



STATE ETHICS COMMISSION

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TELEPHONE (717) 783-1610

February 15, 1994

The Honorable Italo Cappabianca
House of Representatives
Commonwealth of Pennsylvania
Room 30, East Wing
Harrisburg, PA 17120-0028

Dear Representative Cappabianca:

After consulting with the Chair as to your letter of February 3, 1994, I have been directed to personally respond to your inquiry.

In your letter, you request the chronology and information as to advisory opinions that had been issued to you by the State Ethics Commission (SEC). In particular, you seek confirmation that the SEC action as to your advisory opinion was initiated through your action and not by a third party complaint. Lastly, you seek commentary regarding public officials who pose questions about important matters to the SEC as well as the benefits relative to public rather than private advisory requests.

This will confirm that Cappabianca, Opinion 89-014 had its origination via a written request from you dated June 22, 1989 for an advisory opinion. Cappabianca, Opinion 89-014, supra was issued on August 23, 1989. The then Chair of the Commission requested reconsideration of that opinion. In Cappabianca, Opinion 89-014-R, issued on October 26, 1989, the Commission granted reconsideration and vacated Opinion 89-014. Thereafter, the House Parliamentarian and certain legislative counsels sought reconsideration of 89-014-R which was denied in Cappabianca, 89-014-R2, issued on July 9, 1990.

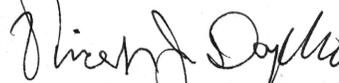
Turning to the matter about public officials seeking inquiries, I would note that the Preamble of the Ethics Law provides in part:

Thus in order to foster maximum compliance with its terms, this act shall be administered in a manner that emphasizes guidance to public officials and public employees regarding the ethical standards established by this act.

65 P.S. 401(b)

Finally, as to your inquiry about the benefit of a public rather than a private advisory request, I am unable to respond. The General Assembly in the 1989 Amendments to the Ethics Law inserted a provision which allows public officials/employees to seek confidential advisory requests. It is the function of the SEC to administer the Ethics Law by issuing public or confidential advisories depending upon the format that is chosen by the requestor who has the right to make such an election for whatsoever reason.

Very truly yours,



Vincent J. Dopko
Chief Counsel

vjd500/mls



STATE ETHICS COMMISSION
308 FINANCE BUILDING
HARRISBURG, PENNSYLVANIA 17120

December 19, 1989

ITALO S. CAPPABIANCA

DISSENTING OPINION

On July 28, 1989, the Commission considered a request from the Honorable Italo S. Cappabianca for an Opinion on the following question:

Whether a member of the General Assembly under the Public Official Employee Ethics Law may purchase airline tickets for travel from and to Harrisburg, Pennsylvania from a travel agency of which he is a president, thereby generating a 10% commission for that agency, and whether the member of the General Assembly may charge his Legislative District account with rent at the local prevailing rate for a district office in a building he owns.

On July 28, 1989, after considerable discussion, the Commission expressed an Opinion affirming the ethical propriety of Mr. Cappabianco's actions in each case, i.e., it was appropriate for him to charge his tickets to and from Harrisburg to a travel agency of which he was a stockholder, and it was appropriate for him to charge his Legislative District account with rent at the local prevailing rate for a district office in a building he owns. Chairperson Hughes dissented from the opinion of the majority and requested reconsideration.

On October 26, 1989, the Commission considered her request to reconsider the original Opinion, and agreed to do so. On reconsideration, the commissioners voted 4 - 3 to reverse the

Opinion expressed at the July 28, 1989 meeting.

A. SHOULD THE REQUEST FOR RECONSIDERATION HAVE BEEN GRANTED?

I dissent from the decision to reconsider the original opinion and from the majority opinion after reconsideration.

Reconsideration may be granted only where the Commission finds one or more of the following:

- (1) A material error of law has been made.
- (2) A material error of fact has been made.
- (3) New facts or evidence are provided, which would lead to reversal or modification of the Order and where these would not be or were not discovered previously by the exercise of due diligence. 51 Pa. Code §2.38.

The Code further provides that the person requesting consideration should present a detailed explanation setting forth the reasons why the Opinion requires reconsideration (italics mine). §2.15. The only explanation setting forth her reasons for reconsideration appear in her letter dated August 30, 1989 and in their pertinent parts are set forth below.

" . . .although these items are authorized legislative expenses, the action of selecting his own travel agency to purchase his airline tickets or using his own building for his district office results in a pecuniary benefit to Representative Cappabianca which is above and beyond the mere utilization of these expenses.

I submit that a conflict exists since Representative Cappabianca would be using the authority of his office by using his travel agency to purchase his airline tickets or of selecting his building for his district office. Derivatively, such use of authority of office results in a private pecuniary benefit through the generation of a 10% commission to his travel agency and the payment of rent to himself for for a legislative business office in a building he owns."

Based on that request, the majority voted to reconsider

the Opinion of July 28, 1989.

From the request itself, it is obvious that no new facts or evidence were offered, no material error of fact was alleged, and no citation of a material error of law was offered.

In the past, the Commission has been requested to reconsider numerous Opinions and Orders. In almost every instance, those requests for reconsideration were denied out of hand without public hearing and without serious debate. The mere fact that "any person" is simply dissatisfied with the Commission ruling does not fulfill the requirement that a detailed explanation be given.

My concern is that the business of the Commission may be very seriously impaired if, after every Opinion in which there is a dissent, or in every Opinion where the full Commission is not present, or in every Opinion where "any person" considers it to be an important Opinion, that the Commission then would be required to grant reconsideration. If we accept the reason stated in Chairperson Hughes' letter, the majority would be bound in the future to accept for reconsideration any case in which the respondent requests reconsideration and in plain language, cites the reason that "I want my case reconsidered because I didn't like your first opinion."

B. I FURTHER DISSENT TO THE OPINION AS EXPRESSED BY THE MAJORITY ON THE MERITS OF THE CASE.

A copy of the original Opinion decided by the Commission July 28, 1989 is attached and is included in this dissent. The legislature has established specific procedures setting forth

circumstances under which its members are permitted to request reimbursement for district office rentals. Members of the legislature are encouraged to make themselves accessible to their constituency. To encourage such practices the members are allowed to charge their legislative district account with rent for the district office. To guarantee against abuses of the practice, certain restrictions are placed on the rentals. The requirements and limitations are set forth in the majority opinion.

To obtain the benefit of rental allowances, the legislator must comply with certain procedural steps. Those are set forth in the majority opinion. The General Assembly has clearly set forth those rules and regulations and procedures and no distinction is made between office space owned and occupied by the legislator and real estate owned by others and occupied by the legislator. Every precaution is taken to protect the practice from abuse. The record in this case clearly demonstrates that Mr. Cappabianco meticulously attended to the necessary procedures before charging his legislative district account with rent for his district office. When the Legislature has established and approved a course of conduct for its members and the member has complied fully, then there can be no legal error in that action. As so aptly stated by Commissioner Pancoast at the public hearing of October 26, 1989,

". . .The control of legislative expense accounts is the primary responsibility of the General Assembly itself within the House and the Senate. If these funds are being expended within the rules and regulations of the legislative body, not violating. . .the use of expense accounts,. . . I

believe there is no error in law. . . ."

". . .In this particular instance. . .these are matters to be handled directly by the Senate and the House of Representatives with respect to the use of. . ." public funds.

By its opinion, the majority of the Commissioners would impose a limit on legislators not to be found in the rules of the General Assembly.

On the issue of travel, every travel agency receives a commission of 10% of the base rate of the cost of the ticket (the cost of the ticket less 7 1/2% tax). The Cappabianca travel agency is incorporated. Italo Cappabianca is a stock holder in the corporation. From the sale of his tickets to and from Harrisburg by the Cappabianca Travel Agency, he may, in fact, receive some very, very small benefit if the Agency shows a profit. By its opinion, the majority proposes unreasonable restrictions and interferes with the legislator's prerogatives.

The public official compensation law provides that members of the General Assembly receive mileage to and from their homes at a rate of \$.20 per mile circular for each week a member was in attendance. Assume, then, that the legislator in fact, spends only \$.18 cents a mile in travel. Does that then oblige this Commission to examine the expense accounts of each legislator to determine whether or not the legislator should refund the \$.02 cents per mile, since, although small, it clearly would be a private pecuniary benefit under the majority interpretation? I think not.

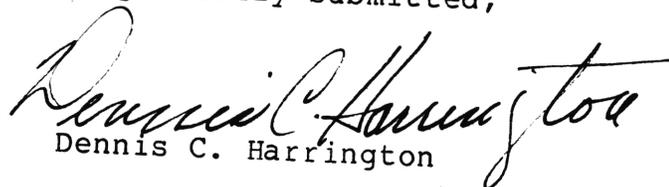
The majority quotes Section 2 of the Ethics Law to support the conclusion that a conflict of interest exists. That same

Section, however, specifically eliminates from the definition of conflict of interest the facts presented in this particular case.

". . ."conflict" or "conflict of interest" does not include an action having a de minimus economic impact (italics mine), or which affects to the same degree a class consisting of the general public, or a sub-class consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated."

If Mr. Cappabianco's actions have any economic impact at all, it is, in fact, one favorable to the taxpayers of the Commonwealth of Pennsylvania. Even in light of the most restrictive interpretation that could be imposed by the majority view, there could only be a de minimus economic impact and therefore not a conflict of interest.

Respectfully submitted,


Dennis C. Harrington

DCH:jc

W. Thomas Andrews concurs in this Dissenting Opinion.
G. Sieber Pancoast concurs in this Dissenting Opinion.



HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

October 30, 1989

SUBJECT: Ethics Commission Decision Regarding District
Office Rentals

TO: All Democratic Members

FROM: Robert W. O'Donnell, Majority Leader *RWO*

On Thursday, October 26, 1989, the Ethics Commission reversed their earlier decision regarding members renting district offices in buildings which they own. The Commission has now held that it is a violation of the Ethics Act for members to engage in this practice. Because the Commission's written opinion will not be issued for approximately two weeks, we cannot supply a more detailed analysis at this time.

Legal counsel from all four caucuses of the House and Senate on Friday, October 27, 1989, requested a reconsideration of this latest opinion. Subsequent communications with the Commission have indicated that due to the aforementioned request for reconsideration, the effective date for the implementation of this latest decision of the Commission will be delayed until the reconsideration can be decided. Thus, this decision has no immediate application, but members who may be affected should begin considering alternatives.

If you have any questions, please contact our caucus legal counsel.

ROBERT W. O'DONNELL
THE MAJORITY LEADER



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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

October 26, 1989

SUBJECT: Public Official and Employee Ethics Law
TO: All Democratic Members
FROM: Robert W. O'Donnell, Majority Leader *RWO*

Act 9 of 1989, which reenacted and amended Pennsylvania's Public Official and Employee Ethics Law, made several significant changes to the existing law. This memorandum summarizes the changes which, in my opinion, will be of most interest to you.

1. Public officials and employees are prohibited from accepting honorariums. Additionally, no person is permitted to solicit or accept severance payment or anything of monetary value contingent upon accepting or assuming public office or employment.
2. No individual may offer or give public officials or employees anything of monetary value with the expectation of influencing their performance.
3. Public officials and employees, their spouses and children, or any business with which any of the foregoing are associated, are prohibited from entering into contracts worth \$500 or more with governmental bodies with which the official or employee is associated, unless the contract has been awarded through an open, public process.
4. Additional information is required to be included on statements of financial interest. In addition to the previous requirement of reporting gifts valued in the aggregate of \$200 or more from one source, officials must now also report reimbursement from private individuals for travel, lodging, or hospitality expenses that exceed \$500.00 in the course of a single occurrence received in connection with public office or employment. This reporting requirement does not apply to expenses reimbursed by the House of Representatives or other governmental bodies.

5. Finally, a definition of "conflict of interest" has been added. Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family, or a business with which he or a member of his immediate family is associated, is defined to be a conflict of interest.

You may wish to review this act since other changes were made which I have not addressed in this memo.

If you have any questions, please contact our caucus legal counsel.

ROBERT W. O'DONNELL
THE MAJORITY LEADER



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HOUSE OF REPRESENTATIVES

COMMONWEALTH OF PENNSYLVANIA

HARRISBURG

October 18, 1989

SUBJECT: Ethics Commission Opinions

TO: All Democratic Members

FROM: Robert W. O'Donnell, Majority Leader *RWO*

I have attached, for your information and review, copies of recent advisory opinions issued by the Ethics Commission which may be of interest to you.

Although I would strongly encourage reading these opinions in their entirety, briefly, the Commission has made the following decisions:

1. A member is permitted to pay, from his legislative district account, the local prevailing rental rate for a district office in a building which he or she owns.
2. An airline ticket may be purchased by a member for legislative travel from a travel agency, even though said member is an officer of that agency.
3. When a member has exhausted his or her postage account and other legislative funds that may be available to pay for a mailing, the member is permitted to receive personal funds from his or her spouse or to receive a gift from a friend to pay for the mailing. Please note that depending upon the circumstances of the gift, it may have to be reported on your Financial Interest Statement.

The Ethics Commission, by virtue of a reconsideration motion made by a member of that Commission, will be reconsidering items one (1) and two (2) listed above at their meeting scheduled for October 26, 1989. We will advise you of the outcome of those reconsiderations.

If you have any questions, please contact our caucus legal counsel.

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

June 22, 1989

COMMITTEES

APPROPRIATIONS, VICE CHAIRMAN
BUSINESS & COMMERCE,
CHAIRMAN, SPECIAL SUBCOMMITTEE
ON SMALL BUSINESS
PROFESSIONAL LICENSURE
MILITARY & VETERANS AFFAIRS
POLICY
CHAIRMAN, SELECT COMMITTEE TO STUDY
BUSINESS ACTIVITIES OF NONPROFITS
CHAIRMAN, THE JOINT STATE
GOVERNMENT COMMISSION TASK FORCE
ON REDUCTION OF COMMONWEALTH
COMPETITION WITH PRIVATE ENTERPRISE
HYDRO POWER TASK FORCE OF THE
COUNCIL OF STATE GOVERNMENTS

John J. Contino, Executive Director
State Ethics Commission
Room 308, Finance Building
Harrisburg, Pennsylvania

Dear Mr. Contino:

It is my understanding that an Advisory Opinion will be rendered to incumbent elected officials with regard to the recently passed new Ethics Code legislation.

In this regard, I am hereby requesting an Advisory Opinion on the following matters:

1. I frequently travel by air from Erie to Harrisburg. The round-trip air fare is approximately \$230. Because of the convenience involved, it has been my practice to purchase these air travel tickets from Cappabianca Travel Agency of which I am the President and, of course, can obtain prompt service. However, the Agency receives approximately a ten percent (10%) commission, as does any other travel agency, from the airlines for the handling of the ticket. Can I continue to purchase my travel tickets from Cappabianca Travel ---- or must I now go to another agency, or purchase the tickets directly from the airlines?

2. I am the owner of a building in Erie which has two separate entrances, with separate utility connections; i.e. separate electrical connections, separate water heaters, separate furnaces and air conditioning, which are two separate apartments in one structure. One is my personal apartment; the other is my legislative district office. Being the owner of the building, I rent the one entity as my legislative district office and charge my legislative district account with rent according to the prevailing rate of rent per square footage in the Erie area. Is this sort of arrangement permissible under the provisions of the new Ethics Code?

I would greatly appreciate it if you could afford me an Advisory Opinion with regard to the two aforementioned matters.

Thank you in advance for your kind cooperation to this request.

Sincerely yours,


Italo S. Cappabianca
State Representative