

## ADVISORY OPINION

*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.***

### **POST EMPLOYMENT RESTRICTIONS GENERIC ADVICE (Legislative staff)**

*The following advice pertaining to restrictions on employees who terminate their legislative service on or after December 30, 2008 was approved by the Commission in response to numerous requests from legislative employees for advice as to how the post employment restrictions would affect them if and when they terminate their employment with the New York State Legislature.*

Substantial changes have been enacted for employees who terminate legislative service on or after December 30, 2008. Pursuant to Public Officers Law, post employment restrictions apply **to all** legislative employees, regardless of whether they are required to file a “long” financial disclosure form pursuant to of Public Officers Law §73-a, or a “short” form pursuant to Public Officers Law §73. **All** former employees are subject to the two year ban described below.

**RELEVANT STATUTE:** Public Officers Law §73(8)(a)(iii)

**DISCUSSION:** Public Officers Law §73(8)(a)(iii) provides the general rule relative to post employment restrictions for all legislative employees, and in relevant part, states:

No legislative employee shall within a period of two years after the termination of such service receive compensation for any services on behalf of any person, firm, corporation or association to appear, practice or directly communicate before either house of the legislature to promote or oppose the passage of bills or resolutions by either house of the legislature.

Chapter 14 of 2007 amended §73(8)(a) of the Public Officers Law relative to legislative employees with the intent to “prohibit former employees from directly lobbying the legislature for a period of two years after their departure.” (Sponsor’s memo) The statute prior to the 2007 amendment restricted certain former employees from “directly or indirectly” promoting or opposing the passage of bills or resolutions.

In reviewing the change, the Commission concludes that it was the intent of the Legislature to restrict former employees’ access to the legislative members and their staff for two years; not to prohibit former employees of using their knowledge, acquired through legislative experience, in subsequent employment. Applying this standard, the Commission has opined on specific activities in response to individual inquiries.

The language of Public Officers Law §73(8)(a)(iii) is specific with regard to prohibiting appearances before and communication with either house of the legislature. During the two year ban, a former employee is prohibited from participating in meetings with legislators and staff and is also subject to a prohibition on verbal and written communication with legislators and their staff.

A former employee may conduct research or assist his new employer with legislative strategy provided that he or she personally, is not communicating verbally or in writing with legislative members or staff.

Although the statute is silent regarding communication with members of the legislature or staff about issues other than the promotion or opposition of legislation or resolutions, we strongly caution former employees that the Commission is hard pressed to envision a legislative matter that would not be considered promoting or opposing the passage of legislation. For example, any funding issue or support for a grant or other financing would be included in or affected by the outcome of a budget bill and consequently would be subject to the ban. Thus, although communication with members of the legislature or staff regarding issues other than the promotion or opposition of legislation or resolutions appears to be permissible, we caution that such communication must be extraordinarily limited.

A former employee may not speak at hearings or committee meetings as pursuant to statute, he or she may not “appear...before either house of the legislature.” The definition of “appear” that seems most relevant here is “to come formally before an authoritative body.” (Webster’s Third New International Dictionary) Consequently, **observing** proceedings is not “appearing before the legislature” or communicating to “promote or oppose the passage of legislation or resolutions.”

Thus, pursuant to Public Officers Law §73(8)(a)(iii), it is permissible for a former legislative employee to attend and observe public hearings held by legislative entities. Clearly, a former legislative staff person may not appear before the legislature at a hearing to present oral testimony nor may he or she submit written testimony. However, he or she may assist others in preparing their oral or written testimony to be submitted to the legislature.

Similarly, a former legislative employee may also attend legislative session, committee meetings and political events. Mere attendance would not constitute appearing, practicing or directly communicating before the legislature. However, depending upon the nature and setting of the proceedings a former employee is observing, it could prove to be difficult not to cross the line into directly lobbying members or staff. It is not uncommon for legislative members and staff to discuss issues with attendees prior to or after formal meetings or hearings. If a former employee were to attend, he or she would need to be certain that communicating in any way which could be construed to be in support of or opposition to legislation with members or staff is scrupulously avoided; even in response to a direct question.

We note that §73(8)(a)(iii) of the Public Officers Law prohibits former legislative employees from appearing or directly communicating **with the legislature** to promote or oppose the passage of legislation or resolutions. The language of the statute is specific with regard to prohibiting appearances before and communication with either house of the legislature.

Consequently, appearances before and communication with other branches of the government, including the executive branch and state agencies, are permissible.

*Adopted Unanimously November 29, 2010  
New York State Legislative Ethics Commission*