

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 189

WHEREAS, it is essential that all persons supplying goods or services to the State of New Jersey, or performing contracts or otherwise executing public works with the assistance of and subject to the approval of the State, must meet a standard of responsibility which assures the State and its citizens that such persons will both compete and perform honestly in their dealings with the State and avoid conflicts of interest; and

WHEREAS, the New Jersey Conflicts of Interest Law prohibits State officers or employees and special State officers or employees from having any interest or engaging in any activity that is in substantial conflict with the proper discharge of their duties in the public interest or from undertaking any employment or service which might reasonably be expected to impair their objectivity or independence of judgment; and

WHEREAS, the New Jersey Conflicts of Interest Law prohibits State officers or employees and special State officers or employees from acting in their official capacity in any matter wherein they have a direct or indirect personal financial interest which might reasonably be expected to impair their objectivity or independence of judgment; and

WHEREAS, N.J.S.A. 52:34-19 provides that it shall be a misdemeanor to pay any fee, commission, compensation, gift or gratuity of any kind, directly or indirectly, to any person employed by the Department of the Treasury or to any other person in the employ of the State having any duties or responsibilities in connection with the purchase or acquisition of any property or services by the State or any agency or instrumentality thereof by or on behalf of any seller or supplier of such goods or services or other party to a contract with the State; and

WHEREAS, it is essential that persons providing goods or services to, or performing contracts for, the State be fully informed of the policies of the State concerning their relationships with State officers or employees and special State officers or employees and that these policies be uniformly applied by the various agencies of the Executive Branch; and

WHEREAS, it is therefore necessary to supplement Executive Order No. 34 (1976), which provides the grounds and procedures applicable to the debarment, suspension and disqualification of State vendors, to encompass appropriate standards prohibiting conflicts of interest on the part of present and prospective State vendors;

NOW, THEREFORE, I, THOMAS H. KEAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. As used in this Order, "vendor" means any person, firm, corporation, or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency.

2. The executive head of each department or agency in the Executive Branch with the lawful authority to engage in State contracting shall, in accordance with the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., promulgate regulations supplementing those heretofore established pursuant to Executive Order No. 34 (1976) governing the causes, conditions and procedures applicable to determinations of debarment, suspension and disqualification by the department or agency to include the minimum standards hereinafter set forth. In addition to any other filing required by law to be made, each executive head shall file with the Attorney General and Treasurer a copy of such rules and regulations as may be promulgated.

3. The rules and regulations referred to in Paragraph 2 shall include the following prohibitions on vendor activities, the violation of which shall render said vendor liable to debarment in the public interest, pursuant to the procedures established by Executive Order No. 34 (1976), by any Executive department or agency:

- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraph 3a. through 3e. shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c.

4. The rules and regulations referred to in Paragraph 2, supra, shall require that the prohibitions set forth Paragraph 3, supra, shall be included in all requests for proposals issued by any State department or agency and in all contracts executed on behalf of a State department or agency, other than those of an interstate agency to which New Jersey is a party and contracts entered into on behalf of the interstate agency.

5. Nothing required by this Order shall be construed to limit the authority of any State department or agency to refrain from contracting within the discretion allowed by law, or to limit N.J.S.A. 52:34-19 or any other applicable statute or regulation.

6. This Order shall take effect on the ninetieth day following its execution.

GIVEN, under my hand and seal, this
20th day of July
in the Year of Our Lord, one
thousand nine hundred and eighty-
eight, and of the Independence of the
United States, the two hundred and
thirteenth.

/s/ Thomas H. Kean
GOVERNOR

(seal)

Attest:

/s/ Michael R. Cole
Chief Counsel

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Business Ethics Guide

A Plain Language Guide to Ethical Business Conduct for Companies Transacting Business with the State of New Jersey, its Institutions, and Agencies (1)

INTRODUCTION AND GUIDING PRINCIPLES

This Plain Language Guide to Ethical Business Conduct ("Guide") covers a wide range of business practices and procedures. It does not cover every issue that may arise, but it does set out basic principles to guide all employees, officers, and directors of companies transacting business with the State of New Jersey. Obeying the law, both in letter and spirit, is the foundation on which a company's ethical standards are built. All company employees, officers, and directors must respect and obey the laws and regulations of the agencies with which they operate. Contracting parties will be required to certify that they have complied with all applicable laws and regulations governing the provision of State services, including the Conflicts of Interest Law, N.J.S.A. 52:13D-12 to -28.

Although the applicable provisions of law are detailed, you will have no difficulty following them, if you follow these simple, guiding principles:

***You may not profit from a conflict of interest on the part of a State employee.**

***You may not "wine and dine" State employees.**

***You may not pay a State employee anything for the performance of his or her official duties.**

***You may not make illegal political contributions.**

***You may not profit, directly or indirectly, from the use of any secret or confidential knowledge or data of the State that a State employee has illicitly disclosed.**

***You should report any illegal or unethical behavior or any violation of the State's ethics and business codes to the State Ethics Commission, by calling the anonymous "Hot Line" established for this purpose.**

This Guide reflects current Conflicts Law. It should be supplemented appropriately to reflect subsequent legislative changes.

OVERVIEW AND RULES OF CONDUCT

This Guide is designed to help private sector vendors and other entities familiarize themselves with some key parts of the New Jersey ethics standards as they apply to employees of the Executive Branch of State Government. If you do business with the Executive Branch, are regulated or licensed by, receive grants from, or lobby State agencies, or if you are considering hiring current and former State employees, this Guide is for you.

This Guide is not meant to serve as formal advice or as a substitute for legal counsel. It provides general information only and does not have the force and effect of law. It does not replace any actual laws or rules, and it does not address every ethical restriction contained in the laws and rules it summarizes. It does not cover the requirements contained in any particular agency's ethics code. Ethical issues may also be addressed in procurement, personnel, and travel rules, as well as in open meetings, open records, and criminal laws. In addition, members of particular professions (e.g., lawyers and accountants) are subject to their own codes of professional responsibility.

In this Guide, we use the term **"State employee"** to refer to State officers and employees and special State officers and employees who are subject to the ethics laws and rules discussed in this Guide. As a practical matter, virtually all employees and appointees in the Executive Branch of New Jersey State Government are "State employees."

GENERAL STANDARDS

As a private sector entity dealing with State agencies, you must not:

*induce or attempt to induce any State employee to violate the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 to -28, or any code of ethics promulgated thereunder;

*influence, or attempt to influence or cause to be influenced, any State employee in his or her official capacity in any manner which might tend to impair his or her objectivity or independence of judgment;

*cause or influence, or attempt to cause or influence, any State employee to use, or to attempt to use, his or her official position to secure unwarranted privileges or advantages for you or any other person or entity; or

*undertake, directly or indirectly, any private business or commercial or entrepreneurial relationship with, or sell any interest in your business to:

*a State employee who has any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by or to any State agency; or

*any person, firm, or entity with which that State employee is employed or associated, or in which he or she has an interest.

A State employee may apply to the Commission for a waiver of this particular restriction, and the Commission may grant the waiver if it finds that the relationship does not present a potential, actual, or appearance of a conflict of interest. If you enter into a business relationship that contravenes this rule, you must promptly report it in writing to the Commission.

GIFTS, FAVORS, SERVICES AND OTHER THINGS OF VALUE

Do not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, honorarium or other thing of value of any kind to:

*any State employee or any member of his or her immediate family (i.e., a spouse, child, parent, or sibling residing in the same household as the employee); or

*any partnership, firm, or corporation with which the State employee is employed or associated, or in which he or she has an interest. Some things of value are obvious, such as money, stock, debt forgiveness, real estate, or automobiles. But less obvious things also have value, including offers of employment, loans, labor, rebates, price discounts, entertainment, or meals.

The effect of this standard is that you must not send holiday gifts, office-warming gifts, tokens of appreciation, or other things of value to State employees or State agencies. In addition, it is improper to invite State employees to meals, parties, sporting events, theatrical performances, and similar social functions.

A State employee can accept a gift from you or contract with you under the same terms and conditions that you offer or make available to members of the general public or to a large class of recipients, provided that the gift or contract does not violate any other Commission guidelines or a particular agency's ethics code. For example, State employees can take advantage of cell phone rate packages offered to "all public employees" and government rates offered by hotel chains. State employees can also accept nonalcoholic beverages and snack items (e.g., coffee, doughnuts, and cookies) at meetings or site visits, but they cannot accept meals.

If any State employee solicits you for a fee, commission, compensation, gift, gratuity, or other thing of value, you are required to report the occurrence promptly, in writing, to the Attorney General and to the Commission.

State employees may accept payment or reimbursement for travel expenses from a private sector entity under very limited circumstances. In each case, the employee must secure prior approval from his or her agency. The rules governing travel expenses, N.J.A.C. 19:61-6.1 et seq., are available at www.nj.gov/lps/ethics/ecesrules.pdf.

EMPLOYMENT OFFERS

Current State Employees

If you offer a job to a State employee, be aware that job negotiations create a financial interest for that employee. As such, the employee will no longer be able to act in the State's interest concerning your company. Please also note that State employees must secure prior approval for secondary employment. Depending on your relationship with the employee's agency, your employment offer may be disapproved, and the State employee could be screened from taking any official action with respect to your contracts, applications, or matters in the future.

Former State Employees

After leaving State service, State employees are under a lifetime ban against the use or provision of information not generally available to the public acquired during their State employment. Further, former State employees are prohibited from representing or assisting a person concerning a particular matter if they were substantially and directly involved in that particular matter while in State employment. For more information, see "Post-Employment Restrictions for State Employees," at www.nj.gov/lps/ethics/pemrcode.htm.

Casino-Related Restrictions

The Casino Control Act and the Conflicts of Interest Law contain restrictions on the employment of current State employees, their immediate family members, and former State employees and their immediate family members, by holders of and applicants for casino licenses. However, there are statutory provisions that permit waivers of some of these restrictions by the State Ethics Commission. In addition, there are restrictions on benefits that can be passed to State employees by holders of and applicants for casino licenses. Questions about these restrictions should be addressed to the Commission, at P.O. Box 082, Trenton, New Jersey, 08625-0082, or at ethics@eces.state.nj.us.

PENALTIES

The State Ethics Commission has the authority to impose penalties on private sector entities and individuals, and it can refer such cases to

appropriate agencies when a violation is punishable by law. Violations of some of the above-described standards can result in the violator's criminal prosecution, and/or suspension, disqualification, or debarment from doing business with any State agency.

