

**STATE ETHICS COMMISSION
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June 3, 2020

TO: State Officials and Employees

SUBJECT: Summary of Public Ethics Law Restrictions on Participation in Matters as a State Employee

The purposes of the Public Ethics Law¹ (“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.²

PARTICIPATION

The Ethics Law restricts participation by State officials and employees in certain matters in their official State duties.

Who is covered by the law?

The participation restrictions of the Ethics Law apply to State officials and employees. An official is a state or public official.³ State officials are constitutional officers in the executive branch, members of the General Assembly, judges, judicial appointees, State’s Attorneys, clerks of the circuit courts, registers of wills, and sheriffs.⁴ Public officials are determined by the Commission by applying various criteria and include members of most State Boards and Commissions.⁵ An employee is an individual employed by an executive unit, the legislative branch, or the judicial branch.⁶

The State Ethics Commission has jurisdiction over officials and employees of the executive branch. Officials and employees of the legislative and judicial branches are under the jurisdiction of different ethics entities—the Joint Ethics Committee and the Judicial Ethics Committee. Additionally, the State Ethics Commission has determined that contractual employees in the executive and legislative branches are not considered “employees” under the Ethics Law, and, in

¹ Md. Code Ann., Gen. Prov., Title 5 (Supp. 2019)

² Md. Const. art. I § 9.

³ Md. Code Ann., Gen. Prov. § 5-101(bb).

⁴ Md. Code Ann., Gen. Prov. § 5-101(II).

⁵ Md. Code Ann., Gen. Prov. § 5-101, 5-103.

⁶ Md. Code Ann., Gen. Prov. § 5-101(g).

general, are not subject to its conflicts of interest provisions unless they file an annual financial disclosure statement and are designated as public officials by the Commission. Employing agencies may still require contractual employees to agree to abide by the Ethics Law, but this agreement does not give the State Ethics Commission jurisdiction over them.⁷

What are the restrictions?

Section 5-501 of the Public Ethics Law sets forth the participation restrictions. An employee or official may not participate in their State position in any of the following situations:

- A matter in which an employee or official has an interest or in a matter in which a qualifying relative has an interest;⁸
- A matter where one of the parties is a business entity in which the employee or official or a qualifying relative has an employment, contractual, or creditor relationship;⁹ and
- A matter in which any of the following are parties to the matter:¹⁰
 - A business entity in which the employee or official has a direct financial interest;
 - A business entity where the employee or official or a qualifying relative is an officer, director, trustee, partner, or employment;
 - A business entity with which employee or official or a qualifying relative has applied for employment, is negotiating employment, or has arranged prospective employment;
 - A business entity that is a party to a contract with an employee or official or a qualifying relative;
 - A business entity engaged in a transaction with the state or subject to regulation by the employee or official's governmental unit where another business entity in which the employee or official has a direct financial interest in the business engaged with the state;
 - A business entity that is a creditor of the employee or official or a qualifying relative; and
 - A business entity that is a creditor in a position to directly and substantially affect the interest of the employee or official or a qualifying relative.

⁷ See the Commission's 2014 Memorandum on Contractual Employees: <https://ethics.maryland.gov/wp-content/uploads/filebase/state-employees/state-employees-memos/Contractual%20Employees.pdf>

⁸ Md. Code Ann., Gen. Prov. § 5-501(a)(1).

⁹ Md. Code Ann., Gen. Prov. § 5-501(a)(2).

¹⁰ Md. Code Ann., Gen. Prov. § 5-501(a)(2).

What is an interest?

An interest is a legal or equitable economic interest that is owned or held wholly or partly, jointly or severally, or directly or indirectly, whether or not the economic interest is subject to an encumbrance or condition.¹¹ The State Ethics Commission has provided guidance in the past that a general interest may not trigger a potential participation issue. The Commission considers whether the employee, official, or qualifying relative has a more specific or unique interest when providing guidance on participation restrictions.

What is a matter, and what does it mean to participate?

The Commission has issued several opinions concerning the concept of “matter” and “participation.” In regards to participation and related post-employment provisions, “matter” has been interpreted to include any proceeding, application, submission, request for ruling or other determination, contract claim, case, or other such particular matter.¹² The Commission has determined that “participation” includes acting, or failing to act, in one’s official capacity, personally and substantially, through approval, disapproval, decision, recommendation, the render of advice, investigation, or otherwise.¹³

Who is a qualifying relative?

A qualifying relative includes a spouse, child, sibling, or parent.¹⁴ The Commission considers a qualifying relative to include a stepchild, stepsibling, or stepparent. In some instances, a State employee or official may consider not participating in State duties in matters involving other relatives or individuals with a close relationship to the employee or official in order to avoid any appearance of a conflict of interest or potential prestige of office issue. Employees and officials should contact and review such circumstances with the employing State agency and State Ethics Commission to obtain guidance in these situations.

What are some examples?

An official or employee may not participate in their State position in a matter involving

- the official or employee’s secondary employer – apart from the State;
- certain relatives’ employers;
- businesses where the official or employee serves on the Board or in an executive position;
- businesses where certain relatives serve on the Board or in an executive position;
- businesses where the official, employee, or certain relatives are seeking employment;
- businesses that the official, employee, or a relative owns in whole or in part;

¹¹ Md. Code Ann., Gen. Prov. § 5-101(t).

¹² Opinion No. 97-13.

¹³ Opinion No. 83-12.

¹⁴ Md. Code Ann., Gen. Prov. § 5-101(gg).

- an entity with which the official, employee, or certain relatives have a personal contract; and
- an entity to which the official, employee, or certain relatives owe a debt.

Are there exceptions?

The State Ethics Commission may grant an exception to the participation restrictions for employees and officials under limited circumstances. An exception is only available when the matter at issue involves a qualifying relative and not a matter involving the employee's own conflict. Exceptions may only be granted by the Commission pursuant to its regulations in COMAR. A State agency may not grant an exception to allow an employee to participate in matters involving qualifying relatives. The Commission considers a number of factors when determining if an exception is warranted:¹⁵

- The nature of the qualifying relative's relationship with the business entity;
- The nature of the relationship between the official or employee and the qualifying relative;
- The geographical distance between the official or employee and the qualifying relative;
- Any prior issues related to the official's or employee's participation in the matter;
- Agency controls and safeguards;
- Any involvement by the qualifying relative in the matter involving the official or employee; and
- The nature of the official's or employee's participation in the matter in relation to the official or employee's overall duties.

The Commission has considered a number of requests for participation exceptions and have granted them with respect to certain qualifying relatives. For example, the Commission granted an exception to allow an employee of the Maryland Transit Administrations to participate for the agency's negotiation team on the MARC train contract even though his brother was employed by Amtrak, a party to the MARC train contract.¹⁶

The Commission has granted exceptions in situations where it finds that the overall circumstances and relationships were sufficiently remote to warrant an exception.¹⁷ The exceptions have generally been given when the two individuals involved are in separate households and have separate financial interests. The Commission has never granted an exception in a situation involving spouses or dependent children.

What do I do if I think I have a conflict?

Call or email the State Ethics Commission to discuss your situation with our agency's counsel. They can help you avoid conflicts, develop nonparticipation plans, or seek a participation exception.

¹⁵ COMAR 19A.02.03.02.

¹⁶ Opinion No. 90-01.

¹⁷ Opinion Nos. 90-2, 90-5, 04-02, 05-01, 05-02, and 07-02.