania State Association of Township Supervisors v. Thornburgh, 496 Pa. 324, 437 A.2d 1 (1981), township supervisors. Members of bi-state authorities are not within Ethics Law coverage. Delaware River Port Authority v. State Ethics Commission, 585 A.2d 587 (Pa. Cmwlth. 1991).

"Public
Employee"

Any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a non-ministerial nature with regard to:

- (1) contracting or procurement;
- (2) administering or monitoring grants or subsidies;
- (3) planning or zoning;
- (4) inspecting, licensing, regulating or auditing any person, or
- (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.

"Public employee" shall not include individuals who are employed by the State or any political subdivision thereof in teaching as distinguished from administrative duties.

Comment: Examples of Application: Rogers v. State Ethics Commission, 4708 A.2d 1120 (Pa. Cmwlth. 1984), certified public accountant for specific audit task in municipality is not a public official or employee within purview of the State Ethics Act; Camel v. State Ethics Commission, 425 A.2d 60 (Pa. Cmwlth. 1981), Turnpike Commission employees, see also 51 Pa. Code §1.1. L.J.S. v. State Ethics Commission, 744 A.2d 798 (Pa. Cmwlth. 2000), a county chief probation officer is a "judicial officer" subject to the exclusive jurisdiction of the Pennsylvania Supreme Court. See, Phillips v. State Ethics Commission, 470 A.2d 659 (Pa. Cmwlth. 1984), regarding objective standards to be utilized in determining coverage.

"Candidate"

Any individual who seeks nomination or election to public office by vote of the electorate, other than a judge of elections, inspector of elections or

consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

"Authority of Office or Employment"

The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

Comment:

A number of unreported judicial opinions have addressed the issue of the use of the authority of office or employment as well as the prerequisite elements necessary to establish a conflict of interest. Although these decisions are unreported, they do offer some insight into the judicial analysis that would apply to the interpretation of these terms. In Keller v. State Ethics Commission, 860 A.2d 659 (Pa. Cmwlth. 2004) the Commonwealth Court of Pennsylvania addressed the issue of these definitions in relation to a borough mayor who received payments for the performance of wedding ceremonies and utilized such payments for personal purposes. The court's analysis in determining that the borough mayor had violated the conflict of interest provisions of the Ethics Law is an instructive analysis as to the application of these provisions and the elements prerequisite to establishing a conflict of interest.

"Immediate Family"

A parent, spouse, child, brother or sister.

Comment:

In-laws are not "immediate family" under the Ethics Act's definition. Pulice v. State Ethics Commission, 713 A.2d 161 (Pa. Cmwlth. 1998), appeal denied, 557 Pa. 642, 732 A.2d 1211 (Pa. 1998).

"Income"

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 or withdrawal therefrom upon assumption of public office or employment or any other form of recompense or any combination thereof. "Income" refers to gross income and includes prize winnings and tax exempt income. The term 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.

Note: Legislators' salary constitutes "income" rather than a "governmentally mandated payment" which would be exempt from the definition of income. In Re Benninghoff, 578 Pa. 402, 852 A.2d 1182 (2004).

"Solicitor" A person elected or appointed to the office of solicitor for the political subdivision.

Comment: In Ballou v. State Ethics Commission, 496 Pa. 127, 438 A.2d 186 (1981), it was held that part-time municipal solicitors were not public officials or employees as defined in State Ethics Act. Act 9 of 1989 specifically includes such individuals as within the parameters of the financial disclosure requirements of the Ethics Law. See 65 P.S. §404(a). Such solicitors are however NOT considered public officials/employees for purposes of the conflict of interest provisions of the law. C.P.C. v. State Ethics Commission, 698 A.2d 155, (Pa. Cmwlth. Ct. 1997), allocatur denied, 704 A.2d 640, 550 PA 686 (1997). A full time municipal solicitor is however subject to the conflict of interest provisions of the law. P.J.S. v. State Ethics Commission, 555 PA 149, 723 A.2d 174 (1999).

"Person" A business, governmental body, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

"Represent" To act on behalf of any other person in any activity which includes, but is not limited to, the following: personal appearances, negotiations, lobbying and submitting bid or contract proposals which are signed by or contain the name of a former public official or public employee.

"Governmental body with which a public official or employee has been associated"

"Governmental body with which a public official or public employee is or has been associated." The governmental body within State government or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

RESTRICTED ACTIVITIES: 65 Pa.C.S. §1103

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

- (a) No public official or public employee shall engage in conduct that constitutes a conflict of interest. A "conflict of interest" is defined as use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or 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. 65 Pa.C.S. §1103(a).

Comment: This section: Official commits a violation of this section even if compensation or financial gain to which he was not entitled was received in good faith. Yacobet v. State Ethics Commission, 531 A.2d 536 (Pa. Cmwlth. 1987); McCutcheon v. State Ethics Commission, 77 Pa. Commw. 529, 466 A.2d 283 (1983). Official casting deciding vote to appoint himself to another compensated position is in violation of this section. Koslow v. State Ethics Commission, 540 A.2d 1371 (Pa. Cmwlth.).

A violation of Section 1103(a) of the Ethics Law occurs when a public official utilizes legislative personnel, facilities and equipment in aid of re-election fundraising activities. See Commonwealth v. Habay, 934 A.2d 732 (Pa. Super. 2007).

A borough mayor who performs wedding ceremonies and retains the proceeds for personal purposes including the donation of such funds to charitable organizations violates the State Ethics Law. Keller v. State Ethics Commission, 860 A.2d 659 (Pa. Cmwlth. 2004).

Public employee violated Section 3(a) when he used the authority of his position to direct government purchases to his wife's companies. Zangrilli, Order No 946, aff'd by Commonwealth Court in a 1996 Memorandum Opinion, Zangrilli v. SEC, No. 2689 C.D. 1994. Township Supervisors violated Section 3(a) when they received compensation not authorized in law and used the Township Solicitor to represent them at Township expense in a lawsuit involving their pay as working Township employees. Township commissioner violated the Ethics Law when he participated in unanimous township actions to approve a shopping center development at the same time that he was actively attempting to perform work at the development. Snyder v. State Ethics Commission, 686 A.2d 843 allocatur denied, 0029 M.D. 1997, 12/23/97.

(Pa. Commw. 1996). R.H., T.W. v. SEC, Nos. 1732-1733 C.D. 1994 (Pa. Commw. Ct. March 18, 1996). Authority Chairman violated Section 3(a) when he offered an Authority employee a raise to cover the cost of purchasing insurance from him. Yezzi, Order No. 825, aff'd by Commonwealth Court in a 1992 Memorandum Opinion, Yezzi v. SEC, No. 693 C.D. 1992. School Director violated Section 3(a) when he supported and/or voted for vendors as to School District contracts in return for gifts or gratuities. Helsel, Order No. 801. Attorney employed by Commonwealth agency violated Section 3(a) when he used Commonwealth time and in some instances, bogus sick leave to sit as a paid Court arbitrator. Cohen, Order No. 610-R.

In Commonwealth ex rel Corbett v. Desiderio, 698 A.2d 134 (Pa. Cmwlth. Ct. 1997), the Commonwealth Court of Pennsylvania determined that conviction for a violation of Section 403 of the Ethics Law by a public official was sufficient cause under the Pennsylvania State Constitution for removal of the official from office through quo warranto proceedings.

It should be noted that actions of a de minimis nature will not constitute a conflict of interest. "De minimis" is defined as an economic consequence having an insignificant effect. For an application of the de minimis exception to the conflict of interest provisions see Bouch v. State Ethics Commission, 848 A.2d 1078 (Pa. Cmwlth. 2004).

- (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 offerer'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. 65 Pa.C.S. §1103(b).

Comment: Pursuant to this provision a private citizen may be charged with a criminal violation of the Ethics Law. Commonwealth v. Heistand, 685 A.2d 1026 (Pa. Super. 1996).

- (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. 65 Pa.C.S. §1103(c).

Comment: Evidence that township commissioner solicited developer's insurance business and obtained a substantial premium from developer and thereafter voted in favor of zoning ordinance necessary for developer's project was sufficient to sustain conviction of violation of this section. Commonwealth v. Cherpes, 360 Pa. Super. 246, 520 A.2d 439 (1987), appeal denied 515 Pa. 612, 530 A.2d 866 (1988). See also Commonwealth v. Heistand, 685 A.2d 1026 (Pa. Super. 1996).

Commonwealth v. Parmar, 448 Pa. Super. Ct. 470, 672 A.2d 314 (1996). The Superior Court of Pennsylvania determined that in contrast to bribery under the Crime's Code, no showing of culpability was required to establish a violation of Section 3(c) of the Ethics Law.

On appeal, the Supreme Court of Pennsylvania, affirmed the lower court decision in an evenly divided vote. One of the opinions of the court disagreed with the rationale contained in the lower court opinion. This opinion reasoned that the Ethics Law, as well as the State Adverse Interests Act does not impose absolute criminal liability and are subject to the culpability requirements of the Crime's Code. Commonwealth v. Parmar, 551 Pa. 318, 710 A.2d 1083 (1998).

- (d) No public official or public employee shall accept an honorarium. 65 Pa.C.S. §1103(d).

- (f) No public official or public employee or his spouse or child or any business in which the person or his spouse or child is associated shall enter into any contract valued at \$500.00 or more with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500.00 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. 65 Pa.C.S. §1103(f).

Comment: This section is a recodification of section 3(c) of Act 1978-170. The amended section revised prior law in several respects including the application of this provision to subcontracts. This provision has not been construed as allowing an interest in contracts by public officials or employees where such might otherwise be prohibited by law. The provision has been applied as a procedural mechanism to be employed where such interest is permissible. In order to constitute a violation of the contracting provision of the Ethics Law, the contract must be between a governmental body with which a public official is associated where the official is a party to the contract. See Bixler v. State Ethics Commission, 847 A.2d 785 (Pa. Cmwlth. 2004). See also Yarcs v. Summit Academy, 845 A.2d 203 (Pa. Cmwlth. 2004) appeal denied 579 Pa. 708, 857 A.2d 682.

- (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. 65 Pa.C.S. §1103(g).

Comment: Pursuant to the above provision the representation must be for promised or actual compensation before the restriction is applicable. Secondly, the law now defines governmental body with which one has been associated as the governmental body within State government or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

The word "person" is broadly defined to include businesses, governmental bodies, individuals, corporations, unions, associations, firms, partnerships, committees, clubs or other organizations or groups or persons.

The Commission has interpreted the term "representation" as used in Section 1103(g) of the Ethics Law to prohibit: (1) Personal appearances before the former governmental body or bodies, including, but not limited to, negotiations or renegotiations in general or as to contracts; (2) Attempts to influence; (3) Submission of bid or contract proposals which are signed by or contain the name of the former public official/public employee; (4) Participating in any matters before the former governmental body as to acting on behalf of a person; (5) Lobbying. Popovich, Opinion 89-005. In Confidential Opinion, 93-005, the Commission held that the prohibition against representing a person includes the former public official/public employee representing himself; and also may apply when a person transfers to another governmental body. See Ledebur, Opinion No. 95-007.

Note: One-year representation restrictions are unconstitutional as applied to former judges, Wajert v. State Ethics Commission, 491 Pa. 255, 420 A.2d 439 (1980) and former governmental attorneys where the conduct constitutes the private practice of law, Pennsylvania Public Utility Commission Bar Association v. Thornburgh, 434 A.2d 589 (Pa. Cmwlth. 1981) affirmed

498 Pa. 589, 450 A.2d 613 (1981). See also, Stephens v. State Ethics Commission, 529 A.2d 594 (Pa. Cmwlth. 1987), (further clarifying what constitutes representation).

Comment: The one year representation provision has also been held unconstitutional as applied to former governmental employees in relation to their activities as privately employed attorneys after the termination of their governmental service. See Shaulis v. Pennsylvania State Ethics Commission, 574 Pa. 680, 833 A.2d 123 (2003).

- (h) No person shall use for any commercial purpose information copied from statements of financial interests required by this act or from lists compiled from such statements. 65 Pa.C.S. §1103(h)
- (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 or a promise of a grant or loan of money from the Commonwealth to the business or corporation recruited or induced to expand. 65 Pa.C.S. §1103(i).
- (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. 65 Pa.C.S. §1103(j).

STATEMENTS OF FINANCIAL INTERESTS REQUIRED TO BE FILED: 65 Pa.C.S. §1104

Who is Required to File

1. A Statement of Financial Interests is required to be filed by all state and local "public officials," elected or appointed, and "public employees" employed by the Commonwealth or by a political subdivision, who are responsible for taking or recommending official non-ministerial (requiring judgment and discretion) action concerning 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 that is greater than de minimis.
 - a. Examples of application of financial disclosure requirements: Kremer v. State Ethics Commission, 503 Pa. 358, 409 A.2d 593 (1983), disclosure requirements unconstitutional as applied to judges; compare, however, In Re: Nomination Petition of James H. Owen for Judge of the Court of Common Pleas 33rd Judicial District, 922 A.2d 973 (Pa. Cmwlth. 2007) affirmed per curiam 592 Pa. 17, 922 A.2d 870 (2007) holding that candidates for

judicial office, including incumbent judges, must file Statements of Financial Interests. (It should be noted that the Lower Court decision is a non precedential one judge opinion); Maunus v. State Ethics Commission, 518 Pa. 592, 544 A.2d 1324 (1988), full-time publicly employed attorneys must comply with disclosure requirements. See also, PJS v. State Ethics Commission, 669 A.2d 1105 (Pa. Cmwlth. Ct. 1997) affirmed 555 PA 149, 723 A.2d 174 (1999) (Third class city solicitor is public employee/official within Ethics Law coverage.)

- b. Filing requirements surpass test of constitutionality when challenged on various basis including right of privacy, vagueness, right of suffrage and relevancy to legitimate state interest. Snider v. Shapp, 1105 A.2d 602 (Pa. Cmwlth. 1979).
 - c. Filing requirements as applied to spousal and minor dependent children information is unconstitutional in that it violates a state constitutional based right of privacy. Denoncourt v. State Ethics Commission, 504 Pa. 191, 470 A.2d 945 (1983).
- 2. Gubernatorial nominees who need Senate confirmation.
 - 3. State, county and local level nominees.
 - 4. Candidates for state, county and local public office.
 - a. Candidates running unopposed in both primary and general elections are not exempt from filing requirements. State Ethics Commission v. Landauer, 496 A.2d 862 (Pa. Cmwlth. 1985). Also see In Re: Nomination Petitions of James H. Owen (supra).

Note: Public officials shall not include members of advisory boards having no authority to expend public funds or to otherwise exercise the power of the state or a political subdivision.

As discussed above, persons who serve as full or part-time solicitors are required to file a Statement of Financial Interests. (This provision substantially negates prior judicial precedent. See Ballou v. State Ethics Commission, 496 Pa. 127, 438 A.2d 186 (1981).

LOCATION OF FILING:

1. Employees of the Commonwealth file **ONLY** with their respective agency, department or bureau personnel office.
2. Employees of county and local political subdivisions file **ONLY** with the governing authority of their political subdivision.
3. Incumbent county and local public officials (who are **NOT** candidates) including authority members file **ONLY** with their political subdivision.
4. Incumbent Commonwealth **Executive Branch public officials and appointed members of board and Commissions (Executive Branch)** file with the State Ethics Commission **AND** with the Governor's Office.
5. Incumbent Commonwealth **Legislative Branch public officials** file with the State Ethics Commission and with the Chief Clerk of the House of Representatives or the Secretary of the Senate, whichever applies.
6. Incumbent Commonwealth public officials of **independent state agencies** file with the State Ethics Commission **AND** with the agency with which they are associated.
7. Other public officials file with the State Ethics Commission and their agency; other public employees file only with their agency.
8. Gubernatorial and state-level nominees file with the State Ethics Commission and with the Senate Caucus Secretary in charge of Executive Nominations.

9. County and local-level nominees file with the governing authority of the political subdivision and, if different, with the official or body vested with the power of confirmation.
10. Candidates for a state-level public office file with the State Ethics Commission **AND** append a copy to the petition to appear on the ballot.
11. Candidates for county or local-level public office file with the governing authority of the political subdivision in which they are candidates **AND** append a copy to the petition to appear on the ballot.
12. Write-in candidates (including winners) not seeking office through the nomination petition process shall file **ONLY** with the State Ethics Commission for state-level office and **ONLY** with the governing authority of the political subdivision for county and local-level office.

Comment: Presenting Statements of Financial Interests to individual members of a governmental body rather than to clerical staff on duty during regular business hours at governmental office does not constitute a valid filing. In Re Olshefski, 692 A.2d 1168, (Pa. Cmwlth. Ct. 1997). See also, In Re: Capra, 693 A.2d 647 (Pa. Cmwlth. 1997); In Re Duncan-Thompson, 625 A.2d 105 (Pa. Cmwlth. 1993).

TIME FILING REQUIRED:

Public employees and public officials, who are not candidates, **NO** later than May 1st of each year a position is held and of the year after leaving a position.

Officials appointed between January 1st and May 1st file **NO** later than May 1st.

Gubernatorial nominees file **NO LATER THAN** 10 days before confirmation.

Candidates file on or before the last day for filing a petition to appear on the ballot for election.

Write-in winners of nominations or elections shall file within 30 days of having been nominated or elected unless such person resigns such nomination or elected office within that period of time. The date of certification of the appropriate election official shall be the time for which the 30 day period is calculated.

Comment: Date of mailing is sufficient to establish timely filing if supported by postmark (applies to local election); In Re Nomination Petition of Robert McMonagle, 793 A.2d 174 (Pa. Cmwlth. 2002). Under the Commission Regulations however, the form must be received at the Commission for state elections and a postmark is not sufficient to establish timely filing.

Note: Only one (1) financial statement is required for each year. If multiple positions are held, the original form must be filed at one of the locations but copies may be filed at the others.

Comment: In addition to any other penalties provided in the law failure by a candidate to file shall be a fatal defect to a petition to appear on the ballot. See Petition of Cioppa, 533 Pa. 564, 626 A.2d 146 (1993), upholding this provision. Such actions to have a petition declared invalid must be initiated within seven days after the last day for filing the petition as set forth in the Election Code. State Ethics Commission v. Cresson, 528 Pa. 339, 597 A.2d 1146 (1991); In Re Bryant, 578 PA 421, 852 A.2d 1192 (2004). Also, no public official shall be allowed to take the oath of office, continue upon his duties or be compensated from public funds unless such statement has been filed, 65 Pa.C.S. §1104(d). Any public official or employee who is required to file a statement and does not do so or files a deficient statement may be subject to a civil penalty of \$25.00 per day for each day said statement is delinquent or deficient up to \$250.00.

Note: Both the Ethics Commission and private objectors have standing to challenge a candidate's nomination petitions for deficiencies on Statements of Financial Interests. In Re Nomination Petition of deYoung, __Pa.__ 90 3 A.2d 1164 (2006).

STATEMENTS OF FINANCIAL INTERESTS; CONTENTS: 65 Pa.C.S. §1105

Filers are required to disclose financial information concerning the prior calendar year. No dollar amounts are required for any of these items except for gifts and certain reportable expense reimbursements. The information pertains only to the filer and includes:

1. The name, address, public position, or the office sought of the person filing.

Comment: The fatal defect rule will not be employed to eliminate a candidate from appearing on the ballot for failure to list service as a Municipal Authority Board Member. See In Re: Nomination Petition of Timothy J. Carroll, 586 Pa. 624, 896 A.2d 566 (2006).

2. The occupation or profession of the filer.
3. Real estate interests in which the Commonwealth or a political subdivision is involved.
4. Creditors owed in excess of \$5,000.00 and the interest rate thereon except those relating to the principal or secondary residence of the filer. The reporting threshold will increase to \$6,500 effective 01/01/98.
5. Sources of income totaling \$1,000.00 or more. Include employers. The reporting threshold will increase to \$1,300 effective 01/01/98.

Note: Income is defined in the Act as 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 or withdrawal therefrom upon assumption of public office or employment or any other form of recompense or any combination thereof. "Income" refers to gross income and includes prize winnings and tax-exempt income. The term 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.

Note: When reporting sources of income it is not sufficient to report "self employed" and the actual provider of the income must be identified. In Re Nomination Petition of Marie deYoung, 900 A.2d 961 (Pa. Cmwlth. 2006).

The decision in deYoung was superceded by the Supreme Court ruling in, In Re: Nomination Petition of Greg Paulmier, __Pa__, 937 A.2d 364 (2007) wherein it was held by the Pennsylvania Supreme Court that a candidate could list either individual sources of income or a business, including a sole proprietorship in compliance with the Ethics Law.

6. Sources and value of gifts in the aggregate of \$250.00 or more and the circumstances thereof. Gifts from family members and certain friends are exempt.

Note: The definition of gift is now found in the Lobbying Disclosure Law, 65 Pa.C.S. §1303-A.

7. The source and amount of payments for transportation, lodging or hospitality expenses exceeding \$650.00 in the in the aggregate made in connection with the public office or employment. Such payments from a governmental body or associations of public officials/employees in which such officials/employees officially serve are exempt.

Note: The Lobbying Disclosure Law of 2006, Act 134-2006, amended the Ethics Law reporting requirement in this category. Prior to 2007, the source of transportation, lodging or hospitality exceeding \$650 was reportable only if such threshold amount was reached in the course of a single event. The new law requires reporting if the threshold is reached in the aggregate during the year.

The definition of hospitality may now be found in the Lobbying Disclosure Law, 65 Pa.C.S. §1303-A.

8. Any office, directorship or employment of any nature whatsoever in any business.

Comment: Failure to list directorships in a for profit entity such as a bank will result in a fatal defect to a candidate's nomination petition. See Pilchensky v. Codaro, 592 Pa. 15, 922 A.2d 877 (2007).

9. Financial interest in any legal entity engaged in business for profit. (5% or more interest in a business entity is considered a financial interest).

Comment: Failure to list presidency of a non profit club will not result in a fatal defect to a candidate's nomination petition. See In Re: Nomination Petition of Timothy J. Carroll, 586 Pa. 624, 896 A.2d 566 (2006).

10. Identity of any financial interest in a business which has been transferred to a member of the filer's immediate family (parent, spouse, child, brother, sister) during the prior calendar year.

Comment: Substantial compliance exception: In, In Re Benninghoff, 578 PA 402, 852 A.2d 1182 (2004), there was no fatal defect when there has been substantial compliance with the filing requirements. Substantial compliance occurs when all financial interests can be discerned from the information that has been disclosed. As a result, the failure of State Representatives to include the House of Representatives as a source of income would not be a fatal defect to their nominating

petitions when they identified their employment as being with the House of Representatives in another section of the form. Compare to this In Re Nominating Petitions of John L. Braxton, (Commonwealth Court Opinion 2005 unreported) reversed by Supreme Court, 874 A.2d 1143 (2005), where it was determined that the defects in a Statement of Financial Interests, including a failure to include mortgages on rental property (listed only as rental property held in my name), did not constitute substantial compliance. The filer also failed to list judicial pensions, the addresses of rental properties and ownership and interest rights in various rental properties. As such, the failures were determined to be fatal defects to the nominating petitions.

Note: The State Ethics Commission shall review the dollar amounts outlined above on a biennial basis and may increase said amounts as deemed reasonable.

STATE ETHICS COMMISSION: 65 Pa.C.S. §1106

Commission Composition

The Ethics Law provides that the State Ethics Commission shall be comprised of seven members who are cognizant of the responsibilities and burdens of public service. Three Commission members are appointed by the Governor, only two of whom may be of the same political party. One member each is 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. All are appointed without confirmation. Commission members are eligible to serve two full three-year terms.

Comment: The section under which four members of the Ethics Commission are appointed by leaders of the General Assembly and three members are appointed by the Governor does not unlawfully discriminate against local offices by not providing for their participation in appointment. See, Pennsylvania State Association of Township Supervisors v. Thornburgh, 490 Pa. 324, 437 A.2d 1 (1981).

Commission Member and Employee Restrictions

Commission members and employees may not hold or campaign for any other public office, hold office in any political party or political committee, actively participate or contribute to any political campaign, influence any decision by a governmental body other than a court of law or as a representative of the Commission, or be employed by the Commonwealth or a political subdivision in any other capacity. Additionally, members of the Commission may not have served as an officer in a political party for one year prior to appointment.

COMMISSION POWERS AND DUTIES: 65 Pa.C.S. §1107

General: The State Ethics Commission shall:

1. Render prospective advisory opinions and advice of counsel to present or former public officials and public employees, their appointing authority or employer regarding such individual's duties and responsibilities under the Ethics Law.
2. Receive and review Financial Interest Statements 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.
3. Prescribe forms for filing.
4. Accept and file information voluntarily supplied that exceeds the requirements of the law.
5. Preserve statements and reports filed with the Commission for a period of 5 years.
6. Make statements available for public inspection and copying.
7. Maintain a master index of statements filed with the Commission.

8. Instruct other state and local agencies in the maintenance of systems which facilitates public access to such statements.
9. Investigate alleged violations of the Ethics Law and issue decisions in relation to said investigations. Said decisions may impose restitution of any financial gain obtained in violation of the Act and may be enforced in the Commonwealth Court of Pennsylvania.
10. Prepare and publish an annual report, prepare and publish special reports, educational materials, and technical studies to further the purposes of the law.
11. Hold hearings, take testimony, issue subpoenas and compel the attendance of witnesses.
12. Prescribe Rules and Regulations to implement the provisions of the Ethics Law. (See 51 PA Code §1.1 et seq. for Regulations effective under Act 170-1978 and 51 PA Code §11.1 et seq. for Regulations effective under Act 9-1989).
13. Hold at least two public hearings each year to seek input from persons and organizations who represent individuals subject to the Ethics Law.

OPINIONS AND ADVICE: 65 Pa.C.S. §1107

The State Ethics Commission is authorized to issue prospective advisory opinions regarding the duties and responsibilities of public officials and public employees subject to the Ethics Law.

1. Any person subject to the act may request an opinion about his own obligations. An opinion may also be requested by the authorized representatives of such person or by the appointing authority or employer of such person.

2. A request for an advisory opinion must be in writing and must include:
 - a. Name, address, and phone number of the person who is the subject of the request and if different, the name, address and phone number of the person initiating the request.
 - b. The name of the governmental body with which the subject serves and the name or title of such person's public office or position.
 - c. If the requestor is the appointing authority, employer or representative of the subject of the request, delineate the nature of such relationship.
 - d. The nature and duties of the subject's office or job. Include an organization chart, bylaws of the organization and a job description.
 - e. List the relevant facts and circumstances surrounding the request.
3. Upon receipt of a request for an advisory opinion:
 - a. The Commission will advise within 14 days whether an advice or opinion can be issued. An advice is issued by the Commission's Chief Counsel where Commission precedent, court cases, the Act or Regulations provide a basis upon which to render such advice. An advice can usually be issued to a person within 21 working days of their request. In some cases, however, the Commission may extend the time. An advice may be appealed to the full Commission.
 - b. In cases where there is no precedent, an opinion will be issued by the Commission members. Upon receipt of the request, the requestor and the subject, if different, will be advised of the date, time, and place of the Commission meeting. Said individuals may attend this meeting and make a presentation.

4. The final advice or opinion will be available to the public as an official Commission ruling. The person requesting the advice or opinion may, however, require that the ruling contain such deletions and changes as shall be necessary to protect the identity of the person involved.
 - a. A person who has requested an opinion and acted in good faith on the opinion that was issued may not be subjected to criminal or civil penalties, provided the material facts are as stated in the request.
 - b. An advice of the Commission is a complete defense in any enforcement proceeding initiated by the Commission and evidence of good faith conduct in any other civil or criminal proceeding if the advice was requested at least 21 working days prior to taking the action described in the request and the material facts are as stated in the request.
 - c. Final opinions of the State Ethics Commission were subject to judicial review. Pennsylvania State Association of Township Supervisors v. State Ethics Commission, 499 A.2d 735 (Pa. Cmwlth. 1985), but administrative remedies must first be exhausted. Mazziotti v. State Ethics Commission, 108 Pa. Commw. 210, 529 A.2d 594 (1987). More recent judicial decisions have, however, cast doubt upon the appealability of Commission opinions. See Suehr v. State Ethics Commission, 651 A.2d 648 (Pa. Cmwlth. 1994) appeal denied 541 Pa. 647, 663 A.2d 697 (1995) holding that opinions do not present actual controversies for review, allocatur den., No. 23 W.D. Allocatur Docket 1995.

Note: Pursuant to amendments to the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §1101 et seq. as amended by Act 135-2006, the State Ethics Commission has been mandated to issue determinations to employees of the Gaming Control Board and employees of independent

contractors of the board who are involved in licensing, enforcement or the development or adoption of regulations or policy, regarding prohibitions on certain employment and appearances before the board for a period of one or two years respectively from the time that they terminate their service with the board or independent contractor.

INVESTIGATIONS: 65 Pa.C.S. §1108

General

1. The State Ethics Commission is authorized to investigate alleged violations of the State Ethics Law either upon the filing of a sworn complaint or through an "own motion" procedure.
2. Complaint forms are available upon request from the Commission. The complaint must state the name, job or office held by the alleged violator and a description of the facts which are alleged to constitute a violation. Complaints must be sworn.
3. An activity that is "Restricted" by Section 1103 (Supra) of the Act, or by the Commission's Regulations may constitute a violation.
4. Procedure: The Commission will initially acknowledge receipt of a complaint.
 - a. 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 will be so notified.
 - b. Upon receipt of a sworn complaint within the Commission's jurisdiction, the Investigative Division initiates a preliminary inquiry. A preliminary inquiry is considered initiated at the time that it is officially docketed. 51 Pa. Code §21.3(a). A preliminary inquiry must be completed within 60 days, and is either terminated or opened as a full investigation.

- c. By statute, the subject of an investigation must be notified prior to the initiation of such investigation of the allegations against said person. 65 Pa.C.S. §1108(c). By regulation, an investigation is considered commenced when the Respondent is provided the requisite notice of the allegations. 51 Pa. Code §21.3(c).
- d. 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, until the investigation is terminated.
- e. If after a preliminary inquiry the matter is terminated, both the Complainant and subject will be notified. If the Commission determines that a complaint is frivolous, the Commission shall so state.
- f. If a full investigation has been conducted, upon the conclusion of the 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, unless an extension is granted.

Comment: Under the prior version of law, no investigation time limits were in effect. Laches would not bar action that took five years to investigate, absent prejudice being shown as a result of delay. Rebottini v. State Ethics Commission, 634 A. 2d 743 (Pa. Cmwlth. 1993). See also Snyder v. State Ethics Commission, 686 A.2d 843 (Pa. Commw. 1996), allocatur denied, 0029 M.D. 1997, 12/23/97, for additional analysis of the investigative time limitations.

- g. Upon completion of the 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.

Note: Averments of fact contained in the findings report which are admitted by Respondent are binding and may not be contradicted during an administrative trial. See Bartholomew v. State Ethics Commission, 795 A.2d 1073 (Pa. Cmwlth. 2002).

- h. 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. Any order requiring restitution may be enforced by either the State Ethics Commission or the Attorney General of the Commonwealth of Pennsylvania.

Note: In order for the Commission to find a violation of Act 9 of 1989, at least four members of the Commission must so find by clear and convincing proof. A violation of Act 170 of 1978 requires substantial evidence.

CONFIDENTIALITY: 65 Pa.C.S. §§1108(a), (k)

1. All Commission information, proceedings and records relating to an investigation are confidential until a final determination is made by the Commission. The final order is a public record. All other file material remains confidential. The identity of a Complainant, however, may be released by the Commission if it is determined that there has been a wrongful use of the Act. (See *infra*).
2. A person may disclose or acknowledge to another matters that are otherwise confidential when the matter pertains to:

- a. Final Orders.
- b. Commission public hearings.
- c. Seeking advice of legal counsel.
- d. Appealing a Commission order.
- e. Communicating with the Commission or its staff in the course of a preliminary inquiry, investigation, hearing or petition for reconsideration by the Commission.
- f. Consulting with a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency.
- g. Testifying under oath before a governmental body or a similar body of the United States of America.
- h. A case in which the person making the disclosure is the Respondent.
- i. Such other exceptions as the Commission, by regulation, may direct.

Pursuant to its authority to direct additional exceptions to the confidentiality requirements, the State Ethics Commission adopted a Resolution on April 13, 2000, directing as Commission policy that confidentiality does not apply and will not be enforced as to:

1. The divulgence of information that third parties have legally obtained about a confidential State Ethics Commission proceeding; and
2. The divulgence by individuals who are interviewees or witnesses as to confidential State Ethics Commission proceedings regarding information that was already in their possession or obtained as a result of participation in such proceedings.

These exceptions were prompted by case law. The Commission is promulgating Regulations as to these exceptions.

Note: In relation to the confidentiality provisions, the Ethics Commission is not required to divulge content of records and files relating to a preliminary inquiry to the subject of that inquiry in relation to a private, civil action that the individual has filed against the alleged complainers. See Garmong v. Stephanini, 802 A.2d 1264 (Pa. Cmwlth. 2002), appeal denied 573 PA 669, 820 A.2d 706.

COMPLAINT PROTECTIONS: 65 Pa.C.S. §§1108(j), 1109(e)

1. No public official or public employee shall discharge any official or employee or change his official rank, grade or compensation, or deny him a promotion, or threaten to do so, for filing a complaint with or providing information to the Commission or testifying in any commission proceeding.
2. Any person who engages in such retaliatory activity is guilty of a misdemeanor and, in addition to any other penalty provided by law, shall be fined not more than \$1,000.00 or imprisoned for not more than one year, or be both fined and imprisoned.

WRONGFUL USE OF ACT: 65 Pa.C.S. §1110 et seq.

1. A Complainant may be civilly liable for a wrongful use of act if:
 - a. The complaint was frivolous (filed in a grossly negligent manner without a basis in law or fact) or without probable cause and made primarily for a purpose other than that of reporting a violation of this Act; or
 - b. He publicly disclosed or caused to be disclosed that a complaint against a person had been filed with the Commission.

2. A person who signs a complaint alleging a violation of this act has probable cause for doing so if he reasonably believes in the existence of the facts upon which the claim is based and either:
 - a. Reasonably believes that under those facts the complaint may be valid under this act; or
 - b. Believes to this effect in reliance upon the advice of counsel, sought in good faith and given after full disclosure of all relevant facts within his knowledge and information.
3. If a public official or public employee has reason to believe a complaint was frivolous or publicly disclosed (a wrongful use of act) such person may request the Commission to investigate said matter.
4. If the Commission determines that there has been a wrongful use of act, the identity of the Complainant may, upon request of the subject, be released.
5. If the Commission determines that there has been no wrongful use of act, the subject may appeal such decision to the commission at which time the subject may show cause why the Complainant violated such provisions.
6. If it has been determined that there has been a wrongful use of act, the subject may recover for the following:
 - a. The harm to his reputation by a defamatory matter alleged as the basis of the proceeding.
 - b. The expenses, including any reasonable attorney fees, that he has reasonably incurred in proceedings before the Commission.
 - c. Any specific pecuniary loss that has resulted from the proceedings.
 - d. Any emotional distress that has been caused by the proceedings.

e. Any punitive damages according to law in appropriate cases.

Note: For an understanding of the Commission's application of the wrongful use of act provisions of the Ethics Law, as well as the restrictions on public disclosure of Commission proceedings, please see the following Commission rulings: Yakin, Order No. 999; Mr. A, Order Nos. 1029, 1055, 1056.

PENALTIES: 65 Pa.C.S. §1109

Violations of section 1103(a), (b), and (c) are felonies and can result in a fine of \$10,000.00 and/or imprisonment for not more than five years. Violations of Section 1103(d) through (j), section 1104 or 1105(a) are misdemeanors and can result in a fine of \$1,000.00 and/or imprisonment of not more than one year. Any person who obtains financial gain from violating any provisions of the act can be ordered to pay three times the financial gain into the State Treasury or the treasury of the political subdivision.

Note: The treble penalty provision of the Ethics Law has been upheld in Commonwealth v. Cherpes, 360 Pa. Super. 246, 520 A.2d 439 (1987); appeal denied 515 Pa. 612, 530 A.2d 866 (1958).

Any person who obtains a financial gain in violation of the Act in addition to the above penalties may be required to make restitution plus interest to the appropriate governmental body.

Any person who violates the confidentiality of a Commission proceeding (investigation) is guilty of a misdemeanor and may be fined not more than \$1,000.00 and/or imprisoned for not more than a year.

Any person who willfully affirms or swears falsely in regard to any material matter before the Commission investigative proceeding is guilty of a felony and shall be fined not more than \$5,000.00 and/or imprisoned for not more than 5 years.

Note: In Commonwealth ex rel Corbett v. Large, 715 A.2d 1226 (Pa. Cmwlth. Ct. 1998) appeal denied 554 Pa. 643, 722 A.2d 685 (1999). The Commonwealth Court of Pennsylvania

determined that a conviction for violations of Section 9(e) (False swearing in regard to any material matter before a State Ethics Commission proceeding) was an infamous crime within the parameters of Article 2, Section 7 of the Pennsylvania Constitution which would prohibit an individual convicted of perjury or other infamous crime from holding any office of trust or profit in the Commonwealth of Pennsylvania. As such, a township supervisor so convicted was removed from office.

In addition to any other civil or criminal penalty provided for in the Act, failure to timely file a Statement of Financial Interest or filing of a deficient statement may result in a fine of \$25.00 per diem up to \$250.00

Note: A public official of a political subdivision who acts in good faith reliance on a written, non-confidential opinion of the political subdivision's solicitor shall not be subject to the criminal or treble damage penalties of the Law. A conviction for violations of the Ethics Law may be sufficient to institute quo warranto for ouster of public official as a conviction of infamous crime, Com ex rel Corbett v. Desiderio, 698 A.2d 134 (Pa. Cmwlth. Ct. 1997).

SUPPLEMENTAL PROVISIONS:

Any governmental body may adopt requirements to supplement this Act provided that no such requirement shall in any way be less restrictive than the Act.

REGULATIONS:

The Regulations of the Commission may be found at 51 Pa. Code §11.1.

CONFLICT OF LAW:

If the provisions of this Act conflict with any other statute, ordinance or regulation or rule, the provisions of this Act shall control.

PUBLIC INSPECTION OF FINANCIAL INTEREST STATEMENTS:

Financial Interest Statements on file with the State Ethics Commission will be available for public inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding legal holidays. There is a charge of .25 per page.

All statements must be made available for public inspection.

COMMISSION DECISIONS:

The complete text of Commission decisions (Opinions, Advices of Counsel, Orders) are forwarded to a law library and public library in each county, as well as to the state library.

GAMING ACT LIST:

Pursuant to recent amendments to the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §1101 et seq. as amended by Act 135-2006, the Pennsylvania State Ethics Commission has been mandated to create and maintain a list of all individuals identified as public officials or executive level public employees as those terms are defined in the Gaming Act. This list will include employees of counties or municipalities with discretionary powers which may affect or influence the outcome of the county or municipality's actions or decision or who was otherwise involved in the development of law, regulation or policy relating to a licensed gaming entity. Additionally, this list will include public officials serving in any county or municipality that directly receives a distribution of revenue under the Gaming Act.

STATE ETHICS COMMISSION WEB PAGE:

The State Ethics Commission has a comprehensive web page that provides information through the internet on various areas of interest. The Commission's web page contains the Ethics Law, the Lobbying Disclosure Law, the Commission's Regulations, Statements of Financial Interests on file with the Commission, as well as a searchable e-library of all Commission rulings.

chersberg/John Contino/LAW
jaimiller/LAW

**STATEMENT OF FINANCIAL
INTERESTS**



COMMONWEALTH OF PENNSYLVANIA
STATE ETHICS COMMISSION

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



STATE ETHICS COMMISSION STATEMENT OF FINANCIAL INTERESTS

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

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

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

THIS FORM MUST BE COMPLETED AND FILED BY:

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

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

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

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

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

STATEMENT OF FINANCIAL INTERESTS INSTRUCTIONS

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

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

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

STATEMENT OF FINANCIAL INTERESTS

PLEASE PRINT NEATLY

01	LAST NAME	FIRST NAME	MI	SUFFIX

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

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

A	<input type="checkbox"/> Candidate (including write-in)	C	<input type="checkbox"/> Public Official (Current)	D	<input type="checkbox"/> Public Employee (Current)	<input type="checkbox"/> Check this block if you are amending an original filing
B	<input type="checkbox"/> Nominee	C	<input type="checkbox"/> Public Official (Former)	D	<input type="checkbox"/> Public Employee (Former)	

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

A	<input type="checkbox"/> seeking <input type="checkbox"/> hold <input type="checkbox"/> held
B	<input type="checkbox"/> seeking <input type="checkbox"/> hold <input type="checkbox"/> held

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

A	
B	

06 OCCUPATION OR PROFESSION (This may be the same as block 4)

07 YEAR The information in blocks 8 through 15 below represents financial interests for the PRIOR calendar year indicated:

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

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

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

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

Name	Address	(OFFICIAL USE ONLY)

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

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

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

Source (Name and Address)	Value

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

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

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

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

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

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

Signature _____ Current Date _____

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

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

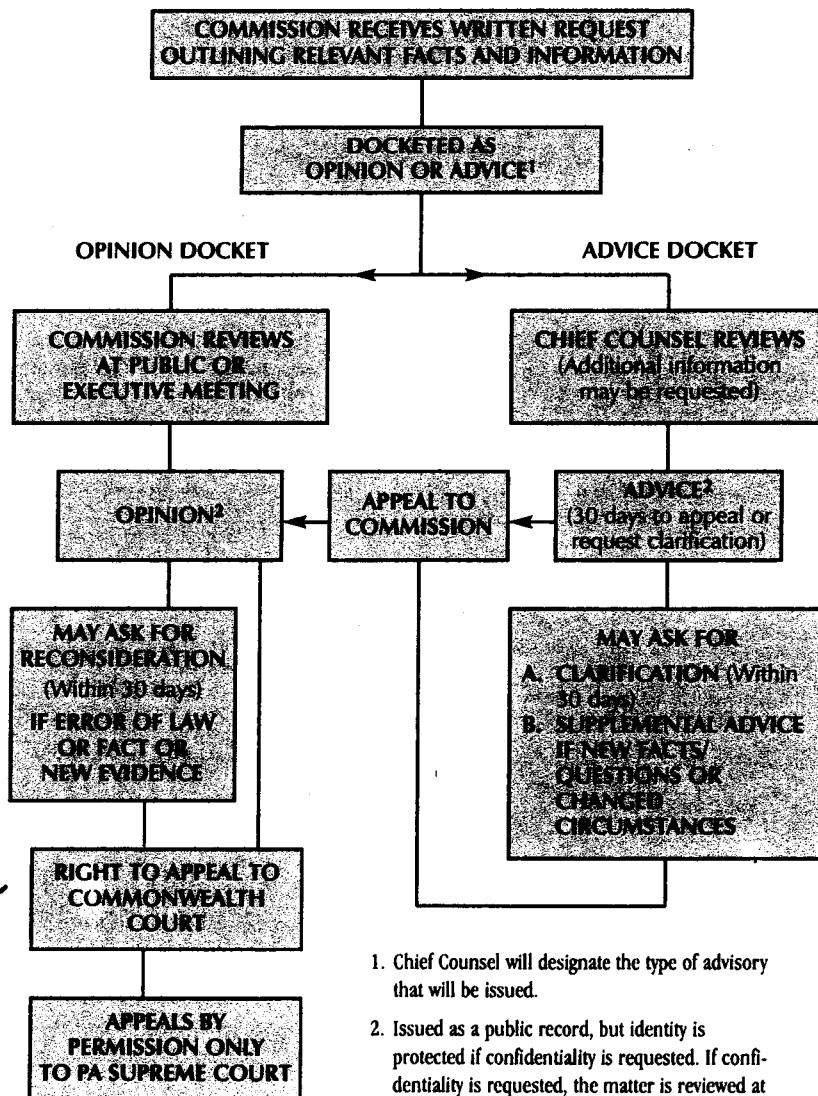
WHO MUST FILE	ORIGINAL WHITE COPY	YELLOW COPY	WHEN TO FILE
A. STATUS BLOCK A - CANDIDATES Statewide State Senate State House Supreme Court Superior Court Common Pleas Court Traffic Court Municipal Court Commonwealth Court	State Ethics Commission P.O. Box 11470 Room 309 Finance Building Harrisburg, PA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

**OPINION/ADVICE
FLOW CHART**

Opinions and Advices

The following chart depicts the Opinion/Advice process:

Opinion/Advice Flowchart

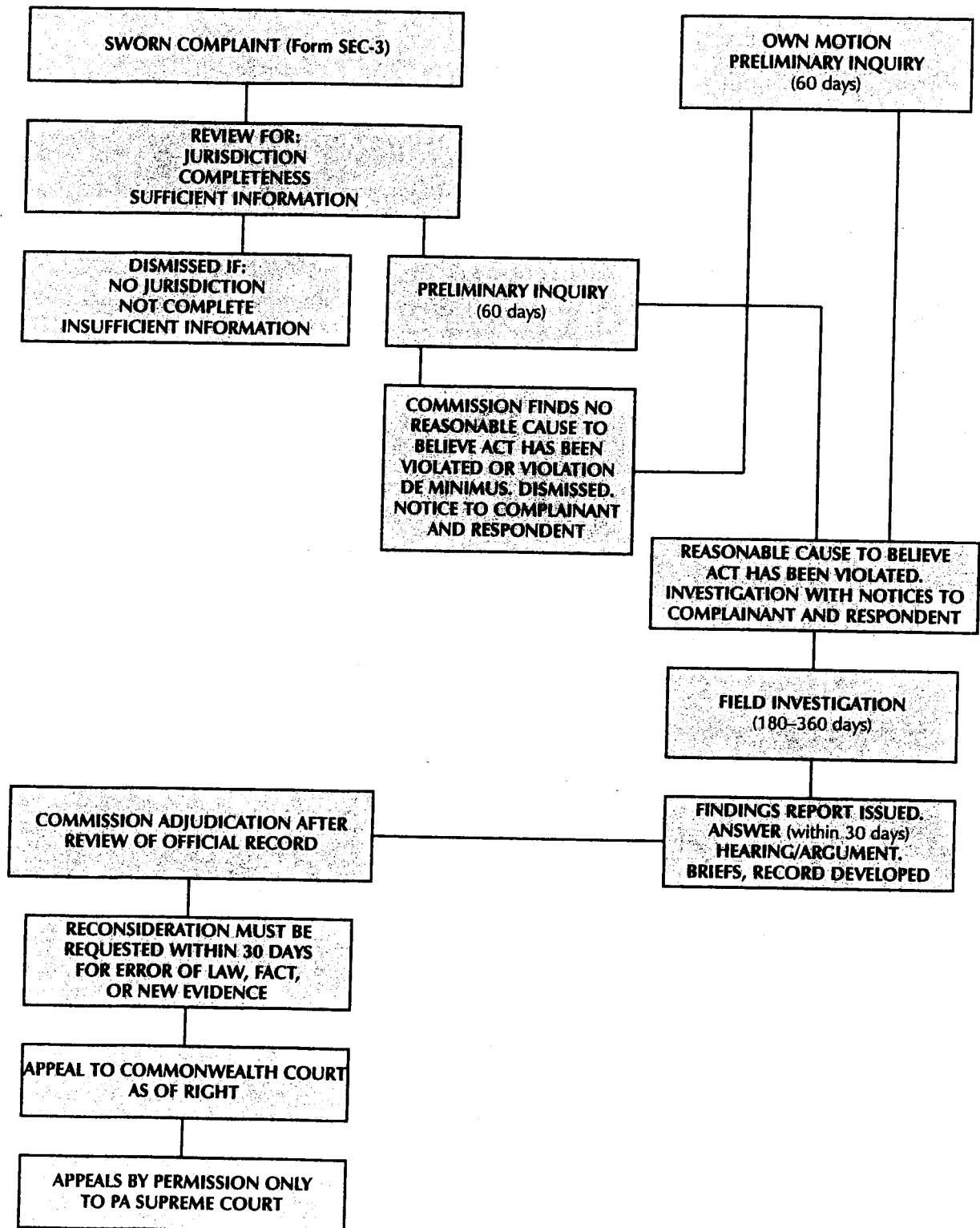


1. Chief Counsel will designate the type of advisory that will be issued.
2. Issued as a public record, but identity is protected if confidentiality is requested. If confidentiality is requested, the matter is reviewed at an executive rather than public meeting.

**INVESTIGATION
FLOW CHART**

The following chart depicts the investigation process.

Investigation Flowchart



SAMPLE CONFLICT MEMO

**SAMPLE WRITTEN MEMORANDUM FOR
DISCLOSING A CONFLICT OF INTEREST
IN ACCORDANCE WITH SECTION 1103(j) OF THE
PUBLIC OFFICIAL AND EMPLOYEE ETHICS ACT,
65 PA.C.S. § 1103(j) (FILE WITH PERSON RESPONSIBLE
FOR RECORDING THE MINUTES OF THE MEETING)**

Pursuant to Section 1103(j) of the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1103(j), this written memorandum will serve to disclose that I, (insert name) , in my capacity as a (insert public position held) of (insert name of governmental body served) , am abstaining from agenda item (insert number, letter or other identifier of agenda item) for the (regular/special) meeting of (insert date) , pertaining to (insert description of agenda item) , due to a conflict of interest under the Ethics Act. The nature of my interest is as follows: (insert a description of the nature of the interest, for example, "my son is applying for the job," or "my employer is bidding on this project") .


Date: (insert date of memorandum)

(signature)

POWERPOINT

Slide 1

STATE ETHICS COMMISSION



**PUBLIC OFFICIAL AND EMPLOYEE
ETHICS ACT**

Presented by:
Brian D. Jachn, Esquire
Assistant Counsel

Slide 2

Introduction

- Public office is a public trust
- To strengthen the faith and confidence of the people with their public officials
- Personal financial interests must not conflict with public duty
- Emphasize guidance

Slide 3

Overview

- Administer and enforce personal financial disclosure requirements
- Issue advices and opinions
- Investigate alleged violations of the Ethics Act

Slide 4

Public Official

- Elected by the public
- Appointed by a governmental body
- Appointed official
- Any political subdivision

Slide 5

Exceptions

- Members of advisory boards
- No authority to expend
- No authority to exercise power

Slide 6

Public Employee

- Employed by the Commonwealth or a political subdivision
- 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"

Slide 7

Conflict of Interest

- Use of the authority of his/her office
- Confidential information
- For the private pecuniary benefit of:
 - Himself / Herself
 - Member of his/her immediate family, or
 - Business with which he/ she or a member of his/her immediate family is associated

Slide 8

Exceptions

- Action having a *de minimis* economic impact
- Affects to the same degree a class consisting of the general public
- Subclass consisting of an industry, occupation or other group

Slide 9

Authority of Office or Employment

- Actual power
- Provided by law
- Necessary to the performance of duty or responsibility

Slide 10

Immediate Family
"A parent, spouse, child, brother or sister."

Slide 11

Business With Which Associated

- *Any business*
- *Public official*
- *Immediate family member*
- *Director, officer, owner, employee or financial interest*

Slide 12

Restricted Activities:

Slide 13

• No public official or public employee shall engage in conduct that constitutes a conflict of interest.

Slide 14

No person shall offer or give:

- Anything of monetary value
- A gift, loan, political contribution, reward or promise of future employment
- Donor's understanding
- Vote, official action or judgment of the public official
- Influenced thereby

Slide 15

No public official, public employee shall solicit or accept:

- Anything of monetary value
- Gift, loan, political contribution, reward or promise of employment
- Any understanding of that public official
- Vote, official action, judgment
- Influenced thereby

Slide 16

- No public official or public employee shall accept an honorarium.

Slide 17

- REVOLVING DOOR**
- No **FORMER** public official/employee shall:
 - Represent
 - Promised or actual compensation
 - Former governmental body
 - One year (Executive Level two year)

Slide 18

- DEFINITIONS
(Revolving Door)**
- Represent:
 - Act on behalf
 - Personal appearances
 - Negotiations
 - Lobbying
 - Bids/contract proposals
 - Contain name/signature

Slide 19

**CONFLICT OF INTEREST
ISSUES:**

Slide 20

- Excess Expense
- Frequent Point Program
- Discount Program Offer
- Vendor Contest
- Surplus Property
- Gifts/Travel Provided by Vendor Contractor
- Solicitations by Superiors/Regulators
- Private business enterprise
- Charter schools
- Use of Personnel, Equipment, Facilities
- Nepotism
- Grant Fund Manipulation
- Perjury

Slide 21

- Red Flags**
- Action with financial implication
 - Connection to public employment
 - Relationship connection ... family/friend
 - Is public disclosure a problem

Slide 22

Key Methods of Protecting Yourself

- Ethics training
 - Participate if available
- Know something about your law
 - Obtain basic information
- Visit web site
- Review decisions – keyword research
- Ask questions
 - Informal
 - Formal

Slide 23

Advisory Opinions

- Formal – Informal
- Prospective
- Non adversarial
- Basic information
- Confidential – Public
- Protective status

Slide 24

Statements of Financial Interest:

Slide 25

Who is required to file:

- All local "public officials," elected or appointed, and "public employees employed by a political subdivision
- County and local level nominees
- Candidates for county and local public office

Slide 26

Where to File

- Officials/Employees
 - local filing
- Candidates
 - local/Election Board
- Write-In Winners
 - local filing

Slide 27

Time table for filing required:

- Public employees and public officials, who are not candidates must file **NO later than May 1st of each year a position is held and of the year after leaving a position**
- Officials appointed between January 1st and May 1st must file **NO later than May 1st**
- Candidates file on or before the last day for filing a petition to appear on the ballot for election
- Write-In Winners - 30 days after acceptance

Slide 28

Statement of Financial Interests
Administrative Responsibilities

Slide 29

Receive forms from State Ethics Commission

Pointer: Make sure you have sufficient forms for all who must file.

Distribute forms to ALL officials and employees who are required to file.

Pointer: Document distribution with dated memo and identification of all recipients.

Advise of filing deadlines.

Slide 30

Track receipt of forms.

Pointer: Time stamp all forms.
Keep deadlines in mind.
Send Follow-up written notices.

Check for completeness (accuracy is filer's responsibility).

Pointer: Make sure form is signed and dated.

Make sure all boxes are filled in or marked none.

Questions regarding who must file, deadlines, etc.

Pointer: Call State Ethics Commission at 1-800-932-0936.

Slide 31

Failure to file:
Advise Board Chair/Vice Chair.
Advise Solicitor.
Attempt to have non-filer call State Ethics Commission.
Report to State Ethics Commission.

Archiving:
Must be available for public access.
May charge actual cost.
May not require explanation.

Notes: Do not keep in personnel file.
Do not keep off site.
Must keep for five (5) years.

Vicarious responsibility: No – you are not responsible for another person's violation of the Ethics Act.

Slide 32

Statement of Financial Interests
Issues of Interest

- Back dating of Statements of Financial Interests.
- Allowing Municipal Administrator (Secretary Manager) to fill out and file governing board forms.
- Public access to forms.
- Prohibition on receipt of compensation from public funds and service in office.

Slide 33

Investigations:

Slide 34

Confidentiality

- Proceedings and records relating to an investigation are confidential.
- The final order is public record.
- Identity of a complainant.

Slide 35

Wrongful Use of Act

- Frivolous
- Without probable cause
- Primarily another purpose
- Public disclosure

Slide 36

Penalties

- Felony - \$10,000 – 5 years
- Misdemeanor - \$1,000 – 1 year
- Restitution
- Treble damages
- Statements of Financial Interests deficiency \$25/\$250

Slide 37

Questions and Answers:

Slide 38

Where to Get More Information:

- Visit the Commission's website at:
www.ethics.state.pa.us
- Contact the Commission at:
1-800-932-0936
- Write to the Commission at:
309 Finance Building, PO Box 11470
Harrisburg, PA 17108-1470

Slide 39

Thank You
