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STATEMENT OF THE
STATE ETHICS COMMISSION
PRESENTED TO THE PENNSYLVANIA
HOUSE OF REPRESENTATIVES,
JUDICIARY COMMITTEE



STATE ETHICS COMMISSION
308 FINANCE BUILDING
HARRISBURG, PENNSYLVANIA 17120

Honorable Thomas R. Caltagirone
Majority Chairman
Judiciary Committee
House of Representatives
Commonwealth of Pennsylvania

Honorable Jeffrey E. Piccola
Minority Chairman
Judiciary Committee
House of Representatives
Commonwealth of Pennsylvania

Chairman: Caltagirone
Chairman: Piccola
Members of the House Judiciary Committee

On behalf of the State Ethics Commission, I am here today, pursuant to the invitation of Chairman Caltagirone, to provide this committee with information regarding the activities and operation of the Pennsylvania State Ethics Commission.

In 1978, the General Assembly of Pennsylvania enacted the Public Official and Employee Ethics Law, more commonly referred to as the State Ethics Law.

In 1989, the Law was amended, and the Commission re-created through the passage of Act 9 - 1989 which culminated the sunset review process.

With the promulgation of this Law, there was simultaneously created an independent agency, the State Ethics Commission. This landmark legislation codified a long standing common law public policy that public office is a public trust and any effort to

realize personal financial gain through public office is a violation of this trust.

In order to effectuate this policy, the law(s) vested in the Commission three primary functions:

1. To administer and enforce the financial disclosure requirements of the Law;
2. to issue advisory opinions and advice to public officials and employees regarding their duties and responsibilities under the Law, and;
3. to investigate, upon sworn complaint or upon the Commission's own motion, alleged violations of the provisions of the Ethics Act.

Additionally, the Commission, in furtherance of the statutorily mandated duties and in pursuit of the expressed intent of the General Assembly that the law be administered in a manner that emphasizes guidance to the officials and employees subject to the provision of the Law, has undertaken various efforts to fulfill an educational mission.

One of the more important aspects of this legislation is the fact that it applies to public officials and employees at both

the state and local levels of government. Thus, for the first time in the history of the Commonwealth of Pennsylvania, a uniform and comprehensive statute was established setting forth standards of conduct for virtually all individuals serving in the public sector.

This Commission, throughout its history, has diligently pursued its statutory mandate in the most efficient and effective manner possible. The first several years of the Commission were concentrated on establishing an operational framework from which the Commission could proceed. Now that this structure has been developed, the Commission continues to fulfill the duties and responsibilities vested in it by law.

The State Ethics Act has undergone many legal challenges, and while there has been some erosion of the Act's application to certain groups of officials, such as judges and lawyers, the Act has survived a substantial number of other legal attacks.

Regarding the few problem areas identified during judicial proceedings, most have been remedied by provisions contained in Act 9 - 1989.

The vast majority of court decisions have upheld the provisions of the law and have affirmed this Commission's application of the Law. The court's validation of this Law, and

the decisions establishing the parameters of the Law's purview, have laid a legal foundation for the Commission's operation. The body of law that has been created, and the public policy as enunciated by the General Assembly, is now well rooted.

The various accomplishments of the State Ethics Commission are nowhere better evidenced than through the myriad of functions performed by the agency and the degree to which the Commission is called upon to carry out these functions.

During the past twelve years, this Commission has issued approximately seventeen hundred advices and more than three hundred opinions. In addition, the Commission staff responds to hundreds of inquiries each week by way of telephone. These opinions and advices have been issued directly to public officials and employees at all levels of government and were in response to questions that had been posed by these individuals.

The resultant decisions have addressed issues ranging from the routine to the extremely complex. Many of these decisions involved questions of first impression for which there existed no prior guidance. For the most part, the public officials and employees who seek the advice of the Commission have no other avenue available for the resolution of their questions. The Commission, in this respect, provides an independent forum from which public officials and employees are able to obtain advice

and guidance regarding their activities as public servants. Not only does the Commission perform this vital advisory role, the power to issue such opinions also provides a statutory protection to persons who seek advance determination as to the propriety of certain activities. Public officials who obtain such advisory opinions also are able to perform the duties and responsibilities of their office with confidence and certainty that their actions will not later be subject to review.

The presence of the Commission thus plays an important role from a broader perspective in government operations.

Indeed, public officials, employees and candidates for public office have, to a great extent, come to rely upon the State Ethics Commission's ability to issue these opinions in a prospective manner.

As noted, the Ethics Law, for the first time in the history of the Commonwealth of Pennsylvania, required public disclosure of certain financial interests of public officials, employees as well as candidates for public office. This then unprecedented requirement of public office was promulgated in order to "strengthen the faith and confidence of the people of the state in their government." The General Assembly further set forth the intent of this requirement and, specifically, delineated that the disclosure was to assure the public that the financial

interests of holders of or candidates for public office did not present a conflict with the public trust.

The State Ethics Commission has administered and enforced this statutory requirement and has promulgated rules and regulations to carry out this function. Additionally, the Commission has established an extremely efficient mechanism for the receipt, indexing, and retrieval of these documents. The Commission distributes approximately 150,000 disclosure forms annually. Although not all forms are filed directly with the Commission, spot compliance reviews are conducted, and the Commission is currently developing a computer generated random sampling compliance program to better ensure an effective, efficient and equitable mechanism of conducting such reviews within the Commission's resource allocations. As part of the administration of the disclosure requirement, non-filers and deficient filers are notified of the filing obligations and of appropriate enforcement or legal procedures that may follow for those who continue to ignore the law. The Commission has also played an active role in ensuring convenient public access to such documents. The Commission will continue to further streamline this process during each filing period and advance the now established foundation for administering the disclosure requirements.

The State Ethics Commission, as can be seen, has played a

useful role in developing an informed electorate.

The third major area of the Commission's statutory mandate relates to its authority to investigate alleged violations of the State Ethics Act. In this respect, the Commission has issued over eight hundred orders during the course of its existence. These orders were issued as a result of either sworn complaints that had been received by the Commission or as a result of investigations that were initiated upon the Commission's own motion. While all investigations must generally remain confidential during the course of investigation, the Commission does have public accountability. As such, upon the final determination of an investigation, the Commission issues an order outlining the allegation, the findings of fact, and the conclusions of law.

This process has resulted in securing restitution to state and local government, representing the financial gains received by some public officials or employees in violation of the Act.

Additionally, the Commission has ordered the termination of certain activities that had resulted in specific conflicts of interests or that represented the use of public office for personal gain.

One of the most significant accomplishments in this area of

the Commission's mandate has been the refinement of the investigative operational function. In 1989, immediately prior to the enactment of the revised Ethics Law, the Commission had approximately 250 open, ongoing investigations. As of this date, that number has been reduced by approximately 100 cases. This reduction has been accomplished with no major increase in the Commission's investigative division but rather through a refinement of the intake and preliminary inquiry procedures.

In addition to the foregoing, the Commission has effectuated an organizational structure that segregates the investigative and adjudicatory functions thereby establishing a process that comports with the most rigid due process requirements.

In 1983, this Commission adopted a statement of purpose and goals or a mission statement that provides that:

The Pennsylvania State Ethics Commission is responsible for strengthening the faith and confidence of the people of the state in their government by effectively and efficiently administering the Ethics Act.

The primary result of the Commission's activities must be a knowledgeable general public, through the participation and cooperation of all persons and groups

affected by the Act.

We will try to achieve this purpose by working towards the following goals:

1. To provide the public with information they need for knowledgeable participation in their state and local governments.
2. To provide the public with information they need to understand their rights under Act 170.
3. To provide persons subject to the Act with information they need to understand their obligations under the Act.
4. To provide heads of governmental bodies with information they need to understand their obligations in the administration of the Act.
5. To provide the public and their representatives in the General Assembly with information on the direction,

performance and activities of the Commission to enable them to make a knowledgeable evaluation of the Commission.

That statement emphasized the Commission's informational or educational function. Interestingly, this statement, although predating Act 9 by six years, was clearly in line with the directions of the General Assembly as outlined in Act 9 - 1989 and as previously noted. During the upcoming year, we will, as a Commission, further review this statement to determine whether there is a need to amend such. The Commission, however, has aggressively worked toward fulfilling this educational mandate. In this respect, the Commission has published and distributed Guides to the Law, Rulings Digests and Comprehensive Annual Reports. The Commission, in accordance with the Law, has held meetings outside of Harrisburg to solicit input from persons and organizations who represent any individual subject to the Law as well as other interested parties. Additionally, the Commission has since the inception of the revised law ensured compliance with the requirement that full texts of rulings are distributed to various enumerated recipients.

Of equal importance is the fact that the Commission has carried out a program of public awareness which has included participation by representatives of the Commission in workshops

and informational seminars for groups throughout the Commonwealth of Pennsylvania including: the Pennsylvania League of Cities; the Pennsylvania Association of School Business Officials; the American Society for Public Administrators; the Pennsylvania Association of Election Officials; the Allegheny County and Western Pennsylvania Association of Township Commissioners; the State Association of Township Supervisors; The Pennsylvania Planning Association; the State Tax Collectors Association; the Association of Housing & Redevelopment Agencies; the First Class Township Commissioners Association; the State Boroughs Association; the Pennsylvania Bar Association; the State Mayors Association; and the elected and appointed officers of the City of Pittsburgh.

Additionally, the Commission has made various presentations to the employees of Commonwealth Agencies and at colleges, schools and universities in the Commonwealth of Pennsylvania.

The Commission will also, during the upcoming year, attempt to develop a flexible training program that can be conducted by agency staff members upon request for any group of government officials and employees. It is anticipated that such a program would be a comprehensive review and analysis of the Law that would include audio and visual aids as well as group workshop sessions where appropriate. The program would be flexible in its adaptability to the varying groups of officials and employees.

In this respect, the Commission is attempting to carry out the mission as delineated not only by the legislature but which the Commission had previously identified for itself.

The instant appearance before this committee presents an ideal opportunity to bring to the attention of the legislature, the thoughts of the Commission regarding areas of potential legislative or regulatory proposals.

Indeed the chair of the committee has specifically requested such input. Additionally, this presentation also will allow the Commission the opportunity to solicit from the committee members any concerns or commentary regarding the general operations of the agency in the administration of the Law. Such input is welcome.

Turning to identifiable proposals which would facilitate the work of the Commission, several items of interest are notable.

In 1987, as part of the sunset review process, the Commission made a number of recommendations regarding potential legislative proposals. One such recommendation was that the statute, allowing certain agencies to petition the Commonwealth Court of Pennsylvania in order to obtain access to confidential information, be amended so as to accord the State Ethics

Commission authority to employ this procedure. See, 42 Pa. C.S.A. §8721.

The State Ethics Commission, in addition to being an administrative agency, performs an investigative function. In this respect, the Commission has been given broad-based investigative powers including the power to issue subpoenas and gather evidence. During the course of many Commission investigations, the Commission is called upon to obtain various documents and information from other governmental bodies. There are occasions when such information is withheld from the Commission on the basis that it is statutorily confidential or otherwise protected. The Commission, for example, has the requirement of monitoring Statements of Financial Interests and investigating alleged violations in relation to Statements of Financial Interests. It would be extremely beneficial to the Commission to have access, for example, to corporate tax returns in order to determine if individuals have received income in excess of \$500 from corporations or if they have a financial interest in such entities. Corporate tax returns, however, are confidentially protected by statute. Similarly, the Commission has on occasion been required to obtain information contained in personnel files regarding the conduct of public employees insofar as it may have violated the State Ethics Act. Once again, this type of information has been withheld from the Commission as confidential. One remedy to the above situation would be to

issue subpoenas for said information. The subpoena, however, does not negate the confidentiality of said material which may still be used as a valid defense to the dissemination thereof. It would appear, however, that another remedy is available to the State Ethics Commission but would require legislative amendments to the Pennsylvania Judicial Code. Specifically, 42 Pa. C.S.A. Section 8721, (the Confidential Access Statute), allows certain investigative agencies access to information which is held by another governmental agency and which is confidential in nature. This statute provides for a complete procedure and further provides for the continued confidentiality of certain information.

During the 1989-90 legislative session such a proposal was in fact introduced in the State Senate. (See S.B. 413 P.N. 428 a copy of which is appended hereto.) This bill, however, was not acted upon. The Commission still believes, however, that such a proposal is warranted.

The Commission also believes that the utilization or employment of hearing examiners for the conduct of administrative hearings is essential. The use of such examiners would assist in the efficient and expeditious fulfillment of the Commission's statutory responsibilities. The hearing examiner after acting as the presiding officer at an administrative hearing, would prepare appropriate findings of fact and recommendations for final

adjudication by the Commission. Of course individuals serving as examiners would have to comply with all of the obligations applicable to Commission employees. Although the Ethics Law, in fact, has the authority to employ such examiners, such is not feasible under the current fiscal constraints. At this time, it is the intent of the Commission to make note of the fact that the Commission realizes the beneficial aspects of this process and will make every effort to implement such in the future where funds permit.

In addition to the foregoing, another area of suggested change concerns the powers and duties of the Commission. Specifically, the Public Official and Employee Ethics Law provides for various remedies that may be employed by the Commission upon finding either a violation of the Ethics Law or otherwise inappropriate conduct. These remedies include the imposition of fines (in the case of financial interest disclosure deficiencies), restitution of inappropriately obtained financial gains, treble penalty assessments, as well as, the ability to make recommendations regarding whether charges should be initiated pursuant to the provisions of the Law. One area not specifically identified in the Law as being within the power of the Commission is the ability to issue, cease and desist orders. On many occasions, the Commission may come across situations which are clearly inappropriate under the State Ethics Law. However, the Commission may find that the factual situations do

not rise to the level of warranting the imposition of monetary penalties or otherwise of bringing criminal charges. However, the Commission should at least have the authority to order the individual engaged in the inappropriate conduct to cease and desist from such activities within a certain period of time. Such a power would not only aid in the facilitation of the Commission's activities, it would also offer the respondent an avenue that may be taken short of the more serious penalties of the Act. Once again the Commission believes that such an approach would be justified and equitable.

Finally, the Committee Chair has requested that we address the impact of House Bill No. 1, 1991 on the State Ethics Commission. This proposed amendment to the Pennsylvania State Constitution, regarding the mechanism of judicial discipline and financial disclosure for the judiciary, will have no effect upon the operations of the State Ethics Commission. The Commission, as a result of a number of court decisions issued during the early 1980's, has played no role in the activities of members of the judicial branch of government.

In closing, I would like to reiterate that the State Ethics Commission welcomes the opportunity to appear here today. The opportunity to engage in a meaningful dialogue with the members of the Commission's oversight committee provides an excellent opportunity for the exploration of ideas and concepts and

provides an avenue for the resolution of concerns and the airing of commentary which can only aid in the more effective administration of the law. The State Ethics Commission will continue to play an important role in providing both a forum and a mechanism through which public officials, public employees and the citizens of the Commonwealth of Pennsylvania will be able to address issues of extreme importance.

Respectfully Submitted,

Helena Hughes, Chairperson

Robert W. Brown, Esq. Vice Chairperson

Dennis C. Harrington, Esq. Commissioner

James M. Howley, Esq. Commissioner

Daneen E. Reese, Commissioner

Roy W. Wilt, Commissioner

Austin M. Lee, Esq. Commissioner

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 413

Session of
1989

INTRODUCED BY REGOLI, STAPLETON, PORTERFIELD, MUSTO, REIBMAN AND
FATTAH, FEBRUARY 6, 1989

REFERRED TO RULES AND EXECUTIVE NOMINATIONS, FEBRUARY 6, 1989

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 access to and disclosure of certain confidential information.

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

6 Section 1. Sections 8721, 8722 and 8724 of Title 42 of the
7 Pennsylvania Consolidated Statutes are amended to read:

8 § 8721. Definitions.

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

12 "Confidential information." Any records, files, data or
13 information, withheld as confidential, whether pursuant to
14 statute or otherwise, by any Commonwealth agency from the
15 Attorney General, a district attorney, the Pennsylvania Crime
16 Commission, the State Ethics Commission or a committee or
17 subcommittee of either House of the General Assembly having
18 subpoena power to investigate criminal activity. The term shall

1 not include personal income tax information or the investigative
2 or intelligence files of the State Police, the Attorney General
3 [or], the Pennsylvania Crime Commission or the State Ethics
4 Commission.

5 "Crime Commission." The Pennsylvania Crime Commission
6 established under the act of October 4, 1978 (P.L.876, No.169),
7 known as the ["]Pennsylvania Crime Commission Act.["]

8 "State Ethics Commission." The State Ethics Commission
9 established under the act of October 4, 1978 (P.L.883, No.170),
10 referred to as the Public Official and Employee Ethics Law.

11 § 8722. Petition for access to confidential information.

12 The Attorney General, a district attorney, the Executive
13 Director of the Crime Commission acting pursuant to a resolution
14 of the Crime Commission, the Executive Director of the State
15 Ethics Commission acting pursuant to a resolution of the Ethics
16 Commission or a committee or subcommittee of either House of the
17 General Assembly having subpoena power to investigate criminal
18 activity, may ex parte petition any judge of the Commonwealth
19 Court for an order providing access to confidential information.

20 § 8724. Disclosure of confidential information.

21 (a) General rule.--Disclosure of confidential information
22 shall be limited as follows:

23 (1) disclosure by the Commonwealth agency holding such
24 information shall be limited to persons personally and
25 directly engaged in the ongoing investigation by the
26 petitioner under section 8723 (relating to grounds for
27 access); and

28 (2) disclosure by the petitioner:

29 (i) in the case of the Attorney General or a
30 district attorney, shall be limited to judicial or

1 administrative proceedings;

2 (ii) in the case of the Crime Commission, shall be
3 limited to official reports; [and]

4 (iii) in the case of the State Ethics Commission,
5 shall be limited to administrative proceedings and
6 orders; and

7 (iv) in the case of a committee or subcommittee of
8 either House of the General Assembly, shall be limited to
9 regular meetings of the committee or subcommittee or
10 debate on the floor.

11 (b) Contents of order.--Commonwealth Court orders entered
12 under section 8723 shall specifically limit the disclosure of
13 confidential information as provided in subsection (a).

14 Section 2. This act shall take effect immediately.