

CHAPTER 11. GENERAL PROVISIONS

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Source

The provisions of this Chapter 11 adopted April 23, 1993, effective April 24, 1993, 23 Pa.B. 2087, unless otherwise noted.

§ 11.1. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise. Additional definitions are set forth in the act.

Act—The act of June 26, 1989 (P. L. 26, No. 9) (65 P. S. §§ 401—413), known as the Public Official and Employee Ethics Law (65 P. S. §§ 401—413).

Administering or monitoring grants—Directing, supervising or approving the expenditure or reimbursement of grant funds or monitoring another person's or organization's administering of grant funds. The term does not include compiling expenditures, comparing actual to planned expenditures or reimbursements, preparing comparative reports or completing grant proposals or reimbursement forms under specific direction.

Advice—A directive of the Chief Counsel of the Commission issued under section 7(11) of the act (65 P. S. § 407(11)) and based exclusively on prior Commission opinions, the act, regulations promulgated under the act and court opinions which interpret the act. See section 402 of the act (65 P. S. § 402).

Appointing authority—The person who is vested with the power to appoint, hire or terminate; if the power is vested in a governmental body, a majority vote of a quorum of that body constitutes the appointing authority.

Audit—A review of statements of financial interests to determine compliance with the act and to provide technical assistance in its administration.

Chairperson—The Chairperson of the Commission.

Child—The term includes adopted and biological children.

Clear and convincing proof—To a degree which requires more than a preponderance of the evidence but less than beyond a reasonable doubt.

Commission—The State Ethics Commission of the Commonwealth.

Commissioner—An appointed and seated member of the Commission.

Confirmation—The power vested in a person or governmental body to approve the nomination of persons.

Contracting or procurement—Awarding a contract or making a decision to purchase by the preparation of requests for bids and proposals, the solicitation

and evaluation of proposals or the selection of a vendor. The term does not include contracting or purchasing through master contracts or purchasing schedules already awarded.

De minimis economic impact—An economic consequence which has an insignificant effect.

Director—An officer acting as an agent for a business who is authorized to regulate, manage and direct alone or in conjunction with other officers.

Docket—The official assignment of a file number to a matter submitted to the Commission.

Election—The term includes primary, special or general elections.

Employed by—Used in any capacity, with or without compensation. This definition is only used in the context of section 6(d)(5) of the act (65 P. S. § 406(d)(5)).

Employer—One who uses the services of others and pays their wages, salaries or other compensation.

Filed—Official papers are filed on the date they are physically received at the Commission Office whether delivered by United States mail, express carrier, hand delivery or by Facsimile Service (FAX). See § 19.1 (relating to forms; filing) for additional requirements when filing a Statement of Financial Interests by Facsimile Service (FAX).

Governing authority—The body empowered to enact ordinances, appropriations and resolutions or to otherwise govern a subordinate body.

Gross negligence—The failure to perform a manifest duty in reckless disregard of the consequences or a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness.

Inspecting, licensing, regulating or auditing—The normal meanings of the terms apply, but the terms do not include activities which are exclusively internal in nature, such as auditing the internal process of an organization, and clerical and procedural activities in issuing permits and licenses.

Local—Governmental units other than the Commonwealth or counties.

Office—The position of president, vice president, secretary, treasurer and other positions designated as an office in the bylaws of the business.

Opinion—A directive of the Commission issued pursuant to section 7(10) of the act setting forth a public official's or public employe's duties under the act.

Planning or zoning—An action which is directed by a planning commission, zoning board, department, agency or governmental body which involves the regulation of real property.

Political subdivision—A county, city, borough, incorporated town, township, school district, vocational school, county institution district and an authority, entity or body organized by the aforementioned.

Public employe—

(i) The term includes an individual who is employed by the Commonwealth or a political subdivision and who is responsible for taking or recommending official action of a nonministerial nature with regard to one or more of the following:

- (A) Contracting or procurement.
- (B) Administering or monitoring grants or subsidies.
- (C) Planning or zoning.
- (D) Inspecting, licensing, regulating or auditing a person.
- (E) Other activities in which the official action has greater than a de minimis economic impact.

(ii) The following criteria will be used, in part, to determine whether an individual is within the definition of “public employe”:

- (A) The individual normally performs his responsibility in the field without onsite supervision.
- (B) The individual is the immediate supervisor of a person who normally performs his responsibility in the field without onsite supervision.
- (C) The individual is the supervisor of a highest level field office.
- (D) The individual has the authority to make final decisions.
- (E) The individual has the authority to forward or stop recommendations from being sent to the person or body with the authority to make final decisions.
- (F) The individual prepares or supervises the preparation of final recommendations.
- (G) The individual makes final technical recommendations.
- (H) The individual’s recommendations or actions are an inherent and recurring part of his position.
- (I) The individual’s recommendations or actions affect organizations other than his own organization.

(iii) The term does not include individuals who are employed by the Commonwealth or a political subdivision of the Commonwealth in teaching as distinguished from administrative duties.

(iv) Persons in the following positions are generally considered public employes:

- (A) Executive and special directors or assistants reporting directly to the agency head or governing body.
- (B) Commonwealth bureau directors, division chiefs or heads of equivalent organization elements and other governmental body department heads.
- (C) Staff attorneys engaged in representing the department, agency or other governmental bodies.
- (D) Engineers, managers and secretary-treasurers acting as managers, police chiefs, chief clerks, chief purchasing agents, grant and contract

managers, administrative officers, housing and building inspectors, investigators, auditors, sewer enforcement officers and zoning officers in all governmental bodies.

(E) Court administrators, assistants for fiscal affairs and deputies for the minor judiciary.

(F) School superintendents, assistant superintendents, school business managers and principals.

(G) Persons who report directly to heads of executive, legislative and independent agencies, boards and commissions except clerical personnel.

(v) Persons in the following positions are generally not considered public employees:

(A) City clerks, other clerical staff, road masters, secretaries, police officers, maintenance workers, construction workers, equipment operators and recreation directors.

(B) Law clerks, court criers, court reporters, probation officers, security guards and writ servers.

(C) School teachers and clerks of the schools.

Public official—A person elected by the public or elected or appointed by a governmental body, or an appointed official in the Executive, Legislative or Judicial Branch of the Commonwealth or a political subdivision thereof. The term does not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense, or to exercise otherwise the power of the Commonwealth or a political subdivision thereof.

(i) The following criteria will be used to determine if the exception in this paragraph is applicable:

(A) The body will be deemed to have the power to expend public funds if the body may commit funds or may otherwise make payment of moneys, enter into contracts, invest funds held in reserves, make loans or grants, borrow money, issue bonds, employ staff, purchase, lease, acquire or sell real or personal property without the consent or approval of the governing body and the effect of the power to expend public funds has a greater than de minimis economic impact on the interest of a person.

(B) The body will be deemed to have the authority to otherwise exercise the power of the Commonwealth or a political subdivision if one of the following exists:

(I) The body makes binding decisions or orders adjudicating substantive issues which are appealable to a body or person other than the governing authority.

(II) The body exercises a basic power of government and performs essential governmental functions.

(III) The governing authority is bound by statute or ordinance to accept and enforce the rulings of the body.

(IV) The body may compel the governing authority to act in accordance with the body's decisions or restrain the governing authority from acting contrary to the body's decisions.

(V) The body makes independent decisions which are effective without approval of the governing authority.

(VI) The body may adopt, amend and repeal resolutions, rules, regulations or ordinances.

(VII) The body has the power of eminent domain or condemnation.

(VIII) The enabling legislation of the body indicates that the body is established for exercising public powers of the Commonwealth or a political subdivision.

(ii) The term does not include judges and inspectors of elections, notary publics and political party officers.

(iii) The term generally includes persons in the following offices:

(A) Incumbents of offices filled by nomination of the Governor and confirmation of the Senate.

(B) Heads of executive, legislative and independent agencies, boards and commissions.

(C) Members of agencies, boards and commissions appointed by the General Assembly or its officers.

(D) Persons appointed to positions designated as officers by the Commonwealth or its political subdivisions.

(E) Members of municipal, industrial development, housing, parking and similar authorities.

(F) Members of zoning hearing boards and similar quasi-judicial bodies.

(G) Members of the public bodies meeting the criteria in paragraph (i)(A).

Requestor—The person seeking an advice or opinion from the Commission.

Respondent—The person who is the subject of a complaint, inquiry or investigation.

Service—Official papers are deemed served on the date of United States postmark if delivered by United States mail, the pickup date if delivered by express carrier or the date received from the Commission if hand delivered or transmitted by FAX.

Staff—The Executive Director, the chief counsel, investigators and other personnel as may be employed by or assigned to assist the Commission.

Sworn complaint—A complaint on a form promulgated by the Commission or its equivalent which is notarized and contains the provision that the complaint is signed under the penalty of perjury.

Unannounced write-in-candidate—An individual who is not a "candidate" as defined in the act and who received sufficient write-in votes on election day to be elected to or nominated for an office.

Vice Chairperson—The Vice Chairperson of the Commission.

Source

The provisions of this § 11.1 amended September 20, 1996, effective September 21, 1996, 26 Pa.B. 4524. Immediately preceding text appears at serial pages (178957) to (178962).

Notes of Decisions

Filing

The requirement of actual receipt to accomplish filing of reports applies only to Statewide candidates; local candidates can comply by having their filing postmarked before the deadline. *In re Nomination Petition of McMonagle*, 793 A.2d 174 (Pa. Cmwlth. 2002).

Cross References

This section cited in 51 Pa. Code § 31.1 (relating to definitions); 51 Pa. Code § 51.1 (relating to definitions).

§ 11.2. Construction.

Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this title shall be liberally construed to promote complete financial disclosure as specified in the act.

§ 11.3. Statute of limitations.

The Commission may investigate a violation of the act within 5 years of its occurrence. The occurrence transpires when an act is complete or requires no further action. This title does not apply to violations committed prior to the effective date of the act, and causes of action initiated for the violations shall be governed by the prior law and title, which are continued in effect for that purpose as if this title were not in force. For the purposes of this title, a violation was committed prior to the effective date of the act if any elements of the violation occurred prior thereto.

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