

Ethics and Conflicts of Interest

The Public Official and Employee Ethics Act¹ assures citizens that the financial interests of public officials and nominees and candidates do not conflict with the public trust. The act promotes full financial disclosure of officials and employees, provides standards for conduct regarding conflicts of interest and possible financial impropriety, and establishes the State Ethics Commission to promote, administer and facilitate enforcement of the act.

Important Definitions

“Public Official” includes “any person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch of this Commonwealth or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense or to otherwise exercise the power of the State or any political subdivision thereof.”²

“Public Employee” includes “any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to:

- Contracting or procurement;
- Administering or monitoring grants or subsidies;
- Planning or zoning;
- Inspecting, licensing, regulating, or auditing any person; or
- Any other activity where the official action has an economic impact of greater than a *de minimis* nature on the interests of any person.”³

The act also contains definitions of “Candidate” and “Nominee”—two additional public figures subject to the act.

Restricted Activities

¹ 65 Pa.C.S. §1101 et. seq. **Note: This act is repealed insofar as it is inconsistent with the Act of July 5, 2012, P.L. 1102, No. 132, known as the State-Owned University Intellectual Property Act, which applies to all economic development transactions entered into by state-owned universities and system employees.**

² 65 Pa.C.S. § 1102.

³ *Id.*

The act enumerates “Restricted Activities” in which parties subject to the act may not engage.⁴ Those most frequently encountered are:

Conflict of Interest. No public official or public employee shall engage in conduct that constitutes a “conflict of interest,” broadly defined as use of the authority of one’s office or employment, or confidential information received through official duties, for the substantial (more than “*de minimis*”) private pecuniary benefit of that person,⁵ a member of his or her immediate family, or a business of which that person or a member of his or her immediate family is associated.⁶

Seeking Improper Influence. No one shall offer an official, employee, candidate, nominee or member of his or her immediate family, or business with which that person is associated, anything of monetary value with the understanding that any official action or judgment of the official, employee, candidate or nominee would be influenced thereby.

Accepting Improper Influence. None of the above-mentioned parties shall solicit or accept anything of monetary value based on an understanding that they would be influenced in the discharge of their public duties thereby.

Contracts. No public official, public employee, or his or her spouse or child, or any business in which that person or any of his or her immediate family is associated, shall enter into any contract valued at \$500 or more with the governmental body with which the official or employee is associated, or any subcontract valued at \$500 or more with a party that has contracted with the official or employee’s governmental body unless the contract was awarded publicly, with full public notice and disclosure. In such a case, the official or employee shall not have any supervisory or overall responsibility for the administration of the contract. Any contract made in violation of this provision may be voided by a court of competent jurisdiction if a suit is commenced within 90 days of the making of the contract or subcontract.

Voting Conflicts. Unless otherwise provided for in the Pennsylvania Constitution or other law, any public official, who in the discharge of his or her official duties would be required to vote on

⁴ See 65 Pa.C.S. § 1103. See also *Shaulis v. Pennsylvania State Ethics Com’n*, 574 Pa. 680, 682 (2003) (abrogated on other grounds by, *Yocum v. Commonwealth Pennsylvania Gaming Control Board*, 639 Pa. 521, 161 A.3d 228 (2017)) (holding that Section 1103(g) is unconstitutional as applied to former government employees who are also attorneys since the Pennsylvania Supreme Court has the “exclusive authority to regulate the conduct of an attorney insofar as it constitutes the practice of law.” – Section 1103(g) states that “Former Official or Employee. No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.”)

⁵ The Pennsylvania Supreme Court held that in order to violate the conflict of interest provisions in Title 65 of the Pennsylvania Consolidated Statutes, Section 1103 (a), “a public official must be consciously aware of a private pecuniary benefit for himself, his family, or his business, and then must take action in the form of one or more specific steps to attain that benefit.” See *Kistler v. State Ethics Comm’n*, 610 Pa. 516, 528 (2011).

⁶ See *Bixler v. State Ethics Com’n*, 847 A.2d 785 (Pa. Cmwlth. 2004) (township supervisor’s action of suggesting at a public meeting that township vehicles could be taken to the auto repair business where he was employed fell within the *de minimis* exclusion since the auto repair business only received \$561.77 in net profit and there was an insignificant effect on both the township and the business). More recently, the Pennsylvania Supreme Court has held “private pecuniary benefit” to mean private financial gain. See *Commonwealth of PA vs. Veon*, 150 A.3d 435 (Pa. 2016).

a matter that would result in a conflict of interest, shall abstain from voting and publicly disclose in writing to the person responsible for preparing minutes the nature of the conflict. If this abstention results in an inability of the body to take action, then the conflicted member may be permitted to vote if the disclosure is made. Also, in three-member governing bodies, if the abstention of a member results in a tie vote, the member may break the tie provided proper disclosure is made.

State Ethics Commission

The State Ethics Commission is also created by the act. Perhaps the most important power of the Commission is issuing orders and findings pursuant to ethics investigations. The Commission may hold hearings, take testimony, issue subpoenas and compel the attendance of witnesses.⁷ Should the Commission find a violation of the act that results in financial gain, it can order restitution plus interest to the appropriate governing body and make recommendations to law enforcement officials for criminal prosecution or dismissal of charges.⁸ Investigations must be made within five years of the alleged occurrence of a violation of the act.

Penalties for violation of the act are serious. Anyone who engages in a conflict of interest or who offers, seeks or solicits improper influence commits a felony and, upon conviction, may pay a fine of not more than \$10,000 and/or may be imprisoned for not more than five years. Anyone who engages in any other restricted activity or violates the financial disclosure provisions of the act commits a misdemeanor and could be fined up to \$1,000 and/or may be imprisoned for not more than one year. Furthermore, anyone found to have made financial gain as a result of a violation of the act “shall pay a sum of money equal to three times the amount of the financial gain resulting from such violation into the State Treasury or the treasury of the political subdivision.”⁹

The act also provides for remedies for anyone harmed by a person who engages in wrongful use of the act by filing a frivolous complaint, including fees and costs, defamation damages, actual pecuniary damages and damages for emotional distress.

For more information on the Public Official and Employee Ethics Act and the State Ethics Commission, including a request for an advisory or the filing of a complaint, visit the Commission’s website <http://www.ethics.pa.gov> (Sept. 9, 2020).

⁷ See 65 Pa.C.S. § 1107.

⁸ *Id.*

⁹ 65 Pa.C.S. § 1109(c).