



# THE ETHICS REVIEW

## A JOINT COMMISSION ON PUBLIC ETHICS NEWSLETTER

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### Am I the right one for this assignment?

You recently accepted employment with a State Agency and have adjusted quite well to your new position with the State. Your supervisor assigns you to a project involving your former private sector employer—after all, who better than you to work out the details of the project with your colleagues.

Before you pick up the phone to call your former boss, you ask yourself, “Hmmm, should I be the one making this call? Isn’t there an ethics rule against doing something like this?”

#### Your suspicion is spot-on!

There is a concept in the Public Officers Law called a “reverse two-year bar.” This cousin of the more common post-employment restriction that, for two years, prohibits a former State employee from appearing before their previous State agency requires that an employee coming to the State from a job in the private sector have a two-year “cooling off” period. That is, for two years after you leave State service, you have to be careful about your relationship with your former agency and for two years after you enter State service from the private sector, you, similarly, have to be careful about your relationship with your former employer. In this reverse two-year bar scenario, you have to ask yourself: should I step away and recuse myself from any involvement in a particular project or assignment in order to avoid even the appearance of a conflict of interest?

An Ethics Advisory Opinion (AO 98-09) identifies factors for you and your State Agency to think

about when faced with this sort of situation, including, but not limited to:

- The role you played at the former private sector job;
- The extent to which you have freedom, in your State job, to decide how to carry out the new assignment;
- The likelihood of your impartiality in the matter being questioned; and
- The difficulty in reassigning the matter to another employee.

The advisory opinion acknowledges that where the close oversight of your work by a supervisor may reduce any appearance that you may favor your past employer over your public duties, then recusing yourself from the State agency matter may not be necessary.

At the end of the day, it is your responsibility to comply with the requirements in the Public Officers Law. Your agency’s Ethics Officer, or JCOPE attorneys, are available to give you and your supervisor guidance on whether actual recusal in this type of situation is required.



## Dear JCOPE

A vendor to my agency has asked if I would provide a reference that they would post on their website. Am I allowed to give them one?

### Answer:

A State employee may generally confirm facts regarding a vendor, but must take care not to specifically endorse a vendor. Therefore, you could "serve as a reference" to the extent that you may confirm facts -- for example, that your agency previously had a contract with the vendor, what goods or services were provided under the contract, or issues which arose under the contract -- both negative and positive.

It can be difficult to discern precisely when something crosses the line from a permissible factual recitation to an impermissible endorsement. The bottom line is that an effort should be made to stick to factual statements, and not allow the agency's statements to be used as a sales pitch.

It may be that some of these situations should be vetted on a case-by-case basis. We encourage you to contact JCOPE should you have any questions regarding this topic.

## ENFORCEMENT ACTIONS

### Code of Conduct:

The former president of SUNY Downstate Medical Center admitted to violating the State ethics laws. The State employee admitted that he used his position and his State credit card to pay for a portion of what turned into a personal trip to Bermuda. His travel was originally slated to include a business-related conference, as well as a birthday celebration for an executive of a contracted vendor of SUNY Downstate.

The conference was ultimately cancelled, but a charge for airfare was nonetheless made to his State-issued credit card. After the charge was discovered as part of an audit by the Office of the State Comptroller, the former president reimbursed the state for the cost of the airfare. The State employee agreed to pay a \$3,000 fine and admitted he violated the Public Officers Law. Public Officers Law §74(3)(d) prohibits State employees from using or attempting to use their official position to secure unwarranted privileges or exemptions for themselves or others.

### Questions about Ethics rules?

Contact JCOPE at [legal@jcope.ny.gov](mailto:legal@jcope.ny.gov)

or 800-87-ETHICS (873-8442) – press 2