

The Legislative Ethics Commission has approved generic advice on the topic listed below. The guidance offered is general in nature and the Commission's response to individual questions may vary according to the facts of each particular request. You are strongly advised to consult Commission staff or your counsel's office for advice pertaining to your individual situation.

Standards of conduct relating to outside employment or business activity

GENERIC ADVICE

The following advice pertaining to outside employment and business activity was approved by the Commission in response to a request for an advisory opinion from a member of the legislature. The same advice would apply to employees who are engaged in outside business activity.

The general rule in Public Officers Law § 74 (2) is intended to guard against substantial conflicts of interest between a member's outside activities and his official duties. It is not intended to prohibit citizen-legislators from having outside interests which result in financial gain, but only to prohibit financial gains made at the expense of the public trust.

If a member's outside interest will be affected by an official act on his part, the test to be applied is whether any impact on his outside interest which results from his sponsorship or voting on state legislation is similar to that realized by other members of the business, profession, occupation or group affected. If so, he may sponsor or vote on such legislation.

ADDITIONAL CONCERNS

The Commission has cautioned members and employees who are engaged in outside employment or business activity to be mindful of and adhere to the prohibitions in Public Officers Law § 73.

Under Public Officers Law § 73 (7) (a), a member or employee of the legislature is prohibited from making an appearance or rendering service before a state agency on certain matters for compensation. The rule of Public Officers Law § 73 (12) also prohibits her from orally communicating, whether for compensation or not, with a state agency, officer or employee with regard to the merits of any matter listed under Public Officers Law § 73 (7) (a). The member or employee is advised to keep her role as a representative of a private corporation separate and distinct from her role as a public official or employee.

A legislator is cautioned not to sponsor or vote on any legislation that would result in a different impact on her company from other affected companies in the same business.

Members and employees are also reminded that outside employment and income must be disclosed on your annual statement of financial disclosure.

EXCEPTIONS

Previous opinions issued by the Legislative Ethics Committee have observed that Public Officers Law § 73 (10) specifically authorizes the appearance before state agencies or in the court of claims by other members of the firm as long as the member of the legislature does not share in the net revenues from the appearance. They also have noted that while Public Officers Law § 73 (12) prohibits oral communication with a state agency, with or without compensation, by a member or employee of the legislature as to the merits of a matter listed in Public Officers Law § 73 (7) (a), it does not prohibit communications in writing which create a formal record of the transaction for consideration as to the merits.

ADDITIONAL CONCERNS PERTAINING TO EMPLOYEES

Legislative Law §66-a prohibits a legislative employee who is engaged in outside employment or business activity from, directly or indirectly, promoting or opposing the passage of legislation outside the scope of his state legislative employment.

Employees are also advised to check with their counsel's office to see whether there are any additional prohibitions in the rules adopted by the Senate or Assembly pertaining to outside employment.