



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 89-3

Teaching at the Municipal Police Training Academy
by the Chief State's Attorney

John J. Kelly, the Chief State's Attorney, has asked the Ethics Commission's advice regarding the following situation.

For the last fifteen years Attorney Kelly has taught criminal law and constitutional law to police officers. During the last six years he has done this teaching as a member of the Connecticut Criminal Law Foundation, Inc. (Foundation). The Foundation enters into contracts with the State's Municipal Police Training Council (M.P.T.C.) to provide training mandated by subsection 7-294d(b), General Statutes. Although Attorney Kelly is currently the Secretary of the Foundation, he takes no part in the negotiation of the contracts in question. Since July 1, 1986, Attorney Kelly has been classified by the M.P.T.C. as a certified instructor in the following areas: Judicial System, Criminal Law-Sources of Law, Laws of Evidence, Laws of Arrest, Searches and Seizures, and Search Warrant Preparation. As an instructor for the M.P.T.C. Attorney Kelly is considered a part-time State employee. This secondary State employment has been approved by his primary appointing authority, the Chairman of the Criminal Justice Commission, as required by Section 5-208a, General Statutes.

Pursuant to P.A. 87-477 the Chief State's Attorney has become a member of the M.P.T.C. Subsection 3(b) of 87-477 provides, in pertinent part, that "Membership on the council shall not constitute holding a public office. No member of the council shall be disqualified from any...employment by reason of his appointment to or membership on the council...notwithstanding the provisions of any general statute...."

Given the above facts, the Chief State's Attorney wishes to know whether his secondary employment as an M.P.T.C. instructor constitutes a conflict of interests under the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes.

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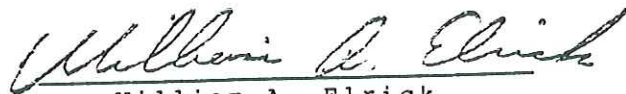
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As the Commission has stated on more than one occasion, there are inherent conflicts of interests under the Code when an employee is also the employer, or a member of the body which is the employer. Such a relationship exists in the case at hand. As a member of the M.P.T.C. the Chief State's Attorney is fulfilling the role of employer, while as an instructor he is functioning as an employee of the Council. Nevertheless, the secondary employment in question is not barred in this instance. The General Assembly, in enacting subsection 3(b) of P.A. 87-477, has made clear that no provision of the General Statutes, including the State's Code of Ethics, shall disqualify an M.P.T.C. member from any employment (emphasis added).

An argument can also be made that no provision of the Code applies to the Chief State's Attorney in the instant situation, since under 87-477 membership on the M.P.T.C. does not constitute holding public office. The Commission rejects this argument. Attorney Kelly is already subject to the Code because of his position as Chief State's Attorney, and it is solely by virtue of this position that he holds his membership on the M.P.T.C. Therefore, he must act pursuant to the Code when, while a member of the M.P.T.C., he is required to take official action which would affect his financial interests as an instructor. Specifically, he must recuse himself from all such action in accordance with subsection 1-86(a), General Statutes.

Lastly, it should be noted that the open and public contract provisions of subsection 1-84(i), General Statutes, do not apply in this instance. The Foundation is not subject to 1-84(i), because it is not a business with which Attorney Kelly is associated as that term is defined in the Code. Subsection 1-79(b), General Statutes. Furthermore, contracts of employment as a State employee are specifically exempted from 1-84(i). Nonetheless, the current procedures by which the M.P.T.C. selects its instructors comply with both the prior public offer and subsequent public disclosure provisions of that subsection. Continuation of these procedures, although not mandatory, will help insure the public of the integrity of the Council's hiring decisions.

By order of the Commission,



William A. Elrick
Chairperson

Dated 1-9-89