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## New Jersey State Legislature

### JOINT COMMITTEE ON ETHICAL STANDARDS

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May 13, 2009

Honorable Mary Pat Angelini  
1955 Highway 34, Bldg. 2A  
Wall Township, NJ 07719

Dear Assemblywoman:

You have asked, through the Ethics Counsel, whether under subsection a. of section 2:5 of the Legislative Code of Ethics and N.J.S.A. 52:13D-19<sup>1</sup> you may enter into a contract with a State agency on behalf of Prevention First, a nonprofit corporation of which you are the Executive Director and Chief Executive Officer.

Subsection a. of section 2:5 provides, in part:

[n]o member of the Legislature shall knowingly himself, or by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$25 or more, made, entered into, awarded or granted by any State agency, except as provided in subsection b. of this section.

This provision prohibits you, as a member of the General Assembly, from contracting with a State agency if the contract is of the value of \$25 or more, unless you comply with subsection b. The prohibition applies not only to you, but also to any corporation you control. Section

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<sup>1</sup> With respect to legislators entering into contracts with State agencies, the analysis under N.J.S.A. 52:13D-19, which is part of the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., is identical to the analysis under section 2:5 of the code.

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2:5 does not define “control.” Nor is the term defined in the definitional section of the code, section 1:1; the comparable section of the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-13; or by case law. In this context, it does not seem to refer exclusively to ownership interests. Such an interpretation would render the provision unnecessary because the next clause addresses legislators who own more than one percent of the stock of a corporation. Rather “control” appears to refer to the authority to direct the corporation’s management and policies. This interpretation is consistent with the definition of the word in *Black’s Law Dictionary*, which defines “control” as “[t]he direct or indirect power to direct the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise . . . .” *Black’s Law Dictionary* 330 (7<sup>th</sup> ed. 1999). In addition, New Jersey’s statutory law regarding corporations contains a similar definition. N.J.S.A. 14A:6-14, which concerns liability of corporate directors, provides that “control” means “the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the corporation, whether through the ownership of voting shares, by contract or otherwise.”

Whether a person has the authority to direct the management and policies of a corporation depends on the particular facts of the situation. In your case, you describe your position at Prevention First as follows in your letter to James G. Willson, Assistant Counsel to the Joint Committee, dated March 11, 2009:

As Executive Director and CEO of Prevention First I am responsible for the day-to-day operations of the agency. This includes administering the programmatic and development activities along with managing the fiscal affairs of the organization. In addition, I also implement the policies of the Board of Trustees as well as providing vision and direction for Prevention First.

. . . I ultimately decide what public Request for Proposals (RFP) that Prevention First pursues based upon input from key management staff. The Board receives a report at their regularly scheduled meetings, detailing all RFP’s for which Prevention First has applied.

The description you have provided suggests that you have the authority to direct the management and, in conjunction with the Board, the policies of the agency. Therefore, it is the opinion of the Joint Committee that you, as Executive Director and CEO, control Prevention First within the meaning of subsection a. of section 2:5.


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The prohibition against entering into contracts of \$25 or more with State agencies also pertains to contracts "by any other person for his [the legislator's] use or benefit or on his account." In your letter of March 11, 2009, you state that the Board of Trustees determines your salary based upon an evaluation of your performance and that Prevention First does not give commissions or bonuses based upon particular contracts. While the Board may not directly link your compensation to the value of contracts awarded, such contracts could be a factor in evaluating your overall performance. In 2009, Prevention First anticipates receiving \$777,069 from State (presumably State agency) sources, which equals forty percent of its projected income. Forty percent is a significant portion, which may affect your evaluation and, ultimately, your salary. For this reason, it is the opinion of the Joint Committee that State agency contracts entered into by Prevention First are at least in part for your benefit.

Because you are subject to subsection a. of section 2:5 of the code, you may only enter into a contract with a State agency of \$25 or more on behalf of Prevention First if you comply with subsection b. of that section. Subsection b. provides that the general prohibition found in subsection a. does not apply to three categories of contracts. The three categories are: (1) contracts made after public notice and competitive bidding; (2) contracts that may be awarded without public advertising and competitive bidding pursuant to N.J.S.A. 52:34-10 or similar applicable provisions; and (3) any contract of insurance entered into by the Director of the Division of Purchase and Property pursuant to N.J.S.A. 52:27B-62. In each case, prior approval from the Joint Committee is required. Subsection b. also addresses the procedure for obtaining the approval of the Joint Committee to bid on or negotiate a State agency contract.

Very truly yours,

JOINT COMMITTEE ON ETHICAL STANDARDS

  
Albert Porrone  
Counsel

AP/pca