



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 88-6

Application of Section 1-84a, General Statutes

A former State employee in the Department of Environmental Protection (D.E.P.) has asked how Section 1-84a of the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes applies to the following situation.

The individual, a certified hydrogeologist, left State service in May of 1986 to start a consulting company. While employed by D.E.P. from 1975-86 he worked on numerous water pollution problems and sites. During this entire period, as part of his official duties, he was actively and directly involved in inspection and testing at a certain industrial site. He was also involved, in his State capacity, in enforcement actions by both D.E.P. and the Federal Environmental Protection Agency (E.P.A.) which sought to impose government clean-up requirements on the Firm occupying the site in question.

According to the Hydrogeologist, in the case of the D.E.P. action (which sought a pollution abatement order against the Firm for their alleged contamination of soil at the site) he was directly involved in negotiations which led to a resolution of the matter by consent agreement. In the case of the E.P.A. action (which was directed against the Firm for their alleged contamination of two public wells) the State was not a party. Therefore, he was involved only to the extent of providing technical input. This matter was also resolved by negotiations and a consent agreement among the parties concerned.

The former State employee has now been retained by counsel for a company which has filed a civil suit against the Firm in question. Specifically, he has been hired to develop proof and act as an expert witness in the suit, which seeks damages for pollution to the Company's property as a result of alleged actions by the Firm. The Company property is adjacent to that of the Firm and lies between the Firm and the public wells which were the subject of the E.P.A. action.

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Counsel for the Firm has asked the Court to exclude the former State employee's expected testimony. The requested exclusion is grounded in part on a claim that the individual's participation in the case would be improper under Section 1-84a of the Code. The Court has reserved decision on the matter.

A resolution of this issue will be made by the Court, as necessary, on the basis of a complete factual record. The Ethics Commission, however, is the proper body to provide an interpretation of Section 1-84a. Subdivision 1-81(a)(3), General Statutes.

Effective in 1983, Section 1-84a states that "no former executive or legislative branch public official or state employee shall disclose or use confidential information acquired in the course of and by reason of his official duties, for financial gain for himself or another person." The Commission has defined "confidential information" as "...information not generally available to the public..." Ethics Commission Advisory Opinion No. 80-16, 42 Conn. L.J. 15, p. 6 (October 7, 1980). Such information may be in any form (written, photographic, recorded, computerized, etc.) including orally transmitted information; e g., conversations, negotiations, etc.

The former State employee maintains that he will not disclose any confidential information in the course of his work. The presence of an opposing party represented by counsel no doubt will insure that, at a minimum, no such information will be made public. However, the question of use of confidential information is another, and more difficult, matter.

It is a fundamental rule of statutory construction that "...words and phrases shall be construed according to the commonly approved usage of the language..." Subsection 1-1(a), General Statutes. "Use", in the context of a provision such as Section 1-84a, is commonly understood to mean "...to put into service...employ...to carry out a purpose or action by means of, make instrumental to an end...apply to advantage..." Webster's Third New International Dictionary at pps. 2523, 2524, G. and C. Merriam Co. (1961).

The former State employee claims his work will not violate the above defined prohibition, because his participation in this matter will be based exclusively on data, reports, and other information taken directly from public records or otherwise publicly available. He further claims that in the aforementioned E.P.A. action he was not privy to any negotiations, discussions, etc. that could be deemed confidential; and that if any such information was gained in the

D.E.P. action it is not relevant to, and therefore would not provide an advantage in, the case at hand. If these claims are accurate, the individual can continue the compensated work at issue without violating Section 1-84a.

It may not be possible to predetermine recollection. However, if it is determined that the former State employee possesses any confidential information gained through State service which could be of use in relation to the pending suit, he should not continue the employment in question. This formulation is broad, and necessarily so. If one has the requisite confidential information, it would seem virtually impossible, no matter how ethical the individual, to proceed in an endeavor without, at least, inadvertent violation of the Code. For in such a case one could not, realistically, segregate such information from their work.

In summary, if the former State employee in fact possesses no confidential information gained in State service which is relevant to the matter at hand, he may proceed with his employment. However, if he has any such information, whatever its form or source, which could provide an advantage, or otherwise be utilized, in the pending suit, he may not proceed without risking violation of Section 1-84a of the Code of Ethics for Public Officials.

By order of the commission,



William A. Elrick
Chairperson

Dated

4/4/88

