

CONNECTICUT STATE ETHICS COMMISSION
30 TRINITY STREET
HARTFORD, CONNECTICUT 06115



Rev. Thomas J. Lynch, *Chairman*
George S. Writer, Jr., *Vice-Chairman*
~~James F. English~~
Sheila M. Hennessey
John M. Lupton
Robert W. MacGregor
~~Charles M. Rocco~~

ADVISORY OPINION NUMBER 79-13

Possible Conflicts When a Director of a Professional Association is a Member of a Board Regulating the Profession

A public accountant who is a member of the State Board of Accountancy has asked whether his membership on the Board would prevent him from serving concurrently as a director of The Connecticut Association of Public Accountants, Inc.

The establishment in the Department of Consumer Protection of the State Board of Accountancy and the responsibilities of the Board are set forth in Chapter 389, General Statutes. Its members are appointed by the Governor. Section 20-279, General Statutes. At least one member must be a public accountant. Ibid. With limited exceptions, in Connecticut no person may practice as a certified public accountant without a certificate from the Board, no person may practice as a public accountant without an authority from the Board, and no such persons may practice unless they are registered with the Board. Section 20-281, id. The Board helps to develop regulations concerning the professional conduct and the continuing education of persons subject to its jurisdiction. Section 20-280, id. It provides for the examination of applicants for certificates as certified public accountants. Section 20-282, id. The Board is charged with maintaining the standards of the accounting profession; it has the power to suspend or revoke the certificate, authority, or registration of a person who is found to have breached the professional standards administered by the Board. Section 20-286, id.

The manner of appointment to the Board, and the State powers the Board exercises, establish that its members are public officials as defined in the Code of Ethics for Public Officials. Section 1-79(j), General Statutes. As such, a member is subject to that Code, including sections 1-84 through 1-86, General Statutes.

Persons licensed to practice by the State Board of Accountancy are eligible for membership in the Connecticut Association of Public Accountants. The Association's constitution states that it is basically an educational organization, the purposes of which include furthering the ethical and educational standards of the accounting profession in order to protect the integrity of the profession and its reputation among the general public, and to promote the general welfare of the Association's members and the accounting profession as a whole. Its by-laws contain Rules of Professional Conduct which are not unlike the Code of Professional Conduct adopted by the State Board of Accountancy in sections 20-280-15a through 20-280-15c, ---

Regulations of Connecticut State Agencies. Duties of the Association's directors include service on the Association's Executive Committee, which manages the Association. Additionally, the Executive Committee, acting as a board of review, considers all findings of the Grievance Committee concerning violation by Association members of the by-laws, including the Rules of Professional Conduct, or other conduct discreditable to the accounting profession. It has the power to enforce penalties and to suspend or expel from the Association members found guilty of such violations.

Those whose profession is accounting must appear before the Board of Accountancy to obtain a license and registration essential to their ability to practice their profession, and to have considered charges against them in a hearing which could result in their being prohibited from practicing their profession. Some must be examined by the Board in order to obtain a professional certificate. There may be an appearance of a possible conflict of interest if a member of a professional society presents himself before the Board to request favorable action on some matter, when one or more Board members belong to the same professional society. The possibilities of a conflict are slight, however. The ties among members of the professional association are unlikely to be so firm that they would influence a Board member to violate his oath, taken in compliance with section 20-279, General Statutes, to perform his duties faithfully.

The General Assembly directed that the majority of the Board members be skilled in accounting: certified public accountants or public accountants. Most of them are members of professional associations. Thus, the possibility of a charge of cronyism is almost built into the statute. On the other hand, only those with a reputation for rectitude, professional competence, and respect for ethical standards should be appointed to the Board. A principal assurance that a candidate has these necessary qualities would be his affiliation with a professional society which requires of its members high standards of education, skill, and moral values.

Membership in a professional association alone, therefore, does not seem to create a disqualification for membership on the State Board of Accountancy, because of the possibility of a conflict of interest grounded on bias, prejudice, or potential cronyism. In fact, the General Assembly has created a Board on which the majority of the members are likely to belong to one of the same professional associations as do those who appear before them.

A potential conflict of interest which public officials must avoid is having their independence of judgment impaired by other employment. Section 1-84(b), General Statutes. While a directorship in the Association may not be "employment" within the meaning of that section, the independence of judgment of a public official

still must not appear to be hobbled as a result of other activity. The Connecticut Association of Public Accountants and the State Board of Accountancy at times will have to take positions on the same basic issues. A public official establishing policy for the Board should not be involved in setting policy on the same issue and carrying it out for the Association. Particularly if the Association were to take a stand on an issue first, one of its directors could be accused of a lack of independent judgment when the Board addressed the issue. Since the Board and the Association have so many common interests, the technique of excusing oneself from acting on a matter (as is done under section 1-86, General Statutes, in the case of a financial conflict of interest) is not a practical solution. It could deprive the Board too often of the contribution of one of its members. Therefore, a Board member should not at the same time be an officer or director of the Association, to avoid even an appearance of a conflict of interest. Membership in the Association, however, is acceptable for a member of the Board.

By order of the Commission,

Thomas J. Lynch

Rev. Thomas J. Lynch
Chairman

Dated May 9, 1979

