



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 83-6

Conflict with the Discharge of a
Legislator's Duties

A legislator has asked whether he would have a conflict of interest if he were to participate in the legislative action on two bills.

He is a member of the Clinical Sociological Association and is employed as a sociology instructor at a private university. He is also enrolled as a graduate student in another university's marriage and family therapy program. One of the bills provides that a person certified as a marital and family therapist by the American Association for Marriage and Family Therapy will be similarly certified in Connecticut. Only people so certified may use the title "Connecticut certified marital and family therapist" and be entered onto the rolls of certified therapists to be maintained by the Department of Health Services. The other bill provides for certification by the Commissioner of Health Services of various categories of social workers and clinical sociologists, based on their training and experience or their certification by other states with standards equivalent to Connecticut's. A person may not utilize the title authorized by the bill, or advertise using the certified social worker or certified clinical sociologist terms of the bill, unless certified in compliance with it.

In Ethics Commission Advisory Opinion No. 79-14 (amended), 41 Conn. L.J. No. 49, p. 38 (June 3, 1980) the Commission discussed at some length the issue of a legislator who was a teacher participating in legislative action affecting teachers. The Opinion pointed out that, under the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes) if the legislator could expect a direct monetary gain or loss from the proposed legislation he had a substantial conflict of interest and was required to abstain from any action on the legislation, unless it affected him no differently than other teachers. Subsection 1-84(a), section 1-85, General Statutes. Even if it affected him no differently than other teachers, if it affected a financial interest of his

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that was of any consequence and was different than the financial interests of all members of the general public, the legislator had two alternatives: he could (1) excuse himself from taking any action on the legislative measure or (2) prepare a written statement and participate. Subsections 1-86(a) and 1-86(b), General Statutes. The statement would have to describe the matter requiring action and the nature of the potential conflict; state why, despite the potential conflict, he could act fairly, objectively, and in the public interest; and be signed under penalty of false statement. Id. The statement was to be delivered to the clerk of the house in which the legislator served, and a copy sent to the Ethics Commission. Id.

It is usually fairly obvious to anyone with a minimum of facts whether a particular piece of legislation can be expected to have a direct financial effect on a particular legislator. If so, there may be a substantial conflict of interest; the legislator cannot act at all unless it affects him as a member of a business, profession, occupation, or group no differently than other members of the business, profession, occupation, or group. Subsection 1-84(a), section 1-85, General Statutes.

Analysis of potential conflict of interest situations usually is more complex, and requires knowledge of facts often held only by the legislator and a few others. The case at hand illustrates the proposition. While the information supplied to the Ethics Commission does not demonstrate that the outcome of the legislative proposals in question would affect the financial interests of the legislator to any considerable extent, it is insufficient to arrive at a well-reasoned conclusion. The legislator involved here is best able to estimate the financial impact of the passage or defeat of one or both bills. Among other things, he is probably the only one who knows how active he may be in the future as a clinical sociologist or a marital and family therapist. He can come to sounder conclusions than most concerning what the economic advantage those achieving certification will gain over those who cannot or do not, and the legislator's own prospects for certification. Such considerations determine whether the legislation can be expected to have any financial impact on the legislator or on a "business with which he is associated" (subsection 1-79(a), General Statutes) and, if so, whether the financial interest is other than de minimis.

The issue of whether the legislator's interest is distinct from that of a substantial segment of the general public can be determined by more objective measures. That the interest be distinct from that of a substantial segment of the general public is the only amendment which has been made to the legislative provisions discussed in Advisory Opinion No. 79-14 (amended). (Then the interest had to be distinct from that of the entire general public.) "Substantial" does not have a precise meaning. The legislative history of the amendment adding "substantial segment" to section 1-86 indicates that a substantial segment of the general public is more than a "business, profession, occupation, or group." It had been proposed that the business, profession, occupation, or group exception to the definition of substantial conflict of interest in section 1-85 be repeated in the definition of potential conflict of interest in section 1-86. At a public hearing the Chairman of the State Ethics Commission protested that so sweeping an exception would furnish inadequate protection to the public. Legislators frequently would be permitted to act on matters affecting their financial interests without having to consider whether they could act fairly, objectively, and in the public interest and without having to disclose publicly a potential conflict of interest. Testimony of Rev. Thomas J. Lynch, Chairman, State Ethics Commission, on Proposed Substitute Senate Bill No. 659, Joint Standing Committee Hearings, Legislative Management 1981, pp. 18-24. The Bill then was changed to allow an exception to the definition of potential conflict of interest when the financial interest affected was not distinct from that of a substantial segment of the general public, and enacted into law. Section 1, Public Act No. 81-53.

A "substantial segment" of the general public therefore appears to have been intended to be less than the entire general public, but more than a business, profession, occupation, or group. In this context, "substantial" means considerable in amount, large, of or pertaining to the main part of anything. Webster's New International Dictionary (2d ed.). Returning to the issue at hand, it does not appear that all Connecticut marital and family therapists, social workers, and clinical sociologists added together would constitute the main part, or even a large part, of the general public of Connecticut. Therefore, that exception does not apply to the legislator in this case.

Using the guidance in Ethics Commission Advisory Opinion No. 79-14 (amended), the legislator must consider whether passage or defeat of either bill would furnish him a direct monetary gain or loss. If not, then he must determine whether passage or defeat might have a consequential effect on his financial interests or those of a business with which he is associated. If that is so, then he must comply with one of the alternatives in section 1-86.

Unless the legislator participates in the action on legislation which gives him a direct financial gain or loss, compliance with the procedure above constitutes compliance with the Code of Ethics for Public Officials, whichever alternative the legislator concludes is appropriate.

Lucille E. Brown

Lucille E. Brown
Chairperson

Dated 2 June 1983