



CITY OF PHILADELPHIA

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Evan Meyer
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Philadelphia Board of Ethics Nonpublic Advice of Counsel No. GC-2008-509

December 22, 2008

Re: City Employee Considering Future Employment with a Company that Consults for the City

A City employee requested nonpublic advice as to the effect of post-employment restrictions of the ethics laws if the individual retired from the City and worked for an employer who does consulting work for the City. The requestor is an engineer and provided a copy of his/her job description, which includes responsibilities such as preparation of standardized specifications for contract inclusion, review of working plans used by contractors and project managers, and the coordination of minor design projects. The job description indicated the requestor's work is performed under the direction of a technical supervisor.

The requestor was advised as follows: In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, my advice is predicated on the facts that I have been provided. I wish to point out that, although previous opinions of this Board, the City Solicitor's Office, and the State Ethics Commission that interpret statutes are guidance to how this office will likely interpret the same provision in the future, previous opinions do not govern the application of the law to different facts. Ethics opinions are particularly fact-specific, and any official or employee wishing to be assured that his or her conduct falls within the permissible scope of the ethics laws is well-advised to seek and rely only on an opinion issued as to his or her specific situation. In that regard, to the extent that this opinion states general principles, and there are particular fact situations that the requestor may be concerned about, the requestor was encouraged to contact the Board of Ethics for

specific advice on the application of the ethics laws to those particular facts.

There are three different ethics laws that relate to post-employment restrictions, two in the City Code and one in the State Ethics Act. The provision in the State Act may present some difficulty for the requestor in doing consulting work for the City of Philadelphia.

A. A Threshold Question on What Law Applies

The State Ethics Act applies only if during the requestor's City employment the requestor was a "public employee." "Public employee" is defined in the Act to include: "Any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with respect to (1) contracting or procurement; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person." 65 Pa.C.S. §1102.

In view of the fact that the requestor's job description includes work involving review of working plans used by contractors and project managers and preparation of standardized specifications for contract inclusion I conclude that the requestor is responsible for taking or recommending official action of a nonministerial nature with respect to contracting and other activity where the requestor's official action has an economic impact on the interests of any person, since his/her recommendations may potentially require contractors, at least, to incur greater costs in making any adjustments to plans. Accordingly, I conclude that the requestor is a "public employee" as defined in the State Ethics Act.¹

Thus, I conclude that the State Ethics Act applies to the requestor.

One-Year Limitation On Representing Others—State Ethics Act

Section 1103(g) of the State Ethics Act, 65 Pa.C.S. §1103(g), restricts "post-employment" activities as follows:

¹ I base this conclusion on my experience of some 20 years of reviewing rulings by the State Ethics Commission. As examples, I attach two rulings, one involving engineering and the other involving a technician, which support this conclusion. State Ethics Commission Advices of Counsel Nos. 06-577 and 04-557.

No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.

The key words in that provision are defined in Section 1102 of the Act, 65 Pa.C.S. §1102. "Represent" is defined as follows:

To act on behalf of any other person in any activity which includes, but is not limited to, the following: personal appearances, negotiations, lobbying and submitting bid or contract proposals which are signed by or contain the name of a former public official or public employee.

"Governmental body with which a public official or employee is or has been associated" is defined as follows:

The governmental body within State government or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

Based on opinions of the State Ethics Commission, I believe that the requestor's "governmental body" would be the entire City of Philadelphia. Accordingly, the requestor may not for one year after the date he/she separates from City employment (last day on the payroll) represent anyone—him or herself, any firm that employs the requestor, or any of its clients—before the City of Philadelphia. Please note the broad definition of "represent," which includes having one's name appear on a bid or contract proposal submitted to the former governmental body or otherwise making known to that body (the City) one's work for the contractor. This means that, until the anniversary date of the requestor's separation, any interaction between the requestor or any future employer or one of the requestor's or its clients and the City regarding any City transactions (such as a contract) may not have any involvement by the requestor, unless such involvement is purely internal at the requestor's employer (if another entity, other than a sole proprietorship) and not in any way revealed to the City.

More particularly, Section 1103(g) would prohibit the requestor for one year from separation from representing any person before the City. The meaning of

"represent" has been the subject of lengthy analysis in several opinions of the State Ethics Commission. It means that the former employee may not: (1) make personal appearances before the City; (2) attempt to influence the City; (3) submit bid or contract proposals, or invoices, that are signed by, or even contain the name of, the former employee; (4) participate, by acting on behalf of a person, in a matter before the City; (5) lobby the City; or (6) be identified on any document submitted to the City. This would include telephone calls, e-mails, and attendance at meetings.

"Represent" does not include, and the former employee may permissibly do, the following: (1) assist in the preparation of any document submitted to the City if the employee's name does not appear in the document; (2) counsel any person regarding that person's appearance before the City, so long as that activity is not revealed to the City; or (3) make general informational inquiries to the City to obtain information that is available to the general public, so long as it is not done in a way to influence the City or make known to the City that the former employee represents his new employer. That last phrase, "make known to the City," is important. In other words, Section 1103(g) would not prohibit a former City employee from working for a company that had a City contract, so long as his work for them was entirely internal at the company and his involvement in the project was in no way revealed to the City.

In particular, I note that the same principles apply to any other employment that the requestor may obtain in the first year after leaving the City, including the possibility that the requestor might contract with the City itself to provide consultant services. This is important because the above restriction includes any contract the requestor may personally contemplate with the City. Section 1103(g) of the Act prohibits a former public employee or official from representing "a person" before his "former governmental body" for one year after he leaves governmental employment. The State Ethics Commission, in Opinion No. 93-005, has held that "a person" includes the former public official himself, and thereby includes representing himself in negotiating a consultant contract with his former body. Thus, such "revolving door" consulting contracts are prohibited (since it is presumably impossible to obtain one without representing one's self, at least in signing the contract). Therefore, I advise the requestor that the State Ethics Act would prohibit him/her for one year after his/her separation from City service from executing a personal consultant contract to work for the City, in any capacity at all. I enclose two rulings from the State Ethics Commission, Advices of Counsel Nos. 07-530 (personal consultant contract with former government employer) and 07-578 (employment with company that has consultant contract), that discuss these principles.

It is important to note that the State Ethics Commission has final

administrative jurisdiction over interpretation of the State Ethics Act. Thus, the requestor may wish to seek the advice of the Commission to obtain a definitive ruling on any particular fact situation or on whether the Act applies. Please note that the Act provides that: “A public official of a political subdivision who acts in good faith reliance on a written, nonconfidential opinion of the solicitor of the political subdivision . . . shall not be subject to the penalties provided for in [the Act].” 65 Pa.C.S. §1109(g). Presumably, it is this provision that is the reason for the concurrent jurisdiction of the Law Department provided for in Charter §4-1100 as to matters involving State law. Since the Board of Ethics is not “the solicitor” of the City, the requestor may wish also to obtain an opinion from the Law Department as to the application of the State Ethics Act. Any such request, to receive the protection, could not be confidential. Since the requestor has asked for nonpublic advice from the Board of Ethics, we issue this edited version of the opinion as is required by Code Section 20-606(1)(d)(iii).

Permanent Limitation On Assistance With Particular Matters—City Code

Section 20-603(1) of the City Ethics Code states:

No person who has served for compensation as a member of Council, City officer or employee shall assist, at any time subsequent to his City service or employment, another person, with or without compensation, in any transaction involving the City in which he at any time participated during his City service or employment.

The “transactions” to which this provision applies are defined broadly in Section 20-601(4) to include matters (i) which are or will be the subject of City action; (ii) to which the City is or will be a party; or (iii) in which the City has a direct proprietary interest. This provision is not a one-year prohibition, like the State Ethics Act provision, but applies “at any time” after a person leaves City employ. However, it is much narrower in scope than the State Ethics Act provision, since it only applies to matters in which the employee “participated” during City employ. This has been interpreted to mean matters in which the employee exercised discretion (and not merely, for example, responded to a routine request for information). Thus, if during the requestor’s service with the City, he/she took official action on any particular transaction concerning which a future employer should contact the City at any time henceforth, the requestor may not assist that future employer in the matter relating to that transaction. On the other hand, I interpret “matter” to mean only the particular issue or issues on which decisions were made by the City with the requestor’s

involvement, not every issue related to that project that may arise after the requestor separates from City service.

Thus, for example, the requestor would not be prohibited from assisting a future employer with interpreting or applying a provision of the contract between that employer and the City unless the requestor had worked on that same issue while with the City.

Two Year Limitation On Financial Interests—City Code

Section 20-607(c) of the Code states:

No member of Council or other City officer or employee shall become financially interested, subsequent to final action, in any legislation including ordinances and resolutions, award, contract, lease, case, claim, decision, decree or judgment made by him in his official capacity, during his term of office or employment and until two (2) years have elapsed since the expiration of service or employment in the term of office of said member of Council or other City officer or employee.

This prohibition shall apply so as to prevent a parent, spouse, child, brother, sister or like relative-in-law or any person, firm, partnership, corporation, business association, trustee or straw party from becoming financially interested for or on behalf of a member of City Council, City officer or employee within said two (2) year period.

In short, this provision prohibits a City employee for two years after leaving City employ from acquiring a financial interest in official decisions she made while in City employ. Thus, if the requestor had, for example, been officially involved in awarding, renewing, amending, or administering the City's contract with an engineering firm, the requestor could not for two years be employed by and receive any compensation from that engineering firm, if such compensation was derived from revenue received under that City action.

Summary

In summary, I reach the following conclusions:

(1) The requestor may not for one year after leaving the employ of the City represent anyone, including him or herself and any future employer (or any client of the requestor or any future employer), before the City. Please note the broad definition of "represent," which includes having the requestor's name appear on a bid, contract proposal, engineering report, invoice, or other official document submitted to the requestor's former governmental body, the City of Philadelphia. This is not limited to any particular department or office of the City.

(2) The requestor may never in the future assist anyone, such as a future employer or one of its clients, in a transaction involving the City on a particular issue or issues on which decisions were made by the City with the requestor's involvement.

(3) The requestor may not for two years after leaving the employ of the City acquire a financial interest in any official decision made while in City employ.

We advised the requestor to feel free to ask further advice from the Board of Ethics, or the State Ethics Commission, if he or she has additional facts to provide. Please also note the option of requesting advice of the City Solicitor (as to the State Act only), as discussed on page 5 above.

Evan Meyer
General Counsel

Attachments (State Ethics Commission Advice of Counsel Nos. 04-557, 06-577, 07-530, 07-578)

cc: Richard Glazer, Esq., Chair
J. Shane Creamer, Jr., Esq., Executive Director

ADVICE OF COUNSEL

May 27, 2004

Steve Wilson
Clerk 2
Department of Revenue
5th Floor, Strawberry Square
Harrisburg, PA 17128

04-557

Re: Public Employee; FIS; Taxpayer Assistance Technician; Pennsylvania Department of Revenue; Financial Disclosure Appeal.

Dear Mr. Wilson:

This responds to your letter dated May 3, 2004, and Financial Disclosure Appeal Form which will be treated as a request for advice from the State Ethics Commission.

Issue: Whether as a Taxpayer Assistant Technician with the Pennsylvania Department of Revenue (Revenue) you would be considered a "public employee" subject to the Public Official and Employee Ethics Act (the "Ethics Act"), 65 Pa.C.S. § 1101 et seq., and the Regulations of the State Ethics Commission, and particularly, the requirements for filing Statements of Financial Interests (SFI's).

Facts: You seek a determination as to whether, in your capacity as a Taxpayer Assistant Technician with Revenue, you are a "public employee" subject to the Ethics Act and the Regulations of the State Ethics Commission. See, 65 Pa.C.S. §1102; 51 Pa. Code §11.1. You specifically question whether you are required to file SFI's.

You have supplied a copy of your job description which is incorporated herein by reference. Your duties and responsibilities include the following:

- "Employees in this class are responsible for providing assistance to taxpayers or their representatives in the areas of sales/use tax, hotel occupancy tax, corporation tax, employer withholding, personal income tax, property tax/rent rebate and inheritance tax. The Taxpayer Assistance Technician will work independently within established guidelines and in conformity with state laws, rulings and regulations.
- Interrogates tax systems (sales, corporate, employer withholding, personal income and property/rent rebate) to ascertain adequate information in order to correctly respond to taxpayer inquiries.
- Assists and advises taxpayer in the proper manner of completing returns and reports as they pertain to the above taxes.

- Receives incoming calls from taxpayer or their representative and responds accordingly.
- Receives correspondence from inquiring taxpayer or their representative and responds either verbally or in writing.
- Gathers necessary documentation from taxpayer or representative and prepares proper department form in order to correctly adjust the taxpayer's account.
- Leads and conducts training for temporary personnel in the area of personal income tax and property tax/rent rebate.
- Schedules temporary office sites during the "tax season" and maintains customer service records and form inventory for both the temporary sites and permanent work location.
- Delivers and arranges presentations upon request from the private sector concerning tax laws, regulations, rules and policy.
- Prepares reports concerning the effectiveness of taxpayer service and makes recommendations concerning the same.
- Operates business machines, CRT and communications equipment.
- Counter person/receptionist for all personal business, taxpayer inquiries/questions/forms and information."

* * *

Discussion: The Ethics Act defines the term "public employee" as follows:

§ 1102. Definitions

"Public employee." Any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to:

- (1) contracting or procurement;
- (2) administering or monitoring grants or subsidies;
- (3) planning or zoning;
- (4) inspecting, licensing, regulating or auditing any person; or
- (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.

The term shall not include individuals who are employed by this Commonwealth or any political subdivision thereof in teaching as distinguished from administrative duties.

The Regulations of the State Ethics Commission similarly define the term "public employee" and set forth the following additional criteria:

(ii) The following criteria will be used, in part, to determine whether an individual is within the definition of "public employee":

(A) The individual normally performs his responsibility in the field without onsite supervision.

(B) The individual is the immediate supervisor of a person who normally performs his responsibility in the field without onsite supervision.

(C) The individual is the supervisor of a highest level field office.

(D) The individual has the authority to make final decisions.

(E) The individual has the authority to forward or stop recommendations from being sent to the person or body with the authority to make final decisions.

(F) The individual prepares or supervises the preparation of final recommendations.

(G) The individual makes final technical recommendations.

(H) The individual's recommendations or actions are an inherent and recurring part of his position.

(I) The individual's recommendations or actions affect organizations other than his own organization.

(iii) The term does not include individuals who are employed by the Commonwealth or a political subdivision of the Commonwealth in teaching as distinguished from administrative duties.

(iv) Persons in the following positions are generally considered public employees:

(A) Executive and special directors or assistants reporting directly to the agency head or governing body.

(B) Commonwealth bureau directors, division chiefs or heads of equivalent organization elements and other governmental body department heads.

(C) Staff attorneys engaged in representing the department, agency or other governmental bodies.

(D) Engineers, managers and secretary-treasurers acting as managers, police chiefs, chief clerks, chief purchasing agents, grant and contract managers, administrative officers, housing and building inspectors, investigators, auditors, sewer

enforcement officers and zoning officers in all governmental bodies.

(E) Court administrators, assistants for fiscal affairs and deputies for the minor judiciary.

(F) School superintendents, assistant superintendents, school business managers and principals.

(G) Persons who report directly to heads of executive, legislative and independent agencies, boards and commissions except clerical personnel.

(v) Persons in the following positions are generally not considered public employees:

(A) City clerks, other clerical staff, road masters, secretaries, police officers, maintenance workers, construction workers, equipment operators and recreation directors.

(B) Law clerks, court criers, court reporters, probation officers, security guards and writ servers.

(C) School teachers and clerks of the schools.

51 Pa. Code § 11.1.

Status as a "public employee" subject to the Ethics Act is determined by applying the above definition and criteria to the position held. The focus is necessarily upon the position itself, and not upon the individual incumbent in the position, the variable functions of the position, or the manner in which a particular individual occupying the position may carry out those functions. See, Phillips v. State Ethics Commission, 470 A.2d 659 (Pa. Commw. Ct. 1984); and Mummau v. Ranck, 531 Fed. Supp. 402 (E.D. Pa. 1982). Furthermore, the Commonwealth Court of Pennsylvania has directed that coverage under the Ethics Act be construed broadly and that exclusions under the Ethics Act be construed narrowly. See, Phillips, supra.

Based upon the above judicial directives, the provisions of the Ethics Act, the State Ethics Commission Regulations, and the opinions of the State Ethics Commission, in light of your duties and responsibilities, the necessary conclusion is that you are a "public employee" subject to the financial reporting and disclosure requirements of the Ethics Act.

Specifically, you work independently to assist taxpayers or their representatives as to Pennsylvania taxes; assist and advise taxpayers in completing tax returns; prepare the forms to adjust taxpayer's accounts; lead and conduct training for certain temporary personnel; and prepare reports as to taxpayer service and make recommendations therein. It is clear that in your capacity as a Taxpayer Assistant Technician, you have the ability to take or recommend official action with respect to subparagraph (5) within the definition of "public employee" as set forth in the Ethics Act, 65 Pa.C.S. § 1102. These activities would also meet the criteria for determining your status as a public employee under the Regulations of the State Ethics Commission, specifically at 51 Pa. Code § 11.1, "public employee," subparagraph (ii). Therefore, you are a "public employee" subject to the Ethics Act and you are required to file Statements of Financial Interests pursuant to the Ethics Act.

Parenthetically, you have not indicated that you have ever challenged or sought to modify your job description in terms of the delineated duties and responsibilities. As

noted, the job description controls in determining whether you are a public employee required to file SFI's.

Conclusion: In your capacity as a Taxpayer Assistant Technician with the Department of Revenue, you are a "public employee" subject to the Public Official and Employee Ethics Act and the Regulations of the State Ethics Commission. Accordingly, you must file a Statement of Financial Interests each year in which you hold the aforesaid position and the year following your termination of such service.

If you have not already done so, a Statement of Financial Interests must be filed within 30 days of this Advice.

Pursuant to Section 1107(11), an Advice is a complete defense in any enforcement proceeding initiated by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding, provided the requestor has disclosed truthfully all the material facts and committed the acts complained of in reliance on the Advice given.

This letter is a public record and will be made available as such.

Finally, if you disagree with this Advice or if you have any reason to challenge same, you may appeal the Advice to the full Commission. A personal appearance before the Commission will be scheduled and a formal Opinion will be issued by the Commission.

Any such appeal must be in writing and must be actually received at the Commission within thirty (30) days of the date of this Advice pursuant to 51 Pa. Code § 13.2(h). The appeal may be received at the Commission by hand delivery, United States mail, delivery service, or by FAX transmission (717-787-0806). Failure to file such an appeal at the Commission within thirty (30) days may result in the dismissal of the appeal.

Sincerely,

Vincent J. Dopko
Chief Counsel

ADVICE OF COUNSEL

August 11, 2006

George J. Fecek
1906 Bower Hill Road
Pittsburgh, PA 15243

06-577

Dear Mr. Fecek:

This responds to your letter of July 13, 2006 by which you requested advice from the State Ethics Commission.

Issue: Whether the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 et seq., presents any restrictions upon employment of a Civil Engineer following termination of service with the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT").

Facts: You are currently employed as a Civil Engineer for PennDot in the District 11-0 Design Unit. Your current duties include performing basic and routine engineering work for in-house roadway projects. You are a member of a design squad that prepares plans, specifications and estimates. You do not award contracts or authorize payments, select consultants or review their work, or supervise any employees. You have submitted a copy of the job description for your position, which is incorporated herein by reference. It is noted that a Civil Engineer has the authority, inter alia, to develop and design roadway and bridge projects and to participate in design field views and final inspections.

You would like to terminate your employment with PennDot and pursue a career in private industry. Your prospective new employer is a large consulting engineering firm that holds contracts to perform engineering services for the Commonwealth.

You state that you are almost certain that you are subject to the provisions of the Ethics Act. You seek guidance as to what activities following termination of Commonwealth employment would constitute prohibited "representation" under Section 1103(g) of the Ethics Act, including answers to the following specific inquiries:

1. "As a Transportation Designer working for a consulting company providing engineering services to PENNDOT, could I perform routine engineering assignments such as roadway design, requiring application of standard engineering techniques and procedures on PennDot projects?
2. Would the appearance of my name on a payroll or other formal submission to PENNDOT constitute a 'representation' as intended in Section 1103(g) of the State Ethics Act?

3. Would the appearance of my name or initials on plans or within engineering calculations on a PENNDOT project that were produced under the direction of and recommended by another responsible figure (i.e., a licensed professional engineer) constitute a 'representation' as intended in Section 1103(g) of the State Ethics Act?
4. Would my attendance at a meeting with PENNDOT officials, where my capacity was to obtain information from PENNDOT to be used in performing routine engineering assignments such as roadway design, requiring application of standard engineering techniques and procedures on PennDot projects constitute a 'representation' as intended in Section 1103(g) of the State Ethics Act?"

Discussion: It is initially noted that pursuant to Sections 1107(10) and 1107(11) of the Ethics Act, 65 Pa.C.S. §§ 1107(10), (11), advisories are issued to the requester based upon the facts that the requester has submitted. In issuing the advisory based upon the facts that the requester has submitted, the Commission does not engage in an independent investigation of the facts, nor does it speculate as to facts that have not been submitted. It is the burden of the requester to truthfully disclose all of the material facts relevant to the inquiry. 65 Pa.C.S. §§ 1107(10), (11). An advisory only affords a defense to the extent the requester has truthfully disclosed all of the material facts.

As a Civil Engineer for PennDOT, you would be considered a "public employee" subject to the Ethics Act and the Regulations of the State Ethics Commission. See, 65 Pa.C.S. § 1102; 51 Pa. Code § 11.1. This conclusion is based upon the job description, which when reviewed on an objective basis, indicates clearly that the power exists to take or recommend official action of a non-ministerial nature with respect to one or more of the following: contracting; procurement; planning; inspecting; administering or monitoring grants; leasing; regulating; auditing; or other activities where the economic impact is greater than de minimis on the interests of another person.

Consequently, upon termination of public service, you would become a "former public employee" subject to Section 1103(g) of the Ethics Act.

While Section 1103(g) does not prohibit a former public official/public employee from accepting a position of employment, it does restrict the former public official/public employee with regard to "representing" a "person" before "the governmental body with which he has been associated":

§ 1103. Restricted activities

(g) Former official or employee.--No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.

65 Pa.C.S. § 1103(g) (Emphasis added).

The terms "represent," "person," and "governmental body with which a public official or public employee is or has been associated" are specifically defined in the Ethics Act as follows:

§ 1102. Definitions

"Represent." To act on behalf of any other person in any activity which includes, but is not limited to, the

following: personal appearances, negotiations, lobbying and submitting bid or contract proposals which are signed by or contain the name of a former public official or public employee.

"Person." A business, governmental body, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

"Governmental body with which a public official or public employee is or has been associated." The governmental body within State government or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

65 Pa.C.S. § 1102.

The term "Person" is very broadly defined. It includes, *inter alia*, corporations and other businesses. It also includes the former public employee himself, Confidential Opinion, 93-005, as well as a new governmental employer. Ledebur, Opinion 95-007.

The term "representation" is also broadly defined to prohibit acting on behalf of any person in any activity. Examples of prohibited representation include: (1) personal appearances before the former governmental body or bodies; (2) attempts to influence; (3) submission of bid or contract proposals which are signed by or contain the name of the former public official/employee; (4) participating in any matters before the former governmental body as to acting on behalf of a person; and (5) lobbying. Popovich, Opinion 89-005.

Listing one's name as the person who will provide technical assistance on a proposal, document, or bid, if submitted to or reviewed by the former governmental body, constitutes an attempt to influence the former governmental body. Section 1103(g) also generally prohibits the inclusion of the name of a former public official/public employee on invoices submitted by his new employer to the former governmental body, even though the invoices pertain to a contract that existed prior to termination of public service, Shay, Opinion 91-012. However, if such a pre-existing contract does not involve the unit where the former public employee worked, the name of the former public employee may appear on routine invoices if required by the regulations of the agency to which the billing is being submitted. Abrams/Webster, Opinion 95-011.

A former public official/public employee may assist in the preparation of any documents presented to his former governmental body. However, the former public official/public employee may not be identified on documents submitted to the former governmental body. The former public official/public employee may also counsel any person regarding that person's appearance before his former governmental body. Once again, however, the activity in this respect should not be revealed to the former governmental body. The Ethics Act would not prohibit or preclude making general informational inquiries to the former governmental body to secure information which is available to the general public, but this must not be done in an effort to indirectly influence the former governmental body or to otherwise make known to that body the representation of, or work for the new employer.

Section 1103(g) only restricts the former public official/public employee with regard to representation before his former governmental body. The former public official/public employee is not restricted as to representation before other agencies or

entities. However, the "governmental body with which a public official/public employee is or has been associated" is not limited to the particular subdivision of the agency or other governmental body where the public official/employee had influence or control but extends to the entire body. See, Legislative Journal of House, 1989 Session, No. 15 at 290, 291; Sirolli, Opinion No. 90-006; Sharp, Opinion 90-009-R.

The governmental body with which you would be associated upon termination of public service would be PennDOT in its entirety including, but not limited to, District 11-0. Therefore, for the first year after termination of your service with PennDOT, Section 1103(g) of the Ethics Act would apply and restrict "representation" of "persons" before PennDOT.

Having set forth the restrictions of Section 1103(g) of the Ethics Act, your specific inquiries shall be addressed.

In response to your first specific inquiry, you are advised that the Ethics Act would not prohibit you from performing routine engineering assignments requiring application of standard engineering techniques and procedures on projects your new employer would be working on for PennDot provided that you would not have direct contact with PennDot personnel or any other contact within the ambit of prohibited representation. Such prohibited contact would include submitting roadway designs containing your name to PennDot.

In response to your second and third specific inquiries, you are advised that the inclusion of your name on documents submitted to or reviewed by PennDot would constitute prohibited representation before PennDot. However, if you would perform work on pre-existing contracts that your new employer had with PennDot before you left your employment with PennDot, and such contracts did not involve the "unit" of PennDot where you formerly worked, specifically District 11-0, your name could appear on routine invoices as to those contracts if required by the regulations of PennDot. See, Abrams/Webster, Opinion 95-011.

In response to your fourth specific inquiry as to whether your attendance at a meeting with PennDot officials in order to obtain information to be used in performing routine engineering assignments would constitute prohibited representation before PennDot, you are advised as follows. To the extent such a meeting would not be open to the public and you would be attending in your capacity with your new employer, such would constitute prohibited representation of your new employer before PennDot. To the extent such a meeting would be open to the general public, you could attend the meeting as a member of the general public; however, if your role would go beyond that of a general observer so that you would actually participate and/or advocate positions, not as a member of the general public but as a representative of your new employer, such representation would be prohibited.

Based upon the facts which have been submitted, this Advice has addressed the applicability of Section 1103(g) only. It is expressly assumed that there has been no use of authority of office for a private pecuniary benefit as prohibited by Section 1103(a) of the Ethics Act. Further, you are advised that Sections 1103(b) and 1103(c) of the Ethics Act provide in part that no person shall offer to a public official/employee and no public official/employee shall solicit or accept anything of monetary value based upon the understanding that the vote, official action, or judgment of the public official/employee would be influenced thereby. Reference is made to these provisions of the law not to imply that there has been or will be any transgression thereof but merely to provide a complete response to the question presented.

Lastly, the propriety of the proposed conduct has only been addressed under the Ethics Act; the applicability of any other statute, code, ordinance, regulation or other

code of conduct other than the Ethics Act has not been considered in that they do not involve an interpretation of the Ethics Act. Specifically not addressed herein is the applicability of the Governor's Code of Conduct.

Conclusion: As a Civil Engineer for the Commonwealth of Pennsylvania, Department of Transportation ("PennDOT"), you would be considered a "public employee" subject to the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1101 et seq. ("Ethics Act"). Upon termination of service with PennDOT, you would become a "former public employee" subject to Section 1103(g) of the Ethics Act. The former governmental body would be PennDOT in its entirety, including but not limited to District 11-0. Section 1103(g) of the Ethics Act would restrict you from engaging in any activity that would constitute prohibited representation before PennDot for one year following termination of Commonwealth employment. The restrictions as to representation outlined above must be followed. The propriety of the proposed conduct has only been addressed under the Ethics Act.

Further, should service be terminated, as outlined above, the Ethics Act would require that a Statement of Financial Interests be filed by no later than May 1 of the year after termination of service.

Pursuant to Section 1107(11), an Advice is a complete defense in any enforcement proceeding initiated by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding, provided the requester has disclosed truthfully all the material facts and committed the acts complained of in reliance on the Advice given.

This letter is a public record and will be made available as such.

Finally, if you disagree with this Advice or if you have any reason to challenge same, you may appeal the Advice to the full Commission. A personal appearance before the Commission will be scheduled and a formal Opinion will be issued by the Commission.

Any such appeal must be in writing and must be actually received at the Commission within thirty (30) days of the date of this Advice pursuant to 51 Pa. Code § 13.2(h). The appeal may be received at the Commission by hand delivery, United States mail, delivery service, or by FAX transmission (717-787-0806). Failure to file such an appeal at the Commission within thirty (30) days may result in the dismissal of the appeal.

Sincerely,

Vincent J. Dopko
Chief Counsel

ADVICE OF COUNSEL

May 4, 2007

Linda S. Weaber
48 Kingston Dr.
Palmyra, PA 17078

07-530

Dear Ms. Weaber:

This responds to your letter received on March 29, 2007, by which you requested advice from the State Ethics Commission.

Issue: Whether the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 et seq., would impose any prohibitions or restrictions upon an Applications Developer Supervisor following termination of employment with the Commonwealth of Pennsylvania, Office of Administration, Bureau of IT Services and Solutions.

Facts: You are currently employed as an Applications Developer Supervisor with the Commonwealth of Pennsylvania, Office of Administration, Bureau of IT Services and Solutions. You have submitted copies of your position description, job classification specifications (job code 01523), and agency organization chart, which documents are incorporated herein by reference.

You state that you plan to retire at the end of June. Following retirement, you would like to work with the Bureau of IT Services and Solutions in a contractor position. You seek guidance as to whether the Ethics Act would restrict you from contracting with the Bureau of IT Services and Solutions during the first year following your retirement.

Discussion: It is initially noted that pursuant to Sections 1107(10) and 1107(11) of the Ethics Act, 65 Pa.C.S. §§ 1107(10), (11), advisories are issued to the requester based upon the facts that the requester has submitted. In issuing the advisory based upon the facts that the requester has submitted, the Commission does not engage in an independent investigation of the facts, nor does it speculate as to facts that have not been submitted. It is the burden of the requester to truthfully disclose all of the material facts relevant to the inquiry. 65 Pa.C.S. §§ 1107(10), (11). An advisory only affords a defense to the extent the requester has truthfully disclosed all of the material facts.

As an Applications Developer Supervisor for the Commonwealth of Pennsylvania, Office of Administration, Bureau of IT Services and Solutions, you would be considered a "public employee" subject to the Ethics Act and the Regulations of the

State Ethics Commission. See, 65 Pa.C.S. § 1102; 51 Pa. Code § 11.1. This conclusion is based upon the position description and the job classification specifications, which when reviewed on an objective basis, indicate clearly that the power exists to take or recommend official action of a non-ministerial nature with respect to one or more of the following: contracting; procurement; planning; inspecting; administering or monitoring grants; leasing; regulating; auditing; or other activities where the economic impact is greater than de minimis on the interests of another person.

Consequently, upon termination of public service, you would become a "former public employee" subject to Section 1103(g) of the Ethics Act.

While Section 1103(g) does not prohibit a former public official/public employee from accepting a position of employment, it does restrict the former public official/public employee with regard to "representing" a "person" before "the governmental body with which he has been associated":

§ 1103. Restricted activities

(g) Former official or employee.--No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.

65 Pa.C.S. § 1103(g) (Emphasis added).

The terms "represent," "person," and "governmental body with which a public official or public employee is or has been associated" are specifically defined in the Ethics Act as follows:

§ 1102. Definitions

"Represent." To act on behalf of any other person in any activity which includes, but is not limited to, the following: personal appearances, negotiations, lobbying and submitting bid or contract proposals which are signed by or contain the name of a former public official or public employee.

"Person." A business, governmental body, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

"Governmental body with which a public official or public employee is or has been associated." The governmental body within State government or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

65 Pa.C.S. § 1102.

The term "person" is very broadly defined. It includes, inter alia, corporations and other businesses. It also includes the former public employee himself, Confidential Opinion, 93-005, as well as a new governmental employer. Ledebur, Opinion 95-007.

The term "representation" is also broadly defined to prohibit acting on behalf of any person in any activity. Examples of prohibited representation include: (1) personal appearances before the former governmental body or bodies; (2) attempts to influence; (3) submission of bid or contract proposals which are signed by or contain the name of the former public official/public employee; (4) participating in any matters before the former governmental body as to acting on behalf of a person; and (5) lobbying. Popovich, Opinion 89-005.

Listing one's name as the person who will provide technical assistance on a proposal, document, or bid, if submitted to or reviewed by the former governmental body, constitutes an attempt to influence the former governmental body. Section 1103(g) also generally prohibits the inclusion of the name of a former public official/public employee on invoices submitted by his new employer to the former governmental body, even though the invoices pertain to a contract that existed prior to termination of public service. Shay, Opinion 91-012. However, if such a pre-existing contract does not involve the unit where the former public employee worked, the name of the former public employee may appear on routine invoices if required by the regulations of the agency to which the billing is being submitted. Abrams/Webster, Opinion 95-011.

A former public official/public employee may assist in the preparation of any documents presented to his former governmental body. However, the former public official/public employee may not be identified on documents submitted to the former governmental body. The former public official/public employee may also counsel any person regarding that person's appearance before his former governmental body. Once again, however, the activity in this respect should not be revealed to the former governmental body. The Ethics Act would not prohibit or preclude making general informational inquiries to the former governmental body to secure information which is available to the general public, but this must not be done in an effort to indirectly influence the former governmental body or to otherwise make known to that body the representation of, or work for the new employer.

Section 1103(g) only restricts the former public official/public employee with regard to representation before his former governmental body. The former public official/public employee is not restricted as to representation before other agencies or entities. However, the "governmental body with which a public official/public employee is or has been associated" is not limited to the particular subdivision of the agency or other governmental body where the public official/public employee had influence or control but extends to the entire body. See, Legislative Journal of House, 1989 Session, No. 15 at 290, 291; Sirolli, Opinion 90-006; Sharp, Opinion 90-009-R.

The governmental body with which you would be deemed to have been associated upon termination of public service would be the Office of Administration in its entirety including, but not limited to, the Bureau of IT Services and Solutions. Therefore, for the first year after termination of service with the Office of Administration, Section 1103(g) of the Ethics Act would apply and restrict "representation" of "persons" before the Office of Administration.

Turning to the specific question that you have posed, you are advised that during the first year following termination of your public service, Section 1103(g) of the Ethics Act would prohibit you from contracting to perform services for the Office of Administration, including but not limited to the Bureau of IT Services and Solutions. Performance of such contractual services would necessarily involve prohibited representation before your former governmental body (for example, through personal appearances before your former governmental body or the submission of written

documents containing your name to your former governmental body). See, Shaub, Order 1242; Confidential Opinion, 97-008; Confidential Opinion, 93-005.

Based upon the facts that have been submitted, this Advice has addressed the applicability of Section 1103(g) only. It is expressly assumed that there has been no use of authority of office for a private pecuniary benefit as prohibited by Section 1103(a) of the Ethics Act. Further, you are advised that Sections 1103(b) and 1103(c) of the Ethics Act provide in part that no person shall offer to a public official/public employee and no public official/public employee shall solicit or accept anything of monetary value based upon the understanding that the vote, official action, or judgment of the public official/public employee would be influenced thereby. Reference is made to these provisions of the law not to imply that there has been or will be any transgression thereof but merely to provide a complete response to the question presented.

Lastly, the propriety of the proposed conduct has only been addressed under the Ethics Act; the applicability of any other statute, code, ordinance, regulation, or other code of conduct other than the Ethics Act has not been considered in that they do not involve an interpretation of the Ethics Act. Specifically not addressed herein is the applicability of the Governor's Code of Conduct.

Conclusion: As an Applications Developer Supervisor for the Commonwealth of Pennsylvania, Office of Administration, Bureau of IT Services and Solutions, you would be considered a "public employee" subject to the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 et seq. Upon termination of service in the aforesaid position, you would become a "former public employee" subject to Section 1103(g) of the Ethics Act. The former governmental body would be the Office of Administration in its entirety including, but not limited to, the Bureau of IT Services and Solutions. The restrictions as to representation outlined above must be followed. During the first year following termination of public service, Section 1103(g) of the Ethics Act would prohibit you from contracting to perform services for the Office of Administration, including but not limited to the Bureau of IT Services and Solutions. The propriety of the proposed conduct has only been addressed under the Ethics Act.

Further, should service be terminated, as outlined above, the Ethics Act would require that a Statement of Financial Interests be filed by no later than May 1 of the year after termination of service.

Pursuant to Section 1107(11), an Advice is a complete defense in any enforcement proceeding initiated by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding, provided the requester has disclosed truthfully all the material facts and committed the acts complained of in reliance on the Advice given.

This letter is a public record and will be made available as such.

Finally, if you disagree with this Advice or if you have any reason to challenge same, you may appeal the Advice to the full Commission. A personal appearance before the Commission will be scheduled and a formal Opinion will be issued by the Commission.

Any such appeal must be in writing and must be actually received at the Commission within thirty (30) days of the date of this Advice pursuant to 51 Pa. Code § 13.2(h). The appeal may be received at the Commission by hand delivery, United States mail,

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delivery service, or by FAX transmission (717-787-0806). Failure to file such an appeal at the Commission within thirty (30) days may result in the dismissal of the appeal.

Sincerely,

Robin M. Hittie
Chief Counsel

ADVICE OF COUNSEL

August 30, 2007

Sharon B. Lipscomb
1015 Spring Street
McDonald, PA 15057

07-578

Dear Ms. Lipscomb:

This responds to your letters of June 30, 2007, and August 1, 2007, by which you requested advice from the State Ethics Commission.

Issue: Whether the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 et seq., would present any restrictions upon employment of a Health Care Coordinator following termination of employment with the Commonwealth of Pennsylvania Department of Public Welfare, Office of Developmental Programs.

Facts: You are currently employed as a Health Care Coordinator with the Commonwealth of Pennsylvania Department of Public Welfare ("DPW"), Office of Developmental Programs ("ODP"). You have submitted copies of two documents that you state are your current job description and position description for your position with DPW. Both documents are incorporated herein by reference. It is noted that these documents list the same working title but different class titles for your position. A copy of the job classification specifications under job code 41710 has been obtained and is also incorporated herein by reference.

Your job description and position description indicate that you work for a Regional Office of Mental Retardation. It is administratively noted that ODP was created within DPW in or about February 2007, through a reorganization of the Office of Mental Retardation.

You state that you have accepted a position of employment with the Tuscarora Intermediate Unit ("Tuscarora IU") as a "Consultant for Office of Mental Retardation Statewide Supports Coordination Initiative" ("Consultant"). In a telephone conversation with Commission staff on August 1, 2007, you confirmed that you would resign from your position with DPW if the Ethics Act would permit you to work as a Consultant for Tuscarora IU following your termination of employment with DPW.

You have submitted a copy of the job description for the Consultant position with Tuscarora IU, which document is incorporated herein by reference. Per said job description, the Consultant reports to the Director of the "OMR Statewide Supports Coordination Initiative/Early Intervention Technical Assistance." The "Fundamental Duties/Essential Functions" of the Consultant include, in pertinent part:

- Participating in the development and, when necessary, the revision of the Training and Technical Assistance Plan;
- Participating in development and implementation of state technical assistance priorities, including statewide training and travel, established by the Bureau of Special Education and Office of Mental Retardation;
- Developing technical assistance plans with counties annually or as needed;
- Providing on-site technical assistance and training locally and statewide for Office of Mental Retardation regional and county office personnel, MH/MR County staff, service provider agencies, local community service agencies, parent groups and consumer groups;
- Performing a combination of topical state and regional technical assistance activities as well as maintaining coordination of local technical assistance;
- Participating in local community and state conferences, workshops and college course work as determined by the Director and the "Departments" to maintain an awareness of innovations in the field;
- Traveling locally and state wide as a major part of the work scope to provide technical assistance, give presentations and attend meetings; and
- Performing other tasks as assigned by the Director of Statewide Supports Coordination Initiative Early Intervention Technical Assistance and/or the "Departments" that support EITA.

Per the Tuscarora IU Consultant job description, the Consultant must be able to work well and cooperate with county and "departmental" staff. The job description does not identify the specific "departments" to which it refers. The job description states that all of the enumerated duties and requirements are essential job functions, and that "Employees will be required to follow any other job related instructions and to perform any other job related duties required by their supervisor." Tuscarora IU Consultant Job Description, at 2.

To further clarify your advisory request, you have also submitted a copy of an unsigned letter dated July 31, 2007, which you state was authored by Richard D. Daubert ("Mr. Daubert"), Executive Director of Tuscarora IU. The letter indicates that you have applied for a full-time employment position with Tuscarora IU as a consultant for a statewide training system known as the "Office of Developmental Programs Consulting System," which system is administered by Tuscarora IU. The letter states that in the said consultant position, you would provide technical assistance and training to individuals and entities that provide services to individuals with intellectual disabilities. Per the letter, you would join the current staff of eight Tuscarora IU employees who provide this service on a statewide basis, and you would report to the Tuscarora IU employee who is the director of the training program. The letter states that Tuscarora IU has contracted with DPW for thirteen years to provide training and technical assistance services. The letter further states that in your position with DPW, you have not been involved in any prior negotiations of contracts or in any decisions to contract with Tuscarora IU. Finally, the letter states that in the potential position with Tuscarora IU, you would not represent Tuscarora IU in any contract negotiations or decision to contract with DPW in the future.

Based upon the above submitted facts, you seek guidance as to whether the Ethics Act would impose any restrictions upon you with regard to your prospective employment as a Consultant with Tuscarora IU following termination of your employment with DPW.

Discussion: It is initially noted that pursuant to Sections 1107(10) and 1107(11) of the Ethics Act, 65 Pa.C.S. §§ 1107(10), (11), advisories are issued to the requester based upon the facts that the requester has submitted. In issuing the advisory based upon the facts that the requester has submitted, the Commission does not engage in an independent investigation of the facts, nor does it speculate as to facts that have not been submitted. It is the burden of the requester to truthfully disclose all of the material facts relevant to the inquiry. 65 Pa.C.S. §§ 1107(10), (11). An advisory only affords a defense to the extent the requester has truthfully disclosed all of the material facts.

It is noted that, pursuant to Sections 1107(10) and (11) of the Ethics Act, 65 Pa.C.S. §§ 1107(10), (11), an opinion/advice may be given only as to prospective (future) conduct. To the extent that your inquiry relates to conduct that has already occurred, such past conduct may not be addressed in the context of an advisory opinion. However, to the extent your inquiry relates to future conduct, your inquiry may and shall be addressed.

As a Health Care Coordinator for DPW, ODP, you would be considered a "public employee" subject to the Ethics Act and the Regulations of the State Ethics Commission. See, 65 Pa.C.S. § 1102; 51 Pa. Code § 11.1. This conclusion is based upon the job description, position description, and job classification specifications, which when reviewed on an objective basis, indicate clearly that the power exists to take or recommend official action of a non-ministerial nature with respect to one or more of the following: contracting; procurement; planning; inspecting; administering or monitoring grants; leasing; regulating; auditing; or other activities where the economic impact is greater than de minimis on the interests of another person.

Consequently, upon termination of employment with DPW, you would become a "former public employee" subject to Section 1103(g) of the Ethics Act.

While Section 1103(g) does not prohibit a former public official/public employee from accepting a position of employment, it does restrict the former public official/public employee with regard to "representing" a "person" before "the governmental body with which he has been associated":

§ 1103. Restricted activities

(g) Former official or employee.--No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.

65 Pa.C.S. § 1103(g) (Emphasis added).

The terms "represent," "person," and "governmental body with which a public official or public employee is or has been associated" are specifically defined in the Ethics Act as follows:

§ 1102. Definitions

"Represent." To act on behalf of any other person in any activity which includes, but is not limited to, the following: personal appearances, negotiations, lobbying and submitting bid or contract proposals which are signed by or contain the name of a former public official or public employee.

"Person." A business, governmental body, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

"Governmental body." Any department, authority, commission, committee, council, board, bureau, division, service, office, officer, administration, legislative body or other establishment in the executive, legislative or judicial branch of a state, a nation or a political subdivision thereof or any agency performing a governmental function.

"Governmental body with which a public official or public employee is or has been associated." The governmental body within State government or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

65 Pa.C.S. § 1102.

The term "person" is very broadly defined. It includes, inter alia, corporations and other businesses. It also includes the former public employee himself, Confidential Opinion, 93-005, as well as a new governmental employer. Ledebur, Opinion 95-007.

The term "representation" is also broadly defined to prohibit acting on behalf of any person in any activity. Examples of prohibited representation include: (1) personal appearances before the former governmental body or bodies; (2) attempts to influence; (3) submission of bid or contract proposals which are signed by or contain the name of the former public official/public employee; (4) participating in any matters before the former governmental body as to acting on behalf of a person; and (5) lobbying. Popovich, Opinion 89-005.

Listing one's name as the person who will provide technical assistance on a proposal, document, or bid, if submitted to or reviewed by the former governmental body, constitutes an attempt to influence the former governmental body. Section 1103(g) also generally prohibits the inclusion of the name of a former public official/public employee on invoices submitted by his new employer to the former governmental body, even though the invoices pertain to a contract that existed prior to termination of service with the former governmental body. Shay, Opinion 91-012. However, if such a pre-existing contract does not involve the unit where the former public employee worked, the name of the former public employee may appear on routine invoices if required by the regulations of the agency to which the billing is being submitted. Abrams/Webster, Opinion 95-011.

A former public official/public employee may assist in the preparation of any documents presented to his former governmental body. However, the former public official/public employee may not be identified on documents submitted to the former governmental body. The former public official/public employee may also counsel any person regarding that person's appearance before his former governmental body. Once again, however, the activity in this respect should not be revealed to the former governmental body. The Ethics Act would not prohibit or preclude making general informational inquiries to the former governmental body to secure information which is available to the general public, but this must not be done in an effort to indirectly influence the former governmental body or to otherwise make known to that body the representation of, or work for the new employer.

Section 1103(g) only restricts the former public official/public employee with regard to representation before his former governmental body. The former public official/public employee is not restricted as to representation before other agencies or entities. However, the "governmental body with which a public official/public employee is or has been associated" is not limited to the particular subdivision of the agency or other governmental body where the public official/public employee had influence or control but extends to the entire body. See, Legislative Journal of House, 1989 Session, No. 15 at 290, 291; Sirolli, Opinion 90-006; Sharp, Opinion 90-009-R.

The governmental body with which you would be deemed to have been associated upon termination of employment with DPW would be DPW in its entirety including, but not limited to, ODP. Therefore, for the first year after termination of employment with DPW, Section 1103(g) of the Ethics Act would apply and restrict "representation" of "persons" before DPW.

Having set forth the restrictions of Section 1103(g) of the Ethics Act, your specific inquiry shall be addressed.

You are advised that Section 1103(g) of the Ethics Act would not prohibit you from being employed by Tuscarora IU following termination of employment with DPW. However, during the first year following termination of employment with DPW, Section 1103(g) of the Ethics Act would prohibit you from performing any job duties as a Tuscarora IU employee that would involve prohibited representation before DPW as set forth above. Cf., Brieche, Opinion 04-013 (Where a former DPW Regional Area Service Manager sought to subcontract with an Intermediate Unit to provide consulting services relative to the Intermediate Unit's training contract with the Office of Mental Retardation, Section 1103(g) would prohibit such individual from having contact or interaction with DPW that would involve acting on behalf of himself or the Intermediate Unit as to matter(s) relating to the training contract or his subcontract.)

Under the submitted facts, during the first year following termination of employment with DPW, it would be impossible for you to perform some of the duties of the Consultant position without running afoul of Section 1103(g) of the Ethics Act. For example, during the one-year period of applicability of Section 1103(g), you would clearly be prohibited from providing on-site technical assistance and training locally and statewide for DPW personnel. See, Metzgar, Opinion 06-002; Ziegler, Opinion 98-001. The aforesaid examples should not be construed as a complete listing of the job duties of the Consultant position that would involve prohibited representation before DPW. Based upon a review of the Tuscarora IU Consultant job description, which refers to unidentified "departments," and which does not specifically indicate which duties would involve contact with DPW, it is not possible to provide a complete listing within this advisory of all of the job duties of the Consultant position that would involve prohibited representation before DPW.

Based upon the facts that have been submitted, this Advice has addressed the applicability of Section 1103(g) only. It is expressly assumed that there has been no use of authority of office for a private pecuniary benefit as prohibited by Section 1103(a) of the Ethics Act. Further, you are advised that Sections 1103(b) and 1103(c) of the Ethics Act provide in part that no person shall offer to a public official/public employee and no public official/public employee shall solicit or accept anything of monetary value based upon the understanding that the vote, official action, or judgment of the public official/public employee would be influenced thereby. Reference is made to these provisions of the law not to imply that there has been or will be any transgression thereof but merely to provide a complete response to the question presented.

Lastly, the propriety of the proposed conduct has only been addressed under the Ethics Act; the applicability of any other statute, code, ordinance, regulation, or other code of conduct other than the Ethics Act has not been considered in that they do not

involve an interpretation of the Ethics Act. Specifically not addressed herein is the applicability of the Governor's Code of Conduct.

Conclusion: As a Health Care Coordinator for the Commonwealth of Pennsylvania Department of Public Welfare ("DPW"), Office of Developmental Programs ("ODP"), you would be considered a "public employee" as that term is defined by the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 et seq. Upon termination of employment with DPW, you would become a "former public employee" subject to Section 1103(g) of the Ethics Act. The former governmental body would be DPW in its entirety including, but not limited to, ODP. The restrictions as to representation outlined above must be followed. Section 1103(g) of the Ethics Act would not prohibit you from being employed by Tuscarora Intermediate Unit ("Tuscarora IU") following termination of employment with DPW. However, during the first year following termination of employment with DPW, Section 1103(g) of the Ethics Act would prohibit you from performing any job duties as a Tuscarora IU employee that would involve prohibited representation before DPW. Under the submitted facts, during the first year following termination of employment with DPW, it would be impossible for you to perform some of the duties of a Tuscarora IU "Consultant for Office of Mental Retardation Statewide Supports Coordination Initiative" without running afoul of Section 1103(g) of the Ethics Act.

The propriety of the proposed conduct has only been addressed under the Ethics Act.

Further, should employment with DPW be terminated, as outlined above, the Ethics Act would require that a Statement of Financial Interests be filed by no later than May 1 of the year after termination of such employment.

Pursuant to Section 1107(11), an Advice is a complete defense in any enforcement proceeding initiated by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding, provided the requester has disclosed truthfully all the material facts and committed the acts complained of in reliance on the Advice given.

This letter is a public record and will be made available as such.

Finally, if you disagree with this Advice or if you have any reason to challenge same, you may appeal the Advice to the full Commission. A personal appearance before the Commission will be scheduled and a formal Opinion will be issued by the Commission.

Any such appeal must be in writing and must be actually received at the Commission within thirty (30) days of the date of this Advice pursuant to 51 Pa. Code § 13.2(h). The appeal may be received at the Commission by hand delivery, United States mail, delivery service, or by FAX transmission (717-787-0806). Failure to file such an appeal at the Commission within thirty (30) days may result in the dismissal of the appeal.

Sincerely,

Robin M. Hittie
Chief Counsel