



Leventry, Haschak & Rodkey, LLC

1397 Eisenhower Boulevard
Richland Square III, Suite 202
Johnstown, PA 15904

Telephone: (814) 266-1799 FAX: (814) 266-5108

www.lhrklaw.com

Municipal Newsletter

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Conflicts of Interest and Ethical Issues: An Overview

The people who comprise local governments are typically ordinary men and women of their respective communities who possess different socioeconomic backgrounds. Each of these individuals more than likely has familial relations with other persons and professional connections with various entities. Of these parties, those of the municipal governments, their families and their occupational contacts have particular interest, predominantly financial, that may be of consequence to the citizens of the municipality and those served by the municipal authorities. In such instances, conflicts of interest and issues of ethics may arise. Thus, the Public Official and Employee Ethics Act (65 Pa. C.S.A. §1101 *et seq.*) (the "Act") was enacted.

The primary purpose of the Act is to "strengthen the faith and confidence of the people of this Commonwealth in their government... [T]he people have a right to be assured... the financial interests of holders or nominees or candidates for public office do not conflict with the public trust." 65 Pa. C.S.A. §1101.1(a). To promote this ideal, the Act identifies such circumstances in which a conflict may exist. "It is recognized that many public officials are citizen-officials who bring... the knowledge and concerns of ordinary citizens and taxpayers. They should not be discouraged from maintaining their contacts with their community through occupations and professions." 65 Pa. C.S.A. §1101.1(b). So, the Act seeks to guide those individuals in balancing their public lives as governmental officials with their private lives as employees and persons of business.

To better understand to whom the Act is applicable, it is necessary to specifically identify those people the Act recognizes as subject to its direction. Most notably, the Act affects the public official who is "elected by the public or elected or appointed by a governmental body or an appointed official [of any] branch [of government] of this Commonwealth or any political subdivision thereof, [except] members of advisory boards [who] have no authority to expend public funds..." 65 Pa. C.S.A. §1102. The Act also involves the public employee

employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to: (1) contracting or procurement; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis [an insignificant effect] on the interests of any person. *Id.*

In addition, the Act also pertains to a nominee "whose name has been submitted to a public official or governmental body vested with the power to finally confirm or reject proposed appointments to public office or employment" or a candidate who

seeks nomination or election to public office by vote of the electorate, other than a judge of the election, inspector of elections or official of a political party... [who has] (1) received a contribution or made an expenditure or given... consent for any... person or committee to receive a contribution or make an expenditure [to influence] his [or her] nomination or election and (2) taken the action necessary under the laws... to qualify... for nomination or election. *Id.*

Write-in candidates who are nominated and/or elected are also subject to the Act, unless they resign within thirty (30) days from the office to which they were nominated or elected. It, should be noted that the Act is not only applicable to the public officials and employees of the various counties, cities, boroughs, incorporated towns, townships and authorities but also school districts, vocational schools, county institution districts and entities or bodies organized by any of the previously mentioned. *Id.*

For purposes of the Act, a conflict of interest arises when the affected person uses

the authority of his [or her] office or em-

Contact Information

Randall C. Rodkey, Esquire
rrodkey@lhrklaw.com

Timothy C. Leventry, Esquire
tleventry@lhrklaw.com

ployment or confidential information received through [such]... office or employment for the private [monetary] benefit of [that person], a member of [that person's] immediate family or a business with which [that person] or a member of [that person's] immediate family is associated. *Id.*

The only instance when this is not an issue is when the economic impact is *de minimis* or insignificant. That is, the action

affects to the same degree a class... of the general public or a subclass... of an industry, occupation or other group includ[ing] the public official or employee, his [or her] immediate family or a business with which he [or she] or a member of his [or her] immediate family is associated. *Id.*

In addition to conflicts of interest, the Act distinguishes other restricted activities. Section 1103 of Title 65 of the Pennsylvania Consolidated Statutes Annotated enumerates those restricted activities relative to officials and employees of local governments. These activities include, but are not limited to, seeking and accepting improper influence by anything of monetary value, "including a gift, loan, political contribution, reward or promise of future employment." 65 Pa.C.S.A. 1103 (b) and (c). Also, honorariums, contingent and severance payments under certain situations and entering into con-

tracts valued at \$500.00 or more. *Id.* at (d) through (f). Likewise, former officials and employees may not "represent a person, with promised or actual compensation, on any matter before the governmental body with which he [or she] has been associated for one (1) year after... leav[ing] that body." *Id.* at (g). Understandably, no official or employee may "use for any commercial purpose information copied from statements of financial interests... or from lists compiled from such statements." *Id.* at (h). Lastly, unless certain exceptions apply, "[a]ny public official or... employee who in the discharge of his [or her] official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote... publicly announce and disclose the nature of [this] interest as a public record in a written memorandum..." *Id.* at (j).

Since we live in a democratic society where the populace elects individuals from among their numbers to govern them with the expectation those officials, the people they employ and the nominees and candidates for those positions will do so in the best interests of the citizens they serve. To ensure this expectation is met in their respective municipal governments, the Commonwealth has enacted the Public Official and Employee Ethics Act. This Act ensures governmental personnel cannot take official action that would affect the lives of the people they administer to for their own pecuniary benefit, the monetary advantage of their immediate family or the financial profit of those companies they or their immediate families are connected to.
