



Formal Advisory Opinion  
No. 1 of 2013

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## New Jersey State Legislature

### JOINT COMMITTEE ON ETHICAL STANDARDS

STATE HOUSE ANNEX  
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**NOTE: Pursuant to the Standard Operating Procedures of the Joint Legislative Committee on Ethical Standards, Section II, paragraph 4, the name of the requester and other identifying information has been redacted from this opinion.**

March 6, 2013

(Member of the Legislature)

Dear (Member)

You wrote to the Joint Legislative Committee on Ethical Standards (Joint Committee) in a letter dated March 6, 2012, asking whether you may take certain actions in light of the fact that in addition to being a (Member), you are the Mayor of (Municipality)<sup>1</sup> for which you receive an annual salary of \_\_\_\_\_.

You have asked whether you may take the following actions:

1. Sponsor and otherwise participate in legislation, including budget resolutions, which fund or otherwise directly benefit (Municipality); and
2. Represent, as Mayor, (Municipality) before State agencies, seeking funds and other benefits for (Municipality).

Initially, we note that the Joint Committee's response to your questions is limited to the Joint Committee's jurisdiction, which is primarily to interpret the Conflicts of Interest Law (Conflicts Law), N.J.S.A. 52:13D-12 et seq., and the Legislative Code of Ethics (Code), as they pertain to members of the Legislature and other Legislative Branch personnel.

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<sup>1</sup> Although the Legislature statutorily banned elected dual office holding for members of the Legislature in N.J.S.A. 19:3-5, that ban excepted existing dual office holding as of the effective date of the ban (February 1, 2008), which dual office holding remains excepted from the ban for so long as it is continuous. You have been Mayor of (Municipality) continuously since prior to that date and, accordingly, hold both offices in accordance with the N.J.S.A. 19:3-5.

Your first question raises the issue of “personal interest” as set forth in Code §2:9 and N.J.S.A. 52:13D-18. Copies of both the Code provision and statute are attached for your reference. The text of the Code definition of “personal interest” is broader than that found in the Conflicts Law, but the Joint Committee has interpreted them in the same way. They both prohibit a legislator from participating in the enactment or defeat of legislation in which the legislator, or a member of his or her immediate family, has a personal interest. Under the Conflicts Law, a member has a personal interest in legislation if “. . . by reason of his participation in the enactment or defeat of any legislation, he has reason to believe that he, or a member of his immediate family, will derive a direct monetary gain or suffer a direct monetary loss.” N.J.S.A. 52:13D-18b. This provision requires that a member have reason to believe that *by reason of his participation* he will derive the necessary benefit or suffer a detriment.

Under the Code, “‘personal interest’ means the member of the Legislature, or a member of his immediate family, believes or has reason to believe he will derive a direct monetary gain or suffer a direct monetary loss by the enactment or defeat of the legislation . . . .” §2:9. In addition, the Code contains language allowing the Joint Committee to direct a member to withdraw from participation if it finds that participation by the member would “. . . constitute a violation of the public trust or create an impression among the public of a violation of the public trust . . . .” Ibid. The Conflicts Law contains no comparable language.

Following the definitions of personal interest, both the Conflicts Law and the Code contain a “class exception” that exempts benefits or detriments that apply equally to a class of people to which the legislator belongs “. . . as a member of a business, profession, occupation or group . . . .” Ibid. Again, the wording is slightly different between the two provisions, but the interpretation has been the same. The Joint Committee has interpreted N.J.S.A. 52:13D-18 and section 2:9 of the Code to allow the widest possible participation by members of the Legislature in the enactment or defeat of legislation while still enforcing the personal interest provisions of the law and Code:

Dual office holding raises difficult ethical issues. In order to answer your first question about participating in legislation benefitting (Municipality), we need to establish that your salary as Mayor would not be dependant upon or increased by any such legislation. If that were the case, a direct monetary benefit would inure to you as a result of the legislation. If legislation increased salaries of all mayors in New Jersey,

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or all mayors in cities of a particular class, the Joint Committee would need to review that legislation specifically. Likewise, if some other situation were to arise where you would personally benefit financially from legislation, you should either refrain from participating or ask the Joint Committee for a determination. If your participation in the legislation would create a violation of the public trust, or create the impression that you have violated the public trust, you cannot participate in that legislation. Close issues should be brought to the Joint Committee for a determination prior to participating in the legislation.

Subject to the foregoing, the Joint Committee is of the opinion that you may, as a (Member), otherwise sponsor and participate in legislation beneficial to (Municipality), including budget resolutions benefitting (Municipality). That you may receive political good will from legislation that benefits (Municipality) is not, by itself, an ethical violation. The Joint Committee acknowledges that insofar as appearance, or creating an impression of a violation of the public trust is concerned, some limited deference must be given to your dual office holding which is allowed under the law.

Your second question concerns appearing before State agencies as the Mayor of (Municipality). N.J.S.A. 52:13D-16b. and Code §2:2c. generally prohibit a member of the Legislature from appearing before State agencies. Copies of both the statute and Code provision are attached. However, N.J.S.A. 52:13D-16c.(9) and Code §2:4i., specifically authorize certain State agency appearances on behalf of counties, municipalities and school districts.

N.J.S.A. 52:13D-16c.(9) provides that a member may appear -

(9) Before any State agency on behalf of a county, municipality or school district, or any authority, agency or commission of any thereof except where the State is an adverse party in the proceeding and provided he is not holding any office or employment in the State agency in which any such proceeding is pending.

Code §2:4i. provides that a member may appear before -

i. A State agency, other than the Legislature or any agency thereof, on behalf of a county, municipality or school district, or any authority, agency or commission of any thereof, except where the State is an adverse party in the cause, action or proceeding. The State shall not be

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considered an "adverse party" in a cause, action or proceeding where joinder of the State or a State agency as a party is required by law or order to protect possible incidental interests of the State (C.52:13D-16).


The Code provision prohibits the appearance, by a member of the Legislature, before the Legislature and agencies in the Legislative Branch ". . . on behalf of a . . . municipality . . . ." <sup>2</sup> You are also prohibited from appearing before State agencies when the State is an adverse party. Subject to these restrictions, and the caveat set forth in the final paragraph, you may appear before State agencies as Mayor on behalf of (Municipality) without violating the Conflicts Law or Code as a (Member). Whether such actions as Mayor would violate any other laws, or ethics codes for local officials, is not within the jurisdiction of the Joint Committee.

The Joint Committee cautions you that if specific situations arise where an appearance of impropriety may arise under Code §2:1 or if your actions may reflect poorly on the "good name, integrity and reputation of the Legislature" (Joint Rule 19), you should bring the specific question to this committee prior to taking action. Code §2:1 and Joint Rule 19 are attached for your reference.

Very truly yours,

JOINT COMMITTEE ON ETHICAL STANDARDS

Albert Porroni  
Counsel

By:   
James G. Willson  
Assistant Counsel

AP:W/pca

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<sup>2</sup> This raises the issue under Code §2:4i. of whether you may appear before the Legislature and its standing reference committees concerning bills that affect (Municipality). Our answer, under a strict reading of the Code, is that you may address the (House) and testify (or speak as a committee member) on such bills only in your capacity as a (Member) and not as Mayor.

## LEGISLATIVE CODE OF ETHICS § 2:1

2:1. a. No member of the Legislature shall undertake any employment or act in any way that impairs the objectivity or independence of judgment of the member of the Legislature in the exercise of his or her duties or is violative of the public trust by an elected official or which creates a justifiable impression among the public that such trust is being violated (C.52:13D-12 and 52:13D-23).

b. No member of the Legislature shall accept from any person, directly or indirectly, whether by himself or through his spouse or a member of his family or through any partner or business or professional associate, any gift, favor, service, employment or offer of employment or any other thing of value, which he knows or has reason to believe is made or offered to him with the intent to influence him in the performance of his duties as a member of the Senate or General Assembly; but this section shall not apply to the acceptance of contributions to his campaign by a member of the Legislature who has announced his candidacy for any elective public office and the member has no knowledge or reason to believe that the campaign contribution is offered or given with the intent to influence the member in the performance of his public duties and responsibilities (C.52:13D-14).

c. No member of the Legislature shall use, or permit the use of, his or her official title in an endorsement or advertisement that promotes a for-profit enterprise or venture.

## Code of Ethics

2:2. Except as hereinafter provided in sections 2:3 and 2:4, no member of the Legislature nor any partnership or firm of which he is a member or any corporation in which he owns or controls an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with:

a. The acquisition or sale by the State or a State agency of any interest in real or tangible or intangible personal property (C.52:13D-15);

b. The acquisition by the State or a State agency of any interest in real property by condemnation proceedings (C.52:13D-15);

c. Any specific cause, proceeding, application or other matter before any State agency (C.52:13D-16).

## Code of Ethics

2:4. A member of the Legislature is authorized to represent, appear for or negotiate on behalf of, or agree so to do, any person other than the State in any proceeding before:

- a. Any court of record;
- b. The Division of Workers' Compensation;
- c. The Division of Taxation in connection with the determination or review of transfer inheritance or estate taxes;
- d. The Department of State in connection with the filing of corporate or other documents;
- e. The Division on Civil Rights;
- f. The New Jersey Board of Mediation;
- g. The New Jersey Public Employment Relations Commission;
- h. The Unsatisfied Claim and Judgment Fund Board, solely for the purpose of filing a protective notice of intention pursuant to P.L.1952, c.174, s.5 (C.39:6-65);
- i. A State agency, other than the Legislature or any agency thereof, on behalf of a county, municipality or school district, or any authority, agency or commission of any thereof, except where the State is an adverse party in the cause, action or proceeding. The State shall not be considered an "adverse party" in a cause, action or proceeding where joinder of the State or a State agency as a party is required by law or order to protect possible incidental interests of the State (C.52:13D-16).

## Code of Ethics

2:9. No member of the Legislature shall participate by voting or any other action on the floor of either House, in committee or elsewhere, in the enactment or defeat of legislation in which he has a personal interest.

The Joint Legislative Committee on Ethical Standards is authorized to investigate the circumstances giving rise to a question of personal interest and upon a finding, after a hearing thereon, that the member's participation with respect to the enactment or defeat of the legislation would constitute a violation of the public trust or create an impression among the public of a violation of the public trust, the joint committee shall direct the member to withdraw his sponsorship of, or participation in, the enactment or defeat of the legislation.

For the purpose of this section a "personal interest" means the member of the Legislature, or a member of his immediate family, believes or has reason to believe he will derive a direct monetary gain or suffer a direct monetary loss by the enactment or defeat of the legislation; a "personal interest" does not mean that by enactment or defeat of the legislation no benefit or detriment could be expected to accrue to him, or to a member of his immediate family, as a member of a business, profession, occupation or group, to any greater extent than any such benefit or detriment could be expected to accrue to any other member of such business, profession, occupation or group (C.52:13D-18).



**52:13D-16. Certain representations, prohibited; exceptions**

5. a. No special State officer or employee, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before the particular office, bureau, board, council, commission, authority, agency, fund or system in which such special State officer or employee holds office or employment.

b. No State officer or employee or member of the Legislature, nor any partnership, firm or corporation in which he has an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any cause, proceeding, application or other matter pending before any State agency. Nothing contained herein shall be deemed to prohibit any such partnership, firm or corporation from appearing on its own behalf. This subsection shall not be deemed to prohibit a member of the Legislature or an employee on the member's behalf from: (1) making an inquiry for information on behalf of a constituent, which may include ascertaining the status of a matter, identifying the statutes or regulations involved in a matter or inquiring how to expedite a matter; (2) assisting the constituent in bringing the merits of the constituent's position to the attention of a State agency; or (3) making a recommendation on a matter or indicating support for a constituent's position to a State agency if no fee, reward, employment, offer of employment, or other thing of value is promised to, given to or accepted by the member of the Legislature or an employee therefor, whether directly or indirectly, and the member or employee does not endeavor to use his official position to improperly influence any determination. As used in this subsection "constituent" shall mean any State resident or other person seeking legislative assistance. Nothing contained herein shall authorize contact with State agencies by members of the Legislature or their employees which is otherwise prohibited by the criminal law, this act or the Code of Ethics and nothing contained herein shall authorize contact with an administrative law judge or agency head during the hearing of a contested case.

c. Nothing contained in this section shall be deemed to prohibit any legislator, or any State officer or employee or special State officer or employee from representing, appearing for or negotiating on behalf of, or agreeing to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with any proceeding:

(1) Pending before any court of record of this State,

(2) In regard to a claim for compensation arising under chapter 15 of Title 34 of the Revised Statutes (Workers' Compensation),

(3) In connection with the determination or review of transfer inheritance or estate taxes,

(4) In connection with the filing of corporate or other documents in the office of the Secretary of State,

(5) Before the Division on Civil Rights or any successor thereof,

(6) Before the New Jersey State Board of Mediation or any successor thereof,

(7) Before the New Jersey Public Employment Relations Commission or any successor thereof,

(8) Before the Unsatisfied Claim and Judgment Fund Board or any successor thereof solely for the purpose of filing a notice of intention pursuant to P.L.1952, c.174, s.5 (C.39:6-65), or

(9) Before any State agency on behalf of a county, municipality or school district, or any authority, agency or commission of any thereof except where the State is an adverse party in the proceeding and provided he is not holding any office or employment in the State agency in which any such proceeding is pending.

L.1971,c.182,s.5; amended 1971, c.359, s.2; 1975, c.228; 1980, c.79, s.1; 1981, c.142, s.3; 1987, c.432, s.3; 1996, c.116.

**52:13D-18 Vote, other action by legislator or immediate family member with personal interest; prohibition.**

7. a. No member of the Legislature shall participate by voting or any other action, on the floor of the General Assembly or the Senate, or in committee or elsewhere, in the enactment or defeat of legislation in which he has a personal interest.

b. A member of the Legislature shall be deemed to have a personal interest in any legislation within the meaning of this section if, by reason of his participation in the enactment or defeat of any legislation, he has reason to believe that he, or a member of his immediate family, will derive a direct monetary gain or suffer a direct monetary loss. No member of the Legislature shall be deemed to have a personal interest in any legislation within the meaning of this section if, by reason of his participation in the enactment or defeat of any legislation, no benefit or detriment could reasonably be expected to accrue to him, or a member of his immediate family, as a member of a business, profession, occupation or group, to any greater extent than any such benefit or detriment could reasonably be expected to accrue to any other member of such business, profession, occupation or group.

L.1971,c.182,s.7; amended 2004, c.23.

## JOINT RULE 19

19. a. In addition to the duties and responsibilities imposed upon it by law, the Joint Committee on Ethical Standards shall have continuing authority to receive, investigate and report to the Senate and General Assembly with respect to allegations concerning the conduct or activities of members of the Legislature and employees of the Legislative Branch of the State Government reflecting upon the good name, integrity and reputation of the Legislature or any member thereof which may be referred to the Joint Committee by a concurrent resolution of the Legislature or considered by the Committee upon its own initiative. The respective members of the Joint Committee appointed from the Senate and the General Assembly shall constitute a standing committee of each House which shall have and exercise on behalf of each House the same continuing authority with respect to receipt and consideration of allegations, referred to either standing committee by resolution of the House or by the initiative of the members of the Committee, concerning the qualifications of the members of their respective Houses of the Legislature and the conduct or activities of members and employees reflecting upon the good name, integrity and reputation of the Legislature, a House or any member thereof. In the event any allegation considered or referred to the Joint Committee or to the standing committee of either House shall involve the qualifications, conduct or activities of a member of the committee, that member shall be disqualified from participation in the committee's consideration of such allegation and the President or Speaker shall appoint a replacement to fill such vacancy on the committee, during consideration of such allegation, from among the members of the House of the same party as the disqualified member.

b. The Joint Committee or the respective members thereof acting as a standing committee of the Senate or the General Assembly is authorized to retain and employ at the expense of the Legislature or of the Senate or General Assembly, as the case may be, the services of such experts and counsel as it shall deem necessary in connection with any investigation concerning the conduct or activities of a member of the Legislature.