

Revolving Door Prohibitions

SIAAB CONFERENCE
SPRINGFIELD, ILLINOIS
OCTOBER 23, 2018

The Questions

As a State employee who left or is about to leave and take a non-State job, in the past year:

- Did I help make decisions concerning the award of a contract to my prospective employer, or its parent or subsidiary?
- Did I help make licensing or regulatory decisions with regard to my prospective employer, or its parent or subsidiary?

Purpose of the Prohibition(s)

- Divided loyalties—are you acting in the best interest of your present or future employer?
- Appearances of divided loyalties
- Cooling off periods
- Not a new idea

Parable of the Shrewd Manager (Luke 16)

- 1 Jesus told his disciples: "There was a rich man whose manager was accused of wasting his possessions.
- 2 So he called him in and asked him, 'What is this I hear about you? Give an account of your management, because you cannot be manager any longer.'
- 3 "The manager said to himself, 'What shall I do now? My master is taking away my job. I'm not strong enough to dig, and I'm ashamed to beg—
- 4 I know what I'll do so that, when I lose my job here, people will welcome me into their houses.'

Shrewd Manager (cont.)

- 5 "So he called in each one of his master's debtors. He asked the first, 'How much do you owe my master?'
- 6 "'Eight hundred gallons of olive oil,' he replied.
"The manager told him, 'Take your bill, sit down quickly, and make it four hundred.'
- 7 "Then he asked the second, 'And how much do you owe?'
- 8 "A thousand bushels of wheat,' he replied.
"He told him, 'Take your bill and make it eight hundred.'

Revolving Door Prohibition (Contracting)

Sec. 5-45. Procurement; revolving door prohibition.

(a) No former officer, member, or State employee, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer, member, or State employee, during the year immediately preceding termination of State employment, participated personally and substantially in the award of State contracts, or the issuance of State contract change orders, with a cumulative value of \$25,000 or more to the person or entity, or its parent or subsidiary.

RD Prohibition (Regulation and Licensing)

Sec. 5-45(b) No former officer of the executive branch or State employee of the executive branch with regulatory or licensing authority, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer or State employee, during the year immediately preceding termination of State employment, participated personally and substantially in making a regulatory or licensing decision that directly applied to the person or entity, or its parent or subsidiary.

In other words...

Employees "personally and substantially" involved in awarding contracts or change orders of \$25,000 or more; or in making licensing or regulatory decisions

during the year preceding termination of State service

cannot knowingly accept employment or receive compensation or fees for services from the person or entity, parent, or subsidiary

for one year after their termination of State service

and neither can their spouses, nor children living with them.

Hypothetical

Mary, a DCFS employee, served on an evaluation committee that recommended awarding a contract to XYZ, Inc. on January 2, 2018. She is fired on December 31, 2018. Mary's husband, Harry, has been offered a part-time consulting contract with XYZ, Inc.'s subsidiary beginning December 30, 2019.

Can Harry accept this work?

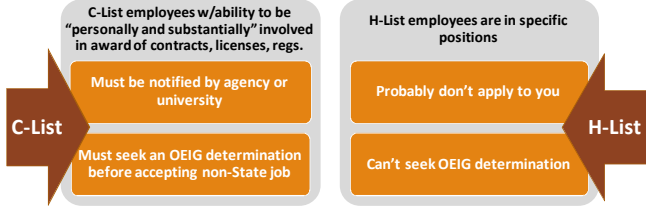
No RD implications

Five situations that do not trigger the RD:

- Secondary Employment
- Termination > 1 year ago
- Moving to another State agency or university
- Unpaid "employment" positions
- Not on "C-list" or "H-list" (and shouldn't be)

"C-List" and "H-List" Employees

All employees subject to revolving door prohibition, but:



C-List

H-List

If on C-List (and not on H-List), employee must seek determination from OEIG before accepting non-State employment

Totality of Participation

Decisions made by group or individual

Team Coordinator (Clements)

Decisions made by a predecessor (Shiel)

Ministerial duties, requesting original documents (Shiel)

Presented employer's application to board (Lasker)

Negotiated settlements with employer (Schwartz)

Confusion about participation in decisions (Wagle)

Other Relevant Information

Timing of job offer

Timing of contracting, licensing decision-making

Other interim employment (Lasker)

Approved contract that created new position (Johnson)

Unusually close relationship with prospective employer

Actual parent/subsidiary relationships (McDorman)

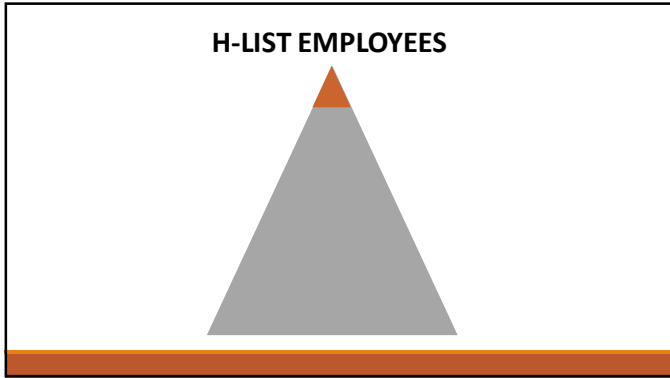
Assist employer's application to State (McBride)

Not being truthful on RD application (Inman)

Substantive Violation of RD

Accepting employment opportunities that violate 5-45(a) or 5-45(b) violates the Ethics Act:

- Class A misdemeanor (50-5(a))
- Fine of up to 3x annual compensation wrongly obtained (50-5(a-1))
- Subject to discipline or discharge



Revolving Door in the Procurement Code

30 ILCS 500/50-30

Applies to executive officers confirmed by the Senate, CPOs, SPOs, PCMs and their designees whose principal duties are directly related to State procurement

Cannot lobby former State agency's procurement process:

- Specifying; bidding; proposing bid, proposal, or contract documents; on their own behalf or on behalf of any firm, partnership, association, or corporation.
- Ban lasts two years.

Auditing the RD

1. How does the agency determine which positions are on the "C-List"? "H-List"? Who makes the determination?
 - New hires
 - As job duties of current employees change
2. Did the OEIG designate any other employees subject to the "C-List"?
3. Does the agency inform employees of their placement on the "C-List"? How often?
4. When an employee leaves, is s/he reminded of duty to notify OEIG?
5. Did a leaving "C-List" employee seek an OEIG determination?
6. Did the Ethics Officer complete his or her statement within five days?
7. Ethics Officer guidance to "H-Listers"

Questions?