

STATE ETHICS COMMISSION
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SUBJECT: Contractual Employees

This memorandum is intended to provide a brief summary of the application of the Public Ethics Law (General Provisions Article -Title 5) as it relates to contractual employees. The Law defines “employee” as an individual who is employed: by an Executive Unit; by the Legislative Branch; or in the Judicial Branch. The discussion here applies to contractual employees employed by an Executive Unit or the Legislative Branch. Questions concerning contractual employees in the Judicial Branch should be directed to the Judicial Ethics Committee.

In General

The conflict of interest provisions of the Public Ethics Law (Subtitle 5) apply to officials and employees. In its statutory role of administering the Public Ethics Law, the State Ethics Commission is responsible for interpreting and applying the Law, and in that role the Commission has interpreted the term “employee” as not applying to contractual employees. As a consequence (with an exception discussed below), contractual employees are not subject to the conflict of interest provisions of the Public Ethics Law.

Contractors as Public Officials

While contractual employees are not “employees” for purposes of the Public Ethics Law, the Law does address contractors in the context of “public officials”. Further, the Law defines the term “official” as being either a State official or a public official. And finally, as noted above, the conflict of interest provisions of the Law apply to officials and employees, and the financial disclosure provisions of the Law (Subtitle 6) apply to “officials”. So it follows that if a contractual employee qualifies as a public official, that contractual employee is also an “official” as defined in the Law, and therefore subject to both the conflict of interest and financial disclosure provisions of the Law.

The Law includes certain contractual employees (although somewhat obliquely) within the definition of public official. It provides “that an individual employed on a contractual basis” is not a public official, unless that contractual employee is employed on a full-time basis for more than 6 months, and the contractual employee is designated by the State Ethics Commission (public official of the Executive Branch¹) or is designated by the Presiding Officers of the General Assembly (public official of the Legislative Branch).

¹The Commission will designate a contractual employee in the Executive Branch as a public official if: 1) the individual is compensated at a rate at least equivalent to a State grade level 16; 2) the individual, acting alone or as a member of an executive unit, has decision making authority or acts as a principal advisor to one with that authority in making State policy, or regardless of compensation level, has decision making authority or acts as principal advisor to one with that authority in procurement-related matters; and 3) the hiring agency identifies the individual as meeting the foregoing criteria.

Accordingly, a contractual employee who is designated a public official is subject both to the conflict of interest and financial disclosure provisions of the Law. Once designated as a public official (whether or not the contractual employee has reached the 6-month point in his/her contract), he/she becomes immediately subject to the conflict of interest and financial disclosure provisions of the Public Ethics Law.

Other Contractual Employees

With the exception of those contractual employees designated as public officials, the Public Ethics Law does not apply to contractual employees. Agencies, of course, are free to make adherence to the Public Ethics Law by contractual employees a condition of their employment by including appropriate language in the contracts. It is important to recognize that if the obligations of these employees are established, not by the Ethics Law, but by contractual provisions, the contracts will not provide the Commission with jurisdiction over violations of the Public Ethics Law by these employees. Any violations of the Public Ethics Law by contractual employees (other than those designated as public officials pursuant to the Law) must be addressed by the agency, as with any other contract violation.

Conclusion

In order for a contractual employee to be subject to the Public Ethics Law, the agency must submit to the State Ethics Commission a request to designate the employee as a public official (public official of the Executive Branch) which is approved by the Commission; for contractual employees of the Legislative Branch, the Presiding Officers of the General Assembly must designate the employee as a public official (public official of the Legislative Branch). As an alternative, an agency can make compliance with the Public Ethics Law a requirement of the contract. When questions arise, contact the State Ethics Commission for advice and guidance.