



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 89-7

Appearances Before the Workers' Compensation Commission
by a Chairperson of the Labor and Public Employees Committee

State Representative Joseph A. Adamo has posed the following question to the Ethics Commission: "Is there a conflict of interest if I represent an individual in a Workers' Compensation case, either before the Commission or through simple meetings with their adjusters?"

Representative Adamo is a Chairman of the Labor and Public Employees Committee of the General Assembly. In Ethics Commission Advisory Opinion No. 88-9, 49 Conn. L.J. No. 48, p. 5D (May 31, 1988) Representative Adamo was advised that he should not represent State employees before the Workers' Compensation Commission. In that Opinion the Commission reasoned that the Chairman's authority over both Workers' Compensation and State employee issues was too substantial to allow acceptance of the employment in question. The Commission stated that, regardless of Representative Adamo's expertise and integrity, there would be an inevitable appearance of use of public office for personal gain and acceptance of employment which would impair independence of judgment as to official duties.

Now the Commission must decide whether the Chairman's authority over Workers' Compensation is in itself sufficient reason to advise against the employment in question.

It is exceedingly difficult to apply the Code's use of office and acceptance of outside employment provisions (subsections 1-84(b) and (c), General Statutes) to the members of Connecticut's part-time General Assembly. The great majority of legislators must, of economic necessity, pursue outside employment while in public service. Under the circumstances, potential conflicts of interests are inevitable. In reaching its decisions, the Commission must determine when these conflicts, both real and apparent, are so significant as to require prohibiting the conduct in question.

In certain instances the General Assembly has settled the issue by statute. Thus, subsection 1-84(d) of the Code prohibits public officials and State employees, and their firms, from compensated appearances before the Banking Department, Claims Commissioner, Commission on Hospitals and

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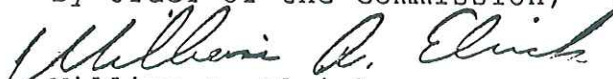
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Health Care, Insurance Department, Department of Liquor Control, Department of Motor Vehicles, State Insurance Purchasing Board, Department of Environmental Protection, Department of Public Utility Control, Connecticut Siting Council, Division of Special Revenue, Gaming Policy Board, or Real Estate Commission. Absent additional legislation, it is obviously beyond the Ethics Commission's authority to prohibit all members of the General Assembly from compensated appearances before a State agency not on the 1-84(d) list.

However, the Commission has, on occasion, advised certain legislators that they should not engage in specific conduct because of the special authority they possess. As in the earlier opinion to Representative Adamo, the Commission has carefully limited these rulings to committee chairpersons and members in other leadership positions. (See, e.g., Ethics Commission Advisory Opinion No. 87-13, 49 Conn. L.J. No. 20, p. 1C (November 17, 1987) which advised against the Chairpersons of the Environment Committee, Chairpersons of the Appropriations Committee, and members of the Finance, Revenue, and Bonding Committee who served on the State Bond Commission participating in the Farmland Preservation Program, because of their authority over the Department or Program in question.)

In the case at hand similar advice concerning representation before the Workers' Compensation Commission is warranted. As the Ethics Commission stated in its first opinion to Representative Adamo, "... the Representative's authority ... over the State agency before which he will appear will make it exceedingly difficult to avoid inadvertent use of his public position in the course of his private, paid representation of clients... regardless of his skill, and no matter how scrupulously he attempts to avoid use of office, many will assume that his clients are being favored by the Commission over which he has such significant official influence." Ethics Commission Advisory Opinion No. 88-9, 49 Conn. L.J. No. 48, p. 50 (May 31, 1988). This assumption, which will undermine public confidence in the integrity of the process, is likely to be widespread, since it is customary in the Workers' Compensation area for the representative's fee to be based on a percentage of the award. As indicated earlier, the Ethics Commission cannot prevent every apparent conflict of interests when a member of the General Assembly is involved, without virtually eliminating outside employment for legislators. It can and will, however, advise against outside employment involving the State, when the legislator's specific authority over the program or agency in question is so great as to create the distinct possibility of inadvertent use of office for financial gain and an inevitable appearance of impropriety.

By order of the Commission,


William A. Elrick
Chairperson

Dated 2/6/89