



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 80-17

Staff Member of Regional Center of Mentally Retarded as Licensee of Home for Mentally Retarded

The superintendent of a regional center operated by the Department of Mental Retardation has asked whether an employee of the regional center who holds a non-managerial, non-policy position may, with propriety, operate a community training home. A "community training home" is a "small family dwelling unit in which a person ... is licensed by the Department of Mental Retardation to provide residential services for four or less people with mental retardation." Subsection 19-569h-1(b), Regulations of Connecticut State Agencies.

The community training home would have to be licensed before it could commence operations. Subsection 19-569h(c), section 19-574, General Statutes. The Department of Mental Retardation has delegated its basic responsibility for licensing community training homes to designated staff members of the regional centers and training schools, with the Department at the most reviewing the applications. Section 19-569h-4, subsections 19-569h-1(g), 19-569h-5(a), Regulations of Connecticut State Agencies. Licenses are renewed annually; renewal may be denied and licenses may be suspended, revoked, or limited for failure to comply with standards imposed by the Department of Mental Retardation. Strict standards for community training homes and their operators were issued less than a year ago. See sections 19-569h-2 and 19-569h-3, *id.* A staff member of the regional center would be at the heart of any procedure affecting the community training home's license. Section 19-574, General Statutes; subsection 19-569h-5(b), section 19-569h-8, Regulations of Connecticut State Agencies. Residents would be placed in the community training home by the superintendent of the regional center at which the operator of the home works or by a staff member of the regional center designated to be the Department of Mental Retardation representative. Section 19-569h, General Statutes; section 19-569h-6, Regulations of Connecticut State Agencies.

The operation of the foregoing statutory and regulatory provisions would mean, in the case at hand, that a community training home run by a member of the regional center staff would be licensed by a fellow staff member. Residents would be placed in the home by a regional center staff member. The supervision and monitoring of the community training center and its residents mandated by section 19-570, General Statutes to determine, among other things, whether persons under the supervision of the Commissioner of Mental Retardation are being deprived of the rights (section 19-575a, General Statutes; sections 19-575a-1 through 19-575-6, Regulations of Connecticut State Agencies) to which they are entitled, and required to decide whether a license should be continued or renewed, would be carried out by fellow staff members. Further limiting the residents' contacts with persons outside the regional center, many of the programs in which the residents would participate are

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provided by, and conducted at, the regional center. The situation invites conflicts of interest, likely to be reflected in a lowering of the quality of the care afforded residents of the community training home.

There are some redeeming features to what might appear to be insulation of the residents of the community training home from any contact other than with the staff members of the regional center at which the home operator works. The operator very likely has demonstrated sympathy for the mentally retarded, which not all people have. The attitude of the operator toward the mentally retarded can be observed daily by staff members of the regional center rather than periodically and briefly during monitoring visits to the home. The operator may have established a relationship with a client at the regional center, and an understanding of the client's needs, which makes the operator a particularly capable and appropriate person to operate the home to which the client is assigned as a resident.

Additionally, there may be some observation and monitoring of the condition and care of a resident by persons other than co-workers of the operator. Some support services provided residents by the regional center may be furnished by other than the regional center staff. Volunteers participate in many of the regional center programs in which a resident might participate. There are recreational and vocational training programs for the mentally retarded run by nonprofit organizations and educational programs operated by the State which might give others besides regional center staff members an opportunity to observe the resident and come to some judgment as to how the resident was being cared for in the community training home.

Nonetheless, observation of a resident of a community training home other than by persons who work at the same regional center as the home's operator is not certain. Furthermore, licensing and supervision of homes, and monitoring of the care and condition of its residents, by fellow workers of the licensee is unlikely to be what the General Assembly had in mind when it passed the various legislative provisions intended to protect the rights and the conditions of the mentally retarded. Only recently a person against whom proceedings for involuntary commitment were brought was given significant rights including the right to counsel, counsel of choice without cost if the person could not pay, and the right to an independent diagnostic and evaluative examination. Section 19-569d, General Statutes, as amended by section 1, Public Act No. 79-583 and section 2, Public Act No. 80-311. The latter Public Act also has enlarged the rights of persons under the supervision of the Commissioner of Mental Retardation and increased the scope of the Commissioner's supervisory responsibilities.

The possible conflicts of interest in the situation presented are in part related to the position an operator or potential operator holds at the regional center. For example, if a potential operator were the staff member designated to be the Department of Mental Retardation representative for licensing there would be a substantial

conflict of interest which could not be avoided. Subsection 1-84(a), section 1-85, General Statutes. Operating a community training home is a way of supplementing income, as well as of helping the retarded. While the compensation paid a licensee to care for a resident is so modest that most licensees must have a special commitment to and concern for the mentally retarded, it is still significant. Therefore, a person who would be required to license his own community training home, or who prepared for the superintendent of the regional center recommendations as to the persons to be placed in his home, would be engaging in business in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed by State law, in violation of subsection 1-84(a), General Statutes. Cf. State Ethics Commission Advisory Opinions Numbers 79-18, 41 Conn. L.J. No. 1, p. 22; 80-7, 41 Conn. L.J. No. 37, p. 21; State Ethics Commission Declaratory Ruling to Members of the Connecticut Real Estate Commission Staff, June 24, 1980. If the operator were one of several who supervised homes and their operators, there would also be a substantial conflict since the operator should not monitor either his own home or homes in competition with his.

On the other hand, there are undoubtedly positions at the regional center in which there would be no substantial conflicts (section 1-85, above) and no opportunity to use confidential information gained in the course of one's employment (subsection 1-84(c), General Statutes). If the regional center staff member avoided use of his office to obtain financial gain (subsection 1-84(c), General Statutes) and offering or giving something of value, through his position or otherwise, to a person for action favoring him (subsection 1-84(f), General Statutes), and if management of the community training home does not result in contravention of the provision on contracts between the State and a State employee (subsection 1-84(i), General Statutes), an employee of a regional Center could operate a community training home without violating the Code of Ethics for Public Officials and State Employees, Chapter 10, Part I, General Statutes. The procedures of section 1-86 could be utilized in the case of potential conflicts of interest.

While the possible conflicts of interests inherent in the situation described can be avoided, if they are not they will be difficult to uncover when essentially the only persons on the scene are those likely to be involved in the conflicts. The Ethics Commission assumes that the Commissioner of Mental Retardation will ensure that the State's responsibility to protect the rights of the inhabitants of the community training home are fulfilled. The situation of a community training home in the region being operated by a member of the regional center staff is rather exceptional. If the Commissioner bears the special circumstances in mind when he discharges the supervising duties assigned him, the public can be reasonably confident that any violations of the Code of Ethics for Public Officials and State Employees will be prevented, or, at the least, uncovered and corrected.

By order of the Commission

*Thomas J. Lynch*

Rev. Thomas J. Lynch, Chairman

Dated October 15, 1980

