



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 80-2

Application of the Code of Ethics for Public Officials to the Consumers Advisory Council

The Consumers Advisory Council has asked the Ethics Commission two questions concerning the application of the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes) to the Council: first, are members of the Council required to submit annual Statements of Financial Interest pursuant to section 1-83, General Statutes; and second, is the Consumers Advisory Council a "legislative or state regulatory agency" within the meaning of those terms in section 1-86, General Statutes?

The Consumers Advisory Council has been established to advise the Governor concerning consumers' interests, to recommend to the Governor and the General Assembly legislation protecting and promoting consumers' interests, to conduct educational programs on consumer matters, and to represent consumers' interests before various governmental bodies. Section 19-170b, General Statutes. Its members, six of whom are public members and one a member of the Attorney General's Office, are appointed by the Governor. Ibid. It receives a small amount of appropriated funds to allow it to perform its functions. Under guidelines adopted by the Council, no appropriated funds may be obligated except upon the vote of a majority of the members. The Council is within the Department of Consumer Protection, for administrative purposes only. Ibid. Its members receive no compensation for their services, but are allowed reimbursement for necessary expenses. Ibid.

Because of the "Advisory" in the Council's title and the nature of the Council's duties, an initial question is whether Council members are public officials (subsection 1-79(j), General Statutes), or members of an advisory board (subsection 1-79(g), General Statutes) who are excluded from the definition of "public official" and therefore are not subject to any of the provisions of the Code. "'Member of an advisory board' means any individual (1) appointed by a public official as an advisor or consultant or member of a committee, commission or council established to advise, recommend or consult with a public official or branch of government or committee thereof, (2) who receives no public funds other than a flat per diem rate or reimbursement for his actual and necessary expenses incurred in the performance of his official duties and (3) who has no authority to expend any public funds or to exercise the power of the state." Subsection 1-79(g), above. Council members are appointed by a public official, the Governor, and receive no public funds other than per diem for actual and necessary expenses incurred in the performance of their official duties. They do not meet the third criterion for being a member of an advisory board, however. Collectively they can expend public funds. Insofar as public funds are concerned, the purpose of subsection 1-79(g)(3) is not to separate State agencies which allow one member to expend public funds from those which require two or

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more members to authorize expenditures. It is to separate State agencies to which public funds are entrusted for expenditure from those to which no public funds are entrusted except to reimburse the expenses of its members. An agency such as the latter, with no public funds to expend and no authority to exercise State power, would be purely advisory and there would be no need for the Code of Ethics for Public Officials to apply to its members. If one member, by himself or with others, can expend public funds, or exercise the power of the State, he should be subject to the Code. Under any other interpretation, members of an agency authorized to expend substantial State funds or to exercise significant State power could remove themselves from the controls of the Code of Ethics for Public Officials simply by adopting an internal rule, such as the Council's guideline, restricting the authority of a single member.

Section 1-83(a), General Statutes, as amended, provides in pertinent part that "[a]ll... commissioners, deputy commissioners,... and such members of the executive department as the Governor shall require, shall file... a statement of financial interests for the preceding calendar year... in any year in which he holds such a position." The Council's question arises because members of State boards and commissions often are considered to be "commissioners".

For a number of reasons, the Ethics Commission has concluded that "commissioners" and "deputy commissioners" in section 1-83(a), above, should be interpreted to mean heads and deputy heads of departments in the Executive Branch of State Government. The Statement of Financial Interests submitted in accordance with section 1-83(a), above, is the successor to the statement of economic interests filed with the Joint Legislative Ethics Committee pursuant to former section 1-76, General Statutes. Despite the apparently broad coverage of the latter section, the only officials in the Executive Branch, other than statewide elected officers, who were required to file statements of economic interests were heads of executive departments and their deputies. Cf. section 1-80a, General Statutes. The legislative history of the statute which enacted section 1-83(a), above, gives no indication of dissatisfaction with past coverage or an intent for the General Assembly to designate specific officials in the Executive Branch, beyond those already filing, to submit the new disclosure statement. The use of the words "commissioners" and "deputy commissioners" (emphasis added) in section 1-83(a) supports this inference. Further, "commissioner" in Connecticut statutes can mean heads of departments and their deputies. The Index to the General Statutes, under "State Appointive Officers: Commissioner: Defined" refers to section 4-12a. That section speaks of department heads and their deputies. Finally, the obvious purpose of section 1-83(a) is to prevent or, sometimes, reveal conflicts of interest. There is a need to disclose potential conflicts of interest only when the public's right to know how its government is being conducted overrides an individual's right to privacy concerning his personal finances. This purpose can be achieved by requiring disclosure by those who have ultimate responsibility in the executive departments plus by those individuals designated by the Governor because of the nature of their responsibilities. The Governor has not designated members of the Consumers Advisory Council to file statements of

financial interests, and they are neither heads nor deputy heads of an executive department.

The Council, assigned to one of the executive departments for administrative purposes, clearly is not a "legislative" agency. Nor does it appear to be a "regulatory" one. "Regulatory" implies controlling or governing directly the conduct of others according to some set of rules or principles. State v. Zazzaro, 128 Conn. 160 (1941); Jeschor v. Guilford, 143 Conn. 152 (1956); Farmington River Co. v. Town Plan & Zoning Commission, 25 Conn. Sup. 125 (1963). An agency, such as the Council, which advises, recommends, studies and reports, educates, and represents, affects others by means other than the direct control and supervision exercised by a regulatory body.

In summary, members of the Consumers Advisory Council, as members, need not file statements of financial interests unless the Governor, at some later date, requires them to do so, and the Council is neither a legislative nor a regulatory State agency for purposes of section 1-86, General Statutes.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated February 21, 1980

