



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 87-6

Application of Subsections 1-84(c) and 1-84(i)
to Property Held in Trust

Almost two decades ago an attorney and his wife created an irrevocable living trust for the benefit, insofar as is pertinent, of their children. They retained no interest in the property transferred in trust. In 1979 part of the trust principal was an office building. That year the trustees leased a portion of the building to the State for three years. The trustees later renewed the lease for a year, after the expiration of which it was renewed for three more years. Prior to the three year renewal the State's need for space was not advertised because the square footage being leased was less than that for which advertising is required. Subsection 4-127c(a), General Statutes. No other site was considered because the facility, for four years, had served the State's purposes adequately.

Before the lease renewal for three years was executed the attorney became a State employee, subject to the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes. Subsection 1-84(i) provides that "[n]o...State employee or member of his immediate family or a business with which he is associated shall enter into any contract with the state, valued at one hundred dollars or more, ...unless the contract has been awarded through an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded...." A lease is a contract. Robinson v. Weitz, 171 Conn. 545 (1976). The Ethics Commission has been asked how subsection 1-84(i) applies to contracts involving property held in trust.

Legal title to the office building had been transferred to the trustees under the trust indenture. Successive leases to the State were signed by the trustees, as they had to be. When the lease was renewed for three years in 1983, however, the equitable owners of the building included dependent children of a State employee, residing in his household. Subsection 1-79(e), General Statutes. The lease was not awarded through an open process, nor was it required by leasing laws to be.

The obvious purpose of subsection 1-84(i) is to prevent a State employee from using his position inside State government to work a deal favorable to those whose financial interests are

important to the State employee, a deal likely to be unfavorable to the State and unfair to others. The preventive technique employed by the General Assembly was to forbid State employees to seek contracts with the State unless others were allowed to compete and the proposals submitted, as well as the contracts finally awarded, were public. Ethics Commission Advisory Opinion No. 84-11, 46 Conn. L.J. No. 3, p. 5D (7/17/84).

A lease with the State can be no less beneficial to an equitable owner than if the equitable owner had legal title as well. However, the language of subsection 1-84(i) does not suggest that beneficiaries of a contract with the State have "entered into" the contract. The legislative history of the statute which established the Code, Public Act No. 77-600, does not indicate that trust beneficiaries enter into a contract when the trustee does. Yet the legislators clearly considered the existence and effects of trusts when they drafted the Code. In designating the assets to be listed in personal financial disclosure statements, they required that some assets, including real estate, held in trust be disclosed. Subparagraphs 1-83(b)(1)(C) and 1-83(b)(1)(D), General Statutes. In contrast, the only leases and contracts with the State to be disclosed are those between the individuals whose financial interests must be disclosed, or a business with which the individual filer is associated, and the State. Subparagraph 1-83(b)(1)(D), General Statutes. A trust of which the individual or his dependent children is a beneficiary is not "a business with which he is associated". Subsection 1-79(a), General Statutes.

The State might be better protected from exploitation of their position by State employees if subsection 1-84(i) required an open and public process when equitable, as well as legal, owners are benefitted by a contract with the State. That does not now, however, appear to be the law.

The attorney who, with his wife, established the trust in question has been appointed by the trustees an attorney in fact, authorized to handle a broad range of matters for the trust, including real estate transactions. He has served as an attorney for the trust. Additionally, he has been manager of a corporation which acted as rental agent for the trust realty. After becoming a State employee, he continued to participate in the arrangements for the three year renewal of the lease of a portion of the office building to the State.

Subsection 1-84(c) provides in part that "...no...State employee shall use his public office or position...to obtain financial gain for himself...[or] child...." Although subsection 1-84(i) does not apply to contracts involving

property held in trust, because of the separation of legal title and beneficial interest, the separation of titles has no application in subsection 1-84(c). The trust arrangement does not interpose a barrier against financial gain to the trust flowing to the beneficiaries of the trust, as it does between trust beneficiaries and the State when the trustees enter into a contract with the State. Therefore, a violation of subsection 1-84(c) could occur if a State employee used his position to obtain financial gain for a trust of which his children were beneficiaries. This rather obvious interpretation is bolstered by the fact that the Code provisions concerning financial disclosure previously cited require the listing of securities and real estate held in trust.

It should be noted that, in the case at hand, there is no evidence of improper use of State position, or any use of State position at all. Nevertheless, it would have been preferable if the attorney, once he became a State employee, had withdrawn as the representative of the trust in arranging the lease of trust property to the State, to avoid the possibility of either the appearance of impropriety or the opportunity for it.

By order of the Commission,



Julie Peck
Chairperson

Dated April 10, 1987

