



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 86-9

Participating in, or supervising, negotiation
or award of State contracts)

In January 1987 legislation will go into effect which imposes a temporary restriction on the employment of some persons who have left State service after participating substantially in or supervising, on behalf of the State, the negotiation or award of a contract valued at \$50,000 or more. The Ethics Commission has been asked for an interpretation of the language concerning substantial participation in, or supervision of, the negotiation or award of a contract.

The provision in question, subsection 1-84b(d), General Statutes, states that no former Executive Branch public official or employee "who participated substantially in the negotiation or award of a state contract obliging the state to pay an amount of fifty thousand dollars or more, or who supervised the negotiation or award of such a contract, shall accept employment with a party to the contract other than the state for a period of one year after his resignation from his state office or position if his resignation occurs less than one year after the contract is signed."

The construction of subsection 1-84b(d) must depend upon the facts of the individual case in which a member of the Executive Branch has participated in, or supervised, the negotiation or award of a contract obliging the State to pay an amount of \$50,000 or more. Nevertheless, some general guidance can be offered.

Subsection 1-84b(d) is an element of legislative measures enacted in 1983--sections 5 and 6, Public Act No. 83-586--which are applicable to, for the most part, former State officials and employees. They complement current restrictions against use of State position, or confidential information gained in it, for private financial benefit by attempting to prohibit certain activity which would occur or have its effect after one has left State service. Subsection 1-84b(d) is intended to prevent both actual conflicts of interests and the appearance of them. By destroying the incentive to handle contract negotiations so as to affect future employment it protects the State's interests and removes the suspicion that a State servant has conducted his work in a way to facilitate his future employment.

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To be effective, subsection 1-84b(d) has to apply to public officials or State employees who have discretionary power to affect the terms of a State contract, or contract amendment, valued at \$50,000 or more. That includes those who have discretionary authority to establish contract specifications, for they could pre-determine to whom a contract would eventually be awarded. Included also are those who review and make recommendations as to what bids should be considered, if the action is more than clerical or perfunctory, or accepted. Obviously included are the ones who negotiate the terms of a contract, or amendments to it.

In each case, the participation must be substantial. Ordinary words in statutes are construed according to the commonly approved usage of the language. Subsection 1-1(a), General Statutes. In Webster's Third New International Dictionary, at page 2280, "substantially" is defined as "in a substantial manner: so as to be substantial". "Substantial", in turn, is said to be synonymous with "material", "real", "true", "important", "essential"; "considerable in amount, value, or worth", "of or relating to the main part of something". Several Connecticut courts have construed the term. See, for example, Smirnoff v. McNerney, 112 Conn. 421, 425, 426 (1930). Connecticut has also ruled that the "word 'substantially'... is a term of some elasticity...; its significance is relative, necessarily relating to the purpose of the provision in which it is used. Loglisci v. Liquor Control Commission, 123 Conn. 31, 37, 38 (1937). "It does not indicate a definite, fixed amount of percentage but is an elastic term which must be construed according to the facts of the particular case." Harris v. Egan, 135 Conn. 102, 107 (1948).

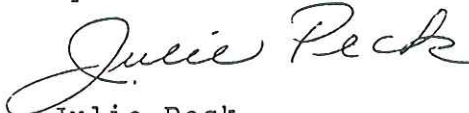
While the facts of each case will determine whether the limitations of subsection 1-84b(d) apply, in the context of the subsection "substantial" means participation which is direct, extensive, and substantive, not peripheral, clerical, or ministerial.

The same analysis applies to those who supervise the negotiation or award of contracts, or contract amendments, obliging the state to expend \$50,000 or more. Webster's, cited above, at page 2296 defines "supervise" as "to coordinate, direct, and inspect continuously and at first hand the accomplishment of: oversees with the powers of direction and decision the implementation of one's own or another's intentions: superintend." In a similar vein, the Connecticut Supreme Court has stated that "'supervision' denotes broad authority to oversee with the powers of direction and decision." State v. Burney, 189 Conn. 321, 326 (1983). In

subsection 1-84b(d), therefore, "supervised" means more than mere perfunctory approval or disapproval of the contract. It contemplates a responsibility requiring the State servant to have become involved in a significant, material degree in the evaluative or decisional processes leading to the award of the contract, or having had such a heavy responsibility for awarding the contract--final approval, for example--that it is unlikely that he did not become personally and substantially involved in the matter. Also included would be those State servants who in fact exercised such supervisory authority in the negotiation or awarding, although not specifically required to do so.

Each request for advice as to the application of subsection 1-84b(d), and any complaint alleging a violation of the subsection, will have to be decided on the facts of the particular case. However, to assure the public that those who represent the State in contracting matters are basing their decisions on the public interest, not their personal interests, it is not necessary to limit the employment, after leaving State service, of those who have contracting responsibilities which are merely clerical, ministerial, or formal. Those affected are persons involved in the contracting process who have exercised discretionary authority in shaping the terms or have otherwise participated in or supervised, in a personal and material way, the negotiating or awarding of a contract or contract amendment having at least the threshold value.

By order of the Commission,



Julie Peck
Chairperson

Dated Aug. 11, 1986

