

As I See It: Pennsylvania's flawed definition of "Conflict of Interest"



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The Merriam-Webster dictionary defines a "conflict of interest" as "a conflict between the private interests and the official responsibilities of a person in a position of trust."

Pennsylvania lawmakers, however, have coined a different definition of the term and enshrined it in the "Public Official and Employee Ethics Act," or "Ethics Act," as it is often called:

"Conflict" or "conflict of interest." Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

The Ethics Act lists 10 activities that public officials and employees are prohibited from engaging in, and a "Conflict of Interest," as defined above, is at the top of that list.

This two-sentence definition of conflict of interest is not only narrow for failing to include any personal conflicts, other than financial ones; it is also weak in that even the prohibition of "pecuniary benefit" implied in the first sentence, is largely cancelled out by the exclusions found in the second sentence!

Removing an action with “*de minimis economic impact*” from the definition of conflict of interest is very reasonable since it prevents the threshold for a conflict of interest from being set ridiculously low.

And removing from that definition an action “which affects to the same degree a class consisting of the general public” is also reasonable. If legislators and the governor, for example, acted officially to lower everyone’s tax rates, that unlikely event would not be counted as a conflict of interest on their part, even though they too would benefit financially from it, because every taxpayer would benefit from it.

But removing from that definition an action “which affects to the same degree a subclass consisting of an industry, occupation or other group which includes the public official or public employee” is not only unreasonable, it is extremely troublesome for the following reasons:

1. It would benefit some but not all taxpayers, while benefitting all the elected officials involved.
2. The only financial conflict of interest that is actually prohibited by the ethics act—as the law is currently written—would be one in which the public official or public employee in question happened to be the only person benefitting financially from the conflicted action in question.
3. That lonely stigma would rarely befall members of the Pennsylvania Legislature because, by its very nature when it passes a law, it always acts as a group of elected officials, each one of which—but not the group—is bound by the Ethics Act. But since one’s legislative colleagues also benefit from each individual vote (to raise their salaries or pensions, for example), individual legislators automatically trigger the ‘group exclusion’ in the second sentence of the definition! So as long as other legislators benefit, it’s apparently OK, under the current Ethics Act, for individual legislators to vote to give all legislators (themselves included) a financial bonus at the expense of the taxpayers.
4. But historically, perhaps for the sake of appearances, when legislators pass laws that clearly benefit themselves—e.g., their automatic salary increases tied to the CPI in 1995, or the doubling of their pensions in 2001—lawmakers always see to it that others, outside of the legislature, also benefit from

their official self-serving actions, because as long as that condition is met, the public officials and public employees involved have no fear of violating the 'Public Official and Employee Ethics Act.'

Consider this direct quote from the Pennsylvania Ethics Commission Website:

"The Ethics Act provides that public office is a public trust and that any effort to realize personal financial gain through public office, other than compensation provided by law, is a violation of that trust. The Ethics Act was passed to strengthen the faith and confidence of the people of the Commonwealth in their government."

Ironically, while the stated intention of the legislature in passing the Ethics Act was to "strengthen the faith and confidence of the people of the Commonwealth in their government," a careful reading of their seriously flawed definition of "Conflict of Interest" tends to have the opposite effect.

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