



# 2011 ETHICS TRAINING

FOR APPOINTEES TO STATE OF ILLINOIS BOARDS

SUBJECT TO THE AUTHORITY OF THE OFFICE OF EXECUTIVE INSPECTOR GENERAL  
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

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Note: This training course has been developed in accordance with the requirements of the State Officials and Employees Ethics Act (5 ILCS 430/5-10). It has been developed for this purpose under the direction of the Office of Executive Inspector General for the Agencies of the Illinois Governor ("the OEIG"). Not for use by other than State of Illinois employees, appointees or officials without the express prior consent of the OEIG.

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## Introduction/General Principles

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As a person appointed to a position in or with a state agency, board, or commission, you are subject to various laws, rules, and policies that typically apply to state employees. Although many appointees to state boards and commissions receive no compensation from the state and may only serve on a part-time or intermittent basis, they are nevertheless subject to the State Officials and Employees Ethics Act (5 ILCS 430 et seq.). For purposes of the Ethics Act, all appointees are considered state employees.

Generally, the Ethics Act and many other ethics-related laws, rules, and policies apply to you regardless of who appointed you and, with few exceptions, apply regardless of other positions that you may hold, such as that of a locally elected official or municipal employee. These laws and rules are intended to ensure that the functions of state government are conducted with fairness, honesty, and integrity. That is, in part, what it means to follow the principles of **ethics**.

Your official actions and those of your fellow appointees may have significant economic and social consequences for the citizens of Illinois. Therefore, it is important that your official actions are made in the best interests of the state and in a manner that is consistent with all applicable laws, rules, policies, and regulations.

Like others who serve the state as appointees, employees, or officials, you must use state-provided resources in the most productive and efficient way possible and generally, only for the work of state government. You must avoid placing your personal or financial interests in conflict with those of the state. If you have knowledge of conduct by a state employee, appointee, or official, or those doing business with the state that is either unethical or unlawful, you have an obligation to notify the appropriate authorities.

It is your responsibility to become familiar with and obey the laws, rules, policies, and regulations that apply to you. If you have a question about either the legality or ethics of a matter related to state government, you may discuss the matter with the ethics officer for the state board or commission which you serve or you may seek private legal counsel.

## What's New

In the lesson materials that follow, you will find updated explanations of the law and new examples of ethics obligations and review questions. You will also find a new lesson concerning recent amendment to the Illinois Procurement Code that, by law, all state employees must be informed of.

## Ethics Officers

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By law, each state agency, including each state board, is required to designate an ethics officer. Ethics officers:

- act as liaisons between their state agencies and the appropriate Executive Inspector General and the Executive Ethics Commission;

- review employees' statements of economic interests before they are filed with the Secretary of State (these statements will be discussed later in this training); and
- provide guidance to state employees in the interpretation and implementation of the State Officials and Employees Ethics Act.

You should have been provided the name of your board's ethics officer and information on how to contact him or her when you were notified of the need to complete this training course. It is recommended that you write the name and contact information for your board's ethics officer on the cover sheet of this training package and keep it as a reference should you have future questions concerning an ethics matter related to your position with the state.

For your reference, a list of ethics officers for state agencies and boards under the jurisdiction of the Office of Executive Inspector General for the Agencies of the Illinois Governor may be found via the Internet at: <http://www.inspectorgeneral.illinois.gov>.

## **Executive Ethics Commission (EEC)**

Established in 2004, the Executive Ethics Commission, in conjunction with the Executive Inspectors General and the Attorney General, is responsible for the oversight of, compliance, implementation, and enforcement of the State Officials and Employees Ethics Act. The commission consists of nine commissioners, appointed on a bipartisan basis, and it exercises jurisdiction over all officers and employees of state agencies under the six executive branch constitutional officers of the state, as well as the nine state public universities. The commission also promulgates rules governing investigations of the Executive Inspectors General and holds administrative hearings related to alleged violations of the Ethics Act. For further information about the Executive Ethics Commission, visit its Web site at: <http://www2.illinois.gov/eec>.

## **Office of Executive Inspector General (OEIG)**

Established in 2003, the OEIG is an independent state agency whose primary function is to investigate fraud, abuse, and violations of laws, rules, and policies in state government. The OEIG investigates allegations of misconduct by the employees, appointees, and elected officials under its jurisdiction.

The OEIG's jurisdiction includes the state public universities, the Office of the Governor, the Office of the Lt. Governor, and all state agencies and departments of the executive branch of state government, except for those agencies under the jurisdiction of other executive branch constitutional officers, specifically the Attorney General, the Comptroller, the Treasurer, and the Secretary of State (other Inspectors General have jurisdiction over the four executive branch constitutional officers not under the OEIG's jurisdiction, and the state legislature).

Additionally, the OEIG has responsibility for investigating misconduct by those doing business with state agencies under the OEIG's jurisdiction.

For additional information about the Office of Executive Inspector General for the Agencies of the Illinois Governor, visit its Web site at: <http://www.inspectorgeneral.illinois.gov>.

## Ethics Training (Ethics Act, Section 5-10)

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Under the Ethics Act, executive branch employees are among those who must, at least annually, complete ethics training under appropriate oversight. Additionally, by law, new employees must complete ethics training within 30 days of their initial employment. Because state employees are defined within the Ethics Act to include, “any appointee,” appointees must also complete ethics training. **Elected** commissioners, trustees, directors, or board members of boards of a state agency, including any retirement system or investment board subject to the Illinois Pension Code, are also state employees for purposes of the Ethics Act.

This training course is specifically required of appointees to entities under the jurisdiction of the Office of Executive Inspector General for the Agencies of the Illinois Governor. It is the responsibility of each state agency, board, commission, etc. to conduct ethics training and to annually report to the OEIG and the Executive Ethics Commission those individuals who have or have not completed training.

Failure to complete training when directed to do so exposes employees and appointees to disciplinary or other action by their state agencies or boards and/or the appropriate ultimate jurisdictional authority (i.e., the Governor, Lt. Governor or in the case of the state public universities, their boards of trustees). This may include action up to and including termination of employment or withdrawal of appointment. Additionally, the failure to complete ethics training and to submit a signed certification of completion of the training, in accordance with the training’s instructions and the requirements of the Ethics Act, may be found to constitute a violation of the Ethics Act. This could result in possible administrative action by the Executive Ethics Commission, including its levy of a fine of up to \$5,000.

Your state board will notify you and provide instructions to you concerning when and how to participate in ethics training. By carefully reading and reviewing the material in this package and, signing and submitting the attached acknowledgement form, you are completing this training for the current year.

## What's New

### Procurement Communications Reporting (30 ILCS 500/50-39)

Among its other goals, the Illinois Procurement Code is intended to ensure that state purchases are made fairly and in the best interests of the state. A recent amendment to the Procurement Code requires that employees be informed, via annual ethics training, of new requirements to report certain communications received by state employees related to state procurement (purchasing) matters.

Under the Procurement Code, any written or oral communication (e.g., a phone call, email, or letter) received by a state employee that provides or requests material (i.e., important) information or makes a material argument about a procurement matter (such as a request for proposals (RFP)), must be reported to the state’s **Procurement Policy Board**. Communications related to the following matters are among those that must be reported:

- Establishing or defining a procurement need or method of source selection
- Drafting, reviewing, or preparing specifications, plans, or requirements
- Drafting, reviewing, or preparing any invitations for bid, requests for proposals, requests for information, sole source procurement justifications, emergency procurement justifications, or selection information
- Evaluating bids, responses, or offers
- Publishing notices to the Procurement Bulletins

Communications reports to the Procurement Policy Board must be submitted using the Procurement Communications Reporting System (PCRS) at: <http://pcrs.illinois.gov> within 30 days and must include:

- The date and time of each communication
- The identity of each person from whom each communication was received, the individual or entity represented by that person, and any action requested or recommended by that person
- The identity and job title of the person to whom each communication was made
- The identity and job title of the person providing a response to each communication, if a response is made
- A detailed summary of the points made by each person involved in the communication
- The duration of the communication
- The location(s) of all persons involved in the communication (including their phone numbers, if via telephone)
- Any other pertinent information

When an **oral communication** to a state employee, which is subject to the above-mentioned reporting requirement, **is made by a lobbyist**, all individuals who participate in the oral communication must submit a written report to the state employee which documents the above-listed report elements (i.e., date, time, etc.). These “lobbyist reports” will be included in the report submitted to the Procurement Policy Board and will be available to the public via the Board’s Web site at: <http://ppb.illinois.gov>.

Communications related to procurement matters **not required to be reported** to the Procurement Policy Board include:

- Statements by a person publicly made in a public forum
- Statements regarding matters of procedure and practice, such as the format or number of copies required related to a contract bid
- Statements made by a state employee to other employees of the same agency or to employees of the Executive Ethics Commission

Generally, communications regarding the administration and implementation of an existing contract do not need to be reported to the Procurement Policy Board; however, communications regarding contract change orders or the renewal or extension of a contract must be reported.

Contact your state agency's ethics officer for additional information concerning these reporting requirements or visit the Procurement Policy Board's Web site (<http://ppb.illinois.gov>) for additional instructions and information.

## **Official Misconduct, Bribery, and Solicitation Misconduct** (Criminal Code of 1961 (720 ILCS 5/33-3))

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Public officers or employees commit misconduct when, in their official capacity, they commit any of the following acts:

- Intentionally or recklessly fail to perform any mandatory duty as required by law
- Knowingly perform an act which they know they are forbidden by law to perform
- With intent to obtain personal advantage for themselves or another, they perform an act in excess of their lawful authority
- Solicit or knowingly accept for the performance of any act a fee or reward which they know is not authorized by law

Public officers or employees convicted of violating any these provisions forfeit their office or employment. In addition, they commit a Class 3 felony.

### For Example:

**A state employee may be committing official misconduct if he approves a state contract, which he knows he does not have the authority to approve. Also, as an example, a state employee may be committing official misconduct if he uses state property or equipment for unauthorized purposes, such as for his personal use or other non-state business.**

Among other circumstances, **bribery** occurs when state employees ask for or accept property or personal advantage, such as, but not limited to, money or free services, in exchange for taking or not taking (or influencing someone else to take or not take) an official act.

### For Example:

**It is unlawful for state employees to accept something of value, such as a promise of future employment, or travel expenses, in exchange for making official decisions, such as the authorization of state financial aid, approval of a state contract, or issuance of a professional license.**

If state employees or officials accept a bribe, they could face criminal charges and if convicted, they could go to jail. It is also a criminal violation of the law if state employees or officials fail to report a bribe to the Illinois State Police.

If state employees have regulatory authority over a person, such as responsibility to investigate, inspect, license, or enforce regulatory measures related to the person's business or activity, and they knowingly ask for or receive political campaign contributions from that person, they have

committed **solicitation misconduct**. If convicted of solicitation misconduct, they will lose their state jobs.

## **Personnel Policies** (Ethics Act, Section 5-5)

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State employees are required to follow the personnel policies of their state agency, board, or commission. These policies must include elements related to the following:

- Work time requirements
- Documentation of time worked/time sheets
- Documentation for reimbursement for travel on official state business
- Compensation
- Earning and accrual of state benefits for those eligible for benefits

As an appointee, you are expected to become familiar with and adhere to the personnel policies of your board or commission.

## **Time Sheets** (Ethics Act, Section 5-5)

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As a state employee, you are required to periodically submit time sheets documenting the time spent each day on official state business to the nearest quarter hour. **As a state board appointee, you are expected to accurately report the hours that you work for the state, on a timely basis, as directed by your state board.**

## **Conflicts of Interest**

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Many appointees to state boards and commissions serve the state on a part-time basis and are also employed elsewhere. As a result, appointees may be more likely than other state employees to have personal, financial, or business interests that have the potential to conflict with their official work on behalf of the state. It is vital to the proper operation of state government and the public's confidence in the integrity and basic fairness of state government, for appointees to avoid not only actual conflicts of interest, but also those situations that may be perceived by others as a conflict of interest.

A conflict of interest occurs when the interests of an appointee are in conflict with the interests of the state. This might occur, for example, when a decision or recommendation that an appointee makes, relative to his or her official position, either affects or is affected by his or her personal interests or those of a family member, friend, or associate.

### For Example:

**An appointee has a conflict of interest when she participates in a decision to award a contract for state business to a company owned by a business associate. Another example of a conflict of interest occurs when an appointee attempts to influence the vote of a fellow board member in order to benefit the financial interests of a friend.**

Official actions taken by an appointee to a state board, such as, but not limited to, voting on an issue before the board, or approving a license application, or granting a contract, or hiring an employee of a board, should be in the best interests of the state.

## Do What's Right!

### **Recommended Best Practice**

In any instance where you believe you may have a conflict of interest with respect to your membership on a state board or commission, it is your responsibility to immediately take steps to appropriately disclose the conflict and take action to remedy it. Disclosure should be made in accordance with any applicable policies of your board or commission. In the absence of a relevant policy, disclosure should be made to the head of the board or commission and to its ethics officer. Every immediate effort must be made to either eliminate the conflict or to recuse yourself from any official business related to the conflict.

Any preexisting, potential, or real conflicts of interest should be disclosed to the state by state employees or appointees during their hiring/appointment process.

### For Example:

**A prospective appointee to a state board whose husband is employed by a law firm that provides legal services to the board should disclose that relationship to the appointing authority.**

Additionally, it is unethical for state employees and appointees to use information made available to them as result of their official duties and which is not generally known to the public, to benefit themselves, their friends, their family, or associates. The use of such insider information to benefit themselves or another person is unlawful under the Illinois Procurement Code (30 ILCS 500/50-50).

### For Example:

**It would be inappropriate and illegal for a state board member to provide confidential information about a competitive bidding process for a state contract to a friend whose business is participating in that same bidding process.**

## Conflicts of Interest Lesson Review Questions

### **Review Question #1**

Jack is a department head within city government. He was recently appointed to a state board that deals with issues affecting local government.

Anna, another member of Jack's state board, owns a company that does business with the city Jack works for. Jack is interested in gathering support for a proposal he plans to make to the state board. He has told Anna that if she supports his proposal, he may be able to steer some city business to her company. Anna has agreed. Are Jack's and Anna's actions ethical?

- A. No, their actions represent a conflict of interest (and possibly much worse).
- B. Yes, their actions are nothing more than the typical “horse-trading” that goes on in any organization, including government.
- C. Yes, their actions are okay, since it is not clear that either of them will receive financial benefit as a result of Jack’s plan.

Select the best answer(s) and then compare your response to the explanation below.<sup>1</sup>

### **Review Question #2**

Tanya is an appointed member of a state board that makes recommendations to a state agency concerning the agency’s issuance of funding grants to various nonprofit service organizations. Tanya’s daughter-in-law works for one of those nonprofits that receive funding from the state agency that Tanya’s board advises. Should Tanya disclose her daughter-in-law’s employment to anyone, since it may be a conflict of interest?

- A. No, because Tanya is only one of several board members who must vote on funding recommendations. She cannot individually make such a recommendation. Therefore, her situation does not represent a conflict of interest.
- B. Yes, Tanya should disclose to her state board her daughter-in-law’s employment, since it may be a conflict of interest.
- C. No, because Tanya’s board only makes recommendations rather than final decisions about funding, she is not required to disclose her daughter-in-law’s employment.
- D. No, because only full-time state employees and not appointees are responsible for avoiding conflicts of interest.

Select the best answer(s) and then compare your response to the explanation below.<sup>2</sup>

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<sup>1</sup> The best response to Review Question #1 is A. Jack’s and Anna’s planned actions represent a conflict of their interests with those of the state, since it appears as though Anna has agreed to take official action on Jack’s board proposal, based on Jack’s offer to steer business to her company. Furthermore, Jack’s offer to Anna may violate the policies of the city he works for. Worst of all, both Jack’s and Anna’s planned actions may represent official misconduct and/or bribery, both of which are potential criminal offenses.

<sup>2</sup> The best response to Review Question #2 is B. Tanya should disclose her daughter-in-law’s employment to her state board’s ethics officer and/or its chairperson. Despite the fact that Tanya’s board makes only recommendations, others would view Tanya’s decisions as affecting or being affected by her daughter-in-law’s employer. This is true even though Tanya cannot individually make a decision affecting the organization that employs her daughter-in-law. The fact that Tanya is an appointee and not a full-time state employee has no relevance to the existence of her conflict of interest. The ethics officer and Tanya’s board should develop a plan to ensure that the interests of Tanya and her daughter-in-law do not come into conflict with those of the state. This may be achieved by ensuring that Tanya does not participate in board actions that have the possibility of being affected by or affecting Tanya’s daughter-in-law’s employer.

## Prohibited Political Activities (Ethics Act, Section 5-15)

State employees and appointees may not participate in any of the following activities while acting, or appearing to act, as state employees or appointees or while conducting state business. If state employees or compensated appointees take part in any of these activities during normal work hours (i.e., during compensated time), then they must use vacation, personal, or compensatory time off. Additionally, state employees or appointees may never engage in any of these activities using state property or resources (such as state-provided telephones, cell phones, photocopiers, or computers):

- Prepare for, organize, or participate in any political meeting, political rally, political demonstration, or other political event

For example, a state employee may not send an email to fellow workers during work hours and/or using a state email account, encouraging them to attend a rally for a candidate for public office. Nor may state employees use a state email account, at any time, to, for example, issue invitations to or advertise a political event to anyone.

- Solicit contributions, including but not limited to purchasing, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event
- Solicit, plan the solicitation of, or prepare any document or report regarding any thing of value intended as a campaign contribution
- Plan, conduct, or participate in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes, or for or against any referendum question
- Survey or gather information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization, or for or against any referendum question

For example, it is unlawful for state employees, during their workday, to call potential voters on behalf of a candidate to find out whom they might vote for in an upcoming election.

- Assist at the polls on Election Day on behalf of any political organization, political candidate, or for or against any referendum question
- Solicit votes on behalf of a candidate, political organization, or for or against any referendum question, or help in an effort to get voters to the polls or participate in a vote recount on behalf of a candidate or political organization
- Initiate, prepare, circulate, review, or file a petition on behalf of a candidate for elective office or for or against any referendum question

- Make a contribution on behalf of any candidate for elective office
- Prepare or review responses to candidates' questionnaires in connection with a campaign for elective office or on behalf of a political organization for political purposes
- Distribute, prepare for distribution, or mail campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question
- Campaign for an elective office or for or against any referendum question
- Manage or work on a campaign for elective office or for or against any referendum question

For example, it is unlawful for state employees to use state-provided telephones, even during an uncompensated lunch period or before or after their normal work hours, to work on someone's campaign for elective office.

- Serve as a delegate, alternate, or proxy to a political party convention

Lastly, a supervisor may not compel a state employee to perform political activities at any time.

## Do What's Right!

### Recommended Best Practice

State employees or appointees must not engage in political activities during the hours they work for the state or while using any state resource (such as phones, copiers, letterhead, fax machines, email accounts, etc.). In some instances, state agencies or state boards and commissions may have policies that more severely restrict the political activities of their employees and appointees, including those activities that may take place outside of the time which employees and appointees work for the state. If you are in doubt as to whether an activity or action may be prohibited by law or policy, you may ask your state board's ethics officer for guidance.

## Prohibited Political Activities Lesson Review Questions

### Review Question #3

James is an unpaid appointee to a state commission. James is actively involved in promoting a referendum to increase property taxes in his town. Is it possible that some of James' activities in support of the referendum may be restricted by state law?

- A. No, because James does not receive a salary from the state, he is not subject to the legal restrictions, such as the Ethics Act, that apply to most full-time state employees.

- B. Yes, the political prohibitions of the Ethics Act, some of which relate to referendum questions, apply to James.
- C. No, since the prohibitions on certain political activities of state employees and appointees only apply to their support of candidates for elective offices and not to referendum questions.

Select the best answer(s) and then compare your response to the explanation below.<sup>3</sup>

#### Review Question #4

Linda is a full-time appointee to a state commission. As such, she has a state email account that she uses to communicate with her commission's staff. Linda also occasionally receives messages via her state email account, from individuals or entities outside of state government, which are unrelated to state business. She recently received a brief email from an acquaintance urging her to vote for a particular candidate for a federal elective office. The email suggests that Linda forward the message to 10 of her friends in an effort to drum up additional support for this particular candidate. Linda isn't sure if she can do so without violating the Ethics Act. What should she do?

- A. Forward the message to her friends, since it's only a few people. Furthermore, Linda plans to send the email on her own time, not when she's supposed to be working on the activities of her state commission.
- B. Seek the advice of her commission's ethics officer, because she is unsure whether using the state's email system for political purposes is unlawful.
- C. Delete the message she received from the acquaintance and inform that person that state law prohibits the use state property and resources, such as the state's email system and Linda's time as a commissioner for political purposes (such as soliciting support for someone running for elective office).

Select the best answer(s) and then compare your response to the explanation below.<sup>4</sup>

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<sup>3</sup> The best response to Review Question #3 is B. The restrictions that pertain to certain political activities under the State Officials and Employees Ethics Act apply to all executive branch employees, including most appointees to state boards and commissions, regardless of whether the appointees receive compensation. Some of the Ethics Act's restrictions on political activities apply to employee or appointee actions in support of candidates for elective office, in support of political parties, **and for or against referendum questions**.

<sup>4</sup> The best response to Review Question #4 is C, although it's also appropriate for Linda to seek the advice of her commission's ethics officer. The Ethics Act prohibits state employees, including appointees, from intentionally misappropriating state property or resources, such as the state's email system, to engage in any prohibited political activity. This includes the use of a state email account to solicit support for a candidate for elective office, regardless of whether its use takes place on an employee's own time (outside of normal work hours or when using vacation, personal, or compensatory time off).

## Political Contributions on State Property (Ethics Act, Section 5-35)

As an appointee to a state board or commission, you may not intentionally solicit, accept, offer, or make political campaign contributions on state property. These prohibitions also apply to public officials, state employees, candidates for elective office, lobbyists (i.e., persons required to be registered under the Lobbyist Registration Act), or any officers, employees, or agents of any political organization.

State property includes, for example, buildings or portions thereof that are owned or exclusively leased by the state.

## Prohibited Offer or Promise (Ethics Act, Section 5-30)

A state employee, appointee, or official may not promise **anything of value** related to state government in consideration for a contribution to a political committee, political party or other entity that has as one of its purposes the financial support of a candidate for elective office.

In the context of a prohibited offer or promise related to a political contribution, **anything of value** includes, but is not limited to:

- positions in state government
- promotions
- salary increases
- other employment benefits, including, but not limited to, modified compensation or benefit terms; compensated time off; or change of title, job duties, or location of office or employment. An employment benefit may also include favorable treatment in determining whether to bring any disciplinary or similar action or favorable treatment during the course of any disciplinary or similar action or other performance review
- board or commission appointments
- favorable treatment in any official or regulatory matter
- the award of any public contract
- action or inaction on any legislative or regulatory matter

### For Example:

**It is unlawful for a state employee or appointee to offer an action by a state board, or to offer someone a state job or to offer an appointment to a state board, or to offer the award of a contract, in exchange for a political campaign contribution.**

## Ban on Gifts from Prohibited Sources (Ethics Act, Sections 10-10, 10-15 and 10-30)

Generally, as a state appointee, you must not ask for or accept anything of value (other than the compensation you may receive from the state) in relation to your position with the state. Asking for or accepting a gift may be illegal under the Ethics Act, or prohibited by your state board's policies. Furthermore, anything of value, if offered to you **in exchange for an official act**, may be considered a bribe.

Prohibited gifts include a variety of things, some of which you might not ordinarily think of as gifts. Gifts are defined by the Ethics Act to include, among other things, tickets to sporting events, hospitality, specially discounted merchandise or services, entertainment, loans, reimbursement of travel expenses, gratuities, cash, food, drink, and honoraria for speaking engagements. In addition to the restrictions on the solicitation or acceptance of gifts from prohibited sources that are contained in the Ethics Act, your state board may have its own policies, which in some instances, may be more restrictive than those of the Ethics Act.

Under the Ethics Act, state employees or appointees may not intentionally solicit or accept prohibited gifts from certain individuals or entities that are defined by law as a “prohibited source” or in violation of any federal or state statute, rule, or regulation. It is also unlawful for employees’ or appointees’ spouses or immediate family members living with them to solicit or accept a prohibited gift from a prohibited source.

**Prohibited sources** include a person or entity that:

- Seeks official action from the state employee or the employee’s state agency or other employee directing the employee
- Does business or seeks to do business with the employee, state agency, or other employee directing the employee
- Conducts activities that are regulated by the employee, the state agency, or other employee directing the employee
- Has interests that may be substantially affected by the performance or non-performance of the official duties of the state employee
- Is a registered lobbyist under the Lobbyist Registration Act
- Is an agent of, a spouse of, or an immediate family member who is living with a prohibited source

Under the Ethics Act, there are a limited number of specific circumstances under which you may lawfully accept certain items of value from a prohibited source, such as the reimbursement of travel expenses for a meeting to discuss state business when the situation meets specific criteria and when such expenses have been approved in advance by your board’s ethics officer.

The list of exceptions is limited to:

- Opportunities, benefits, and services available to the general public on the same conditions
- Anything for which a state employee pays market value
- A lawful contribution under the Election Code or the Ethics Act or activities associated with a fundraising event in support of a political organization or candidate
- Educational materials and missions (as further defined below \*)
- Travel expenses for a meeting to discuss state business (as further defined below \*\*)
- A gift from a relative
- Anything provided on the basis of personal friendship, unless the employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the employee and not because of the personal friendship

- Food or drink that does not exceed \$75 per calendar day
- Food, drink, lodging, and transportation related to outside business or employment activities, if the benefits are customarily provided to others in similar circumstances and are not offered because of the recipient's official position
- Intra-governmental or inter-governmental gifts (e.g. gifts between agency employees or between government employees)
- Bequests, inheritances, and other transfers at death
- Any item or items from any one prohibited source during any calendar year that has a cumulative total value of less than \$100

\*Illinois Executive Ethics Commission Rule 1620.700 states that educational materials and missions are those that have a close connection to the recipient's state employment; predominately benefit the public and not the employee; and are approved by the employee's ethics officer in advance of the mission or receipt of the materials. If advance approval is not practicable, the missions and materials shall be reported to the ethics officer as soon as practicable and shall contain a detailed explanation of why approval could not be obtained in advance.

\*\*Illinois Executive Ethics Commission Rule 1620.700 further states that travel expenses of a meeting to discuss state business are those that have a close connection to the recipient's state employment; predominately benefit the public and not the employee; are for travel in a style and manner in character with the conduct of state business; and are approved by the employee's ethics officer in advance of the travel, if practicable. If advance approval is not practicable, the travel shall be reported to the ethics officer as soon as practicable and shall contain a detailed explanation of why approval could not be obtained in advance.

Under the Ethics Act, if state employees or appointees **unintentionally** receive a prohibited gift from a prohibited source, they may correct the situation and not be in violation of the law if they promptly do any of the following:

- Return the gift to the giver
- Give the gift to a not-for-profit organization, a 501(c)(3) organization
- Give an amount of equal value to a not-for-profit organization, 501(c)(3) organization

Be aware that **any gift that is intended to improperly influence your official conduct** as a state appointee **must not be accepted**. Such a gift may constitute a bribe under state or federal law. Questions you may have related to gifts solicited or received in your capacity as a state appointee or while conducting state business may be referred to your state board's ethics officer.

**Do What's Right!**

#### **Recommended Best Practice**

In general, it is recommended that you simply decline anything of value offered to you (other than the compensation you may receive from your state board) in relation to your official duties, unless it meets one of the exceptions to the Ethics Act's gift ban and is allowable under your state board's policies.

It is advisable that prior to accepting anything of value in connection with your official duties, that you discuss the matter with your board's ethics officer. Exceptions to the suggestion that you discuss the acceptance of a gift with your board's ethics officer should be limited to situations where you are fully confident that your acceptance of a gift does not violate any law, rule, policy, or regulation and does not create the perception of wrongdoing.

### Gift Ban Lesson Review Questions

#### Review Question #5

Binh, who is a member of a state board, is shopping for a used car with his son. While Binh and his son look over cars on a local car dealer's lot, the salesman asks Binh what he does for a living. Binh mentions he's employed full time, but also serves on a state board. In response, the salesman says he will discount the price of the car by an extra 5% because Binh works for the state and the dealer wants to maintain a good relationship with state employees since the dealership has a vehicle maintenance agreement with a state agency. Is it lawful for Binh to accept this special discount?

- A. Yes, since the Ethics Act's gift ban only applies to employees and not appointees.
- B. Yes, since it is likely that the salesman makes similar offers of special discounts to others and since the car salesman isn't asking for anything in exchange for his offer.
- C. Yes, since the dealer's maintenance agreement is with another state agency, and not with Binh's state board.
- D. No, because the offer does not appear to be one that is made available to the general public on the same conditions.

Select the best answer(s) and then compare your response to the explanation below.<sup>5</sup>

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<sup>5</sup> The best response to Review Question #5 is D. It is unclear whether this same offer is made available to members of the public on the same conditions. The car dealer is a prohibited source because it is a state vendor, whether or not its contract with the state is with Binh's state board. The Ethics Act's gift ban generally applies to appointees to state boards and not just to other state employees. Therefore, Binh's acceptance of a merchandise discount, from a state vendor, that is not made available to the general public on the same conditions would be a violation of the Ethics Act.

Furthermore, the gift ban applies to the spouse and immediate family members living with a state employee (or appointee), and therefore, it would apply, in this instance, even if Binh's son was paying for the car and receiving a special discount.

## Review Question #6

Aran is office manager for a small state board. Among his many duties, he orders office supplies and is responsible for the installation and repair of his office's copiers, telephones, printers, and fax machines. Recently, one of his office's two laser printers broke down. When the repairman was in the office to fix it, he offered Aran two free ink cartridges to compensate the office for any inconvenience caused by the printer's malfunction. Aran knows the board's budget is tight and the printer's failure delayed some of the staff's work. Is it lawful under the Ethics Act for Aran to accept the repairman's offer?

- A. Yes, it is lawful under the Ethics Act to accept a gift offered by a prohibited source to a state agency, rather than to an individual state employee.
- B. No, because the value of the printer cartridges is not known.
- C. Yes, since the cartridges are offered to compensate the state for its inconvenience, they are allowable under the Ethics Act's gift ban.

Select the best answer(s) and then compare your response to the explanation below.<sup>6</sup>

## **Revolving Door (Non-State Employment) Restrictions** (Ethics Act, Section 5-45)

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The Ethics Act contains restrictions that may, under certain circumstances, affect whether you, as a state appointee, (or one of your family members) may lawfully accept employment, compensation, or fees from another person or entity after you end your state service.

### **Employment Restrictions and Procedures that Apply to Employees or Appointees Who Participate in Contract, Licensing or Regulatory Decisions:**

Depending on your state appointment and its responsibilities, you may be required to immediately notify the OEIG if you are offered non-state employment from certain persons or entities and to seek a determination from the OEIG regarding whether you may lawfully accept such an offer (before its acceptance).

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<sup>6</sup> The best answer to Review Question #6 is A. Aran's acceptance of the printer cartridges for use by his state agency is lawful under Ethics Act's gift ban. The gift ban only applies to items of value offered by a prohibited source to state employees, appointees and officials and not to those which are offered, as in this instance, to a state agency. In this case, the value of the printer cartridges is not relevant to determining whether they may be lawfully accepted under the Ethics Act nor is whether they are offered to compensate the state for its inconvenience.

It is advisable that prior to accepting a gift on behalf of a state agency that state employees verify that the gift's acceptance does not violate state agency policy or other laws or policies, which may be more restrictive than the Ethics Act.

The Ethics Act requires each executive branch constitutional officer to adopt a policy which identifies those positions under his or her jurisdiction and control, which, by nature of their duties, may have the authority to participate personally and substantially in the award of state contracts, the issuance of contract change orders, or in regulatory or licensing decisions. Certain employment restrictions apply to these positions. Furthermore, the appropriate Executive Inspector General has the authority to determine additional state positions under his or her jurisdiction that, due to their involvement in the award of state contracts or in regulatory or licensing decisions, are also subject to these employment restrictions.

If you are in a position that is determined as being subject to these employment restrictions, you should be provided written notification that they apply to your position upon hiring, promotion, or transfer into a relevant position; and at the time your duties are changed in such a way as to qualify your position for the restrictions.

Generally, the revolving door restrictions apply to state employees or appointees, or immediate family members living with state employees or appointees whose positions allow them the authority to participate in certain regulatory, licensing, or contracting decisions. These general employment restrictions apply during a period of one year immediately after termination of state employees' or appointees' state employment or appointment. During that time period, state employees, appointees, and their immediate family members may not knowingly accept employment or receive compensation or fees for services from a person or entity if the state employees or appointees, during the year immediately preceding termination of state employment:

1. Participated personally and substantially in awarding to the person or entity a contract for services or the issuance of change orders with a cumulative value of \$25,000 or more.
2. Participated personally and substantially in a regulatory or licensing decision that directly applied to the person or entity.

**Any employee or appointee in a position which has been identified as having this regulatory, licensing, or contracting authority and who is offered non-state employment during state employment/appointment or within a period of one year immediately after termination of state employment/appointment must, prior to accepting such non-state employment, notify the appropriate Executive Inspector General.** Within 10 calendar days after receiving such notification, the Executive Inspector General must make a determination as to whether the state employee or appointee is restricted from accepting such employment. An Executive Inspector General's determination may be appealed to the Executive Ethics Commission no later than 10 days after the date of determination.

#### [Additional Employment Restrictions and Procedures that are Independent of an Employee's Duties:](#)

A limited number of state officers, employees, or appointees, in certain positions, are strictly prohibited from knowingly accepting employment or receiving compensation or fees for services from certain individuals or entities during a period of one year after the termination of

their state positions – **regardless of whether the state officers, employees, or appointees were involved in regulatory, licensing, or contract decisions.**

These restrictions apply to employment or compensation offers from a person or entity or its parent or subsidiary, that during the year immediately preceding termination of the officer, employee or appointee’s state position, was a party to a state contract or contracts with a cumulative value of \$25,000 or more involving the officer, member, or state employee's state agency, or was the subject of a regulatory or licensing decision involving the officer, member, or state employee's state agency. **These more absolute restrictions apply to:**

- **members of the general assembly or constitutional officers (such as the Governor);**
- **members of a commission or board created by the Illinois Constitution;**
- **persons whose appointment to office is subject to the advice and consent of the Senate;**
- **the head of a department, commission, board, division, bureau, authority, or other administrative unit within the government of this State;**
- **chief procurement officers, state purchasing officers, and their designees whose duties are directly related to state procurement; and**
- **chiefs of staff, deputy chiefs of staff, associate chiefs of staff, assistant chiefs of staff, and deputy governors.**

To reiterate, the employment restrictions on these positions apply regardless of whether the officer, employee, or appointee participated personally and substantially in the award of the state contract or contracts or the making of the regulatory or licensing decision in question. Furthermore, **there is no process for seeking an exception to the employment restrictions on these positions.**

If you find yourself in a situation where you are offered employment or compensation by an individual or business that conducted official state business with you or your state board, you may discuss the matter with your state board’s ethics officer or private legal counsel to ensure that you comply with the law.

**The Executive Ethics Commission has the authority to issue a fine to a state employee or appointee in an amount of up to three times the total annual compensation that would have been obtained in violation of the Ethics Act’s revolving door employment restrictions.**

### **Revolving Door Lesson Review Question**

#### **Review Question #7**

Two months ago, Mora terminated her employment by a state board in a position that has the authority to participate in the award of state contracts. Therefore, Mora is subject to revolving door restrictions under the Ethics Act. Mora’s son, who lives with her, recently accepted a job offer from a vendor that does business with the state board that previously employed Mora. What actions, if any, should Mora or her son have taken prior to the son’s acceptance of the employment offer?

- A. None, since employment restrictions only apply to current or former state employees and not to any of their family members.
- B. Mora should have informed her son's new employer that it could be fined for making an employment offer to her son.
- C. Mora or her son should have notified the Office of Executive Inspector General and sought its determination prior to his acceptance of the employment offer.

Select the best answer(s) and then compare your response to the explanation below.<sup>7</sup>

### Additional Appointee Restrictions (Ethics Act, Section 5-55 and Lobbyist Registration Act, 25 ILCS 170/3.1)

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Appointees to state boards, commissions, authorities and task forces have specific additional laws and rules that apply to them.

#### Registered Lobbyists (Lobbyist Registration Act, 25 ILCS 170/3.1):

A lobbyist is any person who communicates with an official of the executive or legislative branch of state government for the purpose of influencing executive, legislative, or administrative action. Registered lobbyists are those individuals who meet certain criteria under the Lobbyist Registration Act and are therefore, required to register with the Illinois Secretary of State.

A person required to register as a lobbyist may not serve on a state board, commission, authority, or task force authorized or created by state law or by executive order of the Governor if the lobbyist is engaged by nature of a client's business in the same subject area of the board and commission. Exceptions to this prohibition are limited to instances where the lobbyist serves:

- In an elective public office, whether elected or appointed to fill a vacancy
- On an advisory body that makes nonbinding recommendations to an agency of state government, but does not make binding recommendations or determinations or take any other substantive action

Any registered lobbyist who serves on a board, commission, authority, or task force under one of these exceptions must not take part in any decision that may affect one of his or her clients.

Spouses and immediate family members who are living with a person required to register as a lobbyist also may not be appointed to a board, commission, authority, or task force unless they fall under one of the exceptions above.

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<sup>7</sup> The best response is C. By law, Mora or her son was required to notify the Office of Executive Inspector General **prior to** Mora's son's acceptance of an offer of employment from the consultant, regardless of whether Mora participated personally and substantially in the awarding of state contracts to the consultant.

### Holders of State Contracts (Ethics Act, Section 5-55):

A person, his or her spouse, or any immediate family member living with that person, may not serve on a board, commission, authority, or task force if that person meets any of the following criteria:

- The person has more than a 7 ½ percent interest in a state contract
- The person, together with his or her spouse and immediate family members living with them, has more than a 15 percent interest in a state contract

This ban does not apply if one of the following exceptions occurs:

- The contract in question is an employment contract
- The person, the spouse, or the immediate family member is serving in an elective public office
- The person, the spouse, or the immediate family member is serving on an advisory body that makes non-binding recommendations

Any person who serves on a board, commission, authority, or task force under one of these exceptions must not take part in any decision that may affect the contract in question.

Any individual appointed to a board, commission, authority, or task force must disclose all contracts the individual has with the state.

### State Contract-Related Conflicts of Interest (Governmental Ethics Act (5 ILCS 420/3A-35)):

An appointed member of a board, commission, authority, or task force authorized or created by state law or executive order of the Governor, may not have or acquire a contract or a direct financial interest in a contract with the state that is related to the board, commission, authority, or task force on which they sit. This restriction applies during the appointee's term of office and for one year after the conclusion of the appointee's term. This restriction also applies to the appointee's spouse or an immediate family member of the appointee living in the appointee's residence.

### Whistle Blower Protection (Ethics Act, Article 15)

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State employees, including appointees, may be reluctant to report violations of the law, rules, or regulations out of fear that those affected by their report will do something to harm them or their careers. Such **retaliation is generally against the law.**

An officer, state employee (or appointee), or state agency may not lawfully take any retaliatory action against a state employee for doing any of the following:

- Disclosing or threatening to disclose to a supervisor or to a public body an activity, policy, or practice of any officer, member of the General Assembly, state agency, or other state employee that the state employee reasonably believes is in violation of a law, rule, or regulation

- Providing information or testifying about any violation of a law, rule, or regulation by any executive or legislative branch constitutional officer, member of the General Assembly, state employee, or state agency
- Assisting or participating in a proceeding to enforce the State Officials and Employees Ethics Act

Retaliatory action includes, for example, reprimanding, firing, demoting, transferring or suspending the state employee, changing the terms or conditions of the state employee's employment, or denying the state employee a promotion.

Whistle blower protections do not however prohibit a state employee from being disciplined for matters unrelated to the above-listed protected activities. For example, a state employee who discloses an unlawful act of another state employee may still be disciplined for failing to complete a required work assignment. Such discipline is allowable if it is demonstrated by clear and convincing evidence that the discipline (in this example, for failing to complete a work assignment) would have been imposed in the absence of the employee's disclosure of the unlawful act.

If a state employee retaliates against another state employee for reporting a violation of law or assisting in an investigation, then the individual taking the retaliatory action would be subject to disciplinary action up to and including discharge by his or her state agency, as well as potential administrative action by the Executive Ethics Commission for violating the Ethics Act. In addition, the employee subjected to the retaliatory action could file a lawsuit seeking compensation and other remedies as provided by law.

A list of potential remedies, including, but not limited to reinstatement of employment and back pay, may be found in the State Officials and Employees Ethics Act (5 ILCS 430/15-25). The state circuit courts have jurisdiction to hear cases brought under this section of the Ethics Act.

### **Reporting Violations of Law, Rule, Regulation, or Policy** ([Administrative Order #6, 2003](#))

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To put an end to misconduct it is important if you witness misconduct or have evidence of it, you report it to the proper authorities. As a state employee, it is your ethical duty to report violations of laws, rules, or regulations by another state officer, employee, or other relating to state business.

To report a **non-emergency** violation of law, rule, or regulation, you should contact the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) via its toll-free Hotline at 866-814-1113. Questions and/or reports of alleged violations may also be submitted via the Internet at <http://www.inspectorgeneral.illinois.gov>. For those who require it, the OEIG may also be contacted toll-free via a telecommunications device for the disabled (TTD) at 888-261-2734.

Alleged violations may be reported to the OEIG anonymously. However, in many instances, investigations may be conducted more efficiently if investigators are provided the identity of

the person who reported the matter so, if necessary, investigators may ask follow-up questions to obtain additional information relating to the alleged violation.

In the event of an emergency situation requiring an immediate police response, one should contact the Illinois State Police or the county, municipal, or campus police agency that can provide the fastest response (for example, by dialing “911”). Examples of emergency situations include those that involve the illegal use or possession of a weapon, bodily injury or threat of bodily injury, or criminal sexual assault.

If anyone attempts to improperly influence your official actions as a state appointee, particularly if there is an attempt by anyone to have you or another state employee act or fail to act in a manner that is unlawful or violates your state board’s policies, it is your responsibility to immediately report this matter to the appropriate authorities.

In certain instances, a state employee’s failure to report a violation is itself a violation of the law, as is the case where a state employee fails to report a bribe (720 ILCS 5/33-2).

### **Rights and Responsibilities During Investigations** (Ethics Act, Section 20-70, EEC rules, 2 Ill. Admin. Code Section 1620.300(c)(8), and Administrative Order #6, 2003)

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State board employees and appointees who become involved in an investigation conducted by the Office of Executive Inspector General or the Illinois Attorney General have a duty to cooperate. This means, among other things, that employees and appointees must participate in interviews as requested, tell the truth, not withhold information, and respect the confidentiality of any investigation.

By law, every state agency, officer, and employee must cooperate with and provide assistance to the Executive Inspector General and her or his staff in the performance of any investigation. In particular, each state agency must, to the extent permitted by applicable laws and the rules governing the conduct of Executive Inspectors General, make its premises, equipment, personnel, books, records, and papers readily available to the Executive Inspector General. Investigators may enter the offices or grounds of any state agency at any time, without prior announcement, if necessary to the successful completion of an investigation.

In the course of an investigation, investigators may question any state officer or employee, and any other person transacting business with a state agency. Investigators may also, to the extent permitted by applicable laws and the rules governing the conduct of Executive Inspectors General, inspect and copy any books, records, or papers in the possession of the state agency, including those made confidential by law. Investigators must take care to preserve the confidentiality of information contained in responses to questions or books, records, or papers that is made confidential by law.

All OEIG requests for the production of or viewing of documents or physical objects under the control of a state agency must be made in writing. The recipient of such a request, should he or she believe that the release of the subject matter of the request may violate existing rights or protections under state or federal law, has the right to seek a determination from the Executive

Ethics Commissions (EEC) relative to such rights or protections. The EEC's rules governing this process may be found at its Web site at <http://www2.illinois.gov/eec>.

The Executive Inspector General may compel any employee in a state agency to truthfully answer questions concerning any matter related to the performance of his or her official duties. If so compelled, no statement or other evidence therefrom may be used against an employee in any subsequent criminal prosecution, other than for perjury or contempt arising from such testimony. The refusal of any employee to answer questions if compelled to do so shall be cause for discipline, up to and including discharge. Failure to cooperate includes, but is not limited to, intentional omissions and knowing false statements.

When instructed by an OEIG investigator, an employee or appointee who participates in an investigative interview should not inappropriately disclose any matter discussed during the interview, or even the existence of the investigation, except for example, when necessary to consult with private legal counsel.

With respect to OEIG investigations, EEC rules (2 Ill. Admin. Code Section 1620.300) provide for rights of employees during investigations, including, among other elements:

- If investigators reasonably believe an employee who is the subject of the investigative interview will likely face discipline, the investigators must notify the employee whether the underlying investigation is criminal or administrative in nature.
- If the underlying investigation is **criminal** in nature, the interviewee must be presented a form that outlines the interviewee's rights during the interview, including **the right to the presence of an attorney, union representative, or coworker** uninvolved in the investigation
- If the underlying investigation is **administrative** in nature, the interviewee must be presented a form that outlines the interviewee's rights during the interview, including **the right to presence of a union representative, or coworker** uninvolved in the investigation

In both criminal and administrative investigations, the interviewee must sign the above-mentioned form, attesting only to the fact that the form was presented to the interviewee and he or she was given the opportunity to read it.

Investigators may not infringe upon a state employee's right to seek advice from his or her agency's ethics officer on the interpretation and implementation of the Act, or to seek advice from private legal counsel.

The full text of the rules governing OEIG investigations may be found at the EEC's Web site: <http://www2.illinois.gov/eec>.

## Ex Parte Communications

There are laws which govern how information received by state agencies and their employees in relation to rulemaking and regulatory, quasi-adjudicatory, investment, and licensing procedures must be treated, especially when communications are received by state employees

outside of a public forum. These laws are intended to make these procedures fair and to ensure that related communications received by the state and its employees are appropriately disclosed to others who are involved.

Most state employees are not affected by laws governing ex parte communications; however, if you are an employee of one of the several entities listed below or are involved in formal rulemaking, it is especially important that you understand these requirements. If you have questions about ex parte communications, please seek appropriate counsel, such as, by talking to your board's ethics officer.

There are similar, but different requirements related to ex parte communications that apply to (1) rulemaking under the Administrative Procedures Act, and (2) regulatory, quasi-adjudicatory, investment, and licensing matters under the Ethics Act. In addition, the Executive Ethics Commission has established specific reporting requirements related to ex parte communications. These three sets of requirements are discussed below.

#### [Ex Parte Communications in Rulemaking \(Administrative Procedures Act, 5 ILCS 100, Section 5-165\):](#)

Under the Illinois Administrative Procedures Act, an ex parte communication is defined as any written or oral communication by any person, during the rulemaking period, that provides or requests information of a material nature or makes a material argument regarding potential action concerning an agency's (or board's) general, emergency, or peremptory rulemaking that is communicated to the head of the agency or an employee of the agency, and is:

- Not made in a public forum
- Not a statement limited to matters of procedure and practice
- Not a statement made by a state employee to fellow employees of the same board or agency

An ex parte communication (i.e., one that is not made in a public forum, not limited to matters of procedure and practice, or not made by one employee to another of the same state agency or board) that is received by any agency or board, its head, or its employee must be immediately reported to the agency or board's ethics officer. The ethics officer must require that the communication be made a part of the record for the rulemaking proceeding and must promptly file the communication with the Executive Ethics Commission. **These requirements under the Illinois Administrative Procedures Act apply to all state agencies and boards.**

The intent of this section of the Administrative Procedures Act is to ensure that all parties who are interested in **administrative rules** under consideration by a state agency or board are made aware of communication that may occur outside of a public forum between the agency or board and other interested parties.

[Ex Parte Communications in Regulatory, Quasi-Adjudicatory, Investment, and Licensing Matters \(Ethics Act, Section 5-50\):](#)

Requirements that are different from (albeit seemingly similar to) those explained above, apply to ex parte communications involving only the following state agencies:

Executive Ethics Commission  
Illinois Commerce Commission  
Educational Labor Relations Board  
State Board of Elections  
Illinois Gaming Board  
Health Facilities and Services Review Board  
Illinois Workers' Compensation Commission  
Illinois Labor Relations Board  
Illinois Liquor Control Commission  
Pollution Control Board  
Property Tax Appeal Board  
Illinois Racing Board  
Illinois Purchased Care Review Board  
State Police Merit Board  
Motor Vehicle Review Board  
Prisoner Review Board  
Civil Service Commission  
Personnel Review Board for the Treasurer  
Merit Commission for the Secretary of State  
Merit Commission for the Office of the Comptroller  
Court of Claims  
Board of Review of the Dept. of Employment Security  
Department of Insurance  
Department of Professional Regulation and its licensing boards\*  
Department of Public Health and its licensing boards  
Office of Banks and Real Estate and its licensing boards\*\*  
State Employees' Retirement System Board of Trustees  
Judges' Retirement System Board of Trustees  
General Assembly Retirement System Board of Trustees  
Illinois Board of Investment  
State Universities Retirement System Board of Trustees  
Teachers' Retirement System Board of Trustees

\* The Department of Professional Regulation is a division of the Department of Financial and Professional Regulation

\*\* The Office of Banks and Real Estate is a division of the Department of Financial and Professional Regulation

Under the Ethics Act, an ex parte communication is defined as any written or oral communication by any person that imparts or requests information of a material nature or makes a material argument concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by a state agency or board, that is:

- Not made in a public forum

- Not a statement limited to matters of procedure and practice
- Not a statement made by a state employee to fellow employees of the same board or agency

An ex parte communication received by an agency or board, its head or an agency or board employee/appointee from an interested party or its representative, must be promptly made a part of the related official record. "Interested party," means a person or entity whose rights, privileges, or interests are a subject of the matter under consideration by the agency or board.

An ex parte communication received by an agency or board, its head, or an agency or board employee/appointee from other than an interested party or its representative must be reported to the agency's or board's ethics officer. The ethics officer must promptly require the communication to become a part of the record and will promptly file the communication with the Executive Ethics Commission.

The intent of this section of the Ethics Act is to ensure that all parties who are interested in certain matters under consideration by the above-listed state agencies are made aware of related communications that may occur outside of a public forum between those state agencies and other interested parties.

#### [Applicable EEC Rules \(EEC Rules, 2 Ill. Admin. Code Section 1620.820\):](#)

The rules of the Executive Ethics Commission require that any state officer or employee who receives an ex parte communication from a non-interested party as excluded by Section 5-50(b-5) and Section 5-50(d) of the Ethics Act or an ex parte communication from any person that imparts or requests material information or makes a material argument regarding an agency's rulemaking pursuant to Section 5-165 of the Illinois Administrative Procedures Act shall report this communication within seven (7) days to his or her agency's ethics officer. The full text of the EEC's rule may be found at its Web site: <http://www2.eec.illinois.gov/eec>.

If you have any questions concerning whether or not a communication is subject to these ex parte rules, you may seek the advice of your state board's ethics officer.

#### **Ex Parte Communications Lesson Review Question**

##### **Review Question #8**

Max is an administrative law judge who hears matters related to licenses granted by his state agency. Max recently received an email from someone who is not a party to an ongoing hearing that he is presiding over. The email was informal; however, it offered information that is relevant to the hearing and Max's decision making. Is Max required to take any official action in response to the email?

- A. Yes, Max needs only to ignore this additional information that he received via the email when making any future decisions related to the hearing.

- B. Yes, Max needs to notify the ethics officer for his state agency regarding the email he received.
- c. No, Max should reply to the email with an explanation that such communication should take place during the formal hearing process.

Select the best answer(s) and then compare your response to the explanation below.<sup>8</sup>

### **Disclosure of Economic (Financial) Interests** (Illinois Governmental Ethics Act, 5 ILCS 420 et seq.)

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Members of a state board or commission created by the Illinois Constitution, and candidates for nomination or election to such a board or commission are among those required by law to annually (by May 1 of each year) file a statement of economic interests with the Secretary of State.

Generally, the requirement to file statements of economic interests also applies to compensated employees who:

- Are, or function as, the head of a department, commission, board, division, bureau, authority or other administrative unit within state government, or who exercise similar authority with state government
- Have direct supervisory authority over, or direct responsibility for the formulation, negotiation, issuance or execution of contracts entered into by the state in the amount of \$5,000 or more
- Have authority for the issuance or promulgation of rules and regulations within areas under the authority of the state
- Have authority for the approval of professional licenses
- Have responsibility for the financial inspection of regulated nongovernmental entities
- Adjudicate, arbitrate, or decide any judicial or administrative proceeding, or review the adjudication, arbitration, or decision of any judicial or administrative proceeding within the authority of the state
- Have supervisory responsibility for 20 or more state employees
- Negotiate, assign, authorize, or grant naming rights or sponsorship rights regarding any property or asset of the state, whether real, personal, tangible or intangible
- Have responsibility with respect to the procurement of goods and services

It is the responsibility of the chief administrative officer of each state agency to annually certify to the Secretary of State the names and addresses of those members who are required to file a

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<sup>8</sup> The best response is B. Under the Ethics Act, the email received by Max regarding the subject of his ongoing hearing represents an ex parte communication that must be reported by Max to his state agency's ethics officer. Additionally, it is the ethics officer's responsibility to report the matter to the Executive Ethics Commission and to require that the ex parte communication be made a part of the record of the hearing. It would be insufficient for Max to just alert the message's sender of the need to communicate the information through the hearing process and it would be inappropriate for Max to consider the information in his future decisions without disclosing it as part of the record of the hearing and reporting it to his agency's ethics officer.

statement. If you are subject to the requirement to file a statement of economic interests, on or before April 1 annually, the Secretary of State will notify you of the need to file a statement. This notification typically includes a form for filing the statement. Alternatively, the form may be obtained via the Secretary of State's Web site at:  
[http://www.cyberdriveillinois.com/publications/pdf\\_publications/i188.pdf](http://www.cyberdriveillinois.com/publications/pdf_publications/i188.pdf).

The information required for disclosure via a statement of economic interests includes, for example, but is not limited to:

- The name and means of ownership that a member of a state board or commission may have in any entity doing business in the State of Illinois, in which the ownership interest is in excess of \$5,000 (including, for example, real estate or stock, but not including a time deposit in a bank nor any debt instrument)
- The name and address of any professional organization in which the board or commission member is an officer, director, associate, partner, or proprietor from which the member derived income in excess of \$1,200 during the preceding calendar year
- The identity (such as, the address or legal description) of any capital asset such as real estate from which a capital gain of \$5,000 or more was realized during the preceding year
- The identity of any compensated lobbyist with whom the member maintains a close economic association
- The name of any entity doing business in the State of Illinois from which income in excess of \$1,200 was derived by the member during the preceding calendar year

If you have a question about a statement of economic interests, you may seek the advice of your state board's ethics officer.

## **Truthful Oral and Written Statements**

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It is vital to the integrity of state government that all oral and written statements made by you, in your official capacity as a state appointee, be made in what you believe to be an honest and truthful manner. This requirement applies to all means of communications and applies to documents, including, but not limited to:

- Time sheets
- Employment or appointment applications
- Statements of economic interests
- State board or commission rulings, orders, decisions, findings, etc.
- Letters, emails, and reports

Falsification of official documents or untruthful statements made in the conduct of state business are unethical, may violate state policies or law and may subject a state employee or appointee to administrative action up to and including fine and/or termination of state service, and in some instances may result in criminal prosecution.

## State Agency Policies

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It is important that state employees, including appointees, adhere to those applicable laws, rules, policies, or regulations that are unique to their state agency, including, in the case of appointees, those that are specific to their board or commission. These policies may include for example:

- A quorum requirement, which dictates that a minimum number of appointees be present in order for the board or commission to conduct official business
- Rules specifying limitations or requirements related to how an appointee might designate someone to act in his or her absence at a state board meeting
- Rules explaining how board or commission decisions will be made or how its meetings will be conducted
- Requirements that minutes be kept and/or published for each board or commission meeting
- Specifications regarding how a board or commission may operate in “executive session”
- Term limitations which dictate how long an appointee may serve on a state board or commission
- Restrictions or reporting requirements related to conflicts of interest
- Requirements for board employees to avoid being tardy, strictly limit lunch and break periods, and not misuse or abuse state resources by, for example, using state telephones, computers, vehicles, office supplies, or time for personal business

It is important that the business of state agencies is always conducted in accordance with all applicable laws, rules, policies, and regulations. Please be aware that many laws and rules, including the Ethics Act, are applicable to appointees even in instances where an appointee is not compensated or serves on a board or commission that is only advisory in nature or serves on a board that meets only intermittently or is convened for a limited period of time. These laws and rules may, for example, prevent those who are not formally appointed (or otherwise properly designated in accordance with applicable rules, law, or policy) from participating in state board decisions. Under certain circumstances, individuals who participate in official state business without proper authority may be subject to criminal prosecution (e.g., for “official misconduct”).

There may also be policies that are specifically applicable to a particular state agency, board, or commission that may be more restrictive than the more general laws and rules that apply to all state employees. These policies may include, for example:

- Restrictions concerning the solicitation or acceptance of gifts, which may be more stringent than the general gift ban contained within the State Officials and Employees Ethics Act
- Prohibitions on certain political activities, which may be more restrictive than those prohibitions contained within the State Officials and Employees Ethics Act
- Rules governing purchasing procedures
- Special time reporting or other personnel-related rules

- Hiring practices
- A code of conduct

It is important that you familiarize yourself with all the laws, rules, and policies which apply to you, and that you abide by them. If necessary, you may ask the chairperson of the board or commission which you serve, its legal counsel, its chief administrative officer (e.g., its staff's executive director, if one exists), its ethics officer, or private legal counsel for guidance concerning those laws and rules that apply to your service to the state.

## Penalties

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Penalties for violations of ethics-related laws, rules, and policies by state employees and appointees are dependent upon the specific circumstances. Penalties may include administrative action up to and including termination of employment or appointment. In addition, the Executive Ethics Commission may levy administrative fines in the case of violations of the Ethics Act. Illegal acts, such as bribery, or official misconduct, may result in referrals to the appropriate authorities for criminal prosecution, which, if substantiated, may result in jail time.

Disciplinary action under the State Officials and Employees Ethics Act against a person subject to the Ethics Act and the Personnel Code is under the jurisdiction of the Executive Ethics Commission. Any hearing to contest disciplinary action against a person subject to the Act pursuant to agreement between the Executive Inspector General and an ultimate jurisdictional authority will be conducted by the Executive Ethics Commission.

## Ethics Questions or Concerns

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State board employees and appointees who have questions or concerns about a work-related ethics issue may contact their board's ethics officer. Under the Ethics Act, ethics officers, among their other duties, serve to provide guidance to state employees, including appointees, in the interpretation and implementation of the Ethics Act, which guidance employees may in good faith rely upon.

## Examples of the Ethical Obligations of State Employees and Appointees

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The following are examples of actions or situations concerning the various ethical obligations of state employees, appointees, and officials:

1. **Situation:** An appointed member of a state board asks one of the board's staff members to use the board's copy machine to duplicate a hand-out for a meeting. The hand-out is not related to state business and is related to the appointee's full-time job as an employee of a large corporation. The appointee requested the copies be made only because she is running late for a business meeting due to the fact that a meeting of her state board has run longer than she expected it to.

**Ethical Assessment:** It is improper for a state board member to ask a state employee to engage in any activity that is not official state business or is not allowed by the board's policies during the employee's scheduled work times or while using state property or resources.

2. **Situation:** A state board member agrees to vote in favor of a regulatory rule change proposed by a company subject to his board's oversight. The board member does so after the company privately informed him that it would fund improvements to a school attended by his son.

**Ethical Assessment:** It is unethical and a violation of the law for a state appointee to exchange something of value for an official action. Such conduct may result in criminal prosecution.

3. **Situation:** An appointed board member tells the board's executive director that he is in favor of having the board make an employment offer to the board member's nephew. The nephew is well-qualified for a position with the board's staff.

**Ethical Assessment:** Regardless of the circumstances, it is unethical for any state employee or appointee to attempt to influence any state employee's official action in order to benefit a family member, friend, or associate.

4. **Situation:** Because of an employee's outstanding job performance, a state board member authorizes additional benefit time for a board employee in contradiction to the board's personnel policies

**Ethical Assessment:** It is unethical to violate a state board's policies, regardless of the reason. Depending on the circumstances, such an action may represent official misconduct, which is subject to criminal prosecution.

5. **Situation:** A state board employee arrives at work 30 minutes late due to weather-related traffic delays. She does not report her tardiness on her official time sheet since it was not her fault.

**Ethical Assessment:** It is unethical and unlawful to provide false information in a time report used as a basis for compensating a state board employee, regardless of the reason.

6. **Situation:** A manager who works for a state commission is directed by another state employee to gather information during the manager's state work day related to the commission's functions for use by a candidate for elective office in his election campaign.

**Ethical Assessment:** The State Officials and Employees Ethics Act prohibits this and certain other political activities from being done during a state employee's compensated time, other than vacation, personal, or compensatory time off or at any time when using state property and resources. It is also a violation of the Ethics Act for

any official, director, supervisor, or state employee to require another state employee to perform a prohibited political activity.

7. **Situation:** A state board member suggests to an employee of a company that is subject to his board's licensing authority that the company may receive a favorable licensing decision if it steers some work to a consultant that is a business associate of the board member.

**Ethical Assessment:** It is unethical and unlawful for state board employees and appointees to exchange favors for an official action. Such conduct will result in discipline up to and including termination of employment/appointment and possible criminal prosecution.

8. **Situation:** In an attempt to avoid violating the Ethics Act's gift ban, a state appointee asks a state vendor who offered him a pair of tickets to a charity dinner (valued at \$500) to give the tickets instead to the appointee's spouse.

**Ethical Assessment:** The Ethics Act's prohibitions on accepting a prohibited gift apply to the spouse of and immediate family living with a state employee or appointee. Therefore, simply having a prohibited source give the tickets to an appointee's spouse does not prevent a violation of the law.

9. **Situation:** A state board employee accepts a \$150 honorarium (speaker's fee) for participating in a presentation at a conference hosted by a trade association that both lobbies the employee's board and participates in regulatory matters before that board.

**Ethical Assessment:** Acceptance of such a fee from such a prohibited source (i.e., from an entity that does business with the employee's state agency, or has interests that may be substantially affected by the employee or from an entity that is a registered lobbyist) is prohibited under the Ethics Act.

9. **Situation:** The husband of a former state board appointee is offered employment by a company that is subject to the regulatory authority of the board that his wife was previously a member of. The employment offer was made nine months after the expiration of his wife's term of appointment. The husband wants to accept the employment offer without delay, since such offers are few and far between.

**Ethical Assessment:** Depending on the circumstances, not only are some former appointees, employees, appointees, or officials prohibited from accepting employment or compensation offers from an entity subject to state regulation or licensing, but these restrictions may also apply to their spouses or immediate family members living with them. The restrictions generally apply in instances where the former appointee, employee, appointee, or official participated personally and substantially in making a regulatory or licensing decision that directly applied to the entity making the offer. The husband of the former state employee must submit a revolving door determination request to the OEIG and must not accept this employment offer unless and until the OEIG makes a favorable determination. It is also advisable for those subject to the

revolving door prohibitions of the Ethics Act to carefully review the law or seek private legal counsel prior to acceptance of employment or compensation from entities that are subject to state licensing or regulatory authority. Penalties for violations of the Ethics Act's revolving door employment restrictions may include a fine of up to three (3) times the total annual compensation that would have been obtained in violation of the law.

10. **Situation:** A state employee uses his state-provided computer to access pornographic images via the Internet, email, and/or by accessing files on a portable storage device (e.g., a jump drive or portable hard drive), which he has connected to his state computer.

**Ethical Assessment:** Intentionally accessing such material is wrong and in most instances is specifically prohibited by state agency policies. Violation of such policies will result in disciplinary action, up to and including, termination of state employment, and may depending upon the circumstances result in referral of the matter to appropriate authorities for possible criminal prosecution.

11. **Situation:** A manager within the staff of a state commission is angered upon learning that one of his employees has filed a complaint with appropriate authorities alleging misconduct by a fellow employee of the commission. The manager believes the employee's actions show disloyalty to the commission and may bring embarrassment to the commission. The manager plans to teach the employee a lesson by changing the employee's work schedule.

**Ethical Assessment:** State law prohibits state officials, employees, appointees, or agencies from taking retaliatory action against a state employee who discloses or threatens to disclose to a supervisor or public body misconduct by a state official, employee, appointee, or agency that the state employee reasonably believes is in violation of a law, rule, or regulation. Among other things, retaliatory action includes changing the terms or conditions of employment of a state employee.

12. **Situation:** A member of a state board, who is subject to the requirement to file an annual Statement of Economic Interests, is reviewing instructions for the form in anticipation of submitting it. He remembers receiving a generous birthday gift from his parents and wonders whether it must be reported.

**Ethical Assessment:** Among other items, state law requires that gifts totaling more than \$500 received during the preceding calendar year from an entity, **including those from any individual(s)**, be reported by state employees, appointees, or officials who must file a Statement of Economic Interests.

(This page is intentionally left blank to facilitate two-sided printing and to enable the following Acknowledgement form to be detached as a stand-alone page for submittal)



## **Acknowledgement of Participation in:**

### **2011 Ethics Training for Appointees to State of Illinois Boards**

I certify that I have carefully read and reviewed the content of, and completed 2011 Ethics Training for Appointees to State of Illinois Boards. Furthermore, I certify that I understand my failure to comply with the laws, rules, policies, and procedures referred to within this training course may result in disciplinary action up to and including termination of state employment/appointment, administrative fine, and possible criminal prosecution, depending on the nature of the violation.

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Signature

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Printed Name  
(first, middle initial, last)

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Month and Day of Birth  
(for example, July 15)

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Date

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State Agency, Board, or Commission Name  
(for example, Illinois Commerce Commission)

(To be properly credited for participating in ethics training, please submit this form as directed by your state agency)

January 2011