



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 81-15

Private Employment Related to a State Employee's Official Duties

A State employee whose duties involve environmental protection has asked whether he may utilize his expertise in air quality matters on behalf of a private developer. The State employee is a Transportation Environmental Analyst III in the Office of Environmental Planning, Bureau of Planning and Research, Department of Transportation (DOT). Among the principal responsibilities of the employee, a professional engineer, is preparation of air quality reports for Environmental Impact Statements or Environmental Impact Evaluations prepared for DOT projects in compliance with Chapter 439, Connecticut General Statutes and sections 22a-1a-1 through 22a-1a-12, Regulations of Connecticut State Agencies. Another significant responsibility is preparation of data for submission to the Department of Environmental Protection (DEP) to obtain Indirect Source Construction Permits required for certain highway projects sponsored by DOT. Sections 19-503 and 19-519a, Connecticut General Statutes; section 19-508-100, Regulations of Connecticut State Agencies. He also supervises one or more State employees whose duties are concerned with air quality matters.

Owners or operators of some private facilities or installations proposed to be constructed also may have to obtain from DEP an Indirect Source Construction Permit if the proposed construction project has a particular impact on the State highway system. Section 19-508-100, above. The State employee has asked whether he may prepare an application for an Indirect Source Construction Permit for a private developer. The application would be signed by the developer.

While certain provisions of the Code of Ethics for Public Officials and State Employees (Chapter 10, Part I, General Statutes) bear on the question presented, none seems to prevent the private employment contemplated. The conclusion of the acceptability under the Code of Ethics of the State employee's private employment is based on the fact that there is essentially no significant connection between (1) the State employee and his State position and (2) the private employment.

The Permit application prepared for the private developer will go directly to DEP. Under the statutes and regulations cited above, DOT does not review the application or contribute to its approval or denial. Administrative procedures involving DOT have already been completed by units within the Department with which the employee has no direct connection and over which he has no control. One unit is the State Traffic Commission, composed of the Commissioners of Transportation, Public Safety, and Motor Vehicles. Section 14-298, General

Statutes. It has already issued a permit signifying that it is satisfied that the developer's plans satisfy the Commission's requirements for a uniform system of traffic control signals, devices, and markings. The traffic for the project has been approved by another unit of DOT with which the employee in question has no connection.

The fact that the employee prepared the Permit application will not be known to DEP. There appears to be no way the employee could use his office improperly to encourage DEP to approve the application, in violation of subsection 1-24(c), General Statutes, so long as he does not reveal his private interest to DEP in any other way. On the same basis, a violation of subsection 1-24(d), General Statutes, is avoided. Anonymous preparation of the application does not amount to appearing or taking any other action on behalf of another for compensation before DEP. Ethics Commission Advisory Opinion No. 79-6, 40 Conn. L.J. No. 38, p. 27 (March 20, 1979). The employee is not connected with any State action involving the developer. Private employment with him therefore should not impair his independence of judgment as to his official employment. See subsection 1-24(b), General Statutes.

The State employee may have some confidential information, gained in the course of his official duties, which could be utilized in his private employment. Use or disclosure of this confidential information for his private benefit could be a violation of subsection 1-84(b) or 1-24(c), General Statutes, or both. He may use the expertise, but not confidential information, gained in public employment.

The State employee must avoid use or disclosure of confidential information acquired in the course and by reason of his official duties. His authorship of the Permit application must remain concealed, so other State personnel involved in processing the application are not swayed by the person or the State position of the one who developed it. Under those circumstances, the State employee may prepare the Indirect Source Construction Permit for the private developer.

By order of the Commission,



Rev. Thomas J. Lynch  
Chairman

Dated September 4, 1981