



Formal Advisory Opinion
No. 3 of 2013

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New Jersey State Legislature

JOINT COMMITTEE ON ETHICAL STANDARDS

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July 23, 2013

Honorable Jack M. Ciattarelli
50 Division St., Ste. 200
Somerville, NJ 08876

Dear Assemblyman:

You have asked whether your relationship with Collaborative Support Programs of New Jersey (CSP), is a violation of N.J.S.A. 52:13D-19 and Legislative Code of Ethics (Code) §2:5. These provisions concern members of the Legislature contracting with State agencies. In the relevant part, subsection a. of N.J.S.A. 52:13D-19 provides:

No 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 \$25.00 or more, made, entered into, awarded or granted by any State agency, except as provided in subsection b. of this section.

Subsection a. of section 2:5 of the Code is practically, and in all ways relevant to your inquiry, identical.

The facts, as relayed by you in your request of April 29, 2013, to the Joint Legislative Committee on Ethical Standards (Joint Committee), unless otherwise noted, are as follows.

- You are a member of the New Jersey General Assembly from District 16 and initially took office on December 5, 2011. (New Jersey Legislative Manual, 2012, Skinder-Strauss Associates, pages 272-273).
- You are the sole owner of JMC Real Estate Holdings, LLC, (JMC) which subjects you to the provisions of N.J.S.A. 52:13D-19 and Code §2:5 to the same extent as JMC may be subject to those provisions.
- JMC is the owner of real property located at 166 West Main Street, Somerville, New Jersey (property). The property is 75% occupied by Galen Publishing, which you own. The other 25% of the property is leased by CSP and occupied by Freedom Trail. You have called Freedom Trail a “subsidiary” of CSP. For the purpose of this analysis we will accept your representation in this regard without delving further into that legal relationship. The lease between JMC (you) and CSP, together with all extensions and modifications, is the relevant legal document regarding tenancy of that portion of the property.
- CSP is a private not-for-profit corporation providing mental health services to the community.
- Freedom Trail also provides mental health services to the community as a private entity.
- CSP receives all of its funding from a publicly noticed and competitively awarded contract from the New Jersey Department of Human Services, Division of Mental Health Services.
- The initial lease between JMC and CSP commenced in 2007 for a term of three years to expire on June 30, 2010. The lease was modified in 2009 to extend the term to June 30, 2012 and to provide for automatic two-year renewals unless either party provides a notice of non-renewal.
- Neither you nor any family members have an employment or ownership in either CSP or Freedom Trail. Your only connection with either entity is as the landlord of the property through the lease between JMC and CSP. (Email from Andrew Wynne on your behalf.)

In summary, through the JMC lease to CSP, CSP/Freedom Trail has been your tenant since prior to the time you became a member of the General Assembly. The lease now automatically renews unless either party terminates the lease. The lease

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appears to be at or below fair market value. While CSP receives its funding from a State agency, CSP is not a State agency as defined in N.J.S.A. 52:13D-13a., which definition reads as follows:

a. "State agency" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and, to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.

Accordingly, having CSP/Freedom Trail as a tenant does not violate N.J.S.A. 52:13D-19 because CSP is not a State agency.

The Joint Committee calls N.J.S.A. 52:13D-18 and Code §2:9 (copies attached) to your attention. The law and Code provisions concern personal interest. 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.

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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.

If a 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 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. You could also consult Ethics Counsel.

Very truly yours,

JOINT COMMITTEE ON ETHICAL STANDARDS

Albert Porroni
Counsel

By: 
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Assistant Counsel

AP:W/pca
Enclosures

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-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.