



State University of New York

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Memorandum to Presidents

Date: October 9, 1990

Vol. 90 No. 10

From: Office of the University Counsel and
Vice Chancellor for Legal Affairs

Subject: Code of Ethical Conduct for
State University Officers

To: Presidents, State-operated Campuses

The State University Board of Trustees has adopted a Code of Ethical Conduct applicable to the service of the SUNY Trustees, members of campus Councils, and the trustees of the College of Environmental Science and Forestry (ESF). This action on September 27, 1990 was based upon recent regulations issued by the New York State Ethics Commission which generally require State agencies to adopt internal agency-specific codes of ethical conduct governing the business and professional activities of uncompensated officers (19 NYCRR §932.5).

The Code adopted by the SUNY Trustees, a copy of which is attached for review and distribution to all campus Council members and ESF trustees, is substantially similar to the Code of Conduct which was distributed with a Memorandum to Presidents, Vol. 89, No. 4, dated March 7, 1989, following an advisory opinion of the Ethics Commission. The earlier code lapsed in June 1989, upon the passage of legislation exempting uncompensated State officers, such as the SUNY Trustees, Council members and ESF Board members, from the specific statutory limitations in section 73 of the Public Officers Law.

The newly-adopted Code, which has been filed with the Ethics Commission, establishes ethical standards and limitations on outside activities applicable to all uncompensated University public officers, including those designated policy-makers. It is similar in most respects to the standards governing the business and professional activities of public officers under sections 73 and 74 of the Public Officers Law prior to the adoption of the additional limitations in the Ethics in Government Act of 1987.

The adoption of the Code does not affect the previous determination that campus Council members and ESF trustees are not required to file annual disclosure statements with the State Ethics Commission.

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Any questions concerning the Code of Ethical Conduct and its application 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
Environmental Science & Forestry

Copies for information only sent to:

Presidents, Community Colleges

Deans, Statutory Colleges

President Coll

Provost Nesheim



State University of New York
State University Plaza
Albany, New York 12246

CODE OF ETHICAL CONDUCT

Business or Professional Activities by State University of New York Officers

(Adopted by State University Board
of Trustees September 27, 1990)

1. Statement of Purpose. This Code of Ethical Conduct shall apply to the service of the Trustees of the State University of New York, the members of the councils of the State-operated campuses appointed pursuant to section 356 of the Education Law, and the Board of Trustees of the College of Environmental Science and Forestry appointed pursuant to section 6003 of the Education Law. The provisions of this Code shall be in addition to the requirements of section 73(3) of the Public Officers Law (Attachment I) applicable to the SUNY Trustees as State policy-makers, and the Code of Ethics contained in section 74 of the Public Officers Law (Attachment II), applicable to all State University officers.

2. Definitions. As used in this Code: The term "State University officer" shall mean members of the Board of Trustees of the State University of New York, councils of the State-operated institutions of the State University of New York and the Board of Trustees of the State University of New York College of Environmental Science and Forestry.

The term "compensation" shall mean any money, thing of value or financial benefit conferred in return for services rendered or to be rendered.

The term "ministerial matter" shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.

The term "representative capacity" shall mean the presentation of the interests of a client or other person pursuant to an agreement, express or implied, for compensation for services.

The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the governor, or the

state university of New York or the city university of New York, including their constituent units.

3. Contingency Fee Arrangements Prohibited. No State University officer shall receive, or enter into any agreement express or implied, for compensation for services to be rendered in relation to any case, proceeding, application, or other matter before any State agency other than in the Court of Claims, whereby the officer's compensation is to be dependent or contingent upon any action by such agency with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit; provided, however, that nothing in this subdivision shall be deemed to prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

4. Competitive Bidding Required. No State University officer or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall sell any goods or services having a value in excess of twenty-five dollars to any State agency unless pursuant to an award or contract let after public notice and competitive bidding. This provision shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

5. Limitation on Gifts. No State University officer shall, directly or indirectly, solicit, accept or receive any gift having a value of seventy-five dollars or more whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence the officer, or could reasonably be expected to influence the officer, in the performance of the officer's official duties or was intended as a reward for any official action on the officer's part.

6. Appearances before State University Prohibited. (a) Except as provided in paragraph 4 above, no State University officer, other than in the proper discharge of official duties, shall receive, directly or indirectly, or enter into any agreement express or implied, for any compensation, in whatever form, for the appearance or rendition of services by the officer or another in relation to any case, proceeding, application or other matter before any unit of the State University of New York.

(b) Nothing contained in this provision shall prohibit a State University officer, unless otherwise prohibited, from appearing before a unit of the State University of New York in a representative capacity if such appearance in a representative capacity is in connection with a ministerial matter.

(c) Nothing contained in this paragraph shall prohibit internal research or discussion of a matter, provided, however, that the time is not charged to the client and the State University officer does not share in the net revenues generated or produced by the matter.

7. Post-service Appearances Restricted. No person who has served as a State University officer shall, within a period of two years after the termination of such service, appear or practice before the State University of New York or receive compensation for any services rendered by such former officer on behalf of any person, firm, corporation or association in relation to any case, proceeding or application or other matter before SUNY. No person who has served as a State University officer shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any State agency or receive compensation for any such services rendered by such former officer on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which such person personally participated during the period of State service or which was under such person's active consideration.

8. Firms of State University Officers. Nothing contained in this Code shall be construed or applied to prohibit any firm, association or corporation, in which any present or former State University officer is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with a State agency otherwise proscribed by this Code with respect to such officer, where such officer does not share in the profits resulting therefrom.

9. Certain Oral Communications Prohibited. A State University officer who is a member, associate, retired member, of counsel to or shareholder of any firm, association or corporation which is appearing or rendering services in connection with any case, proceeding, application or other matter described in paragraph six of this Code shall not orally communicate, with or without compensation, as to the merits of such cause with an officer or an employee of the agency concerned with the matter.

10. Use of Firm Letterhead. For the purposes of this Code, a State University officer who is a member, associate, retired member, of counsel to, or shareholder of any firm, association or corporation shall not be deemed to have made an appearance under the provisions of this Code solely by the submission to a State agency of any printed material or document bearing the officer's name, but unsigned by the officer, such as by limited illustrations the name of the firm, association or corporation or the letterhead of any stationery, which pro forma serves only as an

indication that the officer is such a member, associate, retired member, of counsel to, or shareholder.

11. Enforcement Procedure. The State University Trustees shall review alleged violations of this Code and determine an appropriate response which may include referral of alleged violations to the State Ethics Commission, pursuant to subdivision nine of section 94 of the Executive Law. The State Ethics Commission may investigate such alleged violations and make appropriate recommendations to the appointing authority. In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates the provisions of this Code shall be subject to removal by the appointing authority in accordance with the provisions of the Public Officers Law.

PUBLIC OFFICERS LAW, §73(3)

3. No statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee or state officer or employee who is subject to the provisions of section seventy-three-a of this chapter shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another against the interest of the state in relation to any case, proceeding, application or other matter before, or the transaction of business by himself or another with, the court of claims.

PUBLIC OFFICERS LAW, §74
"CODE OF ETHICS"

§ 74. Code of ethics

1. **Definition.** As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. **Rule with respect to conflicts of interest.** No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. **Standards.**

a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.

j. If any officer or employee of a state agency shall have a financial interest, direct or indirect, having a value of ten thousand dollars or more in any activity which is subject to the jurisdiction of a regulatory agency, he should file with the secretary of state a written statement that he has such a financial interest in such activity which statement shall be open to public inspection.

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from officer or employment in the manner provided by law.

(Added L.1954, c. 696; amended L.1964, c. 941, § 6; L.1965, c. 1012, § 4; L.1983, c. 764, § 2.)

Historical Note

1983 Amendment. Subd. 1, opening par. L.1983, c. 764, § 2, eff. Sept. 1, 1983, inserted "or any public benefit corporation or public authority at least one of whose members is appointed by the governor".

Effective Date. Section effective Jan. 1, 1955, pursuant to L.1954, c. 696, § 3.

Legislative Declaration. Laws 1954, c. 696, § 1, eff. Jan. 1, 1955 provides: "Declaration of intent. A continuing problem of a free government is the maintenance among its public servants of moral and ethical standards which are worthy and warrant the confidence of the people. The people are entitled to expect from their public servants a set of standards above the morals of the market place. A public official of a free government is entrusted with the welfare, prosperity, security and safety of the people he serves. In return for this trust, the people are entitled to know

that no substantial conflict between private interests and official duties exists in those who serve them.

"Government is and should be representative of all the people who elect it, and some conflict of interest is inherent in any representative form of government. Some conflicts of material interests which are improper for public officials may be prohibited by legislation. Others may arise in so many different forms and under such a variety of circumstances, that it would be unwise and unjust to proscribe them by statute with inflexible and penal sanctions which would limit public service to the very wealthy or the very poor. For matters of such complexity and close distinctions, the legislature finds that a code of ethics is desirable to set forth for the guidance of state officers and employees the general standards of conduct to be reasonably expected of them."