

**STATE OF NEW JERSEY,
STATE ETHICS
COMMISSION**

Petitioner

v.

**SEEMA SINGH, ESQ.,
FORMER RATEPAYER
ADVOCATE**

Respondent

Anna Lascurain, Deputy Attorney General, for petitioner
(State Ethics Commission, John J. Hoffman, Acting Attorney General of New
Jersey, attorney)

Herbert Waldman, Esq., for respondent (Javerbaum, Wurgaft, Hicks, Kahn,
Wikstrom & Sinins, attorneys)

This is a Final Order being entered in this matter by the State Ethics Commission (“Commission”) of the Initial Decision dated April 14, 2014, by Administrative Law Judge Jeff S. Masin (“Judge Masin” or “ALJ”), concluding that Respondent Seema Singh violated certain sections of the New Jersey Conflicts of Interest Law and the New Jersey Ratepayer Advocate Code of Ethics (“RPA Code of Ethics”), and dismissing other charges in the Complaint. Having considered the Initial Decision, the record below, and the exceptions and replies to exceptions filed by the parties, we reject in part, adopt in part, and modify the recommendation proposed by Judge Masin as follows.

On or about September 27, 2011, the Commission filed a Complaint against

Seema Singh (“Singh” or “Respondent”) alleging that she violated the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., applicable rules of the Commission, N.J.A.C. 19:61-1.1 et seq. and the New Jersey Ratepayer Advocate Code of Ethics (“RPA Code of Ethics”). The matter was tried over the course of 19 days beginning on February 27, 2013 and ending on August 20, 2013. The parties subsequently filed briefs and reply briefs, and the record was closed on February 20, 2014.

On April 14, 2014, the ALJ issued an Initial Decision which dismissed several claims asserted by the Commission but concluded that the Respondent, in simultaneously serving as Ratepayer Advocate/Rate Counsel and as President of the Asian Indian Chamber of Commerce (“AICC”), violated the requirement that she avoid conduct that could reasonably create the perception that she had a conflict of interest. N.J.S.A. 52:13D-23(e)(7); RPA Code of Ethics, Section II. The ALJ also concluded that the Respondent violated N.J.S.A. 52:13D-23(e)(3) and the RPA Code of Ethics Section IV, A by sending a letter to the Superintendent of the State Police seeking his assistance to have a ticket for a moving violation expunged. Finally, the ALJ concluded that the Respondent violated N.J.S.A. 52:13D-23(e)(7) and RPA Code of Ethics, Section II by allowing certain emails between herself and the Managing Director of CSM/SoftSource, Raghu Mahna (“Mahna”), which appear to demonstrate a romantic or otherwise intimate relationship, to appear and remain on the State’s email system, thus creating a situation that could reasonably suggest that she had a conflict of interest in regard to Mahna’s business interests.

Judge Masin assessed penalties for the aforementioned violations as follows: a

\$500 penalty for soliciting the assistance of the Superintendent of the State Police for the purpose of having Singh's moving violation expunged;¹ a \$500 penalty for creating the perception of a conflict of interest with respect to Mahna's business interests by the exchange of several emails found on a State computer; and a \$10,000 penalty for simultaneously holding the positions of Ratepayer Advocate ("RPA") and President of the AICC over the course of approximately four years (2003 through April 5, 2007) and thereby engaging in conduct that led to the "perception" of a conflict.²

On May 19, 2014, Deputy Attorney General Anna Lascurain and Herbert Waldman, Esq. filed exceptions to the Initial Decision on behalf of the Commission and Singh, respectively. Replies to exceptions were subsequently filed by the parties on June 2, 2014.

The Commission obtained an initial Order of Extension from the Office of Administrative Law ("OAL") extending the time for the Commission to issue a Final Order through July 13, 2014, and a subsequent Order of Extension extending the deadline to August 27, 2014.

At all relevant times, Respondent was the RPA and subsequently, Rate Counsel with the Department of the Public Advocate. In this capacity, Singh was a State employee bound by the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., ("Conflicts Law") and the RPA Code of Ethics in effect at the time.

¹ At the time of the offense, in or around September 2003, the maximum civil penalty for a violation of the Conflicts Law was \$500.

² For violations of the Conflicts Law occurring on or after June 16, 2004, N.J.S.A. 52:13D-21(i) calls for a fine of not less than \$500 nor more than \$10,000. Judge Masin assessed a \$10,000 fine by considering the continuing offense as a single offense, rather than imposing separate penalties for each day or month that Singh was deemed to be in violation of the Conflicts Law or RPA Code of Ethics.

The sections of the Conflicts Law applicable to this matter are sections 23(e)(1), (e)(3), e(5) and (e)(7). N.J.S.A. 52:13D-23(e)(1) of the Conflicts Law specifically provides:

No State officer or employee or special State officers or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

N.J.S.A. 52:13D-23(e)(3) provides:

No State officer or employee or special State officer or employee should use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

N.J.S.A. 52:13D-23(e)(5) provides:

No State officer or employee or special State officer or employee should undertake any employment or service, whether compensated or not, which might reasonably be expected to impair his objectivity and independence of judgment in the exercise of his official duties.

Finally, N.J.S.A. 52:13D-23(e)(7) provides:

No State officer or employee or special State officer or employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of the acts that he may be engaged in conduct violative of his trust as a State officer or employee or special State officer or employee.

Relevant sections of State Ethics Commission regulations include N.J.A.C. 19:61-6.6 and 19:61-7.4. N.J.A.C. 19:61-6.6, which restricts the use of a State employee's official title for private fundraising provides: "A State official shall not permit the use of his or her official title for the purpose of fundraising for a private organization."

N.J.A.C. 19:61-7.4, which addresses the recusal process, provides in pertinent part:

(d) A State official must recuse himself or herself from an official matter if he or she has: 1. Any financial interest, direct or indirect, that is incompatible with the discharge of the State official's public duties; or 2. Any personal interest, direct or indirect, that is incompatible with the discharge of the State official's public duties.

(e) For purposes of (d) above, an incompatible financial or personal interest includes, but is not limited to, outside employment; a debtor/creditor relationship; a fiduciary relationship; a source of income; any matter pertaining to or involving a relative or cohabitant; a relationship with a person providing funds, goods or services without compensation; any matter pertaining to or involving a business associate or business investment; and a leadership role in a professional or trade organization, which interest might reasonably be expected to impair a State official's objectivity and independence of judgment in the exercise of his or her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his or her trust as a State official.

The applicable sections of the RPA Code of Ethics include the following:

Section II, entitled General Principles, provides in pertinent part:

Pursuant to N.J.S.A. 52:13D-23(e)(7) no State officers or employees of the Division shall knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of their acts that they may be engaged in conduct violative of their trust as State officers or employees.

Section III, General Duties of All Advocate Officers and Employees, provides in pertinent part:

Officers and Employees shall hold in public trust any property owned or leased by the State, or any other property or funds entrusted to them in the course of their duties and shall exercise reasonable care to protect such property from waste, destruction, or improper use.

Section IV, A, Duties Related to the Performance of Advocate Employment, provides in pertinent part:

Officers and Employees shall not use an official position to secure unwarranted privileges, benefits or advantages for themselves or others.

Section IV, B, Duties Related to the Performance of Advocate Employment, which is similar to N.J.S.A. 52:13D-23(e)(3), provides in pertinent part:

Officers and Employees shall not act in an official capacity in any matter in which they have a direct or indirect interest, financial or otherwise, which might reasonably be expected to impair objectivity and independence of judgment in the discharge of their duties or to interfere with the operation of the Division.

Section IV, C, Duties Related to the Performance of Advocate Employment, provides in part:

Officers and employees shall not in any manner use Divisional personnel, property, supplies or information to further private interests or satisfy private obligations.

Section V, Interest in Regulated Industries, provides in part:

No employees of the Ratepayer Advocate whether classified, or unclassified, temporary or permanent shall have any interest in or any dealings or transactions in any capacity with any public utility or any industry regulated by the Board of Public Utilities except in the strict performance of their duties; except that nothing in this section shall preclude dealing or transacting business with any such public utility or regulated company in connection with personal services involving the person or property of such employees.

Section VIII, C, Acceptance of Gifts, provides in part:

Any employee who receives an invitation to any business-related function (a conference, ground breaking, open house, fund-raiser, appearance involving honorarium, inter alia) from a utility, law firm representing a utility or person doing business with the Advocate or the Board or contemplating doing business with the Advocate or the

Board should report the invitation to the Ratepayer Advocate. A determination in consultation with the Ethics Liaison Officer will be made as to whether acceptance of the invitation will present any problems or conflict or appearance of conflict with this Ethics Code, and whether the Ratepayer Advocate might wish to underwrite the costs incurred with participation in the activity as an alternative to accepting the invitation.

Section VIII, A, Outside Interest/Employment Activities/Annual Disclosure, provides in part:

No officer or employee shall have any direct or indirect interest, financial or otherwise, which is in substantial conflict with the proper discharge of duties or interferes with the operation of the Division.

Section VIII, H, Outside Interest/Employment Activities/Annual Disclosure, provides in part:

Officers or employees shall not make use of their office or employment for the purpose of promoting or advertising any off-duty activity which is either prohibited or permitted by this Code.

Section VIII, I, Outside Interest/Employment Activities/Annual Disclosure, provides in part:

Officers or employees shall not publish any work or give any speech which impairs the performance of their duties or interferes with the operation of the Division or otherwise violates this Code or any Divisional regulation or policy.

Section VIII, J, Outside Interest/Employment Activities/Annual Disclosure, provides in part:

An officer or employee, in a private capacity, may publish any work or give any speech which would not reasonably be expected to cast material doubt on his objectivity and independence of judgment in the exercise of his official functions. When publishing any work or giving any speech in a private capacity under circumstances which identify him as an employee or official of the Division of the Ratepayer Advocate, the officer or employee shall declare, in writing or orally as appropriate, that the views expressed

are his and do not reflect the views of the Ratepayer Advocate or any other agency of State government.

Section X, B, Political Activities, provides in pertinent part:

Officers or Employees shall not engage in political activities during the hours of their employment or at any other time if they interfere with the non-partisan functioning of the Division.

The Commission agrees with and adopts the ALJ's conclusions that the Respondent's actions violated N.J.S.A. 52:13D-23(e)(7) and RPA Code of Ethics, Section II for failing to avoid conduct that could reasonably create the perception that she had a conflict of interest; N.J.S.A. 52:13D-23(e)(3) and RPA Code of Ethics, Section IV, A, for using her official position to seek to have a moving violation expunged; and N.J.S.A. 52:13D-23(e)(7) and RPA Code of Ethics, Section II for engaging in communications with Mahna that could reasonably suggest that she had a conflict of interest regarding his business interests. Initial Decision at p. 103. The Commission also adopts the remainder of the ALJ's findings and conclusions, with the exception of those listed below.³

³ The Respondent filed exceptions to the Initial Decision seeking to dismiss the ALJ's findings with respect to Counts I and II primarily based on procedural grounds. The Respondent asserts that the ALJ based his decision with respect to Count II on a legal and factual theory that was not specifically charged in the Complaint or argued by the Petitioner and that, therefore, the Respondent was not afforded proper notice. The Commission disagrees with the Respondent's assertion. The Complaint describes all potential ethics violations and incorporates them by reference; there were extensive arguments on these allegations; and the Commission is satisfied that Respondent was never deprived of fair notice or due process. Moreover, the Commission's Final Order specifically addresses the recusal rule, N.J.A.C. 19:61-7.4, as pled in the Complaint. The Commission also rejects the Respondent's estoppel argument and agrees with the ALJ's findings that Strmensky's determination was limited to the circumstances surrounding Singh's trip to India, and did not constitute advice to Respondent with regard to any other situation.

Failure to Recuse - Utilities

One allegation in the Complaint is that the Respondent was required to recuse on matters that involved individuals and entities that she associated with as President of the AICC, and that her involvement in these matters as RPA resulted in an unwarranted benefit for herself or others.

The Petitioner alleges that Singh violated the recusal rule, N.J.A.C. 19:61-7.4(c), by participating in discussions and decisions concerning awarding contracts to individuals and entities with which she had a professional association through the AICC, and by participating in RPA matters involving entities that she had contact with through her position as President of the AICC. The ALJ appropriately concluded that Singh's simultaneously holding the position as head ratepayer representative and as President of the AICC, a trade organization, created a conflict. However, while the ALJ recognized that Singh's simultaneous office holding created a perception of an improper conflict that amounted to a violation of the Conflicts Law, he did not find Singh in violation of N.J.A.C. 19:61-7.4(c), the regulation governing recusal, because, he reasoned, recusal "was not the proper means for removing the perception." Initial Decision at p. 31. This conclusion and its underlying reasoning is faulty. Although the ALJ reasoned that the proper remedy for curing the perception problem should have been Singh's resignation from the AICC, this fails to address the actual question presented in this case of whether the Respondent's conduct committed while she held the simultaneous positions violated the recusal rule, N.J.A.C. 19:61-7.4. We conclude that her conduct was in violation of this regulation.

As RPA and later Director of the Division of Rate Counsel, Singh was directly involved with numerous utilities as part of her State duties. The role of the RPA was to represent all classes of utility consumers regarding utility-related matters. P-161. Accordingly, interaction with utilities, sometimes in an adversarial capacity, would naturally be an essential aspect of her role as RPA. As President of the AICC, Singh held a leadership role in a trade organization whose mission was to further the economic interests of the members' businesses. Initial Decision at p. 27, 28. During the course of her AICC presidency, while also RPA, a number of utilities became active, contributing, members of the AICC.

The record is clear that a number of regulated entities, including AT&T, Verizon, PSE&G, New Jersey Resources and New Jersey American Water made contributions to the AICC and participated in AICC activities. One example of such activity is the September 17, 2003 AICC Business Exposition, which took place while Singh held a leadership role at the AICC. During this time, Singh had interactions with these entities while serving as RPA. Correspondence found on Singh's State computer confirms her communications with various utilities, including AT&T, concerning AICC-related matters. One such email from AT&T sent to Singh's RPA email address concerns AT&T's sponsorship of a 2002 AICC anniversary celebration. P-152 The AT&T employee who sent the email knew that Singh was the RPA when AT&T sponsored job expos and networking events with the AICC. Initial Decision at p. 33, 34; Testimony of Yancey 38:4-8. Another email from AT&T that was discovered on Respondent's State computer confirmed a \$5,000 sponsorship from AT&T for an AICC dinner gala. P-190. The receipt of AICC emails from utilities on State time and through State email

demonstrates not just an overlap, but a complete eradication of the line separating Singh's State duties and her outside interests with the AICC.

Since Singh chose to simultaneously hold two positions that would likely result in an improper overlap of her State duties and outside interests, as the RPA, she had an unquestionable duty to recuse from any involvement with utilities or other entities that she had dealings with through the AICC. Her business relations with utilities through the AICC and then as RPA resulted in an inappropriate overlap between her professional service to the State and her personal interests through the trade organization. While recusal may have made it difficult for Singh to continue to perform her duties as RPA, this does not absolve her of her duty under the Conflicts Law to attempt to avoid and correct the conflict, or the appearance of a conflict. Here, the ALJ already determined that there existed an appearance of a conflict of interest in her holding both positions. An actual conflict occurred when she started receiving emails and other correspondence from AICC-affiliated entities while at the RPA. Singh was, therefore, at a minimum, obligated to recuse herself from matters involving these entities.

Recusal is required when a State officer has "any personal interest, direct or indirect, that is incompatible with the discharge of the State official's public duties...[which can include] a leadership role in a ...trade organization, which interest might reasonably be expected to impair a State official's objectivity and independence of judgment in the exercise of his or her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of ...her acts that ...she may be engaged in conduct violative of ...her trust as a State official." N.J.A.C. 19:61-7.4. Here, Singh's personal interest as President of the AICC was to further the

AICC mission and the interests of its members, which became incompatible with the discharge of her public duties as RPA as early as September 2003 when a number of the aforementioned utilities participated in and made contributions to a trade association headed by Singh. Therefore, Singh's failure to recuse on RPA matters involving the aforementioned utilities that were members of or had dealings with the AICC during her presidency constituted a violation of N.J.A.C. 19:61-7.4.

Unwarranted Benefits - Contracts

The evidence is clear that Singh was involved in RPA's awarding of contracts to other, non-utility, AICC members. Singh's involvement as RPA with these other AICC-associated entities during and following the September 17, 2003 AICC Business Exposition created, at a minimum, a reasonable impression or suspicion that she may have been engaged in conduct violative of her trust as a State official. This conflict, or the impression of a conflict, required her to recuse from any dealings with those entities in her role as RPA.

The Commission charged Singh with using her official position to secure unwarranted privileges and advantages for her friends and associates in the award of RPA contracts, in violation of N.J.S.A. 52:13D-23(e)(3) and/or 23(e)(7) and Sections II, III, IV, VIII and X of the RPA Code of Ethics. The Commission identified five vendors that were awarded contracts that were allegedly secured due to Singh's influence, without warrant or compliance with required procurement procedures.

With respect to one vendor, ColorEdge Company ("ColorEdge"), a company that received printing contracts from the RPA in 2003, the ALJ recognized that Singh's

simultaneous dual positions created an inherent conflict of interest and, therefore, her involvement in any manner with actions and decisions involving AICC members was “inherently suspect.” Initial Decision at p. 38. We agree with that assessment. The ALJ also agreed that Singh should have recused from contacts with and contracts involving ColorEdge, an entity associated with AICC as early as 2003. Initial Decision at p. 46. Singh not only failed to recuse, she actively encouraged her staff to reach out to ColorEdge. Testimony of Rosenthal 60:9-25. The ALJ also referenced a May 10, 2004 Inter-Office Memorandum from Singh to her staff, instructing her Public Information Officer, Thomas Rosenthal, to contact ColorEdge about getting bids for a tabletop display, and the ALJ concluded that the memo “does show that the potential for the appearance that she [Singh] was favoring an AICC member and might be doing so in a fashion that also might have involved a violation of bidding rules, was not so farfetched.” Initial Decision at p. 46; P-303. Yet, despite recognizing that Singh took action with respect to ColorEdge when she should have, at a minimum, recused, the ALJ concluded that the Commission failed to establish by the preponderance of the evidence that Singh acted to obtain an unwarranted privilege or advantage for ColorEdge. Initial Decision at p. 46, 47. Given Singh’s association with ColorEdge through the AICC and her continued involvement with ColorEdge while heading the RPA, which included directing her staff to contact ColorEdge for a bid, Singh not only created the appearance that she favored this particular vendor, her direction to RPA staff to reach out to ColorEdge for a bid provided ColorEdge with an unwarranted advantage over other potential vendors.

N.J.S.A. 52:13D-23(e)(3) prohibits a State employee from using or attempting to use her official position to secure an unwarranted advantage for herself or others. Here,

as RPA, Singh secured an unwarranted advantage for a member or affiliate of the AICC when she encouraged her RPA staff to reach out to ColorEdge for additional bids. Therefore, we find that Singh's involvement with ColorEdge as RPA, including her direction to her staff to reach out to ColorEdge for a bid, violated N.J.S.A. 52:13D-23(e)(3) and the RPA Code of Ethics, Section IV.

The ALJ also reached an incorrect conclusion regarding Singh's conduct involving Logistic Outsourcing ("Logistic"), another group that Singh was involved with through her role as President of the AICC. While the ALJ recognized that her holding dual positions was "incompatible from an ethical standpoint," and that Singh recommended Logistic to the RPA IT specialist as a possible contractor for interactive CDs/DVDs, he concluded that Singh's conduct with respect to this vendor did not dictate who would receive the contract and, therefore, did not involve any specific ethical breach. Initial Decision at p. 52. However, while there may not be direct evidence that Singh explicitly directed her staff to award Logistic a contract, the record is clear that Singh requested that her staff contact Logistic to provide specifications for a CD project in October 2004. When this contract was awarded to another vendor and problems arose with regard to the quality of this vendor's product, Logistic was given another opportunity to re-bid the project upon Singh's suggestion to contact Logistic, which was ultimately awarded the project.

Singh, as President of the AICC, was required to recuse from any involvement in matters involving this vendor due to the vendor's association with the AICC. Because she did not recuse, and continued to be involved in RPA matters involving this vendor—including directing her staff to reach out to Logistic for their services—her involvement

not only created the impression that she violated the public trust, but that she provided an unwarranted benefit to Logistic that was not provided to other vendors. The ALJ reasoned that this conduct created no violation because there is no evidence that Singh tried to influence the bids or their evaluation—she did not seek the immediate rejection or withdrawal of a competing vendor’s bid and there is no evidence that the decision by her IT specialist to award the contract to Logistic was influenced by Singh “or that he felt that he had no choice regarding his recommendation.” Initial Decision at p. 51. One significant piece of documentary evidence that was not referenced by the ALJ is a memo prepared by the IT specialist documenting that he recommended the RPA select the bid submitted by another vendor. The contract, however, was awarded to Logistic because of Singh’s influence. The memo indicates that Singh “suggested” that he call Logistic, and it reads: “Based on Seema’s suggestion, we awarded the CD Project to Raghu Tandra [of Logistic].” P-58. While Singh may not have been directly involved in the evaluation of the bids, or the immediate rejection of another vendor’s bid, Singh did influence the process by instructing her staff to reach out to Logistic, clearly giving Logistic a benefit that no other vendor received. Therefore, we find that Singh’s actions with respect to Logistic amounted to a violation of N.J.S.A. 52:13D-23(e)(3) and the RPA Code of Ethics, Section IV.

Touchdown Media, Inc. (“Touchdown”) was another member of the AICC while Singh served as the AICC President and RPA. P-35. The RPA had published a newsletter for consumers concerning utilities and energy issues which had been printed in-house until approximately December 2003, when Singh brought in Touchdown to print the RPA newsletter. Carney Testimony 106:4 to 107:3. In one instance, the owner of

Touchdown emailed Singh at her personal email account, addressing her as “Seema M. Singh, Esq. ratepayer advocate of New Jersey” and explained a quote that Touchdown had discussed with RPA staff for printing the newsletters. The Respondent forwarded the email to her RPA staff and Touchdown was ultimately awarded the contract in 2004. No other bids were obtained for the project and Touchdown printed three newsletters for a total cost to the RPA of \$22,500. Initial Decision at p. 62.

Again, the ALJ noted that Singh’s dual positions posed a general problem regarding matters involving members of the AICC. As President of the AICC, Singh was required to recuse from any involvement in matters concerning Touchdown and its president, as active members of the AICC. Instead, Singh became directly involved in awarding this contract to Touchdown, which not only created an appearance of impropriety, but provided Touchdown with an unwarranted benefit. For that reason, we find that Singh’s actions with respect to Touchdown constituted a violation of N.J.S.A. 52:13D-23(e)(3) and the RPA Code of Ethics, Section IV.

Improper Use of State Time and Resources

The Complaint alleges in part that Singh used State employees and resources to draft and review numerous documents, including emails, correspondence, charts, lists, flyers and forms pertaining to, or for, the AICC. The Complaint alleges that by using State time and resources for personal gain, Singh used her official position to secure unwarranted privileges and advantages for herself, and knowingly acted in a way that was violative of her trust as a State employee in violation of N.J.S.A. 52:13D-23(e)(3) and/or 23(e)(7) and Sections II, III, IV, VIII and X of the RPA Code of Ethics.

To support this Count, the Commission entered into evidence over 250 emails and other documents found on RPA computers that relate specifically to the AICC. Singh did not dispute that “flyers, letters, emails, speeches, pictures and press releases were found on several RPA computers.” Initial Decision at p. 102. Some of these documents involve an AICC tsunami fundraising event on January 19, 2005. P-221 to 236. This includes written remarks, prepared on AICC letterhead, given by Singh as the AICC President at the fundraising event. P-224. Documents relating to this AICC event were not only accessed, but created and edited by Singh and the RPA staff through their State computers. Another example of a document found on RPA computers and worked on by RPA staff was a written speech dated October 19, 2004 and titled “ASIAN INDIAN CHAMBER OF COMMERCE 2ND ANNUAL BUSINESS EXPO ENTREPRENEURSHIP: YOU CAN DO IT...AICC CAN HELP,” that was given by Singh “on behalf of AICC’s Members.” P-179. This written speech, which is explicitly identified as being given on behalf of the AICC, was found on an RPA computer, printed on Division of the Ratepayer Advocate letterhead, and prepared by a member of Singh’s staff.

N.J.S.A. 52:13D-23(e)(3) prohibits a State employee from using or attempting to use her “official position to secure unwarranted privileges or advantages.” Section IV, A of the RPA Code of Ethics contains an identical prohibition. Section III of the RPA Code of Ethics specifically addresses the misuse of State resources. It requires its officers and employees to “hold in public trust any property owned or leased by the State, or any other property or funds entrusted to them in the course of their duties and... exercise reasonable care to protect such property from waste, destruction, or improper use.”

Here, the ALJ erred in failing to find that Singh's use of State time and resources, including State email and computers, and more significantly, the use of State employees who were under her direct supervision to work on matters relating to the AICC and Singh's position as AICC President, constituted a misuse of State time and resources for matters unrelated to Singh's official duties. This misuse not only resulted in an unwarranted benefit for Singh, as President of AICC, but for the AICC as well. The use of RPA computers, email, and staff to review, draft and edit materials for the purpose of supporting AICC business, or Singh's position as President of the organization, was wholly improper and a violation of the Conflicts Law and RPA Code of Ethics. These actions constituted a violation of N.J.S.A. 52:13D-23(e)(3), N.J.S.A. 52:13D-23(e)(7) and RPA Code of Ethics Sections II, III and IV.

Conclusion

By our decision today, the Commission adopts the ALJ's recommendation that the Respondent violated N.J.S.A. 52:13D-23(e)(7) and RPA Code of Ethics, Section II for failing to avoid conduct that could reasonably create the perceptions that she had a conflict of interest. The Commission also adopts the ALJ's recommendation that the Respondent violated N.J.S.A. 52:13D-23(e)(3) and RPA Code of Ethics, Section IV, A, for using her official position to seek to have a moving violation expunged. The Commission also agrees with and adopts the recommendation of the ALJ that the Respondent violated N.J.S.A. 52:13D-23(e)(7) and RPA Code of Ethics, Section II for engaging in communications with a vendor that could reasonably suggest that she had a conflict of interest regarding his business interests. Initial Decision at p. 103. Finally,

the Commission adopts the remainder of the findings and conclusions reached by the ALJ in his Initial Decision, with the exception of the following three findings and conclusions.

First, the Commission finds that the Respondent, as a State employee, violated N.J.A.C. 19:61-7.4 for failing to recuse on RPA matters involving various regulated utilities that were members of or had dealings with the AICC during her presidency. Consequently, the Commission rejects the ALJ's recommendation dismissing the charge that Singh violated N.J.A.C. 19:61-7.4 with respect to Count II of the Complaint.

Second, the Commission finds that the Respondent violated N.J.S.A. 52:13D-23(e)(3) and the RPA Code of Ethics, Section IV for using her official State position to secure unwarranted advantages or benefits for members or affiliates of the AICC. The Commission, therefore, rejects the ALJ's recommendation to dismiss the charge that Singh violated N.J.S.A. 52:13D-23(e)(3) and the RPA Code of Ethics, Section IV with respect to Count I of the Complaint.

Third, the Commission finds that the evidence clearly supports the charge that Respondent violated N.J.S.A. 52:13D-23(e)(3), N.J.S.A. 52:13D-23(e)(7) and RPA Code of Ethics, Sections II, III and IV for her misuse of State time and resources. The Commission, therefore, rejects the recommendation of the ALJ dismissing the charge that Singh violated N.J.S.A. 52:13D-23(e)(3), N.J.S.A. 52:13D-23(e)(7) and RPA Code of Ethics, Sections II, III and IV.

With respect to the ALJ's recommended assessed penalty, the Commission adopts the ALJ's recommendation to impose a \$500 fine for improperly attempting to have a moving violation expunged, in violation of N.J.S.A. 52:13D-23(e)(3) and RPA Code of Ethics, Section IV, A. The Commission also adopts the ALJ's recommendation to

impose a \$500 fine for engaging in communications with a vendor that could reasonably suggest that she had a conflict of interest regarding his business interests, in violation of N.J.S.A. 52:13D-23(e)(7) and RPA Code of Ethics, Section II. Finally, while the Commission has determined that Singh violated sections of the Conflicts Law and RPA Code of Ethics that the ALJ had recommended dismissing, the Commission will not impose an additional penalty beyond the \$10,000 fine assessed by Judge Masin for the violation of N.J.S.A. 52:13D-23(3)(7) and RPA Code of Ethics, Section II. We conclude that the additional violations found by the Commission are all conflicts that are directly related to Singh's conduct while holding dual positions as RPA and AICC President. Since the additional violations arose from Singh's improper holding of overlapping positions that was cited by Judge Masin as the basis for his recommendation of a \$10,000 fine, the Commission finds that this fine is an appropriate sanction for the ethics violations committed by Singh in her dual roles.

It is so ordered.



Andrew S. Berns, Chair
State Ethics Commission

Date: July 22, 2014