



New York State Commission on Ethics and Lobbying in Government

Frederick A. Davie
Chair

Sanford N. Berland
Executive Director

Resolution 2023-02

RESOLUTION ON PROCEDURES FOR ISSUANCE OF INFORMAL ADVICE AND GUIDANCE TO PERSONS WITHIN THE COMMISSION'S JURISDICTION

WHEREAS, Executive Law Section 94(7)(a) requires the Commission to “establish a unit or units solely for ethics and lobbying guidance” within the agency in order to give “prompt, informal advice and guidance to persons whose conduct it oversees” other than members of the legislature and legislative staff; and

WHEREAS, the Commission’s Ethics Division employs a staff of professional ethics attorneys for the express purpose of providing such informal advice and guidance to state officers, employees and officials within the Commission’s jurisdiction, other than members and employees of the legislature, who request such informal advice and guidance, which requests and guidance are confidential pursuant to Executive Law Section 94(7)(b); and

WHEREAS, the Commission’s regulations at 19 NYCRR Part 932 establish requirements and procedures for the approval of the engagement by certain state officers, employees and officials within the Commission’s jurisdiction, other than members and employees of the legislature, in specified activities and employment outside their state positions and employment; and

WHEREAS, pursuant to Executive Law Section 94(7)(c), the Commission may upon written request or on its own initiative render formal advisory opinions,

IT IS HEREBY RESOLVED THAT:

1. Pursuant to and in accordance with the requirements of Executive Law § 94(7)(a) and 19 NYCRR Part 932, Ethics Division staff will provide prompt informal ethics and lobbying guidance when there exists controlling Commission precedent (“informal advice and guidance”) to those persons who request such advice and guidance and whose conduct the Commission oversees, other than members and employees of the legislature, except as set forth in paragraph 2.

2. With respect to a request by: (a) a statewide elected official or state agency, commission, board, or authority head for informal advice and guidance for approval (i) to engage in an outside activity or employment pursuant to 19 NYCRR Part 932; or (ii) to accept official activity expense and service payments pursuant to 19 NYCRR Part 931; or (iii) any other matter on which the Commission is authorized to issue informal advice and guidance; or (b) a request by any person whose conduct the Commission oversees, other than members and employees of the legislature, for informal advice and guidance to engage in an outside activity or employment pursuant to 19 NYCRR part 932 when the income expected to be generated by the outside activity or employment exceeds the lesser of \$50,000 or 50% of the requester's annual State salary, any informal advice and guidance letter to be provided by Ethics Division staff will be circulated to all Members of the Commission at least three business days in advance of its intended issuance date. At any time prior to the intended issuance date of the proposed informal advice and guidance letter, any Member of the Commission may object to its issuance and the proposed letter shall be held in abeyance until a vote by the Members of the Commission at the Commission's next occurring meeting. The objecting Member will notify the Executive Director of the Commission, in writing with a copy to the Chair of the Commission, that such a vote is required. Following receipt of such a request, the Executive Director shall place the requested vote on the agenda for the Commission's next occurring Commission meeting.
3. If the Ethics Division staff receives a request for informal advice and guidance from state officers, employees and officials within the Commission's jurisdiction, other than members and employees of the legislature, for which there is no controlling Commission precedent, no advice and guidance shall be provided until the Members of the Commission have received a written analysis of the issue and a proposed informal advice and guidance letter from the staff, and considered and acted on it at the next Commission meeting.
4. As provided in Executive Law § 94(7)(b), persons receiving informal advice and guidance as provided above may rely upon such advice and guidance absent misrepresentation or omission of material facts.
5. The Commission may, upon its own initiative or on written request, review any informal letter opinion issued by staff to state officers, employees, and other officials within the Commission's jurisdiction at any time and direct staff to draft superseding prospective guidance, whether in the form of a formal advisory opinion issued pursuant to Executive Law § 94(7)(c) or otherwise, for the Commission's review.