



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 87-13

Legislator Participating in Farmland Preservation Program

The Ethics Commission has been asked whether a member of the General Assembly may participate in the State Farmland Preservation Program without violating the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes.

Chapter 422a, General Statutes establishes a program for the State to purchase a farmland owner's right to develop the land for non-agricultural purposes. Implementing regulations have been promulgated. Sections 22-26gg-1 through 22-26gg-8, Regulations of Connecticut State Agencies (Regulations). The following procedure for selecting farmland to be preserved has been developed:

1. Any owner of agricultural land may apply to have the development rights of his land purchased by the State. Section 22-26gg-2, Regulations.

2. The land is evaluated by the Commissioner of Agriculture to determine the probability of its sale for non-agricultural use, its current and potential agricultural productivity, and the degree to which acquisition of the development rights could mitigate damage due to flooding. Subsection 22-26cc(a), General Statutes. Several Federal agencies assist in the evaluation. A detailed schedule of scoring values has been prepared. Section 22-26gg-4b, Regulations. Some of the factors allow some discretion, others none.

3. After consultation with the Farmland Preservation Advisory Committee (an advisory group with broad membership appointed as permitted by subsection 22-26cc(c), General Statutes) the Commissioner, if he decides the land merits preservation, approves the farm for appraisal, informing the Departments of Transportation, Economic Development, and Environmental Protection, and the Office of Policy and Management. Subsection 22-26cc(a), General Statutes.

4. One or more appraisals are obtained and the value of the development rights is determined in consultation with the

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Advisory Committee. The value of the development rights is the difference between the value of the property for its "highest and best use" and its value for agricultural purposes. Id.

5. The Commissioner negotiates with the farm owner a price of the development rights. The Department's offer is based on one or more independent appraisals of the value of the land, but the Commissioner is authorized to purchase development rights for less than what has been determined to be their value. Subsection 22-26cc(a), General Statutes; section 22-26gg-5, Regulations. Consideration must be given to funds available, what is fair, and the effect an offer will have on future negotiations with owners of other farms.

6. When a price has been agreed upon, the application is submitted to the State Properties Review Board as required by subsections 4-26a(f) and 22-26cc(a), General Statutes.

7. If purchase of the development rights is approved by the State Properties Review Board, funds for acquiring rights are requested from the State Bond Commission. Section 22-26hh, General Statutes. The State Bond Commission, when it considers whether to authorize the issuance of bonds for the preservation program, knows what particular farms are involved and has considerable material from the file concerning each farm the development rights of which are sought.

8. Once the development rights of a farm have been acquired by the State, the entire file related to the application for sale of its development rights becomes a matter of public record.

9. The Commissioner may release the land from its agricultural restriction only under the limited circumstances set forth in subsection 22-26cc(c), General Statutes.

As in many cases in which a legislator might wish to take advantage of a State program, the provisions of the Code which must be considered are subsections 1-84(i) and 1-84(c), and section 1-86, General Statutes. The open and public requirements of subsection 1-84(i) are satisfied by the Program's procedures. The Program is spelled out in the statutes, State regulations, and publicity material distributed by the Department of Agriculture. Anyone may apply. The files of applications which have resulted in acquisition of development rights by the State are public. Other application files are open insofar as subdivision 1-19(b)(7), General Statutes, permits.

Compliance with subsection 1-84(c) can be more difficult. That subsection prohibits a legislator from using the authority of his office, or confidential information gained in it, for his personal financial benefit. Improper use of office does not seem a danger in the case of most legislators. First, it is assumed that a legislator will abide by the Code of Ethics. Encouragement to use office improperly is reduced by the fact that so far there have been adequate funds to purchase development rights of all agricultural land involved in applications which survive the review process. Finally, there are numerous checks during the review. There is a structured assessment by the Department of Agriculture of the preservation value of the land, with assistance from Federal agencies. An Advisory Committee, composed of members from diverse backgrounds, participates. The bipartisan State Properties Review Board studies the application. The State Bond Commission, legislative members of which represent both the majority and the minority in the legislature, must approve funding to purchase development rights of a particular farm. Both the State Properties Review Board and the State Bond Commission are provided documentation sufficient for them to make an independent determination of the value of the property to the State and the appropriateness of the purchase price which has been negotiated.

Legislators holding particular positions in the General Assembly, however, should not apply to the Farmland Preservation Program while they hold the legislative offices. They wield such power that inadvertent use of office probably could not be avoided. Although all applications which successfully complete the review process have been funded, not all applications have been found to meet the Program's criteria. Department of Agriculture staff might well not be able to evaluate objectively and fairly the application of a legislator who can almost singlehandedly decide what the Department's programs will be, and how adequately they will be funded. In addition, the appearance of use of office would be inescapable, damaging the credibility of the Program. Legislators appearing to hold such power over the Department of Agriculture and the Farmland Preservation Program are the Chairpersons, Environment Committee, which has jurisdiction over all matters relating to the Department of Agriculture; the Chairpersons of the Appropriations Committee, which has jurisdiction over the Department's appropriations; and the Chairpersons and Ranking Members of the Finance, Revenue, and Bonding Committee because of their membership on the State Bond Commission. Other legislative leaders, such as the chairperson of the

Appropriations subcommittee which considers the budget of the Department of Agriculture, might also feel it unseemly to apply to the Program while heading that subcommittee.

A legislator other than those identified above who applies to sell, or sells, the development rights of his farm to the State might face potential conflicts of interests if legislation amending the Farmland Preservation Program were to be introduced. (There would be the same potential conflicts if the owner were a family member or a business with which the legislator was associated.) Legislative proposals which could affect the success of an application still pending, the amount of the program's funding, or the rights of one who has sold the development rights of agricultural land, normally would create a potential conflict of interest requiring action in compliance with section 1-86, General Statutes.

The conservation of agricultural land has been found to be "vital for the well-being of the people of Connecticut." Section 22-26aa, General Statutes. The status of the landowner should prevent the State from preserving agricultural land desirable for farming only so far as necessary to maintain the integrity of the Program.

The procedures established, by statute and regulation, for the Farmland Preservation Program allow legislators, other than a few whose legislative position provides them extraordinary power over the department administering the Program, to offer to sell, and to convey, to the State the development rights of land which they own.

When the owner is a legislator, review at the multiple levels specified can be particularly thorough to ensure that the public will maintain confidence in the Program, and that the Code of Ethics is not violated.

A legislator who applies for the program may not use his office to influence action on the application. In addition, he must comply with section 1-86, General Statutes -- abstaining or disclosing -- if he is required to act on legislation which involves any aspect of the Farmland Preservation Program.

By order of the Commission,


Vice-Chairman

Dated 10/5/87