STATE ETHICS COMMISSION

MARYLAND PUBLIC ETHICS LAW

- CONFLICTS OF INTEREST
- FINANCIAL DISCLOSURE
- LOBBYIST DISCLOSURE
- PROCEDURES
- LOCAL GOVERNMENT

This information is intended to be a general summary of the Law.
It is not to be read as a substitute for the Law itself.

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General Information: Ethics Law

WHAT IS THE PURPOSE OF THE PUBLIC ETHICS LAW?

The Law, set forth in Md. Code Ann., General Provisions (§§ 5-101 through 5-1001), was enacted for the following purposes:

1. To assure the people of the impartiality and independent judgment of officials and employees (including State board and commission members).

2. To avoid improper influence or even the appearance of improper influence.

3. To require officials and employees to disclose financial affairs and to meet minimum standards of ethical conduct.

WHAT DOES THE PUBLIC ETHICS LAW ADDRESS?

The Law addresses:

1. Definitions of terms. Title 5 Subtitle 1.

2. A State Ethics Commission to administer the Law. Title 5 Subtitle 2.

3. Advisory opinion procedures. Title 5 Subtitle 3.

4. Complaint and enforcement. Title 5 Subtitle 4.

5. Standards of conduct through conflict of interest provisions. Title 5 Subtitle 5.

6. A financial disclosure program for certain board and commission members, employees, and elected officials. Title 5 Subtitle 6.

7. A program for disclosure by and regulation of lobbyists. Title 5 Subtitle 7.

8. Requirements that local governments and boards of education (if a board of education is not covered by county ethics law) establish ethics programs. Title 5 Subtitle 8.

9. Judicial enforcement of Commission orders. Title 5 Subtitle 9.

WHO IS SUBJECT TO THE JURISDICTION OF THE STATE ETHICS COMMISSION?

The following officials and employees are subject to Commission jurisdiction:

1. All employees of the Executive Branch of government.

2. All employees of the Judicial Branch of government with the exception of judges and certain judicial officers. Judges and certain judicial officers are subject to the Public Ethics Law, but for these individuals the Law is administered by the Judicial Disabilities Commission.

3. All employees of the Legislative Branch of government.

4. Elected members of the General Assembly for the purpose of annual financial disclosure but not for standards of conduct. Elected members of the General Assembly are subject to the standards of conduct provisions of the Public Ethics Law, but those provisions are administered by the Joint Ethics Committee in the General Assembly.

5. State officials, including those elected to the offices of Governor, Lt. Governor, Attorney General, Comptroller, State's Attorney, Clerk of Circuit Court, Register of Wills and Sheriff.

6. Individuals serving as members of Executive Branch boards or commissions created by or pursuant to law or regulation, or Executive Order having the force of law. Refer to Md. Code Ann., General Provisions §§ 5-103, 5-609 and 5-611 for more specific direction related to individuals identified as public officials solely because of their membership on boards or commissions.

Conflicts of Interest:

WHAT KINDS OF ACTIVITIES ARE GOVERNED BY THE CONFLICT OF INTEREST PROVISIONS AND ADMINISTERED BY THE STATE ETHICS COMMISSION?

The Ethics Law contains the following general types of prohibitions. Please refer to Md. Code Ann., General Provisions §§5-501 through 5-507 for the specific prohibitions.

1. An employee or official may not participate in a matter in which he or she has an interest. This prohibition also applies where an official's or employee's relatives (spouse, children, brother, sister or parents), or certain entities has/have an interest. Non-participation includes any discussion, advising or deciding of the matter and requires disclosure of the conflict.

2. An official or employee may not participate in a matter when one of the parties is a business entity in which he or she has an employment, contractual or creditor relationship. This prohibition also applies when certain relatives (spouse, children, brother, sister or parents) have such a relationship. Non-participation includes any discussion, advising or deciding of the matter and requires disclosure of the conflict.

3. An official or employee may not participate in a matter in which he or she is negotiating employment with a party to the matter. This prohibition also applies where certain relatives are negotiating employment with a party to the matter.

4. In most instances an official or employee may not have a financial interest in, or be employed by an entity subject to, the authority of the official or employee, or of the agency with which he or she is affiliated.

5. In most instances an official or employee may not have a financial interest in or be employed by an entity having or negotiating a contract with the agency with which he or she is affiliated.

6. An official or employee may not hold any employment relationship that would impair his or her impartiality or independence of judgment.

7. An official or employee may not intentionally use the prestige of his or her office for personal gain or that of another. This prohibition means an official or employee may not use any influence he/she may have to obtain a special benefit for himself/herself or another or use state resources for personal benefit or to benefit another. This includes but is not limited to: influencing the award of a State or local contract to a specific person; initiating a solicitation for a person to retain the compensated services of a particular lobbyist or firm; or using public resources or title to solicit a political contribution.

8. An official or employee whose duties include matters substantially relating to the subject matter of any contract with the State may not become, while he or she is an official or employee of the State, an employee of the party contracting with the State.

9. An official or employee may not assist or represent a party for contingent compensation in any matter involving any State agency or political subdivision other than in a judicial or quasi-judicial proceeding. Additionally, judicial branch employees may not represent persons before the judicial branch even if not for contingent compensation.

10. A former official or employee may not assist or represent anyone other than the State for compensation in a case, contract or other specific matter involving the State, if that matter is one in which he or she significantly participated as an official or employee.

11. An official or employee may not solicit any gift for him or herself or for others. Subject to certain exceptions, an official or employee may not knowingly accept any gift directly or indirectly from any person whom the official or employee knows or has reason to know:

    - is doing or seeking to do business of any kind with his/her agency or department;
    - is engaged in activities that are regulated or controlled by his/her agency or department;
    - has financial interests that may be substantially affected in a specific way by the official or employee; or
    - is a lobbyist with respect to the matters within the employee's or official's functional jurisdiction.

    There are limited exceptions for certain nominal gifts addressed in Md. Code Ann., General Provisions § 5-505.

12. An official or employee may not disclose or use for personal economic benefit, or that of another, confidential information acquired by reason of his or her public position.

13. An official or employee subject to the Ethics Law may not also be registered as a lobbyist.

Financial Disclosure:

WHAT IS FINANCIAL DISCLOSURE?

Financial disclosure is the filing of a form with the State Ethics Commission disclosing certain employment or interests that may relate to the conflict of interest provisions of the Law. The Commission website has a link to a State website that maintains a list of businesses doing business with the State, which an official or employee may use to assist in completing financial disclosure forms and which may help evaluate potential conflict of interest situations. The Law also requires each agency to provide its filers with a list of businesses doing business with the agency. Md. Code Ann., General Provisions §§ 5-601 through 5-611 contain the provisions related to Financial Disclosure, and the Commission staff is available to assist persons required to file.

WHAT ARE SOME OF THE PURPOSES OF FINANCIAL DISCLOSURE?

Some of the purposes are:

1. To provide the Commission, officials, employees, other agency personnel and the public access to documents disclosing possible conflicts of interests.

2. To provide access to documents that demonstrate to the public that financial interests are not hidden and that, generally, officials and employees do not have conflicts of interest.

3. To provide those who complete the form an annual opportunity to review matters that might need some attention to avoid possible conflicts of interest.

4. To assist voters in evaluating the suitability of candidates for the office they are seeking.

WHO HAS TO FILE DISCLOSURE STATEMENTS WITH THE COMMISSION?

1. Members of Executive Branch boards and commissions may be required to file financial disclosure. However, the Ethics Law allows the Commission to grant an exemption if it determines that the board or commission is advisory only. Requests for exemptions must be filed with the Commission on a form provided by the Commission.

2. All State elected officials, including members of the General Assembly, are required to file disclosure statements with the Commission. Judges and judicial officers file with the Judiciary, but copies of the statements are kept on file with the Commission. Candidates for office as a State official must also file with the Commission. Candidates for local office file with local agencies.

3. Certain employees are designated under standards set in the Law to be public officials required to file financial disclosure statements. The criteria for this designation vary by branch of government and take into consideration a variety of factors, primarily the employee's salary and specific duties. You may refer to Md. Code Ann., General Provisions § 5-103 for a definition of the term "public official." The Commission also has memoranda available that specifically address the filing requirements.

WHEN ARE FINANCIAL DISCLOSURE STATEMENTS TO BE FILED?

The general rules governing the timing for filing are as follows:

1. Newly appointed employees or officials file for the previous calendar year within 30 days of taking a State position that requires filing.

2. Incumbent officials and employees serving in a State position requiring filing file no later than April 30th each calendar year for the previous calendar year.

3. Officials and employees terminating service in a State position requiring filing must file for the calendar year immediately preceding (unless that statement has previously been filed) and for any portion of the current calendar year served prior to leaving, within 60 days of leaving the position.

4. State candidates must submit a statement when they file for office and in the year of the election by the earlier of April 30th or the last day for the withdrawal of a candidacy.

ARE FINANCIAL DISCLOSURE STATEMENTS AVAILABLE FOR PUBLIC INSPECTION?

Financial disclosure statements are available for public inspection subject to two requirements:

1. Individuals wishing to examine or copy a statement must appear at the Commission office in person and register their names and home addresses and the names of the persons whose statements they wish to examine or copy.

2. A person who has a statement on file is entitled, upon request, to be notified of the name and address of anyone inspecting his or her statement.

Md. Code Ann., General Provisions § 5-606 addresses this process.

WHAT KIND OF INFORMATION IS INCLUDED ON THE FINANCIAL DISCLOSURE STATEMENT?

Officials and employees are specifically required by law to disclose the following information:

1. Interests held in real property.

2. Interests in corporations, partnerships, LLP or LLC.

3. Interests in non-corporate business entities such as partnerships or sole proprietorships that do business with the State.

4. Gifts over $20 in value or series totaling more than $100.00 received from a person doing business with the State, regulated by the State, or registered as a lobbyist.

5. Offices, directorships, salaried employment or partnerships or similar interests in business entities that do business with the State, held by the official or employee or his or her immediate family (spouse and dependent children).

6. Debts (excluding retail credit accounts) of the filer or a member of his or her immediate family owed to persons doing business with or regulated by the filer's agency.

7. Names and positions of members of the official or employee's immediate family (spouse or dependent children) who were employed by the State.

8. The name of each place of salaried employment of the official, employee or member of his immediate family, and the identification of any business entity in which the official, employee or member of his immediate family was the sole or partial owner and from which income was earned.

Lobbyist Disclosure:

WHAT IS LOBBYIST DISCLOSURE?

Lobbyist disclosure consists of a general requirement that certain people who expend funds or receive compensation to influence State government action, or who give gifts, such as meals and beverages, to influence action, must register and report their compensation and expenditures. Certain persons who seek to influence executive action on a procurement or to secure a business loan or grant from the State, must also register and report as a lobbyist.

The specific provisions related to lobbying activities are set forth in Md. Code Ann., General Provisions §§ 5-701 through 5-715 and are further explained by memoranda available from the Commission and on the Commission's web site.

WHAT KIND OF LOBBYIST INFORMATION IS FILED AND REPORTED WITH THE ETHICS COMMISSION FOR PUBLIC VIEWING?

Information on the registration form includes the name of the person or organization registered, the name of the employer and the topics that will be involved in lobbying activity. Expenditure reports include meals and beverages for employees and officials, compensation paid to the lobbyists, and the lobbyist's administrative expenses. There are special lobbyist reports for the disclosure of gifts, special events, contributors to special purpose lobbyist entities, individual lobbyists doing business with certain officials, and individual lobbyist campaign contribution reports. Officials, employees and the public can review report totals on the State Ethics Commission's website.

DOES THE ETHICS LAW REGULATE WHAT LOBBYISTS CAN DO?

Yes, there is a variety of conduct prohibitions in the Ethics Law including, for example, prohibitions against contingent fees, limits on campaign finance activity, gift limitations, prohibitions against deceptive conduct, and restrictions on using certain methods for generating business. Additionally, individual lobbyists cannot be involved in charitable fundraising at the request of an official or employee. An inclusive list of prohibitions is contained in Md. Code Ann., General Provisions § 5-714, and the Commission has also prepared memoranda further explaining the prohibitions.

Procedures:

HOW CAN AN OFFICIAL OR EMPLOYEE FIND OUT IF SOMETHING HE OR SHE INTENDS TO DO IS CONSISTENT WITH THE LAW?

If you anticipate engaging in some activity that you believe may raise an issue under the Ethics Law, you should contact the Ethics Commission staff. Often the issue can be resolved by guidance at the staff level, or on an informal basis by the Commission. If the question is more complex or if you

believe a formal written opinion is necessary, you may request an advisory opinion. Any official, employee, or lobbyist subject to the Law may request an advisory opinion concerning the application of the Law to him or her. An official or employee may also request an advisory opinion concerning the activities of another official or employee under his supervision. Persons who are not officials, employees, or lobbyists may also request an opinion of the Commission, and the Commission, in its discretion, may issue such an opinion. A formal advisory opinion is an official statement of the Commission itself and can legally be relied upon by the person requesting it. Note, however, that the vast majority of advice provided by the Commission is done informally.

HOW DO I REQUEST AN ADVISORY OPINION?

General Provisions, Title 5 Subtitle 3 addresses requests for opinions. All requests for advisory opinions should be in writing and addressed to the State Ethics Commission at 45 Calvert Street, 3rd Floor, Annapolis, Maryland 21401. The request should include the signature, address, and telephone number of the requestor and set forth the facts and circumstances giving rise to the request.

HOW ARE ADVISORY OPINIONS ISSUED?

Advisory opinions are issued in writing to the person requesting the opinion. All advisory opinions are also published in the ***Maryland Register***. The person who is the subject of the opinion may request confidentiality. Advisory opinions are written, to the extent possible, so as to prevent disclosure of the identity of the person subject to the opinion. A person requesting an opinion should have an answer within 60 days of the request. Formal advisory opinions are published in the COMAR and are available on the Internet through the State Ethics Commission web page or directly on the Office of Secretary of State's – Division of State Documents web page. The Commission, in its discretion, may decide to issue a letter of advice rather than a formal opinion.

HOW IS ENFORCEMENT OF THE ETHICS LAW INSTITUTED?

Any person may file a complaint with the Commission. A complaint must be written, signed and under oath, and allege a violation of the Ethics Law by an official, employee or other person subject to the Commission's jurisdiction. The Commission may reject a complaint it deems plainly frivolous. The Commission may also issue a complaint on its own initiative. The complaint process is addressed in the General Provisions Title 5 Subtitle 4.

WHAT HAPPENS AFTER A COMPLAINT IS FILED OR ISSUED?

After a complaint is issued or accepted, staff counsel initiates an investigation. Based on this investigation, the Commission determines, if the complaint has merit, whether to accept a cure or settlement of the violation in accordance with Md. Code Ann., General Provisions § 5-403 or conduct a formal contested case hearing in accordance with § 5-404. Consideration of the complaint and the hearing process are confidential. The matter becomes public if the Respondent waives confidentiality, the Commission, after a hearing, finds that a violation occurred, or as a result of an agreed upon settlement. The Commission also has the authority to refer cases to the appropriate prosecuting authority as set forth in § 5-408.

WHAT POSSIBLE SANCTIONS CAN THE COMMISSION IMPOSE AFTER IT CONCLUDES THE LAW HAS BEEN VIOLATED?

If the Commission determines that a violation has occurred, it may

1. Issue a cease and desist order.
2. Issue a reprimand.
3. Recommend to the appointing authority censure, removal, or other discipline.
4. Assess late fees up to $500.00.
5. In cases involving regulated lobbyists, the Commission can also levy substantial fines and as to individual regulated lobbyists, suspend, or revoke the lobbyist's registration in accordance with the provisions of Md. Code Ann., General Provisions § 5-405(d).

Additionally, the Commission may ask a circuit court to:

1. Issue a cease or desist order.
2. Set aside certain official action.
3. Impose substantial fines.

The Law also specifically provides that violation of the Law by officials and employees can be the basis for termination, disciplinary action or suspension of compensation pending compliance with an order. General Provisions Title 5 Subtitles 4 and 9 specifically address the sanctions that may be imposed.

Local Government:

HOW DOES THE LAW IMPACT ON LOCAL GOVERNMENT?

The Ethics Law requires local governments to enact similar laws for their jurisdictions. In the case of elected local officials, local governments' laws must be equivalent to or exceed the requirements of State law with respect to conflict of interest provisions and financial disclosure provisions. The State Ethics Commission may exempt certain small municipalities from the requirement to enact ethics laws, or certain parts of ethics laws, for their jurisdictions. School boards may enact their own ethics regulations and thus become independent from county laws. If a State official or employee is also a local government official or employee, he or she may need to consult with the local ethics commission in addition to the State Ethics Commission with regard to some activities. The Ethics Commission issues model laws, approves enacted laws or regulations, and assists in local law development. Md. Code Ann., General Provisions §§ 5-801 through 5-862 address various matters pertaining to local governments.