

Part I Chapter 60 Employee Ethics

A. The Commonwealth Procurement Code Contains Some General Ethics Guidelines in Commonwealth Agency Procurements.

- 1.** Public employment is a public trust. 62 Pa.C.S. § 2301.
- 2.** It is Commonwealth policy to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the Commonwealth. 62 Pa.C.S. § 2301.
- 3.** Public employees must discharge their duties impartially so as to assure fair, competitive access to Commonwealth agency procurement by responsible contractors and to conduct themselves in a manner which fosters public confidence in the integrity of the Commonwealth procurement process. 62 Pa.C.S. § 2301.
- 4.** Those doing business with Commonwealth agencies must observe high standards of honesty and integrity. Any effort to influence any employee to breach standards of ethical conduct is also a breach of ethical standards. 62 Pa.C.S. §§ 2301, 2302(b).
- 5.** When a person has reason to believe that any breach of the above ethical standards has occurred, that person must report all relevant facts to the State Ethics Commission and to the Attorney General for any appropriate action. 62 Pa.C.S. § 2303.

B. Restricted Activities.

1. Misuse of Office.

- a.** Pursuant to the *Public Official and Employee Ethics Act ("Ethics Act")*, 65 Pa.C.S. §1101 *et seq.*, subject to certain statutory exceptions, "public officials" or "public employees" as defined by the *Ethics Act*, 65 Pa.C.S. §1102 (the statutory definitions for these terms are found in Part IX of this outline), are prohibited from using the authority of their public positions to obtain a private pecuniary benefit (financial gain that is not authorized in law) for themselves, member(s) of immediate family, or businesses with which they or member(s) of immediate family are associated. 65 Pa.C.S. § 1103(a). *See, e.g., Pagan*, Order 1466; *Haldeman*, Order 1443; *Jacobson*, Order 1223, *Schwager*, Order 1219; *Brocius*, Order 1151.
- b.** The Code of Conduct prohibits Commonwealth employees, appointees, or officials under the Governor's jurisdiction from engaging directly or indirectly in any business transactions or private arrangement for profit which accrues from or is based upon their official position or authority. Executive Order 1980-18, Amended, *Governor's Code of Conduct*, Part I, para. I(a) ("*Code of Conduct*").

- c. The *Commonwealth Procurement Code* also provides that any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the duties of the employee is a breach of a public trust. 62 Pa. C. S. § 2302(a).

2. Misuse of Information.

- a. "Public officials" or "public employees" as defined by the *Ethics Act*, 65 Pa.C.S. § 1102, are prohibited from using any confidential information received from their public positions to obtain a private pecuniary benefit (financial gain that is not authorized in law) for themselves, member(s) of immediate family, or businesses with which they or member(s) of immediate family are associated. 65 Pa.C.S. § 1103(a); See, e.g., *Drost*, Order 1415, *Herron*, Order 1399, *Reaves*, Order 1260, *Metrick*, Order 1037, *Lavertue*, Order 1002.
- b. The *Code of Conduct* contains a similar prohibition: Commonwealth employees, appointees, or officials under the Governor's jurisdiction are prohibited from using any information, which is obtained as a result of service or employment with the Commonwealth and not available to the public at large, for their own personal gain or for the gain of others. Commonwealth employees, appointees, or officials under the Governor's jurisdiction are also prohibited from divulging any information obtained as a result of service or employment with the Commonwealth and not available to the public at large in advance of the time prescribed for its authorized release. (*Code of Conduct*, Part 1, para. 4).
- c. The *Commonwealth Procurement Code* provides that employees must avoid conflict of interest or improper use of confidential information. 62 Pa. C. S. § 2302(a).
- d. The Contractor Integrity Provisions, which Commonwealth executive agencies are required to insert in all contracts prohibits contractors from disclosing to others any confidential information gained by virtue of the agreement with the Commonwealth. *Contractor Integrity Provisions for Commonwealth Contracts*, Management Directive 216.8.

3. Misuse of Office Facilities and Equipment.

- a. Commonwealth employees, appointees, or officials under the Governor's jurisdiction are prohibited from using any Commonwealth equipment, supplies, or properties for their own private gain or for other than officially-designated purposes. *Code of Conduct*, Part I, para. 5.
- b. Section 1103(a) of the *Ethics Act* similarly generally prohibits the use of government staff, time, equipment, facilities or property for non-governmental purposes -- including business, personal or political purposes. *Confidential Opinion, 05-001*. See, e.g. *Neff*, Order 1498; *Maduka*, Order 1273, *Heck*, Order 1251, *Holt*, Order 1153 (business purposes); *Moore*, Order 1317, *Meduka*, Order 1277, *Sullivan*, Order 1245, *Dividio*, Order 1202 (personal purposes); *Habay*, Order 1313,

Livingston, Order 1030, *Rockefeller*, Order 1004, *Freind*, Order 800 (political purposes).

4. Improper Influence.

- a. Sections 1103(b) and 1103(c) of the *Ethics Act*, 65 Pa.C.S. §§ 1103(b)-(c), pertaining to improper influence, provide in part that no person shall offer or give to a public official/public employee anything of monetary value and no public official/public employee shall solicit or accept anything of monetary value based upon the understanding that the vote, official action, or judgment of the public official/public employee would be influenced thereby. See, e.g., *McGraw*, Order 1397; *Carbo*, Order 1343, *Scott*, Order 1250, *Zwick*, Order 1062; *Livingston*, Order 1030.
- b. The Commonwealth Contractor Integrity Provisions prohibit Commonwealth contractors from offering, conferring or agreeing to confer any pecuniary benefit on anyone as consideration for a decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth. *Contractor Integrity Provisions for Commonwealth Contracts*, Management Directive 216.8.

5. Bonds.

It is a breach of ethical standards and unlawful for any employee in issuing an invitation for bids or a request for proposals to require that any required bond be furnished by a particular surety company or through a particular agent or broker. Any employee who breaches this standard commits a misdemeanor of the first degree. 62 Pa.C.S. §2311.

C. Contracts.

1. Commonwealth employees, appointees, or officials under the Governor's jurisdiction are prohibited from participating in the negotiation of, or the decision to award contracts, the settlement of any claims or changes in any contracts, the making of loans, the granting of subsidies, the fixing of rates, or the issuance of permits, certificates, guarantees, or other things of value to, with, or for any entity in which they have a financial or personal interest. *Code of Conduct*, Part I, para. I(b).
2. "Public officials" or "public employees" as defined by the *Ethics Act*, 65 Pa.C.S. § 1102, as well as their spouses or children, or business(es) with which they, their spouses or children are associated (through status as a director, officer, owner, employee, or holder of a financial interest comprising more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness) are prohibited from entering into:
 - a. Any contract with the governmental body valued at \$500 or more with the governmental body, or
 - b. Any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body, unless the contract

is/has been awarded through an open and public process. See, e.g., *Wilcox*, Order 1306, *Anthony*, Order 1179, *Walters*, Order 1143.

The requisite open and public process includes prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. 65 Pa.C.S. § 1103(f). Section 1103(f) of the *Ethics Act* also provides that the public official/public employee may not have any supervisory or overall responsibility as to the implementation or administration of the contract with the governmental body. *Id.*

Any contract or subcontract made in violation of Section 1103(f) is voidable by a court if the suit is commenced within 90 days of the making of the contract or subcontract.

(Note: In *Bixler v. State Ethics Commission*, 847 A.2d 785 (Pa. Cmwlth. 2004), the Commonwealth Court of Pennsylvania held that a township supervisor did not violate Section 1103(f) of the *Ethics Act* when a business that employed him entered into a contract in excess of \$500 with his township without an open and public process, but the supervisor was neither a party to the contract nor a principal of the contracting business. *Id.* The Court determined that Section 1103(f) of the *Ethics Act* prohibited the conduct of entering into the contract under such circumstances. The Court concluded that although a violation of Section 1103(f) of the *Ethics Act* would be established under such circumstances, it would not be the public official who would be in violation of the law. *Id.* See also, *Means*, Opinion 04-007).

3. Commonwealth employees are prohibited from influencing, or attempting to influence, the making of, or supervision, or in any manner dealing with any contract in which the employee has an adverse interest. Section 4 of the *State Adverse Interest Act*, 71 P.S. § 776.1 et seq. To "have an adverse interest" means to be a party to the contract, other than the Commonwealth or a state agency, or be a stockholder, partner, member, agent, representative, or employee of such party.
4. State employees are prohibited from having an adverse interest in any contract with the state agency by which the state employee is employed. Section 5 of the *State Adverse Interest Act*. Commonwealth Court has interpreted this prohibition as requiring an actual adverse interest. See: *Federation of State Cultural and Educational Professionals v. Commonwealth, Department of Education*, 546 A.2d 147, 119 Pa. Cmwlth. 63 (1988).
5. Another exception has been made by the General Assembly for Commonwealth employees who serve in an elected or appointed capacity as a municipal officer. Such employees are deemed not to have an adverse interest by virtue of any action taken by the municipal body of which the employee is a member if the employee properly abstains and submits a disclosure. Section 7a of the *State Adverse Interest Act*, 71 P.S. § 776.1. If a municipal body would be unable to take any action on a matter before the municipal body because a majority of the members of the municipal body are required to abstain under the statutory exception to the *State Adverse Interest Act*, then such municipal officers are permitted to participate in the action and may vote on, supervise, or otherwise deal with a contract if the municipal officers submit a disclosure of the municipal bodies.

D. Representation of Interests.

1. The *Code of Conduct* prohibits employees from representing or acting as an agent for any private interest whether for compensation or not, in any transaction in which the Commonwealth has a direct and substantial interest and which could be reasonably expected to result in a conflict between a private interest of the official or employee and his official state responsibility. *Code of Conduct*, Part I, para. 2.
2. As noted above, "public officials" or "public employees" as defined by the *Ethics Act*, 65 Pa.C.S. §1102, are prohibited from using the authority of their public positions to obtain a private pecuniary (financial) benefit (gain that is not authorized in law) for themselves, member(s) of immediate family, or businesses with which they or member(s) of immediate family are associated. 65 Pa.C.S. § 1103(a). See, e.g., *Snyder*, Order 1284.
3. Former public officials/public employees are subject to certain post-employment restrictions discussed below that restrict representation. 65 Pa.C.S. §§ 1103(g), (i).

E. Gifts.

1. Ethics Act.

- a. As noted above, Sections 1103(b) and 1103(c) of the *Ethics Act*, 65 Pa.C.S. §§1103(b)-(c), pertaining to improper influence, provide in part that no person shall offer or give to a public official/public employee anything of monetary value and no public official/public employee shall solicit or accept anything of monetary value based upon the understanding that the vote, official action, or judgment of the public official/public employee would be influenced thereby. See, e.g., *McGraw*, Order 1397; *Carbo*, Order 1343, *Scott*, Order 1250, *Zwick*, Order 1062; *Livingston*, Order 1030. "Public officials" or "public employees" as defined by the *Ethics Act*, 65 Pa.C.S. §1102, are prohibited from soliciting or accepting anything of value, including a gift, loan, political contribution, reward, or promise of future employment based upon any understanding of the public official or public employee that the vote, official action, or judgment of the public official or public employee would be influenced thereby. 65 Pa.C.S. § 1103(c). See, e.g., *Catone*, Order 994; see also, *Kasaback*, Order 993.
- b. Even the acceptance of "no-strings-attached" gifts that are not de minimis may form the basis for a conflict of interest under Section 1103(a) of the *Ethics Act*, 65 Pa.C.S. §1103(a). See, e.g., *Haldeman*, Order 1443; *Munford*, Order 1390; *Espenshade*, Order 1387; *Dusenberry*, Order 1064.
- c. Additionally, Section 1105(b)(6) of the *Ethics Act*, 65 Pa.C.S. § 1105(b)(6), provides in part that public officials/public employees must disclose on their Statements of Financial Interests filed pursuant to the *Ethics Act* the name and address of the source and the amount of any gift(s) valued in the aggregate at \$250 or more and the circumstances

of each gift. The filer is not required to disclose gifts from a family member or friend (with the term "friend" excluding a registered lobbyist or employee of a registered lobbyist) when the circumstances make it clear that the motivation for the action was the personal/family relationship. The exception does not apply to gift(s) from a vendor that are a means to continue a business relationship. *See, Eppley, Order 1419.*

- d. Section 1105(b)(7) of the *Ethics Act*, 65 Pa.C.S. § 1105(b)(7), provides in part that public officials/public employees must disclose on their Statements of Financial Interests filed pursuant to the *Ethics Act* the name and address of the source and the amount of any payment for or reimbursement of actual expenses for transportation/lodging/hospitality received in connection with public office or employment where such actual expenses exceed \$650 in an aggregate amount per year. This disclosure requirement does not apply to expenses reimbursed by a governmental body or by an organization or association of public officials or employees of political subdivisions which the public official or employee serves in an official capacity.

2. Code of Conduct.

- a. The *Code of Conduct* prohibits Commonwealth employees, appointees, or officials under the Governor's jurisdiction from soliciting or accepting for their personal use or the use of another, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:
 - (1) Is seeking to obtain business from or has financial relations with the Commonwealth.
 - (2) Conducts operations or activities that are regulated by the Commonwealth.
 - (3) Is engaged, either as a principal or attorney, in proceedings before the Commonwealth or in court proceedings in which the Commonwealth is an adverse party.
 - (4) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

Code of Conduct, part I, para. 3.

- b. The *Code of Conduct* does include exceptions to the prohibition against gifts and favors. They include:
 - (1) Solicitation or acceptance of something of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the action is a personal or family relationship.

- (2) Acceptance of food and refreshment of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting.
- (3) Acceptance of loans from banks or other financial institutions on customary terms of finance for proper and usual activities, such as home mortgage loans.
- (4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, notepads, calendars, and other such items of nominal intrinsic value.
- (5) Receipts of bona fide reimbursement for actual expenses for travel and such other necessary subsistence as is compatible with other restrictions set forth in the *Code of Conduct* and for which no Commonwealth payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his or her behalf for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor may an employee be reimbursed by a person for travel on official business under Commonwealth orders.
- (6) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement from a charitable, religious, professional, social, fraternal, or nonprofit educational, recreational, public service, or civic organization.
- (7) A voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as a marriage, illness, or retirement.
- (8) A plaque, memento, or gift of nominal value offered as a token of esteem or appreciation on the occasion of a public appearance, visit, speech, or the like.

Code of Conduct, Part I, para. 3.

3. Contractor Integrity Provisions.

Contractors are prohibited from offering, giving, or agreeing or promising to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth. *Contractor Integrity Provisions for Commonwealth Contracts*, Management Directive 216.8.

F. Supplementary Employment.

1. Commonwealth employees, appointees, or officials under the Governor's jurisdiction are prohibited from engaging in or accepting private employment or rendering service for a private interest unless such employment or service is first approved by the agency head. *Code of Conduct*, Part II, para. 6.

2. Supplementary employment may be undertaken only when not in conflict with the conditions of employment regulations promulgated by the Executive Board and, if applicable, the Civil Service Commission.
3. Furthermore, supplementary employment may be undertaken only when not in conflict with the conditions of employment or regulations promulgated by the governmental agency by which such employee is employed.
4. Individuals appointed to serve part-time on boards and commissions are not prohibited from pursuing their usual occupation but they cannot perform services or receive compensation from persons or institutions which they regulate or otherwise conduct themselves in a manner inconsistent with the impartial administration of their official duties.
5. Section 1103(a) of the *Ethics Act*, 65 Pa.C.S. § 1103(a), pertaining to conflicts of interest does not prohibit public officials/public employees from having outside business activities or employment; however, as noted above, the public official/public employee may not use the authority of his public position -- or confidential information obtained by being in that position -- for the advancement of his own private pecuniary benefit or that of an immediate family member or business with which he or an immediate family member is associated.

G. Honoria.

1. Pursuant to Section 1103(d) of the *Ethics Act*, 65 Pa.C.S. § 1103(d), "public officials" or "public employees" as defined by the *Ethics Act*, 65 Pa.C.S. § 1102, are prohibited from accepting honoraria. The term "honorarium" is defined as follows: "Payment made in recognition of published works, appearances, speeches and presentations and which is not intended as consideration for the value of such services which are nonpublic occupational or professional in nature. The term does not include tokens presented or provided which are of de minimis economic impact." 65 Pa.C.S. § 1102.
2. Section 1103(d) of the *Ethics Act* is an absolute prohibition against accepting honoraria. However, the question of whether a given payment is an honorarium is to be determined as a matter of law by an application of the statutory definition set forth in the *Ethics Act*, not by the mere label which may have been attached to the payment. *Confidential Opinion*, 01-001. The statutory definition of "honorarium" generally includes payments made in recognition of speaking engagements/presentations, appearances, and published works, but excludes such payments if they are legitimately intended as consideration for the value of such services undertaken in the public official's/public employee's private professional or occupational capacity and are not related to the public position. *Id. See also, Fiorello*, Order 1363. In *Baker*, Opinion 91-004, the State Ethics Commission set forth criteria for determining whether the exclusion applies in any given instance.
3. Under the *Code of Conduct*, Commonwealth employees, appointees, or officials under the Governor's jurisdiction are prohibited from accepting honoraria, speaking fees, or any other valuable consideration. Additionally, Commonwealth employees, appointees, or officials under the Governor's

jurisdiction may not receive compensation for consultation which draws upon ideas or data derived from their official duties.

4. Commonwealth employees may not designate nonprofit, charitable organizations to be the recipients of honoraria or speaking fees offered to them, because such would conflict with a ruling by the State Ethics Commission under the *Ethics Act*. *Richardson*, Opinion 93-006. In *Richardson, supra*, the Commission held that the Ethics Act prohibition against accepting honoraria also prohibits the declination of honoraria payments in favor of donations. Section 1112 of the *Ethics Act*, 65 Pa.C.S. § 1112, provides that the provisions of the *Ethics Act* control in the event of a conflict with any other statute, ordinance, regulation or rule.
5. Individuals serving on boards and commissions who are "public officials" as defined by the *Ethics Act*, 65 Pa.C.S. § 1102, are likewise prohibited by Section 1103(d) of the *Ethics Act*, 65 Pa.C.S. §1103(d), from accepting honoraria. Section 1112 of the *Ethics Act*, 65 Pa.C.S. § 1112, provides that the provisions of the Ethics Act control in the event of a conflict with any other statute, ordinance, regulation or rule.

H. Political Activity.

1. Commonwealth employees, appointees, or officials under the Governor's jurisdiction are prohibited in engaging in any political activity such as campaigning, fundraising, canvassing, or poll watching during his or her specified working hours, or which is determined by the Secretary of Administration to conflict or interfere with the ability of the affected official or employee to effectively and efficiently carry out the duties and functions of his or her position. *Code of Conduct*, Part I, para. 8(a). Employees should submit requests to participate in political activity to the Office of Administration through their agency personnel office.
2. Commonwealth employees, appointees, or officials under the Governor's jurisdiction are prohibited in any manner from coercing any other person in government service or employment to contribute time, money, or services to a political candidate or campaign.
3. There are additional restrictions concerning political activity for employees who hold positions which are covered by civil service. 71 P.S. § 741.905b.
 - a. Civil service employee may not engage in the following activities while employed:
 - (1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.
 - (2) Take an active part in political management or in a political campaign. Prohibited activities include, but are not limited to, the following:
 - (a) Serving as an officer of a political party, a member of a national, state, or local committee of a political party, an

officer or a member of a committee of a partisan political club, or be a candidate for any of these positions.

- (b)** Organizing or reorganizing a political party organization or political club.
- (c)** Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or counting for assessments, contributions, or other funds for a partisan political purpose.
- (d)** Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election, or of a political party, or political club.
- (e)** Taking an active part in managing the political campaign of a candidate for public office in a partisan election or political party office.
- (f)** Becoming a candidate for, or campaigning for, an elective public office in a partisan election (except for the office of school director).
- (g)** Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for a political party office.
- (h)** Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or candidate in a partisan election.
- (i)** Driving voters to the polls on behalf of a political party or candidate in a partisan election.
- (j)** Endorsing or opposing a candidate for public office in a partisan election or a candidate for a political party office in a political advertisement, broadcast, campaign literature, or similar material.
- (k)** Serving as a delegate, alternate, or proxy to a political party convention.
- (l)** Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office.
- (m)** Initiating or circulating a partisan nominating petition.
- (n)** Soliciting, paying, collecting, or receiving a contribution at or in the workplace from any employee for any political party, political fund, or other partisan recipient.

- a. Any officer, director, associate, partner, limited partner or individual owner or members of their immediate family whose political contribution exceeded one thousand dollars (\$1,000) by any individual during the preceding year; or
- b. Any employee of the supplier or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

I. Financial Statements.

1. Ethics Act.

Pursuant to Section 1104(a) of the *Ethics Act*, 65 Pa.C.S. §1104(a), each public official/public employee must file a Statement of Financial Interests for the preceding calendar year, each year that he holds the position and the year after he leaves it.

- a. The term "public official" is defined in the *Ethics Act* as follows:

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"Public official." Any person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch of this Commonwealth or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense or to otherwise exercise the power of the State or any political subdivision thereof.

65 Pa.C.S. § 1102. The regulations of the State Ethics Commission similarly define the term "public official" and set forth additional criteria used to determine whether the advisory board exception applies. 51 Pa. Code § 11.1.

- b. Public employees include those who are responsible for taking or recommending official action of a nonministerial nature with regard to:
 - (1) Contracting or procurement.
 - (2) Administering or monitoring grants or subsidies.
 - (3) Planning or zoning.
 - (4) Inspecting, licensing, regulating, or auditing any person.
 - (5) Any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person. 65 Pa.C.S. § 1102.
- c. Financial interest statements are available for public inspection and copying. 65 Pa.C.S. § 1104(e).

2. Code of Conduct.

Certain executive branch employees are required to file statements of financial interest pursuant to *PART II* of the *Code of Conduct*.

- a.** Those employees include:
 - (1)** The Governor.
 - (2)** The Lieutenant Governor.
 - (3)** Heads of agencies and departments and their respective deputy secretaries, all Commonwealth officials or employees at the level of division chief and above, attorneys, press secretaries, legislative liaisons, and executive and special assistants.
 - (4)** Chairpersons and members of compensated boards and commissions under the Governor's jurisdiction.
 - (5)** Executive directors, counsel, and administrative secretaries of compensated boards and commissions under the Governor's jurisdiction.
 - (6)** Employees of all classes required by the Office of Administration to file financial disclosure under the *Ethics Act*.
- b.** Financial statements filed pursuant to the *Code of Conduct* are not open to persons for commercial purposes but they are available upon request for inspection by accredited reporters employed by general news organizations, as well as the Secretary of Administration and the General Counsel.

J. Criminal Charges.

- 1.** As soon as practical after an employee has been formally charged with criminal conduct related to his or her employment with the Commonwealth or which constitutes a felony, the employee shall be suspended without pay. If the charge results in conviction, such employee shall be terminated *Code of Conduct*, Part III.
- 2.** As soon as practical after an employee is formally charged with criminal conduct other than a felony and not related to his or her employment with the Commonwealth, the agency head or designee must conduct an inquiry and make a preliminary determination as to whether or not the employee should continue to perform his or her duties pending the outcome of the investigation and final determination. In determining whether sufficient reason for disciplinary action exists, the agency head or designee considers the following factors:
 - a.** The employee's explanation, if available.

- b.** The extent to which allowing the employee to continue in his or her position would be detrimental to the physical well-being of the employee, his or her fellow workers, or other persons.
- c.** The nature of the employee's duties, including the amount of discretion exercised as part of those duties.
- d.** The nature, weight, basis, and source of the accusations against the employee.
- e.** The relationship of the accusations to the employee's duties.
- f.** The extent to which the employee must deal directly with the public.
- g.** The extent to which the accusations of wrongdoing may affect the public's trust and confidence in the employee, the agency, and state government.

K. Pre-Employment.

Any person who has an adverse interest in a contract with a state agency cannot become an employee of such agency until the adverse interest has been wholly divested. 71 P.S. § 776.6.

L. Former Employees.

- 1.** A former executive-level Commonwealth employee may not, for a period of two years from the time that he or she terminates his or her Commonwealth employment, be employed by, receive compensation from, assist or act in a representative capacity for a business or corporation that he or she actively participated in recruiting to the Commonwealth of Pennsylvania or that he or she actively participated in inducing to open a new plant, facility, or branch in the Commonwealth, or that he or she actively participated in inducing to expand an existent plant or facility within the Commonwealth, provided that this prohibition shall be invoked only when the recruitment or inducement is accomplished by a grant or loan of money or a promise of a grant or loan or money from the Commonwealth to the business or corporation recruited or induced to expand. 65 Pa.C.S. § 1103(i).
- 2.** A former public official/public employee may not represent a person, for promised or actual compensation, on any matter before the governmental body with which he or she has been associated for a period of one year after leaving that body (Section 1103(g) of the *Ethics Act*, 65 Pa.C.S. § 1103(g)). *See, e.g., Foster*, Order 1458; *Pierce*, Order 1449; *Shaub*, Order 1242, *Dellmuth*, Order 1058.

The term "represent" is broadly defined. 65 Pa.C.S. § 1102. Section 1103(g) prohibits acting on behalf of any person in any activity (for promised or actual compensation). *See, Confidential Opinion*, 93-005. Examples of prohibited representation include: (1) personal appearances before the former governmental body or bodies; (2) attempts to influence; (3) submission of bid or contract proposals which are signed by or contain the name of the former

public official/employee; (4) participating in any matters before the former governmental body as to acting on behalf of a person; and (5) lobbying.

Section 1103(g) of the *Ethics Act* may not be applied to restrict an attorney's conduct insofar as it constitutes the practice of law, because the Supreme Court has the exclusive authority to regulate an attorney's conduct in that regard. *Shaulis v. Pennsylvania State Ethics Commission*, 574 Pa. 680,833 A.2d 123 (2003).

3. Section 2401(12) of *The Administrative Code of 1929*, 71 P. S. § 631.1(12), also prohibits Department of General Services' employees, after leaving the employment of the department, from negotiating or participating in any contract for the providing of goods and services to the department before the expiration of one year from the date of termination of the employment.
4. Former employees also have a duty not to use or disclose to third persons confidential information given to them during the course of their employment. *Restatement, Agency 2d*. Section 396(b).

M. Penalties.

1. **Disciplinary Action.** Commonwealth employees, appointees, or officials under the Governor's jurisdiction who refuse or fail to comply with the *Code of Conduct* are subject to disciplinary action including, but not limited to, reprimands, suspension, and termination.
2. **Criminal Penalties.** Some violations of the *Ethics Act* are felonies and misdemeanors punishable by imprisonment or fines. 65 Pa.C.S. § 1109.
3. **Monetary Payments.** The *Ethics Act* provides for restitution plus interest and treble damages as to financial gains obtained in violation of the *Ethics Act*, 65 Pa.C.S. §§ 1107(13), 1109(c), and civil penalties as to delinquent/deficient Statements of Financial Interests, 65 Pa.C.S. § 1109(f). Additionally, Section 1104(d) of the *Ethics Act*, 65 Pa.C.S. § 1104(d), provides that a public official shall not receive compensation from public funds unless the public official has filed a statement of financial interests as required.
4. **Voidable Contracts.** Contracts or subcontracts made in violation of Section 1103(f) of the *Ethics Act* are voidable by a court of competent jurisdiction if the suit is commenced within 90 days of the making of the contract or subcontract.
5. **Forfeiture of Office or Employment.** Any person who violates the *State Adverse Interest Act* shall not only be guilty of a misdemeanor and be sentenced to pay a fine not exceeding \$1,000 or be imprisoned for a term not exceeding one year or both, but, in addition, shall automatically forfeit any office or employment under any state agency which he or she may then hold. 71 P.S. § 776.8.
6. **Debarment.**

N. Remedial Measures.

1. Violations of the *Ethics Act* are not negated or "undone" through subsequent remedial measures. See, e.g., *Keller v. State Ethics Commission*, 860 A.2d 659 (Pa. Cmwlth. 2004); *Hofrichter*, Opinion 98-003-R.
2. Remedial measures are encouraged, however, and they may, under some circumstances, be considered by the State Ethics Commission to be mitigating factors in determining whether to order restitution, treble penalties, and/or referrals for criminal prosecution. See, *Hofrichter*, *supra*.

O. Lobbying Disclosure.

1. Subject to certain statutory exemptions, the Lobbying Disclosure Law, which took effect January 1, 2007, requires vendors, outside representatives, and internal vendor personnel who seek to influence legislative action or administrative action to register with the Commonwealth and satisfy the reporting requirements for principals and lobbyists as to their lobbying expenses. 65 Pa.C.S. Chapter 13A01 et seq.
2. For the first time in Pennsylvania, procurement activities as to the procurement of "supplies," "services," and "construction" under the Commonwealth Procurement Code are included in the definition of "administrative action" and are covered by the Act.
3. Vendor activities under 62 Pa.C.S. §§ 514 (relating to small procurements), 516 (relating to emergency procurements) and efforts directly related to responding to publicly advertised invitations to bid and requests for proposals are exempt. 62 Pa.C.S. § 13A06 (15).
 - a. Vendor activities performed solely by internal vendor personnel directly in response to formal Commonwealth procurements are exempt, as are sales activities expressly authorized by existing contracts.
 - b. However, vendor activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the vendor/personnel to registration and reporting requirements.
 - c. Actions by outside lobbyists on a vendor's behalf, no matter the procurement stage, are not exempt and must be reported.

P. References.

For conflict of interest and ethics questions, employees should refer, to:

1. The Governor's Executive Order 1980-19, Code of Conduct.
2. The Public Official and Employee Ethics Act, Act 93 of 1998, 65 Pa.C.S. §§ 1101-1113.
3. The State Adverse Interest Act, Act of July 19, 1957, P.L. 1017, as amended, P.S. § 776.1 et seq.

- 4.** The Commonwealth Procurement Code, Act No. 57 of 1998, 62 Pa.C.S. §§ 2301-2311.