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ADVISORY OPINION NUMBER 79-23 (amended)

Application of Subsection 1-84(d), General Statutes, to
Members of the Department of Education Arbitration Panel

The Ethics Commission has been asked whether members of the Arbitration Panel established in the Department of Education by section 10-153f, General Statutes, as amended by Public Act No. 79-405, are subject to the provisions of subsection 1-84(d), General Statutes, as amended by section 5, Public Act No. 79-493.

The Panel is utilized in the arbitration of teacher contract disputes pursuant to sections 10-153a through 10-153f, General Statutes. Persons to represent the interests of local and regional boards of education on the Panel are nominated by the boards; persons to represent the interests of the public are nominated by the State Board of Education; persons to represent the interests of the exclusive bargaining representatives of certified employees are nominated by the bargaining representatives. Subsection 10-153f(a), General Statutes, as amended. Five members from each list of nominees are appointed to the Panel by the Governor, with the advice and consent of the General Assembly, for a term concurrent with that of the Governor. Ibid. They may be removed for good cause. Ibid. Members serve without compensation, but for each day a member is engaged in the arbitration of a dispute he or she receives a per diem fee, determined on the prevailing rate for such services. Subsections 10-153f(a), 10-153f(c)(1), as amended. The fifteen-member Arbitration Panel does not take action as a single body. It is a resource. From it are selected three members (or one member if the parties to a dispute agree) to arbitrate a teacher contract dispute. Subsections 10-153f(c)(1), id., as amended. The three-member panel or the single arbitrator has the same powers and duties as are given the State Board of Labor Relations by section 31-108, General Statutes, which include the power to administer oaths and to issue subpoenas requiring the attendance of witnesses. Subsection 10-153f(d), id., as amended. The parties to the dispute are granted a hearing after notice. Subsection 10-153f(c)(2), as amended. The decision of the arbitrator or arbitrators is binding on the parties. Section 10-153f(c)(4), id., as amended. The decision is subject to judicial review. Section 10-153f(c)(7), id., as amended.

The manner of their appointment and the powers they may exercise once they are assigned to arbitrate a dispute make members of the Arbitration Panel "public officials" for purposes of subsection 1-84(d), supra. Subsections 1-79(j), 1-79(g), id. Subsection

1-84(d) provides that certain public officials may not represent others for compensation before the State agencies listed in the subsection. Section 5 of Public Act No. 79-493 has raised the question posed here by adding to subsection 1-84(d) the following: "[n]othing in this subsection shall be construed as applying to any member of an advisory board or commission who receives no compensation other than a flat per diem rate or reimbursement for actual or necessary expenses, or both, incurred in the performance of his duties".

Members of the Arbitration Panel receive no compensation other than per diem and, possibly, reimbursement for actual or necessary expenses. Assuming that the per diem is paid at a "flat" rate -- that is, it is unvarying, paid at the same fixed rate to every panel member -- subsection 1-84(d) as amended does not apply to members if the Arbitration Panel is an "advisory board or commission" within the meaning of the amendment.

The word "advisory" in this context creates some confusion. The purpose of the amendment to subsection 1-84(d) was to exempt members of certain boards and commissions from the restrictions of that subsection. Members of "advisory boards" as defined in subsection 1-79(g), supra, were not subject to subsection 1-84(d) in the first place. By its terms that subsection applied only to public officials, State employees, and their employees. Members of subsection 1-79(g) advisory boards, as such, are not public officials (subsection 1-79(j), General Statutes), nor are they employed by the State under an employment contract so as to be considered State employees as defined in subsection 1-79(k), General Statutes. Not subject to subsection 1-84(d) anyway, there was no need for members of subsection 1-79(g) advisory boards to be exempted from the subsection.

Therefore, "advisory board" in subsection 1-84(d), as added by section 5 of Public Act No. 79-493, must have some meaning different than it has elsewhere in the Code of Ethics for Public Officials. Otherwise, part of section 5 is meaningless. There is a presumption that the legislature does not intend to enact useless legislation. Bergner v. State, 144 Conn. 282, 287 (1957).

When construing a statutory provision which is somewhat obscure, one should look beyond the literal words to the objects which the provision seeks to accomplish, the purpose to be served, and all relevant circumstances. Bergner v. State, supra, at 288; Landry v. Personnel Appeal Board, 138 Conn. 445, 447 (1952); Merchants Bank & Trust Co. v. Pettison, 112 Conn. 652, 655 (1931). Prior to the subsection's amendment the State Ethics Commission had ruled that subsection 1-84(d), General Statutes, prohibited a member of the Elections Commission (Advisory Opinion No. 78-21, 40 Conn. L.J. No. 13, p. 11), of the Public Health Council (Advisory

Opinion No. 78-22, 40 Conn. L.J. No. 13, p. 12), of the Judicial Review Council (Advisory Opinion No. 78-24, 40 Conn. L.J. No. 21, p. 12), and of the Connecticut Commission on the Arts (Advisory Opinion No. 79-3, 40 Conn. L.J. No. 30, p. 19) from representing others, for compensation, before the State agencies listed in the subsection. Members of the public official's firm were similarly barred. In most cases, a member who was advised that his membership rendered him and his firm subject to the restrictions of subsection 1-84(d) resigned his office. Finding qualified replacements was made difficult, particularly when the prospective nominee was an attorney, by the impact which subsection 1-84(d) had upon the nominee and the members of his or her firm. Subsection 1-84(d) was a significant obstacle in finding competent people to operate, without compensation and as a public service, various boards and commissions useful or necessary to carrying out State functions, despite the fact that members of the boards and commissions involved, as members, had no capability to exercise the undue influence which subsection 1-84(d) was enacted to prevent.

To resolve this problem the General Assembly enacted section 5 of Public Act No. 79-493. It would frustrate the legislature's purpose if the section were to exempt from subsection 1-84(d), General Statutes, only those who were not subject to it. A reasonable construction of "advisory boards and commissions", which does not thwart the purpose of the amendment, is that the boards and commissions referred to in section 5, *supra*, are those whose members, or some of them, receive "no compensation other than a flat per diem rate or reimbursement for actual or necessary expenses, or both, incurred in the performance of [their] duties".

So construed, the application of the amendment depends upon the question of whether the Arbitration Panel is such a board or commission.

"Boards and commissions" and "boards or commissions" in Connecticut statutes are used essentially synonymously with "agencies", at least State agencies other than executive departments. Compare sections 2, 8, and 16 with sections 10, 13, and 35 of Public Act 77-614, an Act Concerning the Reorganization of the Executive Branch of State Government. See also the Uniform Administrative Procedure Act, where "agency" is defined, in part, as a "state board, commission, department, office". Section 4-166(1), General Statutes. "Board or commission" appears to have been employed in section 5 of Public Act No. 79-493 as a shorthand term for a State agency of any description--board, commission, office, council, etc.--including a panel.

The purpose of section 5 of Public Act No. 79-493 was to remove from the restrictions of subsection 1-84(d) those public-spirited citizens who serve without compensation on various special-purpose State agencies, on the basis that a part-time uncompensated member of such an agency does not, as a member, have the capability of unduly

influencing the agencies listed in subsection 1-84(d), General Statutes. The public officials who serve as members of the State agency known as the Department of Education Arbitration Panel receive no compensation, merely a per diem fee. There is no policy reason why Panel members should be subject to the restrictions of subsection 1-84(d), General Statutes, and the language of section 5, Public Act No. 79-493 permits including Panel members within its exemption.

Assuming that the per diem received by the members is a flat rate fee, all members of the Department of Education Arbitration Panel, regardless of what interests they represent, are not, as members, subject to the provisions of subsection 1-84(d), General Statutes.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Amended April 14, 1981