



State University of New York

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Memorandum to Presidents

Date: January 20, 1989 Vol. 89 No. 2

From: Sanford H. Levine, University Counsel
and Vice Chancellor for Legal Affairs

Subject: Ethics in Government Act II

To: Presidents, State-operated Campuses

The purpose of this memorandum is to provide a report on recent developments in the implementation of the Ethics in Government Act ("the Act") affecting: (1) the expanded restrictions on professional and business activities by State officers and employees (amended section 73 of the Public Officers Law); and (2) the financial disclosure requirement on State policy-makers and employees earning more than \$30,000 per year (new section 73-a of the Public Officers Law). These provisions became effective on January 1, 1989 (see Memorandum to Presidents, Vol. 87, No. 11, dated October 30, 1987).

Restrictions on Professional and Business Activities

Responding to a request made by State University on behalf of the SUNY trustees and campus council members, the New York State Ethics Commission issued Advisory Opinion 88-2 on December 29, 1988, a copy of which was sent to you under separate cover on December 30. Opinion 88-2 has suspended the enforcement of the expanded restrictions on professional and business activities (Public Officers Law, §73), until March 1, 1989 as to all State officers, such as the trustees and council members, who receive no compensation or are paid on a per diem basis. Continuation of this suspension after March 1 depends upon either amendment of the statute by the Legislature or adoption of internal codes of conduct by the affected State bodies. The suspension will be reconsidered by the Commission for extension beyond June 30, 1989.

The Opinion recognized the importance of service to New York State by "public spirited citizens from the private sector" who are "essentially volunteering their services." It expressed the concern raised by the University that application of the expanded restrictions on business and professional activities to unpaid State officers would place an undue

burden on these individuals. However, since there was no clear legislative intent in the enactment of the Ethics in Government Act either to include or exclude these State officers, the Commission imposed a suspension on enforcement to await guidance and clarification from the Legislature.

- In response to Advisory Opinion 88-2, the State University Trustees will consider a legislative proposal at their January 25, 1989 meeting which would clarify the coverage of section 73 of the Public Officers Law. The proposed bill would expressly exclude unpaid State officers, including trustees and campus council members, from the new restrictions on compensated appearances before State agencies contained in subdivisions (3) and (7) of section 73. The bill would leave in effect, however, the remaining provisions of the statute, i.e., the "revolving-door" prohibition, gift acceptance limitation and enforcement procedures. It should also be noted that the statutory code of ethics provisions with respect to conflicts of interest would continue to be applicable (Public Officers Law, §74).
- The State University Trustees will consider in February the adoption of a University-wide code of conduct applicable to the service of all SUNY trustees and campus council members, consistent with the recommendations in Advisory Opinion 88-2. Individual campus codes will not be necessary. This action will ensure that the suspension of enforcement of section 73 will continue until at least June 30, 1989, absent earlier legislative action.
- The State Ethics Commission has also issued an opinion (88-1) interpreting the retroactive effect of the so-called "revolving-door" provisions of the Ethics in Government Act. These provisions impose a ban on paid appearances or practice before or rendition of services to an officer or employee's State agency after the officer or employee has left State service. Under the statute, a two-year ban applies to any matter before that agency while a lifetime ban applies to those matters with which the employee was directly concerned during the employee's service to the agency. The State Ethics Commission has now concluded that these post-service restrictions apply to State officers and employees who may have left State service prior

to January 1, 1989, but only with regard to those post-employment activities engaged in on and after that date. The Commission's opinion is currently being challenged in litigation.

Financial Disclosure

Under the Ethics in Government Act (1) State policy-makers and (2) employees earning more than \$30,000 per year are required to file an annual financial disclosure statement on or before May 15th of each year. Regulations of the State Ethics Commission establishing formal procedures for obtaining exemptions from this requirement, particularly for those non-policy-making employees earning more than \$30,000 per year who are not involved in the negotiation, authorization or approval of contracts, grants or regulations, are expected to be issued shortly.

The State Ethics Commission has issued, however, a set of Guidelines for appointing authorities to determine which employees and officers hold "policy-making positions" for purposes of the financial disclosure requirements. Appointing authorities are required to file, by February 28, 1989, a list of their officers and employees holding such policy-making positions.

The Guidelines establish three categories of policy-makers: (1) employees in "managerial" positions under the Civil Service Law; (2) employees in the non-competitive class performing functions influencing policy; or (3) persons who formulate plans for the implementation of action or policy for a State agency or have an effective or substantial influence on an individual in such a position.

- The University, with the support of the Association of Council Members and College Trustees (ACT), will be requesting a determination by the Governor that campus council members not be considered policy-makers under the guidelines of the Ethics Commission and the provisions of the Act. If the Governor concurs, council members will not be required to file public financial disclosure statements. If the Governor includes council members in the list filed with the State Ethics Commission, forms for the financial disclosure statements will be distributed.
- In the employee category, a list of those individuals holding policy-making positions, generally those in managerial titles, will be

filed on a University-wide basis. Campuses will be requested to notify the listed employees of their inclusion and to advise the State Ethics Commission of new employees in these policy-making positions within 30 days of appointment. A memorandum to personnel directors will be sent in the near future, setting forth further details.

We will continue to advise you of further developments. Any questions concerning the Act and compliance with its requirements may be addressed to the Office of University Counsel ([518] 443-5400).

Sanford H. Levine
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Attachment

cc: Chairs, Councils
Chair, Board of Trustees, College of
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