

## **FINAL FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

### **COMPLAINT #026**

The Accountability, Conduct and Ethics Commission (ACE Commission) undertook a full investigation of the Complaint filed on May 23, 2014. This investigation proceeded pursuant to The Accountability, Conduct and Ethics Code of Allegheny County (Ethics Code).

#### **Procedural History**

Complaint #026 was initiated by the Complainant against Robert Macey, a member of Allegheny County Council, Respondent. Based upon the allegations set forth in Complaint #026, the issues investigated were:

1. Whether Respondent, a member of Allegheny County Council, is on the personal staff of a Pennsylvania state senator.
2. Whether Respondent, a member of Allegheny County Council, is employed with a government agency, namely the Pennsylvania General Assembly, for the purpose of performing nondiscretionary or purely ministerial functions.
3. Whether Respondent, a member of Allegheny County Council, is employed in a confidential administrative capacity in state government.

In conducting its investigation of the above, the ACE Commission reviewed the following documentation provided by Complainant, by Respondent, or otherwise obtained by the ACE Commission:

- Special Committee on Government Reform Meeting Minutes – July 12, 2007
- County Council Meeting Minutes (relevant portions) – August 21, 2007
- Ordinance No. 31-07-OR, Bill No 3244-07 – August 21, 2007
- Memorandum to Respondent from John F. Cambest, Esq. – September 18, 2013
- Business Card (provided by Respondent on July 23, 2014)
- PA General Assembly Legislative Directory – July 23, 2014
- Allegheny County Disclosure of Interest – April 21, 2014
- Commonwealth of Pennsylvania Statement of Financial Interests – April 21, 2014
- Letter to Timothy Moury, Chairperson, from Tim Joyce, Chief of Staff – December 10, 2014
- Document headed “The Statute: §7103. Definitions: application
- Pa. Commonwealth Ct. Opinion in Forney v. Harrisburg State Hospital – March 17, 1975

An in-person interview with Respondent was conducted on July 23, 2014. Respondent was accompanied by counsel.

On October 10, 2014, the ACE Commission issued a Findings Report in this matter and forwarded said Report to Respondent. In its Findings Report, the ACE Commission found:

Respondent, a member of Allegheny County Council, is employed on the personal staff of a Pennsylvania state senator; is not employed in such capacity for the sole purpose of performing nondiscretionary or purely ministerial functions; and is employed in a confidential administrative capacity in state government. Accordingly, Respondent is in violation of the provisions, spirit and intent of the Ethics Code.

Respondent, through his attorney, then submitted a response to the Findings Report denying the "allegations" and requesting a hearing. After delays due to difficulties in finding a date when all interested parties would be available, a hearing was held on March 27, 2015. At the hearing, Respondent presented his own additional testimony as well as testimony from one witness. He also presented several additional documents. Respondent was represented by counsel.

## Ethics Code Standards at Issue

### Section 103.04 Standards of Conduct

All Covered Persons shall set and follow an example of proper conduct that shall include the following:

#### O. Political Activity

4. County Council Members are prohibited from being employed, in a confidential administrative capacity, in local, state or federal government. For the purposes of this section (**Ord. 31-07**):

- (a) An individual shall be deemed to be employed in government in a confidential administrative capacity only if he or she (**Ord. 31-07**):
  - (i) Is employed on the personal staff of any elected official in local, state or federal government, or is employed by any legislative body to function as personal staff for any elected official (**Ord. 31-07**);

...

- (b) No individual shall be deemed to be employed in a confidential administrative capacity by virtue of employment with a government agency for the purpose of performing nondiscretionary or purely ministerial functions. Individuals subject to and protected by federal, state or local civil service regulations shall be deemed to perform purely ministerial functions within the scope of such civil service employment for the purposes of this section (**Ord. 31-07**).

## **Final Findings, Conclusions and Recommendations**

### **A. Findings**

1. Respondent's business card states that he represents a specific Pennsylvania state senator, Senator Jim Brewster, as a "Constituent Service Representative." The office address on the business card is the same address as the state senator. On the Pennsylvania General Assembly website, Respondent was previously listed as a "Legislative Liaison" for Senator Brewster. Respondent purports this designation by the Pennsylvania General Assembly website was a scrivener's error and has since been corrected. The ACE Commission notes that the website change from "Legislative Liaison" to "Constituent Service Representative" occurred after the Commission began its investigation in this matter.
2. Respondent claims that he had no responsibility for preparing the business card he presented to the ACE Commission indicating his position for Senator Brewster. However, once he received the card and began using it, Respondent was certainly aware of the card's language and the message it delivered to anyone receiving it.
3. Per the testimony of Senator Brewster's Chief of Staff, Respondent, like all members of a state senator's staff, was hired by the Democratic Caucus of the General Assembly. Control over assignments, hiring and termination are determined by the Senate Democratic Leader's Chief of Staff. As such, none of the staff members is deemed technically on the personal staff of a state senator. However, it was Senator Brewster who initiated the recommendation that Respondent be hired to work in his office. The Senator desired to take advantage of the "synergy between state and county" recognizing that Respondent had "many County connections".
4. In his role as a Constituent Service Representative, Respondent provides the services exclusively for a specific state senator. Respondent attends meetings and events in his official capacity as Constituent Service Representative for Senator Brewster and will represent himself as the official representative for that senator. In some cases, Respondent is asked if his attendance at events is in his official capacity as an elected member of County Council or as the representative of Senator Brewster. In one particular instance, Respondent stated that he attended a community event related to a flooding incident. He was there as the representative of Senator Brewster and also acting as the "face of County Council". Also attending that flood-related event were PennDot and County employees working together. Respondent also stated that he is the Chair of the County Public Works Committee and that the County employees who were at the

flood-related event “knew who he was”. Yet, Respondent purports that he did not attend as a member of County Council or as Chair of the Public Works Committee and that his attendance was strictly ministerial. The ACE Commission finds that Respondent’s responsibilities have all the indicia of being on the Senator’s personal staff while also serving on Allegheny County Council.

5. The Ethics Code defines “Ministerial Action” as “an action that a person performs in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of the person’s own judgment as to the desirability of the action being taken.” **Section 101.03 Definitions.**
  
6. Respondent’s role as Constituent Service Representative requires that he exercise his own judgment and take appropriate actions by interfacing with the relevant state and county governmental agencies on behalf of a specific state senator and on behalf of that specific senator’s constituents. In many instances, Respondent will make phone calls on behalf of the Senator’s constituents to expedite services. Certainly, many constituents who call Senator Brewster’s office anticipate that the matter they are calling about will benefit from the influence, experience and/or position of a state senator. The ACE Commission deems that the scope of Respondent’s services extends beyond the definition of “Ministerial Action” because they require Respondent to use his own judgment. Respondent is not merely filing papers in a ministerial capacity without opinion or bias toward the content of them, but rather Respondent is taking action based on analysis and judgment.
  
7. At Respondent’s request in 2013, Attorney John F. Cambest provided a legal opinion in the form of a Memorandum dated September 18, 2013. The Memorandum is headed “Bob Macey/County Council/Senate Employment.” The Opinion states in part that, “You indicated that you would be addressing complaints from residents of the Mon valley [sic] communities and that you would be engaged in work such as filling out Rent Rebate Forms and other services for individuals in the Mon Valley.” The Opinion further states, “You indicated that the function you would be performing would be ministerial in nature . . .” Attorney Cambest advised that it was his opinion that Respondent would not be in violation of the Ethics Code. Nevertheless, as a result of its investigation, the ACE Commission finds that Respondent’s job responsibilities in Senator Brewster’ office have come to include more than functions that are “ministerial in nature”.
  
8. The rules of ethical conduct, as amended and applied to elected officials in Allegheny County, were created to ensure that public servants at the County level act solely in the best interests of their County constituents. Apparently with this in mind, the original Ethics Code enacted in 2001 provided that County Council Members were prohibited, without exception, from being directly employed in a paid capacity by another elected official in local, state or federal government. It was a total ban against dual employment. Subsequently, the

Ethics Code was amended in 2007 to loosen this prohibition against dual employment. Nevertheless, available legislative history pertaining to the amendment indicates a continuing commitment to preserve independence between County officials and state government. While there is no doubt as to Respondent's intentions to faithfully serve his constituents as an elected County official as well as an employee of the Pennsylvania General Assembly, his dual-government role blurs the bright line distinction that appears to be the intent of the Ethics Code as well as the language set forth in the preamble to the Home Rule Charter of Allegheny County wherein it states, "A home rule government will preserve the powers of our cities, boroughs, townships, and home rule municipalities."

9. If Respondent's particular dual-government role were permitted under the Ethics Code, then of course all members of Allegheny County Council could likewise hold the same dual employment. This state of affairs, if it were to exist, could not reasonably be interpreted as permitted under the Ethics Code.
10. The Ethics Code prohibits County Council Members from being employed in a "confidential administrative capacity" in state government. **§103.04(O)(4)**. The Ethics Code goes on to state that an individual is deemed to be employed in a "confidential administrative capacity" if he or she "is employed on the personal staff of any elected official in . . . state . . . government, or is employed by any legislative body to function as personal staff for any elected official." **§103.04(O)(4)(a)(i)**. Based on this language, once it is determined, as the ACE Commission does here, that a County Council Member is on the "personal staff" of an elected state official, there may be no need to consider anything further.
11. Although our inquiry might end with the finding that Respondent is on the personal staff of Senator Brewster, there is additional language in the Ethics Code that stating that an individual shall not be deemed to be employed in a "confidential administrative capacity" if he or she is employed "with a government agency" to perform non-discretionary or purely "ministerial" functions. **§103.04(O)(4)(b)**. This "ministerial duties" exception from the dual employment ban appears to apply only to those employed by a governmental agency as opposed to those who serve on personal staff of an elected official. Nevertheless, as discussed more fully above, the ACE Commission finds that Respondent is not employed in state government for the sole purpose of performing non-discretionary or purely ministerial functions.
12. The ACE Commission finds that the Respondent, a member of Allegheny County Council, is employed in a confidential administrative capacity in state government and is thereby in violation of Section 103.04(O)(4) of the Allegheny County Ethics Code.

## **B. Conclusions**


Based upon the above findings, it is the opinion of the ACE Commission that Robert Macey, Respondent, a member of Allegheny County Council, is employed on the personal staff of Pennsylvania State Senator Jim Brewster; is not employed in such capacity for the sole purpose of performing non-discretionary or purely ministerial functions; and is employed in a confidential administrative capacity in state government in violation of Section 103.04(O)(4) of the Allegheny County Code of Accountability, Conduct and Ethics.

## **C. Recommendation**

Based upon the above findings and conclusions, the ACE Commission makes the following recommendations pursuant to Section 105.07 of the Ethics Code:

1. A censure be issued by Allegheny County Council to Respondent Robert Macey indicating that he is in violation of The Accountability, Conduct and Ethics Code of Allegheny County as a result of his being employed by the Pennsylvania General Assembly to serve on the personal staff of Senator Jim Brewster while at the same time serving as a member of Allegheny County Council. Further, said censure should require that Mr. Macey resign his position with the Pennsylvania General Assembly within ten (10) days or, failing said resignation, he will be deemed to have forfeited his office as a Member of County Council.<sup>1</sup>

This Final Findings, Conclusions and Recommendations issued this 6th day of May, 2015.

  
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Timothy Moury  
Chair, ACE Commission

Daniel A. Garcia, Esquire  
Michael Louik, Esquire  
Dr. Ronald H. Stone

<sup>1</sup> The ACE Commission notes that Respondent Robert Macey, in September 2013, requested and received a legal opinion regarding the propriety of the dual government positions at issue in this matter.