



THE ETHICS REVIEW

A JOINT COMMISSION ON PUBLIC ETHICS NEWSLETTER

A FOODIE PAUSES TO BEG

If you have been reading the last few issues of The Ethics Review, you may have noticed that the author has a bit of an obsession with food. Well, I have put down the Big Sandwich and the Thin Mints are back in the freezer as I attempt to explain what drives me to these unhealthy comforts. The answer, my friends, is not blowing in the wind. It's the post-employment restrictions.

It is among the most unpleasant of JCOPE tasks to explain to a former State employee that the dream job she just started in the private sector violates the post-employment restrictions. We are not above begging you to call JCOPE as soon as you are thinking about leaving State service so we can discuss how the post-employment restrictions apply to your particular situation and avoid the disagreeable duty of informing you that you cannot keep your new job.

Public Officers Law §73(8)(a), commonly referred to as the "revolving door" restrictions, imposes certain limitations on what former State officials or employees can do with the knowledge, experience, and contacts gained from their public service after they leave a State agency. The restrictions are designed "to preclude the possibility that a former state employee may leverage his or her knowledge, experience, and contacts gained in State service to his or her advantage or that of a client, thereby securing unwarranted privileges, consideration or action." (*Advisory Opinion No. 89-05.*) The statute contains two different types of restrictions: a "two-year bar" and a "lifetime bar."

Two-Year Bar

For two years following your separation from State service, Public Officers Law § 73(8)(a)(i) prohibits you from appearing or practicing before your former agencies OR providing services for compensation in relation to any matter before your former agency (the "backroom services" clause).

Keep in mind an "appearance" before your former agency does not require your physical presence before your former agency.

Merely attaching your name to a document that is submitted to your former agency could be a violation of the appearance or practice clause. Examples of appearing and practicing before your former agency that are prohibited by the two-year bar include: negotiating a contract; submitting a grant proposal or application; representing a client in an audit; engaging in settlement discussions with a former agency; and calling the agency to seek guidance on how it would be likely to apply a regulation in the future, if the agency would not generally provide such information. A broader two-year prohibition applies to officers and employees of the Executive Chamber.

Backroom services usually involve assisting another person with some matter before your former agency – even if the agency does not know that you are involved – and can be something as simple as advising someone to call a particular person at the agency. Should your backroom work appear before your former agency, you would be barred from receiving compensation. However, this prohibition does not apply when you provide such services free-of-charge.

Another thing to be aware of is that depending on your responsibilities as a State employee, you may have more than one "former agency" for purposes of the two-year bar.

Lifetime Bar

As the name suggests, the lifetime bar can be considerably more onerous. Public Officers Law §73(8)(a)(ii) prohibits you from practicing or providing services in relation to any matter in which you were directly concerned and in which you personally participated while in State service. As with the two-year bar, the application of the lifetime bar is heavily dependent upon the specific details of your particular circumstances. When one considers the severe consequences for violating the post-employment restrictions, including a fine up to \$40,000 and the value of any compensation received, it would be reckless not to seek JCOPE's guidance when leaving State service. So please, I beg, ask us first.

Questions about Ethics rules?

Contact JCOPE at jcope@jcope.ny.gov or 518-408-3976

Dear JCOPE

I must travel to NYC for my State job and the hotel accepts the State rate for the room during the work week. I would like to stay in the City to see the Radio City Music Hall Spectacular that weekend. Can I continue to receive the State rate over the weekend, when I extend my work trip and stay in the City for personal reasons?

Answer: Yes. In such situations, according to **Advisory Opinion 05-01**, a State employee must affirmatively represent to hotel management that he or she will be on personal business for part of the trip. If, knowing that an employee is traveling on personal business, a hotel chooses to extend a discount as part of its standard practice, the State's ethics laws are not offended. Also, be sure to consult your agency's policies for any other travel rules that may be in place.

ENFORCEMENT ACTIONS

Outside Activities & Financial Disclosure: A former employee at the Metropolitan Transportation Authority ("MTA") admitted to failing to get approval for his outside business activities, and failing to disclose those activities and his outside income in his annual financial disclosure statements. He also admitted that he used state resources to engage in his outside business activities. The employee resigned after the investigation. The State employee agreed to pay a \$4,000 fine and admitted he violated the Public Officers Law §§ 73-a, which requires certain State employees to accurately disclose their outside activities and income and 74(3)(d), which prohibits State employees from using or attempting to use their official position to secure unwarranted privileges or exemptions for themselves or others.

Code of Conduct: An employee of the MTA admitted to violating ethics laws by participating in the contracting process and negotiating with multiple vendor companies where his girlfriend was either employed or seeking employment. The State employee agreed to pay a \$5,000 fine and admitted he violated Public Officers Law §74(3)(d), which prohibits State employees from using or attempting to use their official position to secure unwarranted privileges or exemptions for themselves or others.

Gifts & Nepotism: A former employee of the MTA admitted to accepting gifts of rounds of golf and meals from vendors he dealt with as part of his official duties. He also admitted to contacting employees of Metro-North Railroad in an attempt to influence employment decisions involving his son, who was a Metro-North Railroad trainee at the time. The State employee was terminated following an investigation by the MTA Inspector General. The State employee agreed to pay a \$2,500 fine and admitted to multiple violations of the Public Officers Law: Public Officers Law § 73(5)(a), which prohibits a State employee from soliciting, accepting, or receiving a gift having more than nominal value in a situation where it could reasonably be inferred that the gift was intended to influence or could be expected to influence him in performing his official duties or as a reward for an official action; and Public Officers Law §73(14), which prohibits State officials from participating in any decision to hire, promote, discipline or discharge a relative, including domestic partners, for any compensated position.

QUOTES OF THE QUARTER

"In civilized life, law floats in a sea of ethics."

Hon. Earl Warren

"To have a right to do a thing is not at all the same as to be right in doing it."

G.K. Chesterton