

CONNECTICUT STATE ETHICS COMMISSION
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ADVISORY OPINION NUMBER 79-20

Robert W. MacGregor

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Rev. Samuel White

Holding Two Positions with the State

An attorney who is a member of the Personnel Appeals Board represents the Commissioner of Human Resources from time to time in legal actions to establish the paternity of children who receive public assistance. He has asked whether, assuming he does not sit as a Board member on any case involving the Department of Human Resources, there is any problem or conflict generated by his holding the two positions related to the State.

Members are appointed to the Personnel Appeals Board by the Governor for a six year term; in lieu of expenses, each is paid \$50 for every day of service. Subsection 5-201(a), General Statutes. Among the powers of members serving on one of the Board's hearing panels is the power to issue and enforce subpoenas. Section 5-205, *id.* Upon sustaining an appeal, members of the Board can direct appropriate remedial action (subsection 5-202(c), *id.*) with which the appointing authority of the aggrieved State employee must comply (subsection 5-202(e), *id.*). Appointed by the Governor and authorized to exercise the power of the State, members are public officials for purposes of the Code of Ethics for Public Officials. Subsection 1-79(j), *id.*

When the Commissioner of Human Resources institutes paternity actions pursuant to Chapter 815y, General Statutes, private attorneys are utilized. Subsection 17-82e-6. 3, Department of Social Services Regulations. Any member of the Connecticut Bar may have his name placed on the list of attorneys maintained by each district office of the Department of Human Resources. Names are selected in rotation by the Department from a local list for choice by a mother who has no attorney or for appointment by the Department if the mother does not choose one. Such an attorney may be paid as much as \$250 for trial of an action involving one child born out of wedlock, and more if the trial involves additional children of the same parties. Public Assistance Manual, Vol. 1, Supp. IV-D, Index No. 404.8. The agreement between the Department of Human Resources and the private attorney to handle a paternity action involves a contract, with the attorney's relation to the State that of an independent contractor.

Nothing in the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes, including the actual code of ethics (section 1-84) within the Code, forbids the public official here from contracting with the State to provide services in a field unrelated to his public office. Prior to the 1979 legislative session, there might have been a question about violation of subsection 1-84(i), General Statutes, if

the contract with the State which the official entered into for his services was valued at one hundred dollars or more, because it is not certain that the method for selecting attorneys meets the subsection 1-84(i) exception based on "an open and public process". (Other exceptions in that subsection do not apply, for the contract is not one of employment as a State employee but as an independent contractor, and appointment of the attorney is by the Department of Human Resources rather than by a court.) Public Act Number 79-493, however, added to subsection 1-84(i) the following: "[n]othing in this subsection shall be construed as applying to any public official who is appointed as a member of the executive branch and who receives no compensation other than reimbursement for actual or necessary expenses, or both, incurred in the performance of his duties except if the public official has authority or control over the subject matter of the contract". Section 7, Public Act Number 79-493. A member of the Personnel Appeals Board receiving compensation in lieu of expenses for each day of service meets the standard of the exception added to subsection 1-84(i), General Statutes, by section 7, above. Thus, the only objection in the Code of Ethics for Public Officials which might possibly be unavoidable has not applied to the public official here since Public Act Number 79-493 was signed into law on June 21, 1979. Compliance with the other provisions of the Code of Ethics for Public Officials should pose no problem for a member of the Personnel Appeals Board representing the State from time to time as an attorney in paternity actions.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated July 20, 1979