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Formal Opinion No. 1-2015

Re: Gifts requiring disclosure under Executive Order 24

Dear Ms. Guerrero,

You have requested guidance concerning the scope and definition of gifts that require disclosure on the financial disclosure statement (FDS) mandated for certain employees by Governor Christie's Executive Order 24 (Gov. Christie, Apr. 27, 2010) (EO24). Because both the Executive Order and the FDS identify "gifts and other gratuities" as a component of income, it is reasonable to conclude that the Executive Order requires disclosure on the FDS of "gifts and others gratuities" that constitute income. This limitation established by the language and structure of the Executive Order renders non-income gifts that employees might receive from friends or family outside of the disclosure requirements established by EO24.

The duty of designated public employees to disclose personal financial interests is entirely a function of executive order. The State Ethics Commission has not promulgated any



rules concerning financial disclosure, nor has the Commission issued any advisory opinions on the question.

EO24's disclosure requirements apply to a broad swath of public officers and employees holding any of the specified offices or their equivalent in the Executive Branch of the State Government. EO24, at 7, ¶ 6; see also, EO1 (Gov. Corzine, Jan. 17, 2006), at ¶ 6 (same); EO10 (Gov. McGreevey, Feb. 28, 2002), at ¶ 6 (same); EO2 (Gov. Whitman, Jan. 18, 1994), at ¶ 6 (same). The financial disclosure requirement established in EO24 is similar in most respects to requirements established by previous Governors. See, e.g., Exec. Order (EO) 1 (Corzine); Exec. Order 10 (McGreevey); Exec. Order 2 (Whitman); Exec. Order 1 (Gov. Florio, Jan. 18, 1990). Over time, Governors have expanded the breadth of the disclosure requirement to additional public officers and employees. Presently, the disclosure requirement applies to an expansive list, including the Governor, the Lieutenant Governor, the head of each principal department, heads and assistant heads of divisions within those departments, the leadership of in-but-not-of boards or independent authorities, specified members of the Office of the Governor, and members of a long list of boards, commissions, independent authorities, and public corporations. EO24, at ¶ 6.

EO24 requires public disclosure of specified public officials' personal financial interests. As EO24 states, "public disclosure of personal financial interests of public officials serves to maintain the public's faith and confidence in its governmental representatives and guards against conduct violative of the public trust." EO24, at 1. To that end, EO24 provides "persons serving in government . . . the benefit of specific standards to guide their conduct," ibid., and establishes that the standards "be applied consistently to similarly situated officials in order to promote respect for those standards[.]" Ibid.

EO24 charges the State Ethics Commission with enforcing its terms. EO24, § V, ¶ 2, at 20. EO24 provides harsh sanctions for failure to comply with its requirements: "The failure of any regular or special State employee or officer covered by this Executive Order to comply with the provisions of this Executive Order shall constitute good cause for his or her removal from employment or office." EO24, § V, ¶ 1, at 20.

To facilitate public employees' financial disclosure obligation, the State Ethics Commission promulgates the FDS. EO24, at ¶ 1. The FDS gathers general and demographic information from reporting employees. The employee then discloses specified financial information for the employee, spouse, and dependent children. Pursuant to EO24, the FDS requires reporting of: assets valued at more than \$1,000; income; offices or positions held in any firm, corporation, association, partnership, or business; liabilities; stocks and bonds held; any interest in closely held corporations or similar business entities; real estate interests; and capital gains.

The Executive Order does not define "income" beyond listing some of its constituent components. Because EO24 does not define its terms, standard maxims of statutory construction direct that we give words their ordinary meaning. State v. Rangel, 213 N.J. 500, 509 (2013) (observing that statutory interpretation begins "by looking at the statute's plain language, giving words 'their ordinary meaning and significance.'") (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). In ordinary usage, *income* is defined as "a gain or recurrent benefit that is usually measured in money and for a given period of time, derives from credit, labor, or a combination of both[.]" Webster's Third New Int'l Dictionary 1143 (3d ed. 1993); see also, VII Oxford English Dictionary 805 (2d ed. 1989) (defining *income* as "that which comes in as the periodical produce of one's work, business, lands, or investments (considered in reference to its amount, and commonly expressed in terms of money)"). That definition is consistent with the itemized components of income. EO24 requires an employee to "list [] all sources of income of the public employee or public officer, his or her spouse or domestic partner, partner in a civil union and dependent children" EO24, § 1, ¶1(f). It includes "all compensated employment of whatever nature," "all directorships and other fiduciary positions for which compensation has or will be received," "all contractual relationships producing or expected to produce income," and "all capital gains." Ibid.

Relevant here, EO24 also includes a catch-all of potential sources of income:

. . . all honoraria, lecture fees, gifts and other gratuities (cash or non-cash), and other miscellaneous sources of income including, but not limited to, interest, dividends, royalties and rents.

[EO24.]

The catch-all language broadly seeks to capture other sources of income not within the more specific categories above it. Governor Corzine's EO1 was the first financial disclosure executive order to include "gifts and other gratuities (cash or non-cash)" as a source of "income." EO1. Compare, e.g., EO10 (McGreevey), supra, at ¶ 1(f) (defining income to include "all honoraria, lecture fees and other miscellaneous sources of income including, but not limited to, interest, dividends, royalties and rents."); EO2 (Whitman), supra, at ¶ 1(f) (same).

Traditional tools of statutory construction instruct that "when a statute contains a list, each word in that list presumptively has a 'similar' meaning." Yates v. United States, 574 U.S. ___, 135 S. Ct. 1074, 1089 (2015) (Alito, J., concurring). This principle "avoid[s] giving a breadth to the more general words which logic, reason and the subject matter of the statute do not show was clearly intended." Germann v. Matriss, 55 N.J. 193, 221 (1970). In the same vein, "[t]he meaning ascribed to the words used in a statute may be indicated or controlled by the words with which it is associated." State v. Afanador, 134 N.J. 162, 172 (1993); see also, Davis v. Mich. Dep't of Treasury, 489 U.S. 803, 809 (1998) (explaining that courts interpret words "in their context and with a view to their place in the overall statutory scheme."); Deal v. United States, 508 U.S. 129, 132 (1993) (noting that "it is a fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used."); Rangel, supra, 213 N.J. at 509 ("We do not view words and phrases in isolation but rather in their proper context and in relationship to other parts of a statute, so that meaning can be given to the whole of an enactment.").

To give definition to "gifts and other gratuities" within the meaning of EO24, Rangel instructs that we evaluate the phrase in its context. We thus look to the other terms

within the catch-all provision: honoraria, lecture fees, other gratuities (cash or non-cash), and other miscellaneous sources of income, including interest, dividends, royalties, and rents. Honoraria and lecture fees are, for example, money received for performing a service, such as speaking at an event. See, e.g., Webster's Third New International Dictionary, supra, at 1087 (defining *honoraria* as "an honorary payment or reward usually given as compensation for services on which custom or propriety forbids any fixed business price to be set or for which no payment can be enforced at law"); VII The Oxford English Dictionary, supra, at 356 (defining *honorarium* as "[a]n honorary reward; a fee for services rendered, esp. by a professional person."). Similarly, the balance of the specified sources - "interest, dividends, royalties, and rents" - all connote compensation received either for services rendered or as a return on investment. See, e.g., Black's Law Dictionary, supra, at 580 (defining *dividend* as "a portion of a company's earning or profits distributed pro rata to its shareholders, [usually] in the form of cash or additional shares"); id. at 1528 (defining *royalty* as "a payment - in addition to or in place of an up-front payment - made to an author or inventor for each copy of a work or article sold under a copyright or patent," and additionally noting that "royalties are often paid per item made, used, or sold, or per time elapsed").

Additionally, the catch-all provision itself imposes a limited definition of gifts by its grammatical structure. As courts have recognized, "the word 'and' carries with it natural conjunctive import," Pine Belt Chevrolet v. J.C.P. & L., 132 N.J. 564, 578 (1993). By referencing "gifts and other gratuities (cash or non-cash)," the catch-all provision limits the disclosure of gifts to those that have the character of a gratuity. A gratuity is a "something given voluntarily or over and above what is due usually in return for or anticipation of some service." Webster's Third New International Dictionary, supra, at 992; see also, VI Oxford English Dictionary, supra, at 780 (defining *gratuity* as "a gift or present (usually of money), often in return for favours or services, the amount depending on the inclination of the giver"). Because subparagraphs (1), (2), and (3) of the income definition refer only to gifts that are "sources of income," they do not expand the scope of gifts subject to disclosure. Thus, E024, by its terms, requires only disclosure of a gift of like character to a gratuity.

Interpreting "gift" within the context of the catch-all provision's entire list avoids the dangers of overbreadth discussed in Germann, supra. This danger is particularly acute where the provision mentions gifts only as one form of the broader category gratuity, which itself is limited by the overall category of income. This cautions against interpreting E024 to require disclosure of gifts categorically different than gratuities. Thus, while including gifts within the definition of income creates some ambiguity, when evaluated in the context provided by other items in the catch all provision and the provision's grammatical structure, it is reasonable to construe "gifts" within the meaning of E024 to mean gifts received in return for services rendered, such as a speaking engagement.

Thus, tools of statutory construction and the plain language of the Executive Order suggest that the sensible reading of the Executive Order is to construe it consistent with other items that must be disclosed: that is, items received in return for performing some service, such as speaking at an event.

Sincerely yours,



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