



2017 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

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

“[R]espondent knowingly and intentionally made numerous material omissions, and knowingly and intentionally made materially false, misleading and evasive statements during the course of his interviews with OEIG investigators . . .” (EEC decision #14-EEC-003)

– These are words from an Executive Ethics Commission decision to levy \$4,000 in fines against a former IDOT section chief who violated the Ethics Act by making more than 10 hours of political phone calls on his personal mobile phone while on compensated time working for the State.

As a person appointed to a state board, or commission, you are subject to various laws, rules, and policies that typically apply to any 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, like all board members, are nevertheless subject to the State Officials and Employees Ethics Act (Ethics Act), 5 ILCS 430 et seq. **For the purposes of the Ethics Act, the statutory definition of “employee” includes compensated and uncompensated appointees and board members.**

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 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. These qualities are what it means to follow the principles of **ethics**. Even if you do fit within one of the few exceptions, we advise you to become aware of the standards to which your colleagues should adhere.

To act ethically, you must use state-provided resources in the most productive and efficient way possible and 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, board member, or official, or those who do 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.

Ethics Officers

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 OEIG 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 Ethics Act.

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

(www2.illinois.gov/eec)

The Executive Ethics Commission (EEC), in conjunction with the executive inspectors general and the attorney general, is responsible for the oversight of, compliance, implementation, and enforcement of the Ethics Act. The commission consists of nine commissioners, appointed on a bipartisan basis, and it exercises jurisdiction over all officers, board members, and employees of state agencies under the six elected executive branch constitutional officers of the state, as well as the nine state public universities. It also has jurisdiction over the four Chicago-area regional transit boards: the RTA, the CTA, Metra, and Pace.

The EEC promulgates rules governing investigations of the executive inspectors general, prepares public information materials to facilitate compliance with ethics laws, provides guidance to ethics officers, reviews reports of activity from executive inspectors general and reports of ex parte communications from ethics officers, oversees employee ethics training, and conducts administrative hearings related to alleged violations of the Ethics Act. For additional information about the Executive Ethics Commission, visit its website at: <http://www2.illinois.gov/eec>.

Office of Executive Inspector General

(www.inspectorgeneral.illinois.gov)

Established in 2003, the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) is an independent state agency. Its primary function is to investigate fraud, abuse, and violations of laws, rules, and policies in governmental entities. The OEIG investigates allegations of misconduct by the employees, board members, and elected officials under its jurisdiction. The OEIG also has responsibility for investigating alleged violations by those doing business with entities under its jurisdiction.

The OEIG's jurisdiction includes:

- the governor;
- the lieutenant governor;
- the board members and employees of and vendors and others doing business with the Regional Transit Boards (i.e., the RTA, the CTA, Metra, and Pace);
- the board members and employees of and vendors and others doing business with the state public universities; and
- all employees of and vendors and others doing business with 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.

To file a complaint with the OEIG, please use one of the following means:

- (1) Call 866.814.1113;
- (2) Fax 312.814.5479;
- (3) TTY 888.261.2734;
- (4) Log in to www.inspectorgeneral.illinois.gov and click on "complaints"; or
- (5) Mail your complaint to one of the OEIG offices:

OEIG
69 West Washington, Suite 3400
Chicago, Illinois 60602

OEIG
607 East Adams, 14th Floor
Springfield, Illinois 62701

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

Ethics Training

(Ethics Act, Section 5-10)

“Even if [the respondent] may have felt pressured by supervisors to ensure his subordinates took their ethics training . . . these facts do not justify him taking ethics training for four employees without their knowledge.” (OEIG Case #13-01848)

– These are words from a publicly disclosed OEIG investigative report explaining how an employee of Metra violated provisions of the Ethics Act by completing ethics training for other Metra employees.

Under the Ethics Act, executive branch board members are among those who must, at least annually, complete ethics training under appropriate oversight. Additionally, new board members must complete ethics training within 30 days of commencement of their employment.

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 and must complete ethics training at least once each calendar year.

This training course is specifically required of board members to entities under the jurisdiction of the OEIG. 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 regarding those individuals who have or have not completed training.

Failure to complete training when directed to do so exposes employees and board members to disciplinary or other action. This may include 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.

Your state board will notify you and provide instructions to you concerning when and how to participate in ethics training.

Personnel Policies

(Ethics Act, Section 5-5)

State employees, including board members, are required to follow rules set forth in the personnel policies by the Office of the Governor and by their state agency, board, or commission. By law, these policies must include elements related to:

- work time requirements;
- documentation of time worked/time sheets for all employees and board members;
- documentation for reimbursement for travel on official state business;
- compensation; and
- earning and accrual of state benefits for those eligible for benefits.

Your ethics officer can better explain what specific policies apply to you.

Hiring Practices

(*Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), Administrative Order No. 1 (1990), No. 2 (1990), No. 1 (1991), and No. 2 (2009))

The overwhelming majority of employee positions in state government are subject to hiring procedures implemented to comply with the 1990 U.S. Supreme Court decision, *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), commonly referred to as "*Rutan*," and other state and federal case law. These procedures are designed to prohibit consideration of political affiliation or support or lack thereof in connection with hiring, promotion, transfer, or recall from layoff, relating to most state jobs. That is, most positions in state government must be filled on an objective merit basis, without regard to any applicant's political affiliation. Only a limited number of state jobs are exempted from these procedures.

Procedures for making hiring decisions for state positions covered by the *Rutan* decision have been established by the Office of the Governor and apply to all agencies, boards and commissions under its jurisdiction. Hiring procedures for *Rutan*-covered positions mandate that:

- any employee who receives a personnel request, referral, or recommendation for a *Rutan*-covered position must refer the person making the request, referral, or recommendation to the Department of Central Management Services Governmental Affairs department for disposition;
- grading of employment applications must be completed on a “blind” basis; that is, applicants’ names and any personally identifiable information must be redacted from applications before they are graded;
- grading of applications must be free from all political considerations;
- the creation of lists of eligible candidates for a *Rutan*-covered position must be done on a blind basis; and
- job descriptions for *Rutan*-covered positions must be reviewed and, if necessary, updated prior to posting, to reflect current duties, responsibilities, and requirements.

“The actions of IDOT officials violated Administrative Order No. 2 (2009) and IDOT’s own personnel policies. As a result, hundreds of individuals were hired without having to go through the *Rutan* hiring process even though they performed *Rutan*-covered duties.” (OEIG Case #11-01567)

– These are words from a publicly disclosed OEIG investigative report explaining how Illinois Department of Transportation officials improperly approved the hiring of ostensibly *Rutan*-exempt “Staff Assistants” to perform *Rutan*-covered duties.

Furthermore:

- any employee who participates in an interview of a candidate for a *Rutan*-covered position must have previously and successfully completed training related to *Rutan* hiring practices;
- *Rutan* interviewers must make their assessments of candidates based on pre-determined hiring criteria and with uniform questions related to the position’s duties;
- employment decisions must be properly documented, including a written justification for the agency’s employment decision; and
- the agency director or his or her designee must certify that the employment decision was not based on political party affiliation or support (or lack thereof).

The Ethics Act directs the OEIG to review hiring and employment files to ensure compliance with *Rutan* and applicable employment laws. As part of its regular investigations, the OEIG reviews various agency hiring practices.

Q & A

- Q. My brother has applied for a *Rutan*-covered position and I know he's well qualified. Is it okay for me to put in a good word regarding my brother with the people preparing a candidate list for this *Rutan*-covered position?
- A. No. The creation of candidate lists for *Rutan*-covered positions must be done on a blind basis; that is, without knowledge of the candidates' names. Recommendations like these may have no role in the hiring process for *Rutan*-covered positions.
- Q. What should I do if someone offers me a recommendation concerning a potential candidate for a *Rutan*-covered position for which I am responsible?
- A. Explain to the individual who offered the recommendation that there are established procedures for filling the position, including that all requests, referrals, or recommendations must be submitted to the CMS Governmental Affairs Department
- Q. What should I do if someone directs me to place someone in a *Rutan*-covered position on the basis of the job applicant's political affiliation?
- A. Report the matter to your ethics officer, the CMS Governmental Affairs Department, or the OEIG.

Conflicts of Interest

"[F]our of the seven other Board members said they would have wanted to know about [the Chairman's] connection to a supplemental education services provider before they discussed the waiver application." (OEIG Case # 12-02216)

– These words are from a publicly released OEIG investigative report. The OEIG found that the board chair violated a board's conflict of interest policy by failing to disclose his spouse's ownership of a supplemental education services provider before the Board voted on rules relating to supplemental education service providers.

Many members of state boards and commissions serve the state on a part-time basis and may be employed elsewhere. As a result, you may be more likely than other state employees to have personal, financial, or business interests that have the potential to conflict with your official work on behalf of the state. In some instances, state law or board rules restrict board members' employment or compensation opportunities in order to prevent conflicts of interest.

Examples of board-specific statutes relating to conflicts of interest include:

Prisoner Review Board (730 ILCS 5/3-3-1(b))

“Each member of the [Prisoner Review] Board shall serve on a full-time basis and shall not hold any other salaried public office, whether elective or appointive, nor any other office or position of profit, nor engage in any other business, employment, or vocation.”

Illinois Workers Compensation Commission (820 ILCS 305/13)

“Each [Workers Compensation] Commissioner shall devote full time to his duties and any Commissioner who is an attorney-at-law shall not engage in the practice of law, nor shall any Commissioner hold any other office or position of profit under the United States or this State or any municipal corporation or political subdivision of this State, nor engage in any other business, employment, or vocation.”

Illinois Commerce Commission (220 ILCS 5/2-102(c))

“Each [Illinois Commerce] commissioner shall devote his entire time to the duties of his office, and shall hold no other office or position of profit, or engage in any other business, employment or vocation.”

As a state board member, you should review the laws and rules that apply to your board to ensure that you are in compliance with any restrictions that are intended to help you to avoid conflicts of interest.

Generally, a conflict of interest occurs when the interests of a board member are in conflict with the interests of the state. This might occur, for example, when a decision or recommendation that a member 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:

- A board member has a conflict of interest when she participates in a decision to award a contract for state business to a company owned by a friend.
- Another example of a conflict of interest occurs when a board member attempts to influence a vote of fellow board members in order to benefit the board member’s own financial interests.

Official actions taken by a member of a state board, such as, but not limited to, voting on an issue before the board, approving a license application, 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 or appear to 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 should be made either to eliminate the conflict or to recuse yourself from any official business related to the conflict. As a state board member you should be alert to the appearance of conflicts of interest in your official duties.

In certain instances, a state board member's conflict of interest may violate the law. For example, it would be unlawful for a State Board of Education member to be gainfully employed or administratively connected with an Illinois school system. This would be unlawful under the Illinois School Code (105 ILCS 5/1A-2).



Conflicts of Interest Lesson Review

Scenario #1

Janice is a state board member who makes decisions concerning the regulation of a certain industry.

Janice recently received a license application from a long-time family friend. Is it appropriate for Janice to be involved in the decision concerning state licensing for her friend?

- A. Yes, as long as Janice discloses to her board chair her friendship with the applicant.
- B. No, Janice should reject the application.
- C. No, Janice should not make any decision on her own related to the application; she should notify her board chairman of the possible conflict and recuse herself from the application process.

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

¹ The best response to Scenario #1 is C. Janice should notify her board chair of the potential conflict of interest and follow any applicable policies of her state agency in dealing with the matter. In most situations involving an official act or decision that will affect a friend, family member, or associate, state employees are generally advised to recuse themselves from the process. That is, they should not participate in any action that will specifically affect a friend, family member, or associate.

Scenario #2

Jeffrey is a state board member. As part of his state board duties, Jeffrey votes with other board members to approve the hiring of certain senior employees of the board. The board is considering a recommendation to hire someone who is the son of Jeffrey's business partner. Should Jeffrey participate in the voting?

- A. Yes, since he is one of many board members who will vote on the matter.
- B. No, because voting on the matter has the potential to appear as a conflict of interest.
- C. Yes, since he really doesn't know the business partner's son all that well.

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

Prohibited Political Activities

(Ethics Act, Section 5-15)

"[Respondent] said she knew 'you're not supposed to' use State email in regards to a political matter. Yet . . . she did use State resources in violation of State law . . . (OEIG Case #14-00421)

– These are words from a publicly released OEIG investigative report. The OEIG found that the state employee intentionally misappropriated her state email account by engaging in prohibited political activity.

State employees and board members may not participate in any of the following activities while acting, or appearing to act, as state employees or board members, or while conducting state business.

- 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 through a private account to fellow workers during work hours, or use a state email account at any time, to encourage support for a candidate for public office, nor to announce a political event.

- Solicit contributions, including, but not limited to, purchasing, selling, 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

² The best response to Scenario #2 is B. Any official act by a board member that has the potential to be perceived as a conflict of interest should be avoided. In this instance, Jeffrey should disclose the potential conflict to the board and should recuse himself from voting on the matter.

- 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 for political purposes, 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 in an upcoming election.

- Assist at the polls on election day on behalf of any political organization, candidate for elective office, or for or against any referendum question
- Solicit votes on behalf of a candidate for elective office or a political organization, or for or against any referendum question, or help in an effort to get voters to the polls
- Initiate for circulation, 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 in that capacity or in connection with a campaign for elective office
- Prepare or review responses to candidate 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
- 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
- Participate in any recount or challenge to the outcome of any election

Lastly, a supervisor may not compel a state employee to perform any of the above-listed political activities at any time.

The only compensated time during which state employees or board members may use to take part in these activities is vacation, personal, or compensatory time off. Also, state employees and board members may never engage in any of these activities by intentionally misappropriating state property and resources (such as state-provided telephones, cell phones, photocopiers, or computers) for the benefit of any campaign for elective office or any political organization.

In some instances, state board policies or the law may more severely restrict the political activities of certain state employees and board members, including those activities that may take place outside of the time, during which those employees and board members work for the state.

An example of a board-specific statute relating to prohibited political activity:

Illinois Election Code (10 ILCS 5/1A-14)

No member of the State Board of Elections may become a candidate for nomination for, or election to, or accept appointment to or hold any other remunerative public office or public employment or any office in a political party. Violation of any prohibition in this Section shall disqualify a member of the Board and a vacancy is thereby created. A vacancy also exists upon the occurrence of any of the events enumerated in Section 25-2 of this Act as in the case of an elective office.

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

Scenario #3

A board member of a state agency offers Megan and other employees paid “authorized leave” to work on a campaign for elective office. Is Megan permitted to use authorized leave to work on a campaign?

- A. Yes. A state board member may authorize leave to allow employees to work on a campaign as long as the board member does not declare which candidates to support.
- B. No. State board employees may never work on political campaigns.
- C. No. Prohibited political activities may only be performed during a state board employee's compensated time off if the employee uses vacation, personal, or compensatory time off.

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

³ The best response to Scenario #3 is C. The Ethics Act only permits state employees to perform prohibited political activities during compensated time if they use vacation, personal, or compensatory time off. Authorized leave time may not be used for this purpose.

Political Contributions on State Property

(Ethics Act, Section 5-35)

As a board member of 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” means any building or portion thereof that is owned or exclusively leased by the state, unless that building or portion thereof is rented or leased from the state by a private person or entity.

► Fundraising in Sangamon County

No incumbent statewide constitutional officer, no legislator, and no candidate for statewide constitutional or legislative office may hold a political fundraising event in Sangamon County between February 1 and the end of the Spring legislative session, nor during the Fall Veto session.

Prohibited Offer or Promise

(Ethics Act, Section 5-30)

A state employee, board member, 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.

If another state employee, board member or official asks or directs you to make a prohibited offer or promise, you have a duty to report it to your ethics officer or the OEIG.

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; 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; and
- action or inaction on any legislative or regulatory matter.

For Example:

It is unlawful for a state board member to make a licensing, regulatory, contracting, or hiring decision, in exchange for the promise of a political campaign contribution.

Scenario #4

Tyler works as an administrative assistant for a state board. He has been asked by a member of the board to contribute to a political campaign in return for two additional days of paid authorized leave.

Is it okay for the board member to make this offer?

- A. No, employees to state boards may not make campaign contributions at any time.
- B. No, the Ethics Act prohibits state employees, board members, or officials from offering 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.
- C. Yes, state employees must follow the orders of their supervisors.

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

Prohibited Public Service Announcements and Other Promotional Material

(Ethics Act, Section 5-20)

The Ethics Act prohibits any public service announcements or advertisements on behalf of any state administered program that contain the proper name, image, or voice of any executive branch constitutional officer or member of the General Assembly from being broadcast or aired on radio or television, printed in a commercial newspaper or commercial magazine, or displayed on a billboard or electronic message board at any time.

Furthermore, the proper name or image of any executive branch constitutional officer or member of the General Assembly may not appear on any bumper stickers, commercial billboards, lapel pins or buttons, magnets, stickers and other similar promotional items that are not in furtherance of the person's official state duties or governmental and public functions, if designed, paid for, prepared, or distributed using public dollars.

⁴ The best response to Scenario #4 is B. The Ethics Act prohibits the offer or promise of **anything of value** when related to a political contribution. In the context of this scenario, the board member offered paid time off for a political contribution from the board employee.

Ban on Gifts from Prohibited Sources

(Ethics Act, Article 10)

“[The IDOA employee] violated the Ethics Act’s gift ban prohibition when he intentionally solicited [a state vendor] for a free ‘roll or two’ of DuQuoin Fair beer tickets . . . ” (EEC decision #14-EEC-006)

– These are words from an EEC decision to fine an IDOA manager for intentionally soliciting 1,000 to 2,000 free beer tickets valued at \$4.00 per ticket from a prohibited source. He was fined \$5,000 by the EEC.

Generally, as a state board member, you should not ask for or accept anything of value (other than compensation or reimbursement 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 connection with an official act, may be considered a bribe.

Examples of gifts potentially prohibited by the Ethics Act 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 certain honoraria for speaking engagements, if offered by a prohibited source.

Under the Ethics Act, state employees or board members may not intentionally solicit or accept gifts from certain individuals or entities that are defined by law as a “prohibited source,” nor may they accept gifts in violation of any federal or state statute, rule, or regulation. It is also unlawful for employees’ or board members’ spouses or immediate family members living with them to intentionally solicit or accept a gift from a prohibited source.

In summary, **prohibited sources** include a person or entity that:

- seeks official action by the state employee or by the constitutional officer, state agency, or other employee directing the employee;
- does business or seeks to do business with the employee or with the constitutional officer, state agency, or other employee directing the employee;
- conducts activities that are regulated by the employee or by the constitutional officer, 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; or
- 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. These exceptions are designed to cover incidental gifts, and do not in any way condone or excuse small payments in connection with official acts. The list of exceptions to the gift ban 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 by an individual 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 refreshments that do not exceed \$75 per calendar day;
- food, refreshments, lodging, transportation and other benefits resulting from 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; and
- any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

Executive Order 15-09 altered the use of some exceptions to the Gift Ban. Under the terms of Executive Order 15-09, appointees to state boards under the governor's jurisdiction may not accept any more than *de minimus* food or refreshments per day, or items from any one prohibited source during any calendar year. Reimbursements for educational missions and travel expenses must be made directly to the state agency, and missions and travel must be approved in advance by the Executive Director of the Executive Ethics Commission.

*Illinois Executive Ethics Commission Regulation [2 Ill. Adm. Code 1620.700] states that educational materials and missions are those that have a close connection to the recipient's state employment or the mission of the agency; 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 Regulation [2 Ill. Adm. Code 1620.700] further states that travel expenses for 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, when a prohibited source offers a gift that does not qualify for an exception under the Act, the board member does not violate the Act if the he or she promptly:

- returns the gift to the giver; or
- gives the gift, or an amount of equal value, to an appropriate charity that is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

Your state board may have its own policies or may be subject to other state laws, which in some instances, may be more restrictive than the Ethics Act's gift ban.

An example of a board-specific statute relating to gifts:

Public Utilities Act (220 ILCS 5/2-102(b))

"... No [Illinois Commerce] commissioner or person appointed or employed by the Commission shall solicit or accept any gift, gratuity, emolument or employment from any person or corporation subject to the supervision of the Commission, or from any officer, agent or employee thereof ..."

Do What's Right!

Recommended Best Practice

In general, it is recommended that you decline anything of value offered to you (other than compensation or reimbursement you may receive from your state board) in relation to your official duties. Furthermore, you should be mindful of accepting gifts that have the appearance of being improper.



Gift Ban Lesson Review

Scenario #5

Tara, who is a state board member, is shopping for a new television for her personal use. The sales clerk offers her a \$200 discount off of the list price of the television because the store has a significant, six-figure contract with her state board. May Tara lawfully accept this offer?

- A. Yes, the discount is for Tara's television which is not connected to her state board.
- B. No, the store is a prohibited source.
- C. No, state board members may not accept gifts available to the general public.

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

⁵ The best response to Scenario #5 is B. If store has a significant contract with her agency, it is considered a prohibited source and therefore, Tara's acceptance of a \$200 discount could represent a violation of the law. Any

Official Misconduct, Bribery, and Solicitation Misconduct

(Criminal Code of 2012 (720 ILCS 5/33))

► Bribery

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. Note that exceptions to the gift ban do not apply to the bribery statute. Any gift, even one that is permitted by the gift ban, may, if intended to influence an intentional act, constitute a bribe.

► Reporting Bribery

Any state official or employee who is offered a bribe, even if they decline to accept the bribe, must report the attempt. Failure to report an offer of a bribe is a Class A misdemeanor.

► Official Misconduct

Public officers or employees commit official misconduct when, in their official capacity, they:

- 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;
- perform an act in excess of their lawful authority with intent to obtain personal advantage for themselves or another; or
- 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 of these provisions forfeit their office or employment. Official misconduct is a Class 3 felony.

► Solicitation Misconduct

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 a form of **solicitation misconduct**. If convicted of solicitation misconduct, state employees may lose their jobs.

For Example:

A state employee who delays an official action for no valid reason in order to obtain something of value for his personal benefit could be found to have committed official misconduct.

opportunity, benefit, or service available on the same conditions as for the general public would not be prohibited. If the \$200 discount were available to the general public and not just government employees, then Tara could lawfully accept it.

Q & A

Q. Is it unlawful for a state employee to request or accept anything of value in exchange for authorizing a state contract?

A. Yes. If state employees or officials request or accept a bribe, they could face criminal charges.

Revolving Door (Post-State Employment) Procedures

(Ethics Act, Section 5-45)

The revolving door provisions of the Ethics Act prohibit public employees, board members, or their spouses or immediate family members living with them, for one year after leaving public service, from accepting employment or compensation from a person or entity, if, during the year prior to leaving public service, the employee participated “personally and substantially” in the award of a contract to, or in a regulatory or licensing decision directly applicable to, the person or entity, or its parent or subsidiary. Certain public employees whose positions may have the authority to participate personally and substantially in such decisions are required to seek a determination from the OEIG that they may accept employment prior to accepting an offer. A small number of high-ranking public officials are prohibited from accepting employment or compensation from any person or entity who is party to a contract involving the employee’s state agency or the subject of a regulatory or licensing decision involving the state employee’s agency, even if they did not individually participate in awarding a contract to, or making a regulatory/licensing decision directly applicable to, the person or entity.

► Revolving Door Provisions and Procedures for Certain High-Level Board Members and Employees (H Listers)

The State Officials and Employees Ethics Act describes H List status under subsection (h) of Section 5-45. A limited number of board members on the so-called H List 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 board members were involved in regulatory, licensing, or contract decisions.**

These H List restrictions apply to:

- persons whose appointment to office is subject to the advice and consent of the Senate;
- the head of a department, commission, board, etc., or other administrative unit within the government of the state;
- chief procurement officers, state purchasing officers, and their designees whose duties are directly related to state procurement;
- chiefs of staff, deputy chiefs of staff, associate chiefs of staff, assistant chiefs of staff, and deputy governors;
- members of a commission or board created by the Illinois Constitution; and
- members of the General Assembly or executive or legislative branch constitutional officers.

Persons in the aforementioned positions may not accept employment, compensation, or fees during a one year period after the termination of their state employment from a person or entity, if the person or entity or its parent or subsidiary, during the year immediately preceding termination of state employment, was:

- a party to a state contract or contracts with a cumulative value of \$25,000 or more involving the board member's agency; or
- subject to a regulatory or licensing decision involving the board member's agency.

To reiterate, the H List provisions of the Ethics Act apply regardless of whether the officer, employee, or board member participated personally and substantially in the award of the state contract or contracts or the making of the regulatory or licensing decision in question.

► **Revolving Door Provisions and Procedures that Apply to Employees or Board Members Who May Participate in Contract, Licensing, or Regulatory Decisions (C Listers):**

If you are appointed to a position that has authority to participate personally and substantially in the award of state contracts or in regulatory or licensing decisions, you may be on the C List. The Ethics Act describes C List status in subsection (c) of Article 5-45. If you are on the C List, you should be instructed in writing by your agency that you must notify the OEIG prior to accepting a non-state employment offer during your board service or within a period of one year immediately after termination of your board service.

Within 10 calendar days of receiving your notification, the OEIG will determine if you are restricted from accepting the offer.

The OEIG's determination regarding a post-board employment offer will be based on whether, during the year preceding departure from board service, the board member participated personally and substantially in any regulatory or licensing decision or contract award directly applying to the prospective employer, and on the effect that the prospective employment may have had on any such decisions.

The OEIG's determination may be appealed to the Executive Ethics Commission by either the affected member or the Office of the Attorney General no later than 10 calendar days after the date of the determination. Therefore, an OEIG's determination is not final until either the time to appeal has expired without appeal or, in the case of an appeal, until the EEC has made its decision.

The OEIG's determination may be appealed to the Executive Ethics Commission by either the affected board member or the Office of the Attorney General no later than 10 calendar days after the date of the determination. Therefore, an OEIG's determination is not final until either the time to appeal has expired without appeal or, in the case of an appeal, until the EEC has made its decision.

If you wish to accept an offer of employment or compensation from an entity that conducted official state business involving 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.

All Board Members	H Listers	C Listers
<p>For one year after leaving board service, no board member may accept post-state employment with any entity with regard to which, in the year prior to leaving board service, he or she participated personally and substantially in the award of contracts with a cumulative value of \$25,000 or more to the potential employer, its parent or subsidiary; or in a regulatory or licensing decision that directly applied to that entity, or its parent or subsidiary.</p>	<p>In addition to the prohibitions that apply to all board members, certain high-level officials, including, among others, constitutional officers, members of constitutionally created boards, certain appointees, heads of state agencies, chief procurement officers, and chiefs of staff, called "H List" employees, are subject to the following prohibition:</p> <p>For one year after leaving state employment, an H List board member may not accept post-state employment with any entity that was a party to state contracts with a cumulative value of \$25,000 or more involving the employee's agency, or that was subject to a regulatory or licensing decision involving the employee's agency, <i>irrespective of whether the employee personally participated in the contract award or regulatory/licensing decision.</i></p>	<p>The Ethics Act requires the identification of a subset of state employees, called "C List" appointees, who are required to seek a determination from the OEIG before accepting post-State employment with a non-state employer. Board members are placed on the C List if their positions, by the nature of their duties, may have the authority to participate personally and substantially in the award of state contracts or in regulatory or licensing decisions.</p> <p>Board members who are not on the C List are not <i>required</i> to seek a determination from the OEIG before accepting post-state employment. However, because all state employees and board members are subject the revolving door prohibitions, EEC regulations provide that any board member or employee (other than those on the H List) <i>may</i> seek a determination from the OEIG.</p>

The Executive Ethics Commission has the authority to issue a fine to a state employee or board member who accepts compensation or employment in violation of these terms 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.

► **Additional Revolving Door Provisions Instituted by Executive Order**

By Executive Order 15-09, Gov. Bruce Rauner has instituted a prohibition on members of state boards under the governor's jurisdiction from (1) negotiating post-state employment with an entity that lobbies your board or commission while serving on that state board or commission and (2) accepting post-state employment for lobbying any executive branch agency for one year after leaving your board or commission. As under the revolving door provisions of the Ethics Act, the provisions of Executive Order 15-09 apply to all boards and commissions under the jurisdiction of the governor, regardless of whether yours is involved in licensing or regulatory decisions or the award of contracts.



Revolving Door Lesson Review

Scenario #6

As a member of a state board, Gina has authority to participate personally and substantially in the award of state contracts. She has been notified that she is on the “H List,” subject to the revolving door employment provisions of the Ethics Act. During a conversation with a consultant who does millions of dollars in business with her transit board, Carla was offered a job. If Gina contemplates leaving the board, what must she do prior to accepting the employment offer?

- A. Gina may not accept the offer.
- B. Gina should inform the consultant that it could be fined for making a job offer.
- C. None; Gina is free to accept any job she wants.

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

Additional Rules for Appointees

Appointees to state boards, commissions, authorities, and task forces have specific additional laws and rules that apply to them, including for example:

► **Registered Lobbyists** (Lobbyist Registration Act, 25 ILCS 170/3.1)

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 may be required to register under the Lobbyist Registration Act. 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 authorized or created by state law or by executive order of the governor. 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; or
- 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.

⁶ The best response to Scenario #6 is A. By law, because Gina is on the H List, she may not accept employment or compensation with any entity that with contracts worth more than \$25,000 with her board, for one year after she leaves board service. Penalties for violating the revolving door provisions, which may reach three times annual compensation, apply to state employees and board members, not to an entity that makes an employment offer.

Spouses and immediate family members who are living with a person required to register as a lobbyist are covered by the same restrictions.

► **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 state board if:

- the person has more than a 7 ½ percent interest in a state contract; or
- 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:

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

Do What's Right!

Recommended Best Practice

Any individual appointed to a state board should disclose all contracts with the board or with the state in which the individual has an interest.

► **State Contract-Related Conflicts of Interest** (Governmental Ethics Act, 5 ILCS 420/3A-35)

An appointed member of a state board 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 on which they sit. This restriction applies during the board member's term of office and for one year after the conclusion of the board member's term. This restriction also applies to the board member's spouse or an immediate family member of the board member living in the board member's residence.

Whistle Blower Protection

(Ethics Act, Article 15 and Whistleblower Act, 740 ILCS 174)

Some state employees, including board members, 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 against the law**.

An officer, state employee (or board member), or state agency may not lawfully take any retaliatory action against a state employee for:

- disclosing or threatening to disclose to a supervisor or to a public body an activity, policy, or practice of any executive or legislative branch constitutional 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 before any public body about any violation of a law, rule, or regulation by any executive or legislative branch constitutional officer, member of the General Assembly, state agency, or other state employee; or
- assisting or participating in a proceeding to enforce the Ethics Act.

Retaliatory action means the reprimand, discharge, suspension, denial of promotion, demotion, transfer or change in the terms or conditions of the state employee's employment, taken in retaliation for a state employee's involvement in a protected activity.

If a state employee retaliates against another state employee for reporting a violation of law or assisting in an investigation, the individual taking the retaliatory action may 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.

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.

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

In addition to the remedies available under the Ethics Act, protections are available to any employee or board member under the Illinois Whistleblower Act. Under the Whistleblower Act, it is generally unlawful for any employer to retaliate or threaten retaliation for an employee's disclosure of information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a state or federal law, rule, or regulation.

If an employer retaliates against an employee in violation of the Whistleblower Act, the employee may bring a civil action against the employer that may result in:

- reinstatement of employment and seniority rights;
- back pay, with interest; and
- compensation for any damages including litigation cost, expert witness fees, and reasonable attorney's fees.

Reporting Violations of Law, Rule, Regulation, or Policy

(Executive Order 16-04) **OEIG Hotline: 866-814-1113**

Executive Order 16-04 requires employees under the jurisdiction of the governor to report misconduct to the proper authorities.

To report a **non-emergency violation** of law, rule, or regulation, you should contact the OEIG via its **toll-free Hotline** at **866-814-1113**. Reports of alleged violations may also be submitted via the Internet at: <http://www.inspectorgeneral.illinois.gov>. For those who prefer it, the OEIG may also be contacted toll-free via a telecommunications device for the deaf (TDD) at 888-261-2734.

Alleged violations may be reported to the OEIG anonymously.

In the event of an emergency situation such as those involving the illegal possession or use of a weapon, you should contact the Illinois State Police or other police agency that can provide the fastest response (for example, by dialing “911”).

Rights and Responsibilities during Investigations

(Ethics Act, Section 20-70, 2 Ill. Admin. Code Section 1620.300, and Executive Order 16-04)

State board members who become involved in an investigation conducted by the OEIG have both rights and responsibilities. As a state board member, you have an obligation to cooperate in such investigations. You must participate in interviews as requested, tell the truth, and not withhold information. Failure to cooperate includes, but is not limited to, intentional omissions and knowing false statements, and is grounds for disciplinary action, including dismissal.

In the course of an investigation, investigators may request information from any person when the information is deemed necessary for the investigation. The OEIG may issue subpoenas to compel the attendance of witnesses and the production of documents and other items for inspection and copying.

In particular, the OEIG may request that any state board member truthfully answer questions concerning any matter related to the investigation. If so requested, no statement or other evidence therefrom may be used against the board member in any subsequent criminal prosecution, unless the board member consents.

Requests for production or viewing of documents or physical objects under state agency control must be made in writing by the OEIG. If the recipient of such a request believes that the release of the subject matter of the request might violate existing rights under state or federal law, the recipient has the right to seek a determination from the Executive Ethics Commission relative to such rights or protections.

As a state board member, you have various additional rights during investigations, including but not limited to those resulting from EEC regulations, which provide:

- 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 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.
- 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.

It is the policy of the OEIG that OEIG investigators will present the interviewee with an OEIG form outlining the interviewee's rights unless OEIG investigators reasonably believe at the time of an interview that there are no circumstances under which an interviewee will be subject or likely to face discipline or adverse action.

The OEIG will not infringe upon a state employee's right to seek advice from their ethics officer on the interpretation and implementation of the Ethics Act, or to seek advice from private legal counsel.

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

Ex Parte Communications

(General definition: "Ex Parte" – A Latin term meaning from one party. An ex parte communication is one that is made in the absence of others who are affected by it.)

Laws govern how information received by state agencies and their employees in relation to rulemaking and regulatory, quasi-adjudicatory, investment, procurement, and licensing procedures must be treated, especially when information is 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 interested in the subject of the communications.

Most state employees are not affected by laws governing ex parte communications; however, if you are an employee of or board member to one of the several entities listed on the following page or are involved in procurement activities or 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.

The Executive Ethics Commission has established specific reporting requirements related to ex parte communications. Also, there are reporting requirements related to ex parte communications that apply to procurement matters under the Procurement Code. These various 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 preemptory 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; and
- not a statement made by a state employee to fellow employees of the same board or agency.

An ex parte communication 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.**

► **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 and the Office of Banks and Real Estate are now divisions 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; and
- 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 or board member 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 or board member 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 Regulation** (2 Ill. Adm. Code 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

- receives 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 days to his or her agency's ethics officer.

► **Procurement Communications Reporting** (30 ILCS 500/50-39 and 2 Ill. Adm. Code 1620.825)
Among its goals, the Illinois Procurement Code is intended to ensure that state purchases are made fairly and in the best interests of the state. The Procurement Code requires that employees be informed, via annual ethics training, of requirements to report certain communications received by state employees related to state procurement (purchasing) matters.

Under the Procurement Code, any written or oral communication received by a state employee who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a state contract and that imparts or requests **material information** or makes a **material argument** about an active **procurement matter**, must be reported to the state's Procurement Policy Board via its website: <http://pcrs.illinois.gov>.^{*} Communications must be reported as soon as practicable, but not more than 30 days after receipt. No trade secrets or other proprietary information shall be included in any communication reported to the Procurement Policy Board.

- * With respect to the Illinois Power Agency, the communication must be reported by the initiator of the communication, and may be reported also by the recipient.

A procurement communication must be reported if it satisfies all four of the following criteria:

1) It is material

Material information is information that is potentially relevant to determining a course of action, such as information pertaining to price, quantity, and terms of payment or performance.

A **material argument** is a communication that is made to influence a decision relating to a procurement matter. It does not include communications that are limited to general information about products, services, or industry best practices, or a response to a state employee's request for information to evaluate new products, trends, services, or technologies.

In determining whether a procurement communication is material, state employees must consider:

- whether the information conveyed is new or already known; and
- the likelihood that the information would influence a pending procurement matter.

2) It is in regard to a potential action

A **potential action** is one that could affect the initiation, development, or outcome of a procurement matter.

3) It relates to an active procurement matter

An “**active procurement matter**” means a **procurement process** beginning with requisition or determination of need by an agency and continuing through the publication of an award notice or other completion of a final procurement action, the resolution of any protests, and the expiration of any protest or Procurement Policy Board review period, if applicable. “Active procurement matter” also includes communications relating to change orders, renewals, or extensions.

Procurement processes, unless otherwise excluded, are processes of procuring:

- goods, supplies, services, professional or artistic services, construction, leases of real property, capital improvements; and,
- master contracts, contracts for financing through use of installment or lease-purchase agreements, renegotiated contracts, amendments to contracts, and change orders.

Examples of **active** procurement matters include activities such as:

- drafting, reviewing, or preparing specifications, plans, or requirements, including determining the method of source selection;
- 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, other communications among an evaluation team and any technical advisors to the team relating to the evaluation of a procurement not yet awarded;
- letting or awarding a contract;
- resolving protests;
- determining inclusion on prequalification lists or prequalification in general;
- identifying potential conflicts of interest or voiding or allowing a contract, bid, offer or subcontract for a conflict of interest;
- allowing a conflict or subcontract pursuant to Section 50-60 of the Illinois Procurement Code; and
- determining, drafting, preparing, executing, denying or approving change orders or the renewal or extension of an existing contract.

4) It is not excluded from the reporting requirements

Exclusions to the reporting requirements include, for example:

- statements by a person publicly made in a public forum;
- statements regarding matters of procedure and practice, such as the format, the number of copies required, the manner of filing, and the status of a matter;
- statements made by a state employee to other employees of the same agency or to employees of the Executive Ethics Commission;
- communications received in response to solicitations pursuant to the Illinois Procurement Code (vendor responses to RFPs);

- communications regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of an existing contract, which must be reported; and
- unsolicited communications providing general information about products, services or industry best practices, before those products or services become involved in a procurement matter.

Reports of procurement communications must include all pertinent information, such as:

- the date, time and duration 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; and
- a detailed summary of the points made by each person involved in the communication;
- the location(s) of all persons involved in the communication (including their phone numbers, if via telephone).

For a more complete explanation of procurement communications reporting requirements, please visit the Procurement Policy Board's website (<http://ppb.illinois.gov>) and the EEC's website: <http://www2.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

Scenario #7

Joel is a state board member. His board is in the process of selecting a service provider for his agency. He received an email from a bidder asking for guidance on how low its bid must be to be selected. Does Joel need to report this inquiry to anyone?

- No, the request was written in an email and not stated orally.
- Yes, Joel needs to report it to his agency's ethics officer.
- No, since it is not a material communication related to a procurement matter.

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

⁷ The best response to Scenario #7 is B. In this instance, the vendor's communication was material, related to a procurement matter, not made in a public forum, and could affect a potential action related to the procurement matter. Any such communication, whether oral or written, must be reported.

Disclosure of Economic Interests

(Illinois Governmental Ethics Act, 5 ILCS 420 et seq.)

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 individuals 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 any of the following appointees:

- members of commissions or boards created by the state constitution;
- persons whose appointment is subject to Senate confirmation;
- persons appointed by the governor to boards and commissions listed in the Governors Board and Commissions Act; and
- persons with authority to issue rules and regulations, or who have authority to approve professional licenses.

See your ethics officer if you have any further questions.

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 individuals who are required to file a 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 website at:

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; and
- 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.

By Executive Order 15-09, Gov. Bruce Rauner has instituted a Supplemental Statement of Interests for every state board member who is under the governor's jurisdiction and who is required to file the Statement of Economic Interests. The Supplemental Statement of Interests is to be filed at the same time as the Statement of Economic Interest, although the Supplement is to be filed electronically with the Executive Ethics Commission rather than on paper with the Secretary of State. The Supplemental Statement seeks answers to three questions addressing real property leased to the state; non-governmental positions and compensation; and litigation involving the state.

Truthful Oral and Written Statements

"The OEIG also concludes that [the respondents] attempted to and did withdraw funds from their own deferred compensation accounts . . . based on false information and supported by fraudulent documents . . ." (OEIG Case #12-02104)

– These are words from a publicly released OEIG investigative report regarding two CTA employees who attempted to improperly withdraw funds from deferred compensation accounts, among other misconduct. Both employees resigned.

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 board member, 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.; and
- 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 board member 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

“By taking no action and allowing fraud to persist for three years, [Respondent] condoned State benefits fraud in the performance of duties.” (OEIG Case #13-01684)

– These are words from a publicly released OEIG investigative report. The OEIG found that the state employee received and used medical benefits, to which she admitted she was not entitled. The employee resigned from the state position.

It is important that state employees, including board members, adhere to those applicable laws, rules, policies, or regulations that are unique to their state agencies, including, in the case of board members, those that are specific to their boards or commissions. State board policies may include for example:

- a quorum requirement, which dictates that a minimum number of board members be present in order for the board or commission to conduct official business;
- rules specifying limitations or requirements related to how an board member 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” or “closed” session;
- term limitations which dictate how long an board member may serve on a state board or commission;
- restrictions or reporting requirements related to conflicts of interest; and
- 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.

Please be aware that many laws and rules, including the Ethics Act, are applicable to board members even in instances where a board member is not compensated, 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 Ethics Act;
- prohibitions on certain political activities, which may be more restrictive than those prohibitions contained within the Ethics Act;
- rules governing purchasing procedures;
- special time reporting or other personnel-related rules;
- hiring practices; and
- a code of conduct.

It is important that you familiarize yourself with all the laws, rules, and policies that 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

Penalties for violations of ethics-related laws, rules, and policies by state employees and board members depend upon the specific circumstances. Penalties may include disciplinary 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. Penalties for revolving door violations may include assessments of up to three times a former state employee's post-state total annual compensation.

Ethics Questions or Concerns

State board employees and board members 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, provide guidance to state employees, including board members, in the interpretation and implementation of the Ethics Act, which employees may in good faith rely upon.

Examples of the Ethical Obligations of State Employees and Appointees

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

1. **Example:** A state board member is offered a hat and t-shirt after meeting with a potential vendor.

Ethical Assessment: While the Ethics Act allows a state employee to accept any item or items from a prohibited source, such as a potential vendor, during any calendar year with a cumulative total value of less than \$100, Executive Order 15-09 prohibits the

acceptance of anything with more than *de minimus* value. It is best to check state agency or board policy, or other regulations for additional restrictions or simply decline the gift. No gift should be accepted if offered in exchange for an official action.

2. **Example:** A state board member uses her state-issued cell phone to solicit donations to a political action committee during her non-compensated time.

Ethical Assessment: The Ethics Act prohibits the intentional misappropriation of state resources for political activities at all times, regardless if it occurs during compensated time or not.

3. **Example:** A former state board member receives an offer of consulting fees from the parent company of an entity subject to a regulatory decision made by the former member.

Ethical Assessment: No former state board member may within a period of one year after termination of state service knowingly accept fees for services from an entity if the board member, during the year immediately preceding termination of his or her appointment, participated personally and substantially in making a regulatory decision that directly applied to the entity, or its parent or subsidiary.

4. **Example:** A state board employee uses a portion of his work day to draft a flyer for a political rally and prints 100 copies using his state computer and printer.

Ethical Assessment: The Ethics Act prohibits this and certain other political activity from being done during a state employee's compensated time (other than vacation, personal, or compensatory time off) or at any time by misappropriating state resources.

5. **Example:** A state board member decides that he is not required to complete a time sheet recording the time he spends on state business because he is not compensated by the state.

Ethical Assessment: The law requires state boards to have policies which require board employees and board members to periodically submit time sheets documenting the time spent each day on official state business to the nearest quarter hour.

6. **Example:** A state board member offers to award a board grant to a consultant in return for the consultant's contributions to a political action committee that the board member advises.

Ethical Assessment: State board members, or employees, may not promise anything of value related to state government in consideration for a contribution to any entity that has as one of its purposes the financial support of a candidate for elective office.

8. **Example:** A state board member asks a board employee to proofread a speech that the board member will make as part of the board member's non-state employment.

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 misappropriating state property or resources.

9. **Example:** In an attempt to insure that the board's future funding is not reduced during a budget review process, a member of a state board prepares a board financial report that overstates the actual amount of money spent by the board.

Ethical Assessment: Falsification of official documents or untruthful statements made in the conduct of state board business are unethical, may violate state policies or laws, and may subject a board member or employee to administrative action up to, and including fines and/or termination of state employment.

10. **Example:** A state board member has a long-standing friendship with the head of a company that is regulated by his state board.

Ethical Assessment: The board member should inform the board that he has a real or apparent conflict of interest regarding the company that his friend manages, and recuse himself from all matters involving the board and that company.

11. **Example:** A state board member submits an expense report to her board for reimbursement of mileage and toll costs that the board member did not actually incur.

Ethical Assessment: Falsification of official documents, or untrue statements made in the conduct of state business are unethical, may violate state policies or law, and may subject a state employee or board member to administrative action up to, and including, fines and/or termination of state employment. In some instances, it may also result in criminal prosecution.

12. **Example:** A state board member is responsible for the procurement of goods and services for her board. This board member is also a full-time employee of an entity doing business in Illinois.

Ethical Assessment: Generally, a statement of economic interests must be submitted annually to the secretary of state by those board members who have responsibility with respect to procurement of goods and services. This statement must contain the name of any entity doing business in the state of Illinois from which income in excess of \$1,200 was derived by the state board member during the preceding calendar year.

13. **Example:** A state board member uses a state computer to view pornographic images

Ethical Assessment: Intentionally accessing such material using a state computer is unethical 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 or appointment, and may, depending on the circumstances, result in criminal prosecution.



Acknowledgement of Participation in:

2017 Ethics Training for Appointees to State of Illinois Boards

I certify that I have carefully read and reviewed the content of, and completed, the 2017 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 fines, and possible criminal prosecution, depending on the nature of the violation.

Signature

Printed Name
(first, middle initial, last)

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

Date

State Board, or Commission Name
(for example, Capital Development Board)

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