

CHAPTER 13. OPINIONS AND ADVICES OF COUNSEL

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Source

The provisions of this Chapter 13 adopted April 23, 1993, effective April 24, 1993, 23 Pa.B. 2087, unless otherwise noted.

Cross References

This chapter cited in 51 Pa. Code § 39.1 (relating to Ethics Act regulations in Part I as to opinions and advices of counsel); and 51 Pa. Code § 59.1 (relating to Ethics Act regulations and advices).

§ 13.1. General provisions.

(a) An advice or an opinion may be requested by a public official or public employe as to his own conduct or by the authorized representative of the person, his present employer, or appointing authority of the person through majority action of the appointing authority, if applicable.

(b) The requestor shall provide the following information in writing:

(1) The name, address and phone number of the person who is the subject of the request and if different, the name, address and phone number of the person initiating the request.

(2) The name of the governmental body with which the subject serves and the name or title of the person's public office or position.

(3) If the requestor is the appointing authority, employer or representative of the subject of the request, the nature of the relationship.

(4) The nature and duties of the subject's office or job. Include an organization chart, bylaws of the organization, if available, and a job description.

(5) List the relevant facts and circumstances surrounding the request.

(c) The requestor may ask that an opinion or advice be issued under either section 7(10) or (11) of the act (65 P. S. § 407(10) and (11)).

(d) The Commission will decide, within 14 days, whether an opinion or advice should be issued and will so advise the requestor.

(e) If a requestor seeks an opinion and is advised that an advice should be issued or if the requestor seeks an advice and is advised that an opinion should be issued, the requestor may either withdraw the request by notifying the Commission within 14 days of the date of receiving notice under subsection (d) or may elect to have the opinion or advice issued as docketed by the Commission.

(f) Advices and opinions are matters of public record except as provided in this section.

(g) A requestor may seek a confidential advice or opinion in writing at the time of the request or within 7 days of notification of docketing as an advice or opinion.

(h) A confidential advice or opinion will be publicly filed but will contain deletions and changes to preserve the confidentiality of the requestor's or subject's identity.

(i) The files relating to a confidential advice or opinion will not be public and will so remain unless released by the requestor or the public official or public employee who is the subject of the advisory.

(j) If a Petition for Review or other legal pleading is filed in a court of law regarding a confidential advice or opinion, the files will become public on the date that the Commission record is transmitted to court or on the date the responsive pleading, motion, application or other legal document is filed by the Commission, whichever date comes first, unless the court directs otherwise.

(k) Documents and submissions to the Commission relating to a request for an opinion or an appeal of an advice shall be made at least 7 days prior to the meeting of the Commission during which the appeal or opinion will be reviewed.

Cross References

This section cited in 51 Pa. Code § 13.5 (relating to public access).

§ 13.2. Advice of counsel.

(a) Advice of counsel will be based exclusively on one or more of the following authorities:

- (1) Prior Commission opinions.
- (2) The act.
- (3) This title.
- (4) Court opinions interpreting the act.

(b) The Chief Counsel will issue the advice on behalf of the Commission within 21 working days after receipt of the request, but the time may be extended for good cause.

(c) Clarification of an advice may be requested in cases where the original advice was incomplete, inconsistent or unclear.

(d) Requests for clarification shall be filed within the 30-day period normally applicable for appealing an advice to the Commission.

(e) The timely filing of a request for clarification will toll the applicable period for appealing an advice to the Commission.

(f) Supplemental advice may be requested in cases in which additional facts are present or circumstances have changed from those in the original request.

(g) An advice of counsel may be appealed to the Commission by the requestor or the subject of the request.

(h) An appeal from an advice to the Commission shall be in writing and filed within 30 days of the issuance of the advice.

(i) An appeal from an advice will be considered by the Commission after which an opinion will be issued either affirming, modifying or reversing the original advice.

(j) Reconsideration may be requested under § 21.29 (relating to finality; reconsideration) of an opinion disposing of an appeal of an advice if the request is filed within 30 days of the issuance of the opinion.

(k) An advice shall be a complete defense in an enforcement proceeding initiated by the Commission, and evidence of good faith conduct in another civil or criminal proceeding, if the requestor, at least 21 working days prior to the alleged violation, requested written advice from the Commission in good faith, disclosed truthfully the material facts and committed the acts complained of either in reliance on the advice or because of the failure of the Commission to provide advice within 21 days of the request or the later extended time.

Source

The provisions of this § 13.2 amended May 5, 1995, effective May 6, 1995, 25 Pa.B. 1777. Immediately preceding text appears at serial pages (178964) to (178965).

§ 13.3. Opinions.

(a) Opinions shall be issued under the provisions in section 7(10) of the act (65 P. S. § 407(10)).

(b) Requests for Commission opinions will be considered in accordance with the procedures outlined in §§ 23.1—23.6.

(c) A party may request that the Commission reconsider an opinion in accordance with § 21.29 (relating to finality; reconsideration). The request shall be filed within 30 days of the service of the opinion and contain a detailed explanation of the reasons in support of the request.

(d) Reconsideration may be granted in the discretion of the Commission under § 21.29(e).

(e) A person who acts in good faith on an opinion issued to him by the Commission will not be subject to criminal or civil penalties for so acting, if the material facts are as stated in the opinion request.

Source

The provisions of this § 13.3 amended May 5, 1995, effective May 6, 1995, 25 Pa.B. 1777. Immediately preceding text appears at serial page (178965).

§ 13.4. Intervention.

(a) A person who is not a party in an advice or opinion request or reconsideration thereof, may file a petition to intervene if the person has an interest. One or more of the following criteria will be utilized to determine whether a person has an interest:

(1) A right conferred by Federal or State law.

(2) An interest which may be affected and which is not adequately represented.

(3) An issue of public importance.

(b) A person shall apply for intervention within 14 days prior to the Commission meeting if the opinion will be reviewed or decided. The Commission may grant an application at any time prior to the meeting, but only for good cause shown.

(c) An application for intervention shall include the facts which establish the nature of the alleged right or interest and the grounds for intervention. The application shall also address the facts if they are deficient or incorrectly stated, and the relevant issues of law. The application may cite authority in support of the advocated position.

(d) The Commission will review applications for intervention to determine whether a grant of intervention is appropriate.

(e) A person may file an amicus brief which shall be received within 14 days prior to the Commission meeting.

§ 13.5. Public access.

(a) Subject to § 13.1(h) and (i) (relating to general provisions), the Commission's advisories, letters requesting advisories, files and information submitted to the Commission relating to a request are public records and will be available for public inspection and reproduction during normal business hours.

(b) The Commission will transmit, free of charge, copies of each order, advice and opinion which has become a matter of public record quarterly to the law library of each county, one public library in each county, the State Library, the State Senate Library, each authority appointing Commission members under this act, the Pennsylvania Association of County Commissioners, the Pennsylvania Association of Boroughs, the Pennsylvania Association of Township Supervisors, the Pennsylvania State Association of Township Commissioners, the Pennsylvania School Boards Association and the Pennsylvania League of Cities.

(c) The Commission may charge a fee for additional copies at a rate not to exceed actual cost.

(d) A digest and index of Commission opinions may be published and disseminated annually.

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