



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 89-17

Private Consulting Related to the Duties of a
Department of Transportation Employee

Mr. Daniel S. Muirhead, a Deputy Commissioner in the Department of Transportation (DOT), has asked how the requirements of the Code of Ethics for Public Officials, Connecticut General Statutes, Chapter 10, Part I, would apply to the establishment of an outside consulting business by one of DOT's employees.

The employee in question is Mr. Rickey Reed, a senior affirmative action officer in DOT's Office of Contracts. Mr. Reed's duties include processing documentation submitted by the low bidder for a DOT contract to ascertain whether the bidder, or its listed subcontractors, qualifies as a certified Minority Business Enterprise, Women's Business Enterprise, or small contractor under the State's Disadvantaged Business Enterprise and Small Contractor Set-Aside Programs. As part of this review, Mr. Reed determines: (1) whether the named firms can perform the services for which designated by the low bidder; (2) whether the firms have been appropriately certified by the State; and (3) whether the firms were previously approved by the State to perform the services designated by the low bidder. Mr. Reed also determines whether the low bidder's affirmative action plan is approved and current. If problems arise in the review of the above documentation, Mr. Reed communicates with the low bidder to clarify, and if necessary correct, areas of concern.

The business Mr. Reed wishes to start would provide consulting to Disadvantaged and Women's Business Enterprises (DBE/WBE) in completing their certification applications and in assisting DBE/WBE firms in competing in all aspects of the Disadvantaged Business Enterprise Program. Specifically, the consulting firm's literature offers services in the following areas: certification package consultation and preparation; DBE program consultation and problem solving assistance; contract compliance reporting form service including affirmative action program updates and certification package updates; and DBE liaison officer service.

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Under the Code of Ethics, a state official or employee is not prohibited from using his or her expertise for outside financial benefit. However, one may not use official authority, or confidential information gained in state service, for private financial gain. Conn. Gen. Stat. §1-84(c). Additionally, one may not accept outside employment which will impair independence of judgment as to official duties, or require or induce disclosure of confidential information. Conn. Gen. Stat. §1-84(b).

In requesting this opinion, Deputy Commissioner Muirhead has claimed that Mr. Reed's state position provides him access to confidential files and other confidential information that relates to a DBE's efforts to become certified. Specifically, the Application for Prequalification, one of the major requirements for certification, is reviewed and administered by Mr. Reed's office. As a result, Mr. Muirhead states that Mr. Reed has access to the names of all companies applying for certification as well as to any problems these applicants may be experiencing with the certification process. Mr. Muirhead also notes that Mr. Reed has access to information regarding firms that are having contract compliance, affirmative action and certification package updates. Mr. Muirhead writes that, "In summary, Mr. Reed would have access to and/or knowledge of a whole gamut of contract compliance activities, some of which are directly related to his work, and some of which would provide him with information that other similar consulting firms would not have access to."

In response, Mr. Reed has asserted that: (1) the Office of Contract Compliance, not the Office of Contracts, administers the DBE certification process; (2) the Office of Contracts does administer one phase of the process, the prequalification phase. However, Mr. Reed states that he is not personally involved in any aspect of this prequalification work; and (3) his proposed consulting work on certification package preparation and submission would, of necessity, occur before the State's certification process commences. In essence, Mr. Reed disputes the claim that he has official access to commercially significant confidential information.

It is not necessary to determine whether Mr. Reed's apparent access to confidential information is, in fact, sufficient reason to prevent the outside employment at issue. Another Code provision - §1-84(b)'s proscription on acceptance of outside employment which will impair independence of judgment as to official duties - precludes the work.

As the Commission has often stated, conflicts of interest, both real and apparent, are almost inevitable when a state employee accepts private clients that can benefit from the employee's official actions. See, e.g., Ethics Commission Advisory Opinion Nos. 88-20, 50 Conn. L.J. No. 23, p. 3c (December 6, 1988); 88-16, 50 Conn. L.J. No. 15, p. 5D (October 11, 1988); 88-14, 50 Conn. L.J. No. 15, p. 1D (October 11, 1988); 88-11, 50 Conn. L.J. No. 8, p. 1c (August 23, 1988). Regardless of Mr. Reed's involvement in, and access to confidential information about, the DBE/WBE certification process, his subsequent official involvement with these businesses at the time of DOT contracting provides him with official authority over the very group he seeks to serve in a private, paid capacity. If successful in his outside endeavor, Mr. Reed, in his state capacity, would soon be required to review certification documentation he had previously prepared as a private consultant. Under such circumstances, the public and competing DBE/WBEs would have little confidence in the independence and impartiality of Mr. Reed's official decisions.

In summary, in order to avoid violation of §1-84(b) of the Code of Ethics for Public Officials, the affirmative action officer in DOT's Office of Contracts should not offer private consulting services regarding DOT's Disadvantaged Business Certification process, set-aside programs, or affirmative action requirements.

By order of the Commission,



William A. Elrick
Chairperson

Dated 6-5-89

