

Ethics Officer 101

2016 Ethics Officer Conference
April 5, 2016
University of Illinois--Springfield

EO Duties (Sec. 20-23)

- Liaison between agency (university or transit board) and the Executive Ethics Commission
- Review Statements of Economic Interest
- Provide guidance to officers and employees

Revolving Door

- Employees participating "personally and substantially" in award of contracts, licensing and regulatory decisions are "C-List"
- Cannot accept compensation for one year after separation of State service
- Must notify OEIG before accepting position
 - "C-list" gets OEIG determination
 - "H-List" not required to notify, but still prohibited

Determination and Appeal

- OEIG has 10 calendar days to make determination
- 10 calendar days to file appeal with EEC
- Employee or AG has 5 days to respond
- If employee appeals, will help get record
- EEC has 10 days to issue a decision
- Failure of AG to appeal or EEC failure to decide timely means employee can take job

Revolving Door, 2 IAC 1620.610

Statement from the Ethics Officers of the State agencies employing the employee in the last 12 months identifying:

- any contracts the prospective employer, or its parent or subsidiaries had with the State agencies in the last 12 months, the amounts of contracts.
- any regulatory or licensing decisions made by the State agencies in the last 12 months that applied to the prospective employer or its parent or subsidiary, whether the employee was involved in any regulatory, licensing or contracting decisions regarding the prospective employer or its parent or subsidiary within the last 12 months, and a description of involvement.

Revolving Door, cont.

- If the Ethics Officer is the employee seeking the determination or is unable for any reason to provide this statement, the EIG may consider a statement provided by another appropriate employee or officer.
- The statement from the ethics officer must be submitted to the EIG within 5 calendar days.

EEC Review

(g)...In deciding whether to uphold an Inspector General's determination, the appropriate Ethics Commission shall assess **in addition to any other relevant information**, the effect of the prospective employment or relationship upon decisions referred to in sections (a) and (b), based upon the **totality of the participation by the former officer, member, or State employee in those decisions.**

5 ILCS 430/5-45(g) (2010)

Revolving Door Exec. Order

- Per Executive Order 15-09, cannot:
 - negotiate for employment or compensation with lobbyist or lobbying entity, if registered to lobby employee's State agency.
 - For one year after separation of service accept compensation for lobbying any State agency.
- Also consider Ethics Act and Procurement Code revolving door prohibitions

HB 4989/SB 3316

- "Notification" defined by EEC rule, starts 10-day clock
- Restricted employees to get determination file within three business days
- Clarifies that indirect compensation triggers the prohibition
- EOs to do annual on-line training

EO 15-09 Gift Ban

- For those subject to Governor's jurisdiction
- No \$100 catch-all exception (#12)
- No \$75 food and refreshment
 - But de minimis meals served at business meetings or receptions in course of official duties okay
- Educational Missions and Travel expenses need Chad's approval in advance.

Ex Parte Communications

- Not ex parte communications:
 - Publicly made statements in a public forum
 - Statements or questions regarding matters of procedure or practice
 - Intra-agency communications

Ex Parte Related to Rulemaking

- Written or oral communications
- During the rulemaking period (first notice)
- Imparts or requests "material information" regarding rules:
 - Can't simply phrase the comment as a question to avoid ex parte:
 - Not statements or questions regarding procedure or practice
 - Reasonable person standard
- Communicated to the agency, head of the agency, or other agency employee

Ex Parte Related to Decision Making

- Regulatory, quasi-adjudicatory, investment and licensing decision communications
- Applies to specific, identified agencies
- Written or oral communications, imparts or requests material information
- Matter pending before or under consideration by the agency
 - Pending—normal means of officially placing issue before the agency, e.g. petition, complaint, adding to the agenda.
 - Under consideration—suggests that the agency is considering action before it is "officially" pending.

Handling Ex Parte Communications

- Employees must report them to their Ethics Officer within seven days
- For rulemaking EPC, EO reports all to the EEC within seven days and makes them part of the record
- For decision-making EPC, EO reports to EEC only EPCs from non-interested parties, and makes them part of the record

Giving Advice

- EO should have the first crack at giving advice
- Call me for assistance
- Notifications of apparent conflicts of interest
- Difficult employees—you are not their lawyer
