



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 80-5

Occupational Licenses for Relatives of an Official Involved in the Licensing Process

The Director of Licensing and Administration, Department of Consumer Protection, has asked whether the Code of Ethics for Public Officials and State Employees, Chapter 10, Part I, General Statutes, allows his wife to retain her Connecticut real estate broker's license, and allows his children to apply to the Real Estate Commission for, and to receive, such licenses, while he holds his State position. The question arises because the Director of Licensing and Administration's supervisory responsibilities include directing the examination and licensing activities of the licensing agencies, including the Real Estate Commission, assigned to the Department; and planning, organizing, and directing the administrative, fiscal, and business activities of the Department, including such activities of the Real Estate Commission. Additionally, prior to reorganization of the Executive Branch of State Government pursuant to Public Act No. 77-614, the present Director of Licensing and Administration was Executive Director of the Real Estate Commission.

The Real Estate Commission has been established by section 20-311a, General Statutes. It consists of five citizens appointed by the Governor, three of whom must be currently, and have been for at least ten years previously, licensed real estate brokers in Connecticut; the other two are public members. Section 20-311a, General Statutes. Members receive no salary, but are reimbursed for necessary official expenses. Section 20-311c(b), *id.* Each member of the Commission, before entering upon his duties, takes an oath to perform the duties of his office faithfully. *Ibid.*

The duties of the Commission are contained in Chapter 392, General Statutes. Among these are the licensing of real estate brokers and salesmen. Section 20-313, 314, *id.* The Commission must determine whether applicants have the moral qualities required of real estate brokers or salesmen, and whether they have the education, experience, and knowledge to hold a license. Section 314, *id.* A license may be refused for failure to meet these or other standards. See section 20-316, subsection 20-314(e), *id.* The Commission may temporarily suspend or permanently revoke a license it has issued if the licenseholder has obtained a license by false or fraudulent misrepresentation or, as a licensee, performed one of a number of forbidden acts. Section 20-320, *id.* It may impose a fine in addition to or in lieu of such action. *Ibid.* Licenses are renewed annually. Subsection 20-314(d), section 20-319, *id.* It is neither lawful nor good business to act as a real estate broker or salesman without a license issued by the

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Commission. Sections 20-312, 20-325, 20-325a, id.

The Real Estate Commission licenses persons to advertise and sell, in this state, property in another state (sections 20-329a through 20-329n, General Statutes), and provides the necessary endorsement to real estate brokers' licenses to allow brokers to act as real property securities dealers in Connecticut (sections 20-329o through 20-329bb, General Statutes). The Commission also arbitrates disputes between brokers or salesmen if asked (section 20-311f, General Statutes), and maintains, and makes payments from, the Real Estate Guaranty Fund (sections 20-324a through 20-324i, General Statutes).

The moral suitability of an applicant for a license or its renewal is determined by the Commission partly from the answers to questions on the application form. In the case of an initial license, affidavits from persons in a position to vouch for the applicant's reputation for honesty, truthfulness, and fair dealing are required. For renewals, the Commission can check its records for any adverse reports. The competency with regard to real estate matters of an applicant for an initial license is determined in part by written examination. The examinations are prepared, subject to the approval of the Real Estate Commission, by the Center for Real Estate and Urban Economic Studies, established at the University of Connecticut to assist the Commission in the examination of applicants for real estate licenses among other responsibilities. Section 10-144a, id. Examinations are proctored by a member of the Commission or its staff. The examinations are corrected, mechanically, by an administrative section of the Department of Consumer Protection which is outside the Real Estate Commission. The Real Estate Commissioners, of course, are the ones who actually issue the license and take subsequent action on licenses they have granted.

The Director of Licensing and Administration is related to the Commission's licensing process in several ways. He assists the Commission in establishing and maintaining a licensing program which is efficient and effective. He provides administrative and business support to the Commission. The Commission staff is in some respects subordinate to him in the chain of supervision, as is the section which corrects the Commission's written examinations. The Commissioners themselves are independent of the Director of Administration and Licensing.

The personnel on the Commission staff who maintain custody of the examination and prepare recommendations to the Commission, and those who grade the Commission's examinations, are several levels removed from the Director in the administrative chain. Nevertheless, it is obvious that the Director of Administration and Licensing can, if he wishes, influence the course of an applicant's request

for a license or renewal of one, or affect the processing, prior to the time the Commission considers the matter, of possible disciplinary action against a licensee. Thus, certain applicants could be favored, or their competition limited. (This would be true even if the Director did not have "old boy" ties to the Commission.) As a consequence, it could be argued that no one related, by blood, marriage, or otherwise, to someone involved in the licensing process in the Department of Consumer Protection should be granted a license by an agency in the Department, in order to avoid even the appearance of a conflict of interest.

A contrary consideration is that in the case of real estate licenses, and in other instances, a person may not carry on a particular occupation unless licensed by the State to do so. If, in this case, all the provisions of the Code of Ethics for Public Officials and State Employees, Chapter 10, Part I, General Statutes, are in fact adhered to scrupulously, it seems unduly harsh to ban, outright, issuance or retention of a license, simply to avoid an appearance of a conflict of interest. It would be more reasonable to maintain confidence in the integrity of the process by less drastic means, if possible.

The major protection against violation of the standards of conduct which sections 1-84 through 1-86, General Statutes, including subsection 1-84(c), impose upon public officials and State employees is the justified expectation that State officials and employees will perform their duties honestly and faithfully. Cf. section 5-267, General Statutes. Because of the opportunities for actions in violation of the Code of Ethics for Public Officials and State Employees in the instant case, public confidence in the integrity of the licensing process can be fortified by an applicant who is the Director's relative disclosing the relationship when a license or license renewal is applied for. Even though the Director's official duties do not include taking any action on an application for a license or its renewal, it would be appropriate for him to advise his immediate supervisor in writing that he will not influence the course of the application in any way. Cf. section 1-86, General Statutes. This will alert the proper people, particularly the members of the Real Estate Commission, to scrutinize the application and its processing with particular care and thoroughness. Disclosure should also be made when disciplinary action is considered.

The members of the Real Estate Commission who issue licenses, and take disciplinary action against licenses, are independent of the Director of Licensing and Administration. The two public members are not even associated with the Director's and the applicant's or licensee's occupation. Their presence on the Commission gives assurance that even the licensing matters involving the other three commissioners, who by statute must hold licenses issued by the Commission, are handled fairly and impartially. All Commissioners have taken an oath to perform their duties faithfully.

It is to be expected that some relatives of persons officially involved in one way or another with the Real Estate Commission, or

similar body charged with issuing and policing occupational licenses, will be interested in holding a real estate or other license. It should not be necessary to devise a separate system for such persons, or to deny them a license needed to practice a particular occupation. Full disclosure of the relationship, coupled with the other safeguards which are built into licensing systems, should curb most, if not all, violations of the Code of Ethics for Public Officials and State Employees, and lead to the uncovering of some violations if they occur.

In summary, so long as there is full disclosure in writing of the relationship, the children of the Director of Licensing and Administrative, Department of Consumer Protection may apply to the Real Estate Commission for real estate brokers' licenses, and his wife may hold her license, without the Director violating the Code of Ethics for Public Officials.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated February 19, 1980