

PENNSYLVANIA STATE ETHICS COMMISSION



Statement of the State Ethics Commission Presented to the Pennsylvania State Senate Committee on Rules and Executive Nominations

**Prepared by:
John J. Contino, Esquire
Executive Director
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February 2, 2010

The Honorable Dominic Pileggi
Chairman
Committee on Rules and
Executive Nominations
Pennsylvania State Senate
Commonwealth of Pennsylvania

The Honorable Robert J. Mellow
Minority Chairman
Committee on Rules and
Executive Nominations
Pennsylvania State Senate
Commonwealth of Pennsylvania

Chairman Pileggi

Chairman Mellow

Members of the Senate Committee on Rules and Executive Nominations

My name is John J. Contino and I am the Executive Director of the Pennsylvania State Ethics Commission. On behalf of the Members of the Pennsylvania State Ethics Commission, I am here today pursuant to the invitation of the Committee to make a brief statement and provide commentary on Senate Resolution No. 228 providing for the adoption of ethical conduct rules for the Senate and to answer any questions that the Members of the Committee may have regarding the relationship between the proposed Senate Resolution and the Public Official and Employee Ethics Act.

As some of the Members of the Committee may be aware, I have been with the Pennsylvania State Ethics Commission for over twenty-five years. I have also been active in the Council on Governmental Ethics Laws (COGEL) for over twenty years. COGEL is an international professional organization for governmental agencies, organizations and individuals with responsibilities or interests in governmental ethics, elections, campaign finance, lobbying, and freedom of information laws. In this respect, my comments to you are being offered not only in my capacity as Director of the Commission but also as a result of my experience in dealing with my counterparts throughout the country.

At the outset, based upon these experiences, it is my observation and assessment that it is a nationally recognized public principle that a government official or employee

may not use the resources of their public office or employment in aid of or to conduct political or personal activities. The Pennsylvania State Ethics Commission has long held that this basic tenet of public policy, which is embodied in Senate Resolution 228, is specifically prohibited by the provisions of the Public Official and Employee Ethics Act. The Commission, on numerous occasions, has determined that the utilization of Commonwealth or other publicly supported or related facilities, equipment and personnel for the advancement of political or personal purposes transgresses the provisions of the Ethics Act. The reasoning and analysis of the Commission has found support in Pennsylvania judicial precedent. Most recently, the Superior Court of Pennsylvania, in Commonwealth of Pennsylvania v. Habay, 934 A.2d 732, __ Pa. Super __ (2007); petition for allowance of appeal denied, 598 Pa. 746, 945 A.2d 575 (2008), confirmed the application of the Ethics Act to the type of conduct that would be prohibited by Senate Resolution 228.

With the foregoing in mind, I would like to offer some brief commentary regarding the Senate Resolution.

Initially, on behalf of the Commission and its Members, I would like to commend the sponsors of the Resolution and the Senate, as a body, for reaffirming the longstanding public policy in a clear and concise manner and in a fashion that is consistent with existing law.

The Resolution provides that compliance with the Ethics Act (both as to the Statement of Financial Interests filing requirements and other provisions thereof) would be mandatory for all Senators and designated Senate employees. (See Section 2, Paragraph 11, page 11, lines 21-25). The use of the phrase *designated Senate employees* may be somewhat restrictive in that the Ethics Act applies to all individuals who meet the specific definition of public official or public employee. Although the parameters of the filing requirements have been extremely well defined during the course of the Commission's thirty years of existence, there may be, from time to time, situations where an employee not designated by the Senate or its rules, could be required to file a Statement of Financial Interests, as determined by the Pennsylvania State Ethics Commission. As such, it is suggested that a clear indication that the ultimate resolution regarding whether or not a specific individual is required to file a Statement of Financial Interests or is covered by the Ethics Act in general is a determination that is ultimately to be made by the Pennsylvania State Ethics Commission. It is anticipated that there will be little variation between the Senate designation of Senate employees and Ethics Act determinations of coverage. However, the foregoing is simply noted in an effort to avoid any potential confusion on the part of covered Senate employees.

In this respect, it is suggested that an affirmative statement be provided for in the resolution that the rules enumerated through Resolution No. 228 are supplementary to the provisions of the Ethics Act, as provided for in Section 1111 thereof, which delineates that any governmental body may adopt requirements to supplement the Ethics Act providing that no such requirements may be less restrictive than the Ethics Act. 65 Pa.C.S. §1111.

In relation to the standardized process for reporting alleged violations of the rules, Section 8 (page 7, lines 20 through 30; page 8, lines 1 through 3) designates the specific individuals to whom an alleged violation of the rules should be reported. While it is recognized that this particular provision of the Resolution relates specifically to the internal disciplinary process of the Pennsylvania State Senate, it may be advisable to also include somewhere in the reporting provisions that while not required, nothing in the rules should be construed to prohibit reporting to additional authorities that may have jurisdiction over the type of conduct set forth in the Resolution under other provisions of law.

Additionally, while it is recognized that the Senate has an absolute right to adopt rules governing its operation and to discipline its Members and employees, it may be helpful to further recognize that a determination made, pursuant to these rules may not necessarily result in a similar determination under the Ethics Act. That is, such determination would not be binding on the Commission.

Finally, it is noted that as a result of experience in the administration and enforcement of the Ethics Act, that the uniform application of the provisions of the Ethics Act has created standardized criteria that is applicable to all public officials and public employees throughout the Commonwealth of Pennsylvania. Of course, such has been the result of the promulgation of the Ethics Act through the legislative process. In the event that the General Assembly deems it advisable to promulgate the substantive content of Senate Resolution No. 228 into a statutory provision, such would be consistent with both the substance and uniform application of the provisions of the Ethics Act. Proceeding in such a manner would make these guidelines applicable to all public officials and public employees throughout the Commonwealth of Pennsylvania at all levels of government.

I am offering the foregoing as a general overview. The staff of the Commission would be more than willing to meet with representatives of the Committee to discuss the specific details of the Resolution in depth or to provide any other assistance.

I, once again, would like to thank the Members of the Committee and the Pennsylvania State Senate for the consideration of these remarks and I am available to answer any questions that the Members of the Committee may have.

Respectfully submitted by:

John J. Contino, Esquire
Executive Director

On behalf of:
The Pennsylvania State Ethics Commission