

M. Wilson

DIVISION OF MENTAL HEALTH AND HOSPITALS

Administrative Bulletin Transmittal Memorandum No. 50

September 12, 1983

SUBJECT: Administrative Bulletin 4:08
Review of Continuing Outside Employment

The purpose of this transmittal is to inform all Division of Mental Health and Hospitals employees of their responsibilities under the New Jersey Conflicts of Interest Law, the Department of Human Services Code of Ethics and Department Administrative Orders 4:05, 4:13 and 4:14.

Administrative Bulletin 4:08, Review of Continuing Outside Employment, provides guidelines for determining when the continuing outside employment of Division of Mental Health and Hospitals employees constitutes a conflict of interest.


In general, these laws and regulations restrict the rights of employees to hold property, to maintain financial interests, or to engage in certain activities, when such holdings, interests or activities would create a conflict of interest. A conflict of interest is broadly defined to include actual and potential or apparent conflicts. An apparent conflict of interest, for example, is a situation that may create in the mind of the public an impression of a conflict of interest, whether or not such a conflict actually exists. The conduct of employees, therefore, must be not only ethical but above suspicion as well.

Additionally, these laws and regulations prohibit employees from engaging in outside activities and employment which interfere with the efficient performance of their duties. The Department of Human Services regulations require employees to seek and obtain prior and continuing approval from the Chief Executive Officer, or Division Director, as appropriate, before engaging in any continuing outside employment. This includes employment by another State agency or in a second position within the Division or Department.

Employees must be cautioned with regard to provisions contained in N.J.S.A. 52:13D, the Department of Human Services Code of Ethics, and Department Administrative Orders 4:05, 4:13 and 4:14, dealing with subjects such as the acceptance of gifts, representation and appearances before State agencies, contracts with the State, continuing outside employment, and disclosure of information.

It should be noted that N.J.S.A. 52:13D-21 and 23 provide penalties for persons found guilty of violating any provisions of the Conflicts of Interest Law or the Code of Ethics and that N.J.S.A. 52:13D-21 authorizes the Executive Commission on Ethical Standards to conduct investigations, hold hearings, and compel the attendance of witnesses and the production of records. Therefore, all employees shall be encouraged to comply with requests from the Department of Human Services for information regarding activities that may come within the areas governed by these laws and regulations.

The procedures described in Administrative Bulletin 4:08 shall be implemented by all Chief Executive Officers and Assistant Directors beginning October 17, 1983.


Richard H. Wilson, Director
Division of Mental Health and Hospitals

RHW:PK:r

DIVISION OF MENTAL HEALTH AND HOSPITALS

ADMINISTRATIVE BULLETIN 4:08

DATE: September 19, 1983

SUBJECT: Review of Continuing Outside Employment
Applicability: H,CO

I. Introduction

A. Purpose

This Administrative Bulletin implements and clarifies Administrative Order 4:05, sections I.A.1 and I.D, by providing guidelines for determining when the continuing outside employment of Division of Mental Health and Hospitals employees constitutes a conflict of interest.

B. Policies

These guidelines are intended to implement the purposes of the New Jersey Conflicts of Interest Law and the Department of Human Services Code of Ethics, while recognizing that "citizens who are government officials and employees have the right to private interests of a personal, financial and economic nature;" and "that standards of conduct should separate those conflicts of interest which are unavoidable in a free society from those conflicts which are substantial and material or which bring government into disrepute." N.J.S.A. 52:13D-23(e) (8).

C. Related Legislative and Regulatory Parameters

1. The New Jersey Conflicts of Interest Law:

N.J.S.A. 52:13D (Attachment A)

Section 15: Representation for acquisition or sale of property by the State;

Section 16: Representation on proceeding pending before employee's office;

Section 17: Representation on matter in which directly involved; relationship with casino applicants or licensees.

Section 19: Contracts with the State;

Section 20: Transactions involving pecuniary interest;

Section 24: Solicitation, receipt or agreement to receive employment for services related to State duties.

2. The Department of Human Services Code of Ethics (Attachment B):

- Section 3: Employment which might reasonably be expected to impair objectivity and independence of judgment in the exercise of State duties;
- Section 7: Licensed or regulated business or profession;
- Section 8: Direct or indirect personal financial interests that might reasonably be expected to impair objectivity or independence of judgment;
- Section 9: Interest, business or transaction in substantial conflict with State duties.

3. Administrative Order 4:05 (Attachment C):

- Section I.A. 2: Outside employment during normal working hours;
- Section I.A. 3: Outside employment interfering with efficiency in performance of State duties.

D. Definitions

1. "Approving authority" means the person who is responsible for determining whether continuing outside employment shall be permitted. This person is the Chief Executive Officer for hospital employees, the Division Director for Central Office staff, and the Commissioner for the Division Director. A decision by an approving authority may be appealed, pursuant to these procedures, to a superior body within or without the Department.
2. "Client" means a client of the Division of Mental Health and Hospitals or a recipient of services provided directly or indirectly by any other employee.
3. "Continuing outside employment" means outside employment, which is either:
 - a. time limited, for a continuous period of no more than 15 working days, during which the employee is working full time for an outside employer and is not working for the Division; or
 - b. time limited and either:
 1. continues for more than 3 months; or
 2. involves more than 1 contact per week; or

c. not time limited.

4. "Employee" means a person who is employed by the Division of Mental Health and Hospitals.
5. "Employer" means either the Division of Mental Health and Hospitals, a self-employed employee, or a person, corporation, or association for whom an employee is working. "Outside employer" means an employer other than the Division of Mental Health and Hospitals.
6. "Employment" means work by an employee for an employer which is full time or part time or on a consultant or volunteer basis and which may or may not be remunerated. "Outside employment" is employment for an outside employer.

II. General Rules and Responsibilities

A. Any employee who is engaged in any activity, practice or employment which is clearly prohibited by the Conflicts of Interest Law, the Code of Ethics, Administrative Orders 4:05, 4:13 (Attachment D) or 4:14 (Attachment E), or which constitutes a conflict of interest as defined in Section III of this bulletin should immediately discontinue such activity, practice or employment.

B. Requirement of Approval of Continuing Outside Employment

An employee may engage in continuing outside employment only with the prior and continuing approval of an approving authority.

C. Responsibilities of Approving Authority

The approving authority shall be responsible for soliciting information from subordinates regarding their continuing outside employment and shall act on requests for approval of such employment pursuant to the standards and procedures described in this bulletin.

III. Standards of Conduct

A. The approving authority is responsible for determining whether or not an employee's proposed continuing outside employment is in violation of the requirements of the following laws and regulations:

- B. An employee who is currently engaged in continuing outside employment shall, within three weeks of implementation of these procedures, submit to his/her supervisor a "Request for Approval of Continuing Outside Employment" (see Attachment F).
 - C. Within five working days of receipt of such request, the employee's supervisor shall complete a "Disposition of Request for Continuing Outside Employment" and state his/her opinion as to whether a conflict of interest or other ethical problem exists (see Attachment G). The supervisor shall forward these materials, through channels, to the approving authority. An intermediary supervisor may append information and/or recommendations to these materials.
 - D. The approving authority shall forward the request and supporting materials to the Director of Human Resources who, in consultation with the Special Assistant to the Chief Executive Officer (or Special Assistant to the Director, as appropriate), shall review the materials within ten working days of receipt, and advise the approving authority as to whether he/she believes that a conflict of interest or other ethical problem exists.
 - E. The approving authority shall review the request and the opinion of the Director of Human Resources and shall notify the employee of his/her final decision within five working days of receipt of the opinion. A copy of the approving authority's decision shall be forwarded, at the same time, to the Director, Division of Mental Health and Hospitals.
 - F. The employee may, within three weeks of receipt of the approving authority's decision, file an appeal by notifying the Division Director, who in turn, shall promptly request a review by the Executive Commission on Ethical Standards. (see Attachment H).
 - G. An employee may continue outside employment which predates his/her employment with the Division pending the resolution of a request made pursuant to this section.
- V. An approving authority may disapprove outside employment at any time, whether or not a request for approval has been submitted, upon his/her determination that such employment violates other sections of the Conflicts of Interest Law, the Code of Ethics or other sections of Administrative Orders 4:05, 4:13 or 4:14.


Richard H. Wilson, Director
Division of Mental Health and Hospitals

STATE GOVERNMENT

CHAPTER 13D. CONFLICTS OF INTEREST

STATE GOVERNMENT

52:13D-12

- Sec. 52:13D-12. Legislative findings [New].
- 52:13D-13. Definitions [New].
- 52:13D-14. State officer or employee or member of legislature; acceptance of thing of value to influence public duties [New].
- 52:13D-15. Representation, appearance or negotiation, directly or indirectly, for acquisition or sale of property by state [New].
- 52:13D-16. Representation, appearance or negotiation on proceeding pending before particular office, bureau, etc., or state agency [New].
- 52:13D-17. Representation on matter in which directly involved during state service [New].
- 52:13D-17.1 Repealed.
- 52:13D-17.2 Certain state and municipal officers and employees; relationships with casino applicants or licensees; prohibitions; violations [New].
- 52:13D-18. Vote or any other action by member of legislature with personal interest; statement required [New].
- 52:13D-19. Contracts, agreements, sales or purchases with state [New].
- 52:13D-20. Representation of state agency in transaction involving pecuniary interest for legislator or state officer employee [New].
- 52:13D-21. Executive commission on ethical standards; penalties for state officers or employees found guilty by commission [New].
- 52:13D-22. Joint legislative committee on ethical standards; penalties for state officers or employees found guilty by committee [New].
- 52:13D-23. Code of ethics; approval; violations; penalties [New].
- 52:13D-24. Solicitation, receipt or agreement to receive, thing of value for service related to official duties; exceptions [New].
- 52:13D-25. Disclosure or use for personal gain of information not available to public [New].
- 52:13D-26. Inducement or attempting to induce legislative member or state officer or employee to violate act; penalty [New].
- 52:13D-27. Short title [New].

TABLE

Showing where the subject matter of the repealed sections is now covered by sections 52:13D-12 to 52:13D-27.

Former Section	Present Section	Former Section	Present Section
52:13D-1	52:13D-27	52:13D-5	52:13D-21
52:13D-2	52:13D-14	52:13D-6	52:13D-22
52:13D-3	52:13D-15	52:13D-7	52:13D-21
		52:13D-8	52:13D-21
		52:13D-9	52:13D-22
52:13D-4	52:13D-10, 52:13D-18	52:13D-10	52:13D-22
		52:13D-11	52:13D-23
		52:13D-12	52:13D-13

Law Review Commentaries

Conflicts of interest of public officers. M. J. Halnes (Summer 1970) 34 N.J. State Bar J. 6.
Conflicts of interest situations and remedies. Ralph Eisenberg (1959) 13 Rutgers L. Rev. 666.
Dual offices incompatible under common law. (1961) 16 Rutgers L. Rev. 157.

52:13D-1 to 52:13D-11. Repealed by L.1971, c. 182, § 19, eff. Jan. 11, 1972.

L.1971, c. 182, § 19, approved June 2, 1971 provided: "Chapter 229 of the laws of 1967 is repealed as of the effective date of this act but any rules, regulations and opinions of the Executive Commission on Ethical Standards and the Joint Legislative Committee on 52:13D-12. Legislative findings

The Legislative finds and declares:

(a) In our representative form of government, it is essential that the conduct of public officials and employees shall hold the respect and confidence of the people. Public officials must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

(b) To ensure propriety and preserve public confidence, persons serving in government should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards amongst them. Some standards of this type may be complex and vary in circumstances, are best left to the governance of several agencies of government.

(c) It is also recognized that under a free government it is both necessary and desirable that all citizens, public officials included, should have certain specific interests in the decisions of government, and that the activities and conduct of public officials should not, therefore, be unduly circumscribed.

L.1971, c. 182, § 1, eff. Jan. 11, 1972.

Sections 18 and 20 of L.1971, c. 182, approved June 2, 1971, provided: "18. Nothing in this act shall be deemed to alter, limit, restrict, enlarge or otherwise affect the rights or obligations of any State officer or employee, member of the Legislature or employee, or any transaction entered into or agreed to prior to the effective date of this act.

"20. This act shall take effect January 11, 1972."

Title of Act:

An Act for the more effectual regulation of the conduct of State officers and employees and members of the Legislature, repealing the "New Jersey Conflicts of Interest Law" (P.L.1967, c. 229), and supplementing Title 52 of the Revised Statutes, L.1971, c. 182.

Administrative Code References

Department of higher education, code of ethics, see N.J.A.C. 9:2-10.1 et seq.

Library references

Statutes 52:110.

Statutes 52:110-110.

C.J.S. Officers 53 110-110.

C.J.S. Statutes 53 59 et seq., 113.

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1/2. Validity

Legislature's delegation of power to joint legislative committee on ethical standards to enforce the conflicts of interest statute and to impose fines for violations of its provisions is not violative of Const., Art. 4, § 4, 3, constituting provisions pertaining to power to punish members of each house of the legislature.

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1967

Monmouth County v. Morales, 119 N.J. Super. 29, 289 A.2d 663 (L.1972).

Department of transportation Form 12-102 entitled "Certification by Employer Regarding Outside Employment" is not included in the general exclusion for personnel records within the meaning of Executive Order No. 9 (1968) and 11 (1974), which includes such items as employees' performance ratings, family history, medical and psychology information, is directly related to the department pursuant to § 52:13D-23, and is a public document under the right to know law available to a member of the news media for his inspection. Atty. Gen. F.O.1976, No. 24.

Except for certain specific proscriptions contained in the Constitution or statutes, there is no absolute bar to dual employment of public officers and employees. Atty. Gen. F.O.1976, No. 18.

2. Attorneys who serve as counsel for governmental bodies must avoid not only direct conflicts of interests, but any situation which might appear to involve a conflict of interests. N.J.S.A. 52:13D-12(a); ABA Code of Professional Responsibility, Matter of Opinion No. 415, New Jersey Court Advisory Committee on Professional Ethics, 81 N.J. 318, 407 A.2d 1197 (1979).

An office association or partnership between counsel for a municipality and since a municipal attorney has a duty to further that municipality's public interest, whereas a county attorney is bound to advance public interest of county.

52:13D-13. Definitions

As used in this act, and unless a different meaning clearly appears from the context, the following terms shall have the following meaning:

- a. "State agency" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, within or created by the State and any office, board, bureau or commission, authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.
- b. "State officer or employee" means any person, other than a member of the Legislature, holding an office or employment in a State agency, excluding special State officers or employees as defined in subsection c, of this section.
- c. "Member of the Legislature" means any person elected to serve in the General Assembly or the Senate.
- d. "Head of a State agency" means (1) in the case of the Executive Branch of Government, the department head or, if the agency is not assigned to a department, the Governor, and (2) in the case of the Legislative Branch, the chief presiding officer of each House of the Legislature.
- e. "Special State officer or employee" means (1) any person holding an office or employment in a State agency for which office or employment no compensation is authorized or provided by law, or no compensation other than a sum in reimbursement of expenses, whether payable per diem or per annum, is authorized or provided by law and; (2) any person, not a member of the Legislature, holding a part-time elective or appointive office or employment in the Legislative branch.
- f. "Person" means any natural person, association or corporation.
- g. "Interest" in a corporation means the ownership or control of more than 10% of the stock of the corporation, means (1) the ownership or control

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of more than 10% of the profits or assets of a firm, association, or partnership, or more than 10% of the stock in a corporation for profit other than a professional service corporation organized under the "Professional Service Corporation Act" (N.J.S. 14A:17-1 et seq.); or (2) the ownership or control of more than 1% of the profits or assets of a firm, association, or partnership, or more than 1% of the stock in any corporation, which is the holder of, or an applicant for, a casino license or in any holding or intermediary company with respect thereto, as defined by the "Casino Control Act," P.L.1977, c. 110 (C. 5:12-1 et seq.). The provisions of this act governing the conduct of individuals are applicable to shareholders, associates or professional employees of a professional service corporation regardless of the extent or amount of their shareholder interest in such a corporation.

h. "Cause, proceeding, application or other matter" means a specific cause, proceeding or matter and does not mean or include determinations of general applicability or the preparation or review of legislation which is no longer pending before the Legislature or the Governor.

i. "Member of the immediate family" of any person means the person's spouse, child, parent or sibling residing in the same household.

L.1971, c. 182, § 2, eff. Jan. 11, 1972. Amended by L.1971, c. 350, § 1, eff. Jan. 11, 1972; L.1981, c. 142, § 2, eff. May 14, 1981.

Prior Law: N.J.S.A. 52:13D-11 (L. 1967, c. 229, § 11). Section 4 of L.1971, c. 359, provided: "This act shall take effect January 11, 1972." 1. Construction and application of Governor's power to carry out his constitutional executive responsibilities is not curtailed in any degree by legislative enactment of the Conflicts of Interest Law, L. 1971, c. 350, § 2, N.J. Super. 23, 365 A.2d 211 (A.D.1976) affirmed 75 N.J. 458, 333 A.2d 428.

52:13D-14. State officer or employee or member of legislature; acceptance of thing of value to influence public duties

No State officer or employee, special State officer or employee, or member of the Legislature shall accept from any person, whether directly or indirectly and whether by himself or through his spouse or any member of his family or through any partner or associate, any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with intent to influence him in the performance of his public duties and responsibilities. This section shall not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office.

L.1971, c. 182, § 3, eff. Jan. 11, 1972.

Prior Law: N.J.S.A. 52:13D-3 (L. 1967, c. 229, § 2). Section 4 of L.1971, c. 182, see § 52:13D-13 note.

2. Determination of interest in public office or employment whether public or private is sufficient to disqualify the official if actual in nature and requires inquiry as to whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty. Pataki v. City Council of City of New Brunswick, 126 N.J. Super. 233, 313 A.2d 804 (A.D.1974).

3. Determination of interest in public office or employment whether public or private is sufficient to disqualify the official if actual in nature and requires inquiry as to whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty. Pataki v. City Council of City of New Brunswick, 126 N.J. Super. 233, 313 A.2d 804 (A.D.1974).

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- 1. In general
- 2. Where a public official has a direct or indirect private interest in the outcome of his official action which is different

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52:13D-15 STATE GOVERNMENT

52:13D-15. Representation, appearance or negotiation, directly or indirectly, for acquisition or sale of property by state

No member of the Legislature or State officer or employee shall represent, appear for, or negotiate on behalf of, whether by himself or by or through any partnership, firm or corporation in which he has an interest or by any partner, officer or employee of any such partnership, firm or corporation any person or party other than the State in any negotiations for the acquisition or sale by the State or a State agency of any interest in real or tangible or intangible personal property, or in any proceedings relative to such acquisition or sale before a condemnation commission or court; provided, however, nothing contained in this section shall be deemed to prohibit any person from representing himself in negotiations or proceedings concerning his own interest in real property.

L.1971, c. 182, § 4, eff. Jan. 11, 1972.
Prior Law: N.J.S.A. 52:13D-3, 52:13D-4 (L.1967, c. 229, §§ 3, 4).
Effective date and retroactive application of L.1971, c. 182, see § 52:13D-12 note.

52:13D-16. Representation, appearance or negotiation on proceeding pending before particular office, bureau, etc., or state agency

a. No special State officer or employee, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before any State agency; provided, however, this subsection shall not be deemed to prohibit a member of the Legislature from making an inquiry for information on behalf of a constituent. If no fee, reward or other thing of value is proposed to, given to or accepted by the member of the Legislature, whether directly or indirectly nor shall anything contained herein be deemed to prohibit any such partnership, firm or corporation from appearing on its own behalf.

b. No State officer or employee or member of the Legislature, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before any State agency; provided, however, this subsection shall not be deemed to prohibit a member of the Legislature from making an inquiry for information on behalf of a constituent. If no fee, reward or other thing of value is proposed to, given to or accepted by the member of the Legislature, whether directly or indirectly nor shall anything contained herein be deemed to prohibit any such partnership, firm or corporation from appearing on its own behalf.

c. Nothing contained in this section shall be deemed to prohibit any legislator, or any State officer or employee or special State officer or employee from representing, appearing for or negotiating on behalf of, or agreeing to represent, appear for, or negotiate with any proceeding, pending before any court than the State in connection with any proceeding, pending before any court arising under chapter 15 of Title 34 of the Revised Statutes (Workers' Compensation), any proceeding in connection with the determination or review of the transfer inheritance or estate taxes, any proceeding in connection with the filing of corporate or other documents in the office of the Secretary of State, any proceeding before the Division of Civil Rights, the New Jersey State Board of Mediation or the New Jersey Public Employment Relations Commission, the Unsatisfied Claim and Judgment Fund Board solely for the purpose of filing a notice of intention pursuant to P.L.1952, c. 174, s. 5 (L. 39:8-45),

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52:13D-17 STATE GOVERNMENT

or any successor thereof or any proceeding on behalf of a county, municipality or school district, or any authority, agency or commission of any thereof except where the State is an adverse party in the proceeding and provided he is not holding any office or employment in the State agency in which any such proceeding is pending.

L.1971, c. 182, § 5, eff. Jan. 11, 1972. Amended by L.1971, c. 350, § 2, eff. Jan. 11, 1972; L.1975, c. 228, § 1, eff. Oct. 16, 1975; L.1980, c. 70, § 1, eff. July 29, 1980; L.1981, c. 142, § 3, eff. May 14, 1981.

Prior Law: N.J.S.A. 52:13D-3, 52:13D-4 (L.1967, c. 229, §§ 3, 4).
1975 Amendment. Made former subsection c. applicable to appearances, representations or negotiations before the Unsatisfied Claim and Judgment Fund Board solely for the purpose of filing a notice of intention pursuant to P.L.1952, c. 174, s. 5 (L. 39:8-45).
Effective date and retroactive application of L.1971, c. 182, see § 52:13D-12 note.

1880 Amendment. Inserted former subsection b. relating to prohibition of employment of special state officer or employee with any holder of or applicant for a State license, other directly or indirectly, and without indication of department in employment, omitted former subsection c. which read: In this section shall be deemed to prohibit any legislator, or any State officer or employee from representing, appearing for or negotiating on behalf of, or agreeing to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before any State agency; provided, however, this subsection shall not be deemed to prohibit a member of the Legislature from making an inquiry for information on behalf of a constituent. If no fee, reward or other thing of value is proposed to, given to or accepted by the member of the Legislature, whether directly or indirectly nor shall anything contained herein be deemed to prohibit any such partnership, firm or corporation from appearing on its own behalf.

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Validity 1

1. Validity
This section applicable to state legislators does not have an impermissible chilling effect upon attorneys who wish to be candidates for the state legislature in its prohibition of any representation or appearance by any State officer or employee of any person or party other than the State in connection with any cause or other matter pending before any State agency, unless such person is a constituent and nothing of value is promised to or received by legislator, in view of facts that during years in which statute has been in effect, attorneys continued to occupy more than their fair share of legislative seats. Joint Legislative Committee on Ethical Standards v. Perkins, 179 N.J. Super. 382, 432 A.2d 116 (A.D.1981).

2. Conflict of interest
Legislature's delegation of power to joint legislative committee on ethical standards to enforce the conflicts of interest statute and to impose fines for violations of its provisions is not violative of Const. Art. 4, § 3, pertaining to power to punish members of each house of the legislature. Joint Legislative Committee on Ethical Standards v. Perkins, 179 N.J. Super. 382, 432 A.2d 116 (A.D.1981).
A substantial nexus existed between compelling public or state interest in discouraging corruption and appearance of corruption among state legislators and this section which clearly outweighs the alleged repressive effect upon rights of attorneys to run for legislative office. Id.

52:13D-17. Representation on matter in which directly involved during state service

4d) No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment. Any person who

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in the provisions of this section is a disorderly person, and shall be subject to a fine not to exceed \$500.00 or imprisonment not to exceed 6 months, or both.
L.1971, c. 182, § 9, eff. Jan. 11, 1972. Amended by L.1971, § 3, eff. Jan. 11, 1972.

Effective date and retroactive application of L.1971, c. 182, see § 52:13D-12 note.
The amendment by L.1971, c. 359, § 3 also deleted former subsection (b) which prohibited state officers and employees within two years after termination of employment from representing, appearing for or negotiating on behalf of anyone other than the state before the state agency by which the officer or employee was formerly employed.
Law: N.J.S.A. 52:13D-3 (L. 1967, c. 229, § 3).

52:13D-17.1 Repealed by Laws 1981, c. 142, § 7, eff. May 14, 1981

The repealed section, added by L.1980, c. 79, § 2, related to prohibition of acquisition in acceptance of employment by or representation of casino applicants or licensees by certain state and municipal officers and employees, and

52:13D-17.2 Certain state and municipal officers and employees; relationship with casino applicants or licensees; prohibitions; violations

A. As used in this section "person" means any State officer or employee subject to financial disclosure by law or executive order and any other State officer or employee with responsibility for matters affecting casino activity; any special State officer or employee with responsibility for matters affecting casino activity; the Governor; any member of the Legislature or full time member of the Judiciary; any full time professional employee of the Office of the Governor, or the Legislature; the head of a principal department; the assistant or deputy heads of a principal department, including all assistant and deputy commissioners; the head of any division of a principal department; any member of the governing body, or the municipal judge or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner, or consultant regularly employed or retained by such planning board or zoning board of adjustment.

b. No State officer or employee, nor any person, nor any member of the immediate family of any State officer or employee, or person, nor any partnership, firm or corporation with which any such State officer or employee or person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm, or corporation, shall hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, in connection with any cause, application, or matter.

c. No person or any member of his immediate family, nor any partnership, firm or corporation with which such person is associated or in which he has an interest, nor any partner, officer, director or employee while he

1. In general
Where much of the information relevant to crimes charged against defendant was gathered while defense counsel was that assistant prosecutor, and where the crimes charged involved alleged manipulation or cover-up of previously gathered evidence, fact that dates of the specific charges in the indictments were long after defense counsel had left the prosecutor's office did not preclude finding that there was a conflict of interest in defendant's representation by the former first assistant prosecutor. State v. Luterfeld, 135 N.J. Super. 347, 343 A.2d 465 (A.D.1975).

from solicitation or acceptance of compensation for service or disclosure, and prohibition of influence of licensee or other proceedings.
See, now, § 52:13D-17.2.

is associated with such partnership, firm or corporation, shall, within 2 years next subsequent to the termination of the office or employment of such person, hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for or negotiate on behalf of, any holder of, or applicant for, a casino license in connection with any cause, application, or matter, or applicant for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino restrictions applicable to members and employees of the Casino Control Commission and employees and agents of the Division of Gaming Enforcement pursuant to subsection b. (2) of section 59 and to section 60 of P.L.1977, c. 110 (C. 6:12-59b. (2) and C. 6:12-60).

d. The Joint Legislative Committee on Ethical Standards and the Executive Commission on Ethical Standards, as appropriate, shall forthwith determine and publish, and periodically update, a list of those positions in State Government with responsibility for matters affecting casino activity.

e. No person shall solicit or accept, directly or indirectly, any compliment or has reason to know is older than a service or discount that is offered to members of the general public in like circumstance.

f. No person shall influence, or attempt to influence, by use of his official authority, the decision of the commission or the investigation of the division in any application for licensure or in any proceeding to enforce the provisions of this act or the regulations of the commission. Any such attempt shall be promptly reported to the Attorney General; provided, however, that nothing in this section shall be deemed to prohibit a request for information by any person concerning the status of any application for licensure or any proceeding to enforce the provisions of this act or the regulations of the commission.

g. Any person who willfully violates the provisions of this section is a disorderly person and shall be subject to a fine not to exceed \$500.00 or imprisonment not to exceed 6 months, or both.
L.1981, c. 142, § 4, eff. May 14, 1981.

Prior Laws: C. 52:13D-17.1 (L.1980, c. 79, § 2).
Provisions of this section were formerly contained in § 52:13D-16.

Title of Act:
An Act concerning casino activity and the conduct of certain elected and appointed public officers and employees and police thereto, amending and supplementing P.L.1971, c. 182, amending P.L.1977, c. 110, P.L.1980, c. 28 and P.L.1980, c. 69 and repealing section 2 of P.L.1981, c. 79, L.1981, c. 142.
Library References:
G.J.S. Gaming § 1 et seq.

Index to Notes

- 1. Validity
- 2. Actions
- 3. Judges
- 4. Construction and application

1. Validity
This section restricting dealings or relationships of members of judiciary with casino entities did not violate Const. Art. 6, § 2, par. 3 placing in the State and confere. Memorandum of conduct for present law did not present conflict of interest with the constitutional judicial powers of the Supreme Court, law served an important, legitimate governmental purpose clearly within the state police power.

2. Actions
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concern of the legislature, and it did so in a fashion that did not interfere with the Supreme Court's administration of the court system and regulation of the judiciary and legal profession. Knight v. City of Newark, 86 N.J. 374, 491 A.2d 833 (1981).
2. Interpretation of legislature in enacting currently operative New Jersey gambling industry law as it relates to gaming industry was to include persons of the judiciary both full-time members of the judiciary both full-time municipal court judges located in any municipality within the state as well as any full-time or part-time municipal judge within the City of Atlantic City, 431 A.2d 833 (1981).
3. Judges
Post-termination restrictions contained in current conflicts of interest law relating to dealings or relationships with all full-time judges and municipal court judges of Atlantic City, and to those with whom they may become associated in the practice of law, shall also apply to part-time municipal court judges upon their termination of public offices, but such post-termination restrictions shall be limited to such judges individually and shall not be extended to law firms or other attorneys with whom they become associated after leaving judicial office. Knight v. City of Newark, 86 N.J. 374, 491 A.2d 833 (1981).
Part-time municipal

ical restrictions provided in conflict of interest law relating to dealings or relationships with gaming entities, and such restrictions should govern conduct of such judges in office, both with respect to discharge of their official responsibilities and with respect to their practice of law including any law firm or other attorneys with whom they are employed or associated. Id.

4. Actions Where members of association of municipal court judges may be affected by

amendment to the conflicts of interest law, which prohibited dealings or relationships with gaming entities, plaintiffs might be indirectly affected by court's resolution of the ethical question of concern in the judicial opinion. Plaintiff was brought and by parties with a stake in the outcome, admission with a powerful public interest sufficient to demonstrate their standing to sue. *Krieger v. City of Marquette*, 96 N.J. 374, 431 A.2d 838 (1981).

52:13D-18. Vote or any other action by member of legislature with personal interest; statement required

(a) No member of the Legislature shall participate by voting or any other action, on the floor of the General Assembly or the Senate, or in committee or elsewhere, in the enactment or defeat of legislation in which he has a personal interest until he files with the Clerk of the General Assembly or the Secretary of the Senate, as the case may be, a statement (which shall be entered verbatim on the Journal of the General Assembly or the Senate) stating in substance that he has a personal interest in the legislation and that notwithstanding such interest, he is able to cast a fair and objective vote and otherwise participate in connection with such legislation.

(b) A member of the Legislature shall be deemed to have a personal interest in any legislation within the meaning of this section if, by reason of his participation in the enactment or defeat of any legislation, he has reason to believe that he will derive a direct monetary gain or suffer a direct monetary loss. No member of the Legislature shall be deemed to have a personal interest in any legislation within the meaning of this section if, by reason of his participation in the enactment or defeat of any legislation, no benefit or detriment could reasonably be expected to accrue to him, as a member of a business, profession, occupation or group, to any greater extent than any such benefit or detriment could reasonably be expected to accrue to any other member of such business, profession, occupation or group.

L.1971, c. 182, § 7, eff. Jan. 11, 1972.
Effective date and retroactive application of L.1971, c. 182, see § 52:13D-12 note.

Prior Law: N.J.S.A. 52:13D-4 (L. 1967, c. 229, § 4).

52:13D-19. Contracts, agreements, sales or purchases with state

No member of the Legislature or State officer or employee shall knowingly himself, or by his partners or through any corporation which he controls or in which he owns or controls more than 10% of the stock, or by any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$25,000 or more, made, entered into, awarded or granted by any State agency; provided, however, that the provisions of this section shall not apply to (a) purchases, contracts, agreements or sales which (1) are made or let after public notice and competitive bidding or which (2), pursuant to section 5 of chapter 48 of the laws of 1944 (C. 52:34-10), may be made, negotiated or awarded without public advertising or bids, or (b) any contract of insurance entered into by the Director of the Division of Purchase and Property pursuant to section 10 of article 6 of chapter 112 of the laws of 1944 (C. 52:27B-62). If such purchases, contracts or agreements, including change orders and amendments thereto, shall receive prior approval of the Joint Legislative Committee on Ethical Standards if a member of the Legislature or State officer or employee in the Legislative Branch has an interest therein which would otherwise be forbidden by this section.

L.1971, c. 182, § 8, eff. Jan. 11, 1972.
Effective date and retroactive application of L.1971, c. 182, see § 52:13D-12 note.
Prior Law: N.J.S.A. 52:13D-3, 52:13D-4 (L.1967, c. 229, §§ 3, 4).

1. Construction and application does not include any substitute for the original act, as amended, or any act, as amended, which is pending or proposed.

52:13D-20. Representation of state agency in transaction involving pecuniary interest for legislator or state officer employee

No member of the Legislature or State officer or agent for a State agency for the officer or employee shall act as officer or agent for a State agency for the transaction of any business with himself or with a corporation, company, association or firm in the pecuniary profits of which he has an interest (except that ownership or control of 10% or less of the stock of a corporation shall not be deemed an interest within the meaning of this section).

L.1971, c. 182, § 9, eff. Jan. 11, 1972.
Effective date and retroactive application of L.1971, c. 182, see § 52:13D-12 note.

Prior Law: N.J.S.A. 52:13D-3, 52:13D-4 (L.1967, c. 229, §§ 3, 4).

52:13D-21. Executive commission on ethical standards; penalties for state officers or employees found guilty by commission

(a) The Executive Commission on Ethical Standards created pursuant to P.L.1967, chapter 229 is continued and established in the Department of Law and Public Safety and shall constitute the first commission under this act.
(b) The commission shall be composed of seven members appointed by the Governor from among State officers and employees serving in the Executive Branch. Each member shall serve at the pleasure of the Governor during the term of office of the Governor appointing him and until his successor is appointed and qualified. The Governor shall designate one member to serve as chairman and one member to serve as vice-chairman of the commission.
(c) Each member of the said commission shall serve without compensation but shall be entitled to be reimbursed for all actual and necessary expenses incurred in the performance of his duties.

(d) The Attorney General shall act as legal adviser and counsel to the said commission. He shall upon request advise the commission in the rendering of advisory opinions by the commission, in the approval and review of codes of ethics adopted by State agencies in the Executive Branch and in the recommendation of revisions in codes of ethics or legislation relating to the conduct of State officers and employees in the Executive Branch.
(e) The said commission may, within the limits of funds appropriated or otherwise made available to it for the purpose, employ such other professional, technical, clerical or other assistants, excepting legal counsel, and incur such expenses as may be necessary for the performance of its duties.

(f) The said commission, in order to perform its duties pursuant to the provisions of this act, shall have the power to conduct investigations, hold hearings, compel the attendance of witnesses and the production before it of such books and papers as it may deem necessary, proper and relevant to the matter under investigation. The members of the said commission and the persons appointed by the commission for such purpose are hereby empowered to administer oaths and examine witnesses under oath.
(g) The said commission is authorized to render advisory opinions as to whether a given set of facts and circumstances would, in its opinion, constitute a violation of the provisions of this act or of a code of ethics promulgated pursuant to the provisions of this act.

(h) The said commission shall have jurisdiction to initiate, receive, hear and review complaints regarding violations, by any State officer or employee or special State officer or employee in the Executive Branch, of the provisions of this act or of any code of ethics promulgated pursuant to the provisions of this act. Any complaint regarding a violation of a code of ethics may be referred by the commission for disposition in accordance with subsection 12(d) of this act.
(i) Any State officer or employee or special State officer or employee found guilty by the commission of violating any provision of this act or of a code of ethics promulgated pursuant to the provisions of this act shall be fined not less than \$100,000 nor more than \$500,000, which penalty may be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S. 2A:36-1), and may be suspended from his office. Employment by the order of the commission for a period of not in excess of 1 year. If the commission finds that the conduct of such officer or employee constitutes a will-

and continuous disregard of the provisions of this act or of a code of ethics promulgated pursuant to the provisions of this act. If any other such person removed from his office or employment and any further bar such capacity whatsoever for a period of not exceeding 5 years from the date on which he was found guilty by the commission.

1 Sections 62:13D-1 to 62:13D-11 repealed. L.1971, c. 182, § 10, eff. Jan. 11, 1972.
Effectivity date and retroactive application of L.1971, c. 182, see § 62:13D-12 note.
Prior Law: N.J.S.A. 62:13D-5 to 62:13D-8 (L.1967, c. 229, §§ 5-8).
Library references
Attorney General § 6 et seq.
States § 243, 67.
C.J.S. Attorney General § 5 et seq.
C.J.S. States §§ 62, 88, 86.

1. Meeting
The discussions of the executive commission on ethical standards concerning the issuance of an advisory opinion or the facts upon which an advisory opinion is to be based is not permitted to be held in closed session under the exception in the Open Public Meetings Act in this section for "investigations of violations or possible violations of the law." Atty. Gen. F.O. 1977, No. 2.

52:13D-22. Joint legislative committee on ethical standards; penalties for state officers or employees found guilty by committee

(a) The Joint Legislative Committee on Ethical Standards created pursuant to the provisions of P.L.1967, chapter 229 is continued and established in the Legislative Branch of State Government and shall constitute the first joint committee under this act.

(b) The joint committee shall be composed of four members of the Senate appointed by the President thereof, no more than two of whom shall be of the same political party, and four members of the General Assembly, appointed by the Speaker thereof, no more than two of whom shall be of the same political party. The members of the said joint committee shall be appointed annually, as soon as may be after the commencement of the legislative year, to serve during the legislative year.

(c) The said joint committee shall organize annually, as soon as may be after the appointment of its members, by the selection of a chairman and vice chairman from among its membership and the appointment of a secretary who need not be a member of the joint committee.

(d) The Chief Counsel of the Law Revision and Legislative Services Commission shall act as legal adviser to the said joint committee. He shall, upon request, assist and advise the joint committee in the rendering of advisory opinions by the joint committee, in the approval and review of codes of ethics adopted by State agencies in the Legislative Branch, and in the recommendation of revisions in codes of ethics or legislation relating to the conduct of members of the Legislature or State officers and employees in the Legislative Branch.

(e) The said joint committee may, within the limits of funds appropriated or otherwise available to it for the purpose, employ such other professional, technical, clerical or other assistants, excepting legal counsel, and incur such expenses as may be necessary to performance of its duties.

(f) The said joint committee shall have all the powers granted pursuant to chapter 13 of Title 62 of the Revised Statutes.

(g) The said joint committee is authorized to render advisory opinions as to whether a given set of facts and circumstances would, in its opinion, constitute a violation of the provisions of this act or of a code of ethics promulgated pursuant to the provisions of this act.

(h) The said joint committee shall have jurisdiction to initiate, receive, hear and review complaints regarding violations of the provisions of this act or of a code of ethics promulgated pursuant to the provisions of this act. It shall

further have such jurisdiction as to enforcement of the rules of either House of the Legislature governing the conduct of the members thereof as the rules of such House may confer upon the joint committee. A complaint regarding violation of a code of ethics promulgated pursuant to the provisions of this act may be referred by the joint committee for disposition in accordance with subsection 13(d) of this act.²

(f) Any State officer or employee or special State officer or employee in the Legislative Branch found guilty by the joint committee of violating any provisions of this act or of a code of ethics promulgated pursuant to the provisions of this act shall be fined not less than \$100.00 nor more than \$500.00, which penalty may be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S. 2A:58-1), and may be suspended from his office or employment by order of the joint committee for a period not in excess of 1 year. If the joint committee finds that the conduct of such officer or employee constitutes a willful and continuous disregard of the provisions of this act or of a code of ethics promulgated pursuant to the provisions of this act, it may order such person removed from his office or employment and may further bar such person from holding any public office or employment in this State in any capacity whatsoever for a period of not exceeding 5 years from the date on which he was found guilty by the joint committee.

(g) A member of the Legislature who shall be found guilty by the joint committee of violating the provisions of this act or of a code of ethics promulgated pursuant to the provisions of this act shall be fined not less than \$100.00 nor more than \$500.00, which penalty may be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S. 2A:58-1), and shall be subject to such further action as may be determined by the House of which he is a member. In such cases the joint committee shall report its findings to the appropriate House and shall recommend to the House such further action as the joint committee deems appropriate, but it shall be the sole responsibility of the House to determine what further action, if any, shall be taken against such member.

L.1971, c. 182, § 11, eff. Jan. 11, 1972.
1 Sections 62:13D-1 to 62:13D-11 repealed.
2 Section 62:13D-23(d).
Effective date and retroactive application of L.1971, c. 182, see § 62:13D-12 note.
Prior Law: N.J.S.A. 62:13D-5, 62:13D-8 to 62:13D-10 (L.1967, c. 229, §§ 5, 8-10).
Library references
States § 244.
C.J.S. States §§ 42, 45-47.

52:13D-23. Code of ethics; approval; violations; penalties

(a) The head of each State agency, or the principal officer in charge of a division, board, bureau, commission or other instrumentality within a department of State Government designated by the head of such department for the purposes hereinafter set forth, shall within 6 months from the date of enactment, promulgate a code of ethics to govern and guide the conduct of the members of the Legislature or the State officers and employees in the agency to which said code is applicable. Such code shall conform to the general standards hereinafter set forth in this section, but it shall be formulated with respect to the particular needs and problems of the agency to which said code is to apply.

(b) A code of ethics formulated pursuant to this section to govern and guide the conduct of the State officers and employees in any State agency in the Executive Branch, or any portion of such a code, shall not be effective unless it has first been approved by the Executive Commission on Ethical Standards. When a proposed code is submitted to the said commission it shall be accompanied by an opinion of the Attorney General as to its compliance with the provisions of this act and any other applicable provision of law. Nothing contained herein shall prevent officers of State agencies in the Executive Branch from consulting with the Attorney General or with the Executive Commission on Ethical Standards at any time in connection with the preparation or revision of such codes of ethics.

(c) A code of ethics formulated pursuant to this section to govern and guide the conduct of the members of the Legislature and State officers and

employees in any State agency in the Legislative Branch, or any portion of such code, shall not be effective unless it has first been approved by the Legislature by concurrent resolution. When a proposed code is submitted to the Legislature for approval it shall be accompanied by an opinion of the chief counsel as to its compliance with the provisions of this act and any other applicable provisions of law. Nothing contained herein shall prevent officers of State agencies in the Legislative Branch from consulting with the Chief Legislative Counsel or the Joint Legislative Committee on Ethical Standards at any time in connection with the preparation or revision of such codes of ethics.

(d) Violations of a code of ethics promulgated pursuant to this section shall be cause for removal, suspension, demotion or other disciplinary action by the State officer or agency having the power of removal or discipline. When a person who is in the classified civil service is charged with a violation of such a code of ethics, the procedure leading to such removal or discipline shall be governed by any applicable provisions of the Civil Service Law and the Rules of the Department of Civil Service. No action for removal or discipline shall be taken under this subsection except upon the referral or with the approval of the Executive Commission on Ethical Standards or the Joint Legislative Committee on Ethical Standards, whichever is authorized to exercise jurisdiction with respect to the complaint upon which such action for removal or discipline is to be taken.

(e) A code of ethics for officers and employees of a State agency shall conform to the following general standards:

(1) No State officer 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.

(2) No State officer or employer should engage in any particular business, profession, trade or occupation which is subject to licensing or regulation by a specific agency of State Government without promptly filing notice of such activity with the Executive Commission on Ethical Standards, if he is an officer or employee in the Executive Branch, or with the Joint Legislative Committee on Ethical Standards, if he is an officer or employee in the Legislative Branch.

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

(4) No State officer or employee should act in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment.

(5) No 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.

(6) No State officer or employee should accept any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing him in the discharge of his official duties.

(7) No 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 his acts that he may be engaged in conduct violative of his trust as a State officer or employee.

(8) Rules of conduct adopted pursuant to these principles should recognize that under our democratic form of government public officials and employees should be drawn from all of our society; that citizens who serve in Government can not and should not be expected to be without any personal interest in the decisions and policies of government; that citizens who are Government officials and employees have a right to private interests; a personal, financial and economic nature; that standards of conduct

rate those conflicts of interest which are unavoidable in a free society from those conflicts of interest which are substantial and material, or which bring Government into disrepute.

(f) The code of ethics for members of the Legislature shall conform to subsection (e) hereof as nearly as may be possible.

Effective date and retroactive application of L.1971, c. 182, see § 52:13D-13 note. Prior Law: N.J.S.A. 52:13D-10 (L. 1967, c. 229, § 10).

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1/2. Construction and application. Form PR-102 entitled "Certification by Employee Regarding Possible Employment for Personnel Records Within the Meaning of Executive Order No. 9 (1963) and 11 (1971), which includes such items as history, medical and psychology information, is not included in the Code of Ethics promulgated by the department pursuant to this section, and is a public document under the Right to

52:13D-24. Solicitation, receipt or agreement to receive, thing of value for service related to official duties; exceptions. No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance or other matter related to his official duties, except reasonable fees for speeches or published works on matters within his official duties and except, in connection therewith, reimbursement of actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State of New Jersey. This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office. L.1971, c. 182, § 13, eff. Jan. 11, 1971.

Effective date and retroactive application of L.1971, c. 182, see § 52:13D-12 note.

52:13D-25. Disclosure or use for personal gain of information not available to public. No State officer or employee, special State officer or employee, or member of the Legislature shall willfully disclose to any person, whether or not for pecuniary gain, any information not generally available to members of the public which he receives or acquires in the course of and by reason of his official duties. No State officer or employee, special State officer or member of the Legislature shall use for the purpose of pecuniary gain, whether directly or indirectly, any information not generally available to members of the public which he receives or acquires in the course of and by reason of his official duties. L.1971, c. 182, § 14, eff. Jan. 11, 1972.

Effective date and retroactive application of L.1971, c. 182, see § 52:13D-12 note.

Know Law available to the member of the news media for his inspection. 1. Teachers and faculty. Board of Higher Education's 1973 guidelines on outside employment, insofar as they embodied additional restrictions on outside employment beyond those which were prevalent, directly affected work and welfare of college employees, related to terms and conditions of their employment within contemplation of Employer-Employee Relations Act, did not affect any non-educational policies, and thus should have been negotiated. Association of New Jersey State College Faculties, Inc. v. New Jersey Bd. of Higher Ed., 68 N.J. 72, 328 A.2d 235 (1974).

2. Dual office holding. The departments of state government are free to regulate dual officeholding in instances where it may be expected to impair the objectivity and independence of the state officer or employee in the exercise of his or her primary job responsibilities. Atty. Gen. F.O.1976, No. 18.

52:13D-26 STATE GOVERNMENT

52:13D-26. Inducing or attempting to induce legislative member or state officer or employee to violate act; penalty

No person shall induce or attempt to induce any State officer or employee, special State officer or employee, or member of the Legislature to violate any provision of this act or any code of ethics promulgated thereunder. Any person who willfully violates any provision of this section is a disorderly person, and shall be subject to a fine not to exceed \$500.00 or imprisonment not to exceed 6 months, or both.

L.1971, c. 182, § 15, eff. Jan. 11, 1972.

Effective date and retroactive application of L.1971, c. 182, see § 52:13D-12 note.

Library references
Disorderly Conduct § 1, 15.
C.J.S. Disorderly Conduct §§ 1(1) et seq., 9.

52:13D-27. Short title

This act shall be known as, and may be cited as, the "New Jersey Conflicts of Interest Law."

L.1971, c. 182, § 17, eff. Jan. 11, 1972.

Effective date and retroactive application of L.1971, c. 182, see § 52:13D-12 note.

Prior Law: N.J.S.A. 52:13D-1 (L.1967, c. 229, § 1).

1. Review

Inasmuch as subsequent to judgment determining that Governor was without power by executive order to convert position of member of waterfront commission from part-time to full-time post the Governor had waived application of the executive order to the commissioner insofar as it was applied to his cur-

rent term and there was no longer a justiciable controversy between the commissioner and the Governor, and issue of applicability of the conflicts of interest statute to the commissioner appeared without the information and assistance of administrative agency findings and without the circumscribing precision of a presently justiciable controversy, reviewing court would not undertake or decide the appeal. *De Ross v. Byrne*, 139 N.J. Super. 132, 353 A.2d 100 (A.D.1976).

CHAPTER 13E. INVESTIGATING AGENCIES, CODE OF FAIR PROCEDURES

52:13E-2. Personal service

1. In general

Where copy of Code of Fair Procedure was served on each witness with subpoena to appear before state commission of investigation and subpoena contained sufficient statement of subject of investigation and witnesses were allowed right to have counsel present and receive his advice, and hearing was private, commission did not act improperly or deny witnesses due process. *Zicarelli v. New Jersey State Commission of Investigation*, 55 N.J. 249, 251 A.2d 129 (1970), affirmed 92 S.Ct. 1670, 406 U.S. 472, 32 L.Ed.2d 234.

Where state commission of investigation was not an accusatory body but was intended to find facts which might be used subsequently as basis for legislative and executive action and commission was not required to make and publicize findings with respect to guilt of specific individuals but was created to discover and to publicize state of affairs in criminal area, statute creating commissio. did not deny due process of law on contention that individuals summoned before commission are denied protections accorded by Bill of Rights. *Id.*

52:13E-3. Right to counsel; submission of proposed questions

1. In general

Section 52:9M-17 which provides immunity to witness only against use and derivative use of "responsive" answers and evidence, as construed by Supreme Court of New Jersey to protect witness against answers and evidence he in good faith believed were demanded, was not so vague as to violate Due Process Clause of Fourteenth Amendment (U.S. C.A. Const. Amend. 14), particularly in context where witness before New Jersey state commission of investigation is entitled to have in advance of testimony a statement of subject matter on which the commission intends to examine him and is entitled to have counsel present during course of hearing. *Zicarelli v. New Jersey State Commission of Investigation*, 92 S.Ct. 1670, 406 U.S. 472, 32 L.Ed.2d 234 (1972).

Since the New Jersey state commission of investigation has a purely in-

vestigative character and purpose, due process does not require full panoply of judicial procedures in its hearings, and its procedures, which permit witnesses to be accompanied by counsel, who shall be permitted to advise witnesses of rights, "subject to reasonable limitations," which permit witnesses to submit proposed questions, which preclude cross-examination of adverse witnesses, which do not permit persons to call witnesses in their own behalf, and which allow at the minimum the filing of a statement by witnesses and by persons who believe they had been adversely affected by evidence before the commission, comport with due process. *U. S. ex rel. Cutena v. Elias*, C.A., 405 F.2d 765 (1972).

Where copy of Code of Fair Procedure was served on each witness with subpoena to appear before state commission of investigation and subpoena contained sufficient statement of subject

CODE OF ETHICS

The purpose of this code is to provide Department staff with a set of ethical standards which will guide their relationship with persons served by the institutions and agencies of the Department, with the families of such persons, the general public, and with commercial and industrial firms with whom the Department does business. Chapter 182, P.L. 1971, the New Jersey Conflicts of Interest Law, is the basic statute and its policy declaration is pertinent here. In C.52:13D-12 the Legislature finds and declares:

- (a) In our representative form of government it is essential that the conduct of public officials and employees shall hold the respect and confidence of the people. Public officials must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.
- (b) To ensure propriety and preserve public confidence, persons serving in government should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards amongst them. Some standards of this type may be enacted as general statutory prohibitions or requirements; others, because of complexity and variety of circumstances, are best left to the governance of codes of ethics formulated to meet the specific needs and conditions of the several agencies of government.
- (c) It is also recognized that under a free government it is both necessary and desirable that all citizens, public officials included, should have certain specific interests in the decisions of government, and that the activities and conduct of public officials should not, therefore, be unduly circumscribed.

The following guidelines are hereby promulgated, as approved by the Executive Commission on Ethical Standards, to become effective January 11, 1972.

1. All officers and employees shall act in a manner to carry out the statutory and historical purpose of the Department with respect to the treatment, habilitation, rehabilitation, care, protection, and support of the citizen who may require the services provided by the Department. Respect for the civil rights, the dignity and privacy of the individual, and humane care and treatment, are elements of our obligation (Administrative Orders 1:54 and 1:55).

2. No officer or employee shall willfully disclose to any person any information not generally available to members of the public which he receives or acquires in the course of and by reason of his official duties.
3. No state officer or employee shall undertake any employment or service whether compensated or not, which might reasonably be expected to impair objectivity and independence of judgment in the exercise of official duties.
4. No state officer or employee shall use official position to secure unwarranted privileges or advantages.
5. No state officer or employee shall accept any gift, fee, favor, service or other thing of value under circumstances from which it might reasonably be inferred that such gift, fee, service or other thing of value was given or offered for the purpose of influencing discharge of official duties.
6. No officer or employee shall knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public which would tend to be violative of public trust.
7. No officer or employee shall engage in any particular business, profession, which is subject to licensing or regulation by a specific agency of the state government without promptly filing notice of such activity.
8. No state officer or employee shall act in official capacity in any matter wherein there is a direct or indirect personal financial interest that might reasonably be expected to impair objectivity or independence of judgment.
9. No officer or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction of professional activity, which is in substantial conflict with the proper discharge of duties in the public interest.
10. No officer or employee shall engage in any political or partisan activity if his salary, whether whole or part, is derived from federal funds. This is in compliance with federal law (Section 12(a), Act of August 2, 1939, as amended). Those covered by the statute must assume the responsibility for seeing that their activities do not violate it.
11. This code is intended to augment but not to replace existing Department Administrative Orders and pertinent professional codes of ethics.

ADMINISTRATIVE ORDER 4:05
(Revised 11/1/77)

DEPARTMENT OF HUMAN SERVICES

EFFECTIVE DATE: 1 November 1977 DATE ISSUED: 15 October 1977

SUBJECT: Payments to Departmental Personnel for
Services Provided Outside the Department

This Administrative Order establishes policies and procedures pertaining to outside employment and payments for outside services during working hours.

I. GENERAL POLICIES

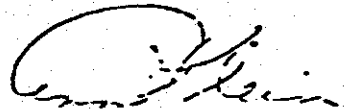
- A. The primary obligation of a full-time employee of the Department of Human Services is to the Department. Any continuing outside employment must have the prior and continuing approval of the Division Director in the case of central office components or the Chief Executive Officer in the case of institutional staff. Any continuing outside employment of Division Directors or Deputy or Assistant Commissioners shall have the prior and continuing approval of the Commissioner. Such approval shall be given only if the outside employment does not:
1. Constitute a conflict of interest;
 2. Occur during the normal working hours of the employee's work time; or
 3. Interfere with the employee's efficiency in the performance of his or her primary job.
- B. Employees of this Department will not solicit or receive any compensation, reward, employment, gift or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance or other matter related to an employee's official duties, except reasonable fees for speeches or published works.
- C. Employees of this Department receiving compensation in the form of fees, stipends, honorariums or salary

A.O. 4:05
(Rev. 11/1/77)

- (which is in addition to their regular compensation) when such service is performed during their regular work hours, shall charge the time away from work assignments to vacation leave.
- D. No employee of the Department shall serve in a consultant relationship to any public agency or shall see patients or clients for a fee when such fee is provided by or paid from New Jersey public funds except upon approval pursuant to Section I. A.
- E. The following will constitute a statement of policy with respect to private practice on the part of full-time professional salaried employees:
1. Outside job responsibilities of Department personnel shall not be permitted to interfere in any way with their services to the State, or impair the efficiency with which they discharge them.
 2. Personnel employed by the Department shall not use the facilities, personnel, or equipment with any State institution or agency for the examination or treatment of patients other than those regularly admitted and State employees entitled to service.
 3. All private practice shall be conducted in a manner and under conditions as will not incur justifiable complaints from local practitioners, and will promote sound public relations between the State and the institutions on one hand, and the general public on the other.
 4. When staff engages in consultative work or private practice on a fee basis and such work requires their absence from a tour of duty, as scheduled by the institutional Medical Director or Superintendent, such absence shall be charged against their annual leave.
 - a. To guide interpretation, a tour of duty of the Medical Director shall require his attendance at the institution during the regular business hours of each week day.

A.O. 4:05
(Rev. 11/1/77)

5. The Chief Executive Officer of the several institutions who are in close touch with the facts and circumstances of each case, shall be responsible to the Commissioner, through the Division Director, for the administration and proper execution of the foregoing provisions.



Ann Klein
Commissioner

ADMINISTRATIVE ORDER 4:13
(Revised)

DEPARTMENT OF HUMAN SERVICES

EFFECTIVE DATE:

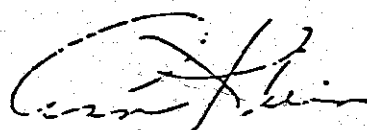
DATE ISSUED:

SUBJECT: Financial Transactions with Patients,
Residents and Clients.

This Administrative Order establishes the policies pertaining to financial transactions with patients, residents and clients.

I. GENERAL POLICIES

- A. All employees are forbidden to borrow money from or to carry on any financial transactions with patients, residents and clients. A violation hereof shall be sufficient cause for dismissal from service.
- B. Any program that would involve employees carrying on financial transactions in the interests of patients, residents or clients must be approved by the appropriate Chief Executive Officer.



Ann Klein
Commissioner

ADMINISTRATIVE ORDER 4:14
(Revised 11/1/77)

DEPARTMENT OF HUMAN SERVICES

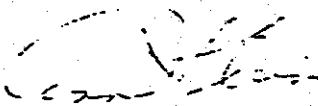
EFFECTIVE DATE: 1 November 1977 DATE ISSUED: 15 October 1977

SUBJECT: Acceptance of Gifts, Entertainment and
Gratuities by Department Personnel

This Administrative Order establishes the policies and procedures for the Department pertaining to the acceptance of gifts, entertainment and gratuities.

I. GENERAL POLICIES

- A. Employees of the Department of Human Services shall not accept gifts, entertainment or gratuities from any present or former patient, resident or client of the Department.
- B. No employee of the Department of Human Services shall accept any gift, gratuity, favor, service or anything of more than minimal value from individuals, fellow employees, families or representatives of patients, residents or clients if it might be reasonably inferred that such gift, gratuity, favor service or anything of value was given or offered for the purpose of influencing discharge of official duties.
- C. Employees of the Department of Human Services shall not accept gifts, entertainment or gratuities of more than minimal value from persons, agencies or firms who have done, are doing, or desire to do business with this Department, or persons, agencies or firms who are interested in promoting the use of their products or services.


Ann Klein
Commissioner

DIVISION OF MENTAL HEALTH AND HOSPITALS
REQUEST FOR APPROVAL OF CONTINUING OUTSIDE EMPLOYMENT

Date _____

*Request No. _____

1. Name of Employee _____
2. Division of Mental Health and Hospitals employment:
 - a. Institution: Specify _____
Central Office: Specify _____
 - b. Job Title _____
 - c. Job Responsibilities (List on a separate sheet; attach job specifications)
 - d. Full-time _____ Part-time _____
Normal Working Hours _____
 - e. Salary _____
3. Proposed continuing outside employment:
 - a. Employer _____
 - (1) Is employer a grantee or contractor of the Division? If so, specify on a separate sheet.
 - (2) Is employer subject to licensing or regulation by a State agency? If so, specify on a separate sheet.
 - b. Job Title _____
 - c. Job Responsibilities: (List on a separate sheet; attach job specifications whenever possible) Include the type of clients served and whether such clients are likely to be current, former or potential clients of the Division or of an agency funded by the Division.
 - d. Full-time _____ Part-time _____
Normal Working Hours _____
 - e. Salary _____
 - f. Proposed starting date _____

* Institution number - year - month - consecutive number.

4. Will this employment require you to give any service, advice, or assistance related to your official duties as an employee of the Division of Mental Health and Hospitals? If so:
 - a. Is this only because you are receiving a fee for speeches or published works? Yes _____ No _____
If yes, specify and state fee on a separate sheet.
 - b. Is this only because you are receiving reimbursements of actual expenses for travel and reasonable subsistence for which no payment or reimbursement is made by the State? Yes _____ No _____
If yes, specify on a separate sheet.
5. Are you proposing to work as a consultant to a public agency? If so, specify on a separate sheet.
6. Will you be seeing patients or clients for a fee which is paid from New Jersey public funds? If so, specify on a separate sheet.
7. Will this employment require you to engage in financial transactions with or on behalf of Division clients? If so, specify on a separate sheet.
8. Does this employment require you to represent, appear or negotiate directly or indirectly, for the acquisition or sale of property owned by the State or in a proceeding pending before the hospital or Division in which you work? If so, specify on a separate sheet.
9. Does this employment involve the transaction of any business with a State agency? If so, specify on a separate sheet.

I CERTIFY THAT THE INFORMATION
SUBMITTED ON THIS FORM IS CORRECT
TO THE BEST OF MY KNOWLEDGE.

Signature

Date

DIVISION OF MENTAL HEALTH AND HOSPITALS
DISPOSITION OF
REQUEST FOR CONTINUING OUTSIDE EMPLOYMENT (C.O.E.)

Check One:

Date _____

*Request No. _____

- A. Supervisor recommendation _____
- B. Director of Human Resources recommendation _____
- C. Approving Authority _____

Is this a final decision? Yes _____ No _____

- 1. Name of Employee _____
- 2. Institutional Staff _____ Specify: _____
Central Office Staff _____ Specify: _____
- 3. Job Title _____

4. _____ I recommend that this request be:

_____ I find that this request is:

Approved _____

Disapproved _____

Referred to the Executive Commission on Ethical Standards _____

5. Reason for recommendation or decision:

- _____ a. The C.O.E. constitutes a conflict of interest.
- _____ b. The C.O.E. occurs during the normal working hours of the employee's work time.
- _____ c. The C.O.E. will interfere with the employee's efficiency in the performance of his/her employment with the Division.
- _____ d. The C.O.E. involves the receipt of compensation for service, advice or assistance which is related to the employee's official duties and is not within a permitted exception.
- _____ e. The employee is requesting to work in a consultant relationship to a public agency or to see clients for a fee paid from New Jersey public funds.

* Institution number - year - month - consecutive number.

- _____ f. The employee is a full-time professional salaried employee and the C.O.E. constitutes private practice which:
 - (1) may incur justifiable complaints from local practitioners,
or
 - (2) will not promote sound public relations between the State institutions and the general public.
- _____ g. This employment will involve the employee in financial transactions with or on behalf of Division clients.
- _____ h. This employment might reasonably be expected to impair the employee's objectivity or independence of judgment in the exercise of his/her Division duties.
- _____ i. The employment involves a business which is subject to licensing or regulation by the State.
- _____ j. The employment will put the employee in a position where he/she will have a direct or indirect personal financial interest in actions that he/she might take in his/her capacity as an employee of the Division, which might reasonably be expected to impair his/her objectivity or independence of judgment.
- _____ k. The employment involves prohibited representation.
- _____ l. The employment involves execution of prohibited contracts.

6. Although an advisory opinion is being requested, the approving authority recommends:

approval _____ / disapproval _____

7. Basis for recommendation or decision. (Specify in detail on a separate sheet).

8. Name(s) of person(s) completing form.

Name _____	Name _____
Title _____	Title _____
Signature _____	Signature _____
Date _____	Date _____