



THE ETHICS REVIEW

A JOINT COMMISSION ON PUBLIC ETHICS NEWSLETTER

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Two-Year Bar and Deferred Payments

The purpose of the post-employment restrictions is to prevent former State employees from securing unwarranted privileges, consideration, or action for themselves or another through the use of the knowledge, experience, and professional contacts gained throughout a career in State service.

Public Officers Law § 73(8)(a) contains a “two-year bar” that, in part, prohibits former State employees from performing “backroom services”— rendering compensated services relating to any case, proceeding or application or other matter— before their former agency. In other words, former State employees cannot be paid to develop or assist someone else in developing work product that will be reviewed and submitted to their former agency. For example, a prohibited backroom service includes a former employee being compensated to prepare documents for a client, even if that employee’s name is not on them, when it is reasonably foreseeable that the documents will be reviewed by the employee’s former agency. This prohibition is in effect regardless of when the compensation is ultimately paid, i.e., even if it is deferred until after the two-year bar period has expired.

Consider the following scenario: You retired from the Department of Taxation and Finance. Although the two-year bar prohibits compensated work preparing a client’s State tax return, you agree to prepare your client’s tax returns, but your business partner will submit the work product to Tax instead of you. You and your client agree that payment for the work will be made after the two-year restricted period has expired. Is this arrangement permissible?

In 2019, the Commission settled an enforcement action for \$30,000 against James Breen, a former Department of Taxation and Finance employee. Breen admitted that after his retirement from the Department, he provided services on behalf of a tobacco distribution company in relation to tax refund claims filed with his former employer. Breen arranged for someone else to help him file those claims and shared some of his compensation with that other person—money he received after the two-year bar had expired. The lesson learned here? Deferring payment for rendered services will not avoid a violation of the post-employment restrictions.

As a reminder, if you are planning on leaving State service, make sure you get advice

regarding these restrictions before you leave. As always, your Ethics Officer and JCOPE attorneys are available to discuss how

the ethics laws may apply to your circumstances.

Dear JCOPE

I have an ethics question relating to my State job. Where should I go for advice?

Answer:

Your first move is to contact your agency's Ethics Officer, an employee designated by the agency to provide guidance on compliance with the ethics laws, including agency-specific rules.

JCOPE has an Attorney of the Day program through which an attorney on staff will promptly respond to confidential phone inquiries and e-mail requests sent to our inbox (legal@jcope.ny.gov) every business day from State officers and employees.

Finally, don't forget to review JCOPE's website containing comprehensive information on the State's ethics laws, financial disclosure requirements, lobbying regulations, and more.

Enforcement Actions

CODE OF CONDUCT: A former Building Superintendent for the New York State Office of General Services ("OGS") admitted that on five separate occasions, he accepted finders' fees totaling \$6,750 from a vendor which administered events at an OGS building. The former State employee knew that accepting such finders' fees were against the agency's rules. The State employee was terminated as a result of the investigation. The State employee agreed to pay a \$9,000 fine and admitted to a violation of 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.

FINANCIAL DISCLOSURE: A Senior Counsel at the New York State Liquidation Bureau admitted to failing to disclose his outside employment in his annual financial disclosure statement even though he was not compensated in that position. The former Senior Counsel represented the Liquidation Bureau against an individual who was under receivership of the Liquidation Bureau. When the proceeding concluded, the former Senior Counsel entered into a business relationship with the individual but

did not disclose that relationship. The former State employee agreed to pay a \$1,000 fine and admitted he violated the Public Officers Law § 73-a.

CODE OF CONDUCT: A former Chief Information Security Officer at the Bronx Community College of the City University of New York (“BCC”) admitted that he attempted to help his fiancée obtain a permanent position at BCC. The former State employee sought assistance from the Interim Registrar to hire his fiancée, who was then assigned in a non-permanent position,

to a full-time position in the registrar’s office. The fiancée did not get the permanent position. BCC forwarded the matter to the Commission and the State employee retired as a result of the investigation. The State employee agreed to pay a \$1,500 fine and admitted to a violation of 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 or
800-87-ETHICS (873-8442) – press 2