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New Jersey State Legislature

JOINT COMMITTEE ON ETHICAL STANDARDS

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ALBERT PORRONI
Secretary and Counsel

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April 26, 2011

Dear

You have asked two questions about an offer of employment you received from a construction firm that is a subcontractor on State agency projects. Your questions are:

1. If you accept the offer, do you need authorization from the Joint Committee for your employer to subcontract on State agency projects if your employer:
 - a) has no contact with the State agency with regard to the contract;
 - b) is not named as a subcontractor in the contract with the State agency; and
 - c) is paid directly by the general contractor, not the State agency?
2. If you accept the offer, do you need authorization from the Joint Committee for your employer to provide quotes to one or more general contractors that are bidding on State agency contracts if your employer is named by one or more of the general contractors in their bid or bids to the State agency?

The answer to both questions is no. If you accept the offer and become an employee of the construction firm, you do not need authorization from the Joint Committee for your employer to subcontract on State agency projects.

We base our answer on the following facts and assumptions. Together with a partner, you started the construction firm in 2005, and started a prior incarnation of the firm in 1996. In 2009, you transferred your stock holdings. You currently do not hold an ownership interest in the firm. We assume that you have made no agreements about reacquiring an ownership interest. You state that you would work as an office manager with primarily clerical duties for which you would receive only a salary with no bonuses or commissions. In your letter of

Honorable
Page 2
April 26, 2011

inquiry, you state that you would have no role "with regard to the actual approval of quotes or the approval of any sub contracts." You state further that your role "would include the review of paperwork required to fulfill the subcontracts as well as other paperwork associated with the running of the company. For example, obtain and review insurance certificates, review and forward manifests and invoices etc." We assume that you would not hold any other position with the firm and that you would not personally execute any subcontracting agreements. We also assume that you have no reason to believe the firm offered you employment to influence you in the performance of your legislative duties.

Your questions concern the ban on legislators and their firms contracting with State agencies contained in N.J.S.A. 52:13D-19 and section 2:5 of the Legislative Code of Ethics. In relevant part, subsection a. of N.J.S.A. 52:13D-19 provides:

No member of the Legislature . . . shall knowingly himself, or by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$25.00 or more, made, entered into, awarded or granted by any State agency, except as provided in subsection b. of this section.

Subsection a. of section 2:5 of the Code is practically, and in all ways relevant to your inquiry, identical.

N.J.S.A. 52:13D-19 and section 2:5 of the Code do not cover your situation. Any contract between your employer and a State agency is not executed or undertaken "by [your] partners," because you are no longer a partner in the firm. If you accepted employment, you would not control the firm. Your duties as you have described them do not appear to include strategic decisions about the direction of the firm or which projects to pursue. You do not own or control more than 1% of the stock. Finally, we do not believe that being a salaried employee of a firm that subcontracts on State agency projects under these circumstances renders the contract executed or undertaken between the State agency and the general contractor a contract "for [your] use or benefit or on [your] account."

Please note there are other sections of the New Jersey Conflicts of Interest Law and the Legislative Code of Ethics that may become relevant in the course of your employment. N.J.S.A. 52:13D-25 and section 2:11 of the Code prohibit a legislator from willfully disclosing nonpublic information acquired in the course of and by reason of the legislator's official duties. N.J.S.A. 52:13D-16 and section 2:2 of the Code prohibit legislators and firms in which they have an interest from representing, appearing for, or negotiating on behalf of

Honorable
Page 3
April 26, 2011

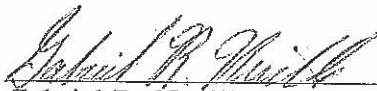
any person other than the State before State agencies, with certain exceptions.* N.J.S.A. 52:13D-18 and section 2:9 of the Code prohibit legislators from participating in legislation in which they have a personal interest.

Should your duties at the firm change, please do not hesitate to request additional guidance as this may change our analysis.

Very truly yours,

JOINT COMMITTEE ON ETHICAL STANDARDS

Albert Porroni
Counsel

By: 
Gabriel R. Neville
Assistant Counsel

AP:N

* You state you would personally have no contact with any State agency.