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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 NO. ONE

Letter from the Director

As everyone in State government knows, we once again find ourselves in the midst of a budget crisis. As a result, funding will be tight across the board, and we will all need to do more with less. For the Board of Ethics, that means finding ways to meet its education goals without extensive travel or publication expense. We plan to rely more on electronic communication and the Internet, but we will need your help.

You will need to make more of an effort to seek out relevant information: check our web site periodically; read our newsletters on-line; review recent advisory opinions issued to other Public Officials. We will need to make more information available on an extremely cost-efficient basis. In short, we will all need to work both harder and smarter. If you have any questions or suggestions along this line, please contact us at (919) 733-2780.

Perry Y. Newson

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 on conflict of interest questions.

"Odds 'n' Ends"

Research Assistant Resigns. The Board of Ethics is once again short-handed from a staff standpoint. The Board's Research Assistant recently resigned to take a job with another state Department, and we wish her all the best. While this may slow the disclosure review and evaluation process a bit, remaining staff feel they can "hold the fort" at least until the next busy filing season.

Budget Situation. To make matters worse from a staff standpoint, the vacant Research Assistant position has been targeted for possible elimination due to the current budget crisis. Time will tell.

Director Speaks to International Visitors Group. On a more positive note, the Board's Executive Director recently met with a group of foreign officials to discuss "accountability in government and business." Participants included legislators, regulators, law enforcement officials, and members of the media from 20 different countries. The visit was sponsored by the US State Department's International Visitor Program. Mr. Walker Reagan of the NC Legislative Research Division discussed ethics and conflict of interest from the perspective of the legislative branch of government.

Have you updated your Statement of Economic Interest this year?

All covered Officials must file an updated Statement by May 15 each year. See section 9 (b) of the Order. If you have any questions relating to the Statement, please call the Board's offices at 733-2780 and ask for Millie.

History of the Board of Ethics

On January 10, 1977, Governor James B. Hunt, Jr. used his first executive order to create the North Carolina Board of Ethics. It consisted of five persons appointed by the Governor. The list of those covered by the order and thus subject to the Board's jurisdiction was substantially the same as it is today and included employees in the Governor's office, department heads and their chief assistants, employees in exempt policy-making positions, and appointees to non-advisory boards and commissions. The financial disclosures required in "Statements of Economic Interest" (SEI) were also very similar to those in the current Order. The Board's main duties and responsibilities in 1977 were reviewing SEIs, rendering advisory opinions, and investigating complaints. The Board's enforcement powers were much more limited, however: the Board could *investigate* complaints, issue a *report* to the appropriate appointing authority, and *recommend* "remedial action with respect to any problem revealed by such an investigation." Note that the Board did *not* have the power to issue sanctions against individual Public Officials found in violation of the Order. "Sanctions" consisted of appropriate disciplinary action against *employees*, but such disciplinary action was not for the Board to mete out.

Governor Hunt's original ethics order remained in effect for his two terms. Like his predecessor, Governor James G. Martin used his first executive order to establish a Board of Ethics on January 31, 1985. Persons subject to the Order and the financial disclosures required remained substantially the same. The Board's duties and powers likewise remained substantially the same, including its ability to investigate and report on complaints. Once again the Board did *not* have the power to issue sanctions against individual Public Officials found in violation of the Order.

In 1986, Governor Martin expanded the Board's membership to seven gubernatorial appointees, and in 1990 he amended his ethics order "to include all members of boards, commissions, and councils within the executive branch that exercise the sovereignty of the State and/or advise the heads of principal departments, irrespective of appointing authority." He also used Executive Order 127 to extend the Board of Ethics for a period of five years.

When Governor Hunt returned to office in 1993, he once again used his first executive order (January 9, 1993) to establish the Board of Ethics. The Board's membership, jurisdiction, and duties, including its investigative and enforcement powers, remained substantially the same as they had been under the prior version of the Order. In May of 1993, Governor Hunt slightly amended Executive Order 1 to delete the provision which prohibited full-time State employees subject to the Order from holding any other public employment for compensation (EO 14; May 20, 1993).

Things changed dramatically in 1997. As a result of real and perceived problems at the Department of Transportation that year, Governor Hunt totally revised his ethics order in early 1998. Executive Orders 127 and 131 greatly expanded the Board of Ethics' powers and duties, particularly in the areas of ethics education, financial disclosure and evaluation, and enforcement. For example, the new Order charged the Board with developing and implementing an ethics education and awareness program for all covered Public Officials. In addition, the Board was given broader powers to investigate complaints and take strong remedial action in appropriate cases. For the first time in its 20-year history, the Board was charged with issuing specific sanctions against Public Officials. Moreover, the Board could recommend that an offending Public Official be removed from his or her State position. Agency heads (which included board chairs) were given more supervisory and leadership responsibilities, and specific "rules of conduct" for covered Public Officials were expanded and explained in greater detail. For the first time, Public Officials were directed to avoid "even the appearance of a conflict of interest." Other rules regarding the disclosure of confidential information, the hiring of family members, and the acceptance of honoraria were added. Overall, EO 127 was the greatest expansion of the Board's powers and duties in its 20-year history.

Governor Easley's first executive order modified, but largely left intact, the significant changes of Governor Hunt's EO 127. While Governor Easley's Executive Order Number One retained the basic philosophical approach of its predecessor, the new Order made some significant changes. The most obvious change was a general reorganization of sections and subsections in order to, among other things, combine all duties and responsibilities pertaining to individuals (e.g., Agency heads) or public bodies (e.g., the Board of Ethics) into comprehensive sections. The Board's ability to sanction Public Officials was also retained, although the Board was given more discretion in that area.

Today, the Board of Ethics remains the State's primary conflict of interest "watchdog" for high-level employees and appointees in the executive branch of State government. As always, the Board's overall mission is to protect the public interest and maintain the public trust by helping Public Officials, and the boards and commissions on which they sit, avoid conflicts of interest and appearances of conflict of interest as they perform their public duties.

ESSENTIAL ETHICAL OBLIGATIONS

In the early 1990s, the American Bar Association's (ABA) Section of Administrative Law and Regulatory Practice commissioned an in-depth study of "the ethical considerations inherent in public service and how best to establish meaningful and effective regulation" for *federal* employees. 45 *Administrative Law Review* 287, "Keeping Faith: Government Ethics & Govern Ethics Regulation (Summer 1993). The members felt it was essential for the ABA to respond to "increasingly disturbing trends adversely affecting government service – namely, that the public's confidence in government was eroding because some government officials failed to observe reasonable ethical standards; that public service was less frequently viewed as a high calling; and that government employees conscientiously doing their jobs were being forced through a maze of unrealistic ethical obstacles or paralyzed by them into inaction." The result was a 54-page report widely endorsed as an integrated, interrelated approach to the regulation of ethics in government service.

While nearly 10 years old, the study has aged well and still bears reading, particularly for its general observations about public service and ethics regulation. The following is a brief summary of some of the observations made about "The Qualities of Ethical Government Service."

The report identifies at least five essential ethical obligations of one who enters government service:

- (1) ***Fidelity to the Public Trust.*** The cardinal duty of the fiduciary is loyalty. We the people entrust public power to elected and appointed officials for the purpose of furthering the public interest. To accept that power is to undertake a commitment that it will be used only for this purpose, and not to advance the narrow interest of self or of any other person or group.
- (2) ***Scrupulous Integrity.*** Self-interest, partiality and prejudice are strong and subtle motives. Constant vigilance that these do not actually shape official conduct is essential – but it is not sufficient. In addition, those entrusted with public power must avoid circumstances that create the opportunity for interest or bias to exert their corrosive influence. In this sense, ethical public service involves avoiding not only the fact, but also the appearance, of impropriety.
- (3) ***Competence and Diligence.*** While abuse of public power is clearly intolerable, the responsible use of public power is also compromised by mediocrity, complacency and neglect. The ethical standard is not the utopian ideal of being perfect, but rather the attainable goal of serving the public as wisely and well as is humanly possible.
- (4) ***Discretion.*** Because the possession of sensitive information about public and private persons and activities is justified only to accomplish public purposes, those entrusted with it must treat it with utmost care, avoiding not only the obvious evil of deliberate profiteering but also the harm that can be done through careless disclosure.
- (5) ***Responsiveness.*** The fundamental obligation to serve the public requires that government employees provide citizens with the assistance they need to comprehend their legal rights and duties, and to obtain meaningful access to official decisionmakers. This responsibility includes not only supplying necessary information accurately and completely but also treating every member of the public with courtesy, attentiveness and respect.



Don't forget to update your Statement of Economic Interest by **May 15**. If you have not had any material changes since your last filing, you may use the new "NO-CHANGE FORM" (also called the "Short Form"). Be sure to sign whichever form you use and have it notarized.

"Statement of Economic Interest" Due-Dates

All **new** employees or appointees who are covered by Executive Order Number One must file their full Statement of Economic Interest ("Long Form") 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 were to resubmit a **new Statement** on or before **May 15, 2001**. See section 9 (e).

Thereafter, all covered Officials must file an **updated Statement** by **May 15** each year. See section 9 (b).

If you have any questions relating to the Statement, please call the Board's offices at 733-2780.

