

New York State Ethics Commission

Advisory Opinion No. 99-16: Application of Public Officers Law §73(8)(a)(i) to a former employee of the Workers' Compensation Board who wishes to appear before regional offices of the Board other than the one in which he worked.

INTRODUCTION

The following advisory opinion is requested by [], a former employee of the New York State Workers' Compensation Board ("Board"). [The former State employee] served as an Administrative Law Judge with the Board in its [] office for [less than one year] until he was terminated from State service on [], 1999. He asks whether Public Officers Law §73(8)(a)(i) prevents him from appearing or practicing before the Board in [counties other than the one in which he was employed].

Pursuant to the authority vested in the New York State Ethics Commission ("Commission") by §94(15) of the Executive Law, the Commission renders its opinion that Public Officers Law §73(8)(a)(i) precludes [the former State employee] from appearing or practicing or rendering services on matters before the Board in other parts of New York State. The length of his service with the Board does not mitigate the application of the two year bar.

BACKGROUND

[The former State employee] was appointed to the Board on [], 1998, and worked for approximately [] months as an Administrative Law Judge in the Board's [] office in [] County. On [], 1999, [the former State employee] was notified that pursuant to §4.5 of the Rules of the Classified Service of the Department of Civil Service governing probationary terms, he would be discharged from the Board effective at the close of business on [], 1999. On [], 1999, [the former State employee] was subsequently informed by the Board in its Confidential Ethics Opinion No. 99-14 that pursuant to Public Officers Law §73(8)(a)(i), he would be precluded from appearing or practicing before the Board for a period of two years following his termination from State service.

By letter to the Commission dated [], 1999, [the former State employee] requested a formal opinion to determine whether Public Officers Law §73(8)(a)(i) prevents him from appearing or practicing before the Board's offices in [counties other than the one in which he was employed].

APPLICABLE STATUTE

The post-employment restrictions applicable to former State officers and employees set the ground rules for what individuals may do with the knowledge, experience and contacts gained from public service after they terminate their employment with a State agency.

The two year bar post-employment restriction found in Public Officers Law §73(8)(a)(i) states:

No person who has served as a state officer or employee shall within a period of two years after the termination of such service or employment appear or practice before such state agency or receive compensation for any services rendered by such former officer or employee on behalf of any person, firm, corporation, or association in relation to any case, proceeding or application or other matter before such agency.

DISCUSSION

Inherent in the question posed to the Commission is whether the duration of employment with the State mitigates the application of the post-employment restrictions. Also inherent in the question is whether the location of the employment in one region of the State permits a post-employment appearance in a different region.

The Commission has previously held that all former State employees, regardless of position, function, status or bargaining unit, are covered by Public Officers Law §73(8) ([Advisory Opinion No. 91-17](#)) and that the statute contains no exception for part-time, seasonal or temporary employees. For example, the Commission has held that seasonal, temporary employees retained by the Department of Taxation and Finance are covered by the post-employment restrictions ([Advisory Opinion No. 94-4](#)). It has also held that a former employee of the Racing and Wagering Board who served in a part-time capacity as a Racing Presiding Judge is subject to §73(8)(a)(i) ([Advisory Opinion No. 98-3](#)).

The Commission has held, however, that students should not be included within the definition of "employee" for purposes of §73 of the Public Officers Law and, thus, should not be covered under the post-employment restrictions of §73(8)(a) ([Advisory Opinion No. 91-01](#)).

Although [the former State employee] was employed by the Board for less than one year and was terminated, rather than resigned, from State service, these facts do not limit the extent to which the application of the post-employment restrictions must be applied. Pursuant to Public Officers Law §73(8)(b)(i), State employees terminated after January 1, 1995 and before April 1, 1999 because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the work force were exempt from the two year bar or eligible for such exemption. Non-policymaking employees were automatically exempt from the bar, and policymaking employees were exempt upon application to and approval by the Commission. However, the so-called "layoff" bill has not been extended beyond April 1, 1999, so [the former State employee] is ineligible for the exception.

As a former Administrative Law Judge to the Board, [the former State employee] was in a position to gain unique and valuable knowledge of Board operations, and he could potentially use this knowledge and his judicial credential to attract clients to a private law practice before the

Board. His appearance before his former colleagues might suggest to his clients and to the public that the Board could be improperly influenced by him. It is this type of access to and potential use of contacts and insider information for personal, financial gain that the post-employment restrictions were meant to prohibit.

Moreover, because the Board is centrally operated and administered, its regional offices cannot stand alone as separate State agencies for purposes of the post-employment restrictions. Accordingly, [the former State employee] cannot appear or practice or render services for compensation on any matter before a regional office of the Board without appearing before his former agency.

CONCLUSION

The Commission concludes that Public Officers Law §73(8)(a)(i) precludes [the former State employee] from appearing or practicing or rendering services for compensation on matters before the Board in any part of New York State for two years after his termination. His length of service with the Board does not mitigate the application of the two year bar. The location of his service with the Board does not limit the regions in which his appearance is precluded.

This opinion, until and unless amended or revoked, is binding on the Commission in any subsequent proceeding concerning the person who requested it and who acted in good faith, unless material facts were omitted or misstated by the person in the request for opinion or related supporting documentation.

All concur:

Paul Shechtman, Chair
Robert J. Giuffra, Jr.
Henry G. Gossel
Lynn Millane
O. Peter Sherwood, Members

Dated: October 27, 1999