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ADVISORY OPINION NUMBER 79-12

Status of the Connecticut Resources Recovery Authority

The status of the Connecticut Resources Recovery Authority under the statutes administered by the State Ethics Commission has been questioned in two respects. First, the Commission has been asked whether members of the Authority are subject to the disclosure requirements of section 1-83, General Statutes. Secondly, the Commission has been asked whether the Authority occupies such a position in State Government that an attempt to influence its administrative action constitutes lobbying as defined in section 1-91, General Statutes.

The Connecticut Resources Recovery was established by the Solid Waste Management Services Act, Public Act Number 73-459, now Chapter 361b, General Statutes. In a legislative finding, the General Assembly declared it appropriate to provide "statutory authorization for the necessary state structure, which can take initiative and appropriate action to provide the necessary systems, facilities, technology and services for solid waste management and resources recovery [,]... to authorize and establish the necessary state and local structure and powers for the effective accomplishment of solid waste management and resources recovery,... [and] to monitor and supervise the activities and operations of the state authority created by this chapter...." Section 19-524g, General Statutes. The Authority is a "body politic and corporate, constituting a public instrumentality and political subdivision of the state of Connecticut established and created for the performance of an essential public and governmental function...." Section 19-524t (a), *id.* Ten directors form the membership of the Authority. Six directors serve ex officio. Of these, three are heads of State executive departments and two are legislators. Of the other four, appointed by the Governor, two are municipal officials and two are public members. Sections 19-524t(b), (c), *id.* The Governor may remove any director for cause. Section 19-524t(k) *id.* The Authority's purposes are to develop and implement a plan for the design, construction and operation of a statewide network of regional systems, in conjunction with private industry, utilizing the best available means of resources recovery to resolve the solid waste disposal problems of Connecticut municipalities. Section 19-524u, *id.* Subject to

approval of the State Treasurer, the Authority may issue bonds to finance its operations; the bonds are payable from the revenues generated by the Authority and any other receipts. Section 19-524bb(a), id. The bonds are not a debt or liability of the State, and neither the faith and credit nor the taxing power of the State are pledged to payment of the principal of or interest on the Authority's bonds. Section 19-524ee(a), id. The Authority's property and operations are exempt from State and local taxes; its bonds and notes, and income from them, are exempt from all State taxes except for estate and succession taxes. Section 19-524cc, id. Its projects are directed to be self-sustaining. Sections 19-524u(2), 19-524ee(b), id. Currently, the Authority does not routinely receive any appropriations from the State's general fund. The Authority must establish a special reserve fund which, if utilized to pay principal, interest, or redemption fees, might fall below a level established by statute. Then, upon certification by the Authority Chairman to the appropriate State officials, funds are deemed appropriated from the State's general fund sufficient to restore the special reserve fund to its required minimum level. Section 19-524ee(b), id. These monies eventually are to be repaid to the State. Ibid. The Authority has been granted broad powers to carry out its mission, including both some governmental powers and powers customary for a corporation. See, among others, sections 19-524x through 19-524aa, id. It is required to report quarterly to the Governor and annually to the General Assembly, and it is subject to audit by the State Auditors of Public Accounts in accordance with normal audit practices prescribed for departments, boards, commissions, and other agencies of the State. Section 19-524v, id. Employees of the Authority are not subject to the State Personnel Act. Cf. section 19-524x(1), id. Its directors "may engage in private employment, or in a profession or business, subject to any applicable laws, rules and regulations of the state or federal government regarding official ethics or conflict of interest". Section 19-524t(f). When the existence of the Authority is terminated by law, all its rights and properties pass to the State. Section 19-524t(1).

In the legislative finding quoted above, the General Assembly stated that Chapter 361b, General Statutes, created a "state authority". The State Manual lists the Authority among State agencies, boards, commissions, departments, colleges, schools, and institutions. Connecticut Register and Manual 1978, pp. 178, 184, 238. These and some other provisions previously mentioned would indicate that the Authority is a State agency, in the Executive Branch or Executive Department of State Government. On the other hand, the statute which established it declared the Authority to be a political subdivision of the State, and the Authority was made practically independent of the State, financially and operationally. Furthermore, when the issue was the status of the Authority under section 4-37b, concerning the State insuring itself, the Attorney General found that the General Assembly had found

established in the Authority "a body independent of the body politic known as the State of Connecticut". Opinion of the Attorney General to the Chairman, State Insurance Purchasing Board, September 25, 1974, p. 3.

The status of the Authority in relation to lobbying seems reasonably clear. "Lobbying" includes communicating with an official or his staff in the Executive Branch of State Government for the purpose of influencing administrative action. Section 1-91(k), General Statutes. "Administrative action" means action or non-action of any executive agency with respect to various quasi-legislative matters. Section 1-91(a) *id.* An "executive agency" is "a commission, board, agency, or other body or official in the executive branch of the state government and any independent body of the state government that is not a part of the legislative or judicial branch." Section 1-91(e), *id.* The Authority was formed to carry out an essential public and governmental function but, as previously noted, as a political subdivision of the State. Section 19-524t(a), *id.* The legislative history of the Act establishing the Authority leaves little doubt that the General Assembly intended to create a "public service corporation" or "quasi-municipal corporation" essentially independent of the State. See 16 S. Proc., 1973 Sess., Pt. 8, pp. 3765 through 3767. While the language of the statute is not always entirely consistent with this purpose, it is certainly adequate to have achieved it in 1973. Public Act Number 77-614, which reorganized the Executive Branch, contains no indication that the Legislature believed the Authority to be in the Executive Branch in 1977. The Attorney General found the Authority "a body independent of the body politic known as the State of Connecticut". Opinion, *supra*, p. 3. The Authority is not an executive agency of the State as defined in Section 1-91(e), General Statutes, and efforts to influence its actions therefore are not lobbying.

The requirement to comply with the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes is restricted essentially to public officials and State employees as defined in Part I. To be a public official or State employee subject to the Code an individual must serve in one of the branches of State Government. Sections 1-79(j) and 1-79(k), General Statutes. Only legislators and certain public officials and State employees serving in the Executive Branch of State Government must file annual statements of financial interests. Section 1-83, *id.* Since the Authority was made independent of all branches of State Government, its members are not subject to the Code of Ethics for Public Officials, including the financial disclosure provisions.

When the General Assembly established the Authority in 1973 the Code of Ethics for Public Officials, enacted in 1971, was not applicable.

h. just become effective. It might seem inconsistent for the General Assembly to grant an agency the power to raise and expend many millions of dollars for a public purpose and yet not to make the members subject to the Code which had been enacted to cover the activities of State personnel, most of whom had positions giving them far less opportunity than Authority members to take official action favoring their private financial interests. The General Assembly apparently believed other checks on the conduct of the Authority's members were sufficient. Principal among these is the common law doctrine of conflicts of interests enunciated in Low v. Madison, 135 Conn. 1(1948). That case established a standard of ethical conduct for public officials which in some respects is more demanding than the Code of Ethics for Public Officials. The common law rules regarding conflict of interest appear clearly applicable to a subdivision of the State created by public authority for a public purpose. Cf. Stocker v. Waterbury, 154 Conn. 446 (1967); Housing Authority v. Dorsey, 164 Conn. 247(1973). They should be at least as effective as the Code in ensuring that Authority members do not place themselves in a position where their personal interests may conflict with their public duties. Additionally, some members are subject to ethical codes by virtue of holding a public position other than membership on the Authority. While they may engage in private employment (which might provide an opportunity for business dealings with the Authority), they remain subject to the official ethics and conflict of interest standards of those codes. Section 19-524t(f), General Statutes.

In summary, because the Connecticut Resources Recovery Authority is a political subdivision of the State independent of the State Government, its members are not subject to the financial disclosure provisions of the Code of Ethics for Public Official, Chapter 10, Part I, and those who attempt to influence the Authority's actions are not lobbying, as defined in Chapter 10, Part II, General Statutes.

By order of the Commission,

Thomas J. Lynch

Rev. Thomas J. Lynch
Chairman

Dated May 9, 1979.