

Pennsylvania State Ethics Commission



Pennsylvania Public Official and Employee Ethics Act
65 Pa. C.S. § 1101 *et seq.*

Chester County Engineers Conference

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Robert Morris

1734-1806

- As the central civilian in the government, Morris was, next to General George Washington, "the most powerful man in America."
- He had lost one of the largest private navies in the world during the War, personally supplied the funding for eighty percent (80%) of all bullets fired during the war and almost seventy five percent (75%) of all other expenses for the fledgling government, though he never asked to be reimbursed for these expenses.
- Accused of Conflicts of Interest while his privateer vessel carried merchandise while in the service of the Continental Congress.



Conflict of Interests:

“A conflict of interest is a set of circumstances that creates a risk that professional judgement or actions regarding a primary interest will be unduly influenced by a secondary interest.”

Thompson, Dennis (1993). "Understanding financial conflicts of interest." *New England Journal of Medicine* 329 (8): 573–76. 1]

Primary Interests:

Primary interest refers to the principal goals of the profession or activity, such as the protection of clients, the health of patients, the integrity of research, **and the duties of public office.**

Secondary Interests:

Secondary interest includes not only **financial gain** but also such motives as the desire for professional advancement and the wish to do **favors for family** and friends.

Conflict of interest rules usually focus on financial relationships because they are relatively more objective, fungible, and quantifiable.

Generally, secondary interests are not treated as a wrong in among themselves but become objectionable when they are believed to have greater weight than the primary interests.

The *conflict* in a conflict of interest exists whether or not a particular individual is actually influenced by the secondary interest.

Core Mission

The Pennsylvania State Ethics Commission's core mission and guiding principle is that public office is a public trust and that any effort to realize personal financial gain through one's public office is a violation of that trust.

Executing Core Mission

Administer and enforce personal financial disclosure requirements

Issue advices and opinions

Investigate alleged violations of the Ethics Act

Conflict of Interest – Ethics Act

Use of the authority of his/her office

Confidential information

For the private pecuniary benefit of:

- Himself / Herself
- Member of his/her immediate family, or
- Business with which he/ she or a member of his/her immediate family is associated

Public Official:

Elected by the public

Appointed by a governmental body

Appointed official

Any political subdivision

Public Employee:

- Employed by the Commonwealth or a political subdivision
- Responsible for taking or recommending official action of a non-ministerial nature with regard to:
- Contracting or procurement; Administering or monitoring grants or subsidies
- Planning or zoning; Inspecting, licensing, regulating or auditing any person, or
- Any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person"

51 Pa. Code §11.1

DEFINITIONS

(iv) Persons in the following positions are generally considered public employees:

(D) Engineers, managers and secretary-treasurers acting as managers, police chiefs, chief clerks, chief purchasing agents, grant and contract managers, administrative officers, housing and building inspectors, investigators, auditors, sewer enforcement officers and zoning officers in all governmental bodies.

Authority of Office or Employment

- Actual power
- Provided by law
- Necessary to the performance of duty or responsibility

The Commission has repeatedly and consistently held that “[u]se of authority of office is more than the mere mechanics of voting and encompasses all of the tasks needed to perform the functions of a given position. Use of authority includes . . . discussing, conferring with others, and lobbying for a particular result.”

In re Gallen, Commission Order No. 1198 at 37

Pecuniary Benefit

[W]e derive the proposition that pecuniary gain (or loss) consistently is defined in ways that imply amenability to quantification. A pecuniary benefit or detriment must be financial. While it may not be possible to come up with a to-the-dollar value of a given pecuniary benefit, various statutes make clear that difficulties with precise quantification do not preclude grading of the offense by assessment of value.

Commonwealth v. Veon, 637 Pa. 442, 460, 150 A.3d 435, 446 (2016)

Immediate Family

*"A parent, spouse,
child, brother or sister."*

Business With Which Associated

Any business

Public official

Immediate family member

Director, officer, owner, employee or financial interests

Restricted Activities:

No public official or public employee shall engage in conduct that constitutes a conflict of interest.

Exceptions

Action having a *de minimis* economic impact

Affects to the same degree a class consisting of the general public

Subclass consisting of an industry, occupation or other group

No person shall offer or give AND No public official, public employee shall solicit or accept:

- Anything of monetary value
- A gift, loan, political contribution, reward or promise of future employment
- Donor's understanding
- Vote, official action or judgment of the public official
- Influenced thereby

No public official or public employee
shall accept an honorarium.

REVOLVING DOOR

65 Pa.C.S. §1103 (g)

- No FORMER public official/employee shall:
 - Represent a person
- Promised or actual compensation
- Former governmental body
- One year (Executive Level two year)

Red Flags



- Action with financial implication
- Connection to public employment
- Relationship connection ...
family/friend
- Is public disclosure a problem?

Statements of Financial Interest:

Who is required to file:

All local “public officials,” elected or appointed,
and “public employees employed by a political
subdivision

County and local level nominees

Candidates for county and local public office

Where to File

Officials/Employees

- local filing

Statement of Financial Interests

Issues of Interest

- Back-Dating of Statements of Financial Interests.
- Allowing Municipal Administrator (Secretary Manager) to fill out and file governing board forms.
- Public access to forms.
- Prohibition on receipt of compensation from public funds and service in office.

51 Pa. Code §15.2

(h) If a law firm or engineering firm is designated solicitor or engineer, the persons primarily responsible for providing the services in the firm are responsible for filing a Statement of Financial Interests

Advisory Opinions

- Formal – Informal
- Prospective
- Non adversarial
- Basic information
- Confidential – Public
- Protective status

Investigations



- ❑ Proceedings and records relating to an investigation are confidential.
- ❑ Identity of a complainant is confidential.
- ❑ The final order is public record.

: File Docket: 08-044
: Date Decided: 4/30/09
: Date Mailed: 5/15/09

ORDER NO. 1518

1. As a Supervisor for Piatt Township ("the Township"), Lycoming County, Alfred Hauser ("Hauser") unintentionally violated Section 1103(a) of the Ethics Act, 65 Pa.C.S. § 1103(a), in relation to his participation in discussions and evaluations of proposals resulting in the award of a contract to Larson Design Group, Inc. ("LDG"), an entity by which he is employed.
2. Hauser did not violate Section 1103(f) of the Ethics Act, 65 Pa.C.S. § 1103(f), when a contract was entered into between LDG and the Township without an open and public process.
3. An unintentional violation of Section 1103(a) of the Ethics Act, 65 Pa.C.S. § 1103(a), occurred when Hauser participated in the issuance of payments to LDG.

BY THE COMMISSION,

Louis W. Fryman, Chair

As a Supervisor for Piatt Township, Lycoming County, Alfred Hauser unintentionally violated Section 1103(a) of the Ethics Act, in relation to his participation in discussions and evaluations of proposals resulting in the award of a contract to Larson Design Group, Inc., an entity by which he is employed.

In Re: William Beale,
Respondent

File Docket: 13-025
Date Decided: 9/30/14
Date Mailed: 10/10/14

ORDER NO. 1644

1. As a Council Member for Brackenridge Borough ("Borough"), Allegheny County, William Beale ("Beale") violated Section 1103(a) of the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1103(a), in relation to his participation in discussions and/or actions of Borough Council resulting in the appointment of Garvin Engineering Municipal Management ("GEMM") as the Borough Engineer, at a time when he knew or had a reasonable expectation that he, an immediate family member, and/or a business with which he or an immediate family member is associated was or would be serving as a subcontractor to GEMM, albeit on non-Borough related projects.
2. A violation of Section 1105(b) of the Ethics Act, 65 Pa.C.S. § 1105(b), occurred in relation to Beale's failure to list all sources of income on his Statement of Financial Interests for calendar year 2009, and when he failed to list his name, address, and public position on his Statement of Financial Interests for calendar year 2011.
3. Per the Consent Agreement of the parties, Beale is directed to make payment in the amount of \$1,700.00 payable to the Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of this Order.
4. Per the Consent Agreement of the parties, Beale is directed to not accept any reimbursement, compensation or other payment from the Borough representing a full or partial reimbursement of the amount paid in settlement of this matter.
5. To the extent he has not already done so, Beale is directed to file complete and accurate amended Statements of Financial Interests for the 2009 and 2011 calendar years with the Borough, through the Pennsylvania State Ethics Commission, by no later than the thirtieth (30th) day after the mailing date of this Order.
6. Compliance with paragraphs 3, 4, and 5 of this Order will result in the closing of this case with no further action by this Commission.
 - a. Non-compliance will result in the institution of an order enforcement action.

BY THE COMMISSION,

John J. Bolger, Chair

As a Council Member for Brackenridge Borough, Allegheny County, William Beale violated Section 1103(a) of the Ethics Act, in relation to his participation in discussions and/or actions of Borough Council resulting in the appointment of Garvin Engineering Municipal Management as the Borough Engineer, at a time when he knew or had a reasonable expectation that he, an immediate family member, and/or a business with which he or an immediate family member is associated was or would be serving as a subcontractor to GEMM, albeit on non-Borough related projects.

In Re: Dennis J. Simon, : File Docket: 12-026
Respondent : Date Decided: 4/24/14
 : Date Mailed: 5/6/14

ORDER NO. 1633

1. As a Member of the Wilkinsburg-Penn Joint Water Authority ("Authority") Board of Directors ("Board"), Dennis J. Simon ("Simon") violated Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1103(a), when he participated in discussions and actions of the Authority Board to replace the then existing Authority engineer with Chester Engineers, Inc. ("Chester Engineers"), a business with which Simon is associated and serves as a Vice-President, by utilizing the authority of his office to persuade Authority Board Members to support the appointment of Chester Engineers, and when he subsequently requested that a motion be made by the Authority Board to appoint Chester Engineers as the Authority engineer.
2. Per the Consent Agreement of the parties, Simon is directed to make payment in the amount of \$9,500.00 payable as follows: (a) \$7,500.00 payable to the Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of this Order; and (b) \$2,000.00 in reimbursement representing a portion of the expenses and costs incurred by the Pennsylvania State Ethics Commission in the investigation and administrative prosecution of the instant matter, payable by certified check or money order made payable to the Pennsylvania State Ethics Commission.
3. Per the Consent Agreement of the parties, Simon is directed to not accept any reimbursement, compensation or other payment from the Authority representing a full or partial reimbursement of the amount paid in settlement of this matter.
4. Compliance with Paragraphs 2 and 3 of this Order will result in the closing of this case with no further action by this Commission.
 - a. Non-compliance will result in the institution of an order enforcement action.

BY THE COMMISSION,

John J. Bolger, Chair

As a Member of the Wilkinsburg-Penn Joint Water Authority Board of Directors, Dennis J. Simon violated Section 1103(a) when he participated in discussions and actions of the Authority Board to replace the then existing Authority engineer with Chester Engineers, Inc., a business with which Simon is associated and serves as a Vice-President, by utilizing the authority of his office to persuade Authority Board Members to support the appointment of Chester Engineers, and when he subsequently requested that a motion be made by the Authority Board to appoint Chester Engineers as the Authority engineer.

Penalties

Administrative and Civil:

- Violation of Act (Public Order)
- Restitution
- Treble Penalty (Restitution + Penalty)
- Statements of Financial Interests \$25/\$250

Criminal:

- Any person who violates the provisions of section 1103(a), (b) and (c) (relating to restricted activities) commits a felony and shall, upon conviction, be sentenced to pay a fine of not more than \$10,000 or to imprisonment for not more than five years, or both. 65 Pa.C.S. §1109 (a).
- Other violations of the Ethics Act punishable by a fine of not more than \$1,000 or to imprisonment for not more than one year, or both.

Where to Get More Information

Visit the Commission's website at:

www.ethics.pa.gov

Contact the Commission at:

1-800-932-0936

Write to the Commission at:

Finance Building
613 North Street, Room 309
Harrisburg, PA 17120-0400