



GEORGE F. BASON
CHAIRMAN

1324 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1324
(919) 733-2780 FAX (919) 733-2785

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

Volume 9, Issue 1

Annual Report Edition

January 2006

"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

ANNUAL REPORT

Executive Order Number One directs the Board of Ethics to submit an annual report to the Governor covering not only its specific activities over the past calendar year but also the subject of public disclosure, ethics, and conflicts of interest in State government in general. This issue of our newsletter summarizes the Board's annual report for the 2005 calendar year.

The year began and ended with examinations of possible changes to ethics regulation in the executive branch of state government. A gubernatorial committee focused on the current executive order and finished its work in January. It recommended several changes. As the year drew to a close, a House Select Committee began its examination of a possible ethics law for the executive branch, including the possible codification of Executive Order Number One. This important work will continue during 2006 and hopefully into the legislative "short session" beginning in May. Hopefully, the outcome will be the passage of an ethics law recommended by the Board at its November 16, 2005, meeting.

ETHICS EDUCATION *"Have Order, Will Travel"*

We are once again able to travel outside of the Raleigh area to make basic ethics education and awareness presentations. If your board or agency would like such a presentation, please call the Board's offices to make the necessary arrangements.

In addition, Board staff is always available for telephone consultations on conflict of interest questions.

"But if you ask what is the good of education in general, the answer is easy: that education makes good men, and good men act nobly."

Plato

Board Refers Case to District Attorney

At its November 16, 2005, meeting, the Board of Ethics referred the matter of Kevin Geddings' sworn Statement of Economic Interest to "appropriate State officials" for investigation of possible wrongful conduct. Mr. Geddings was a member of the Lottery Commission until resigning after his client, a major lottery contractor, disclosed that it had paid him \$24,500 in 2005. He failed to disclose these payments on his SEI filed with the Board of Ethics.

At the same public meeting, the Board ruled that despite any possible violations of Executive Order Number One, the Board lacked jurisdiction over Mr. Geddings after his resignation from the Lottery Commission. The Board felt that its enforcement powers over Public Officials terminate once they are no longer covered by the Order.

"Statements of Economic Interest" Coming Soon

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

We will soon be mailing Statements of Economic Interest and "No-Change" short forms, where applicable, to all covered Public Officials. If you have any questions relating to the Statement, please call the Board's offices at (919) 733-2780 and ask for Beth Carpenter.

ANNUAL REPORT

“The Board shall submit a report annually to the Governor on its activities and generally on the subject of public disclosure, ethics, and conflicts of interest. The report shall include such recommendations for administrative and legislative action as the Board deems appropriate.”

Executive Order No. One, Section 5 (a) (4).

2005 ANNUAL REPORT SUMMARY

The following is a summary of the Board’s 2005 annual report to the Governor.

I. BACKGROUND INFORMATION

Following a tradition started in 1977, Governor Michael F. Easley used his first executive order to establish the North Carolina Board of Ethics (“BOE” or “the Board”) as the State’s primary conflict of interest “watchdog” for high-level employees and appointees in the executive branch of State government. Executive Order Number One (January 12, 2001) modified, but largely left intact, the significant changes made by former Governor Hunt in his Executive Order 127. The Board's overall mission remains protection of the public interest and maintenance of 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. The Board pursues its goals primarily through education, evaluation, and enforcement.

For example, the Board has developed and pursues an ethics education and awareness program for covered Public Officials. In addition to producing periodic newsletters and making ethics presentations, the Board issues advisory opinions on prospective ethics questions involving conflict of interest and the appearance of conflict. The comprehensive financial and personal interest disclosure requirements in the form of a sworn “Statement of Economic Interest” (“SEI”) were retained virtually unchanged in Executive Order Number One. To identify areas of possible ethical concern, the Board reviews and evaluates these statements filed by persons subject to the Order to determine whether the financial interests and other information reported reveals an actual or potential conflict of interest. Finally, the Board retained its ability to investigate complaints and issue appropriate “sanctions” within jurisdictional and other limitations.

While 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. This should make it easier for Public Officials and others to identify and follow applicable rules and guidelines.

II. BUDGET & STAFFING

For the first time in a long time, the Board has a full staff. The Board's new Administrative Assistant, Beth Carpenter, began work in October 2004 and has transitioned wonderfully into a difficult position. She now does the bulk of the work on the Board's economic and personal interest disclosure and evaluation program, as well as maintain the Board's custom database. In addition, the Board filled a long-vacant Research Assistant position in June 2005. Since joining the Board's staff, Leigh Hayden has done invaluable research on a host of topics, most recently an exhaustive comprehensive analysis of ethics laws, rules, and policies in all 50 states. Thus, the Board now has a full staff contingent with which to oversee and assist the 276 boards, commissions, and agencies and approximately 2500 actual or prospective appointees and employees under its jurisdiction.

The Board also avoided any budget cuts. The Board's appropriation is now approximately \$206,000, and the Board came in under budget in all categories.

III. REPORT ON ACTIVITIES FOR 2005

A. Summary of Major Events/Developments

The Board's Executive Director started the year serving on the Governor's Executive Branch Ethics Advisory Committee. This blue ribbon panel, chaired by Secretary of Revenue E. Norris Tolson, was charged with recommending to the Governor any beneficial changes to existing executive orders (specifically including Executive Order Number One), regulations, and practices regarding ethical conduct within the executive branch of North Carolina state government. The Committee issued its final report in January 2005, concluding that overall Executive Order Number One was a fairly comprehensive document. The Committee suggested a few changes, however, including adding a gifts provision and revising the financial and personal interest disclosure process.

The seemingly perennial budget crisis under which both State government as a whole and the Board of Ethics in particular suffered for the past several years continued to abate in 2005. Literally from its re-establishment in January 2001, the Board has been significantly impacted by budget issues. Some of the initial impacts have lingered, but others have been significantly reduced. From the beginning, not all consequences were bad.

Most significantly, the ban on non-essential travel remained lifted for most of the year, allowing staff the ability to once again make out-of-town ethics education presentations. As background information, the elimination of all non-essential travel in early 2001 brought the Board's budding ethics education and awareness program to an abrupt halt. In 1999 and 2000, the Board's Executive Director made basic ethics

education and awareness presentations to over 120 entities reaching literally thousands of Public Officials and other interested individuals.

While continuing to increase over the past several years, the number of presentations remained a relatively low 13 in 2005, despite the fact that a concentrated effort was made to reach covered boards and commissions in the western part of the state in the summer of 2005. This “western swing” met with moderate success. One reason the numbers were lower than expected was the “gas crisis” which hit state government toward the end of the year, once again halting out-of-town travel for non-essential purposes. Several presentations had to be cancelled for this reason.

The good news is that the travel ban remains lifted, the gas crisis has abated, and the Board begins 2006 with a full staff contingent. Staff thus hopes to pursue a more vigorous presentation schedule in 2006, subject to other external factors.

The Board remained unable to publish and distribute its newsletters in hard copy. While it is reasonable to assume that this still results in a reduction in the amount of “ethics” information reaching covered Public Officials, staff attempted to increase distribution by expanding its electronic distribution list for newsletters and other communications. This is obviously the wave of the future not only here in North Carolina but also nationwide. As more Public Officials and other interested parties become used to receiving information in an electronic format, the negative aspects of not sending hard copy newsletters will dissipate and eventually disappear.

On the positive side, however, both past and current budget pressures continue to force the Board to look for alternative ways to accomplish its mission, particularly on the education front. One way it has done so is through the Internet. The Board continued to update and utilize its web site during 2005. The Board produced six newsletters in 2005, all in an electronic format. As mentioned above, the Board began distributing newsletters electronically to as many covered Public Officials and other interested parties as possible. The Board also updated and expanded the type and amount of information available on the web pertaining to advisory opinions. In addition to adding the actual opinions, the Board updated and improved its different indexes to aid Public Officials and other researchers in answering prospective ethics questions. It also updated and improved all financial disclosure forms for the next filing year. All financial disclosure forms are also available on the web (although electronic filing is not yet an option).

While the number of formal advisory opinions issued by the Board has decreased in recent years (the Board issued four opinions in 2005), the number of “informal” advisory opinions and other advice has increased dramatically. Staff handles a multitude of varied requests almost daily.

Despite the transition to a new staff member handling the financial and personal interest disclosure and evaluation process, the Board was able to timely review nearly 1800 Statements of Economic Interest.

Public Officials are still able to file a “No-Change” short form if they do not have any material changes to report.

On a more negative note, member Penny Craver of Wilmington resigned her Board position in June 2005 after 12 years of dedicated service. The Board now has one position vacant.

Finally, 2005 ended as it began -- with consideration of possible changes to the ethics regulatory system in the executive branch, this time by a legislative committee. On December 1, 2005, Speaker James B. Black established the House Select Committee on Ethics and Governmental Reform. This 22-member committee was charged with, among other things, examining “the appropriateness of the scope of the State Ethics Board over the executive branch actions, including the determination whether this agency created by gubernatorial executive [order] should be codified into law, and whether appointees made by any appointing authority to executive boards and commissions should be required under oath to submit to the State Ethics Board written statements of economic interest prior to assuming office.” The Select Committee must report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before the convening of the 2006 Regular Session of the 2005 General Assembly on May 9, 2006.

Board staff, particularly including its executive director, has been asked to provide information to the Committee, and they plan to do so in 2006. In November 2005, the full Board of Ethics voted unanimously to recommend that the General Assembly pass a comprehensive ethics law for the executive branch of state government, but it did not at that time provide any specific suggestions as to what that law should look like. The Board plans to take up that question in early 2006.

B. Statistical Summaries

The Board held three (3) meetings in 2005.

The Board received two formal complaints reviewable under Executive Order Number One.

The Board issued four (4) formal advisory opinions.¹

The Board's Executive Director made 13 ethics education and awareness presentations.

Board staff handled numerous telephone inquiries concerning the Order and Statement of Economic Interest filing requirements and general conflict of interest/appearance of conflict issues, including the issuance of informal advisory opinions.

¹ Complaints and advisory opinions are initiated by third parties and thus their numbers are outside the Board's control. This number does not include numerous informal opinions given by the Executive Director or Administrative Officer.

The Board “published” six (6) electronic newsletters that were available on its expanded web site.

Board staff evaluated 1782 Statements of Economic Interest, including both full and “Supplemental” statements. Specific findings for the SEI evaluations were as follows:

No actual, apparent, or potential conflict of interest	279
Potential for conflict of interest	225
Supplemental Statements reviewed	1278
Total Statements Evaluated:	1782

IV. OTHER PUBLIC OFFICIALS VOLUNTARILY COMING UNDER THE BOARD’S JURISDICTION

While the first reach of Executive Order Number One is to the Governor’s employees and appointees, others may voluntarily come under the Order’s coverage and thereby the Board’s jurisdiction. Section 4 of the Order invites each of the elected heads of the Council of State agencies, the Board of Governors of the University of North Carolina System, the President Pro Tempore of the North Carolina Senate, and the Speaker of the House of Representatives to *voluntarily* participate in the Order. Those desirous of participating may specify those appointees and exempt employees who must submit a Statement of Economic Interest for evaluation by the Board of Ethics. All services available to Public Officials under the Order are available to those brought within the coverage of the Order voluntarily.

For calendar year 2005, the Board covered approximately 596 Public Officials under section 4 of the Order. At the end of 2005, four Council of State members had elected to be covered under the Order: the Attorney General, the Lieutenant Governor, the State Treasurer, and most recently the Superintendent of Public Instruction.

V. GOALS & RECOMMENDATIONS FOR 2006

The Board will continue to emphasize ethics education and conflict identification/prevention, primarily through statement of economic interest evaluations, education and awareness presentations, periodic newsletters, and advisory opinions. With the non-essential travel ban lifted, the Board hopes to revitalize its statewide ethics education program. It will increase electronic communications and try to make more services and information available through the Internet.

As mentioned above, at its November 16, 2005, meeting, the Board voted unanimously to recommend that the General Assembly pass a comprehensive ethics law for the executive branch of state government.

Board Recommends Legislative Action

On November 16, 2005, the Board unanimously voted to recommend that the North Carolina General Assembly pass a comprehensive ethics law for the executive branch of state government. Unconnected to this request, the House Select Committee on Ethics and Governmental Reform began considering ethics reform in the executive branch in December 2005. This 22-member committee was charged with, among other things, examining “the appropriateness of the scope of the State Ethics Board over the executive branch actions, including the determination whether this agency created by gubernatorial executive [order] should be codified into law....” The Select Committee held its first meeting on January 6, 2006, and must report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before May 9, 2006.

The Committee has already heard from Board members and staff. The Board’s Vice Chair, Jane Flowers Finch, and its Executive Director, Perry Newson, made presentations to the Committee at its first meeting. The Committee asked the Board to provide any information it may deem helpful and specifically for any recommendations as to what provisions an executive branch ethics law should contain. The Board will take up these and other issues early in 2006, beginning with its January 13 meeting.

We will continue to report on this important effort as the year progresses, including any final outcome in the 2006 legislative “short session.”

IMPORTANT INFORMATION ON-LINE

Board of Ethics **newsletters, opinions,** and other items are available **on-line** at the Board’s web site:

www.doa.state.nc.us/ethics

Alternatively, you can access the Board’s web site through the North Carolina home page. Just click on “NC Agencies” at the left 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 Internal Operating Procedures, Statement of Economic Interest forms, advisory opinions, and all newsletters.

WE ARE ALWAYS AVAILABLE FOR TELEPHONE CONSULTATION IF NECESSARY.