



# THE ETHICS REVIEW

## A JOINT COMMISSION ON PUBLIC ETHICS NEWSLETTER

SPRING/SUMMER 2017

### Will I stay or will I go?

I know what you are thinking; I will NEVER leave State service. Believe it or not, some State employees choose to take the leap into the cold, dark world of the private sector. Often a job offer may come from a private entity with a matter before a State officer or employee.

Consider this example: You are a State employee that is part of a team negotiating a contract with Acme Widget. Two weeks into negotiations, Acme employee, Mr. X, asks if you would consider leaving the State to work for him.

Before you give notice and pack up your desk, however, it is critical that you review the guidelines on when and if you may negotiate for a private sector job with an entity or individual that has a specific matter pending before you.

You must promptly notify your supervisor and agency Ethics Officer if you wish to either discuss an *unsolicited* job offer (i.e., the prospective employer contacted you first) from a private sector entity or individual that has a specific matter pending before you; or *solicit* a job with such an entity or individual, even if you do not intend to pursue it (Commission Advisory Opinion No. 06-01).

If you intend to pursue the job opportunity, you may do so only after waiting 30 days from:

1. The date the matter before you closed; or
2. The date on which you notify your supervisor and Ethics Officer of your intent to engage in employment discussions with the person or entity with the matter pending before you, and you recuse yourself from the matter and any further contact with the entity or individual.

This means you cannot engage in any communication regarding the potential job during that 30-day period. You cannot ask the employer



about salary, or even the all import question -- is there parking?

### Different scenario:

What if you receive a job offer from a local government or State entity with a matter pending before you? This could arise, for example, in the context of an audit.

Opinion 06-01 does not expressly address job offers from governmental entities with matters before you. However, it is important to consider Public Officers Law (POL) §74, the State Code of Ethics, in this scenario. If you find yourself in these circumstances, contact JCOPE or your Ethics Officer to discuss how the Code of Ethics may apply to your situation.

### Other Considerations:

If a State employee fails to comply with the rules set forth in Opinion 06-01, the Commission may also find that the employee violated the gift restrictions found in Public Officers Law §73(5), since the promise of future employment could be considered a gift.

Finally, before deciding to accept an offer, please do not forget to contact JCOPE or your Ethics Officer to discuss the post-employment restrictions. JCOPE staff is always available to advise you before you take any actions.

## Dear JCOPE

I work side-by-side with contractors on a daily basis. One of the contractors and I grab coffee nearly every morning and he buys for both of us. I am aware that vendors can give State employees gifts with a value of less than \$15. Is it ok that he does this every day?

### Answer:

You are correct that an interested source (generally, an entity or individual that does business with the State), may give a State employee a gift of less than "nominal value," generally \$15 or less (POL §73(5)).

However, you noted that this vendor buys you a cup of coffee almost every day. Be aware that the gift regulations provide that POL §74 must still be considered when a State employee receives multiple items of less than nominal value. Thus, the public may perceive that daily gifts, even those of less than nominal value, are intended, when taken in the aggregate, to influence your official action. From now on, I would advise you to pay for your own cup of java.

### Questions about Ethics rules?

Contact JCOPE at [jcope@jcope.ny.gov](mailto:jcope@jcope.ny.gov)

or 518-408-3976

## ENFORCEMENT ACTIONS

### Code of Conduct:

The former Chairperson of the New York State Athletic Commission admitted to violating the ethics law by misusing his official position to obtain benefits for others that included, but were not limited to, improperly obtaining official credentials for his son and his son's friend to get into a boxing match for free. The State employee agreed to a \$2,000 fine and admitted violating 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

The former regional director of the New York State Department of Transportation ("DOT") admitted to violating the ethics law for accepting improper gifts from a vendor over several years. He accepted improper gifts of annual hunting trip packages, which included airfare, lodging, and meals, from a family friend who was also an employee of a DOT vendor with which he did business in his official capacity. The State employee agreed to pay a

\$5,000 fine and admitted he violated 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.

### Code of Conduct:

A supervisor at the Metropolitan Transit Authority (MTA) admitted to violating the ethics law when he asked a subordinate if he knew of any available jobs for his son. With the supervisor's knowledge, the subordinate contacted a MTA vendor over whom he had oversight to inquire about work for his son, who the vendor eventually hired. The State employee agreed to pay a \$3,000 fine and admitted to a violation of 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.