



STATE OF CONNECTICUT  
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 86-4

Post-employment Restrictions on One Holding  
a Designated State Position


Legislation to become effective in early 1987, subsection 1-84b(c), General Statutes, provides that a person serving in one of the designated positions in specified State regulatory agencies may not seek employment "with any business subject to regulation by his agency" or accept such employment within one year after leaving the agency. One of the agencies listed in the subsection is the Connecticut Siting Council. The Ethics Commission has been asked what businesses are included within the limitation, considering the broad sweep of the Siting Council's potential authority.

A principal task of the Connecticut Siting Council is to balance the need for adequate, reliable, and economical public utility services with the need to protect the State environment, including public health and safety. Sections 16-50g, 16-50p, General Statutes. Any person wishing to develop, or modify substantially, transmission or electric generating facilities of public utilities or large private power producers, large cogeneration facilities, or cable television or telecommunication facilities must first obtain a certificate of environmental compatibility and public need from the Council. Section 16-50k, id. The certificate may contain terms, limitations, and conditions for construction, maintenance, and operation of the facility. Id. The Council retains authority to ensure that the facility is built, maintained, and operated in compliance with the provisions of the certificate and Chapter 277a, General Statutes. Section 16-50u, id.

The Council also considers applications for certificates of public safety and necessity from persons who wish to construct or modify most facilities for the disposal, treatment, storage, or recovery of hazardous waste. Sections 22a-117, 22a-122, id. The Council may enforce, suspend, or revoke any permit it issues for failure to comply with its terms, limitations, or conditions concerning construction, operation, or closure of the facility; with post-closure requirements; or with the requirements of Chapter 445, General Statutes. Section 22a-123, id.

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Thousands of private industrial and commercial firms in Connecticut, plus many State agencies and subdivisions of the State, could become subject to regulation by the Siting Council. For example, it is understood some 15,000 Connecticut firms generate hazardous waste. In many cases, if one of those firms wishes to hold more than 55 gallons or 500 pounds, whichever is greater, of hazardous waste on site for longer than a year, it must obtain a certificate from the Siting Council, which then has authority to oversee the firm's hazardous waste operations to ensure that they conform to the requirements of the certificate and the statutes.

On the other hand, if the firm elected to have its hazardous waste handled by a hazardous waste disposal firm, it could avoid being subject to regulation by the Connecticut Siting Council. Although potentially liable to regulation by the Council, it might not actually be subject to regulation on that account so long as it continued its method of handling hazardous waste.

Neither the language of subsection 1-84b(c), General Statutes nor the purpose behind it requires speculation as to possibilities of becoming subject to regulation by the Council. Those "subject to regulation" by the Connecticut Siting Council are businesses which are conducting operations which require a certificate from the Council, are applicants for a certificate, or are certificate holders. That interpretation meets the purpose of preventing State servants from switching sides for a year, allowing friendships on the State agency to cool, information gained in State service to become stale, and so forth. The issue of potential liability to regulation by the Council is met by a companion piece of "revolving door" legislation, subsection 1-84b(b), General Statutes. Applied to the case at hand, that provision says that a person who leaves a designated position on the Council may not for a year represent anyone, other than the State, for compensation before the Council. Should a person leaving a designated position on the Council join a firm only potentially liable to regulation by his former agency, that person could not represent the firm before the Council for a year after leaving State service if the firm decided to apply for a certificate from the Council. The former State servant could utilize experience gained while serving on the Council or its staff, but not any influence he might have by virtue of his former service. Cf. Ethics Commission Advisory Opinion No. 79-6, 40 Conn. L.J. No. 38, p. 27 (March 20, 1979).

The provision allowing a former agency member to represent the State before his old agency in subsection 1-84b(b) (and a similar statement in subsection 1-84b(a)), strengthen the argument that "business" in subsection 1-84b(c) should not be stretched to include State agencies. In this case as well as other revolving door areas, a person who has served the public in a subsection 1-84b(c) position on the Connecticut Siting Council could continue State service by seeking and accepting a position in a State agency which was conducting some activity making it subject to regulation by the Council. There would be no switching sides. The person would still be bound to serve the public's interest. The restrictions of subsection 1-84b(c) ought to apply only when a person wishes to leave State service in a designated position for employment in a private business subject to regulation by the Council.

In summary, one serving in a subsection 1-84b(c) position with the Connecticut Siting Council is restricted in his post-employment opportunities only if the new position is in a private business which should apply for, has applied for, or holds a certificate issued by the Council.

By order of the Commission,

  
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Julie Peck  
Chairperson

Dated Feb 3, 1986

