



Ethics Officer Guidance: Rental Income as an Outside Activity

Rental Income-Outside Activity

JCOPE regulations require State employees designated as policymakers to seek approval from JCOPE before engaging in certain outside activities, including, but not limited to, employment or a business venture that generates, or is expected to generate, more than \$5,000 in annual compensation.

Ethics Officers have asked: Do the regulations apply to the rental of real property?

JCOPE regulations exclude from the definition of “compensation” any income received from “transactions involving such individual’s own securities, personal property, or real estate” [19 NYCRR Part 932.2(c)]. Since income derived from a policymaker’s real estate is *not* to be considered compensation (for outside activity approval purposes), Ethics Officers have often asked whether a policymaker must seek additional JCOPE approval to lease and collect rent for residential real estate.

JCOPE has determined that policymakers need its approval to lease residential rental property if, and only if, that policymaker earns more than \$5,000 and has established a business entity—for example, a limited liability company—to own, operate, and manage the rental property in question. Otherwise, the policymaker need not request prior approval by JCOPE to lease residential real estate.

Ethics Officer Guidance

In many circumstances, however, an employee may earn rental income of more than \$5,000 *without* establishing a formal business entity associated with that rental property. Although this scenario does not require JCOPE prior approval, Ethics Officers should, nonetheless, use their agency’s outside activity approval process as an opportunity to provide the employee with guidance regarding the general standard for all persons subject to Public Officers Law § 74. For instance, a guidance letter should note:

- Public Officers Law § 74 prohibits all State employee from engaging in an activity that raises a conflict of interest, or even an appearance of a conflict of interest, with respect to their State duties.
- A plan for recusal usually can mitigate a conflict should one arise. Accordingly, Ethics Officers should advise employees to recuse themselves from matters involving both the agency and the employee’s rental property.
- Employees must not rent the property to any person with whom they interact while performing their State duties, including not only persons or entities that do business or are regulated by the agency, but also the officer’s or employee’s co-workers.

Ethics Officer Guidance: Rental Income as an Outside Activity

- Actions associated with an employee's outside activity are not allowed during that employee's State work hours and should not interfere with their official work responsibilities.
- No State resources of any type can be used to accomplish an employee's outside activity.
- Certain information related to an employee's outside activity must be disclosed in any annual Financial Disclosure Statement required to be filed with JCOPE by the employee.

Have Questions? Contact us by calling 1-800-87-ETHICS (3-8442) or by email at legal@jcope.ny.gov. All communications with JCOPE are confidential.