



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION 89-25 (AMENDED)

Application of the Code of Ethics to a Former
State Employee Seeking to Contract With His
or Her Former Agency

Last month the Ethics Commission issued an advisory opinion which held that one of the Ethics Code's post-state employment provisions, Conn. Gen. Stat. 1-84b(b), would prevent a former state employee from personally contracting as a consultant with his or her former agency for one year after leaving state service.

Section 1-84b(b) states that:

No former executive branch or quasi-public agency public official or state employee shall, for one year after leaving state service, represent anyone, other than the state, for compensation before the department, agency, board, commission, council or office in which he served at the time of his termination of service, concerning any matter in which the state has a substantial interest.

In the previous opinion, Ethics Commission Advisory Opinion No. 89-25, 51 Conn. L.J. No. 15, p. 2C (October 10, 1989), the Commission noted that once the former employee was hired by his or her former agency, the individual would be representing the State as permitted by 1-84b(b). In the process of obtaining the consulting or other employment, however, the former state employee would be representing someone other than the State, i.e., himself or herself, in violation of the express language of 1-84b(b). The Commission concluded, therefore, that the individual was barred from personally seeking employment with the former agency for one year.

Since the issuance of Ethics Commission Advisory Opinion No. 89-25, concern has been expressed by several state agencies, including the Office of Policy and Management and the Governor's Office, that the ruling will hamper the State's ability to carry out essential functions, particularly in light of the large number of recent retirements from state service resulting from the enactment of P.A. 89-323, An Act Concerning A Supplemental Retirement Benefit For State Employees. In the course of

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discussion with those concerned over the possible impact of Ethics Commission Advisory Opinion No. 89-25, it has been suggested to the Ethics Commission that Conn. Gen. Stat. §5-164a(c) may provide a limited statutory exemption to §1-84b(b). Section 5-164a(c) states, in pertinent part, that "no member reemployed under this section...or otherwise reentering state service shall receive a retirement income during his reemployment...except (1) if his services as an employee are rendered for not more than ninety working days in any one calendar year...." It has been proposed that this provision implicitly allows retired state employees to represent themselves before their former agencies for the purpose of being reemployed for up to ninety days when such representation would otherwise be prohibited by §1-84b(b).

In the past, the Ethics Commission, in a very few instances, has construed a state statute as creating a legislative exemption to a provision of the Code of Ethics. (See, e.g., Ethics Commission Advisory Opinion No. 80-20, 42 Conn. L.J. No. 26, p. 21 (December 23, 1980). "When the General Assembly provides for the appointment to a board or commission of someone in a position such that there is an inherent conflict of interests, it in effect grants that person a waiver of certain conflict of interest provisions of the Code of Ethics for Public Officials with which the public members of the same agency must conform.") The Commission declines to recognize such an exemption in this instance. Past exemptions were specific and unambiguous. Section 5-164a(c) is neither. As part of the State Retirement Act it speaks to computation of retirement benefits, not conflict of interest policy considerations. Furthermore, the provision addresses reemployment by any state entity at any time, and does not explicitly authorize representation before one's former agency in derogation of §1-84b(b).

A better case for waiver is presented by Conn. Gen. Stat. §5-248(e) which states, in pertinent part, that:

When any employee has resigned in good standing with the consent of the appointing authority under whose jurisdiction he was employed and has withdrawn his resignation within one year, the commissioner of administrative services shall refer the name of such employee to the appointing authority for possible reinstatement to positions in classes in which he has attained permanent status.

This provision does appear to explicitly authorize reemployment as a state employee by one's former agency within one year under

certain circumstances. However, the far more typical situation, and the one addressed in Ethics Commission Advisory Opinion No. 89-25, concerns employment as an independent contractor, e.g., a consultant; not reemployment in one's former state position. Commission research reveals no personnel or retirement provision which would act as a waiver of §1-84b(b) in connection with such consulting or other independent work.

Nonetheless, the Ethics Commission recognizes the legitimate concerns voiced regarding the effect of Ethics Commission Advisory Opinion No. 89-25 by those charged with the administration of Connecticut's government. While, in the Commission's opinion, state agencies can unquestionably continue to function without the aid of recently retired or resigned personnel, there are, no doubt, many instances when the availability of these individuals will make state operations more efficient and effective. Furthermore, at both the federal level and in other states, provisions analagous to §1-84b(b) routinely provide an exemption allowing former governmental employees to represent themselves before their former agencies within one year for the purpose of being reemployed by those agencies. (See, e.g., 5CFR Ch. 1, §737.11(h)(1), (1-1-89 Ed.), Ohio Rev. Code §102.03(A).)

Considering the widespread adoption of this exemption in other jurisdictions, and in light of the important policy considerations at issue, the Ethics Commission is convinced that a limited regulatory exemption to §1-84b(b) is appropriate in this instance. The Commission, therefore, intends to promulgate a regulation which will allow a former state official or employee to have personal contact with his or her former agency within one year after leaving state service for the purpose of being reemployed (as either a state employee or independent contractor) by that agency. In order to help insure that this reemployment is utilized to take advantage of the former employee's expertise, and not as an improper reward for past favors or friendships, the regulatory exemption will require that the reemployment be at no greater pay level than the individual was receiving at the time of separation from state service, plus necessary expenses if the work is performed as an independent contractor.

The Ethics Commission intends to include the proposed exemption to §1-84b(b) in the regulations implementing the Code of Ethics for Public Officials which are currently being drafted. It is anticipated that these regulations will be ready for legislative review by January 1, 1990. Until this issue is

finally resolved, the Commission will take no action against those whose activities may be at variance with the Commission's interpretation of S1-84b(b) in this matter.

By order of the Commission,



William A. Elrick
Chairperson

Dated 11/13/89