



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 80-21

### Legal Services to the Connecticut Student Loan Foundation by a Member of the General Assembly

An attorney who has been providing legal services to the Connecticut Student Loan Foundation has been elected to the General Assembly. The services which the attorney has provided the Foundation are confined to collecting on defaulted student loans using standard commercial law procedures. He intends to accept no more cases from the Foundation. He would prefer to continue to completion action on the cases presently assigned to him upon which he has commenced work, provided this does not constitute a violation of the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes.

A member-elect of the General Assembly is a public official for purposes of the Code of Ethics. Subsection 1-79(j), General Statutes. Therefore, provisions of the Code applicable to a public official already govern the member-elect's conduct, as they will after he is sworn in to office.

The Connecticut Student Loan Foundation is a nonprofit corporation which has been established, under Chapter 180, General Statutes, to improve the opportunities for postsecondary education for Connecticut residents, and for others attending eligible institutions in the State. Section 10-358, General Statutes. The Foundation is authorized to make or guarantee loans to eligible students. Subsection 10-361(a), *id.* The student borrower pays interest at a relatively low rate because interest above a certain rate, and all interest accruing while the borrower is in school, is paid by the Federal Government. 45 C.F.R. Part 177, Subpart C; Foundation Regulations Article IX. A borrower need not start repaying the loan for his education until after he completes or quits the program for which the loan was made. 45 C.F.R. section 177.507; Foundation Regulations Article XI. Repayment is scheduled on terms favoring the borrower, and repayment can be deferred for a time under certain circumstances. 45 C.F.R. sections 177.507, 177.508; Foundation Regulations Articles XI, XII. The lender is guaranteed repayment of his loan in the case of the default, death, disability, or discharge in bankruptcy of the borrower. 45 C.F.R. sections 177.402, 177.405, 177.406; Foundation Regulations Article XIV. If the borrower defaults, first the lender and then the Foundation attempts collection. If those efforts are unavailing, the Foundation repays the lender and obtains reimbursement from the Federal Government. A requirement for the reimbursement in full by the Federal Government of funds paid lenders by the Foundation in the cause of defaulted loans is that the Foundation after reimbursement make all reasonable

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efforts to collect the loan. 45 C.F.R. sections 177.401(c)(3), 177.405(f)(1)(ii).

One of the methods used by the Foundation to pursue default collection is to retain attorneys throughout the State to attempt collection from defaulting borrowers in the area. The attorneys are selected by counsel to the Foundation. On a contingency fee basis they utilize standard procedures--demand letter, lawsuit, execution on judgment, etc. Funds collected by this method, less collection expenses, are remitted to the Federal Government. The public official in question is such an attorney. Except for the requirement that the attorney obtain Foundation approval before settling suits for less than the amount sued for, the attorney may pursue collection of defaulted loans using his best judgment, keeping the Foundation and its counsel informed. The Foundation could, if the results of the attorney's efforts were to be unsatisfactory, sever the relationship.

The Foundation receives a substantial appropriation from the State to help pay administrative costs but the great percentage of its administrative and other costs is met by interest income and Federal funds. The contingency fees paid the attorney in question come from funds, gained through successful collection efforts, which after deduction of collection costs are remitted to the Federal Government.

The attorney in question probably is an independent contractor, rather than an employee of the Foundation, in that the Foundation seems to look only for results from the attorney and has not retained the right to control the manner in which he carries out his duties. Cf. Spring v. Constantino, 163 Conn. 563, 573-576 (1975). Working as an independent contractor on a contingency fee basis nonetheless should be considered "employment" as that term is used in subsections 1-84(a) through 1-84(c), General Statutes. Ethics Commission Advisory Opinion No. 80-15, 42 Conn. L.J. No. 14, p. 10. The relationship between the General Assembly and the Connecticut Student Loan Foundation is so remote and intermittent, however, that there appears to be no likelihood of the public official's outside employment causing him to breach the provisions of subsections 1-84(a) through 1-86(c), General Statutes. Paid on a contingency basis from funds he collects from defaulting student borrowers, it is hard to conceive how he could have a substantial conflict of interest as the term is defined in section 1-85, General Statutes. The two positions do not seem to allow improper use of office or of confidential information gained as a legislator, or even suggest that his independence of judgment as a General Assembly member could be impaired by his employment as an attorney for the Foundation. This is particularly true when it is considered that he will accept no more cases from the Foundation, merely complete the cases assigned him prior to his election. Further, there is

no violation of subsection 1-84(i), General Statutes, concerning contracts by a public official with the State valued at \$100 or more. The attorney was not a public official when he agreed to serve as a collection attorney for the Foundation. If by chance a potential conflict of interest based on the legislator's outside employment for the Foundation arises, section 1-86, General Statutes provides methods for avoiding a violation of the Code.

The nature and remoteness of the relationship between the General Assembly and the Foundation, and the ability to avoid potential conflicts of interest, leads to the conclusion that the two positions also are not incompatible under the common law doctrine of incompatibility. See State ex rel. Schenck v. Barrett, 121 Conn. 237, 242-243 (1936). Although the General Assembly created the Foundation and appropriates funds to pay a portion of the Foundation's administrative expenses each year, a member of the General Assembly does not have the supervisory or review role over an attorney collecting on defaulted loans guaranteed by the Foundation which could make the functions of the two positions inconsistent. The character of, and relationship between, the office of legislator and the position of an attorney who receives his compensation from funds collected from defaulting borrowers, any funds remaining after collection expense going to the Federal Government, is so tenuous as to be essentially non-existent.

There appears, therefore, to be no problem under the Code of Ethics for Public Officials with a member-elect of the General Assembly providing collection services to the Connecticut Student Loan Foundation when he confines his services to completing action on collection cases which he accepted before his election to the legislature.

By order of the Commission,



Rev. Thomas J. Lynch  
Chairman

Dated December 3, 1980

