



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 87-15

Legislative Action Possibly Affecting the
Financial Interests of the Legislator's Spouse

Despite a number of substantial modifications of Connecticut's criminal justice system in recent years, events have led the General Assembly to believe that the desirability of further changes in the area of criminal investigations should be examined. Criminal investigations are being conducted by a variety of different organizations -- the State Police, Office of the Chief State's Attorney, and offices of the various state's attorneys. Some of the methods utilized in criminal investigations may be worthy of review. State Police have twice secretly taped conversations with a state's attorney. An informant has been used in the investigation of allegations against the spouse of a judge before whom the informant's criminal prosecution was pending.

The Legislative Program Review and Investigations Committee is considering a program review or an investigation of the investigative methods utilized within the criminal justice system in Connecticut. The Committee may start by analyzing the current investigatory roles and responsibilities of the State Police, Chief State's Attorney, and the state's attorneys.

A legislator assigned to the Legislative Program Review and Investigations Committee is married to a judge of the Superior Court. The legislator has asked whether, because of her spouse's office, she has any conflicts of interests while participating in the study; can the legislator participate in the Committee's proceedings on this matter and, if so, are there specific issues on which abstention from action is required.

As a public official, the legislator is subject to the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes. The Code states, in various ways, that a public official or State employee may not use his or her office, or confidential information acquired through and by virtue of it, for the financial benefit of the public official or of, among others, the public official's spouse. A relaxation of this

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strict standard is granted legislators (and members of regulatory agencies) under certain circumstances.

There appear to be few areas of the Committee's activity which could affect the financial interests of a sitting judge. Superior Court judges may request, or be assigned as, investigatory grand juries, one criminal investigation technique. Section 54-47b, General Statutes. Superior Court judges also, of course, participate in all the elements of criminal procedure -- arrests, searches and seizures, arraignments, wiretaps, probable cause hearings, bail, dismissal or trial of criminal cases, post-trial proceedings, and so forth. Title 54, General Statutes. Any of these elements, and particularly those most involved in criminal investigations, could come under the scrutiny of the Committee during its program review or investigation. However, it is difficult to see how any general study or general Committee recommendation could affect the financial interests of a particular judge. If, for example, the Committee were to propose that investigatory grand juries be abolished, the financial interests of Superior Court judges would be unaffected even if the General Assembly were to enact legislation accomplishing the recommendation.

On the other hand, if the Committee looks into particular criminal investigations or particular criminal cases related to them, it could encounter one in which the legislator's husband was involved as a judge. A judge may be suspended without pay, removed from office, or denied reappointment if his or her conduct is considered not up to proper judicial standards. Article V, section 2, as amended, Connecticut Constitution and Article XI, Amendments to the Connecticut Constitution; chapter 872a, General Statutes. Whenever anyone's actions are scrutinized it is possible for them to be found wanting. Failure to meet judicial standards could jeopardize a judge's retaining his or her compensation as a judge.

The Code of Ethics provides that if, in the course of her duties on the Committee, the legislator is required to take action affecting a consequential financial interest of her spouse, she may either excuse herself from taking action, or proceed with her duties but only if able to file the written statement required. Subsection 1-86(a), General Statutes. See also Ethics Commission Advisory Opinion No. 79-14 (amended), 41 Conn. L.J. 49, p. 38, (June 3, 1980); Ethics Commission Advisory Opinion No. 83-6, 45 Conn. L.J. 1, p. 5B, (July 5, 1983). (While those two advisory opinions concern a legislator required to take action affecting his own financial interests,

the reasoning process and the action to be taken under section 1-86 are the same when the financial interests of a legislator's spouse may be affected.) The written statement will describe the potential conflict of interests and explain why, despite the conflict, she can vote fairly, objectively, and in the public interest.

In summary, it appears that the legislator may participate freely in all the Committee's proceedings, including those concerning Superior Court judges in general, which can be anticipated under the circumstances, with one exception. That exception can arise when matters specifically involve her spouse. When matters involving her spouse as an individual come under consideration and she perceives her duties as a member would require her taking action affecting a financial interest, of any consequence, of her spouse, she must abstain or disclose and make the necessary declaration.

The foregoing is based on the scope of the Committee's activities which can be anticipated, considering the terms of the program review or investigation the Committee now contemplates. Obviously, should the Committee explore, for example, raising the salaries of all Superior Court judges as a way of tackling problems perceived in criminal investigations, financial gain could accrue to the legislator's spouse. The legislator could participate in action on that issue only after complying with the procedures of section 1-86, just as she must when action might affect the financial interests of her husband alone.

By Order of the Commission,



William A. Elrick, Chairperson

Dated DEC. 8, 1987

