



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 85-9

State Department of Education Employees Serving
as Members of Regional or Local Boards of Education

The Ethics Commission has been asked whether employees of the Department of Education may serve as members of boards of education of regional or local school districts.

Boards of education manage and operate the public school system which towns are required by section 10-15, General Statutes to maintain. Their duties are more specifically spelled out in section 10-220, General Statutes. While boards of education are agents of the State when carrying out the educational interests of the State, members of a board of education are not State but town officers. Sansone v. Bechtel, 180 Conn. 96, 100 (1980). Being town officers, members of a board of education are not, by virtue of their status as board members alone, subject to the Code of Ethics for Public Officials, Chapter 10, Part 1, General Statutes, which considers the actions of State officials and employees. Members of boards of education are not compensated for their service on a board. Section 10-225, General Statutes.

The State Board of Education has general supervision and control of the educational interests of the State, including preschool, elementary and secondary education, special education, vocational education, and adult education. Subsection 10-4(a), General Statutes. The Department of Education serves as the administrative arm of the Board. Section 10-3a, General Statutes.

The State Board of Education and the Department of Education provide advice, assistance, services, and supervision to the boards of education in their implementation of the State's educational interests. A review of Title 10, General Statutes reveals that the Board and Department administer a host of grants for which some or all boards of education are eligible: compensatory education, adult education, special education, school feeding programs, education equalization, interdistrict cooperation, primary mental health, young parents, summer remedial education, capital projects, etc. Some of these grants are issued according to formulas, with the Board or Department performing mainly a ministerial function. In the case of others, however, the Board or Department has significant administrative discretion. For purposes of this advice, it does not seem to make much difference whether the Board or the

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Department is authorized by statute to administer a grant. Even if award authority is given to the Board, much of the basic administration of a grant program would appear to have to be accomplished by employees of the Department, the administrative arm of the Board. The Board and Department also review and approve or reject various plans which boards of education must submit. Some of these plans have to be approved at the State level in order for boards of education to receive various reimbursements. The Department verifies, and may audit, returns of each board of education's receipts, expenditures, and statutes. Section 10-227, General Statutes. The Board may impose a forfeiture of up to \$10,000 if a board of education's returns are tardy. Id. The Board issues the teacher, principal, supervisor, and superintendent certificates which those individuals must hold in order to be employed in Connecticut's public school system. Section 10-145, General Statutes.

In addition to supporting boards of education, the State Board of Education and the Department of Education ensure that boards of education meet State standards in a number of areas. For example, if a person is unable to resolve with his board of education a complaint that the board is unable or unwilling to implement the educational interests of the State, or if the State Board initiates such a complaint, the State Board and Department of Education conduct proceedings which can conclude with the Board ordering the board of education to take remedial action. Section 10-4b, General Statutes. If the board of education fails to obey the order, the Board may go to the superior court to compel compliance. Subsection 10-4b(c), General Statutes. Again, if a person is unable to gain satisfaction at the local level on a claim that the board of education is not furnishing required school accommodations, an appeal may be taken to the State Board of Education. Section 10-186, General Statutes. The issue will be decided by a hearing Board which may be composed of employees of the Department of Education. Subsection 10-186(a), General Statutes. If the board of education fails to make the arrangements ordered, it can suffer a substantial forfeiture. Id. The State Board of Education can even exercise the detailed supervision of filing a complaint with the Department of Health Services if it finds that sanitary conditions in a schoolhouse are inadequate. Section 10-203, General Statutes.

It can be seen that the Department of Education and its employees provide advice and assistance to boards of education, have considerable discretion in the administration of grants for which boards of education are eligible, have

authority to audit the returns of boards, and may become engaged in a suit or other action against a board of education in an effort to enforce State educational standards.

An employee of the Department of Education may serve as a member of a board of education only if that service creates no inherent, unavoidable conflicts of interests under the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes) and, if a classified employee elected to a board in a political partisan election, the employee can comply with the provisions of subsection 5-266a(b), General Statutes.

Subsection 5-266a(b) prohibits classified State employees from holding a municipal office gained in a political partisan election if there would be a conflict of interests as defined by the State Ethics Commission. The regulation defining these conflicts (section 5-266a-1, Regulations of Connecticut State Agencies) provides in part:

Sec. 5-266a-1. Conflicts of interests.

- (a) There is a conflict of interests which precludes a person in State service from holding elective municipal office when one or more of the following applies:
 - (1)
 - (2) The department or agency in which a classified State employee has an office or position has discretionary power to:
 - (A) ...;
 - (B) Approve the accounts or actions of the municipal office;
 - (C) Institute or recommend actions for penalties against the incumbent of the municipal office;
 - (D) ...;
 - (E) Affect any grants or subsidies, administered by the State, for which the municipality in which the municipal office would be held is eligible.
 - (3) A person employed in the classified State service or in the judicial department is required by law or regulation to deal with or assist the incumbent of the municipal office in the execution of the employee's official functions and duties.
- (b) There is a conflict of interests which precludes a person employed in the classified state service or in

the judicial department from holding elective municipal office when holding such office will either impair his independence of judgment as to his state duties or require or induce him to disclose confidential information acquired by him in the course of and by reason of his state duties.

The Department of Education has authority to approve the accounts and the actions of boards of education. The Department may institute or recommend actions on penalties against boards of education and possibly, in some circumstances, against a member of a board. It has discretion in exercising its authority to dispense a number of grants to the towns on whose boards of education a person would serve. Many of the classified employees in the Department are required to deal with or assist the members of boards of education. There appear to be a number of situations, up to that in which the State is suing a board of education to enforce compliance with standards, in which a member of a board of education might find his independence of judgment as to his State duties to be impaired.

Any one of these conflicts of interests would preclude a classified employee in the Department of Education from serving as a member of a board of education if the office were gained in a political partisan election. Section 5-266a-1, above.

Those regulations would not prevent board of education membership by unclassified Department of Education employees, classified employees becoming members of a board by some means other than election, and classified employees winning office on a board in an election which was not a political partisan one. In deciding the effect of the Code of Ethics, unpaid service on a board of education is not "employment" for purposes of the Code. Ethics Commission Advisory Opinion No. 80-15, 42 Conn. L.J. 14, p. 10 (9/30/80). A board of education is not a "business with which he is associated" under the Code. Subsection 1-79(a), General Statutes. Reviewing the Code under these circumstances, none of its provisions appear to prevent service on a board of education by an unclassified department employee, or a classified employee not gaining the office in a political partisan election.

The Ethics Commission has said as much. In a Declaratory Ruling issued March 7, 1980 to Victor M. Sullivan the Commission concluded that an unclassified Department of

Education employee who was serving as the Title I Administrator for the Title I, Elementary and Secondary Education Act of 1965 program in the State's regional vocational-technical schools could also serve as a member of a local board of education. The basis for the Commission's position was that the regional vocational-technical school system was separate in almost every respect from the school systems run by local boards of education. The employee had no control over the allocation of Title I funds between the vocational-technical school system and the other State school systems. There was essentially no relationship between her State position and duties and her duties as a member of a local school board.

There are possibly other Department of Education employees (in the Division of Vocational Rehabilitation, for example, one would think) whose State duties have little to do with the public school systems run by local and regional boards of education and who are not barred by subsections 5-266a(b), General Statutes from serving in a municipal office. Most of them ought to be able to serve with propriety on a local board of education. On the other hand, the Ethics Commission has ruled that a member of the State Board of Education because of his broad authority could not do even substitute teaching in the public school system if he accepted compensation for it. Ethics Commission Advisory Opinion No. 82-10, 44 Conn. L.J. 26, p. 11B (12/28/82). In case of doubt, the advice of the Ethics Commission should be sought. Subdivision 1-81(a)(3), General Statutes.

Employees of the Department of Education would seem likely to have experience and an attitude useful to a board of education. Some whose State duties include supporting, advising, assisting, supervising, or otherwise interacting with boards of education may not be barred from serving on a board of education by either subsection 5-266a(b) or the Code of Ethics for Public Officials. Nevertheless, even if a position in the Department should not constitute an "office", it would seem appropriate for each of them to consider whether there is not such "contrariety and antagonism" between the duties of one's State position and those of a school board member that one could not faithfully and impartially discharge the duties of both. See State ex rel. Schenck v. Barrett, 121 Conn. 237, 242-243 (1936).

By order of the Commission,


Julie Peck
Chairperson

Dated Dec. 2, 1985

