



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 87-3

State Employee's Outside Business Interests
Affected by His Official Actions

The Ethics Commission has been asked how the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes) applies to an employee of the Department of Environmental Protection whose private business interests may soon be affected by action taken by his Department.

The employee is a principal sanitary engineer, heading an element of the Land Disposal Section, Water Compliance Unit, Environmental Quality Division. He has developed an alternative type of leaching system for subsurface sewage systems, which he is in the process of patenting. A firm has been formed to manufacture and sell the leaching system. The sanitary engineer will receive a percentage of the firm's profits and owns enough of its stock to make it a business "with which he is associated". Subsection 1-79(a), General Statutes. He also receives a salary from the firm as a consultant.

The Code of Ethics will not permit him to represent his firm for compensation before the Department. Subsection 1-84(d), General Statutes.

In Connecticut no disposal system may be built, operated, extended, or replaced unless the Commissioner of Environmental Protection approves. Sections 22a-416, 22a-430, General Statutes. The Commissioner has retained authority to approve commercial and household subsurface sewage disposal systems discharging more than 5,000 gallons of sewage per day, and some of less capacity which discharge particular types of wastes; approval of others discharging 5,000 or less gallons of domestic sewage has been delegated to the Commissioner of Health Services or municipal health authorities. Subsections 22a-430(f), (g), General Statutes; section 22a-430-1, Regulations of Connecticut State Agencies.

One of the responsibilities of the sanitary engineer's element is to review, prior to approval by higher authority, plans and specifications for new subsurface sewage disposal

systems included with applications for required permits. See subdivision 22a-6(a)(4), subsection 22a-424(h), General Statutes. The organization he heads also inspects permitted systems for compliance with statutes and regulations. If found wanting, enforcement actions may be initiated. Sections 22a-7, 22a-432, General Statutes. Any changes to bring a system into compliance would be reviewed by the sanitary engineer's organization.

It can be anticipated that applications for permits proposing use of the sanitary engineer's leaching system will soon be received by the Commissioner of Environmental Protection. Therefore, the sanitary engineer is on the verge of having a substantial conflict of interests. That is to say, he will have a financial interest in, and will be engaging in, a business under circumstances such that he can expect to derive a direct monetary gain, or suffer a direct monetary loss, by reason of his official activity; the benefit or detriment will occur to him as a person engaged in the business of supplying components for leaching systems differently than others engaged in the business. Subsection 1-84(a), section 1-85, General Statutes. If his leaching system proves to be successful and utilized in some subsurface sewage disposal systems in Connecticut, he would have a substantial conflict of interests even if plans and specifications for permits were not to specify use of his leaching system but would allow his system to qualify.

He will also soon have accepted employment impairing his independence of judgment as to his official duties, in violation of subsection 1-84(b), General Statutes.

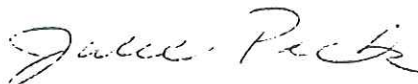
He would meet the technical requirements of the Code of Ethics if he were no longer to participate in any way in the process of reviewing subsurface sewage disposal systems and their permits, thereby changing his State duties and responsibilities for purposes of subsections 1-84(a) and 1-84(b), avoiding violation of subsection 1-84(c) each time he acted on a permit, and complying with section 1-86, General Statutes. His element has other responsibilities. His superiors already take final action on the issuance, renewal, and denial of subsurface sewage disposal systems for which the Department has retained responsibility. Abstention would satisfy the Code of Ethics.

Even if that would be acceptable to the Commissioner, however, he might wish to consider whether the public would have confidence in the Department's action on major subsurface sewage disposal systems. The sanitary engineer's element has been responsible for reviewing permits and systems for some years, and his position in the element is well known. Even if

it became common knowledge in the business that he had withdrawn from involvement in actions affecting disposal systems, questions would likely be raised as to how objectively his subordinates could review systems proposing use, or using, his invention or a leaching system utilizing competitive materials.

The Commission has been asked whether possible violation of the Code of Ethics might be avoided if the sanitary engineer were to be transferred from the Land Disposal Section to another section of the Water Compliance Unit, the Planning and Water Quality Management Section. That Section periodically updates Connecticut's water quality standards, maintains ambient water quality and biological monitoring stations, evaluates water quality standards, develops pollution abatement strategies using mathematical models, and provides planning and coordination between local, regional, State, and federal agencies. It has no responsibilities with regard to specific subsurface sewage disposal systems. The sanitary engineer's official position in that Section could avoid violations of the Code. He would, of course, have to refrain from official or unofficial activity, with his former subordinates or others, related to his leaching system. Likewise he could serve with propriety in the Natural Resources Center, which is not in the Environmental Quality Division. It is a non-regulatory unit which produces, interprets, and collates natural resource baseline data, carries out management planning programs for selected natural resources, serves as a central source for natural resource information, and develops related educational delivery systems. His official activities related to the Center's mission would cause no problems under the Code of Ethics.

By order of the Commission,



Julie Peck
Chairperson

Dated March 2, 1987

