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ATTORNEYS AT LAW

LOUISIANA SHERIFFS' PENSION AND RELIEF FUND EDUCATIONAL PROGRAM

AUGUST, 2014

A REVIEW OF LOUISIANA ETHICS LAWS

I. LOUISIANA ETHICS LAWS

A. State Constitution

Article X, Section 21 of the Louisiana Constitution mandates the creation of a state ethics commission. It is the intent of the constitution that the agency have both rule making and quasi-judicial powers. Decisions of the agency are subject to judicial review.

B. 42:1101, LRS

Louisiana statutes set forth a comprehensive program for avoidance of conflicts of interest.

C. Focus of the ethics laws

The focus of the ethics laws on avoidance of conflict; disclosure of potential conflicts, and prohibition of improper compensation. Acceptance of gifts is strictly regulated and public officers may not receive outside compensation for their public offices. Public officers may not vote on or engage in contractual relationships with their own

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agencies. No public officer may vote on a matter in which he or she or an immediate family member or business associates has a pecuniary interest. The law was amended in 2005 to require reporting of expenditures made by providers of service to retirement plans on trustee or administrator entertainment.

- D. Ethic Commission has authority to issue advisory opinions and to adjudicate violations of the law.
- E. A Summary of the Applicable Ethics Provisions

Code of Governmental Ethics Summary:

The Board of Ethics ("Board") is composed of 11 members; 7 members are appointed by the governor, 2 members are elected by the Senate, and 2 members are elected by the House of Representatives. The Board administers the Code of Governmental Ethics ("Code") pertaining to all state and local public employees, appointed members of boards and commissions, and elected officials other than judges. The Board issues advisory opinions, conducts private investigations of alleged violations, maintains a computerized data management system, conducts educational activities, seminars, and publishes materials to provide instruction. The Code is designed to ensure public confidence in the integrity of government, the independence and impartiality of elected officials and public employees, governmental decisions and policy are made in the proper channel of government structure, and that public office and public employment are not used for private gain.

Definitions:

Agency means a department, office, division, agency, commission, board, committee, or other organizational unit of government.

Agency Head means the chief executive or administrative officer of an agency or any member of a board or commission who exercises supervision over the agency.

Controlling Interest means any ownership in any entity or trust, held by or on behalf of an individual or his immediate family, either individually or collectively, which exceeds 25%.

Immediate Family means children, spouses of children, brothers, sisters, spouses of his brothers and sisters, parents, spouse, and the parents of his spouse.

Public Employee means anyone who is an officer or official of a governmental entity who is not filling an elected office.

Public Servant means a public employee or elected official.

Thing of Economic Value means money or any other thing having economic value. Promotional items having no substantial resale value, food, drink, refreshments, reasonable transportation, reasonable entertainment, which are consumed while the personal guest of some person, salary, and related benefits are excluded from this definition.

General Prohibitions:

The following list is a summary of some of the Code's key prohibitions pertaining to both elected officials and public employees.

- The receipt of a thing of economic value is prohibited in the following circumstances:
 - (1) receipt of a thing of economic value from anyone other than the governmental agency for the performance of public duties;
 - (2) for the performance of a service substantially related to their public duties which draws on non-public information;
 - (3) for any services rendered to or for the following:
 - a. persons who have or are seeking to obtain a contractual or other business or financial relationship with the public servant's agency,
 - b. persons who are regulated by the public servant's agency,
 - c. persons who have substantial economic interests which may be substantially affected by the performance or non-performance of the public employee's official duties.

- d. the above restrictions apply to the public servant's spouse and to an entity in which the public servant owns an interest in excess of 25%.
- (4) Governmental employees may not solicit or accept a thing of economic value from the persons listed above in Section (3).
 - (5) A spouse of a public employee may not solicit or accept a thing of economic value from anyone who may be substantially affected by the employee's performance or non-performance of his public duties; and
 - (6) elected officials may not accept or solicit a thing of economic value from a lobbyist or their employees.
 - Public employees are prohibited from accepting food or drink in excess of \$54.00 for a single event. Certain professional organization events are excluded from this restriction.
 - A public employee may not receive a thing of economic value for assisting someone with a transaction with the agency of the public servant.
 - Participation by a public servant in a transaction involving the governmental entity is prohibited when any of the following persons have a substantial economic interest:
 - (1) the public servant;
 - (2) any member of the public servant's immediate family;
 - (3) any entity in which the public servant has an ownership interest that is greater than the interest of a general class;
 - (4) any entity of which the public servant is an officer, director, trustee, partner, or employee;
 - (5) any person or entity with whom the public servant is negotiating or has an arrangement concerning prospective employment;

(6) any person or entity who is indebted to the public servant or is a party to an existing contract with him and is in a position to affect directly his economic interests.

● Participation in Debates and Votes:

An **elected official** may participate in the debate and discussion of a matter, which could violate the Code, only if he discloses the nature of the conflict prior to the participation in the debate, the disclosure is made prior to any vote taken on the matter, the elected official must not vote on the matter, and he must recuse himself.

Appointed members may recuse themselves to avoid a violation, but they may not participate in the debate or discussion of the matter. **Other public employees** who are not sole decision- makers can be disqualified from transactions that would violate the Code.

● Public employees are prohibited from bidding on, entering into, or being in any way interested in any contract, subcontract or other transaction under the supervision or jurisdiction of the public servant's agency. This restriction also applies to the public servant's immediate family members and to legal entities in which the public servant and/or his family members own more than a 25% interest.

● A public servant is prohibited from the use of the authority of his office to compel or coerce a person to provide himself or someone else with a thing of economic value that they are not entitled to by law. A public servant is prohibited from the use of their authority of his office to compel or coerce a person to engage in political activity. An employee is also prohibited from participating in the sale of goods or services to persons regulated by his agency if a member of his immediate family or if a business enterprise in which the employee, or members of his immediate family own more than a 25% interest, receives or will receive a thing of economic value by virtue of the sale.

- It is prohibited for a public servant or other person to make a payment, give, loan, transfer, or deliver or offer to give, loan, transfer, or deliver a thing of economic value to a public servant when the public servant is prohibited by the Code from receiving such a thing of economic value.

Nepotism:

- An agency head may not employ an immediate family member in his agency.
- A member of a governing authority or the chief executive of a governmental entity may not employ an immediate family member in the governmental entity.

Exceptions to Nepotism Rules:

- A person employed one year prior to their family member becoming an agency head is not prohibited from continuing in their position;
- A school teacher who is an immediate family member of the superintendent or a school board member may be employed as long as the family member is certified to teach.
- An immediate family member of a hospital service district board member, or of a public trust authority board member, may be employed by that authority as long as the agency serves a population of less than 100,000, and the family member is a licensed physician or a registered nurse.
- Nepotism rules do not apply to persons employed as volunteer firefighters.

Post Employment:

- During the two-year period following the termination of their public service, **Agency Heads or Elected Officials** may not assist another for compensation in a transaction, appear in connection with any transaction involving their former agency, and they may not provide any service on a contractual basis to or for their former agency.

- During the two-year period following the termination of their public service, **Board or commission Members** may not contract with, be employed in any capacity by, or be appointed to any position by their former board or commission.
- During the two-year period following the termination of their public service, **Public Employees** may not assist another for compensation, in a transaction, or in an appearance in connection with a transaction involving the agency in which the former public employee participated while employed by the agency. The former public employee may not provide his former employer with any service (s)he provided while employed with the public agency on a contractual basis.

Procedures:

- The Board may file a complaint to initiate an investigation into any matter which it has reason to believe may be a violation of the Code. The Board considers information discovered through a confidential investigation. Some cases lead to voluntary admissions of violations of the Code through the publication of a consent opinion.

Enforcement and Penalties:

- Agency heads have a responsibility to report possible Code violations to the Board.
- The Board has the authority to censure an **elected official** or other person within its jurisdiction and to impose a fine up to \$10,000 per violation; it does not have the authority to remove an elected official from office.
- The Board has the authority to remove, suspend, reduce the pay or demote a **public employee** or other person and to impose a fine of not more than \$10,000 per violation.
- The Board has the authority to impose restrictions on a **former public servant** to prevent appearances before his former agency and to prohibit the negotiation for or entering into business relationships with his former agency.

- The Board has the authority to rescind contracts, permits and licenses, without contractual liability to the public, whenever the Board finds that a violation has influenced the making of such contract, permit or license, and that such rescission is in the best interest of the public.
- The Board may order the payment of penalties if an investigation reveals that **any public servant** or other person has violated the Code to his economic advantage and penalties can include the amount of such economic advantage plus one half.
- The Board is authorized to order the forfeiture of any gifts or payments made in violation of the Code.

Financial Disclosure: Who Must File?

- Persons holding statewide elected office, the secretaries of certain departments of state government, the superintendent of education, the commissioner of higher education, the president of each public post secondary education system, and persons holding certain positions in the office of the Governor must file a financial disclosure report with the Board each year.
- State legislators, elected officials holding a public office representing a voting district with a population of 5,000 or greater, members of the Board of Ethics, the ethics administrator, and members of the Board of Elementary and Secondary Education must file a financial disclosure report with the Board each year.
- Members and designees of boards and commissions which have the authority to expend, disburse, or invest \$10,000 or more in funds in a fiscal year, members of the State Civil Service Commission, and members of the Board of Commissioners of the Louisiana Stadium and Exposition District must file a financial disclosure report with the Board of Ethics each year.¹
- Elected officials holding a public office representing a voting district with a population of less than 5,000 must file a financial disclosure report with the Board of Ethics each year.

¹ To ensure timely compliance, the LSPRF provides necessary forms, filing assistance, and monitoring of timely compliance.

- Financial disclosure reports must be filed each year the office or position is held, and the year following the termination of the office or position. The financial disclosure report is due by May 15 each year. The penalty for late filing is \$50 per day.

F. Relevant Opinions of the Ethics Commission and Forms

1. Opinion No. 2009-543

In this opinion, requested by the LSA, The Ethics Commission opined that trustees of the LSPRF are covered by Tier 2.1 and must file disclosure forms on the basis that the Board disburses, invests, or expends more than \$10,000 per year. Heirs and estates of deceased officials are not required to file. The Commission declined to answer whether the Sheriffs' offices could assist in the accounting needed to accomplish filing, on the basis that such questions are the purview of the Attorney General.

2. Opinion No. 2009-061

In this opinion, the Commission considered issues related to the attendance of pension trustees at the annual educational conference for the Louisiana Association of Public Employees Retirement Systems (LAPERS). Educational conferences fall outside of the \$50 rule for food and beverage if all attendees are invited and the event is scheduled as part of the conference agenda. The Commission noted that the statute specifically exempts "gatherings held in conjunction with a statewide organization of public officials." If all attendees are not invited to the hosted event, the regular restrictions on entertainment apply. The Commission did note that tax and gratuity are not counted toward the \$50 limit as the statute only speaks to the cost of food, beverage and entertainment. The \$50 limit has been raised to \$56. See, *Gifts : A Summary of Gift Restrictions in the Louisiana Code of Ethics, Revised October 29, 2012.*

3. Opinion No. 2009-497

In this opinion the Commission held that teachers who are honored for their service by the school board may not receive gift

cards which are sponsored by vendors of the School Board, even if the teachers have no control over the selection of vendors.

4. Opinion No. 2009-443

In this opinion the Commission considered the provision that prohibits a vendor from providing food or drink to public official in excess of \$50. Public officials may accept promotional items of no substantial value (coffee cup, hat, etc) and a meal as long as the person paying for the meal is present. The cost is determined by dividing the overall cost by the number of persons invited. In this opinion, the total cost of the food and beverage was \$30,000 and 1500 people were invited, which makes it less than \$50 per person. The opinion held that while clipboards and portfolios with a corporate logo were permissible because of their nominal value, camping chairs and stools which had a substantial resale value were deemed prohibited.

5. Opinion No. 2009-175

In this opinion, the Commission considered a request by a city to receive the money collected by private citizens and donated to the city to improve public parks. The Commission held that was permissible as long as city employees were not involved in the solicitation.

6. Opinion No. 2009-152

In this opinion, the Commission addressed the attendance at a luncheon by a state senator, his staff secretary and press aide where admission was charged. Unless the public officials (including the aides) were honorees or scheduled speakers at the program, they must either pay admission or report the value of the event.

7. Opinion No. 2009-123

In this opinion, the Commission considered participation in a golf tournament. A governmental entity (in this case, a police jury) can lawfully pay the registration for its own officers and employees. There is no prohibition from a vendor giving a sponsorship to the Police Jury Association of Louisiana which includes prizes and gift bags, as long as those prizes are under

the control of the association and not the vendor. Employees of agencies who participate in the association would be prohibited from soliciting the prizes, even in the name of the association.

8. Opinion No. 2009-095

In this opinion, the Commission addressed activities by a not-for-profit association which raised money for a public library. The Commission concluded that the association could secure funds and donate books and other materials to the library. The Association could not, however, pay the cost for a library employee to attend a seminar. The Commission did say that if the association made an unconditional gift of money to the library, then the library could choose to reimburse the employee for the cost of the seminar. Lastly, the Commission held that library employees were prohibited from receiving gift baskets or gift cards from the Association as a reward for their work.

9. Opinion No. 2010-115

Employees of Plaquemines Parish are prohibited from competing in a drawing for cruise tickets donated to the Parish government as part of a promotional, economic development program. For every 20 cruise packages sold, the cruise line would donate one cruise package to be made available to Parish employees through a random drawing. The Ethics Board found that receipt of the cruise package, even as a result of a random drawing would be a gift or other item of value received by a public officer or employee for the performance of their duties because eligibility for the drawing was based on their status as public servants.

10. Opinion No. 2010-404

A registered lobbyist is prohibited from inviting members of the Legislature to his private property for an evening dinner, an overnight stay in his home, followed by a turkey shoot on his property the following days. The overnight stay and the turkey shoot are deemed things of economic value which may not be accepted by public servants nor offered by a registered lobbyist.

11. Opinion No. 2010-767

An assistant district attorney is not prohibited from investing in an alcohol monitoring company in which his partners would be principals in a separate company which already has a contract with the same parish's court system. The Ethics Board noted that the ADA had no responsibility for the prosecution of DUI offenses. The new company was a permissible investment only because it would not co-mingle funds with the existing companies. Ownership was not considered "services" prohibited by the statute.

12. Board Docket No. 2011-1781

By a vote of 6-3, the Commission found that acceptance of a scholarship to the meeting of the Louisiana Trustee Education Council (LATEC) awarded as a door prize did not violate the Ethics Law. The Board determined that the winner was selected at random and the prize was not a reward for public service.

13. Board Docket No. 2012-1940

In this opinion, the Commission answered a series of questions relating to acceptance of gifts by school teachers. Other than exchange of gifts of comparable value among teachers and a PTA-sponsored luncheon, attended by PTA officials, teachers could not accept any gift of value in recognition of their teaching, as it would be deemed unauthorized additional compensation. Schools were permitted to accept unconditional gifts of teaching supplies, provided they were not dedicated by the giver to a single person.

14. Board Docket No. 2013-1518

A public agency may accept a charitable donation from a political action committee where the agency is authorized by statute to accept donations and the PAC is authorized to make donations.

15. Board Docket No. 2013-170

A public officer may accept complimentary travel and lodging expenses as a speaker at a national symposium provided the sponsoring agency does not do business with nor is regulated by

the agency whose officers are receiving the complimentary travel and lodging expenses.

16. Board Docket No. 2013-1476

An employee of a state agency is not prohibited from accepting cruise tickets won as a door prize at the Retired State Employees Association meeting.

17. Board Docket No. 2013-1415

An LSU police officer being named Officer of the Year may not accept restaurant privileges from the University but may accept football game tickets from the LSU Athletic Association because he does not render services for the Association.

18. Board Docket No. 2013-1326

A public officer who serves as his son's little league coach may not solicit fund raising money from any person or corporation which does business or is seeking to do business with the agency.

19. Consent Order No. 2012-249

A public officer commits an ethics violation by accepting as community property a share of his wife's wages through her employment as an independent contractor with the agency the public officer heads.

20. Forms

a. Tier 2 - This form is for elected sheriffs and is required as a condition of their candidacy for elected officer. If a sheriff who serves as a trustee has filed a Tier 2 disclosure, no additional form is required.

b. Tier 2.1 - This form applies to persons who serve on a board or commission that has authority to expend, disburse or invest \$10,000 or more in a fiscal year. The Ethics Commission has previously determined in Opinion 2009-543 that the LSPRF is covered by this reporting tier.

21. 2014 Gift Update Issued By Commission on Ethics

- a. Food and drink consumed in the presence of the giver expanded to \$58.
- b. An employee of LASERS is permitted to attend a tailgate party sponsored by a vendor if the vendor is present but may not accept tickets to a football game.
- c. Flowers donated to a funeral may not exceed \$100.
- d. A public officer may not accept use of a vacation home from a friend if the friend is attempting to do business with or influence the agency.
- e. The \$58 limit does not apply to a national or regional organization's meeting or a meeting of a statewide organization of government employees. This is best measured by dividing the total cost by the number of persons invited.
- f. Holiday gifts such as hams or turkeys are prohibited as they are a "thing of economic value." This would also apply to gifts like wedding gifts unless the giver is a family member if the giver has a business relationship with the agency of the recipient. The economic value of the gift is irrelevant.

II. CONCLUSION

IF YOU HAVE ANY QUESTIONS OR COMMENTS CONCERNING THIS PRESENTATION, CONTACT ROBERT D. KLAUSNER, ESQUIRE, KLAUSNER, KAUFMAN, JENSEN & LEVINSON, 10059 N.W. 1ST COURT, PLANTATION, FLORIDA 33324, (954) 916-1202, FAX (954) 916-1232, EMAIL bob@robertdklausner.com, WEBSITE: www.robertdklausner.com