

**STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY**

Advisory Opinion 09-02 Pursuant to Public Officers Law §§73 and 74, DOT paid student interns, employed in civil service titles that require them to either pay a fee to PEF or be members of PEF, and who otherwise meet the criteria of “student” under Advisory Opinion No. 91-01, are not subject to the revolving door provisions of Public Officers Law §73(8)(a).

INTRODUCTION

The following advisory opinion is issued in response to a request submitted on behalf of the New York State Department of Transportation (“DOT”) []. DOT inquires whether its Student Assistants, Engineering Interns and Transportation Construction Inspectors (referred to collectively as “Interns”), who either pay a fee to the Public Employee Federation (“PEF”) but are not members or become PEF members by virtue of their employment and, as a result, receive union benefits, qualify as “students” under Advisory Opinion No. 91-01 who are exempt from the post-employment restrictions of Public Officers Law §73(8)(a).

Pursuant to the authority vested in it by Executive Law §94(15), the New York State Commission on Public Integrity (“Commission”) concludes that Interns who pay a fee to PEF but are not members as well as those who are PEF members, and who otherwise meet the criteria of “student” set forth in Advisory Opinion No. 91-01, are not subject to the revolving door provisions of Public Officers Law §73(8)(a), because they receive PEF benefits, not State employee benefits.

DISCUSSION

In Advisory Opinion No. 91-01, the Commission concluded that the post-employment restrictions do not apply to student interns working in State agencies who meet the following four criteria:

1. The student must be enrolled as a full-time student in an accredited course of study or on a seasonal recess;
2. The student may not work half-time or more per week during the school year;
3. The student who works full-time during the summer or other similar semester breaks shall be limited to 120 days (four months) of full-time service for the State during the summer vacation period; and
4. The student may not receive any State employee benefits, such as medical, retirement, or vacation benefits, nor any right to re-employment.

The Commission concluded that “students who qualify for exclusion from the definition of ‘employee’ . . . are primarily ‘students’ rather than ‘employees’ for purposes of §73 of the Public Officers Law.”

In reaching its conclusion, the Commission observed that students do not typically form the same type of long-term or even short-term contacts that employees employed on a regular basis develop. The Commission noted that students are generally employed either for the summer or part-time during the school year to financially support their education and to obtain practical experience in an area under study. Students seldom have any rights to re-employment by the State or gain any permanency in their positions. They are generally ineligible for most employee benefits such as health insurance, vacation or sick leave, or retirement benefits. Thus, the Commission reasoned, “[i]t is less likely, in the case of students, that the public might reasonably question whether these individuals carried out their public responsibilities solely to acquire information and contacts that would increase their opportunities for private gains once they terminated their State service” (see, Advisory Opinion No. 91-01).

DOT previously requested an informal opinion clarifying the term “student” as defined by Advisory Opinion No. 91-01. Of relevance here¹, DOT asked whether Interns, who are union members have received a “State employee benefit” under criterion four and thus, are no longer “students” for purposes of the student exception to the revolving door provisions of the Public Officers Law. In an informal opinion dated February 26, 2008, the Commission stated that becoming a union member could cause an Intern to be subject to the post-employment restrictions if such membership conferred any employee benefit on the student that is offered by New York State through the union, such as a vision plan or health insurance. The informal opinion also stated, however, that if union membership only conferred benefits that were not part of a collective bargaining agreement and, thus, not State employee benefits, i.e. educational opportunities or discounts to different venues, union membership would be akin to joining a professional organization that offers benefits to its members and would not nullify an Intern's “student” status.

DOT now inquires regarding criterion four of Advisory Opinion No. 91-01 and whether the “student” status under the Public Officers Law of an Intern is nullified if the Intern is employed in the Professional, Scientific and Technical Services Unit (“PS&T Unit”), and by virtue of his or her employment automatically receives certain PEF benefits. According to DOT, all paid Interns employed in the PS&T Unit either pay a fee to PEF but are not members, or pay dues to PEF and are members.

A fee payor receives union representation during the collective bargaining process, but no other union benefits.² According to PEF, its representation does not affect the fee paying Interns' eligibility for employment benefits, which is generally determined based on the number of hours per week an employee works. Additionally, PEF states that there is no provision in the collective bargaining agreement that only concerns Interns. Accordingly, union representation during the collective bargaining process is not a State employee benefit. Nor does it confer any right to re-employment. Therefore, fee paying Interns are “students” for purposes of the revolving door provisions.

A dues paying member of PEF automatically receives representation during the collective bargaining agreement, and is also entitled to an Assault Trauma and Captivity Insurance benefit, a \$15,000 Accidental Death and Dismemberment benefit and a legal defense benefit. According to PEF, these benefits are not State employee benefits, but are provided by PEF only to its

members and are paid for by union dues. Since these are not State employee benefits, they do not nullify the “student” status of Interns who are union members for purposes of the revolving door provisions.

The Commission concludes that Interns employed in PS&T titles who either pay a fee to PEF or are PEF members are not subject to the revolving door provisions of Public Officers Law §73(8)(a) provided they otherwise meet the criteria of “student” under Advisory Opinion No. 91-01.

All concur:

John D. Feerick,
Chair
Daniel R. Alonso
Virginia M. Apuzzo
John M. Brickman
Andrew G. Celli, Jr.
Richard D. Emery
Daniel J. French
Robert J. Giuffra, Jr.
David L. Gruenberg
Hon. James P. King
Hon. Howard A. Levine
Loretta E. Lynch
John T. Mitchell,
Members

Date: February 3, 2009

footnotes:

¹DOT also sought clarification on the term “student” as it applied to other scenarios that involve its student employees. Following issuance of the Commission's informal opinion, DOT seeks further clarification only with respect to union benefits and representation. Therefore, only this issue is addressed here.

²DOT also inquired whether union representation during any disciplinary proceeding would create a benefit that nullifies the “student” status for purposes of the revolving door provision. However, Counsel's Office for both PEF and the Governor's Office of Employee Relations stated that all students in these DOT positions are temporary employees. As temporary employees, they are at-will employees who are not entitled to union representation during disciplinary process.