Date: July 22, 1977

From: Office of the University Counsel and Vice Chancellor for Legal Affairs

Subject: Legislation extending additional privileges and responsibilities to student members of Councils and Boards of Trustees

The Governor has recently signed legislation amending Section 353, 356 and 6306 of the Education Law (Chapter 164 of the Laws of 1977). The legislation provides:

1. That the student member of the State University Board of Trustees, the student members of the Councils at the State-operated campuses, and the student members of the Boards of Trustees at the community colleges shall be subject to the laws, rules and codes of ethics applicable to voting members of such public bodies;

2. That, except for the right to vote, each such student member of a Board or Council shall be "afforded the same parliamentary privileges as are conferred upon voting members, including but not limited to the right to make and second motions and to place items on the agenda"; and

3. That the student members of community college Boards of Trustees "may be removed...in accordance with rules and regulations promulgated by the respective campus student organizations. . .".

In 1975 the Legislature amended the Education Law to add non-voting student members to the Board of Trustees of State University, to the Councils at the State-operated campuses, and to the Board of Trustees of each community college (Chapter 587 of the Laws of 1975; Memorandum to Presidents, Vol. 75, No. 17). Shortly thereafter the Attorney General of the State of New York rendered an opinion that such student members were not public officers and were not subject to the provisions of the Public
Officers Law, Sections 10, 17 or 73 through 78 (1975 Op. Atty. Gen., November 25). Likewise, in 1976, the Attorney General held that the non-voting student member of the State University Board of Trustees (and, by inference, student members of Councils and community college Boards of Trustees) was not authorized to move or second resolutions (1976, Op. Atty. Gen., June 14).

The most recent legislation supplants the opinions of the Attorney General. Except for the right to vote, student members are now accorded the same benefits and are subject to the same responsibilities as other Board and Council members.

Students on State-operated Boards and Councils are now accorded the protection of Section 17 of the Public Officers Law (see our recent Memorandum to Presidents, Vol. 77, No. 10) and must adhere to the Public Officers Law regarding conflicts of interest (attachment 1) and standards of ethics (attachment 2). Likewise, such student members at the State-operated campuses must now file with the Secretary of State an oath of office and a certification of having received Sections 73 through 78 of the Public Officers Law. Forms and procedures for such filing should be the same as those used in the past for voting members.

Community college Trustees, including the non-voting student member, are not covered by Sections 17 and 73-78 of the Public Officers Law. All community college Trustees, however, are subject to Sections 800-808 of the General Municipal Law, and related rules or codes of ethics adopted by the counties and municipalities. Community college Trustees should review such requirements with their local attorney.

Finally, the new legislation and State University guidelines provide that student members of community college Boards of Trustees may be removed in accordance with rules and regulations promulgated by the respective campus student organizations. A comparable provision providing for removal of student members of the Councils at the State-operated campuses is found at Section 356 of the Education Law.

Walter J. Relihan, Jr.
§ 73. Business or professional activities by state officers and employees and party officers

1. As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department.

The term "compensation" shall mean any money, thing of value or financial benefit conferred in return for services rendered or to be rendered.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

The term "regulatory agency" shall mean the banking department, insurance department, state liquor authority, department of agriculture and markets, department of state, other than the division of corporations and state records, department of public service and the board of standards and appeals in the department of labor.

2. No officer or employee of a state agency, member of the legislature or legislative employee shall receive, or enter into any agreement express or implied for, compensation for services to be rendered in relation to any case, proceeding, application, or other matter before any state agency, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit; provided, however, that nothing in this subdivision shall be deemed to prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

3. No full-time salaried officer or employee of a state agency, full-time salaried legislative employee, or member of the legislature shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another against the interest of the state in relation to any case, proceeding, application or other matter before, or the transaction of business by himself or another with, the court of claims.

4. No officer or employee of a state agency, member of the legislature or legislative employee or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall sell any goods or services having a value in excess of twenty-five dollars to any state agency unless pursuant to an award or contract let after public notice and competitive bidding. This subdivision shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

5. No officer or employee of a state agency, member of the legislature or legislative employee shall, directly or indirectly, solicit, accept or receive any gift having a value of twenty-five dollars or more whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to any officer or employee of a state agency, member of the legislature or legislative employee under such circumstances.

6. (a) Every member of the legislature or legislative employee shall, on and after December fifteenth and before the following January fifteenth, in each year, file with the secretary of the senate, if a member or employee of that body, or with the clerk of the assembly, if a member or employee of that body a written statement of
(1) each financial interest, direct or indirect of himself, his spouse and his unemancipated children under the age of eighteen years in any activity which is subject to the jurisdiction of a regulatory agency or name of the entity in which the interest is had and whether such interest is over or under five thousand dollars in value.

(2) every office and directorship held by him in any corporation firm or enterprise which is subject to the jurisdiction of a regulatory agency, including the name of such corporation, firm or enterprise.

(3) any other interest or relationship which he determines in his discretion might reasonably be expected to be particularly affected by legislative action or in the public interest should be disclosed.

(b) On or before January thirty-first in each year the secretary of the senate and the clerk of the assembly shall prepare a report containing the statements required to be filed pursuant to paragraph (a) of this subdivision. Copies of such reports shall be open to public inspection in the office of the secretary of the senate and the clerk of the assembly. Each house may adopt rules to implement the provisions of this subdivision, insofar as they relate to members of the legislature and legislative employees.

(c) A member of the legislature or legislative employee who knowingly and wilfully makes a false statement or gives information which he knows to be false in any written statement required to be filed pursuant to this subdivision, shall be guilty of a misdemeanor.

7. No person who has served as an officer or employee of a state agency shall within a period of two years after the termination of such service or employment appear before such state agency or receive compensation for any services rendered on behalf of any person, firm, corporation or association in relation to any case, proceeding or application with respect to which such person was directly concerned and in which he personally participated during the period of his service or employment; nor shall any person who has served as the head of a state department which is a regulatory agency, or the department of transportation, or a deputy thereof, within a period of two years after the termination of such service receive compensation for any services rendered on behalf of any person, firm, corporation or association in any case, proceeding or application before the department with which he so served wherein his compensation is to be dependent or contingent upon any action by such agency with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit, or in promoting or opposing, directly or indirectly, the passage of bills or resolutions before either house of the legislature; nor shall any person who has served as a member of the legislature within a period of two years after the termination of such service receive compensation for any services rendered on behalf of any person, firm, corporation or association to promote or oppose, directly or indirectly, the passage of bills or resolutions by either house of the legislature; provided, however, that nothing herein contained shall prohibit any state agency from adopting rules concerning practice before it by former officers or employees more restrictive than the requirements of this subdivision.

8. No party officer while serving as such shall be eligible to serve as a judge of any court of record, attorney-general, district attorney or assistant district attorney. As used in this subdivision, the term "party officer" shall mean a member of a national committee, an officer or member of a state committee or a county chairman of any political party.

9. Nothing herein contained shall be construed to prohibit any firm or association in which any officer or employee of a state agency is a member, from appearing, rendering services in relation to any matter before, or transacting business with a state agency, where such officer or employee of a state agency does not share in the profits resulting therefrom; nor shall anything herein contained be construed to prohibit any firm or association in which any full-time salaried officer or employee of a state agency, full-time salaried legislative employee, or member of the legislature is a member, from appearing, rendering services in relation to any matter before, or transacting business with, the court of claims, where such full-time salaried officer or employee of a state agency, full-time salaried legislative employee, or member of the legislature does not share in the profits resulting therefrom.

10. In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates the provisions of subdivisions two through five or subdivision seven of this section shall be guilty of a misdemeanor.
§ 74. Code of ethics

1. Definition. As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. Rule with respect to conflicts of interest. No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.

j. If any officer or employee of a state agency shall have a financial interest, direct or indirect, having a value of ten thousand dollars or more in any activity which is subject to the jurisdiction of a regulatory agency, he should file with the secretary of state a written statement that he has such a financial interest in such activity which statement shall be open to public inspection.

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Added L.1954, c. 696; amended L.1964, c. 941, § 6; L.1965, c. 1012, § 4, eff. Jan. 1, 1966.