

CONNECTICUT STATE ETHICS COMMISSION
39 TRINITY STREET
HARTFORD, CONNECTICUT 06115



ev. Thomas J. Lynch, *Chairman*
George S. Witter, Jr., *Vice-Chairman*

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Sheila M. Deane
John M. Lupton
Robert W. MacGregor
Gerard M. Peterson

ADVISORY OPINION NUMBER 78-24

Status under Public Act Number 77-600 of
Attorney-Members of the Judicial Review Council

An attorney, a partner in a law firm, has asked the State Ethics Commission whether or not her appointment by the Governor to the Judicial Review Council has made her a public official as defined in Public Act Number 77-600 and subject to the restraints of section 1-66, Connecticut General Statutes, as amended by section 6 of that Act.

The present Judicial Review Council was authorized by Amendment Article XI of the Connecticut Constitution and established by Public Act Number 77-494. Like the membership (former section 51-51a, Connecticut General Statutes) of the Judicial Review Council it supplants, it contains judges and laymen. Section 5, Public Act Number 77-494. Unlike its predecessor, three of the new Council's members must be "attorneys-at-law admitted to practice in this state who shall be appointed by the governor with the approval of the general assembly...." *Ibid.* This same section specifies various disqualifications from membership: a judge automatically ceases to be a member upon retiring from full-time active service; no member, except a judge, may hold any paid position, elected or appointed, with the State or the United States, be a selectman or chief executive officer of any municipality, be an employee of the Judicial Department, or hold certain political offices. *Ibid.* Members receive no compensation but are reimbursed for expenses incurred in the performance of their official duties. Section 15, Public Act Number 77-494. Among the powers of the Judicial Review Council is authority to censure judges of all courts, except courts to which judges are elected; to suspend such judges from their judicial office for a period of up to one year; to exonerate judges of charges; and to retire judges whom it finds to have become permanently incapacitated and unable to fulfil the duties of their office adequately. Sections 8 and 11, *id.*

Public Act Number 77-600 defines a public official as "... any person appointed to any office on the legislative, judicial or executive branch of state government by the governor, with or without the advice and consent of the general assembly..., but shall not include a member of an advisory board or a judge of any court...." Section 1(j). Here the attorney has been appointed to an office in State Government by the Governor, with the approval of the General Assembly. She is neither a judge nor a member of an advisory board. The latter is defined as "... any individual appointed by a public official as an advisor or consultant or member of a committee, commission or council established to advise, recommend or consult with a public official or branch of government or committee thereof and who receives no public funds other than reimbursement for his actual and necessary expenses incurred in the performance of his official duties and who has no authority to expend any public funds or to exercise the power of the state." Section 1(g), Public Act Number 77-600. While the attorney

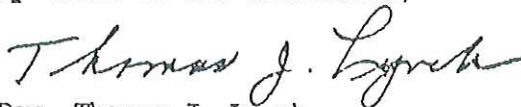
receives no public funds other than reimbursement for her actual and necessary expenses, it can hardly be said that a member of a commission which can suspend a State judge from office for a term not to exceed one year does not exercise the power of the State. Consequently the attorney is a public official as defined in Public Act Number 77-600, unless that Act does not apply to attorney-members of the Judicial Review Council.

Reading the two Acts separately and together, there is no indication that the attorneys added to the membership of the new Judicial Review Council are not subject to the provisions of the Code of Ethics for Public Officials, Public Act Number 77-600. As is true of many State agencies, attorney-members of the Judicial Review Council must meet various criteria prior to and during their service on the Council. Section 5, Public Act Number 77-494. However, there is no inconsistency between these and the rules and standards of Public Act Number 77-600. On the contrary, because attorney-members of the Judicial Review Council are in the delicate situation of practicing before the very judges whose conduct they are empowered to review it is particularly important that the attorneys be subject to the conflict-of-interest provisions of the Code of Ethics for Public Officials. The fact that one of those provisions, section 6(d) of Public Act Number 77-605, prohibits public officials from practicing before certain State agencies does not require a different conclusion. There is nothing in Public Act Number 77-494 which indicates that attorney-members of the Council must be eligible to practice before those State agencies. As in the case of other attorneys who are public officials, this appears to be an area of practice they must forego. State Ethics Commission Advisory Opinions Number 78-1, 39 Conn. L.J. No. 36, p. 17 and Number 78-22, 40 Conn. L.J., No. 13, p. 12.

The two Acts in question, passed in the same legislative session, can easily be read together to form one consistent body of law. During floor debate prior to passage of each Act, legislators were reminded of the existence of the other legislation. See, e.g., Connecticut General Assembly Senate Proceedings, Vol. 20, Pt. 8, pp. 3325-3334; House Proceedings Vol. 20, Pt. 13, pp. 5578-5579 and Vol. 20, Pt. 15, pp. 6478-6479. The full debate contains no evidence that attorney-members of the Judicial Review Council were intended to be excluded from coverage by Public Act Number 77-600. Statutory amendments affecting the Judicial Review Council passed during the 1978 legislative session do not change this conclusion. See Public Act Numbers 78-281, section 3 and 78-379, sections 24 and 25.

Consequently, an attorney who is a member of the Judicial Review Council is a "public official" for purposes of Public Act Number 77-600 and is subject to the provisions of that Act, including section 1-66, Connecticut General Statutes, as amended by the Act.

By order of the Commission,


Rev. Thomas J. Lynch
Chairman

Dated November 6, 1978

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November 22, 1978

State Ethics Commission
30 Trinity Street
Hartford, Connecticut

ATTENTION: Mr. Eaton

Dear Commissioner:

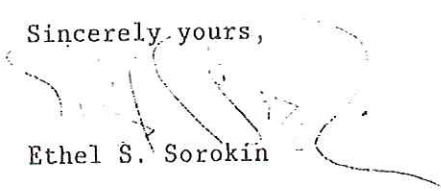
On May 17, 1978, I requested an advisory opinion with respect to the role of the members of the Judicial Review Council under various statutes interpreted by the Ethics Commission. On November 8, 1978, we received the Commission's opinion dated November 6, 1978.

New issues have developed with respect to other sections of 1-66 and Public Act 77-484. In addition, I feel certain legislative history should be called to your attention which was not raised in my earlier letter.

Accordingly, I request, on behalf of Mr. Leo Flaherty, Chairman of the Judicial Review Council who joined in my earlier request for an opinion, and myself, that the matter be reviewed at a rehearing. Without any waiver of our right to appeal the advisory opinion, we request that you reopen the matter of your opinion and an appeal, if any, be deferred until after the issuance of your opinion on the rehearing in accordance with accepted practice.

Upon your granting the rehearing, we would appreciate it if you would accord us 30 days to submit a memorandum of law and related materials in support of our position.

Sincerely yours,


Ethel S. Sorokin

ESS:drg

cc. Leo Flaherty, Esquire
John LaBelle, Esquire