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Personnel Advisory
Memorandum No. 99-1

March 22, 1999

M E M O R A N D U M

To: College Presidents

From: Acting Vice Chancellor Roy P. Moskowitz 

Re: New York State Ethics Law and Regulations Regarding
Activities of Employees in Policy Making
Positions/Notification

The purpose of this memorandum is to advise covered employees¹ of their obligations under the State Ethics Law. This Memorandum supersedes Personnel Advisory Memoranda 96-2 and 96-3. The College's ethics officer (labor designee) should distribute a copy of this memorandum to each covered employee.

¹ Employees in the following titles and functions are covered and required to comply with all of the filing requirements specified herein: Executive Compensation Plan titles, REM titles, Affirmative Action Officer, Director of Public Relations, Director of Security, SEEK Director, Director of Administrative Computing, Business Manager, Personnel Director, Purchasing Director, Grants Officer, University Architects and Engineers, Administrative Superintendent of Buildings and Grounds, and such other titles and functions as are designated by the college to the State Ethics Commission. Your college's ethics officer (labor designee) has a list of your college's covered employees.

I have enclosed the blue ethics booklet (August 1996 edition) published by the State Ethics Commission which contains the applicable laws and regulations which are referenced herein. The college's ethics officer should ensure that each covered employee has received a copy of the blue ethics booklet, and may obtain additional copies directly from the State Ethics Commission.

Covered employees are required to file a Financial Disclosure Statement with the State Ethics Commission each calendar year by **May 15th (May 17th in 1999)**, to avoid penalties. Financial Disclosure Statement forms are mailed by the State Ethics Commission to the home address of covered employees around the beginning of April. If any covered employee does not receive a form by the end of April, for calendar year 1998, he/she should immediately contact the college's ethics officer or the State Ethics Commission, at 1-800-87ETHICS, or the form may be downloaded from the home page of the State Ethics Commission (www.dos.state.ny.us/ethc/ethics.html).

The blue ethics booklet and this memorandum should also be given to new covered employees as they are appointed to their positions. A new covered employee is required to file a Financial Disclosure Statement for the prior year (i.e., 1998) within 30 days of being appointed to a covered position (but not earlier than May 15th).

This memorandum will review outside activities, prohibited activities and prohibited gifts.²

A. OUTSIDE ACTIVITIES

I. Restrictions on Outside Employment for Covered Employees.

(1) Prohibited Outside Employment. Employees are barred from engaging in any outside activity which "interferes or is [in] conflict with the proper and effective discharge of such individual's official duties of responsibilities". (See Sec. 932.3(a)).

(2) Permissible Outside Public Sector Employment. Outside public sector employment for which only nominal compensation is received is permissible and does not require University approval.

² The regulations on honoraria are overseen by the University's Office of Faculty and Staff Relations (See Sec. 930) and are therefore not addressed herein.

If compensation exceeds nominal compensation the approval of both the University and the State Ethics Commission is required. (See Sec. 932.3(b)). For the purposes of the regulation, "nominal compensation" means no more than either: (a) the per diem amount provided for the position where no other compensation for such appointment is received; or (b) \$4,000 in annual compensation (See Sec. 932.1(d)).

(3) Permissible Outside Private Sector Employment. Outside private sector employment or other activity for which more than nominal compensation (i.e., \$4,000) is received requires the approval of both the University (i.e., college president) and the State Ethics Commission (See Sec. 932.3(c)). Outside private sector employment or other activity which pays more than \$1,000, but less than \$4,000 annually must be approved by the college president (See Sec. 932.3(d)).

Please note that the exception for "per diem" compensation applies only to public sector positions such as school board members or administrative law judges. If an employee receives "per diem" payments from a private sector employer and the separate payments exceed the permissible annual amount, approval for such employment is necessary.

II. Restrictions On Other Outside Activities.

(1) Corporate Director or Officer. No covered individual may serve as a director or officer of a for-profit corporation or institution without obtaining for each corporation or institution, prior approval from the State Ethics Commission for such service, regardless of whether there is any compensation. (See Sec. 932.3(e)).

(2) Political Parties. No covered individual may serve as an officer of any political party or political organization (See Sec. 932.2(a)), nor may such an individual serve as a member of any political party committee, including party district leader, or serve as a member of national committee of a political party. (See Sec. 932.2(b)).

III. Requests for Approval.

(1) Time for Submission. Covered employees engaged, or to be engaged, in outside activities paying more than \$1,000 (or \$4,000 for public sector employment) are required to submit a request for approval as soon as possible. If the specific outside activity has already been approved, it does not have to be approved again. Requests for approval should be submitted for

employment by the City University Research Foundation or other University related entities, as well as for royalties for books. Lawyers, accountants, psychologists, real estate agents, etc., need not list the names of individual clients, but may give a general description of their work. If at the time of accepting employment, or starting a business activity, it is not known whether the applicable limits will be exceeded, the request for approval should be filed when it is known that the applicable limit will be exceeded.

(2) Approvals Required. The State Ethics Commission form for requesting approvals of outside employment and other activities, is attached hereto. The requests for approval are subject to approval by the college president, who is the "appointing authority." If approved, the request should be retained by the college president, except for approvals of compensation for outside activities in excess of \$4,000. These latter approvals should be forwarded to this office by the college president, for transmission to the State Ethics Commission.

The "Terms and Conditions for Employment for Staff in the Executive Compensation Plan" adopted by the Board of Trustees on January 26, 1987, also require that employees in the Executive Compensation Plan obtain the approval of the college president for outside activities. Section F(2)(a) of these "Terms and Conditions" provide that as to "Multiple Positions":

Employees in the Executive Compensation Plan shall, upon approval of the President, or in the case of the Central Office, the Chancellor, be permitted to engage in outside consultation and professional activities up to a maximum of two (2) days per month. Days, other than the regular days off, on which such consultation activities occur shall be charged to annual leave.

Questions regarding implementation of this multiple position policy for Executive Compensation Plan employees should be addressed to the Vice Chancellor for Faculty and Staff Relations.

(3) Approval for College Presidents. College presidents are required to submit requests for approval of outside employment to the Chancellor for approval. A copy of the request to the Chancellor should be submitted to me, so that I may review the request and make a recommendation to the Chancellor.

(4) Required Information on Outside Activity. The State Ethics Commission requires the following information on each outside activity to assist it in making its determination on a request for approval.

- a. A job description of the employee with the University, including the payroll and functional titles, nature of duties, any funding or grant decisions in which the employee participates, and the scope of involvement with outside private entities.
- b. A description of the outside activity, title of position and name of entity. Any and all state agencies and subdivisions with which the outside activity is affiliated or has any relationship should be included.
- c. The total number of hours per week devoted to the outside activity. Include specific days and time, if applicable.
- d. If the outside activity requires time from normal working hours with the University, arrangements made for time off from the University, i.e., the taking of annual leave.

(5) Submission to Vice Chancellor for Legal Affairs. Requests for approval of outside activities of more than \$4,000, if approved by the college president, should be submitted to this office as soon as possible for review and transmission to the State Ethics Commission.

(6) Standard of Review. The criteria for review by the college should include whether the proposed outside activity interferes with or is in conflict with the proper and effective discharge of such employee's duties, and whether the outside activity is inconsistent with Section 74 of the State Ethics Law, which are the standards applied by the State Ethics Commission.

(7) Required Outside Activity Request Form. The attached State Ethics Commission form should be used for requesting approvals. For private employment, etc., where \$4,000 income will not be exceeded, strike out the words "more than" before "\$4,000" and insert "less than" or "equal to". Additional sheets of paper should be attached with the required information.

IV. Disclosure of Information.

(1) Public Inspection. The information set forth in the Annual Statement of Financial Disclosure filed with the State Ethics Commission is subject to public inspection except for the categories of value or amount, and any information deleted through the appeals process. Consistent therewith, requests for approval of outside activities which receive final approval will be subject to public disclosure, but denials will not.

B. PROHIBITED ACTIVITIES

All college employees are covered by the statutory prohibitions in the State Ethics Law. Particular attention should be paid to the prohibitions in the following sections of the State Ethics Law (Public Officers Law).

- (a) Section 73(3)(b). Prohibition on the practice of law before the State Court of Claims.
- (b) Section 73(4)(a). Prohibition on doing business with a State agency in excess of twenty five dollars (\$25), except through formal competitive bidding.
- (c) Section 73(5). Certain prohibitions on acceptance of gifts in excess of seventy five dollars (\$75), as discussed below.
- (d) Section 73(7)(a). Certain prohibitions on appearances before State agencies.
- (e) Section 73(8). Revolving Door Provision. Prohibition on practicing before the employee's former State agency (CUNY) for two years after termination of employment; and lifetime prohibition on appearing before any State agency or receiving compensation for any services with respect to any matter which the employee was personally involved with during his or her employment with the State agency (CUNY).

C. PROHIBITED GIFTS

The State Ethics Commission has issued Advisory Opinion No. 94-16 to explain the prohibitions against employees accepting gifts contained in the State Ethics Law. A copy of the advisory opinion is available upon request, and has been furnished to the college's ethics officer. The law prohibits offers to, or acceptance by, employees of any gift valued at \$75 or more under

circumstances in which it could be inferred that the gift was intended to influence or reward the recipient for performing official duties. A gift under \$75 may not be accepted if it would constitute a substantial conflict with the proper discharge of the duties of an officer or employee.

A gift is anything of value given to an employee including money, service, loans, travel, meals, refreshments, entertainment, hospitality, or discounts. The value of a gift is determined by its retail cost of purchase. If a ticket is involved, the gift is the value of the ticket even if a portion of the ticket price is donated to charity. Where there are multiple gifts, including meals, the aggregate value of the individual gifts within a twelve month period will be considered to determine whether they total \$75.

Employees are prohibited from accepting gifts over \$75 from individuals, companies, unions, vendors and contractors that negotiate with, do business with, or are interested in doing business with the University or any of its colleges. Limited exceptions are provided for gifts received when it is clear that they derive from a personal or family relationship (i.e., the donor cannot charge or deduct the item as a business expense) and meals received by all participants in a group at an educational or professional function when related to the employee's responsibilities, but not travel and lodging. When a gift may not be given to an employee, the donor may not offer the gift to the employee's family or to an individual the employee designates.

Anyone contemplating accepting a gift from a business account, vendor, contractor or union should review Advisory Opinion 94-16 prior to accepting the gift. You may write to me for guidance if you have a question regarding any matter set forth in the advisory opinion on gifts.

Encls.

c: Chancellor's Cabinet
Chief Academic Affairs Officers
Chief Administrative Affairs Officers
Chief Student Affairs Officers
Legal Affairs Designees
Ethics Officers (Labor Designees)

Outside Activity Report

NAME (Last, First, M.I.) _____ TITLE _____

STATE AGENCY _____ REGULAR WORK SCHEDULE FROM AM PM TO AM PM REGULARLY SCHEDULED WORK DAYS MON-FRI OTHER: _____

STATE AGENCY ADDRESS _____

HOME ADDRESS _____

All correspondence should be sent to my State Agency Address Home Address

This is a request for approval of:

- holding an elected or appointed public office; e.g., mayor or uncompensated Town Board member
- holding public employment from which I would receive more than \$4,000 annual compensation or the per diem amount provided to such position.

Position: _____

- private employment, engaging in a profession or business or other outside activity from which more than \$4,000 annual compensation would be received.

Position and Employer: _____
Specify hours per week _____ and
days and hours during which you will be engaged in the outside activity _____

Does your private employment, profession or outside activity conduct any business with your employing state agency or any other state agency? YES NO

- my serving as a director or officer of a profit-making corporation or institution.

Name of corporation/institution: _____
Specify hours per week _____ and
days and hours during which you will be engaged in the outside activity _____

Does the corporation/institution conduct any business with your employing state agency or any other state agency? YES NO

You MUST ATTACH a copy of your state job duties AND a description of your outside activity.

Signature **X** _____ Date _____

APPOINTING AUTHORITY CONSENT (MUST be completed by appointing authority):

I give my consent to the above-stated outside activity, having determined that this request is appropriate, considering Sections 73 and 74 of the Public Officers Law; this agency's applicable policies, procedures or rules and regulations governing employee conduct; and other factors such as (specify factors, if appropriate):

Authorized Signature **X** _____ Date _____

Title _____