



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

ADVISORY OPINION NO. 90-18

"Application of Conn. Gen. Stat. §1-84b(b) to Representation  
of a Regional Educational Service Center by a  
Former State Employee"

Lisa Doyle Moran, Ethics Commission Staff Attorney II, has asked the Commission whether, under the Code of Ethics for Public Officials, a Bureau Chief at the State Department of Education can accept a position as Executive Director of a Regional Educational Service Center ("RESC"), and then represent the RESC before his or her former agency within a year after leaving state service.

Under Connecticut General Statute §1-84b(b), no former state employee "shall, for one year after leaving state service, represent anyone, other than the state, for compensation before the department...in which he served at the time of his termination of service, concerning any matter in which the state has a substantial interest." The threshold issue here is whether, by representing a RESC, the former state employee is representing "anyone other than the state."

The establishment of a RESC is authorized by state statute. Conn. Gen. Stat. §10-66a et seq. RESCs are formed by local boards of education to address certain educational needs. Under §10-66c(a), the board of a RESC "shall be a public educational authority acting on behalf of the state of Connecticut." The legislative history reveals that the language "acting on behalf of the state of Connecticut" was added in 1987 in order to accord the RESCs tax-exempt status and thus assure their ability to borrow funds. Conn. Jt. Standing Committee Hearings, Education, Pt. 3, 1987 Session, pp 810-811. Furthermore, the intent of other language added in 1987 was to ensure that a RESC is considered a separate legal entity. 30 H.R. Proc., Pt. 24, 1987 Session, p. 8830. RESCs own land and buildings and other "independent assets." Id., p. 8830.

State statutes do provide certain limits and controls on the existence and authority of the RESCs. For example, a RESC's plan of organization and operation must be approved by the state

Phone : (203) 566-4472

97 Elm Street-Rear • Hartford, Connecticut 06106

*An Equal Opportunity Employer*

board of education, and reviewed triennially by the board for the purpose of the RESC's continued approval. Conn. Gen. Stat. §§10-66a, 10-66h. However, the salaries of RESC employees are paid by the RESC itself; they are not on the state payroll. Also, although RESCs do receive state funding, their operations are not appropriated for in the legislative budget.

Another significant difference between a RESC and a state agency is that RESC employees are not subject to the Code of Ethics for Public Officials. The purpose of the exemption in §1-84b(b) is to allow a state employee who has moved from one state agency to another to represent the new employer before the old. That representation is acceptable because the employee is still covered by the Code of Ethics. No such safeguard is present in the case of a state employee who leaves work for a RESC.

In short, although RESCs serve a public function, they are separate legal entities, not state agencies. Therefore, representation of a RESC is not representation of the state, and, under Conn. Gen. Stat. §1-84b(b), a former state employee may not represent a RESC, for compensation, before his or her former agency within a year after leaving state service.

Attorney Moran has also asked whether the following activities of the former Department of Education Bureau Chief would constitute prohibited "representation" under §1-84b(b):

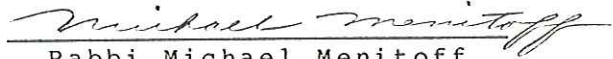
1. Signing certifications which state that the RESC has expended money in a proper manner;
2. Attending monthly meetings of all RESC directors, held with a deputy commissioner of the Department of Education.

Taking the questions in order, in signing the certifications, the former state employee/current RESC director certifies that the expenditures made by the RESC in its implementation of a grant awarded by the state are proper and valid expenditures. The Commission has consistently held that the restrictions of §1-84b(b) apply in situations where discretionary authority is exercised by the State. See Ethics Commission Advisory Opinion No. 88-15, 50 Conn. L.J. 15, p. 3D (October 11, 1988). It must be assumed that the certification is not just a rote act, but rather represents a true evaluation of the validity of the RESC's expenditures. Since the certification is made to assure the State that the funds were properly spent, it provides an opportunity for the former state employee's new employer to benefit improperly, however unintentionally, as a result of the ex-employee's contact with

the Department of Education. Therefore, he or she should not sign such certifications within one year after leaving state service.

With regard to attendance at monthly meetings with a deputy commissioner of the Department of Education, the Commission has carved out a narrow exception to the definition of "representation", if the former state employee's contact with his or her former agency is limited to purely technical, nondiscretionary matters no longer at issue between the State and the private employer. For example, a former systems analyst may have limited contact with her former agency regarding technical implementation of a contract awarded to her new employer, provided that her contact is strictly confined to the technical work. Ethics Commission Advisory Opinion No. 88-15, supra. In that case, the contract involved the institution of an Automated Budget System and a Capitol Budget System at the State Office of Policy and Management, the analyst's former agency. Generally, however, a former state employee cannot attend a meeting at her former agency as a representative of a new employer with regard to matters of specific interest to the private employer. See Declaratory Ruling No. 90-A, (January 8, 1990). Therefore, since the former state employee is now employed as the RESC's executive director, his or her representation of the RESC at department meetings is inappropriate and should not take place within a year after leaving state service.

By order of the Commission,

  
Rabbi Michael Menitoff  
Chairperson

Dated 6-8-90

