

New York State Ethics Commission

Advisory Opinion No. 94-14: Application of the lifetime bar of Public Officers Law §73(8).

Introduction

The following advisory opinion is issued in response to a request by [], a former employee of [a State agency], for an opinion as to whether the lifetime bar provision of Public Officers Law §73(8) precludes him from having certain proposed contacts with his former agency.

Pursuant to its authority under Executive Law §94(15), the Commission concludes that the lifetime bar provision of Public Officers Law §73(8) would permit [the requesting individual] to give certain information to his former agency and attend meetings with agency staff as long as the information and the content of the meetings is not the same as that which he considered or reviewed while he was employed at the agency.

Background

[The requesting individual] was the Director of [] and Training for [a State agency] until his retirement on []. As Director, [the requesting individual] was responsible for overseeing all of the activities of the Bureau which was chiefly responsible for the certification and training of [] offices and the administration of State assistance for [].⁽¹⁾

[The requesting individual] is currently a member of [], a professional association of local [] that has regular contact with the [State agency] concerning the training of local [] personnel. He asks whether, as a member of that Committee, he can provide the [State agency] with information about new seminars, courses, training material, meetings, attendance rosters and other information that the [State agency] requires to update its training records. [The requesting individual] had been active with the [association] prior to his retirement from the [State agency], and he remains active. [The requesting individual] also inquires as to whether he may attend certain meetings with the staff of the [State agency] as a member of the [association].

On March 7, 1994, the Commission issued an informal opinion which permitted [the requesting individual] to conduct the requested activities, finding that they would entail new matters not covered by the lifetime bar of Public Officers Law §73(8). On March 29, 1994, [the requesting individual] requested a formal opinion of the Commission.

Applicable Statute

The lifetime bar provision of Public Officers Law §73(8) provides:

No person who has served as a state officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any state agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he personally participated during the period of his service or employment, or which was under his or her active consideration.

Discussion

Public Officers Law §73(8), generally referred to as the "revolving door" provision, sets the ground rules for what individuals may do with the knowledge, experience and contacts gained from public service after they terminate their employment with a State agency. Public Officers Law §73(8) contains two restrictions on the post-employment activities of former State officers and employees -- a two-year absolute bar on an employee's appearing before his or her agency and the lifetime bar cited above. Since it has been more than two years since [the requesting individual] left his agency, the Commission considers only the application of the lifetime bar.

This provision acts as a permanent prohibition to appearances and the rendition of services pertaining to any case, application, proceeding, or transaction in which the officer or employee was directly concerned and personally participated or which was under his or her active consideration while in State service.

In [Advisory Opinion No. 91-2](#), the Commission, interpreting this provision, stated that, "[i]t is permissible for former employees to draw on their information concerning 'old' transactions if the information bears a relationship to current transactions." In [Advisory Opinion No. 91-18](#), the Commission reiterated its position that Public Officers Law §73(8) does not preclude a former State officer or employee from appearing, practicing, communicating, or rendering services for compensation on new and separate matters or transactions, notwithstanding the fact that the State employee may have been directly concerned or personally participated in a similar or related transaction while he or she was in State service.

In the instant matter, [the requesting individual] has inquired as to whether he may provide the [State agency] with information about new seminars, courses, training material, meetings, attendance rosters and other information that the [State agency] requires to update its training records. According to the [State agency], the training seminars and courses, as well as the instructors who offer the training, differ from year to year. Likewise, those individuals attending the training seminars change from year to year. Based on these facts, even though [the requesting individual] was responsible for the training of [] while in State service, he may provide the [State agency] with the information as proposed, as this information pertains to new matters.

[The requesting individual] has also inquired as to whether, as a member of the [association], he may attend meetings with the staff of the [State agency] to discuss future training programs. According to the [State agency], these meetings are informal and generic in nature, and the topics discussed may change from year to year. As long as the content of the training programs is

new and is not the same as that which [the requesting individual] reviewed or considered while employed at the [State agency], he may attend the meetings.

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 or related supporting documentation.

All concur:

Joseph M. Bress, Chair

Barbara A. Black,
Angelo A. Costanza,
Robert E. Eggenschiller,
Donald A. Odell, Members

Dated: June 21, 1994

Endnotes

1. Due to budgetary constraints, [the requesting individual's] former Bureau was disbanded at the time he left State service and the responsibilities of the Bureau were assigned to other units of the [State agency].