DELAWARE
PUBLIC INTEGRITY COMMISSION
410 Federal St., Suite 3; Dover, Delaware 19901
Phone (302) 739-2399 Fax (302) 739-2398

TO: Cabinet Secretaries, Division Directors and their Equivalents in the Executive Branch

FROM: State Public Integrity Commission

DATE: February 18, 1999

SUBJ: **Ethics Bulletin 008 - Financial Disclosure and the Code of Conduct**

The State Public Integrity Commission recently received an inquiry from a Senior Executive Branch official who said that he and other such officials were under the belief that if they disclosed gifts pursuant to the Financial Disclosure statute and/or Executive Orders No. 5 and 19, that there could be no violation of the State Code of Conduct restrictions on accepting gifts. The belief is not correct for the following reasons:

(1) Courts have routinely held that financial disclosure reporting laws are broad and do not guarantee the absence of conflicts of interest. *Commission Op. No. 97-01*. The Courts noted that trying to tailor financial disclosure reporting laws to the many offices affected is impractical, so the issue of whether a conflict exists should be approached on a case-by-case basis. *Id.* The means by which this Commission decides if accepting gifts, payment of expenses, etc., raises an ethical issue is by applying the Code of Conduct restriction on accepting things of monetary value. *See , 29 Del. C. § 5806(b).* The Commission applies the provision to "the particular facts," as required by *29 Del. C. § 5809(c)*. Thus, by statute, we approach the question of a conflict on a case-by-case basis.

(2) The legal standard which governs whether accepting a gift, payment of expenses, or anything of monetary value raises an ethical issue, is: if acceptance may result in: (1) impaired independence of judgment in performing official duties; (2) preferential treatment to any person; (3) official decisions outside official channels; or (4) any adverse effect in the public's confidence in the integrity of its government. *29 Del. C. § 5806(b).* Thus, the Commission looks at such facts as whether the official has any decision making authority over the gift giver to decide if the official's judgment would be impaired. On a broader perspective, in deciding if acceptance may result in "any adverse effect on the public's confidence in the integrity of its government," which is basically an appearance of impropriety standard, the Commission looks at the totality of the circumstances. *Commission Op. No. 96-78.* Thus, the fact that an official may publicly disclose the value of the gift in the financial disclosure report, could be a fact the Commission would consider, but it would not be the sole determining fact.

(3) We further note that Executive Orders No. 5 and 19 provide that where a Senior Executive branch official accepts a gift valued at more than $250, the gift is to be reported to the Commission within 30 days of receipt so that it may decide if “any ethical issue is raised.” Thus, the above criteria would be used to rule on those matters. However, it must be noted that even if a gift is: (1) less than $250 and thus not reported under the financial disclosure statute or under the Executive Orders, or (2) accepted by **any** State employee, State officer, or Honorary State official in the Executive Branch--not just those subject to the financial disclosure laws--the issue of whether it is proper to accept **any** gift, regardless of value, is governed by the Code of Conduct.