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"WHEREAS, THE PEOPLE OF NORTH CAROLINA ENTRUST PUBLIC POWER TO ELECTED AND APPOINTED OFFICIALS FOR THE PURPOSE OF FURTHERING THE PUBLIC, NOT PRIVATE OR PERSONAL, INTEREST..."
EXECUTIVE ORDER NUMBER ONE

Letter from the Director

Due to the State budget crisis, all State agencies and boards were asked to postpone their regular business meetings to the maximum extent possible. As a result, the Board of Ethics was unable to meet for the last six months of Fiscal Year 2000-2001 (January to June 2001). This included the period immediately following Governor Easley's issuance of Executive Order Number One reestablishing the Board of Ethics. The long-vacant seventh Board seat was also filled during this time.

The Board now has a backlog of important business to address, including the review and approval of advisory opinions, consideration of new rules consistent with the new ethics order, and, perhaps most importantly, several complaint investigations.

The Board has set a tentative meeting date of **Friday, September 21, 2001**, beginning at 10:00 am to address these and other important issues. All interested Public Officials as well as members of the public are welcome to attend this open meeting.

Perry Y. Newson

"An ethical person often chooses to do more than the law requires and less than the law allows. The ethical person is concerned with what is right to do, not with what she has a right to do."

Josephson Institute of Ethics

Leaving State Government to Work in the Private Sector: Going Through the "Revolving Door"

One of the more common questions addressed to Board of Ethics staff, particularly as a change in gubernatorial administrations approaches, is what restrictions apply to leaving State government employment and going to work in the private sector. This is of particular concern when the former State employee had regulatory or contractual dealings with his new employer while he was with the State. It is not hard to imagine the kinds of conflict of interest and appearance of conflict issues these situations raise. What may be surprising is the answer in North Carolina.

Neither state law nor the Executive Order restricts a state employee's ability to leave state government and go to work for a private entity. This is true even when a state employee goes to work for an entity that he or she regulated or conducted business with during the period of state employment. An employee often accepts a position with a private entity which requires that he work directly with his former state employer. This is referred to as the "revolving door" situation — a state employee walks out of the door of state government only to immediately come back through that door to conduct business with the state as a private citizen or vendor representative.

Even if there is no legal or "ethical" impediment to doing so, leaving public service to work for a private entity that will do business with the employee's former state employer may create a perception of bias or conflict of interest. And this potential for apparent bias attaches not only to the former employee's subsequent dealings with his former state employer but also to his actions and decisions immediately prior to leaving state employment. At what point did the employee transfer his primary loyalty from his former government employer to his present private one? Did the former government employee take some action or enter into an arrangement (like a contract) that would benefit his future employer? These are the types of questions or concerns raised in "revolving door" situations.

(continued on next page)

BOARD NEWS

Board staff is back down to two. Christine Miller, the Board's Research Assistant, has returned to private practice as a paralegal. She has relocated to Richmond, Virginia, to work for a private law firm. We wish her all the best.

The "Revolving Door" (continued)

On several occasions the Board has been asked for official advisory opinions addressing "revolving door" situations. In each of these cases, the Board noted that **once an official leaves state government, the Board no longer has jurisdiction over that individual.** In one of its very first "Interpretive Memoranda," the Board made this definitive pronouncement:

The Board interprets [Governor Hunt's original 1977] Executive Order Number One as not ordinarily extending to the so-called "revolving door" situations involving movement in and out of state employment by persons who in their private employment have done or now do business with the same units of State Government in which they now or have previously been employed.

Because the Order applies only to persons in State Government, it obviously does not reach the person who has now left state employment for private employment of this type.

However, the Board has also stated that business transactions between a former employee and his former state employer could reflect unfavorably on both parties and must therefore be taken seriously. This is particularly true when the nature of the entity's business relationship with the state was known to the employee prior to his accepting the job with the private entity. As stated in an early advisory opinion on this subject (AO-81-002), "A fundamental concern about 'revolving door' transactions seems to be the potential for an appearance that the employee had a conflict of interest while in state service."

Acknowledging that it is not unusual for employees to leave state service for jobs in the private sector involving the same general subject matter they dealt with in their government jobs, the Board noted that it is usually possible to hypothesize at least an appearance of conflict of interest between the state job and future employment plans, but that "distinctions can be drawn between those appearances of conflict which are likely, significant, and avoidable and those which are merely remote, insignificant, and unavoidable."

Other states and the federal government have passed "Revolving Door" laws to address this issue. These statutes often call for a one-year "cooling off" period. Such statutes do not forbid state employees from accepting employment with private entities following state employment; rather they require that the former state employee refrain from participating in business activities that would require interaction with his former state employer for a set amount of time. This procedure enables both the former employee and his former state employer to avoid a conflict of interest or the appearance thereof.

Although there is no formal policy or statute addressing the revolving door issue in North Carolina, in order to serve the best interests of the public, state government employees and agencies should exhibit appropriate sensitivity to the possibility that an appearance of conflict of interest could be created should they choose to conduct business with former employees following that employee's separation from state employment. To that end, officials might want to evaluate each proposed transaction to assess whether a significant and avoidable appearance of impropriety is likely to result if the state agency conducts business with its former employee. In making this determination, the parties could consider the following:

- (1) *Subject Matter of the Proposed Transaction:* Is the subject of the proposed transaction a project that the former employee was personally responsible for or was involved in as a decision-maker during state service?
- (2) *Time Element:* How much time has passed since the employee left state service? Is the former employee still closely identified in the public mind with a program of the state employer that is now the subject of a proposed business transaction?
- (3) *Interests of the Employee and Former State Employer:* Will the interests of the state and the interests of the former employee be adverse in the proposed transaction, or will both parties stand to benefit equally?
- (4) *Method of Conducting Business:* Will the former employee and the former state employer conduct business privately, or will any transactions take place through a competitive bidding process?

While acknowledging that the only sure way to prevent an appearance of conflict in a revolving door situation is for the former employee to avoid *any* business dealings with or involving the same units of government which formerly employed him, the Board noted that a case-by-case assessment of revolving door situations could have the advantage of limiting the former employee's activities only in those instances where a significant appearance of impropriety would be likely to arise.

Typically, it would not normally be necessary for the new employer to forego business dealings with the state agency. Instead, requiring that the former employee refrain from becoming involved in any contracts between his new private employer and his former state agency for a limited period of time can, in most cases, at least reduce or minimize the appearance of conflict. In such situations, the private entity may contract with the state agency, but not by or through the former state employee during his or her "cooling off" period.

Finally, it is always wise for the parties, particularly the state agency, to **disclose** the former employment relationship prior to the formation of the contract to help mitigate any appearance of conflict of interest or apparent bias in the official decisionmaking process.

Because of the lack of clear "bright line" rules in North Carolina, these revolving door questions are some of the most difficult faced by conscientious Public Officials and State employees. To a great extent, the ultimate decision is left up to the personal code of conduct of the individuals involved. •

"Few men have virtue to withstand the highest bidder." George Washington

"Nearly all men can stand adversity, but if you want to test a man's character, give him power." Abraham Lincoln

ANNOUNCEMENTS :

ETHICS EDUCATION

Due to the current State budgetary situation, we are still unable to travel outside of the Raleigh area to make basic ethics education and awareness presentations.

If your board or agency is meeting in the area and you would like such a presentation, please call the Board's offices to make the necessary arrangements.

In the meantime, Board staff is always available for telephone consultations and conflict of interest questions.

BOARD MEETING SCHEDULED - September 21, 2001

The Board of Ethics will hold an open meeting on Friday, September 21, 2001, beginning at 10:00 a.m. in room 2087 of the Department of Administration building in downtown Raleigh, 116 West Jones Street. The Board will address pending complaints, preliminary advisory opinions, and other business.

"STATEMENT OF ECONOMIC INTEREST" DUE-DATES

All **new** employees or appointees who are covered by Executive Order Number One must file their Statement as soon as reasonably possible, the intent being to have a conflict evaluation prior to or contemporaneous with the commencement of public service where feasible. All **currently serving** Public Officials who submitted a Statement under former Executive Order 127 must resubmit a **new Statement** on or before **May 15, 2001**. Thereafter, all covered Officials must file an **updated Statement** between **April 15 and May 15** each year.

IMPORTANT INFORMATION ON-LINE

The Board of Ethics' **newsletters** and other key information is available **on-line** at the Board's web site:

www.doa.state.nc.us/doa/ethics

Alternatively, you can access the Board's web site through the North Carolina home page. Just click on "NC Agencies" at the top of the page and "go" to the Department of Administration "Quick Link." Then select "Boards and Commissions" where you will find the Board of Ethics listed. The Board of Ethics' "home page" will give you access to Executive Order Number One, the Board's Rules and Regulations, Statement of Economic Interest forms, advisory opinion information, and all newsletters.