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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 7, 2000

John J. Contino, Executive Director
State Ethics Commission
309 Finance Building
Harrisburg, PA 17108-1470

Re: Regulation #63-7 (IRRC #2128)
State Ethics Commission
Procedure

Dear Mr. Contino:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director
cae
Enclosure

Honorable Thomas P. Gannon, Majority Chairman, House Judiciary Committee
Honorable Kevin Blaum, Democratic Chairman, House Judiciary Committee
Honorable F. Joseph Loeper, Chairman, Senate Rules and Executive Nominations Committee
Honorable Robert J. Mellow, Democratic Chairman, Senate Rules and Executive Nominations Committee
Vincent J. Dopko

Comments of the Independent Regulatory Review Commission

on

State Ethics Commission Regulation No. 63-7

Procedure

September 7, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The State Ethics Commission (SEC) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by August 7, 2002, the regulation will be deemed withdrawn.

1. Sections 17.3. Creditors, 17.4. Income, 17.5. Gifts. and 17.6. Expense reimbursement. – Clarity.

Subsection (a) in each of these sections references “65 Pa.C.S. § 1105(d) (*relating to powers and duties of commission*).” (Emphasis added.) However, Section 1105 of the statute is entitled “Statement of financial interests,” and Section 1105(d) is entitled “Cost-of-living adjustments.” The SEC should amend the final regulation so that titles in the citations are consistent with the titles in the statute.

2. Section 21.6. Confidentiality. – Legislative intent; Need; Reasonableness

Paragraphs (1) through (8) of this section repeat the exceptions to the confidentiality provision in the Public Official and Employee Ethics Act (65 Pa.C.S. § 1108(k)(1) – (8)). The SEC designed Paragraphs (9) and (10) to reflect the decisions of the United States Supreme Court and lower federal courts. These decisions have upheld the First Amendment right of the news media to publish information regarding confidential proceedings such as grand jury and judicial review board investigations, and the right of an individual to disclose his or her own testimony in such confidential proceedings to a third party.

Senate Counsels Stephen C. MacNett and C. J. Hafner have commented that Paragraph (9) may include situations that should not be exempt. We agree with their concern, and believe the same concern applies to Paragraph (10) as well. As drafted, Paragraphs (9) and (10) are not consistent with legislative intent, as they could render the statutory confidentiality provision meaningless.

In addition, we question the reasonableness and need for these provisions, as they far exceed the exceptions allowed under current precedent. As proposed, this regulation would allow disclosure of any information acquired as a result of participation in a SEC investigative proceeding. To be consistent with federal court decisions and existing law, exceptions should be limited to the news media and to individuals who disclose their own testimony.