



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 90-21

Application of §1-84b(b) to an Employee of the
Department of Economic Development

Paul H.D. Stoughton, Esq. has requested an advisory opinion on behalf of his client, Mr. Leslie E. Twible, regarding the application of Connecticut General Statutes §1-84b(b) to a post-state employment opportunity which Mr. Twible is considering.

Mr. Twible is currently employed by the State Department of Economic Development ("DED") as an assistant director in the Office of Small Business Services. He is considering accepting employment with a newly formed non-profit organization where his job would be to provide management assistance to various members of the business community. According to Attorney Stoughton's request for advice, the general scope of Mr. Twible's post-state activities would be as follows:

1. Assist regional businesses with writing business plans, packaging bank loan applications, packaging SBA loan applications, and by providing marketing, market research, and accounting services.
2. Develop widespread awareness of existing federal, state, and local resources available for job training.
3. Improve the competitive position of small companies in key manufacturing areas.
4. Advocate entrepreneurial development in the region, especially among women, minorities, and home-based businesses.
5. Call upon (visit) strategically important businesses to identify problems and develop solutions.
6. Initiate a pilot technology transfer program with local businesses in cooperation with all area institutions of higher education.

7. Match the needs of select regional businesses to a growth management program which retain private management consultants on a reduced fee basis.

8. Prepare an entrepreneurship development program in consultation with colleges and universities.

9. Market the programs of the organization through conferences, newsletters, brochures, etc.

Subsection 1-84b(b) of the Code of Ethics states, in pertinent part, that:

No former...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.

Attorney Stoughton states that none of the above enumerated activities will require Mr. Twible to communicate in any way with DED, although his employer may contact the agency regarding various grant or budgetary matters. In only two instances is it anticipated that Mr. Twible would have contact with DED: (1) periodically, he may be required to prepare "progress reports" that would be sent to DED for its records. (It is asserted that these reports would not require any action on the part of DED.); and (2) occasionally, he could be in a position to refer a small business client to DED for specific services.

Attorney Stoughton submits that these two "contacts" with DED would not seem to present an opportunity for an abuse of discretion, and should, therefore, be permitted under a narrow exception to §1-84b(b) which the Commission has established in previous advisory opinions. The exception in question was set forth in Ethics Commission Advisory Opinion No. 88-15, 50 Conn. L.J. No. 15, p. 3D (October 11, 1988). In that Opinion the Commission held that the term "represent" as used in §1-84b(b) would not be interpreted to prohibit contact with one's former agency when the contact was technical in nature and did not involve the individual in any matters at issue between the State, or any other party, and the individual's employer or client. The Commission reasoned that the principal legislative purpose behind §1-84b(b) -- prevention of use of contacts, influence or other insider's advantage gained during state

service to obtain improper benefit in subsequent compensated dealings with one's former agency -- could be fulfilled by applying the subsection only when the "representation" involved a matter in which the State exercised discretionary authority (e.g., contract or grant award, contested case, or permit application). It did not seem necessary, or fair, to further limit post-state employment opportunities by extending the restriction to contacts with one's former agency that did not present the opportunity for use of improper advantage (e.g., technical work implementing a state contract, requests for generic information, etc.).

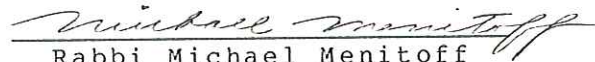
Applying this standard to Mr. Twible's situation: (1) If, in fact, the "progress reports" in question are a routine requirement of his job, do not necessitate any action by DED and involve no matter at issue between the agency and Mr. Twible's employer or client, he would be permitted to submit the reports to DED within the one year period established by §1-84b(b). The Commission cautions, however, that this limitation on the application of §1-84b(b) is not intended, and should not be used, as an opportunity for a former state official or employee to remind or notify former colleagues of his or her involvement with a matter pending before the former agency. (For example, a senior level employee should not sign or submit technical or informational reports or documents that do not require his or her signature or certification, nor should the individual contact the former agency to request generic information that a subordinate would normally obtain.)

(2) Mr. Twible may refer small business clients to DED for specific services. He should not, however, for one year after leaving state employment, be the individual who introduces the client to the agency. Such a situation presents far too great an opportunity for intentional or inadvertent use of influence or contacts, the precise evils which §1-84b(b) was enacted to prevent.

Additionally, it should be noted that §1-84b(b) would not prevent Mr. Twible from representing clients before any state or quasi-public agency other than DED, nor would his employer be prohibited from appearing before DED during the one year period. See Ethics Commission Advisory Opinion No. 89-13, 50 Conn. L.J. No. 46, p. 1C (May 16, 1989). (Former public official's law firm could represent clients for compensation before his former agency within the one year period set forth in §1-84b(b). The former official, however, should receive no portion of any fee generated by his firm's appearances before his former agency for one year following his resignation from state service.)

Finally, in the course of preparing this Opinion the Commission staff was asked whether the restrictions of §1-84b(b) apply when the contact is initiated not by the former employee but by the former agency. The answer is an unequivocal yes. If the other requirements of §1-84b(b) are met, the prohibition on compensated representation applies regardless of the physical location of the activity and regardless of who initiates the contact.

By order of the Commission,


Rabbi Michael Menitoff
Chairperson

Dated 6-8-90