

ATTORNEY GENERAL

In summation, you are advised that the Board of Trustees of the College of Medicine and Dentistry of New Jersey is vested with the authority to establish a faculty practice plan for each professional school of the College. You are further advised that as presently organized the faculty practice plans at each educational unit of the College are creatures of and under the direct supervision and control of the governing body of the College. As a consequence of this relationship, each faculty practice program is subject to all appropriate rules and regulations promulgated by the College and all State statutes and regulations generally applicable to the College, including but not limited to, the requirements enumerated in the preceding paragraphs.

Very truly yours,

WILLIAM F. HYLAND
Attorney General

By: MARY CATHERINE CUFF
Deputy Attorney General

1. The New Jersey Dental School plan does not provide for a minimum guaranteed salary supplement.
2. The New Jersey Dental School utilizes the Office of Business Affairs for billing, collection and distribution services. Rutgers Medical School is serviced by a part-time business manager in the office of the Director of Business Affairs of the Rutgers Medical School.
3. Presently, all faculty practice activities at the New Jersey Dental School must occur within the confines of the dental school or an affiliated institution. There is no provision for an off-premises waiver.
4. At the New Jersey Dental School, 30% of plan income is deducted for overhead; 10% for an emergency reserve fund; 15% for distribution to the Dean's Discretionary Fund, Departmental Discretionary Fund and Research Fund; 45% for faculty salary supplementation.

September 17, 1976

RAYMOND J. COLANDUONI
Director of Administration
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

FORMAL OPINION NO. 24-1976

Dear Director Colanduoni:

You have asked for an opinion as to whether Department of Transportation Form PR-102 entitled "Certification by Employee Regarding Outside Employment" is a public record subject to disclosure under the Right to Know Law. It appears that certain information with regard to the outside employment of employees in the

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Department has been furnished to the news media. As a result, a member of the news media has asked for the opportunity to review the Form PR-102 in the custody of your office. For the following reasons, you are advised that the Form in question is a public record under the Right to Know Law and should be made available for inspection.

The requirement that Form PR-102 be completed is a condition of employment for each Department employee and is an integral part of the *Code of Ethics of the New Jersey Department of Transportation* promulgated on February 10, 1972 pursuant to the New Jersey Conflicts of Interest Law, *N.J.S.A. 52:13D-23*. See also *New Jersey Department of Transportation Policy and Procedures*, No. 2.109-B (March 20, 1974); *New Jersey Department of Transportation Policy and Procedures*, No. 2.1091 (June 14, 1976). The Form requires the employee to state whether or not he has outside employment, and if he does, to provide the name and address of the outside employer, the hours of outside employment and a general description of the nature of and duties involved in the outside employment. The Form also requires the employee to state whether or not he is licensed by a professional board, and if so, to name the issuing agency.

The policy behind the Right to Know Law, *N.J.S.A. 47:1A-1 et seq.*, and the common law right to know, is to guard against secrecy in government and to make public officers accountable to the citizens of the State. This policy was cogently stated by the Supreme Court of New Jersey in the recent case of *Irvial Realty Co., Inc. v. Board of Public Utility Commissioners*, 61 N.J. 366 (1972). It is only where the need for confidentiality outweighs the compelling policy of public disclosure, that a governmental record may be withheld from public inspection.

The Right to Know Law permits the Governor to list various records which are to be excluded from the public's right to know, when in the opinion of the Governor disclosure will result in a greater harm to governmental operations and individuals than confidentiality. *N.J.S.A. 47:1A-2*. Accordingly, on October 1, 1963, Governor Hughes promulgated Executive Order No. 9, Section 3(b), which served to exclude personnel records from public inspection. More recently, Governor Byrne, through Executive Order No. 11 promulgated on November 15, 1974, reaffirmed the general exclusion for personnel records, while ordering that certain information in employees' pension records, which had been excluded under Executive Order No. 9, be deemed a public record.

Personnel records, within the meaning of Executive Orders No. 9 (1963) and 11 (1974z, include such items as employees' performance ratings, family history, medical and psychological information. Because of the invasion of privacy of government employees and the potential for abuse that the public disclosure of such information would engender, this type of personnel data should be kept confidential. On the other hand, Form PR-102 is not a personnel record in the sense contemplated by the Executive Order; rather it serves as a managerial device to assure that employees having outside employment are not in a conflict of interest position. Thus, the Form is a response by the Department of Transportation to the need to require its employees to meet the ethical standards of the Conflicts of Interest Law, *N.J.S.A. 52:13D-12 et seq.*, and is directly related to the Code of Ethics promulgated by the Department pursuant to *N.J.S.A. 52:13D-23*.

In our analysis of whether or not Form PR-102 is a public record, which should be disclosed in accordance with the Right to Know Law, we have paid particular attention to recognition by the Legislature that the requirement for State officials and employees to avoid conflicts of interest is particularly a *public* concern. *N.J.S.A. 52:13D-12* provides:

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The Legislature finds and declares:

(a) In our representative form of government, it is essential that the conduct of public officials and employees shall hold the respect and confidence of the people. Public officials must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

(b) To ensure propriety and preserve public confidence, persons serving in government should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards amongst them. Some standards of this type may be enacted as general statutory prohibitions or requirements; others, because of complexity and variety of circumstances, are best left to the governance of codes of ethics formulated to meet specific needs and conditions of the several agencies of government.

The right of the public to know whether an employee is sacrificing his capacity to work or objectivity in the performance of his public responsibilities because of the conflicting nature of his outside employment is of paramount importance and outweighs any incidental invasion of privacy. Thus, it would be entirely consistent with the legislative policy underlying the Conflict of Interest Law, as well as the Right to Know Law, to publicly disclose this information bearing on the ethical conduct of state employees.

For the foregoing reasons, Form PR-102 is a public document under the Right to Know Law, and this document should be made available to the member of the news media for his inspection.

Very truly yours,

WILLIAM F. HYLAND

Attorney General of New Jersey

By: RICHARD L. RUDIN

Deputy Attorney General

September 29, 1976

FRANK A. MASON, DIRECTOR
Office of Employee Relations
134 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 25-1976

Dear Director Mason:

You have requested our advice as to whether a managerial executive, a confidential employee or a supervisory employee, as defined by the New Jersey Employer-Employee Relations Act, has a right to join or actively participate in public