

**Formal Advisory Opinion
No. 1 of 2010**

June 17, 2010

Honorable Upendra J. Chivukula
888 Easton Ave.
Somerset, NJ 08873

Dear Assemblyman:

You are currently a member of the New Jersey Commission on Science and Technology (commission) (N.J.S.A. 52:9X-1et seq.). As you believe that the commission is doing good work, you would like to submit a budget resolution pursuant to Joint Rule 42 to fund the commission for Fiscal Year 2011 in the amount of \$2,000,000. Because you presently are a member of the Commission and because you may be reimbursed for expenses pursuant to N.J.S.A. 52:9X-5, you are concerned that your submission of the budget resolution may violate the Legislative Code of Ethics (Code), §2:9, dealing with personal interest. You have asked the Joint Legislative Committee on Ethical Standards (Joint Committee) for a formal advisory opinion in this regard. We note that Code §2:9 provides as follows:

No member of the Legislature shall participate by voting or any other action on the floor of either House, in committee or elsewhere, in the enactment or defeat of legislation in which he has a personal interest.

The Joint Legislative Committee on Ethical Standards is authorized to investigate the circumstances giving rise to a question of personal interest and upon a finding, after a hearing thereon, that the member's participation with respect to the enactment or defeat of the legislation would constitute a violation of the public trust or create an impression among the public of a violation of the public trust, the joint committee shall direct the member to withdraw his sponsorship of, or participation in, the enactment or defeat of the legislation.

For the purpose of this section a "personal interest" means the member of the Legislature, or a member of his immediate family, believes or has reason to believe he will derive a direct

monetary gain or suffer a direct monetary loss by the enactment or defeat of the legislation; a "personal interest" does not mean that by enactment or defeat of the legislation no benefit or detriment could be expected to accrue to him, or to a member of his immediate family, as a member of a business, profession, occupation or group, to any greater extent than any such benefit or detriment could be expected to accrue to any other member of such business, profession, occupation or group (C.52:13D-18).

Sponsoring a budget resolution, perhaps speaking on the resolution in committee, and voting on the annual, fiscal year 2011 appropriations act on third reading, if it contains the subject appropriation, all would implicate Code §2:9. One question would be whether you or a member of your immediate family would derive a direct monetary gain by the enactment of the legislation. The other question which would arise under the second paragraph of Code §2:9 is whether your participating in the enactment of the appropriations act would “. . . constitute a violation of the public trust or create an impression among the public of a violation of the public trust. . . .”

We will start the analysis by stating that a provision allowing for and the actual reimbursement of necessary expenses incurred in the performance of your duties as a member of the commission does not constitute a financial gain to you. It is at most, making you whole for the necessary costs incurred by you in being a member. Accordingly, although you have stated that you have not accepted any reimbursement for necessary expenses to date, if you were to do so, it would not constitute a direct monetary gain.

As the commission may employ an executive director (N.J.S.A. 52:9X-7) and other paid staff (N.J.S.A. 52:9X-8), and it may enter into contracts (N.J.S.A. 52:9X-9r.), hire consultants (N.J.S.A. 52:9X-9s.), establish business incubation facilities (N.J.S.A. 52:9X-9d.) and perform a host of other functions that may benefit individuals and entities, counsel has directly asked whether you or any member of your immediate family will derive a direct monetary gain from the continuation of the commission. You responded that neither you nor your immediate family would derive a direct monetary gain. You are also not aware of any disclosed or non-disclosed relationships between the commission and others that would constitute a “. . . violation of the public trust or create an impression among the public of a violation of the public trust. . . .” on your part.

Accordingly, it is the opinion of the Joint Committee that you may submit the subject budget resolution and participate in the adoption of the resolution by the Assembly Budget Committee and the consideration and passage of the fiscal year 2011 annual appropriations act, or any other action attendant to the legislation, without violating Code §2:9 with regard to the New Jersey Commission on Science and Technology. If the budget resolution is adopted and

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enacted as part of the appropriations act, you would need to exert caution to be sure that none of the actions of the commission, to the extent they are within your control, during fiscal year 2011 would constitute a personal interest to you, or the appearance of a violation of the public trust, pursuant to Code §2:9.

Very truly yours,

JOINT COMMITTEE ON ETHICAL STANDARDS

Albert Porroni
Counsel

By: _____
James G. Willson
Assistant Counsel

AP:W/pca