



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 81-7

State Board Member Bidding on a Contract to
be Supervised by Board

The Department of Health Services administers, under the supervision of the State Board of Examiners for Nursing, examinations for licensure as a registered nurse or licensed practical nurse. The Ethics Commission has been asked whether a member of the Board may bid on a contract to carry out the Department of Health Services' responsibilities for administration of the licensure examinations.

The State Board of Examiners for Nursing is composed of 11 members, appointed by the Governor for a term coterminous with the term of the Governor. Subsection 20-88(a), General Statutes. Seven members must be associated in some way with the profession of nursing; 4 are public members. Id. No member may be, or have been during the year prior to appointment, an elected official of any professional association of nurses. Id. Members are limited to two full consecutive terms on the Board. Id. They receive no compensation but are reimbursed for necessary expenses incurred in the performance of their duties. Subsection 20-88(b), id.

The Board adjudicates all charges of improper professional conduct brought against persons licensed to practice nursing. Subsection 20-90(b), section 20-99, id. Upon a finding of guilty it may revoke or suspend the person's license or impose various lesser sanctions. Sections 20-99, 19-4s, id. Another of the several responsibilities of the Board is to approve, with the consent of the Commissioner of Health Services, nursing programs and programs for training licensed practical nurses which meet the Commissioner's standards for education and training. Subsection 20-90(a), id.

With regard to examinations for licensure as a registered nurse or as a licensed practical nurse, the Board supervises the administration of the examination by the Department of Health Services. Section 20-92, id. Administration of the examination encompasses setting up sites, hiring proctors, reviewing security procedures, etc. The Department is considering having these administrative procedures assumed by a private contractor. The Board will make recommendations as to which contractor should be selected by the Department. The question presented to the Ethics Commission is whether a Board member may bid on the contract.

Considering the manner of their appointment and the State powers they are authorized to exercise, members of the State Board of Examiners for Nursing are public officials for purposes of the Code of Ethics for Public Officials. Subsections 1-79(j), 1-79(g), General Statutes. They must therefore comply with the provisions of the Code -- sections 1-84 through 1-86, General Statutes -- which have been enacted to prevent conflicts of interests involving public officials.

It would seem the most fundamental conflict of interest for a member of a board to bid on a contract when the board will make recommendations as to which bidder should receive the contract and when the board will supervise execution of the contract. On the other hand, the Code of Ethics for Public Officials specifically allows a public official to enter into a contract with the State provided the contract is awarded through an open and public process. Subsection 1-84(i), id. Additionally, a public official can avoid a conflict of interest by abstaining from official action on the matter which would cause the improper financial impact or, in the case of a potential conflict of interest, by filing the requisite statement. Subsection 1-84(a), section 1-86, id.

In the case at hand, however, it may be impossible for the member in preparing his contract offer to avoid using information, gained through his office, which is not available generally to the public. This would violate subsection 1-84(c), id., even if the confidential information were used inadvertently.

Further, the member is a part of the body which will supervise the administrative procedures, necessary for the conduct of licensure examinations, which the member's business organization would carry out. It seems clear that the member, if his or her bid were successful, would have accepted employment which would impair the member's independence of judgment as to his or her official duties, in violation of subsection 1-84(b), id. Additionally, the member might well be induced to use confidential information acquired in the course of and by reason of official duty, in violation of subsection 1-84(b), id., should the member's business organization be awarded the contract to administer the nursing license examinations.

The Code of Ethics for Public Officials does not bar the Board member from entering into most contracts with the State. In fact, because Board members receive no compensation, only reimbursement of official expenses, one could enter into a contract with the State even if it were not awarded through an open and public process (as the one in question presumably will be) provided the member had no authority or control over the subject matter of the contract. Subsection 1-84(i), id., penultimate sentence. But when the subject of the contract is within the responsibilities of the Board member, and its execution is supervised by the Board, other provisions of

section 1-84 dictate that so long as the person remains a Board member he or she should not even bid on the contract, much less execute its provisions.

By order of the Commission,

Handwritten signature of Thomas J. Lynch in cursive script.

Rev. Thomas J. Lynch
Chairman

Dated May 6, 1981

