



2015 ETHICS TRAINING

for Appointees to State of Illinois Boards

Subject to the Authority of the Office of Executive Inspector General
for the Agencies of the Illinois Governor

Note: This training course has been developed in accordance with the requirements of the State Officials and Employees Ethics Act (5 ILCS 430/5-10). It has been developed for this purpose under the direction of the Office of Executive Inspector General for the Agencies of the Illinois Governor ("the OEIG"). Not for use by other than State of Illinois employees, appointees or officials without the express prior consent of the OEIG.

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FOR THE AGENCIES OF THE ILLINOIS GOVERNOR**

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Notice of Mandatory 2015 Ethics Training

Dear State Appointee:

The purpose of this correspondence is to inform you of your obligation to participate in ethics training as required under the State Officials and Employees Ethics Act (5 ILCS 430/5-10) ("Ethics Act"). Under the Ethics Act, appointees to state boards and commissions must complete an appropriate ethics training course at least once each calendar year. Furthermore, state law requires new appointees to complete ethics training within 30 days of the commencement of their appointment.

Although many appointees to state boards and commissions receive no compensation from the state for their service and may only serve on a part-time or intermittent basis, they are nevertheless required to comply with the Ethics Act. For purposes of the Ethics Act, appointees are considered state employees and are therefore obligated to participate in state employee ethics training.

Please take sufficient time to familiarize yourself with the information provided in this ethics training course. I also strongly encourage you to become familiar with any additional laws, rules, policies, or regulations that are specific to your particular board or commission. These specific laws and rules may, for example, govern how your board conducts its business.

Questions about an ethics-related matter concerning your service to the state may be directed to your board's designated ethics officer, whose responsibilities include providing guidance to state employees and appointees. Additionally, if you need to report a non-emergency violation of the law by a state official, employee, or appointee or someone doing business with the state, you may do so by contacting this office's toll-free hotline at 866.814.1113, or via the web at: <http://www.inspectorgeneral.illinois.gov>.

To meet your 2015 ethics training obligation as an appointee, you must complete the attached training course. Upon completion of its reading materials, you must also sign and submit its Acknowledgement of Participation form as instructed by your board or commission (typically, these forms are to be submitted to your board's ethics officer). Submittal of the form serves as the formal record of your compliance.

Furthermore:

- You are asked to complete this course and submit the Acknowledgement of Participation form at your earliest convenience, but not later than the deadline provided by your state board or commission.
- Annual ethics training is required of you as long as your appointment remains in effect, even if the board that you serve has not recently met.
- You must complete this training, in most instances, even if you have participated in another form of ethics training (such as Internet-based training because you are coincidentally a full-time employee of another state agency). Exceptions are generally limited under the law to appointees who are also members of the legislative or judicial branches of state government.
- You must complete the attached "appointee" training course only once each calendar year. Therefore, if you serve on more than one board under the jurisdiction of the Office of Executive Inspector General for the Agencies of the Illinois Governor and you have already completed this training this year in connection with your service on another board; please notify the ethics officer for each board so that each may properly report your compliance.

Please contact the ethics officer for the state board or commission from whom you received this notice if you believe that you have received this notice in error, or if you have questions concerning the subject matter of this training, or any ethics issue concerning your service to the state.

Failure to complete this training may result in withdrawal of your appointment and may subject you to administrative action by the Illinois Executive Ethics Commission for violating the Ethics Act.

Individuals with disabilities, who may be in need of an accommodation to participate in ethics training, are required to give appropriate notice to their state board.

Thank you, in advance, for your commitment to acting with honesty and integrity in the performance of your duties as a state appointee.

Sincerely,

Ricardo Meza
Executive Inspector General

By:


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Director of Ethics Training and Compliance

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Introduction/General Principles

"[R]espondent knowingly and intentionally made numerous material omissions and knowingly and intentionally made materially false, misleading and evasive statements during the course of his interviews with OEIG investigators." (EEC decision #14-EEC-003)

– These are words from an Executive Ethics Commission decision to levy \$4,000 in fines against a former IDOT section chief who violated the Ethics Act by making more than 10 hours worth of political phone calls on his personal mobile phone while on compensated time working for the State.

As a person appointed to a state board, or commission, you are subject to various laws, rules, and policies that typically apply to any state employees. Although many appointees to state boards and commissions receive no compensation from the state and may only serve on a part-time or intermittent basis, they, like all appointees, are nevertheless subject to the State Officials and Employees Ethics Act (Ethics Act), 5 ILCS 430 et seq. **For the purposes of the Ethics Act, appointees are treated the same way as state employees.**

Generally, the Ethics Act and many other ethics-related laws, rules, and policies apply to you regardless of who appointed you and, with few exceptions, apply regardless of other positions you may hold, such as that of a locally elected official or municipal employee. These laws and rules are intended to ensure that the functions of state government are conducted with fairness, honesty, and integrity. These qualities are what it means to follow the principles of **ethics**. Even if you do fit within one of the few exceptions, we advise you to become aware of the standards to which your colleagues should adhere.

To act ethically, you must use state-provided resources in the most productive and efficient way possible and only for the work of state government. You must avoid placing your personal or financial interests in conflict with those of the state. If you have knowledge of conduct by a state employee, appointee, or official, or those who do business with the state that is either unethical or unlawful, you have an obligation to notify the appropriate authorities.

It is your responsibility to become familiar with and obey the laws, rules, policies, and regulations that apply to you. If you have a question about either the legality or ethics of a matter related to state government, you may discuss the matter with the ethics officer for the state board or commission which you serve, or you may seek private legal counsel.

Ethics Officers

Each state agency, including each state board, is required to designate an ethics officer. Ethics officers:

- act as liaisons between their state agencies and the appropriate executive inspector general and the Executive Ethics Commission;

- review employees' statements of economic interests before they are filed with the Secretary of State (these statements will be discussed later in this training); and
- provide guidance to state employees in the interpretation and implementation of the State Officials and Employees Ethics Act.

For your reference, a list of ethics officers for state agencies and boards under the jurisdiction of the Office of Executive Inspector General for the Agencies of the Illinois Governor may be found via the Internet at: <http://www.inspectorgeneral.illinois.gov>.

Executive Ethics Commission

(www2.illinois.gov/eec)

Established in 2004, the Executive Ethics Commission (EEC), in conjunction with the executive inspectors general and the attorney general, is responsible for the oversight of, compliance, implementation, and enforcement of the State Officials and Employees Ethics Act. The commission consists of nine commissioners, appointed on a bipartisan basis, and it exercises jurisdiction over all officers, appointees, and employees of state agencies under the six executive branch constitutional officers of the state, as well as the nine state public universities. It also has jurisdiction over the four regional transit boards, i.e., the RTA, the CTA, Metra, and Pace.

The EEC promulgates rules governing investigations of the executive inspectors general, prepares public information materials to facilitate compliance with ethics laws, provides guidance to ethics officers, reviews reports of activity from executive inspectors general and reports of ex parte communications from ethics officers, oversees employee ethics training, and conducts administrative hearings related to alleged violations of the Ethics Act. For additional information about the Executive Ethics Commission, visit its website at: <http://www2.illinois.gov/eec>.

Office of Executive Inspector General

(www.inspectorgeneral.illinois.gov)

Established in 2003, the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) is an independent state agency. Its primary function is to investigate fraud, abuse, and violations of laws, rules, and policies in governmental entities. The OEIG investigates allegations of misconduct by the employees, appointees, and elected officials under its jurisdiction. The OEIG also has responsibility for investigating alleged violations by those doing business with entities under its jurisdiction.

The OEIG's jurisdiction includes:

- the governor;
- the lieutenant governor;
- the board members and employees of and vendors and others doing business with the regional transit boards (i.e., the RTA, the CTA, Metra, and Pace);
- the board members and employees of and vendors and others doing business with the state public universities; and

- all employees of and vendors and others doing business with state agencies and departments of the executive branch of state government, except for those agencies under the jurisdiction of other executive branch constitutional officers, specifically the attorney general, the comptroller, the treasurer, and the secretary of state (other inspectors general have jurisdiction over the four executive branch constitutional officers not under the OEIG's jurisdiction, and the state legislature).

For additional information about the Office of Executive Inspector General for the Agencies of the Illinois Governor, visit its website at: <http://www.inspectorgeneral.illinois.gov>.

Ethics Training

(Ethics Act, Section 5-10)

"Even if [the respondent] may have felt pressured by supervisors to ensure his subordinates took their ethics training ... these facts do not justify him taking ethics training for four employees without their knowledge." (OEIG Case #13-01848)

– These are words from a publicly disclosed OEIG investigative report explaining how an employee of Metra violated provisions of the Ethics Act by completing ethics training for other Metra employees.

Under the Ethics Act, executive branch employees are among those who must, at least annually, complete ethics training under appropriate oversight. Additionally, new employees must complete ethics training within 30 days of commencement of their employment. Because state employees are defined within the Ethics Act to include any appointee, appointees must also complete ethics training. **Elected** commissioners, trustees, directors, or board members of boards of a state agency, including any retirement system or investment board subject to the Illinois Pension Code, are also state employees for purposes of the Ethics Act and must complete ethics training.

This training course is specifically required of appointees to entities under the jurisdiction of the OEIG. It is the responsibility of each state agency, board, commission, etc. to conduct ethics training and to annually report to the OEIG and the Executive Ethics Commission regarding those individuals who have or have not completed training.

Failure to complete training when directed to do so exposes employees and appointees to disciplinary or other action. This may include termination of employment or withdrawal of appointment. Additionally, the failure to complete ethics training and to submit a signed certification of completion of the training, in accordance with the training's instructions and the requirements of the Ethics Act, may be found to constitute a violation of the Ethics Act.

Your state board will notify you and provide instructions to you concerning when and how to participate in ethics training.

Official Misconduct, Bribery, and Solicitation Misconduct

(Criminal Code of 2012 (720 ILCS 5/33))

A Department of Labor employee delivered "an inspection report indicating that he had witnessed the ... load test. [He] filed it knowing that he did not attend the load test. In fact, he told OEIG investigators that he sat in his vehicle for an hour and a half ..., never spoke to anyone about the test during that time, and never saw the ski lift in operation on that day. ... This failure to observe the load test is particularly egregious given that as [he] himself stated, an accident on a ski lift is a major event due to the potential for serious injury of anyone subsequently riding that ski lift." (OEIG Case #11-00621)

– These words are from a publicly disclosed OEIG investigation concerning the misconduct of a former Department of Labor employee who submitted false inspection reports.

► Official Misconduct

Public officers or employees commit official misconduct when, in their official capacity, they:

- intentionally or recklessly fail to perform any mandatory duty as required by law;
- knowingly perform an act which they know they are forbidden by law to perform;
- perform an act in excess of their lawful authority with intent to obtain personal advantage for themselves or another; or
- solicit or knowingly accept for the performance of any act a fee or reward which they know is not authorized by law.

Public officers or employees convicted of violating any of these provisions forfeit their office or employment. In addition, they commit a Class 3 felony.

For Example:

A state employee who exceeds his lawful authority to obtain something of value for his personal benefit could be found to have committed official misconduct.

► Bribery

Among other circumstances, **bribery** occurs when state employees ask for or accept property or personal advantage, such as, but not limited to, money or free services, in exchange for taking or not taking (or influencing someone else to take or not take) an official act.

Q & A

Q. Is it unlawful for a state employee to request or accept anything of value in exchange for authorizing a state contract?

A. Yes. If state employees or officials request or accept a bribe, they could face criminal charges.

► Solicitation Misconduct

If state employees have regulatory authority over a person, such as responsibility to investigate, inspect, license, or enforce regulatory measures related to the person's business or activity, and they knowingly ask for or receive political campaign contributions from that person, they have committed **solicitation misconduct**. If convicted of solicitation misconduct, state employees will lose their state jobs.

Personnel Policies

(Ethics Act, Section 5-5)

State employees, including appointees, are required to follow the personnel policies of their state agency, board, or commission. By law, these policies must include elements related to:

- work time requirements;
- documentation of time worked/time sheets;
- documentation for reimbursement for travel on official state business;
- compensation; and
- earning and accrual of state benefits for those eligible for benefits.

Time Sheets

(Ethics Act, Section 5-5)

"After being made aware [that he had been under surveillance, the former State employee] ... stated that he wished to correct information that he had previously provided..." [He] then described his abuse of State time and misuse of a State vehicle as "extensive" ... (OEIG Case #11-02060)

– These are words from a publicly released OEIG investigative report. The OEIG found that a former IDOC employee, among other forms of misconduct, violated IDOC timekeeping policy. The employee resigned.

The law requires your board to have a policy requiring you to periodically submit time sheets documenting the time spent each day on official state business to the nearest quarter hour. **As a state appointee, you are expected to accurately report the hours that you work for the state, on a timely basis, as directed by your state board.**

Hiring Practices

(*Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), Administrative Order No. 1 (1990), No. 2 (1990), No. 1 (1991), and No. 2 (2009))

"The actions of IDOT officials violated Administrative Order No. 2 (2009) and IDOT's own personnel policies. As a result, hundreds of individuals were hired without having to go through the *Rutan* hiring process even though they performed *Rutan*-covered duties" (OEIG Case #11-01567)

- These are words from a publicly disclosed OEIG investigative report explaining how Illinois Department of Transportation officials improperly approved the hiring of "Staff Assistants" to perform *Rutan*-covered duties. The IDOT officials resigned.

The overwhelming majority of employee positions in state government are subject to hiring procedures implemented to comply with a 1990 U.S. Supreme Court decision, *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), commonly referred to as "*Rutan*." These procedures prohibit consideration of political affiliation or support or lack thereof in connection with hiring, promotion, transfer, or recall from layoff, relating to most state jobs. That is, most positions in state government must be filled on a merit-basis, without regard to any applicant's political affiliations. Only a limited number of state jobs are exempted from these requirements.

Procedures for making hiring decisions for state positions covered by the *Rutan* decision have been established by the Office of the Governor and apply to all agencies, boards and commissions under its jurisdiction. Hiring procedures for *Rutan*-covered positions mandate that:

- any employee who receives a personnel request, referral, or recommendation for a *Rutan*-covered position must refer the person making the request, referral, or recommendation to the Department of Central Management Services Governmental Affairs department for disposition;
- grading of employment applications must be completed on a "blind" basis; that is, applicants' names and any personally identifiable information must be redacted from applications before they are graded;
- grading of applications must be free from all political considerations;
- the creation of lists of eligible candidates for a *Rutan*-covered position must be done on a blind basis; and
- job descriptions for *Rutan*-covered positions must be reviewed and, if necessary, updated prior to posting, to reflect current duties, responsibilities, and requirements.

Furthermore:

- any employee who participates in an interview of a candidate for a *Rutan*-covered position must have previously and successfully completed training related to *Rutan* hiring practices;

- *Rutan* interviewers must make their assessments of candidates based on pre-determined and uniform questions related to the position's job description;
- employment decisions must be properly documented, including a written justification for the agency's employment decision; and
- the agency director or his or her designee must certify that the employment decision was not based on political party affiliation or support (or lack thereof).

In 2009, the General Assembly amended the Ethics Act to expand the duties of the OEIG to include the review of hiring and employment files to ensure compliance with *Rutan* and applicable employment laws. As part of its hiring monitoring program, the OEIG reviews various agency hiring practices.

Q & A

- Q. My brother has applied for a *Rutan*-covered position and I know he's well qualified. Is it okay for me to put in a good word regarding my brother with the people preparing a candidate list for this *Rutan*-covered position?
- A. No. The creation of candidate lists for *Rutan*-covered positions must be done on a blind basis; that is, without knowledge of the candidates' names. Recommendations like these may have no role in the hiring process for *Rutan*-covered positions.
- Q. What should I do if someone offers me a recommendation concerning a potential candidate for a *Rutan*-covered position for which I am responsible?
- A. Explain to the individual who offered the recommendation that there are established procedures for filling the position, including that all requests, referrals, or recommendations must be submitted to the CMS Governmental Affairs Department.
- Q. What should I do if someone directs me to place someone in a *Rutan*-covered position on the basis of the job applicant's political affiliation?
- A. Report the matter to the OEIG.

Conflicts of Interest

"[A DHS employee authorized Temporary Assistance for Needy Families (TANF) benefits for] family members of [her] friend and former co-worker. These individuals were also DHS clients... Therefore, the allegation that [she] violated DHS policies by engaging in conduct that constituted a conflict of interest is **FOUNDED.**" (OEIG Case #08-00494)

- These words are from a publicly released OEIG investigative report. The OEIG found that the state employee violated DHS’s conflict of interest policy by approving state benefits for friends and relatives.

Many appointees to state boards and commissions serve the state on a part-time basis and may be employed elsewhere. As a result, you may be more likely than other state employees to have personal, financial, or business interests that have the potential to conflict with your official work on behalf of the state. In some instances, state law or board rules restrict appointees’ employment or compensation opportunities in order to prevent conflicts of interest.

Examples of board-specific statutes relating to conflicts of interest include:

Prisoner Review Board (730 ILCS 5/3-3-1(b))

“Each member of the [Prisoner Review] Board shall serve on a full-time basis and shall not hold any other salaried public office, whether elective or appointive, nor any other office or position of profit, nor engage in any other business, employment, or vocation.”

Illinois Workers Compensation Commission (820 ILCS 305/13)

“Each [Workers Compensation] Commissioner shall devote full time to his duties and any Commissioner who is an attorney-at-law shall not engage in the practice of law, nor shall any Commissioner hold any other office or position of profit under the United States or this State or any municipal corporation or political subdivision of this State, nor engage in any other business, employment, or vocation.”

Illinois Commerce Commission (220 ILCS 5/2-102(c))

“Each [Illinois Commerce] commissioner shall devote his entire time to the duties of his office, and shall hold no other office or position of profit, or engage in any other business, employment or vocation.”

As a state appointee, you should review the laws and rules that apply to your board to ensure that you are in compliance with any restrictions that are intended to help you to avoid conflicts of interest.

Generally, a conflict of interest occurs when the interests of an appointee are in conflict with the interests of the state. This might occur, for example, when a decision or recommendation that an appointee makes, relative to his or her official position, either affects or is affected by his or her personal interests or those of a family member, friend, or associate.

For Example:

An appointee has a conflict of interest when she participates in a decision to award a contract for state business to a company owned by a friend. Another example of a conflict of interest occurs when an appointee attempts to influence a vote of fellow board members in order to benefit the appointee’s own financial interests.

Official actions taken by an appointee to a state board, such as, but not limited to, voting on an issue before the board, or approving a license application, or granting a contract, or hiring an employee of a board, should be in the best interests of the state.

~~Down Right~~

Recommended Best Practice

In any instance where you believe you may have or appear to have a conflict of interest with respect to your membership on a state board or commission, it is your responsibility to immediately take steps to appropriately disclose the conflict and take action to remedy it. Disclosure should be made in accordance with any applicable policies of your board or commission. In the absence of a relevant policy, disclosure should be made to the head of the board or commission and to its ethics officer. Every immediate effort should be made either to eliminate the conflict or to recuse yourself from any official business related to the conflict. As a state appointee you should be alert to the appearance of conflicts of interest in your official duties.

In certain instances, a state employee's conflict of interest may violate the law. For example, it would be unlawful for a State Board of Education member to be gainfully employed or administratively connected with an Illinois school system. This would be unlawful under the Illinois School Code (105 ILCS 5/1A-2).



Conflicts of Interest Lesson Review Scenarios

Review Scenario #1

Paul is a state board member. He currently works for an organization that is regulated by the board that he is appointed to. During a board meeting, Paul notices that his employer is on the board agenda for a regulatory issue.

What should Paul do?

- A. Paul should participate in the board meeting, and vote as he sees fit.
- B. He should ask his board's ethics officer for advice, since his involvement is or could be perceived as a conflict of interest.
- C. Paul should vote against his employer's interests to prove that he is not showing any favoritism.

Select the best answer(s) and then compare your response to the explanation at the bottom of this page.¹

Review Scenario #2

Jose is a state board appointee. His wife works for a company that offers treatment to patients that are monitored by the state board he is appointed to. Does Jose's wife's job cause him to have a conflict of interest?

- A. Yes. Jose's wife's job represents a conflict of interest.
- B. No, because conflicts of interest only relate to matters involving state licensing decisions.
- C. Maybe, depending upon both his and his wife's official duties. Jose's duties as a state board member may result in him having a conflict of interest based on his wife's job.

Select the best answer(s) and then compare your response to the explanation below.²

Prohibited Political Activities

(Ethics Act, Section 5-15)

"In total, Respondent made dozens of prohibited political telephone calls during State-compensated time..." (EEC decision #13-EEC-021)

– These are words from an Executive Ethics Commission decision to levy a \$1,500 fine against a state employee who engaged in prohibited political activity by placing telephone calls to schedule a campaign event for a candidate for the General Assembly.

State employees and appointees may not participate in any of the following activities while acting, or appearing to act, as state employees or appointees, or while conducting state business.

- Prepare for, organize, or participate in any political meeting, political rally, political demonstration, or other political event

¹ The best response to Review Scenario #1 is B. Paul's involvement in a regulatory matter regarding his current employer could be perceived as a conflict of interest. He should discuss this matter with either the head of his state board or the board's ethics officer to appropriately manage the issue. It would be best for Paul to step aside and allow someone else to make any decisions regarding his current employer.

² The best response to Review Scenario #2 is C. Jose's wife's job may or may not cause him to have a conflict of interest depending on whether his official actions may affect or be affected by his wife's job duties. If, for example, Jose is involved in monitoring or policymaking that affects his wife's job duties, then Jose has a conflict. He should examine his board's policies to ensure that he complies with them, discuss the situation with his board's ethics officer, and, if necessary, take actions to avoid a conflict of interest if and when one presents itself.

For example, a state employee may not send an email through a private account to fellow workers during work hours or using a state email account at any time to encourage them to attend a rally for a candidate for public office, nor to issue invitations to or advertise a political event.

- Solicit contributions, including, but not limited to, purchasing, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event
- Solicit, plan the solicitation of, or prepare any document or report regarding any thing of value intended as a campaign contribution
- Plan, conduct, or participate in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes, or for or against any referendum question
- Survey or gather information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes, or for or against any referendum question

For example, it is unlawful for state employees, during their workday, to call potential voters on behalf of a candidate to find out whom they might vote for in an upcoming election.

- Assist at the polls on election day on behalf of any political organization, candidate for elective office, or for or against any referendum question
- Solicit votes on behalf of a candidate for elective office or a political organization, or for or against any referendum question, or help in an effort to get voters to the polls
- Initiate for circulation, prepare, circulate, review, or file a petition on behalf of a candidate for elective office or for or against any referendum question
- Make a contribution on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office
- Prepare or review responses to candidate questionnaires in connection with a campaign for elective office or on behalf of a political organization for political purposes
- Distribute, prepare for distribution, or mail campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question
- Campaign for an elective office or for or against any referendum question

- Manage or work on a campaign for elective office or for or against any referendum question

For example, it is unlawful for state employees to use state-provided telephones, even during an uncompensated lunch period or before or after their normal work hours, to work on someone's campaign for elective office.

- Serve as a delegate, alternate, or proxy to a political party convention
- Participate in any recount or challenge to the outcome of any election

Lastly, a supervisor may not compel a state employee to perform political activities at any time.

The only compensated time during which state employees or appointees may take part in any of these activities is during vacation, personal, or compensatory time off. Also, state employees and appointees may never engage in any of these activities by intentionally misappropriating state property and resources (such as state-provided telephones, cell phones, photocopiers, or computers) for the benefit of any campaign for elective office or any political organization.

In some instances, state board policies or the law may more severely restrict the political activities of certain state employees and appointees, including those activities that may take place outside of the time, during which those employees and appointees work for the state.

An example of a board-specific statute relating to prohibited political activity:

Illinois Election Code (10 ILCS 5/1A-14)

No member of the State Board of Elections may become a candidate for nomination for, or election to, or accept appointment to or hold any other remunerative public office or public employment or any office in a political party. Violation of any prohibition in this Section shall disqualify a member of the Board and a vacancy is thereby created. A vacancy also exists upon the occurrence of any of the events enumerated in Section 25-2 of this Act as in the case of an elective office.

If you are in doubt as to whether an activity or action may be prohibited by law or policy, you may ask your state board's ethics officer for guidance.



Prohibited Political Activities Lesson Review Scenarios

Review Scenario #3

Is it lawful for a state board appointee to forward a single email promoting a candidate for elective office to a small number of business colleagues who are not state employees using a board issued email account if the appointee does so outside of his state board work hours?

- A. Yes, because the message is brief and makes minimal use of the state board email account.
- B. No. The Ethics Act prohibits the intentional misappropriation of state property or resources for purposes of a prohibited political activity.
- C. Yes. The activity takes place outside of the appointee's state board work time.

Select the best answer(s) and then compare your response to the explanation at the bottom of this page.³

Political Contributions on State Property

(Ethics Act, Section 5-35)

As an appointee to a state board or commission, you may not intentionally solicit, accept, offer, or make political campaign contributions on state property. These prohibitions also apply to public officials, state employees, candidates for elective office, lobbyists (i.e., persons required to be registered under the Lobbyist Registration Act), or any officers, employees, or agents of any political organization.

"State property" means any building or portion thereof that is owned or exclusively leased by the state.

Prohibited Offer or Promise

(Ethics Act, Section 5-30)

A state employee, appointee, or official may not promise **anything of value** related to state government in consideration for a contribution to a political committee, political party, or other entity that has as one of its purposes the financial support of a candidate for elective office.

If another state employee, appointee or official asks or directs you to make a prohibited offer or promise, you have a duty to report it to your ethics officer or the OEIG.

In the context of a prohibited offer or promise related to a political contribution, **anything of value** includes, but is not limited to:

- positions in state government;
- promotions;
- salary increases;

³ The best response to Review Scenario #3 is B. The Ethics Act prohibits this and various other political activities from being performed through the misappropriation of state property or resources, such as but not limited to telephones, fax machines, copiers, computers, and email accounts. There are no exceptions to these restrictions based on the insignificance of the misappropriation. Furthermore, the prohibition against the misappropriation of state property and resources applies at all times.

- other employment benefits, including, but not limited to, modified compensation or benefit terms; compensated time off; or change of title, job duties, or location of office or employment. An employment benefit may also include favorable treatment in determining whether to bring any disciplinary or similar action or favorable treatment during the course of any disciplinary or similar action or other performance review;
- board or commission appointments;
- favorable treatment in any official or regulatory matter;
- the award of any public contract; and
- action or inaction on any legislative or regulatory matter.

For Example:

It is unlawful for a state employee or appointee to make a licensing, regulatory, contracting, or hiring decision, in exchange for a political campaign contribution.

Review Scenario #4

Leticia is a recently appointed, unpaid member of a state board. Until her appointment, Leticia was actively involved in various political activities. Does the Ethics Act restrict Leticia, as a member of a state board, from participating in political activities?

- Yes, while her appointment is in effect, Leticia is strictly prohibited from engaging in any political activity.
- No, the Ethics Act's prohibitions on certain political activities apply only to compensated appointees. They do not apply to unpaid appointees like Leticia.
- Yes, like other state employees, the Ethics Act's prohibitions against certain political activities apply to appointees during the hours which they work for the state and by misappropriating state property.

Select the best answer(s) and then compare your response to the explanation at the bottom of this page.⁴

Prohibited Public Service Announcements and Other Promotional Material

(Ethics Act, Section 5-20)

The Ethics Act prohibits any public service announcements or advertisements on behalf of any state administered program and that contain the proper name, image, or voice of any executive branch constitutional officer or member of the General Assembly from being broadcast or aired

⁴ The best response to Review Scenario #4 is C. The restrictions that pertain to certain political activities under the State Officials and Employees Ethics Act apply to all executive branch employees, including most appointees to state boards and commissions, regardless of whether the appointees receive compensation. They apply during the hours an appointee works for the state. In addition to the Ethics Act, board members may be covered by policies of their board or commission, which may be more restrictive than state law.

on radio or television, printed in a commercial newspaper or commercial magazine, or displayed on a billboard or electronic message board at any time.

Furthermore, the proper name or image of any executive branch constitutional officer or member of the General Assembly may not appear on any bumper stickers, commercial billboards, lapel pins or buttons, magnets, stickers and other similar promotional items that are not in furtherance of the person's official state duties or governmental and public functions, if designed, paid for, prepared, or distributed using public dollars.

Ban on Gifts from Prohibited Sources

(Ethics Act, Article 10)

"... [The IDOA employee] violated the Ethics Act's gift ban prohibition when he intentionally solicited [a state vendor] for a free "roll or two" of DuQuoin Fair beer tickets..." (EEC decision #14-EEC-006)

– These are words from an EEC decision to fine an IDOA manager for intentionally soliciting 1,000 to 2,000 free beer tickets valued at \$4.00 per ticket from a prohibited source. He was fined \$5,000 by the EEC.

Generally, as a state appointee, you should not ask for or accept anything of value (other than compensation or reimbursement you may receive from the state) in relation to your position with the state. Asking for or accepting a gift may be illegal under the Ethics Act, or prohibited by your state board's policies. Furthermore, anything of value, if offered to you **in connection with an official act**, may be considered a bribe.

Gifts are defined by the Ethics Act to include, among other things, tickets to sporting events, hospitality, specially discounted merchandise or services, entertainment, loans, reimbursement of travel expenses, gratuities, cash, food, drink, and certain honoraria for speaking engagements.

Under the Ethics Act, state employees or appointees may not intentionally solicit or accept gifts from certain individuals or entities that are defined by law as a "prohibited source," nor may they accept gifts in violation of any federal or state statute, rule, or regulation. It is also unlawful for employees' or appointees' spouses or immediate family members living with them to intentionally solicit or accept a gift from a prohibited source.

In summary, **prohibited sources** include a person or entity that:

- seeks official action by the state employee or by the constitutional officer, state agency, or other employee directing the employee;
- does business or seeks to do business with the employee or with the constitutional officer, state agency, or other employee directing the employee;
- conducts activities that are regulated by the employee or by the constitutional officer, state agency, or other employee directing the employee;

- has interests that may be substantially affected by the performance or non-performance of the official duties of the state employee;
- is a registered lobbyist under the Lobbyist Registration Act; or
- is an agent of, a spouse of, or an immediate family member who is living with a prohibited source.

Under the Ethics Act, there are a limited number of specific circumstances under which you may lawfully accept certain items of value from a prohibited source. These exceptions are designed to cover incidental gifts, and do not in any way condone or excuse small payments in connection with official acts. The list of exceptions to the gift ban is limited to:

- opportunities, benefits, and services available to the general public on the same conditions;
- anything for which a state employee pays market value;
- a lawful contribution under the Election Code or the Ethics Act or activities associated with a fundraising event in support of a political organization or candidate;
- educational materials and missions (as further defined below *);
- travel expenses for a meeting to discuss state business (as further defined below **);
- a gift from a relative;
- anything provided by an individual on the basis of personal friendship, unless the employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the employee and not because of the personal friendship;
- food or refreshments that do not exceed \$75 per calendar day;
- food, refreshments, lodging, transportation and other benefits resulting from outside business or employment activities, if the benefits are customarily provided to others in similar circumstances and are not offered because of the recipient's official position;
- intra-governmental or inter-governmental gifts (e.g., gifts between agency employees or between government employees);
- bequests, inheritances, and other transfers at death; and
- any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

*Illinois Executive Ethics Commission Rule 1620.700 states that educational materials and missions are those that have a close connection to the recipient's state employment or the mission of the agency; predominately benefit the public and not the employee; and are approved by the employee's ethics officer in advance of the mission or receipt of the materials. If advance approval is not practicable, the missions and materials shall be reported to the ethics officer as soon as practicable and shall contain a detailed explanation of why approval could not be obtained in advance.

**Illinois Executive Ethics Commission Rule 1620.700 further states that travel expenses of a meeting to discuss state business are those that have a close connection to the recipient's state employment; predominately benefit the public and not the employee; are for travel in a style and manner in character with the conduct of state business; and are approved by the employee's ethics officer in advance of the travel, if practicable. If advance approval is not

practicable, the travel shall be reported to the ethics officer as soon as practicable and shall contain a detailed explanation of why approval could not be obtained in advance.

Under the Ethics Act, if a state employee or appointee receives a gift from a prohibited source, he or she does not violate the law if he or she promptly:

- returns the gift to the giver;
- gives the gift, or an amount of equal value, to an appropriate charity that is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

Your state board may have its own policies or may be subject to other state laws, which in some instances, may be more restrictive than the Ethics Act's gift ban.

An example of a board-specific statute relating to gifts:

Public Utilities Act (220 ILCS 5/2-102(b))

"... No [Illinois Commerce] commissioner or person appointed or employed by the Commission shall solicit or accept any gift, gratuity, emolument or employment from any person or corporation subject to the supervision of the Commission, or from any officer, agent or employee thereof..."

Do What's Right

Recommended Best Practice

In general, it is recommended that you decline anything of value offered to you (other than compensation or reimbursement you may receive from your state board) in relation to your official duties. Furthermore, you should be mindful of accepting gifts that have the appearance of being improper.



Gift Ban Lesson Review Scenarios

Review Scenario #5

Amy, an office manager for a small state board, contacts the board's printer service vendor after a printer malfunction. After repairing the printer, the vendor offers a free toner cartridge to compensate the office for the inconvenience.

Is it lawful under the Ethics Act for Amy to accept the vendor's offer?

- A. Yes, the Ethics Act allows the acceptance of a gift offered by a prohibited source to a state agency, rather than to an individual state employee.
- B. No, because the value of the toner cartridge is not known.
- C. Yes, inconvenience to the state is an exception to the gift ban section of the Ethics Act.

Select the best answer(s) and then compare your response to the explanation at the bottom of this page.⁵

Review Scenario #6

Indira, a state board appointee, is having dinner with her family at a restaurant. After their meal, the restaurant's chef comes to Indira's table to see how they enjoyed the meal. During this conversation, Indira mentions that the dinner was in celebration of her fifth year as a state board appointee. The chef announces that all celebratory dinners are offered at a discount at his restaurant.

Should Indira accept this gift?

- A. No. A state appointee may never accept a gift.
- B. Yes, if not prohibited by other law or rule, Indira may lawfully accept this gift under the Ethics Act.
- C. No, the Ethics Act prohibits the intentional acceptance of gifts, even if the gift is available on the same conditions as for the general public.

Select the best answer(s) and then compare your response to the explanation at the bottom of this, and the next page.⁶

Revolving Door (Non-State Employment) Prohibitions and Procedures

(Ethics Act, Section 5-45)

The Ethics Act contains prohibitions that may, under certain circumstances, affect whether you, as a state appointee, or one of your family members living with you may lawfully accept employment, compensation, or fees from another person or entity after you end your state service.

⁵ The best response to Review Scenario #5 is A. Amy's acceptance of the toner cartridge for use by her state board is lawful under the Ethics Act's gift ban. The gift ban only applies to items of value offered by a prohibited source to state employees, appointees and officials and not to those which are offered, as in this instance, to a state agency. In this case, the value of the toner cartridge is not relevant to determine whether it may be lawfully accepted under the Ethics Act. Also, inconvenience to the state is not an exception to the gift ban section of the Ethics Act.

⁶ The best answer to Review Scenario #6 is B. The Ethics Act's gift ban pertains only to gifts being offered, or solicited from, a prohibited source. In this case, the restaurant does not appear to be a prohibited source. Moreover, the discount (gift) is made available to all customers who are celebrating an occasion. As long as the state board that Indira works for does not have any rule or policy that is stricter than the Ethics Act, the acceptance of this gift is lawful.

No former officer, member, or state employee, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of state employment, knowingly accept employment or receive compensation or fees for services from a person or entity if:

- the officer or state employee, during the year immediately preceding termination of state employment, participated personally and substantially in the award of state contracts, or the issuance of state contract change orders, with a cumulative value of \$25,000 or more to the person or entity, or its parent or subsidiary; or
- the officer or state employee, during the year immediately preceding termination of state employment, participated personally and substantially in making a regulatory or licensing decision that directly applied to the person or entity, or its parent or subsidiary.

► **Requirements that Apply to Employees or Appointees, Who May Participate in Contract, Licensing, or Regulatory Decisions:**

If you are in a position that, by nature of its duties, may have the authority to participate personally and substantially in the award of state contracts or in regulatory or licensing decisions, you should be instructed in writing by your agency that these revolving door provisions apply to you.

If your position may exercise such authority, you must notify the Office of Executive Inspector General prior to accepting a non-state employment offer during your state employment or within a period of one year immediately after termination of your state employment.

Within 10 calendar days of receiving your notification, the OEIG will determine if you are restricted from accepting the offer.

The OEIG's determination regarding a non-state employment offer will be based on whether, during the year preceding departure from the state payroll, the state employee participated personally and substantially in any contract, regulatory or licensing decision applying to the prospective employer, and on the effect that the prospective employment may have had on any such decisions.

This determination may be appealed to the Executive Ethics Commission by either the affected appointee or the Office of the Attorney General **no later than 10 calendar days after** the date of determination. Therefore, an OEIG determination is not final until either the time to appeal has expired without appeal or, in the case of an appeal, until the EEC has made its determination.

► **Additional Employment Restrictions and Procedures for Certain High-Level Employees**

A limited number of state officers, employees, or appointees in certain positions are strictly prohibited from knowingly accepting employment or receiving compensation or fees for services from certain individuals or entities during a period of one year after the termination of their state positions. These restrictions apply **regardless of whether the state officers, employees, or appointees were involved in regulatory, licensing, or contract decisions.**

These restrictions apply to:

- persons whose appointment to office is subject to the advice and consent of the Senate;
- the head of a department, commission, board, etc., or other administrative unit within the government of the state;
- chief procurement officers, state purchasing officers, and their designees whose duties are directly related to state procurement;
- chiefs of staff, deputy chiefs of staff, associate chiefs of staff, assistant chiefs of staff, and deputy governors;
- members of a commission or board created by the Illinois Constitution; and
- members of the General Assembly or executive or legislative branch constitutional officers.

Persons in the aforementioned positions may not accept employment, compensation, or fees during a one year period after the termination of their state employment from a person or entity, if the person or entity or its parent or subsidiary, during the year immediately preceding termination of state employment, was:

- a party to a state contract or contracts with a cumulative value of \$25,000 or more involving the state employee or the employee's agency; or
- was subject to a regulatory or licensing decision involving the state employee or the employee's agency.

To reiterate, the employment restrictions on these positions apply **regardless** of whether the officer, employee, or appointee participated personally and substantially in the award of the state contract or contracts or the making of the regulatory or licensing decision in question. Furthermore, there is no process for seeking an exception to the employment restrictions on these positions.

If you find yourself in a situation where you are offered employment or compensation by an individual or business that conducted official state business with you or your state board, you may discuss the matter with your state board's ethics officer or private legal counsel to ensure that you comply with the law.

The Executive Ethics Commission has the authority to issue a fine to a state employee or appointee in an amount of up to three times the total annual compensation that would have been obtained in violation of the Ethics Act's revolving door employment restrictions.



Revolving Door Lesson Review Scenario

Review Scenario #7

As a state board employee, Gregory manages requests for proposals and participates in agency deliberations and has been notified that his position may have authority to participate personally and substantially in such deliberations. Gregory's sister owns a company that would like to do business with his board. His sister offers to hire Gregory to help her company produce bids on board contracts. Gregory decides to leave the state board and starts working for his sister's company the next day.

Has Gregory violated the revolving door statute?

- A. No. Gregory can work for a family-owned company without restrictions.
- B. Yes, he cannot work for a company that will bid on state work.
- C. Yes. Even if Gregory believes that his sister has not previously bid for state contracts, he must notify the OEIG before he can start work.

Select the best answer(s) then compare your response to the explanation at the bottom of this page.⁷

Additional Appointee Restrictions

Appointees to state boards, commissions, authorities, and task forces have specific additional laws and rules that apply to them, including for example:

► **Registered Lobbyists** (Lobbyist Registration Act, 25 ILCS 170/3.1)

A lobbyist is any person who communicates with an official of the executive or legislative branch of state government for the purpose of influencing executive, legislative, or administrative action. Registered lobbyists are those individuals who meet certain criteria under the Lobbyist Registration Act and are therefore, required to register with the Illinois secretary of state.

A person required to register as a lobbyist may not serve on a state board authorized or created by state law or by executive order of the governor. Exceptions to this prohibition are limited to instances where the lobbyist serves:

- in an elective public office, whether elected or appointed to fill a vacancy; or
- on an advisory body that makes nonbinding recommendations to an agency of state government, but does not make binding recommendations or determinations or take any other substantive action.

Spouses and immediate family members who are living with a person required to register as a lobbyist are covered by the same restrictions.

⁷ The best response to Review Scenario #7 is C. By law, Gregory is required to notify the Office of Executive Inspector General **prior to** accepting an offer of employment. There are no exceptions for family-owned companies. With approval, employees like Gregory may work for companies that will bid on state work.

► **Holders of State Contracts** (Ethics Act, Section 5-55)

A person, his or her spouse, or any immediate family member living with that person, may not serve on a state board if:

- the person has more than a 7 ½ percent interest in a state contract; or
- the person, together with his or her spouse and immediate family members living with them, has more than a 15 percent interest in a state contract.

This ban does not apply if:

- the contract in question is an employment contract;
- the person, the spouse, or the immediate family member is serving in an elective public office; or
- the person, the spouse, or the immediate family member is serving on an advisory body that makes non-binding recommendations.

Do What's Right

Recommended Best Practice

Any individual appointed to a state board should disclose all contracts with the board or with the state in which the individual has an interest.

► **State Contract-Related Conflicts of Interest** (Governmental Ethics Act, 5 ILCS 420/3A-35)

An appointed member of a state board authorized or created by state law or executive order of the governor, may not have or acquire a contract or a direct financial interest in a contract with the state that is related to the board on which they sit. This restriction applies during the appointee's term of office and for one year after the conclusion of the appointee's term. This restriction also applies to the appointee's spouse or an immediate family member of the appointee living in the appointee's residence.

Whistle Blower Protection

(Ethics Act, Article 15 and Whistleblower Act 740 ILCS 174/1 et seq.)

State employees, including appointees, may be reluctant to report violations of the law, rules, or regulations out of fear that those affected by their report will do something to harm them or their careers. Such **retaliation is against the law**.

An officer, state employee (or appointee), or state agency may not lawfully take any retaliatory action against a state employee for:

- disclosing or threatening to disclose to a supervisor or to a public body an activity, policy, or practice of any executive or legislative branch constitutional officer, member of the General Assembly, state agency, or other state employee that the state employee reasonably believes is in violation of a law, rule, or regulation;
- providing information or testifying before any public body about any violation of a law, rule, or regulation by any executive or legislative branch constitutional officer, member of the General Assembly, state agency, or other state employee; or

- assisting or participating in a proceeding to enforce the State Officials and Employees Ethics Act.

Retaliatory action means the reprimand, discharge, suspension, denial of promotion, demotion, transfer or change in the terms or conditions of the state employee's employment, taken in retaliation for a state employee's involvement in a protected activity.

Whistle blower protections do not however prohibit a state employee from being disciplined for matters unrelated to the above-listed protected activities. For example, a state employee who discloses an unlawful act of another state employee may still be disciplined for failing to complete a required work assignment. Such discipline is allowable if it is demonstrated by clear and convincing evidence that the discipline (in this example, for failing to complete a work assignment) would have been imposed in the absence of the employee's disclosure of the unlawful act.

If a state employee retaliates against another state employee for reporting a violation of law or assisting in an investigation, then the individual taking the retaliatory action may be subject to disciplinary action up to and including discharge by his or her state agency, as well as potential administrative action by the Executive Ethics Commission for violating the Ethics Act. In addition, the employee subjected to the retaliatory action could file a lawsuit seeking compensation and other remedies as provided by law.

A list of potential remedies, including but not limited to reinstatement of employment and back pay, may be found in the State Officials and Employees Ethics Act (5 ILCS 430/15-25). The state circuit courts have jurisdiction to hear cases brought under this section of the Ethics Act.

In addition to the remedies available under the Ethics Act, protections are available to any employee or appointee under the Illinois Whistleblower Act. Under the Whistleblower Act, it is generally unlawful for any employer to retaliate or **threaten retaliation** for an employee's disclosure of information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a state or federal law, rule, or regulation.

If an employer retaliates against an employee in violation of the Whistleblower Act, the employee may bring a civil action against the employer that may result in:

- reinstatement of employment and seniority rights;
- back pay, with interest; and
- compensation for any damages including litigation cost, expert witness fees, and reasonable attorney's fees.

Reporting Violations of Law, Rule, Regulation, or Policy

(Administrative Order #6, 2003) **OEIG Hotline: 866-814-1113**

If you witness misconduct or have evidence of it, you should report it to the proper authorities.

To report a **non-emergency violation** of law, rule, or regulation, you should contact the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) via its **toll-free Hotline at 866-814-1113**. Questions and/or reports of alleged violations may also be submitted via the Internet at: <http://www.inspectorgeneral.illinois.gov>. For those who require accommodations for the differently-abled, the OEIG may also be contacted toll-free via a telecommunications device for the disabled (TDD) at 888-261-2734.

Alleged violations may be reported to the OEIG anonymously.

In the event of an emergency situation such as those involving the illegal possession or use of a weapon, you should contact the Illinois State Police or other police agency that can provide the fastest response (for example, by dialing "911").

Rights and Responsibilities during Investigations

(Ethics Act, Section 20-70, EEC rules, 2 Ill. Admin. Code Section 1620.300, and Administrative Order #6, 2003)

State employees who become involved in an investigation conducted by the Office of Executive Inspector General have both rights and responsibilities. As a state employee, you have an obligation to cooperate in such investigations. You must participate in interviews as requested, tell the truth, and not withhold information. Failure to cooperate includes, but is not limited to, intentional omissions and knowing false statements, and is grounds for disciplinary action, including dismissal.

In the course of an investigation, investigators may request information from any person when the information is deemed necessary for the investigation. The executive inspector general may issue subpoenas to compel the attendance of witnesses and the production of documents and other items for inspection and copying.

In particular, the executive inspector general may request that any state employee truthfully answer questions concerning any matter related to the performance of his or her official duties. If so requested, no statement or other evidence therefrom may be used against the employee in any subsequent criminal prosecution, unless the employee consents.

Requests for production or viewing of documents or physical objects under state agency control must be made in writing by an executive inspector general. If the recipient of such a request believes that the release of the subject matter of the request might violate existing rights under state or federal law, the recipient has the right to seek a determination from the Executive Ethics Commission relative to such rights or protections.

As a state employee, you have various additional rights during investigations, including but not limited to those resulting from EEC rules (2 Ill. Admin. Code Section 1620.300), which specify:

- If investigators reasonably believe an employee who is the subject of the investigative interview will likely face discipline, the investigators must notify the employee whether the underlying investigation is criminal or administrative in nature.

- If the underlying investigation is administrative in nature, the interviewee must be presented a form that outlines the interviewee's rights during the interview, including the right to presence of a union representative or coworker uninvolved in the investigation.
- If the underlying investigation is **criminal** in nature, the interviewee must be presented a form that outlines the interviewee's rights during the interview, including the right to the presence of **an attorney**, union representative or coworker uninvolved in the investigation.

It is the policy of the OEIG that OEIG investigators will present the interviewee with an OEIG form outlining the interviewee's rights unless OEIG investigators reasonably believe at the time of an interview that there are no circumstances under which an interviewee will be subject or likely to face discipline or adverse action.

Investigators may not infringe upon a state employee's right to seek advice from their ethics officer on the interpretation and implementation of the Ethics Act, or to seek advice from private legal counsel.

The full text of the rules governing OEIG investigations may be found at the EEC's website: <http://www2.illinois.gov/eec>.

Ex Parte Communications

(General definition: "Ex Parte" – A Latin term meaning from one party. An ex parte communication is one that is made in the absence of others who are affected by it.)

Laws govern how information received by state agencies and their employees in relation to rulemaking and regulatory, quasi-adjudicatory, investment, procurement, and licensing procedures must be treated, especially when information is received by state employees outside of a public forum. These laws are intended to make these procedures fair and to ensure that related communications received by the state and its employees are appropriately disclosed to others who are interested in the subject of the communications.

Most state employees are not affected by laws governing ex parte communications; however, if you are an employee of or appointee to one of the several entities listed on the following page or are involved in procurement activities or formal rulemaking, it is especially important that you understand these requirements. If you have questions about ex parte communications, please seek appropriate counsel, such as by talking to your board's ethics officer.

There are similar but different requirements related to ex parte communications that apply to (1) rulemaking under the Administrative Procedures Act and (2) regulatory, quasi-adjudicatory, investment, and licensing matters under the Ethics Act. In addition, the Executive Ethics Commission has established specific reporting requirements related to ex parte communications. Also, there are reporting requirements related to ex parte communications that apply to procurement matters under the Procurement Code. These various requirements are discussed below.

► **Ex Parte Communications in Rulemaking** (Administrative Procedures Act, 5 ILCS 100, Section 5-165)

Under the Illinois Administrative Procedures Act, an ex parte communication is defined as any written or oral communication by any person during the rulemaking period that provides or requests information of a material nature or makes a material argument regarding potential action concerning an agency's (or board's) general, emergency, or preemptory rulemaking that is communicated to the head of the agency or an employee of the agency, and is:

- not made in a public forum;
- not a statement limited to matters of procedure and practice; and
- not a statement made by a state employee to fellow employees of the same board or agency.

An ex parte communication that is received by any agency or board, its head, or its employee must be immediately reported to the agency or board's ethics officer. The ethics officer must require that the communication be made a part of the record for the rulemaking proceeding and must promptly file the communication with the Executive Ethics Commission. **These requirements under the Illinois Administrative Procedures Act apply to all state agencies and boards.**

The intent of this section of the Administrative Procedures Act is to ensure that all parties who are interested in **administrative rules** under consideration by a state agency or board are made aware of communication that may occur outside of a public forum between the agency or board and other interested parties.

► **Ex Parte Communications in Regulatory, Quasi-Adjudicatory, Investment, and Licensing Matters** (Ethics Act, Section 5-50)

Requirements that are different from (albeit seemingly similar to) those explained above, apply to ex parte communications involving only the following state agencies:

Executive Ethics Commission
Illinois Commerce Commission
Educational Labor Relations Board
State Board of Elections
Illinois Gaming Board
Health Facilities and Services Review Board
Illinois Workers' Compensation Commission
Illinois Labor Relations Board
Illinois Liquor Control Commission
Pollution Control Board
Property Tax Appeal Board
Illinois Racing Board
Illinois Purchased Care Review Board
State Police Merit Board
Motor Vehicle Review Board
Prisoner Review Board
Civil Service Commission
Personnel Review Board for the Treasurer
Merit Commission for the Secretary of State

Merit Commission for the Office of the Comptroller
Court of Claims
Board of Review of the Dept. of Employment Security
Department of Insurance
Department of Professional Regulation and its licensing boards*
Department of Public Health and its licensing boards
Office of Banks and Real Estate and its licensing boards**
State Employees' Retirement System Board of Trustees
Judges' Retirement System Board of Trustees
General Assembly Retirement System Board of Trustees
Illinois Board of Investment
State Universities Retirement System Board of Trustees
Teachers' Retirement System Board of Trustees

* The Department of Professional Regulation is a division of the Department of Financial and Professional Regulation

** The Office of Banks and Real Estate is a division of the Department of Financial and Professional Regulation

Under the Ethics Act, an ex parte communication is defined as any written or oral communication by any person that imparts or requests information of a material nature or makes a material argument concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by a state agency or board, that is:

- not made in a public forum;
- not a statement limited to matters of procedure and practice; and
- not a statement made by a state employee to fellow employees of the same board or agency.

An ex parte communication received by an agency or board, its head or an agency or board employee/appointee from an interested party or its representative, must be promptly made a part of the related official record. "Interested party," means a person or entity whose rights, privileges, or interests are a subject of the matter under consideration by the agency or board.

An ex parte communication received by an agency or board, its head, or an agency or board employee/appointee from **other than** an interested party or its representative must be reported to the agency's or board's ethics officer. The ethics officer must promptly require the communication to become a part of the record and will promptly file the communication with the Executive Ethics Commission.

The intent of this section of the Ethics Act is to ensure that all parties who are interested in certain matters under consideration by the above-listed state agencies are made aware of related communications that may occur outside of a public forum between those state agencies and other interested parties.

► **Applicable EEC Rules** (EEC Rules, 2 Ill. Admin. Code Section 1620.820):

The rules of the Executive Ethics Commission require that any state officer or employee who:

- receives an ex parte communication from a non-interested party as excluded by Section 5-50(b-5) and Section 5-50(d) of the Ethics Act; or
- receives an ex parte communication from any person that imparts or requests material information or makes a material argument regarding an agency's rulemaking pursuant to Section 5-165 of the Illinois Administrative Procedures Act shall report this communication within seven days to his or her agency's ethics officer.

The full text of the EEC's rule may be found at its website: <http://www2.illinois.gov/eec>.

► **Procurement Communications Reporting** (30 ILCS 500/50-39 and EEC rules, 2 Ill. Admin. Code Section 1620.825)

Among its goals, the Illinois Procurement Code is intended to ensure that state purchases are made fairly and in the best interests of the state. The Procurement Code requires that employees be informed, via annual ethics training, of requirements to report certain communications received by state employees related to state procurement (purchasing) matters.

Under the Procurement Code, any written or oral communication received by a state employee who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a state contract and that imparts or requests **material information** or makes a **material argument** about an active **procurement matter**, must be reported to the state's Procurement Policy Board via its website: <http://pcrs.illinois.gov>.^{*} Communications must be reported as soon as practicable, but not more than 30 days after receipt. No trade secrets or other proprietary information shall be included in any communication reported to the Procurement Policy Board.

- * With respect to the Illinois Power Agency, the communication must be reported by the initiator of the communication, and may be reported also by the recipient.

A procurement communication must be reported if it satisfies all four of the following criteria:

1) It is material

Material information is information that is potentially relevant to determining a course of action, such as information pertaining to price, quantity, and terms of payment or performance.

A **material argument** is a communication that is made to influence a decision relating to a procurement matter. It does not include communications that are limited to general information about products, services, or industry best practices, or a response to a state employee's request for information to evaluate new products, trends, services, or technologies.

In determining whether a procurement communication is material, state employees must consider:

- whether the information conveyed is new or already known; and
- the likelihood that the information would influence a pending procurement matter.

2) It is in regard to a potential action

A **potential action** is one that could affect the initiation, development, or outcome of a procurement matter.

3) It relates to an active procurement matter

An “**active procurement matter**” means a **procurement process** beginning with requisition or determination of need by an agency and continuing through the publication of an award notice or other completion of a final procurement action, the resolution of any protests, and the expiration of any protest or Procurement Policy Board review period, if applicable. “Active procurement matter” also includes communications relating to change orders, renewals, or extensions.

Procurement processes, unless otherwise excluded, are processes of procuring:

- goods, supplies, services, professional or artistic services, construction, leases of real property, capital improvements; and,
- master contracts, contracts for financing through use of installment or lease-purchase agreements, renegotiated contracts, amendments to contracts, and change orders.

Examples of **active** procurement matters include activities such as:

- drafting, reviewing, or preparing specifications, plans, or requirements, including determining the method of source selection;
- drafting, reviewing, or preparing any invitations for bid, requests for proposals, requests for information, sole source procurement justifications, emergency procurement justifications, or selection information;
- evaluating bids, responses, or offers, other communications among an evaluation team and any technical advisors to the team relating to the evaluation of a procurement not yet awarded;
- letting or awarding a contract;
- resolving protests;
- determining inclusion on prequalification lists or prequalification in general;
- identifying potential conflicts of interest or voiding or allowing a contract, bid, offer or subcontract for a conflict of interest;
- allowing a conflict or subcontract pursuant to Section 50-60 of the Illinois Procurement Code; and
- determining, drafting, preparing, executing, denying or approving change orders or the renewal or extension of an existing contract.

4) It is not excluded from the reporting requirements

Exclusions to the reporting requirements include, for example:

- statements by a person publicly made in a public forum;

- statements regarding matters of procedure and practice, such as the format, the number of copies required, the manner of filing, and the status of a matter;
- statements made by a state employee to other employees of the same agency or to employees of the Executive Ethics Commission;
- communications regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of an existing contract, which must be reported;
- unsolicited communications providing general information about products, services or industry best practices, before those products or services become involved in a procurement matter; and
- communications received in response to solicitations pursuant to the Illinois Procurement Code (vendor responses to RFPs).

Reports of procurement communications must include:

- the date, time and duration of each communication;
- the identity of each person from whom each communication was received, the individual or entity represented by that person, and any action requested or recommended by that person;
- the identity and job title of the person to whom each communication was made;
- the identity and job title of the person providing a response to each communication, if a response is made;
- a detailed summary of the points made by each person involved in the communication;
- the location(s) of all persons involved in the communication (including their phone numbers, if via telephone); and
- any other pertinent information.

For a more complete explanation of procurement communications reporting requirements, please visit the Procurement Policy Board's website (<http://ppb.illinois.gov>). Rules related to procurement communications reporting may also be found at the EEC's website: <http://www2.illinois.gov/eec>.

If you have any questions concerning whether or not a communication is subject to these ex parte rules, you may seek the advice of your state board's ethics officer.



Ex Parte Communications Lesson Review Scenario

Review Scenario #8

Sandra is a state board appointee and manages the competitive bidding process for her board. She recently received an email from a business owner that asked for information explaining the process for submitting bids. Does Sandra need to report this inquiry to anyone?

- A. No, since the message was limited to matters of procedure and practice.
- B. Yes. Sandra needs to report it to her board's ethics officer.
- C. Yes. Sandra needs to report it to the Procurement Policy Board.

Select the best answer(s) and then compare your response to the explanation below.⁸

Disclosure of Economic Interests

(Illinois Governmental Ethics Act, 5 ILCS 420 et seq.)

Members of a state board or commission created by the Illinois Constitution and candidates for nomination or election to such a board or commission are among those individuals required by law to annually (by May 1 of each year) file a statement of economic interests with the secretary of state.

Generally, the requirement to file statements of economic interests also applies to compensated state employees who:

- are, or function as, the head of a department, commission, board, division, bureau, authority or other administrative unit within state government, or who exercise similar authority within state government;
- have direct supervisory authority over, or direct responsibility for the formulation, negotiation, issuance or execution of contracts entered into by the state in the amount of \$5,000 or more;
- have authority with respect to the issuance or promulgation of rules and regulations within areas under the authority of the state;
- have authority for the approval of professional licenses;
- have responsibility for the financial inspection of regulated nongovernmental entities;
- adjudicate, arbitrate, or decide any judicial or administrative proceeding, or review the adjudication, arbitration, or decision of any judicial or administrative proceeding within the authority of the state;
- have supervisory responsibility for 20 or more state employees;
- negotiate, assign, authorize, or grant naming rights or sponsorship rights regarding any property or asset of the state, whether real, personal, tangible, or intangible; or
- have responsibility with respect to the procurement of goods and services.

It is the responsibility of the chief administrative officer of each state agency to annually certify to the secretary of state the names and addresses of those individuals who are required to file a statement. If you are subject to the requirement to file a statement of economic interests, on

⁸ The best response to Review Scenario #8 is A. In this instance, the business owner's communication was not material and need not be reported. If it had been material, under the Procurement Code, any written or oral communication received by a state employee that imparts or requests material information or makes a material argument about a procurement matter, must be reported to the state's Procurement Policy Board via its website: <http://pcrs.illinois.gov>.

or before April 1 annually, the secretary of state will notify you of the need to file a statement. This notification typically includes a form for filing the statement. Alternatively, the form may be obtained via the secretary of state's website at:
http://www.cyberdriveillinois.com/publications/pdf_publications/i188.pdf.

The information required for disclosure via a statement of economic interests includes, for example, but is not limited to:

- the name and means of ownership that a member of a state board or commission may have in any entity doing business in the state of Illinois, in which the ownership interest is in excess of \$5,000 (including, for example, real estate or stock, but not including a time deposit in a bank nor any debt instrument);
- the name and address of any professional organization in which the board or commission member is an officer, director, associate, partner, or proprietor from which the member derived income in excess of \$1,200 during the preceding calendar year;
- the identity (such as, the address or legal description) of any capital asset such as real estate from which a capital gain of \$5,000 or more was realized during the preceding year;
- the identity of any compensated lobbyist with whom the member maintains a close economic association; and
- the name of any entity doing business in the state of Illinois from which income in excess of \$1,200 was derived by the member during the preceding calendar year.

If you have a question about a statement of economic interests, you may seek the advice of your state board's ethics officer.

Truthful Oral and Written Statements

"The OEIG also concludes that [the respondents] attempted to and did withdraw funds from their own deferred compensation accounts ... based on false information and ... fraudulent documents ..." (OEIG Case #12-02104)

– These are words from a publicly released OEIG investigative report regarding two CTA employees who attempted to withdraw funds from another CTA employee's deferred compensation account, among other misconduct. Both employees resigned.

It is vital to the integrity of state government that all oral and written statements made by you, in your official capacity as a state appointee, be made in what you believe to be an honest and truthful manner. This requirement applies to all means of communications and applies to documents, including, but not limited to:

- time sheets;
- employment or appointment applications;
- statements of economic interests;
- state board or commission rulings, orders, decisions, findings, etc.; and

- letters, emails, and reports.

Falsification of official documents or untruthful statements made in the conduct of state business are unethical, may violate state policies or law and may subject a state employee or appointee to administrative action up to and including fine and/or termination of state service, and in some instances may result in criminal prosecution.

State Agency Policies

"... [The respondent] improperly authorized or awarded DHS ... benefits to numerous individuals, in violation of multiple DHS policies and procedures related to processing benefits ..." (OEIG Case #08-00494)

– This language is taken from a publicly released OEIG final report. The OEIG found that an employee of the Department of Human Services (DHS) violated multiple DHS policies by, among other misconduct, using other individuals' Link cards for unauthorized purposes.

It is important that state employees, including appointees, adhere to those applicable laws, rules, policies, or regulations that are unique to their state agencies, including, in the case of appointees, those that are specific to their boards or commissions. State board policies may include for example:

- a quorum requirement, which dictates that a minimum number of appointees be present in order for the board or commission to conduct official business;
- rules specifying limitations or requirements related to how an appointee might designate someone to act in his or her absence at a state board meeting;
- rules explaining how board or commission decisions will be made or how its meetings will be conducted;
- requirements that minutes be kept and/or published for each board or commission meeting;
- specifications regarding how a board or commission may operate in "executive" or "closed" session;
- term limitations which dictate how long an appointee may serve on a state board or commission;
- restrictions or reporting requirements related to conflicts of interest; and
- requirements for board employees to avoid being tardy, strictly limit lunch and break periods, and not misuse or abuse state resources by, for example, using state telephones, computers, vehicles, office supplies, or time for personal business.

Please be aware that many laws and rules, including the Ethics Act, are applicable to appointees even in instances where an appointee is not compensated or serves on a board or commission that is only advisory in nature or serves on a board that meets only intermittently or is convened for a limited period of time. These laws and rules may, for example, prevent those who are not formally appointed (or otherwise properly designated in accordance with

applicable rules, law, or policy) from participating in state board decisions. Under certain circumstances, individuals who participate in official state business without proper authority may be subject to criminal prosecution (e.g., for "official misconduct").

There may also be policies that are specifically applicable to a particular state agency, board, or commission that may be more restrictive than the more general laws and rules that apply to all state employees. These policies may include, for example:

- restrictions concerning the solicitation or acceptance of gifts, which may be more stringent than the general gift ban contained within the State Officials and Employees Ethics Act;
- prohibitions on certain political activities, which may be more restrictive than those prohibitions contained within the State Officials and Employees Ethics Act;
- rules governing purchasing procedures;
- special time reporting or other personnel-related rules;
- hiring practices; and
- a code of conduct.

It is important that you familiarize yourself with all the laws, rules, and policies that apply to you, and that you abide by them. If necessary, you may ask the chairperson of the board or commission which you serve, its legal counsel, its chief administrative officer (e.g., its staff's executive director, if one exists), its ethics officer, or private legal counsel for guidance concerning those laws and rules that apply to your service to the state.

Penalties

Penalties for violations of ethics-related laws, rules, and policies by state employees and appointees depend upon the specific circumstances. Penalties may include disciplinary action up to and including termination of employment or appointment. In addition, the Executive Ethics Commission may levy administrative fines in the case of violations of the Ethics Act. Illegal acts, such as bribery or official misconduct, may result in referrals to the appropriate authorities for criminal prosecution. Penalties for revolving door violations may include assessments of up to three times a former state employee's post-state total annual compensation.

Disciplinary action under the State Officials and Employees Ethics Act against a person subject to the Ethics Act is under the jurisdiction of the Executive Ethics Commission. Any hearing to contest disciplinary action for a violation of the Ethics Act by a person subject to the Personnel Code pursuant to an agreement between the executive inspector general and an ultimate jurisdictional authority will be conducted by the Executive Ethics Commission.

Ethics Questions or Concerns

State board employees and appointees who have questions or concerns about a work-related ethics issue may contact their board's ethics officer. Under the Ethics Act, ethics officers, among their other duties, provide guidance to state employees, including appointees, in the

interpretation and implementation of the Ethics Act, which guidance employees may in good faith rely upon.

Examples of the Ethical Obligations of State Employees and Appointees

The following are examples of actions or situations concerning the various ethical obligations of state employees, appointees, and officials:

1. **Situation:** A state board appointee uses her state-issued cell phone to solicit donations to a political action committee during her non-compensated time.

Ethical Assessment: The Ethics Act prohibits the intentional misappropriation of state resources for political activities at all times; regardless if it occurs during compensated time or not.

2. **Situation:** A vendor of a state board offers a board member tickets to a sporting event with a total value of \$350.

Ethical Assessment: With a very few exceptions, the Ethics Act prohibits a state vendor from offering a gift of that value to a state board member, and also prohibits the board member from accepting such a gift.

3. **Situation:** A former state board member receives an offer of consulting fees from the parent company of an entity subject to a regulatory decision made by the former member.

Ethical Assessment: No former state board appointee may within a period of one year after termination of state service knowingly accept fees for services from an entity if the appointee, during the year immediately preceding termination of his or her appointment, participated personally and substantially in making a regulatory decision that directly applied to the entity, or its parent or subsidiary.

4. **Situation:** A state board appointee uses his state-provided computer to view pornographic images.

Ethical Assessment: Intentionally accessing such material using a state computer is unethical and in most instances is specifically prohibited by state agency or board policies. Violation of such policies will result in disciplinary action, up to and including, termination of state employment or appointment, and may, depending on the circumstances, result in criminal prosecution.

5. **Situation:** A state board appointee decides that she is not required to complete a time sheet recording the time she spends conducting state business because she does not receive compensation from the state.

Ethical Assessment: The Ethics Act mandates policies that apply to state boards, which require board employees and appointees to periodically submit time sheets documenting the time spent each day on official state business to the nearest quarter hour.

6. **Situation:** A vendor to a state board offers to buy supplies from a company controlled by a board member if that member seeks to get other board members to approve the vendor's license application.

Ethical Assessment: It is unethical and unlawful for state board employees or appointees to trade favors with others for an official action. Such conduct will result in discipline up to and including termination of employment/appointment, and possible criminal prosecution.

7. **Situation:** A state board appointee finds out that a board employee has filed a complaint with the OEIG concerning another employee's alleged violation of the law. The appointee asks the employee's supervisor to give the employee a bad annual performance review because the subject of the complaint is a friend of the appointee.

Ethical Assessment: The Ethics Act prohibits any state appointee, employee, or agency from taking any retaliatory action against a state employee for disclosing or threatening to disclose to a supervisor or to a public body an activity that the employee reasonably believes is in violation of a law, rule or policy.

8. **Situation:** A state board appointee asks a board employee to proofread a speech that the appointee will make as part of the appointee's non-state employment.

Ethical Assessment: It is improper for a state board member to ask a state employee to engage in any activity that is not official state business or is not allowed by the board's policies during the employee's scheduled work times or while misappropriating state property or resources.

9. **Situation:** A state board member offers to approve a regulatory rule change in return for a contribution to a campaign for elective office.

Ethical Assessment: State board appointees, or employees, may not promise anything of value related to state government in consideration for a contribution to any entity that has as one of its purposes the financial support of a candidate for elective office.

10. **Situation:** A state board appointee has a long-standing friendship with the head of a company that is regulated by his state board.

Ethical Assessment: The appointee should inform the board that he has a conflict of interest regarding the company that his friend manages, and recuse himself from all matters involving the board and that company.

11. **Situation:** A state board appointee submits an expense report to her board for reimbursement of mileage and toll costs that the appointee did not actually incur.

Ethical Assessment: Falsification of official documents, or untrue statements made in the conduct of state business are unethical, may violate state policies or law, and may subject a state employee or appointee to administrative action up to, and including, fine and/or termination of state employment. In some instances, it may also result in criminal prosecution.

12. **Situation:** A state board appointee is responsible for the procurement of goods and services for her board. This appointee is also a full-time employee of an entity doing business in Illinois.

Ethical Assessment: Generally, a statement of economic interests must be annually submitted to the secretary of state by those appointees who have responsibility with respect to procurement of goods and services. This statement must contain the name of any entity doing business in the state of Illinois from which income in excess of \$1,200 was derived by the state appointee during the preceding calendar year.

13. **Situation:** While on a break in a state office building, a state board appointee offers to make a campaign contribution to an acquaintance.

Ethical Assessment: Political contributions may not be intentionally solicited, accepted, offered, or made on state property by state board employees, appointees, or officers. An inadvertent solicitation, acceptance, offer, or making of a contribution is not a violation of the Ethics Act so long as reasonable and timely action is taken to return the contribution to its source.

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Acknowledgement of Participation in:

2015 Ethics Training for Appointees to State of Illinois Boards

I certify that I have carefully read and reviewed the content of, and completed, the 2015 Ethics Training for Appointees to State of Illinois Boards. Furthermore, I certify that I understand my failure to comply with the laws, rules, policies, and procedures referred to within this training course may result in disciplinary action up to and including termination of state employment/appointment, administrative fines, and possible criminal prosecution, depending on the nature of the violation.

Signature

Printed Name
(first, middle initial, last)

Month and Day of Birth
(for example, July 15)

Date

State Board, or Commission Name
(for example, Illinois Lottery Control Board)

(To be properly credited for participating in ethics training, please submit this form as directed by your state board)

