



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 87-8

Post-Service Employment of the Deputy Commissioner
of Transportation, Bureau of Highways

The former Deputy Commissioner of Transportation, Bureau of Highways, has asked whether he may accept employment as Executive Secretary, Connecticut Bituminous Concrete Producers Association.

The responsibilities of the Commissioner of Transportation include the development, design, construction, and maintenance of the State highway system. Section 13b-24, General Statutes. Within the Department of Transportation this responsibility is assigned to the Bureau of Highways, under its Deputy Commissioner. Section 13b-17b-5, Regulations of Connecticut State Agencies.

The Connecticut Bituminous Concrete Producers Association is a trade group to which most of Connecticut's bituminous concrete producers belong. Also members are equipment dealers and petroleum and liquid asphalt suppliers. The Executive Secretary is the senior staff member. Duties include administration of the Association's office and affairs, arranging meetings and conferences, taking various steps to keep the Association abreast of new technology, and advising Association members of appropriate resolutions of contractual disagreements relating to construction materials.

The former Deputy Commissioner advises that in his State office he did not negotiate or sign contracts with the Association or its members. Construction and maintenance contracts were the responsibility of the Commissioner of Transportation and were reached through sealed public bids. The prime contractor would arrange with the subcontractor to provide material such as bituminous concrete. The Department had only a veto power, for cause, over the subcontractor. If the Department itself needed bituminous concrete, it was purchased by the Department of Administrative Services using sealed public bids.

The Deputy Commissioner left State service after section 1-84b, General Statutes became effective. Therefore, four provisions of the Code of Ethics (Chapter 10, Part I, General Statutes) apply to his post-service employment.

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He may never use confidential, inside information gained in his State office for the private financial benefit of anyone. Subsection 1-84a, General Statutes.

He may never represent anyone other than the State concerning any particular matter in which he participated personally and substantially as a State servant, if it is one in which the State has a substantial interest. Subsection 1-84b(a), General Statutes.

For a year after leaving State service he may not represent anyone, other than the State, for compensation before the Department of Transportation concerning a matter in which the State has a substantial interest. Subsection 1-84b(b), General Statutes.

If he participated substantially in the negotiation or award, or supervised the negotiation or award, of a contract, valued at \$50,000 or more, with the Association within a year of leaving State service, he may not accept employment with the Association for a year after leaving State service. Subsection 1-84b(d), General Statutes.

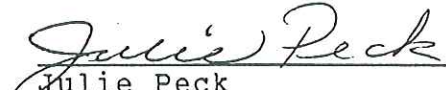
The provisions limiting the employment of a former member of the executive branch, such as the former Deputy Commissioner, are in the main self-explanatory. After leaving State service he may exploit the experience and information (other than confidential information) acquired in State service. He may never switch sides on a particular matter. For a year he may not exploit any influence he may have with his former department, or any friendships or obligations acquired while in the Department, including obligations gained in the contracting process if a contract valued at \$50,000 or more was involved.

Representing the Association before the Department of Transportation means any activity that reveals the identity of the Director as the Association's representative: appearing in person, signing a document, identifying oneself on the telephone, etc. The Association is not barred by hiring the former Deputy Commissioner as an employee from being represented before the Department by someone else. See Ethics Commission Advisory Opinion No. 86-11, 48 Conn. L.J. No. 18, p. 1D, 2D (10/28/86).

In Advisory Opinion No. 86-9, 48 Conn. L.J. No. 11, p. 33 (9/9/86), the Commission described in some detail the activities which could be included in "participating substantially in, or supervising, the negotiation or award of a

contract". Persons included are those who have discretionary power to affect the terms of a contract -- the specifications, for example. Also included are those who review proposals and make recommendations, other than clerical or perfunctory ones, as to bids to be considered or accepted. Supervision includes that by those whose responsibilities require them to become involved to a significant, material degree in the evaluation or decisional processes leading to the award of a contract, or who have such a major responsibility for awarding the contract -- such as final approval -- that it is unlikely that a person did not become involved personally and substantially in the contract award. Also included are those who in fact exercise supervisory authority in the negotiation or award of a contract, although not specifically required to do so.

By order of the Commission,


Julie Peck
Chairperson

Dated July 7, 1987

