



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 79-29

Member of the General Assembly as Town Attorney

A member of the General Assembly has asked the State Ethics Commission whether he may serve as a town attorney at the same time as he holds his legislative office.

The charter of the town in question provides that the town attorney holds office at the pleasure of the town council. His duties are the usual ones assigned a town attorney, including acting as chief legal advisor of all offices, departments, and agencies, and of all officers and employees in matters relating to their official powers and duties. He represents the town in all legal proceedings, and performs other services required by the General Statutes and the town's charter and ordinances. The town attorney is assisted in his duties by two other members of the Connecticut bar. The legislator states that "[p]otential conflicts faced by the town attorney are resolved by delegating total responsibility of the matter giving rise to the conflict to one or both of his assistants."

Legislators are public officials for the purposes of the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes, and therefore subject to the Code. Section 1-79(j), General Statutes. A number of Code provisions apply to the situation of a legislator who is a town attorney, but there appear to be none with which a legislator cannot comply so long as he is aware of them. The legislator here has already demonstrated his sensitivity to the requirement to conform to the Code by asking the Ethics Commission whether his "employment ... or professional activity ... is in substantial conflict with the proper discharge of his duties ... in the public interest and of his responsibilities as prescribed by the laws of this state" Subsection 1-84(a), *id.* There appears to be no substantial conflict, as that term is defined in section 1-85, General Statutes, in this case. Should a conflict or the appearance of one arise (for example the town charter provides that his compensation as town attorney is set by the council and thus conceivably could be increased because he assisted the town through his office in the General Assembly concerning legislation in which the town has an interest, section 1-86, General Statutes, provides a mechanism for avoiding the conflict or showing that none exists. Acceptance of the position of town attorney need not impair his independence of judgment, and he can avoid the disclosure

of confidential information gained as a legislator. Subsections 1-84(b) and 1-84(c), General Statutes. He cannot represent his town before certain State agencies, and neither should his assistants. Subsection 1-84(d), *id.* While the law office of a town attorney may not be the "partnership, association, or ... professional corporation" named in subsection 1-84(d), above, most of the same policy considerations which bar all members of a public official's law firm from representing others before the listed agencies apply in the case of the lawyers in a town attorney's office. The town will have to make other arrangements for representation should it be involved in proceedings before the agencies listed in subsection 1-84(d), General Statutes.

As has been noted, subsection 1-84(a) and section 1-85, General Statutes, can bar a legislator from voting, deliberating, or taking other official action on some legislation supported or opposed by the town of which he is the attorney. Section 2-16 General Statutes, which permits a member of the General Assembly to appear before it or any of its bodies on behalf of the town which he represents does not supersede section 1-84(a) in this case. Section 2-16, above, refers to a legislator representing a town in its capacity as one of his constituents, not to the representation of a town for which he is the paid attorney. Section 1-102, General Statutes would control the town attorney who is also a legislator, and it imposes a prohibition on the town as well.

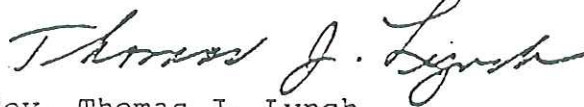
Since one of the positions which the legislator will fill is a municipal one and the other is at the State level, the separation of powers principles embodied in Article III, section II of the Connecticut Constitution and section 2-5, General Statutes, are not applicable.

In addition to the constitutional and statutory provisions which must be considered, Connecticut common law prohibits the holding of two offices which are incompatible. State ex rel. Schenck v. Barrett, 121 Conn. 237, 242-243 (1936); Ethics Commission Advisory Opinion Number 78-29, 40 Conn. L.J. No. 26, p. 11. Assuming that it is necessary under the common law that the two positions be "offices", a legislator's position certainly is one. Subsection 1-79(b) and 1-79(j), General Statutes. The town attorney appears to hold an "office" also, as defined in Connecticut. See Kelly v. Bridgeport, 111 Conn. 667, 670-671 (1930). The town attorney's position is established in the town charter. Serving at the pleasure of the creating power seems to be the equivalent of a fixed tenure of office. Compare p. 670 and p. 671 of Kelly v. Bridgeport, *supra*. Town attorneys normally have the power to exercise some of the sovereign functions of municipal government. Bredice v. Norwalk, 152 Conn. 287, 293-294 (1964). Looking at the duties of the two offices, there does not appear to be in their character and nature "contrariness and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other." State ex rel. Schenck v. Barrett, *supra*, at 242. The two offices under consideration here are not incompatible and one person may, therefore, under the common law hold both. See also Reilly v. Ozzard, 33 N.J. 529, 166 A.

2d 360 (1960).

In summary, a member of the General Assembly may hold the position of town attorney so long as neither he nor any of the attorneys in the town attorney's office (or in the legislator's law firm, if any) represents the town before the agencies listed in subsection 1-84(d), General Statutes.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated December 6, 1979

