

New York State Ethics Commission

Advisory Opinion No. 91-10: Application of the financial disclosure requirements of Public Officers Law §73-a to State employees in the "Research Scientist" title series.

Introduction

The following advisory opinion has been prepared in response to a request for exemption, submitted on behalf of State employees serving in the title series of "Research Scientist,"⁽¹⁾ from the application of the financial disclosure filing requirements of Public Officers Law §73-a.⁽²⁾ Specifically, the employee organizations and State agencies assert that those employees serving as Research Scientists should be exempted from the financial disclosure requirement because their job duties do not fall within those of Executive Law §94(9)(k), which would preclude the granting of an exemption.

Pursuant to the authority vested in the State Ethics Commission ("Commission") by Executive Law §94(15), the Commission hereby renders its opinion that State employees serving as Research Scientists exercise responsibilities with respect to applying for grants and loans which are similar to academics employed by the State and City University systems. In its Advisory Opinion No. 90-15, the Commission imposed a short-form filing requirement for State University of New York ("SUNY") and City University of New York ("CUNY") academic employees. Likewise, the Commission will require Research Scientists to file with the Commission the abbreviated, two-phase financial disclosure forms requiring the same information to be reported as is required from SUNY and CUNY academic employees.

Applicable Law

Public Officers Law §73-a(2) provides, in relevant part, that:

(a) Every . . . state officer or employee . . . shall file an annual statement of financial disclosure containing the information and in the form set forth in subdivision three hereof. Such statement shall be filed on or before the fifteenth day of May with the respect to the preceding calendar year,

For purposes of financial disclosure, Research Scientists are State officers or employees as defined by §73-a(1)(c).

Executive Law §94(9)(k) provides that persons who have not been designated policymakers by their appointing authority but who otherwise are required to file a financial disclosure statement (because they earn over the filing rate) may request an exemption from filing, provided that the public interest does not require disclosure and the applicant's duties do not involve certain

responsibilities.⁽³⁾ Under §94(9)(k), the pertinent consideration with Research Scientists is whether their potential job responsibility to negotiate, authorize or approve, "the obtaining of grants of money or loans . . ." would require them to file a financial disclosure statement under Executive Law §94(9)(k).

Discussion

Several State agencies⁽⁴⁾ and the Public Employees Federation ("PEF"), an employee organization, submitted requests for exemption from the filing requirement of Public Officers Law §73-a on behalf of Research Scientists.

The Civil Service job specification⁽⁵⁾ provides that persons serving as Research Scientists "perform basic research involving the formulation, conduct, analysis, interpretation, and reporting of scientific investigations of phenomena or problems with applications in subject matter fields in the medical, biological and behavioral sciences." The specification states that such work typically results in "publishable contributions" to the scientific field under study. Factors considered in the review for classification in this title series are: educational achievements, professional research experience, honors, fellowships and awards received, publications and reports authored, professional recognition, grants received and supervisory experience. The Commission notes that, although each Research Scientist is eligible to apply for outside funding to support his or her work, it is not necessary that each Research Scientist actually do so, or do so every year.

Agency and employee organization representatives noted that Research Scientists often hold dual appointments with their respective agencies and the SUNY and CUNY systems. A Research Scientist often teaches classes and conducts laboratory research at SUNY/CUNY facilities and may be asked to serve on national and State commissions, task forces, scientific advisory boards and other entities involved in scientific and social policy issues. Often, Research Scientists compete for grants from the same government and private sponsors as SUNY/CUNY faculty. The Commission observed that the process by which Research Scientists apply for grants is similar to the process for SUNY/CUNY academic employees. The Research Scientists' job duties do not require that they personally become involved in the negotiation, authorization or approval of the obtaining of grants of money or loans. Instead, Research Scientists utilize not-for-profit corporations which serve their respective employing agencies to process grant applications and control funds received.⁽⁶⁾ Similarly, SUNY/CUNY academics use their Research Foundations to process grant applications. Other State employees who apply for grants as part of their job duties do not have "foundations" available, and must apply directly to the sponsoring organization. Because of the similarities between Research Scientists and faculty, the Commission considered that requiring Research Scientists to file the §73-a financial disclosure statement would create a standard different from that the Commission imposed on similarly situated SUNY/CUNY counterparts, thereby undermining morale and hindering an agency's ability to recruit and retain a highly qualified professional staff.

The Commission also considered whether the public interest requires financial disclosure by Research Scientists to ensure that Research Scientists are free from conflicts of interest and their appearance. The courts have often stated that "financial disclosure statutes reflect the not

unreasonable judgment of many legislatures that disclosure will help reveal and deter conflicts of interest." See *Barry v. City of New York*, 712 F.2d 1554, 1560 (2d Cir.), *cert. denied*, 464 U.S. 1017 (1983). In upholding a financial disclosure law enacted by New York City, the court, in *Barry* found "autonomy and confidentiality interests (of covered employees) will be somewhat affected by the filing requirements, but the governmental interests in determining and detecting conflicts of interests and venality will be furthered substantially to justify that requirement." *Barry*, 712 F.2d at 1560.

Furthermore, the process by which Research Scientists apply for grants is controlled by their respective agencies and the public and private sponsors responsible for the review of research projects. In the case of federal government grants, which are the majority of all research grants received, applications for funding are submitted to a rigorous peer review process and several tiers of approval. Consequently, it is clear to the Commission that, because Research Scientists are not directly involved in the negotiation, authorization or approval of grants of money or loans and because government regulation over the grant process already exists, the Commission will not require Research Scientists to file the financial disclosure statement set forth in Public Officers Law §73-a.

The Commission concludes that the public interest in having Research Scientists be accountable for private and business interests which are or could be perceived as conflicting with their State job responsibilities is satisfied by a short form filing. This is so because the State agencies' not-for-profit corporation is the actual entity which applies for grants and serves as the conduit for funds received.

Therefore, the Commission hereby imposes on Research Scientists a short form filing requirement similar to that required of academics employees of SUNY/CUNY. This two-part process requires Research Scientists to file form-RS1 with the Commission at the same time other State employees file regular forms on or before the fifteenth of May for the preceding calendar year.⁽⁷⁾ When Research Scientists apply for grants, fellowships, etc., they shall provide information including outside employment.⁽⁸⁾

Each person serving as a Research Scientist who applies for a research grant shall, as their academic counterparts, provide additional information to his or her appointing authority on form-RS2. This information shall be provided once each year and updated as changes occur. The information to be provided is similar to that requested in questions 4, 5, and 16 of the Annual Statement of Financial Disclosure prescribed in Public Officers Law §73-a. The Commission will not, however, require the reporting of the "category of value" with respect to any of the information sought. The purpose of filing is to determine whether the Research Scientist or his or her spouse may personally gain from the research in ways that are not permissible under Public Officers Law §§73 or 74. Pursuant to Public Officers Law §94(17)(a)(1), categories of value are deleted from the forms of those State officers and employees which the Commission makes available for public inspection.⁽⁹⁾ In the area of research grants, if the question of a conflict is raised, the amount or value of a particular holding would be incidental. The Commission is interested only in information which may reveal a conflict of interest under the Public Officers Law.

Conclusion

The Ethics in Government Act sought to restore the public trust in State government by limiting opportunities for abuse of official positions and by eliminating any appearance of undue influence. Public Officers Law §73-a was enacted, in part, to deter persons employed by the State of New York from taking advantage of their public position to secure personal gain at the State's expense. The Commission concludes that the public interest is served by requiring State employees holding the position of Research Scientist to file a financial disclosure short form similar to that currently in use by SUNY and CUNY academic employees.

It is the opinion of the Commission that the filing required in this opinion will satisfy the requirements of Public Officers Law §73-a for non-policymaking Research Scientists required to file. Individuals who fail to file the required information with the Commission, or who file a deficient statement, shall be subject to the same penalties provided in Executive Law §94 for failure to file an Annual Statement of Financial Disclosure under §73-a. In such circumstances, the Commission shall proceed as it would for other State employees required to file.

The filing requirement for affected Research Scientists will be used by the Commission for a two year period, commencing June 1991 until May 1993. At that time the Commission will determine if the procedure is effective, and, if so, will issue permanent rules and regulations to continue it.

This opinion, until and unless amended or revoked, is binding on the Commission in any subsequent proceeding concerning the person who requested it and who acted in good faith, unless material facts were omitted or misstated by the person in the request for opinion.

All concur:

Joseph M. Bress, Chair

Angelo A. Costanza

Norman Lamm

Donald A. Odell, Members

Dated: May 21, 1991

Endnotes

1. Those titles include: Assistant Research Scientist, Grade 14; Research Scientist I, Grade 18; Research Scientist II, Grade 22; Research Scientist III, Grade 25; Research Scientist IV, Grade 27; Research Scientist V, Grade 31; Research Scientist VI, Grade 35; Research Scientist VII, Grade 38 and Research Scientist VIII, Grade 38, hereinafter "Research Scientists." Any individual serving in a Research Scientist title ranked below SG-24 does not earn compensation

in excess of the filing rate and, therefore, is not subject to the financial disclosure filing requirement.

2. State agencies and employee organizations are permitted by 19 NYCRR Part 935 to submit a Request for Exemption from filing an Annual Statement of Financial Disclosure on behalf of individuals who serve in the same title or job classification.

3. Any employee serving in the Research Scientist title series who has been designated by his or her agency as a policymaker must file the financial disclosure statement set forth in Public Officers Law §73-a. This opinion will supersede previous Commission determinations for those serving as Research Scientists who are not policymakers and who, in previous filing years, sought individual exemptions from filing and were denied such exemptions based on their individualized performance programs.

4. The Division of Alcoholism and Alcohol Abuse, the Office of Mental Health, the Department of Health and the Office of Mental Retardation and Developmental Disabilities requested the exemption for Research Scientists. Other State agencies employing Research Scientists are the Department of Social Services, Department of Environmental Conservation, the Division for Youth and the Division of Substance Abuse Services.

5. New York State Department of Civil Service, Classification Standard for Occ. Code 6162000.

6. The Research Foundation for Mental Hygiene, Inc. ("RFMH") is the agency authorized, by contract with New York State, to administer external research grants and contracts. The foundation performs this function for the component agencies of the Department of Mental Health ("DMH"): OMH, OMRDD, DAAA and DSAS. Research Scientists in the DMH are expected to apply for external research grants as part of their regular duties. Their success in receiving such grants is among the criteria used in their performance evaluation. Other such entities include the Youth Research, Inc. (affiliated with the Division for Youth); the Welfare Research Institute (affiliated with the Department of Social Services) and individual Program oversight at the Department of Environmental Conservation.

7. For year 1990 (due in 1991), persons serving in the title Research Scientist must file the abbreviated financial disclosure form with the Commission within 30 days of receipt of notice from the Commission of their requirement to file. For year 1991 (due in 1992) such persons must file on or before the fifteenth of May. Persons filing the abbreviated form will be afforded an opportunity to request deletions and exemptions from the Public Advisory Council, as provided in §94(18)(h) of the Executive Law. The second form, required of those Research Scientists who actually do apply for grants, must be filed upon first applying for a grant, and updated throughout the years as information changes and subsequent grant applications are made.

8. Pursuant to the Commission's [Advisory Opinion No. 90-15](#), academic employees at both CUNY and SUNY who earn compensation at an annual rate greater than the filing rate set by §73-a must file annual statements containing information similar to question 13 of the Annual Statement of Financial Disclosure. In addition, each faculty member who applies for a research grant must provide additional information similar to that requested in questions 4, 5, and 16. [See

Appendix A for the forms to be completed by those persons serving in the title Research Scientist.] [*transcriber's note: Appendix A not available with electronic version of this Opinion.*]

9. The State Ethics Commission is specifically exempted from the application of the Freedom of Information Law. Executive Law §94(17)(a).