



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

ADVISORY OPINION NO. 88-8

### Relatives Employed as Faculty in the Same University Department

The President of the Connecticut State University-American Association of University Professors, Mr. Paul E. Wenger, and the Vice-President for Personnel of the Connecticut State University, Mr. David C. Newton, have asked the Ethics Commission a series of questions regarding possible conflicts of interests when immediate relatives serve in the same university department. Specifically, the gentlemen have requested advice on the following issues:

(1) Because of the quasi-supervisory role of the department chairperson in a department's activities, can either of two immediate relatives in the same department serve as chairperson without creating a situation in substantial conflict with the intent of the ethics law?

(2) When one relative is a department chair, can she recommend or convey the recommendation concerning the employment of her relative within the department? Can any department member participate in a personnel recommendation concerning an immediate relative?

(3) If affected department members or chairs absent themselves from the decision, would there still be a problem if another member or group of department members act in their stead?

As is the custom in academe, in the Connecticut State University system the faculty have significant authority in directing the affairs of their department. Under the Collective Bargaining Agreement (the Contract) now in effect, a departmental evaluation committee (DEC) composed of tenured faculty makes the initial recommendations for promotion, tenure, and renewal of full time faculty. Article 4.11.1, Contract. Although these recommendations are subject to modification or reversal at a higher level, by both custom and

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contract the initial recommendations have considerable weight in the final decisions. Article 4.10, id. Similarly, in the area of appointment of faculty the affected department, through its search committee, is authorized to make the initial recommendation. Article 5.1, id. As with promotion, tenure, and renewal decisions, the department's initial recommendation regarding the hiring of faculty can be reversed, but is normally of considerable importance. Article 4.10, id. The department also has primary authority in the areas of teaching assignments and scheduling. Articles 5.17, 9.7, id.

"The department Chairperson has the dual responsibility of leading the department in fulfilling its responsibilities in academic and personnel areas and of facilitating the functioning of the department. The department Chairperson is the normal channel of communications between the department...and the administration." Article 5.23, id. Department Chairperson is a compensated position. Article 9.6, id. As part of the Chairperson's responsibilities, he or she may sit on the DEC ex-officio. Article 4.11.1, id. If not so serving, the Chairperson contributes separate evaluations to all promotion, tenure, and renewal decisions, except those directly affecting their own position. Id. Additionally, scheduling conflicts within the department are resolved by the administration working with the Chairperson. Article 9.7, id.

The faculty of the Connecticut State University are State employees. Subsection 1-79(k), General Statutes. Therefore, they are subject to the provisions of the Code of Ethics for Public Officials, Chapter 10, Part 1, id. Subsection 1-84(c) of the Code, in pertinent part, states that "...no...state employee shall use his public...position...to obtain financial gain for himself, his spouse, child, child's spouse, parent, brother or sister..." When confronted with a decision which would significantly affect a financial interest of one of the enumerated individuals, subsection 1-86(a) of the Code provides a mechanism for avoiding the potential conflict. For a faculty member acting as part of a committee, e.g., the DEC, abstention from voting, deliberating, or taking any other action is a sufficient remedy under subsection 1-86(a) to avoid a potential conflict. When an individual is required to take an action, e.g., a chairperson not on the DEC submitting separate evaluations to the DEC process, subsection 1-86(a) mandates that the individual prepare a written statement signed under penalty of false statement describing the matter requiring action and the nature of the potential conflict. A copy of this statement is to be delivered to the individual's immediate superior who shall assign the matter to another employee. The other employee should be a peer or superior of the individual,

not a subordinate who is subject to the control or influence of the individual with the potential conflict. Ethics Commission Advisory Opinion No. 81-18, 43 Conn. L.J. No. 23, p. 43A (Dec. 8, 1981).

Applying these Code provisions to the questions posed:

1. One of two immediate relatives in the same department can serve as department chairperson without violation of the Code, as long as the restrictions of subsections 1-84(c) and 1-86(a) are adhered to. Specifically, when required to take an action which would significantly affect the financial interest of one of the individuals listed in 1-84(c), the Chairperson must proceed as mandated by 1-86(a). Actions regarding promotion, tenure, reappointment, and appointment would certainly be of significant financial consequence. Actions regarding teaching assignments or scheduling conflicts can have significant financial ramifications, and should be avoided whenever such a financial element is apparent. When the requisite financial impact is present, the Chairperson must not only avoid acting with regard to the immediate relative, but also with regard to any competitor of that relative. As the Commission has stated on several occasions, by taking official action affecting a competitor of an individual, a State employee can favor the financial interests of the individual. See, e.g., Ethics Commission Advisory Opinion No. 81-18, 43 Conn. L.J. No. 23, p. 43A (Dec. 8, 1981).

When a chairperson must abstain and file statements pursuant to 1-86(a) on frequent occasions, e.g., when the immediate relative of the Chairperson is an untenured junior member of the department, the Chairperson should consider whether the potential conflicts are so substantial as to significantly interfere with official responsibilities. If so, the Chairperson should resign.

2. As discussed supra, under the Code a chairperson cannot make a recommendation regarding a relative listed in subsections 1-84(c) or 1-86(a), if a significant financial interest is involved. The Chairperson can convey a department's recommendation concerning such an individual to the University administration, if the act is solely a transmittal of information with no stated or implied endorsement or other comment. For such a routine, ministerial action would not be one which would "affect" the relative's financial interest as that term is used in 1-86(a).

3. As discussed supra, when a chairperson must abstain from a required official action, a peer or superior can be

assigned to act in the Chairperson's place pursuant to subsection 1-86(a). Similarly, when a faculty member of a department committee must abstain from acting on a matter, the individual's peers on the committee can continue to act.

In closing, the Commission realizes that in many instances where close relatives are employed, or seek employment, as faculty in the same department, the members of the department will be placed in a difficult position with regard to personnel decisions. Nevertheless, such employment is not barred by the Code of Ethics for Public Officials as long as the restrictions of subsections 1-84(c) and 1-86(a) of the Code are observed.

By order of the Commission,



William A. Elrick  
William A. Elrick  
Chairperson

Dated

5/2/88