



Formal Advisory Opinion
No. 1 of 2009

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New Jersey State Legislature

JOINT COMMITTEE ON ETHICAL STANDARDS

STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068
(609) 292-4625

ALBERT PORRONI
Secretary and Counsel

JAMES G. WILLSON
Assistant Counsel

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Dear

You have asked for guidance from the Joint Legislative Committee on Ethical Standards (Joint Committee) regarding whether you may legally represent an injured patron against a casino employer and whether you may represent an injured worker in a workers' compensation action against a casino employer.¹

The applicable provision of the Legislative Code of Ethics is section 2:8.c., which provides, in the relevant portion:

No member of the Legislature, or any firm with which he is associated as an officer, director or holder of an interest, as defined in section 1:1 of this code, shall represent, appear for, or negotiate on behalf of, any person, firm, corporation or association with respect to any transaction between such person, firm, corporation or association and the holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, as the same are defined in the Casino Control Act.

¹ We note that N.J.S.A. 52:13D-16 and Code §2:4, generally allow a member of the Legislature to represent an employee in a workers' compensation action. That is not dispositive of your question.

When that portion of §2:8.c. is distilled to its bare essentials, based upon the facts presented, it would read:

No member of the Legislature . . . shall represent . . . or negotiate on behalf of, any person . . . with respect to any transaction between such person . . . and the holder of . . . a casino license. . . .

The question is, therefore, does “transaction” include legal representation and the negotiation that usually takes place in the course of legal representation? Words and phrases carry well-understood meanings absent explicit indication of specific meaning. See N.J.S.A. 1:1-1 and Fisher v. NJ State Parole Bd., 303 N.J. Super. 229 (AD 1997).

Webster’s New World Dictionary 1419 (3rd College ed. 1988), defines “transaction” as: “1 a transacting or being transacted 2 something transacted; specif., a) a business deal or agreement. . . .”

“Transact” is defined as “. . . to carry on, perform, conduct, or complete (business, etc.) – *vi* [Rare] to do business; negotiate. . . .” Id.

“Transaction” is defined in *Black’s Law Dictionary* 1668-1669 (Revised 4th ed. 1968), under the sub-category “civil law” as “[a]n agreement between two or more persons who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on.” Id.

There seems to be an obvious purpose behind §2:8.c. which is to avoid a conflict of interest between members of the Legislature and casinos. Upon establishment of the attorney-client relationship, the attorney will become familiar with the relevant facts and the applicable law. Usually, the next step is not filing a lawsuit but contacting the adverse party to see if the matter may be settled. At this point negotiations usually begin. If the negotiations are not successful, the plaintiff’s attorney may file a complaint. That raises the ante and may convince the defendant to resume negotiations. The defendant will usually file an answer and perhaps a counterclaim which also affect negotiations. While it differs between cases, negotiation may continue up to the rendering of a verdict and sometimes beyond if an appeal is pursued.

If a legislator is representing the plaintiff against the holder of a casino license and the legislator has a record of voting on bills favorable to the casino industry, the concern is that

the casino will try to maintain good will with the legislator by agreeing to settle the matter in a manner favorable to the legislator's client. If the legislator has voted against the best interests of the casino industry, the casino may still agree to an unusually beneficial settlement from the plaintiff's perspective in order to try to cultivate the good will of the legislator which will hopefully result in a voting record for the legislator which is more favorable to the casino industry.

These concerns all relate to the negotiation process between the attorney/legislator and the casino. These concerns cannot reasonably be assuaged by requiring the attorney/legislator to take all complaints against casinos through the legal process to a jury verdict or judicial decision as that may be contrary to the client's best interest in most cases.

Accordingly, it is the Joint Committee's advice that "transaction," as used in Code §2:8.c., must be read to include the negotiation inherent in legal representation. This would hold true whether that representation is in a general civil matter or in a workers' compensation case.

Very truly yours,

JOINT COMMITTEE ON ETHICAL STANDARDS

Albert Porroni
Counsel

By:



James G. Willson
Assistant Counsel