

No. 1978-170

AN ACT

HB 198

Relating to conflicts of interest involving certain public officials serving in State or State agencies and local political subdivision positions and prohibiting certain public employees from engaging in certain conflict of interest activities requiring certain disclosures and providing penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Purpose.

The Legislature hereby declares that public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust. In order to strengthen the faith and confidence of the people of the State in their government, the Legislature further declares that the people have a right to be assured that the financial interests of holders of or candidates for public office present neither a conflict nor the appearance of a conflict with the public trust. Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this act shall be liberally construed to promote complete disclosure.

Section 2. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Business.” Any corporation, partnership, sole proprietorship, firm,

enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.

“Business with which he is associated.” Any business in which the person or a member of the person’s immediate family is a director, officer, owner, employee or holder of stock.

“Commission.” The State Ethics Commission.

“Compensation.” Anything of economic value, however designated, which is paid, loaned, granted, given, donated or transferred, or to be paid, loaned, granted, given, donated or transferred for or in consideration of personal services to any person, official or to the State.

“Executive-level State employee.” The Governor, Lieutenant Governor, cabinet members, deputy secretaries, the Governor’s office staff, any State employee with discretionary powers which may affect the outcome of a State agency’s decision in relation to a private corporation or business or any employee who by virtue of his job function could influence the outcome of such a decision.

“Gift.” A payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value, unless consideration of equal or greater value is received. “Gift” shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person’s immediate family or from a relative within the third degree of consanguinity of the person or of the person’s spouse or from the spouse of any such relative.

“Governmental body.” Any department, authority, commission, committee, council, board, bureau, division, service, office, officer, administration, legislative body, or other establishment in the Executive, Legislative or Judicial Branch of the State or a political subdivision thereof.

“Immediate family.” A spouse residing in the person’s household and minor dependent children.

“Income.” Any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain or any other form of recompense or any combination thereof.

“Indirect interest in real estate.” Any business entity the assets of which are 80% or more in real property.

“Ministerial action.” An action that a person performs in a prescribed manner in obedience to the mandate of legal authority, without regard to, or the exercise of, the person’s own judgment as to the desirability of the action being taken.

“Person.” A business, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

“Political contribution.” Any advance, conveyance, deposit,

distribution, transfer of funds, loan, payment, pledge, purchase of a ticket to a testimonial or similar fund-raising affair, or subscription of money or anything of value, except volunteer services, in connection with a political campaign, and any contract, agreement, promise, or other obligations, whether or not legally enforceable, to make a political contribution.

“Public employee.” Any individual 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 minimus nature on the interests of any person.

“Public employee” shall not include individuals who are employed by the State or any political subdivision thereof in teaching as distinguished from administrative duties.

“Public official.” Any elected or appointed official in the Executive, Legislative or Judicial Branch of the State or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense, or to otherwise exercise the power of the State or any political subdivision thereof. “Public official” shall not include any appointed official who receives no compensation other than reimbursement for actual expenses.

“State consultant.” A person who, as an independent contractor, performs professional, scientific, technical or advisory service for a State agency, and who receives a fee, honorarium or similar compensation for such services. A “State consultant” is not an executive-level employee.

Section 3. Restricted activities.

(a) No public official or public employee shall use his public office or any confidential information received through his holding public office to obtain financial gain other than compensation provided by law for himself, a member of his immediate family, or a business with which he is associated.

(b) No person shall offer or give to a public official or public employee or candidate for public office or a member of his immediate family or a business with which he is associated, and no public official or public employee or candidate for public office shall solicit or accept, anything of value, including a gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action, or judgment of the public official or public employee or candidate for public office would be influenced thereby.

(c) No public official or public employee or a member of his immediate family or any business in which the person or a member of the person's

immediate family is a director, officer, owner or holder of stock exceeding 5% of the equity at fair market value of the business shall enter into any contract valued at \$500 or more with a governmental body unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. Any contract made in violation of this subsection shall be voidable by a court of competent jurisdiction if the suit is commenced within 90 days of making of the contract.

(d) Other areas of possible conflict shall be addressed by the commission pursuant to paragraph (9) of section 7.

(e) No former official or public employee shall represent a person, with or without compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.

(f) No person shall use for any commercial purpose information copied from statements of financial interests required by this act or from lists compiled from such statements.

(g) No former executive-level State employee may for a period of two years from the time that he terminates his State employment be employed by, receive compensation from, assist or act in a representative capacity for a business or corporation that he actively participates in recruiting to the Commonwealth of Pennsylvania or that he actively participated in inducing to open a new plant, facility or branch in the Commonwealth or that he actively participated in inducing to expand an existent plant or facility within the Commonwealth, provided that the above prohibition shall be invoked only when the recruitment or inducement is accomplished by a grant or loan of money or a promise of a grant or loan of money from the Commonwealth to the business or corporation recruited or induced to expand.

(h) (1) Any individual who holds an appointive office in any political subdivision shall not have an interest in any contract or construction in which that political subdivision shall enter or have an interest.

(2) Any person violating the provisions of this subsection shall be barred for a period of five years from engaging in any business or contract with any political subdivision or the Commonwealth or any of its agencies.

(3) For purposes of this subsection the term "interest" shall not include the ownership of shares of stock in any corporation in an amount of 5% or less of the total issue for said corporation.

Section 4. Statement of financial interests required to be filed.

(a) Each public employee employed by the Commonwealth shall file a statement of financial interests for the preceding calendar year with the department, agency or bureau in which he is employed no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Any other public employee shall file a statement of financial interests with the governing authority of the political subdivision by which he is employed no later than May 1 of each year that he holds such

a position and of the year after he leaves such a position.

(b) Each candidate for public office shall file a statement of financial interests for the preceding calendar year with the commission prior to filing a petition to appear on the ballot for election as a public official. A petition to appear on the ballot shall not be accepted by an election official unless the petition includes an affidavit that the candidate has filed the required statement of financial interests with the commission.

(c) Each candidate for public office nominated by a public official or governmental body and subject to confirmation by a public official or governmental body shall file a statement of financial interests for the preceding calendar year with the commission and with the official or body that is vested with the power of confirmation at least ten days before the official or body shall approve or reject the nomination.

(d) No public official shall be allowed to take the oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a statement of financial interests with the commission as required by this act.

(e) (1) Any candidate for State or county-wide public office shall file a statement of financial interests with the commission pursuant to this act and shall file a copy of that statement with the Board of Elections in the county in which the candidate resides.

(2) Any candidate for local office shall file a statement of financial interests with the commission pursuant to this act and shall file a copy of that statement with the governing authority of the political subdivision in which he is a candidate.

(f) All statements of financial interest filed pursuant to the provisions of this act shall be made available for public inspection and copying during regular office hours.

Section 5. Statement of financial interests.

(a) The statement of financial interests filed pursuant to this act shall be on a form prescribed by the commission and shall be signed under penalty of perjury by the person required to file the statement.

(b) The statement shall include the following information for the prior calendar year with regard to the person required to file the statement and the members of his immediate family.

(1) The name, address and position of the person required to file the statement.

(2) The occupations or professions of the person required to file the statement and those of his immediate family.

(3) Any direct or indirect interest in any real estate which was sold or leased to the Commonwealth, any of its agencies or political subdivisions; purchased or leased from the Commonwealth, any of its agencies or political subdivisions; or which was the subject of any condemnation proceedings by the Commonwealth, any of its agencies or political subdivisions.

(4) The name and address of each creditor to whom is owed in excess of \$5,000 and the interest rate thereon. However, loans or credit extended between members of the immediate family and mortgages securing real property which is the principal residence of the person filing or of his spouse shall not be included.

(5) The name and address of any person who is the direct or indirect source of income totalling in the aggregate \$500 or more. However, this provision shall not be construed to require the divulgence of confidential information protected by statute or existing professional codes of ethics.

(6) The name and address of any person from whom a gift or gifts valued in the aggregate at \$200 or more were received, and the value and the circumstances of each gift. However, this provision shall not be applicable to gifts received from the individual's spouse, parents, parents by marriage, siblings, children or grandchildren.

(7) The source of any honorarium received which is in excess of \$100.

(8) Any office, directorship or employment of any nature whatsoever in any business entity.

(9) Any financial interest in any legal entity engaged in business for profit.

(c) The statement of financial interest need not include specific amounts for any of the items required to be listed.

Section 6. State Ethics Commission.

(a) There is established a State Ethics Commission composed of seven members, President pro tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House, and the Minority Leader of the House shall each appoint one member. Three members shall be appointed by the Governor without confirmation.

(b) Members of the commission shall serve for terms of five years, except that, of the members first appointed:

(1) the two members appointed by the President pro tempore and Minority Leader of the Senate shall serve for four years;

(2) the two members appointed by the Speaker and the Minority Leader of the House shall serve for two years; and

(3) of the three members appointed by the Governor two shall serve for three years, and one shall serve for five years.

(c) No member shall be appointed to more than one full-five-year term on the commission.

(d) No individual, while a member or employee of the commission, shall:

(1) hold or campaign for any other public office;

(2) hold office in any political party or political committee;

(3) actively participate in any political campaign;

(4) directly or indirectly attempt to influence any decision by a governmental body, other than a court of law or as a representative of the commission on a matter within the jurisdiction of the commission; or

(5) be employed by the Commonwealth in any other capacity, whether or not for compensation.

(e) A majority of the commission by resolution shall declare vacant the position on the commission of any member who takes part in activities prohibited by subsection (d). An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member he succeeds, and is eligible for appointment to one full five-year term thereafter. Any vacancy occurring on the commission shall be filled within 30 days in the manner in which that position was originally filled.

(f) The commission shall elect a chairman and a vice chairman. The vice chairman shall act as chairman in the absence of the chairman or in the event of a vacancy in that position.

(g) Four members of the commission shall constitute a quorum and the votes of a majority of the members present is required for any action or recommendation of the commission. The chairman or any four members of the commission may call a meeting provided that advance written notice is mailed to each member and to any person who requests notice of such meetings.

(h) Members of the commission shall be compensated at a rate of \$50 per day and shall receive reimbursement for their actual and necessary expenses while performing the business of the commission.

(i) The commission shall employ an executive director, a general counsel, and such other staff as are necessary to carry out its duties pursuant to this act. The executive director shall be responsible for the administrative operations of the commission and shall perform such other duties as may be delegated or assigned to him by the commission, except that the commission shall not delegate the making of regulations to the executive director. The general counsel shall be the chief legal officer of the commission. The commission may obtain the services of experts and consultants as necessary to carry out its duties pursuant to this act. The State Treasurer and the Attorney General shall make available to the commission such personnel, facilities, and other assistance as the commission may request.

Section 7. Duties of the commission.

In addition to other duties prescribed by law, the commission shall:

(1) Prescribe and publish rules and regulations to carry out the provisions of this act.

(2) Prescribe forms for statements and reports required to be filed by this act and furnish such forms to persons required to file such statements and reports.

(3) Prepare and publish guidelines setting forth recommended uniform methods of accounting and reporting for use by persons required to file statements and reports by this act.

(4) Accept and file any information voluntarily supplied that exceeds the requirements of this act.

(5) Make statements and reports filed with the commission available for public inspection and copying during regular office hours and make copying facilities available at a charge not to exceed actual cost.

(6) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements.

(7) Prepare and publish annual summaries of statements and reports filed with the commission.

(8) Preserve statements and reports filed with the commission for a period of five years from date of receipt.

(9) (i) Issue to any person, upon such person's request, an opinion with respect to such person's duties under this act. The commission shall, within 14 days, either issue the opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith on an opinion issued to him by the commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and may from time to time be published.

(ii) Provide written advice to any person upon their request with respect to such person's duties under this act. Such advice shall be provided within 21 working days of the request, provided that the time may be extended for good cause. It shall be a complete defense in any enforcement proceeding initiated by the commission, and evidence of good faith conduct in any other civil or criminal proceeding, if the requester, at least 21 working days prior to the alleged violation, requested written advice from the commission in good faith, disclosed truthfully all the material facts and committed the acts complained of either in reliance on the advice or because of the failure of the commission to provide advice within 21 days of the request of such later extended time.

(iii) Initiate an inquiry where an opinion has not been requested but where there is a reasonable belief that a conflict may exist. Such inquiry shall be conducted in privacy with full respect to the confidentiality of all the parties involved in the alleged conflict. If the commission finds that there is a conflict, the information shall be provided for criminal proceedings unless the alleged offender removes himself from the conflict with receiving financial gain.

(iv) Issue advisory opinions to any present or former State employee who contemplates terminating his State employment and/or becoming employed by, contracting with, assisting or acting in a representative capacity for a business or corporation, upon such employee's request. That opinion shall state whether, upon the facts presented, such employment, contract, assistance or representation would be in violation of section 3(g). If the advisory opinion states that such employment, contract, assistance or representation would not be

in violation of the provisions of section 3(g), the person who requested the opinion may not be prosecuted or penalized, either criminally or civilly, under the provisions of this act provided that the actions under question bear a substantial similarity to the facts presented to the commission.

(10) Hold hearings, take testimony, issue subpoenas and compel the attendance of witnesses.

(11) Make recommendations to law enforcement officials either for criminal prosecution or dismissal of charges arising out of violations of this act.

(12) Prepare and publish special reports and technical studies to further the purposes of this act.

(13) Prepare and publish, prior to June 1 of each year, an annual report summarizing the activities of the commission.

Section 8. Investigations by the commission.

(a) Upon a complaint signed under penalty of perjury by any person or upon its own motion, the commission shall investigate any alleged violation of this act. All commission proceedings and records relating to an investigation shall be confidential until a final determination is made by the commission. The executive director shall notify any person under investigation by the commission of the investigation and of the nature of the alleged violation within five days of the commencement of the investigation. Within 15 days of the filing of a sworn complaint by a person alleging a violation, and every 30 days thereafter until the matter is terminated, the executive director shall notify the complainant of the action taken to date by the commission together with the reasons for such action or nonaction.

(b) If a preliminary investigation fails to indicate probable cause for belief that this act has been violated, the commission shall terminate the investigation and so notify the complainant and the person who had been under investigation.

Section 9. Penalties.

(a) Any person who violates the provisions of section 3(a) and (b) is guilty of a felony and shall be fined not more than \$10,000 or imprisoned for not more than five years, or be both fined and imprisoned.

(b) Any person who violates the provisions of section 3(c) through (h) or section 4 is guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned for not more than one year, or be both fined and imprisoned.

(c) Any person who obtains financial gain from violating any provision of this act, in addition to any other penalty provided by law, shall pay into the State Treasury a sum of money equal to three times the financial gain resulting from such violation.

(d) The penalties prescribed in this act do not limit the power of either House of the Legislature to discipline its own members or impeach a public official, and do not limit the power of agencies or commissions to discipline officials or employees.

(e) Any person who violates the confidentiality of a commission proceeding pursuant to section 8, is guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned for not more than one year, or be both fined and imprisoned. Any person who willfully affirms or swears falsely in regard to any material matter before a commission proceeding pursuant to section 8 is guilty of a felony and shall be fined not more than \$5,000 or imprisoned for not more than five years, or be both fined and imprisoned.

Section 10. Court employees.

Nothing in this act, or in any other law or court rule shall be construed to prohibit any constable or any employee of a court of common pleas, the Municipal Court of Philadelphia, the Traffic Court of Philadelphia, or any employee of a district justice from also being an officer of a political body or political party as such terms are defined in the act of June 3, 1937 (P.L.1333, No.320), known as the "Pennsylvania Election Code," and the same may hold the office of a county, State or national committee of any political party, and may run for and hold any elective office, and may participate in any election day activities.

Section 11. Supplemental provisions.

Any governmental body may adopt requirements to supplement this act, provided that no such requirement shall in any way be less restrictive than the act.

Section 12. Conflict of law.

If the provisions of this act conflict with any other statute, ordinance, regulation or rule, the provisions of this act shall control.

Section 13. Severability.

If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of this act and the application of such provisions to other persons and circumstances shall not be affected thereby.

Section 14. Effective date.

This act shall take effect January 1, 1979 except that subsections (a) and (d) of section 4 shall take effect January 1, 1980.

APPROVED—The 4th day of October, A. D. 1978.

MILTON J. SHAPP