

STATE ETHICS COMMISSION

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TO: Prospective Board and Commission Appointees

SUBJECT: Board and Commission Ethics Law Requirements-Partial Summary & Analysis

Members serving on boards and commissions subject to the Public Ethics Law (Md. Code Ann., General Provisions Article, Title 5) are “public officials,” and, for purpose of board activities, have a fiduciary responsibility to the State and are bound by the conflict of interest provisions of the law. The nature of the member’s employment and his or her role in that organization will have an impact on the degree of potential conflicts of interest related to board responsibilities. Formal ethics advice from the State Ethics Commission relies on specific factual situations. The general principles discussed below may be considered:

1. Non-Participation (Public Ethics Law § 5-501) – A board or commission member is required to recuse him or herself if the board is considering a matter that would have a specific impact on the member’s employer or on an entity in which the member has an ownership interest. Generally, disqualification is not required as to matters in which an employer is only generally interested, but recusal is required as to those matters in which the employer has some specific and clearly defined interest that is unique, or nearly unique, to it. For example, if a board considers adopting a policy to eliminate the board member’s particular employer from an area of business or greatly hindering it in some special way, recusal is required unless the member’s disqualification would result in the lack of a quorum. Thus, the State Ethics Commission’s advice has been that situations requiring non-participation on licensing or advisory boards tend to involve more than general policy development, while situations in which there is some discrete and particularized impact on the official, his employer, or certain family members would require disqualification. If disqualification would result in a quorum problem, the member may disclose the conflict on the record and participate.
2. Employment and Ownership Interests (Public Ethics Law § 5-502(b) and (c)) - The Ethics Law recognizes that persons appointed to boards or commissions may have affiliations resulting in prohibited conflicts of interest. The law allows these individuals to be appointed despite these otherwise disqualifying affiliations provided they file public “time of appointment” exemption forms with the Commission disclosing the conflict to the appointing authority and the Senate, if confirmation is required. This exemption is addressed in § 5-502(c)(4). The decision to accept the conflict and make the appointment under these particular disclosure procedures is the function of the appointing authority rather than the State Ethics Commission, although the Commission does have a role in determining the scope of the exemption. The exemption process is available only for **conflicts that exist at the time of appointment** and does not apply to conflicts that develop after appointment. Generally, board memberships on private entities (both for profit and non-profit), even if non-compensated, are considered employment for the purposes of the Public Ethics Law. While private board membership conflicts most often occur in grant or procurement situations, they also may occur in other situations in which people are on professional or trade association boards.

There is also an exemption for individual licensees who are appointed to licensing boards pursuant to a statutory requirement that persons subject to the jurisdiction of the board serve on that board.

3. Lobbyists serving on Boards and Commissions (Public Ethics Law § 5-703 and COMAR 19A.07.01.05B and .06) Lobbyists may serve on boards and commissions provided that, within 5 days of the dual status, the member/lobbyist discloses to the Commission any current representation of a person for compensation before a State governmental unit, except in a judicial or quasi-judicial proceeding; any current representation of a State agency for compensation, any contractual relationship with State government, or any transaction with State government for monetary consideration; any current interest held by the regulated lobbyist, the regulated lobbyist's spouse or dependent children, together or separately, having either 10 percent or more of the capital stock, or stock worth \$35,000 or more, in a corporation subject to regulation by or doing business with the board or commission, or any interest in a partnership, limited liability partnership, or limited liability company subject to regulation by or doing business with the board or commission; the name of the primary employer of the regulated lobbyist; and the name of any business entity from which the regulated lobbyist or spouse of the regulated lobbyist receives earned income as a result of an ownership interest. Additionally, the regulated lobbyist/member shall update the information required to reflect the lobbyist's current registrations throughout each reporting period, and, whenever an issue arises within the board or commission related to the disclosed information, the regulated lobbyist member shall submit a statement, on the record of the board or commission, of recusal from discussion of, voting on, or any other action required by the circumstances concerning the issue.
4. Post Service (Public Ethics Law § 5-504(d)) - When a member leaves a board either because the board ceases to exist or the member's term expires, that member may be limited in activities he performs relating to actions in which he was significantly involved as a board member.
5. Misuse of Position (Public Ethics Law § 5-506) - This section prohibits board members from intentionally using their board positions for their own gain or that of another. For example, a board member would have to avoid activities on behalf of an employer involving board activities, particularly as to any policy or legislative issues in which his or her board status would be relevant to the situation. A board member also cannot use his or her status in marketing the member's private businesses. A board member also may not: 1) use his/her position to influence the award of a State contract to a specific person (except in the conduct of official duties); 2) directly or indirectly initiate a solicitation for a person to retain the compensated services of a particular regulated lobbyist; or 3) use public resources or title to solicit a political campaign contribution.
6. Confidential Information (Public Ethics Law § 5-507) - A board member is prohibited from using any confidential information acquired by serving the board for his or her own gain or the gain of another.
7. Procurement Specifications (Formerly Public Ethics Law § 5-508) – This provision was transferred from the Public Ethics Law to the State Finance and Procurement Article (§13-212.1) on October 1, 2015. However, the text remains the same and board members should be aware of its application. If a board member who, as part of his or her board's activities, takes an active role in developing specifications for a State procurement, the member's employer may be barred from bidding on that procurement, even if the board member does not assist the employer in the procurement process. If any board becomes involved in procurement specifications, board members who are employees of any potential vendors must abstain from participation in this aspect of the board's activities.

8. Financial Disclosure (Public Ethics Law § 5-609) - This subtitle requires members of boards and commissions that are not purely advisory to file annual public financial disclosure statements. At a minimum, this requires disclosure of the employment of the board member, spouse and dependent children and any business activity from which income is earned. Other situations that may present a potential for conflict of interest must also be disclosed.

This memorandum is not a comprehensive analysis of the Law. The State Ethics Commission will respond to questions on the basis of the specific facts involved.