

January 18, 2007

MEMORANDUM FOR THE CHANCELLOR

FROM NICHOLAS ROSTOW

SUBJECT: Executive Orders Nos. 1 and 2

cc: Senior Staff
Presidents of State-Operated Institutions

On January 1, 2007, Governor Spitzer issued two executive orders to promote ethical conduct by State employees and to eliminate the impact of politics in governmental decision-making. Copies of Executive Orders Nos. 1 and 2 are attached. The provisions of the executive orders apply to State officers and employees who serve at the pleasure of the Governor or their appointing authority and to members of public authorities. As applied to the State University, the executive orders apply to State University Board members, appointees of the Board, including Presidents and System Administration senior managers, and employees of the State University who serve in management/confidential positions. A summary of pertinent provisions of the executive orders follows.

Executive Order No. 1

Individuals are prohibited from accepting gifts or gratuities of more than nominal value under circumstances that permit the inference that the gift was intended to influence the individual in the performance of official business or that the gift is a tip, reward or sign of appreciation for any official act by the individual.

Generally, State supplies, equipment, computers, personnel and other resources may not be used for non-governmental purposes. Official stationary may not be used for non-governmental purposes, and State resources may not be used to mail personal correspondence. State mail, postage, internal office mail and inter-city couriers may not be used for non-governmental purposes. State telephones may not be used for non-governmental long-distance calls, other than toll-free calls, collect calls and calls billed to a personal account. State telephones may be used for incidental and necessary personal calls, limited in number and duration, which do not interfere with an employee's public duties. State computers may be used for incidental and necessary personal purposes, in limited amount and duration, which do not interfere with an employee's public duties. State vehicles shall be used for official business or incidental use associated with official business away from an employee's official work station. An employee shall record, calculate and report as personal income the value of personal use of a State vehicle.

An individual shall not take part in hiring or employment decisions relating to a family member, nor take part in contracting decisions relating to a family member or entity in which a family member serves as officer, director or partner, or entity in which a family member owns or controls 10% or more of the stock of such entity. For purposes of these prohibitions, a family member is a person who lives in the household of the individual or who is related within the third degree of consanguinity or affinity.

Executive Order No. 2

Individuals are prohibited from making monetary contributions, or requesting others to do so, to the campaign of the Governor or Lieutenant Governor or to a political campaign committee organized by or for the specific benefit of either.

Individuals who are involved in recruiting, interviewing or hiring applicants for State employment; making promotional, disciplinary or other employment decisions relating to a State employee; or awarding or making decisions related to State contracts or grants, may not ask the applicant, employee or current or prospective contractor or grantee, as the case may be, the individual's party affiliation, whether the individual has made campaign contributions to any party, elected official or candidate for elective office, or whether the individual voted for any elected official or candidate for elective office.

Please distribute copies of this memorandum to staff members who are likely to be affected by the executive orders.

Attachments

No. 1

EXECUTIVE ORDER

ESTABLISHMENT OF ETHICAL CONDUCT GUIDELINES

WHEREAS, government employment is a privilege rather than a right, and is based upon the trust and confidence placed in the State's workers by the public; and

WHEREAS, all State employees therefore must act in a manner consistent with that public trust, and must not take any actions that are intended, or appear to be intended, to achieve personal gain or benefit; and

WHEREAS, employees and officers of State agencies and public authorities are subject to certain ethical statutes and rules, including but not limited to the State Code of Ethics (Section 74 of the Public Officers Law), statutory restrictions on business and professional activities (Section 73 of the Public Officers Law), and opinions issued by the State Ethics Commission; and

WHEREAS, there are some areas where New York's existing statutes governing ethical standards can and should be improved; and

WHEREAS, until that occurs through legislative action, it is appropriate to take steps to ensure that as many State employees and officers as possible maintain the highest ethical and professional standards;

NOW, THEREFORE, I, Eliot Spitzer, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the laws of the State of New York, do hereby order as follows:

1. Definitions

"Agency" shall mean any state agency, department, office, board, commission or other instrumentality of the State, other than a public authority.

"Public authority" shall mean a public authority or public benefit corporation created by or existing under any State law, at least one of whose members is appointed by the Governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit corporation.

2. Application

This order shall apply to all State agency officers and employees who serve at the pleasure of the Governor or their appointing authority, and to all members of all public authorities who are appointed by the Governor. Each public authority shall adopt policies or rules applying the restrictions set forth below to all officers and employees who serve at the pleasure of their appointing authority.

3. Prohibition Against the Receipt of Gifts

Subject to the conditions set forth below, all individuals covered by this executive order are prohibited from accepting gifts or gratuities of more than nominal value where the circumstances would permit the inference that: (a) the gift was intended to influence the individual in the performance of official business; or (b) the gift constituted a tip, reward, or sign of appreciation for any official act by the employee. This prohibition shall apply notwithstanding Public Officers Law § 73(5), which provides that gifts up to \$75 may be allowed in certain circumstances.

4. Prohibition Against the Use of State Property

State supplies, equipment, computers, personnel and other resources may not be utilized for non-governmental purposes, including for personal purposes or for outside activities of any kind. This prohibition includes but is not limited to the following:

a. Official stationery may not be used for non-governmental purposes, nor may State government resources be used to mail personal correspondence. The designation "personal" on agency stationery means only that the contents are meant for the personal viewing of the addressee and not that the sender is acting unofficially. All letters and other written materials printed on such official stationery are considered official, and thus the designation "unofficial" has no meaning and may not be used.

b. Under no circumstances may State mail, postage, internal office mail, or inter-city couriers be used for non-governmental purposes.

c. State telephones may not be used for non-governmental long-distance calls, except for toll-free calls, collect calls, and calls billed to a personal telephone number. State telephones may be used for incidental and necessary personal local calls that are of limited number and duration and do not conflict with the proper exercise of the duties of the State employee.

d. State computers may be used for incidental and necessary personal purposes, such as sending personal electronic mail messages, provided that such use is in a limited amount and duration and does not conflict with the proper exercise of the duties of the State employee.

e. State vehicles shall be used for official business or incidental use associated with official business away from an employee's official work station. Individuals who are authorized by their agency or public authority to use a vehicle for personal purposes shall keep records of such use, and the value of such personal use shall be calculated and reported as personal income to such individual for tax purposes.

5. Prohibition Against Nepotism in Hiring and Contracting

a. No individual covered by this order may take part in any hiring or employment decision relating to a family member. If a hiring or employment matter arises relating to a family member, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

b. No individual covered by this order may take part in any contracting decision: (i) relating to a family member; or (ii) relating to any entity in which a family member is an officer, director or partner, or in which a family member owns or controls 10% or more of the stock of such entity. If a contracting matter arises relating to a family member, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

c. For the purposes of this paragraph, the term "family member" shall mean any person living in the same household as the employee, and any person related to the employee within the third degree of consanguinity or affinity.

6. Prohibition Against Executive Chamber Employees Lobbying State Agencies and Public Authorities

The provisions of Public Officers Law § 73(8) prohibiting former State officers and employees from appearing or practicing before their former agency for a period of two years shall, with respect to Executive Chamber employees, extend to appearing or practicing before any Executive Branch agency or public authority.

7. Penalties

Any violation of this order may result in dismissal or other appropriate sanction as determined by the appointing authority of the individual committing such violation.

G I V E N under my hand and the
Privy Seal of the State

in the City of Albany
this first day of January in the year two thousand seven.

BY THE GOVERNOR /s/ Eliot Spitzer

/s/ Richard S. Baum
Secretary to the Governor

No. 2

EXECUTIVE ORDER

ELIMINATING POLITICS FROM GOVERNMENT DECISIONMAKING

WHEREAS, it is essential that the duties and responsibilities of State government be performed in a non-partisan manner; and

WHEREAS, all State employees and officers should feel free to pursue the interests of the public in an environment that is free from political party influence or interference; and

WHEREAS, all State taxpayers and residents and all those who depend on State government services have the right to expect that government programs will be administered and managed with the highest degree of professionalism and without regard to partisan politics; and

WHEREAS, all State employees and officers should be selected based upon their qualifications, integrity, honesty, competency and dedication to fulfilling the public policies of the State, and should not be excluded from State service based solely upon their political affiliations; and

WHEREAS, it is the obligation of every State employee and officer to pursue a course of conduct that will not engender public concern as to whether the individual is engaged in acts that may violate his or her public trust; and

WHEREAS, although certain State laws and rules place limits on political campaign activities of State employees, there are ways in which these laws can be improved and strengthened; and

WHEREAS, until that occurs through legislative action, it is appropriate to take steps to limit, to the greatest extent possible, the influence of politics on government decisionmaking;

NOW, THEREFORE, I, Eliot Spitzer, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the laws of the State of New York, do hereby order as follows:

1. Definitions

"Agency" shall mean any state agency, department, office, board, commission or other instrumentality of the State, other than a public authority.

"Public authority" shall mean a public authority or public benefit corporation created by or existing under any State law, at least one of whose members is appointed by the Governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit corporation.

2. Application

This order shall apply to all State agency officers and employees who serve at the pleasure of the Governor or their appointing authority, and to all members of all public authorities who are appointed by the Governor. Each public authority shall adopt policies or rules applying the restrictions set forth below to all officers and employees who serve at the pleasure of their appointing authority.

3. Prohibition Against Campaign Contributions to the Governor and Lieutenant Governor

No individual covered by this executive order may make or offer to make any monetary contribution to the campaign of the Governor or the Lieutenant Governor, or to any political campaign committee organized by or for the specific benefit of the Governor or the Lieutenant Governor. In addition, no individual covered by this executive order may request or demand that any other person make or offer to make any monetary contribution to the campaign of the

Governor or the Lieutenant Governor, or to any political campaign committee organized by or for the specific benefit of the Governor or the Lieutenant Governor.

4. Prohibition Against Consideration of Politics in Employment and Contracting

No individual covered by this executive order who is involved in recruiting, interviewing or hiring applicants for State employment, or making appointments to State boards or commissions, or making promotional, disciplinary or other employment decisions relating to State employees, may ask any such applicant or employee to reveal: (a) the party affiliation of the applicant; (b) whether the applicant has made campaign contributions to any party, elected official, or candidate for elective office; or (c) whether the candidate voted for any elected official or candidate for elective office. The provisions of this paragraph shall not apply to circumstances where such inquiry is necessary for the proper application of State law or approved State agency or public authority rules, policies or practices (e.g., inquiring about party affiliation where State law limits the number of members of a State board who can be from the same party).

No individual covered by this executive order who is involved in the awarding of State grants or contracts, or making decisions relating to State grants or contracts, may ask any officer or director of such current or prospective contractor or grantee to reveal: (a) the party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any party, elected official, or candidate for elective office; or (c) whether the individual or entity voted for any elected official or candidate for elective office.

5. Prohibition Against Appearances by Candidates in State Advertising

Under no circumstances may any State agency or public authority permit any elected official or any candidate for elective office to appear in any advertisement in any media, including but not limited to television, radio, Internet or print, if such advertisement is paid for, in whole or in part, directly or indirectly, by any State agency or public authority, or if any State agency or public authority resources are utilized in the creation of such advertisement.

6. Prohibition Against Campaigning for State or Federal Office

No commissioner, executive director or other head of any agency or public authority shall seek nomination, designation or election to any compensated federal or state public office, or shall commence a candidacy for such office, unless such individual first resigns from State service or requests and is granted a leave of absence without pay. Such leave, if granted, must commence before such individual engages in any campaign activities, including but not limited to announcing a candidacy, circulating petitions, soliciting contributions, distributing literature, or taking any other action to actively promote oneself as a candidate for elective office.

7. Penalties

Any violation of this order may result in dismissal or other appropriate sanction as determined by the appointing authority of the individual committing such violation.

G I V E N under my hand and the
Privy Seal of the State
in the City of Albany
this first day of January in the year two thousand seven.

BY THE GOVERNOR

/s/ Eliot Spitzer

/s/ Richard S. Baum
Secretary to the Governor