

New York State Ethics Commission

Advisory Opinion No. 96-10: Application of Public Officers Law §73-a to a Commissioner of a State agency who sits *ex officio* on several State boards and commissions.

INTRODUCTION

The following advisory opinion is issued in response to an inquiry from John P. Cahill ("Cahill"), General Counsel at the Department of Environmental Conservation ("DEC"). He asks whether the Commissioner of DEC must list on his Annual Statement of Financial Disclosure, required by Public Officers Law §73-a, each board and commission on which he sits as an *ex officio* member solely by reason of his being the Commissioner.

Pursuant to the authority vested in the New York State Ethics Commission ("Commission") by Executive Law §94(15), the Commission hereby renders its opinion that Public Officers Law §73-a does not require the Commissioner to list each such board or commission.

BACKGROUND

The question presented to the Commission was first presented as a request for an informal opinion submitted by former DEC General Counsel Marc Gerstman on behalf of a former Commissioner. On February 14, 1995, an informal opinion was issued which concluded that the Commissioner need not list the boards and commissions on which he serves *ex officio*, since that information is a matter of public record and no private interests are involved.

Subsequent to the issuance of the informal opinion, the Comptroller issued a report in connection with his audit of the Olympic Regional Development Authority. In that report, he discussed financial disclosure statements filed with the Commission, and stated "[i]n addition, *ex officio* Board members were not disclosing their membership on the Authority's Board or other public boards and commissions." In response, Cahill sought this opinion with respect to the obligations of the Commissioner of DEC.

APPLICABLE LAW

Public Officers Law §73-a(1)(c) defines the term "state officer or employee" to mean:

(i) heads of state departments and their deputies and assistants;

....

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

(a) Every statewide elected official, 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 respect to the preceding calendar year. . .

Annual Statement of Financial Disclosure Question No. 2(a) requires that the filing individual state his or her "Title of Position."

Annual Statement of Financial Disclosure Question No. 4(a) requires that the filing individual list any office, trusteeship, directorship, partnership, or position of any nature, whether compensated or not, held by the reporting individual with any firm, corporation, association, partnership, or other organization other than the State of New York.

DISCUSSION

Public Officers Law §73-a clearly requires that the Commissioner of DEC file a statement of financial disclosure and answer all of the questions mandated by that section. The Commissioner not only heads DEC, but, by statute, he also sits as a member of the Board of other public entities created by legislation, such as the Olympic Regional Development Authority [Public Authorities Law §2608], the New York State Environmental Facilities Corporation [Public Authorities Law §1282], the New York State Energy Research and Development Authority [Public Authorities Law §1852], the New York City Municipal Water Finance Authority [Public Authorities Law §1045-c], the State Superfund Management Board [Environmental Conservation Law §27-1319], and the State Environmental Board [Environmental Conservation Law §5-0101].⁽¹⁾ In requesting this opinion, the Counsel to the Commissioner asks this Commission to determine whether it is necessary for the Commissioner to list each such board and commission on his annual statement of financial disclosure.⁽²⁾

The Commissioner's service on each of the boards and commissions on which he serves *ex officio* is a matter of public record. Listing them on the Commissioner's financial disclosure statement would not add to the public's knowledge. Furthermore, one underlying purpose of financial disclosure is to reveal possible conflicts of interest between public service and private, personal interests. The Commissioner's service on these boards and commissions is part of his public responsibilities and presumptively not in conflict with his official duties. No private interests are involved. Given these considerations, disclosure is not required for these positions.

It is the Commission's hope that the Commissioner, as well as others similarly situated, will note within his own agency the entities on which he sits as an *ex officio* member as an aid to the public. The public should have some convenient way to determine on which boards a commissioner serves *ex officio* without having to scour the statutes.

CONCLUSION

The Commission concludes that Public Officers Law §73-a does not require the Commissioner of DEC to list on his financial disclosure statement every board and commission on which he sits as an *ex officio* member by virtue of his being the Commissioner.

This opinion, until and unless amended or revoked, is binding on the Commission in any subsequent proceeding concerning the requesting individual 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

Evans V. Brewster

Angelo A. Costanza

Robert E. Eggenschiller

Donald A. Odell, Members

Dated: May 28, 1996

Endnotes

1. Others include the Industrial Hazardous Waste Facility Siting Board [Environmental Conservation Law §27-1105], the New York State Oil, Gas and Solution Mining Advisory Board [Environmental Conservation Law §23-0311], the Lake George Park Commission [Environmental Conservation Law §43-0105], the Great Lakes Commission [Environmental Conservation Law §21-0903], the Delaware River Basin Commission [Environmental Conservation Law §21-0703], the State Nature and Historical Preserve Trust [Environmental Conservation Law §45-0109], the New England Interstate Water Pollution Control Compact [Environmental Conservation Law 21-0103], the Hudson River Valley Greenway Communities Council [Environmental Conservation Law §44-0105], the Tri-State Compact and Interstate Environmental Commission [Environmental Conservation Law §21-0503], and the Ohio River Valley Sanitation Commission [Environmental Conservation Law §21-0305].

2. It should be noted that the Commissioner's role is not unique. Many State agency heads also serve on a variety of State boards and commissions by virtue of their positions.