



OFFICE OF THE ATTORNEY GENERAL
CONNECTICUT

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February 25, 2021

Lawrence Fox
Chair, State Contracting Standards Board
165 Capitol Avenue
Suite 1060
Hartford, CT 06106

Dear Chairman Fox:

You have requested a formal legal opinion concerning the scope of the State Contracting Standards Board's ("the Board's") jurisdiction with respect to the Connecticut Port Authority ("the Port Authority"), a quasi-public agency. As explained below, the Board's jurisdiction over quasi-public agencies in general is quite limited and the Board's jurisdiction is even more circumscribed with regard to the Port Authority.

The Board's power derives from its statutes. *See* Conn. Gen. Stat. §§ 4e-1 to 4e-69. Those statutes draw distinctions between state contracting agencies and quasi-public agencies, such as the Port Authority. Most of the Board's rights, powers, duties, and authorities extend only to state contracting agencies, as opposed to quasi-public agencies. In addition, the Port Authority's enabling statutes include a provision that excludes certain of the Port Authority's agreements from approval, review or regulation by the Board and other state agencies. *See* Conn. Gen. Stat. § 15-31b(a)(15).

We conclude that the Board's jurisdiction with respect to the Port Authority would primarily be limited to regulating a bidder's contest under Conn. Gen. Stat. § 4e-36 involving a Port Authority contract that did not involve real property. The General Assembly would have to change the statutes to expand the Board's oversight.

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Background on Quasi-Public Agencies

Connecticut currently has seventeen quasi-public agencies. *See* Conn. Gen. Stat. § 1-120(1).¹ Their roles vary, but the General Assembly’s “major reason for establishing” each quasi-public agency “was their organizational location outside the structure of state government, which meant they could avoid many of the requirements and controls imposed on governmental agencies.” Office of Legislative Research, Connecticut General Assembly, Report No. 2019-R-0182, Quasi-Public Agencies, p. 2 (September 3, 2019). The General Assembly believed that the quasi-public agencies’ structure would allow them to “respond to problems and opportunities faster and more efficiently than a comparable state agency while maintaining a degree of oversight and accountability.” *Id.*

The balance the General Assembly struck between flexibility and oversight varies from one quasi-public agency to another. Chapter 12 of the General Statutes applies to quasi-public agencies generally. *See* Conn. Gen. Stat. §§ 1-120 to 1-134. It provides that quasi-public agencies’ procedures are subject to public notice and comment absent emergency circumstances. *See* Conn. Gen. Stat. § 1-121. It also requires that quasi-public agencies submit to biennial compliance audits by the Auditors of Public Accounts (“the Auditors”), *see* Conn. Gen. Stat. § 1-122, and submit annual reports to both the Governor

¹ They are Connecticut Innovations, Incorporated, the Connecticut Health and Educational Facilities Authority, the Connecticut Higher Education Supplemental Loan Authority, the Connecticut Student Loan Foundation, the Connecticut Housing Finance Authority, the Connecticut Housing Authority, the Materials Innovation and Recycling Authority, the Capital Region Development Authority, the Connecticut Lottery Corporation, the Connecticut Airport Authority, the Connecticut Health Insurance Exchange, the Connecticut Green Bank, the Connecticut Retirement Security Authority, the Connecticut Port Authority, the Connecticut Municipal Redevelopment Authority, the State Education Resource Center, and the Paid Family and Medical Leave Insurance Authority. *See* Conn. Gen. Stat. § 1-120(1).

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and the Auditors. *See* Conn. Gen. Stat. § 1-123. In addition, Chapter 12 prevents quasi-public agencies from engaging in conduct that could impede their employees' ability and incentive to blow the whistle on misconduct. *See* Conn. Gen. Stat. § 1-125a.

Beyond those general provisions, each of the quasi-public agencies has its own statutory provisions. Some of those provisions expressly exempt the quasi-public agency from aspects of state oversight. An example that we reference above and will discuss in detail below is Conn. Gen. Stat. § 15-31b(a)(15), which provides—with certain specific exceptions—that almost all of the Port Authority's real estate transactions “shall not be subject to approval, review or regulation by any state agency pursuant to title 4b or any other provision of the general statutes.” Real estate transactions by the Connecticut Airport Authority and the Connecticut Lottery Corporation are insulated by similar provisions. *See* Conn. Gen. Stat. § 15-120cc(b)(4); Conn. Gen. Stat. § 12-806(b)(16).

The Board's Power Concerning Quasi-Public Agencies

As with any state agency, the Board is a statutory creation and may only work within the boundaries of its statutes. *See, e.g., Pereira v. State Board of Education*, 304 Conn. 1, 40-41 (2012); *Ethics Commission of Town of Glastonbury v. Freedom of Information Commission*, 302 Conn. 1, 8 (2011). The Board's statutes draw a broad distinction between state contracting agencies and quasi-public agencies, such as the Port Authority. The Board's statutes define “State contracting agency” as

any executive branch agency, board, commission, department, office, institution or council. “State contracting agency” does not include the judicial branch, the legislative branch, the offices of the Secretary of the State, the State Comptroller, the Attorney General, the State Treasurer, with respect to their constitutional functions, any state agency with respect to contracts specific to the constitutional and statutory functions of

the office of the State Treasurer. For the purposes of section 4e-16, “state contracting agency” includes any constituent unit of the state system of higher education and for the purposes of section 4e-19, “state contracting agency” includes the State Education Resource Center, established under section 10-4q.

Conn. Gen. Stat. § 4e-1(28). That definition does not reference quasi-public agencies generally and its inclusion of a single quasi-public agency—the State Education Resource Center—for purposes of a single statutory provision—section 4e-19—suggests that other quasi-public agencies are not “state contracting agencies” for purposes of the Board’s statutes.

These provisions alone would weigh heavily toward a conclusion that when the Board’s statutes grant the Board power over state contracting agencies, that power does not extend to quasi-public agencies other than the State Education Resource Center. “When legislation contains a specific definition, the courts are bound to accept that definition.” *State v. Acordia, Inc.*, 310 Conn. 1, 21-22 (2013) (quotation marks omitted). In any event, other provisions in the Board’s statutes draw an explicit distinction between state contracting agencies and quasi-public agencies and remove any doubt about that conclusion. *See, e.g.*, Conn. Gen. Stat. §§ 4e-1(8); 4e-1(16); 4e-2(g)(2)(D); 4e-10(a), (b).

Many of the statutes setting forth the Board’s rights, powers, duties, and authorities reference only state contracting agencies and therefore do not extend to quasi-public agencies. *See, e.g., Acordia, Inc.*, 310 Conn. at 21-22. For example, Conn. Gen. Stat. § 4e-7(a) provides *inter alia* that “[f]or cause, the State Contracting Standards Board may review, terminate or recommend to a state contracting agency the termination of any contract or procurement agreement undertaken by

any state contracting agency.” The Board’s power under § 4e-7(a) does not apply to quasi-public agencies.²

By contrast, some of the Board’s statutes do apply to quasi-public agencies. An example of a statute that explicitly refers to quasi-public agencies is Conn. Gen. Stat. § 4e-2(g)(2)(D), which allows the Board to appoint a Chief Procurement Officer and provides that the Chief Procurement Officer shall “review and monitor the procurement processes of each state contracting agency, quasi-public agencies and institutions of higher education.”³ (The position of Chief Procurement Officer has been vacant since March 2017.) Another example is Conn. Gen. Stat. § 4e-13, which requires quasi-public agencies—as well as other entities—to post contracting opportunities and other information on the State Contracting Portal. In addition, Conn. Gen. Stat. § 4e-50 requires quasi-public agencies—among other entities—to include a certain provision in documents relating to the environmental remediation of a brownfield property.

Some of the Board’s operative statutes, in turn, use statutorily defined terms in ways that make clear that the operative statutes apply to quasi-public agencies. Most significantly, Conn. Gen. Stat. § 4e-36—entitled “Contest of the solicitation or award of a contract by bidder or proposer”—applies to “contracts” and “state contracts.” Both of those

² Although “contract” is a defined term that includes quasi-public agencies, it is clear from its structure that § 4e-7 applies only to state contracting agencies. See Conn. Gen. Stat. § 4e-1(8) (defining “contract”). Section 4e-7 repeatedly refers to state contracting agencies and uses “contract” as one “undertaken by” a state contracting agency.

³ Conn. Gen. Stat. § 4e-1(22) defines “Procurement” to mean

contracting for, buying, purchasing, renting, leasing or otherwise acquiring or disposing of, any supplies, services, including but not limited to, contracts for purchase of services and personal service agreements, interest in real property, or construction, and includes all government functions that relate to such activities, including best value selection and qualification based selection.

defined terms encompass quasi-public agencies, and no other language in § 4e-36 creates any ambiguity on the issue. There is no reference to a “state contracting agency” in § 4e-36⁴ and § 4e-36(d)’s references to “such agency” are consistent with applying the statute to quasi-public agencies.⁵

The Board’s statutes draw a clear distinction between state contracting agencies and quasi-public agencies.⁶ Most of the Board’s statutes give the Board authority over only state contracting agencies. That is not to say the Board completely lacks authority over quasi-public agencies; for example, the Board has authority over a § 4e-36 bid contest, appoints the Chief Procurement Officer who may review procurement processes, and quasi-public agencies must use the State’s Contracting Portal. Nonetheless, the Board’s authority regarding quasi-public agencies is much more limited and circumscribed relative to its authority over state contracting agencies.

The Board’s Statutory Authority Regarding the Port Authority

The Board’s questions focus upon whether, and if so, in what manner, the Board has statutory authority regarding procurement and contracting engaged in by the Port Authority. Therefore, the general limitations on the Board’s scope of authority over quasi-public agencies discussed above apply with equal force to the Port Authority

⁴ This is in contrast to statutes like Conn. Gen. Stat. § 4e-7 (discussed above), which only apply to state contracting agencies despite the isolated use of the word “contract”.

⁵ Other statutes give the Board authority to issue regulations relating to “contracts,” a defined term that includes contracts to which a quasi-public agency is a party. See Conn. Gen. Stat. §§ 4e-1(8); 4e-22. See also Conn. Gen. Stat. §§ 4e-1(16); 4e-24 (emergency procurements).

⁶ The text of the Board’s statutes is sufficiently clear that a court would be unlikely to look to their legislative history for guidance. See, e.g., Conn. Gen. Stat. § 1-2z. In any event, the legislative history sheds little light on the issues this Opinion addresses. To the extent the legislative history applies, it is consistent with the statutes’ text.

specifically. See Conn. Gen. Stat. § 1-120(1); *see also* Conn. Gen. Stat. § 15-31a(a) (providing *inter alia* that “[t]he [Port A]uthority shall not be construed to be a department, institution or agency of the state”). Moreover, the Port Authority’s enabling statute provides for an express and explicit exclusion of state agency oversight of its real estate transactions, except for the sale of real estate in fee simple. Conn. Gen. Stat. § 15-31b(a)(15). Between the Board’s admittedly narrow scope of authority over quasi-public agencies generally, and the Port Authority’s express exclusion from state agency oversight for most real estate transactions, the Board has very limited oversight over the Port Authority’s transactions.

The Port Authority was “established and created for the performance of an essential public and governmental function,” but it “shall not be construed to be a department, institution or agency of the state.” Conn. Gen. Stat. § 15-31a(a). As one of Connecticut’s quasi-public agencies, the Port Authority’s purposes include “coordinat[ing] the development of Connecticut’s ports and harbors, with a focus on private and public investments,” “market[ing] the economic development of such ports and harbors,” working with “other state, local and private entities to maximize the economic potential of the ports and harbors,” and “develop[ing] strategic entrepreneurial initiatives that may be available to the state.” Conn. Gen. Stat. § 15-31b(a). “To accomplish” the Port Authority’s “purposes,” the Port Authority has “the duty and power to” *inter alia* “[m]ake and enter into all contracts and agreements that are necessary, desirable or incidental to the conduct of its business.” Conn. Gen. Stat. § 15-31b(a)(9).

The Port Authority’s statutes also grant the Port Authority “the duty and power to” *inter alia* “[i]nvest in, acquire, lease, purchase, own, manage, hold and dispose of real property and lease, convey or deal in or enter into agreements with respect to such property on any terms necessary or incidental to carrying out the purposes of sections 15-31a to 15-31i, inclusive.” Conn. Gen. Stat. § 15-31b(a)(15). The Port Authority’s statutes explicitly exclude these real estate transactions from state agency oversight, providing that

such transactions shall not be subject to approval, review or regulation by any state agency pursuant to title 4b or any other provision of the general statutes, except the authority shall not convey fee simple ownership in any property associated with the ports or harbors under its jurisdiction and control without the approval of the State Properties Review Board and the Attorney General.

Conn. Gen. Stat. § 15-31b(a)(15). That exclusionary language is a clear statement by the General Assembly that actions the Port Authority takes pursuant to its § 15-31b(a)(15) power “shall not be subject to approval, review or regulation by any state agency” unless the action is to convey property by fee simple, and then approval is required from the State Properties Review Board and the Attorney General, and not the Board.⁷

As a result, what, if any, power the Board has over procurement and contracting the Port Authority engages in further depends on the scope of § 15-31b(a)(15). That, in turn, depends on whether: (1) the Board is a “state agency” for purposes of § 15-31b(a)(15); and (2) the Port Authority’s conduct at issue is within the scope of § 15-31b(a)(15). The answer to the first is yes. The answer to the second will depend on the specific factual circumstances.

1. The Board Is a “State Agency” for Purposes of § 15-31b(a)(15).

The initial question is whether the Board is a “state agency” for purposes of the exclusion included in the Port Authority’s § 15-31b(a)(15) provision. If the Board is a “state agency” for these purposes, § 15-31b(a)(15) bars the Board’s ability to approve, review or regulate the Port Authority’s real estate transactions.

⁷ The text of § 15-31b(a)(15) is sufficiently clear that a court would be unlikely to look to its legislative history for guidance. *See, e.g.*, Conn. Gen. Stat. § 1-2z. In any event, § 15-31b’s legislative history sheds no light on the issues this Opinion addresses.

The Port Authority's statutes do not define "state agency." As a result, we look to dictionaries and other statutes for guidance. *See, e.g., State v. Panek*, 328 Conn. 219, 227 (2018). Here, both weigh strongly in favor of concluding that the Board is a "state agency" for purposes of §15-31b(a)(15). Ballentine's Law Dictionary defines "state agency" as "[a] department, commission, board, committee, or body of any form operating as an instrumentality of the state government." Ballentine's Law Dictionary (3d Ed. 1969). Consistent with that definition, multiple statutes define the term "state agency" to include state boards.⁸ Consequently, we conclude that the Port Authority's exclusion limits the Board's power when the conduct at issue is within the exclusion's scope.

2. Whether the Port Authority's Conduct Involves a Transaction that § 15-31b(a)(15) Insulates from Review.

The second question is whether the Port Authority's conduct at issue involves a transaction that § 15-31b(a)(15) insulates from review. Specifically, § 15-31b(a)(15) applies when the Port Authority exercises its power to "[i]nvest in, acquire, lease, purchase, own, manage, hold and dispose of real property and lease, convey or deal in or enter into agreements with respect to such property on any terms necessary or incidental to carrying out the purposes of sections 15-31a to 15-31i, inclusive." Conn. Gen. Stat. § 15-31b(a)(15).

Whether given conduct by the Port Authority comes within the scope of the statutory exception will be fact dependent. The Port Authority's general contracting authority in § 15-31b(a)(9) is broader than the transactions referenced in the § 15-31b(a)(15) exception. That said, the

⁸ *See* Conn. Gen. Stat. § 1-79(20) (including "board" in definition of "state agency"); Conn. Gen. Stat. § 4-166 (including "state board" in definition of "agency"). *See also* Conn. Gen. Stat. § 4e-1(28) (in the Board's enabling statute, includes "any executive branch ... board" in definition of "state contracting agency").

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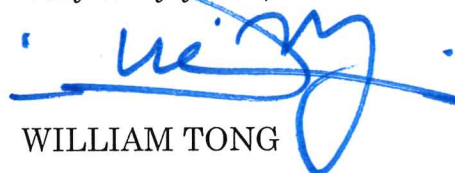
§ 15-31b(a)(15) exception does exclude almost all real estate transactions from the Board's approval, review or regulation.⁹

Reading those two provisions together indicates that the Board could exercise authority over Port Authority contracts that do not involve real estate, at least to the extent the Board could exercise authority over other quasi-public agencies that entered into similar contracts. The Board's enforcement authority appears to be limited to deciding a bidder's contest under Conn. Gen. Stat. § 4e-36 involving a Port Authority contract that does not involve real property.

Again, whether a given action by the Port Authority falls both within the scope of the Board's general power over quasi-public agencies and outside the scope of § 15-31b(a)(15)'s exclusion will depend on the facts and circumstances at issue. Ultimately, the Board's power is relatively limited when it comes to quasi-public agencies generally and § 15-31b(a)(15) limits the Board's power further when it comes to the Port Authority's real estate transactions. The General Assembly would have to change the statutes to expand the Board's oversight.

We trust that the foregoing responds to your inquiries.

Very truly yours,



WILLIAM TONG

⁹ The Connecticut Airport Authority and Connecticut Lottery Corporation share the same exception in their enabling statutes. See Conn. Gen. Stat. § 15-120cc(b)(4); § 12-806(b)(16).