

**STATE ETHICS COMMISSION
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October 1, 2014

TO: State Officials and Employees

SUBJECT: Summary of Public Ethics Law Restrictions on Secondary or Outside Employment and Ownership of Financial Interests

The purposes of the Ethics Law are to avoid conflicts of interest, ensure impartiality and independence of judgment and avoid the appearance of conflicts of interest. The State Constitution also expresses a similar standard stating the need for officials to act diligently, faithfully and without partiality or prejudice.

SECONDARY EMPLOYMENT

The Public Ethics Law restricts secondary employment by officials and employees of the State. For purposes of the Public Ethics Law, the State position is primary employment and all other employment is secondary employment.¹

Types of Employment

Secondary employment includes compensated employment with an entity and non-compensated service involving a fiduciary relationship such as service on a board of directors. Secondary employment under the Public Ethics Law includes the following situations:

- Compensated employment with a for-profit or non-profit entity;
- Compensated employment with local government or a federal agency;
- Compensated employment with another State agency;
- Service as an elected official at the local level²;
- Service on a State, federal, or local government board or commission with or without compensation³; or
- Service on a for-profit or non-profit board or commission with or without compensation.

Basic Secondary Employment Prohibitions

The Public Ethics Law includes three provisions which may restrict secondary employment.

1 This memorandum does not apply to Judges or Members of the General Assembly as their restrictions are administered by other ethics agencies.

2 Other Ethics Law restrictions may also apply.

3 Other Ethics Law restrictions may also apply.

- Sections 5-203(b)(1) and Sections 5-502(c)(1)(i) prohibit an official or employee from having secondary employment with an entity that does business with, is regulated by, or is under the authority of the State department or agency with which the official or employee is affiliated. The Public Ethics Law authorizes the Commission to grant exceptions to this restriction under very limited circumstances. The Commission's exception regulations are published in COMAR Title 19A and delineate specific requirements for an exception. Generally, the Commission will not grant an exception if the employee or official has State duties relating to the private employer, is affiliated with the unit of the State agency that has duties relating to the private employer, or has duties with the private employer relating to the State department or agency with which the official or employee is affiliated.
- Section 5-502(b)(2) of the Ethics Law prohibits secondary employment that would impair the impartiality and independent judgment of the official or employee.
- Section 5-503(b) prohibits an official or employee who has duties relating to a contract from being employed by an entity that is a party to that contract.

Sometimes an employee or official may wish to hold two State positions, either through employment with two State agencies or through service on a State board in addition to State employment. In these situations, the Commission's analysis focuses on the provisions of § 5-502(b)(2) and whether the service in one State position will impair or create the appearance of impairment of the individual's independence of judgment in the other State position.

Secondary employment involving uncompensated service as a director or board member of an organization requires a determination of whether the service is in a private capacity or as a representative of the individual's State agency. In many instances, a person may be appointed to serve on a non-profit board in an ex officio capacity as an agency representative. In these situations, the official or employee must follow the instruction of the individual's State agency, represent the State agency's interests, and serve on the board at the pleasure of the employing State agency. Generally, this type of service is allowed, subject to certain restrictions.

Section 5-703(f)(3) generally bars a regulated lobbyist from being an official or employee of the State. The Commission's regulations (COMAR 19A.07.01) allow a regulated lobbyist to serve on a State board or commission under limited circumstances and subject to certain restrictions. However, a State official or employee may not be a lobbyist required to register as a regulated lobbyist with the State Ethics Commission.

The Commission has issued numerous formal advisory opinions providing detailed discussions of many different situations involving secondary employment. You may find the formal advisory opinions at the website of the Division of State Documents in the Office of the Secretary of State at <http://www.dsd.state.md.us/comar/SearchTitle.aspx?scope=AdvisoryO> or on our website at <http://ethics.gov.state.md.us>. If you have a specific question regarding secondary employment, you should contact the Commission for advice.

OWNERSHIP INTEREST PROHIBITIONS

Section 5-502 prohibits State employees and officials from having financial interests in entities that do business with or are regulated by the State Department or agency with which the employee or official is affiliated. The Public Ethics Law defines "financial interest" to include ownership of an interest in which the owner is currently receiving, has received in the past three

years, or in the future is entitled to receive \$1,000 or more per year. The Commission has interpreted financial interest to include an interest for which the owner is entitled to receive \$1,000 or more upon sale of the interest. "Financial interest" also includes ownership of more than 3% of a business entity by an official, employee or the spouse of an official or employee. The Commission's regulations authorize the Commission to grant an exception to this strict prohibition under limited circumstances. The regulations include a requirement that the financial interest be disclosed and the Commission to determine that there is no conflict or appearance of conflict. Not all situations are appropriate for an exception. For example, an energy official could not have financial interests in oil companies; a health official could not have financial interests in a hospital; and a utilities commission member could not have financial interests in utility companies. If you have a specific question regarding financial interests or wish the Commission to consider granting you an exception, you should contact the State Ethics Commission.

SPECIAL EXEMPTIONS AND RELATED RESTRICTIONS

The Public Ethics Law contains some special exemption provisions that may allow, under very limited circumstances, an official or employee to hold secondary employment or a financial interest that the Public Ethics Law would otherwise prohibit. Most of the provisions are applicable solely to part-time members of State boards and commissions. Other situations generally require a request for exemption from the Governor and the agency involved and are seldom used. (See § 5-502(d)).

It is important to note that even when the Commission grants an exception or exemption, all of the other provisions of the Public Ethics Law continue to apply. For example, the employee or an official may not participate in any matters on behalf of the State relating to the employee's secondary employer or ownership interest entity even if the Commission grants an exemption or exception.