

ABUSE OF OFFICE

A Summary of the prohibitions found in Section 1116 of the Code of Governmental Ethics



Louisiana Board of Ethics
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February 2009

Information Sheet #3

Section 1116 of Louisiana's Code of Governmental Ethics (LSA -R.S. 42:1116) prohibits a public servant from requiring another public servant or other person to engage in political activity or to provide a thing of economic value to someone who is not entitled by law to receive that particular thing. § 1116 of the Code also prohibits a regulatory employee from aiding in the sale of goods or services if a member of his immediate family or if a business owned by the public servant or a member his immediate family will benefit from the sale. § 1116 of the Code appears to be intended to prevent public employees and elected officials from using their position to their economic or political advantage. The purpose of this fact sheet is to outline the specific prohibitions of §1116.

GENERAL PROVISIONS OF §1116

- **No public servant* may use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce another public servant or other person, to provide him or anyone else with a thing of economic value that he is not entitled to by law.**

*A "public servant" is an elected official (except for judges) or a public employee.



Example #1: A publicly employed supervisor announces to his secretary that it might be a good idea to remember that his birthday is Friday and that he loves expensive cigars. He hints that the failure to give him cigars could result in a less than satisfactory evaluation. Is this a potential violation of § 1116 of the Code?

Answer: Yes. Once the supervisor made insinuations about job performance in relation to the giving or not giving of a birthday gift, he stepped over the line. The giving of cigars as a birthday present or otherwise is in no way related the secretary's job performance. Even if intended as a joke, it is highly plausible that the Board would perceive such a suggestion as intended to compel or coerce the secretary into giving a birthday gift, preferably cigars.

Example #2: Two public employees have been working on a complicated electrical project for nearly four months. One employee has more seniority (Bob) than the other (Tim). Tim is up for a major promotion, on the basis of his performance on this project and the recommendation of Bob. One afternoon, something goes wrong and some of the public property being worked upon is severely damaged. It appears that the mishap was due to the inexperience of Tim. The protocol in such a situation dictates that Tim must report the damage to his section supervisor. Instead, Bob tells Tim that if Tim will pay for Bob's dry



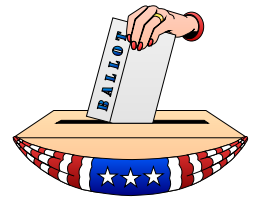
cleaning and cuts his grass for one full month, Bob will act as if nothing happened and if asked, will say that the damaged property was stolen. Does this situation present any Ethics Code violations?

Answer: Yes. Besides having some potential intra-agency problems, Bob may be using his position (as the one who will make a recommendation regarding Tim's promotion) to obtain a thing of economic value from his junior co-worker. It is very possible that the Board would perceive Bob's suggestion as an attempt to compel or coerce Tim into providing services which would cost Bob time and money to otherwise obtain.

- **A public servant is prohibited from using the authority of his office or position, directly or indirectly, in a manner which is intended to compel or coerce, any person to engage in political activity*.**

*Political activity is defined by the Code to mean an effort to support or oppose the election of a candidate for political office.

Example #3: Mary and Jane have been co-workers for quite some time. In general they share the same ideas on major life issues. However, when it comes to politics, they are like vinegar and oil. Mary prefers conservative candidates and Jane prefers moderate or liberal candidates. During the election of the local justice of the peace, Mary supports Henry while Jane supports Richard. However, Mary tells Jane that if she does not support Henry, Mary will tell their mutual supervisor about all the times Jane has taken a longer lunch than is generally permitted by the office. Is Mary's behavior indicative of a §1116 problem?



Answer: Perhaps. Mary has "threatened" Jane with an action which will likely get Jane into trouble in the office. It is very likely that the Board will perceive this behavior as intended to compel or coerce Jane into supporting Henry, which is considered political activity for purposes of the Ethics Code.

- **A regulatory employee* is prohibited from participating in any way in the sale of goods or service to persons regulated by his agency, if a member of his immediate family* or if a business enterprise in which the regulatory employee or members of his immediate family own in excess of 25%, receives or will receive a thing of economic value by virtue of the sale.**

*"Regulatory employee" was added to the Ethics Code by a 1999 legislative amendment and is defined as "a public employee who performs the function of regulating, monitoring, or enforcing regulations of any agency.

* "Immediate family" is defined by the Code to include a public servant's children, the spouses of his children, his brothers, his sisters, the spouses of his brothers and sisters, his parents, his spouse and the parents of his spouse.



Example #4: An employee of the Department of Natural Resources (DNR), who is in charge of inspecting oilfield sites, recommends that the owner of the well head he is inspecting, needs to obtain a replacement well head because the one he is currently using does not meet DNR standards. The owner asks the inspector if he knows where he might quickly obtain a replacement well head. The inspector informs the owner that his father sells oilfield equipment and has some well heads that might work on this particular well.

Just being friendly, the inspector brings several well heads to the owner for inspection. The owner agrees to buy one of the well heads from the inspector's father if a few minor adjustments are made. The inspector's father agrees and after the adjustments are made, the inspector, again, just being friendly, delivers the well head to the owner. Was this transaction a violation of the Ethics Code?

Answer: Yes. Pursuant to newly added subsection C of §1116 of the Code, the inspector aided in the sale of equipment to a person who is regulated by his agency and the benefit of the sale went to the inspector's father, who is an immediate family member. Although the inspector thought he was just being friendly by bringing the well owner and his father together, to their mutual benefit, Section 1116C of the Code strictly prohibits the inspector from having anything to do with any transaction which would inure to the benefit of a member of his immediate family.



Example #5: One day while patrolling his area, a state police officer makes a routine traffic stop for speeding. Upon obtaining the license of the driver, he discovers that the driver has five outstanding warrants for his arrest. The officer takes the driver into custody. On the way to the police station, the driver comments that he is going to need a bail bondsman. Hearing the comment, the police officer says that his brother is a bail bondsman in the neighboring parish, but even so, he thinks his brother would serve as the bail bondsman in this case. The driver asks the police officer if he would call his brother and find out. The police officer politely agrees and calls his brother after they reach the station. His brother agrees to serve as the bail bondsman and the driver gets out of jail on bond. Has the police officer potentially violated the Ethics Code?

Answer: Yes. Despite his efforts to be helpful, the police officer appears to have violated Section 1116C of the Code. By making the suggestion that his brother get involved and by calling his brother to secure his involvement, which involvement will inure to the brother's economic benefit, the police officer participated in the sale of services to a person he was regulating and detaining.



The Board encourages public servants to seek advice from the Board as to how the law applies to their specific situation(s) by writing and requesting an advisory opinion. Advisory opinions are not issued as to past conduct, but can provide crucial advice on how to avoid problems in the future. If you wish to obtain an advisory opinion, please send your request to the address provided at the beginning of this fact sheet. You may also call our staff for informal advice over the telephone at (225)219-5600 or toll free at 1-800-842-6630.

The Board has a web site located at: www.ethics.state.la.us

This information sheet is only a summary of the financial disclosure provisions contained in §1116 of the Code of Governmental Ethics. If interpretations of this information sheet conflict with the provisions of the Code, the Code will control.