



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 80-20

Conflicts of Interests with a Public official's Duties

The Ethics Commission has been asked to advise whether a person who serves as a member of the State Alcohol and Drug Abuse Commission may also serve on the board of directors of a community-based program which receives all or part of its funding from the Commission. The member would abstain from participating in official Commission action affecting significantly the program with which he is affiliated as a director.

The State Alcohol and Drug Abuse Commission has been established by section 17-155ff, General Statutes. It is assigned to the Department of Mental Health, for administrative purposes only. Section 17-155ff, General Statutes. The Commission has 22 members: eight (including the Commissioner of Mental Health and the Commissioner of Correction) serving ex officio represent State agencies with a particular interest in alcohol and drug abuse problems; four are appointed by the legislative leadership; and ten are appointed by the Governor, five to be knowledgeable in the prevention and treatment of alcohol abuse, five knowledgeable in the prevention and treatment of drug abuse. Id. Members appointed by the Governor serve for three years and are to be selected to reflect the geographic balance of the State, insofar as possible. Id.

Basic responsibilities of the Commission include establishing the State plans for drug and alcohol abuse education, prevention, treatment, and rehabilitation, and then funding and monitoring programs which help implement the plans. Section 17-155gg, General Statutes. Assisting, by their advice, the Commission in developing the State plans and in allocating funding to programs are two groups -- the Alcohol Advisory Council and the Drug Advisory Council, established under section 17-155m and section 17-155jj, respectively, General Statutes. Among programs funded by the Commission are some administered by the Department of Mental Health, others by the Department of Correction, and still others by organizations on whose board of directors sit one or more of the members of the Commission. The Commission also coordinates all activities in the State relating to alcohol and drug abuse problems, including coordination of such activities among State departments.

In addition to exercising State powers in carrying out some of their duties (see sections 17-155gg, 17-155hh, General Statutes), the Commission members have authority to expend significant amounts of State funds; almost half of the Commission's budget of over \$10

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million for the current fiscal year comes from State appropriations, the remainder being Federal funds. By virtue of the manner of their appointment and of the powers granted them, the members appointed by the Governor and by the legislative leadership are public officials, section 1-79(j), General Statutes, and therefore subject to the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes. A community-based agency of which a member is a director is, under the Code, a "business with which he is associated". Section 1-79(a), id.

The Code of Ethics for Public Officials contains a number of provisions of possible applicability to the situation of an Alcohol and Drug Abuse Commission member being associated with a community-based agency which receives part or all of its funds from the Commission. Some apply whether or not the member receives pay for serving as a director of the agency. Others apply only if the member is paid by, and therefore "employed" by, the agency. A major and controlling problem is the clear opportunity for the improper use of office or of confidential information gained in office for the financial gain of the community-based agency which is applying to and receiving grants from the Commission. The situation presents such an invitation to violate subsection 1-84(c), General Statutes that the Commission member should not serve on both the Commission and the agency. This is not a problem which disappears if no contracts between the State and the community-based agency valued at \$100 or more are involved (subsection 1-84(i), General Statutes) or if the member simply abstains from official action when an application for funds from the agency on whose board he sits is under consideration. The Commission provides funds from a limited pot. Other agencies competing for the same funds would have reason to be apprehensive about the objectivity of a person who, if he authorizes funds for them, is depleting the monies available to another agency for the successful operation of which the Commission member is in part responsible. As the Ethics Commission has said in a very similar situation, "dealing on both sides of a transaction gives the appearance of the most fundamental kind of a conflict of interest. No matter how honest or selfless one's motives may be, it is impossible to maintain an appearance of fairness and impartiality in such a situation, or to convince the public that all public decisions are being made for the public good." Ethics Commission Advisory Opinion No. 79-18, 41 Conn. L.J. No. 1, p. 22, 23; see also Ethics Commission Advisory Opinions No. 80-7, 41 Conn. L.J. 37, p. 21; 80-15, 42 Conn. L.J. No. 14, p. 10.

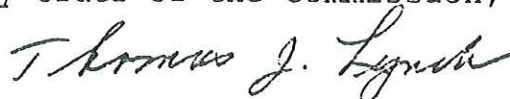
It will be noted that at least two other members of the Alcohol and Drug Abuse Commission -- the Commissioners of Correction and of Mental Health -- also manage agencies which receive funds from the Commission. The General Assembly specifically designated them to be Commission members, knowing that they head State agencies receiving funds from the body to which they were appointed. Many State boards and commissions are made up of a mixture of public members and those who are associated with the industry, business, or activity which is the subject matter of a board's or a commission's interest. Until recently, for example, it was not uncommon for a board regulating

a specialty in the health provider field to be made up entirely of members of that specialty, who thus were among the regulated. Now it is mandated that at least one third of the members of all State boards and commissions, with a few specific exceptions, be public members. Subsection 4-9a(b), General Statutes, which also defines a "public member". Other members may be specified to be selected from persons or groups with built-in conflicts of interests, as are the two commissioners on the Alcohol and Drug Abuse Commission. When the General Assembly provides for the appointment to a board or commission of someone in a position such that there is an inherent conflict of interest, it in effect grants that person a waiver of certain conflict-of-interest provisions of the Code of Ethics for Public Officials with which the public members of the same agency must conform. The expertise or other contribution made by the member with the conflict of interest no doubt is considered worth the risk of harm, which can be minimized when the conflict of interest is apparent.

There is no indication that any Commission member here who serves on the board of a community-based agency receiving funds from the Commission is other than a public member subject to all the ethical concepts contained in the Code of Ethics for Public Officials. The General Assembly normally makes it very clear when a commission or board member is to come from the business, industry, or other activity over which the board or commission has some authority. See, for example, the sections establishing the State Alcohol Advisory Council and the State Drug Advisory Council. Among other members associated with the control and treatment of alcohol abuse to be appointed to the former are "three persons representing community programs dealing with alcohol and intoxication". Section 17-155m, General Statutes. Among the members of the latter are to be "five representatives of community drug treatment programs". Section 17-155jj, id.

No such criteria apply to the members appointed by the Governor or the legislative leadership to the State Alcohol and Drug Abuse Commission. In their determination of how to expend the millions of dollars in the Commission's budget those members apparently are to be free of entanglement with agencies seeking funds from the Commission. The public and agencies seeking grants from the Commission should be able to be confident that the public members' decisions are based only on the public interest. Therefore, a member appointed to the State Alcohol and Drug Abuse Commission by the legislative leadership or the Governor should not also serve as a director of a community-based agency which seeks funds from the Commission. One position or the other should be abandoned.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated November 10, 1980

