STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

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Advisory Opinion No. 2012-8

July 19, 2012

Questions Presented:

The petitioner, a member of the General Assembly, asks whether—as a salaried employee of Northeast Utilities ("NU") "tasked with developing and coordinating NU's emergency management programs"—he may do as follows:

(1) "communicate with the agencies listed in section 1-84 (d) of the general statutes where such communications are for the purposes of (A) providing such agencies, as NU power users, with information relevant to their preparation for and response to power emergencies, and (B) coordinating NU's emergency preparedness and response activities with the relevant state agency personnel so as to properly prepare for anticipated power emergencies and safely and efficiently respond to power outages and emergencies when they occur"; and

(2) "communicate with other state agency employees and officials without being considered a 'lobbyist' under section 1-91 (k) of the general statutes where such communications are ordinary and customary communications between a power service provider and power users as well as fellow emergency response officials intended for informational purposes, and not . . . intended to influence any agency administrative action."

Brief Answers:

(1) The petitioner may communicate with § 1-84 (d) agencies if the communications are a routine requirement of his job, do not necessitate or seek any action by the § 1-84 (d) agencies, and do not involve any matter at issue between those agencies and NU.

(2) If his communications with state officials and employees are not intended to influence any administrative action, then the petitioner will not be engaged in "lobbying" and thus will not be in violation of the legislator-as-lobbyist prohibition in General Statutes § 1-86 (c).

At its June 2012 regular meeting, the Citizen's Ethics Advisory Board ("Board") granted the petition for an advisory opinion submitted by State Senator Kevin Witkos. The Board issues this advisory opinion on the date shown below in accordance with General Statutes § 1-81 (a) (3). The opinion interprets the Codes of Ethics[1] and its regulations, is binding on the Board concerning the person who requested it and who acted in good-faith reliance thereon, and is based solely on the facts provided by the petitioner.

Facts

The pertinent facts provided by the petitioner are set forth below and are considered part of this opinion:

> I recently decided to retire from the Canton Police Department and pursue employment opportunities in the security and emergency management fields. After responding to an on-line job posting listing a position for a regional emergency management coordinator, I was offered a job with Northeast Utilities/CL&P (NU). With 28 years of experience in local law enforcement as a police officer, 10 years as a fire fighter, including 5 years as Chief of my local fire department, and multiple certifications in Incident Command Systems and hazardous materials handling, the job is an excellent fit for my skill set. However, both I and NU management want to be sure

[1]Chapter 10, parts I and II, of the General Statutes.

that I can fulfill certain responsibilities of the position without violating any provisions of the ethics code.

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My job title would be "Regional Coordination Specialist" ("RCS"). My primary responsibility will be to assist in the development and execution of NU's emergency preparedness and response programs, procedures and policies. I will report to a Regional Coordination Supervisor.

As RCS, part of my job would involve communications with major NU power users, including municipalities and state agencies, as well as other emergency response personnel, including local and state emergency management and response officials. The purpose of these communications would be to convey information regarding NU's emergency preparedness and response plans, policies, procedures and technology and how they might impact the user and to coordinate emergency response activities in order to keep the user apprised of restoration process, coordinate efforts and safely and efficiently restore power.

I will not appear before any state agency in any administrative or regulatory matter affecting the legal rights or obligations of NU. I will not seek to influence any state agency's policy making or administrative decision making. Nor will I be promoting or selling NU products or services. My salary will in no way be contingent upon or affected by any state agency action. As a large business organization, NU has both in house and outside lawyers and lobbyists who handle such matters. These are entirely different functions and departments within NU.

The following are examples of the kinds of communications and activities my job would likely include:

(1) Meetings with non-profit emergency management organizations such as the Red Cross and area hospitals as well as local, regional and state emergency management officials to demonstrate updated emergency communications systems and discuss the coordination of communications in the event of an emergency. The state officials could include

personnel from the Department of Emergency Management and Homeland Security, for example.

(2) The planning and execution of emergency drills to test the effectiveness and preparedness of NU's systems. Such drills could include local and state emergency response officials and therefore, might require communicating and coordinating with such officials to plan and execute.

(3) The coordination of emergency response efforts. Such coordination might include communicating with the facilities or building maintenance personnel at a state agency that has lost power and coordinating efforts by, for example, asking that they block off an area while NU crews work to restore power or repair lines or have an agency building maintenance employee present to assist, etc.

As you can see, these communications are ordinary and customary communications between a power provider and its power users as well as fellow emergency management personnel intended to benefit the user and assist all emergency response officials. They are not communications intended to influence any agency administrative action, decision or policy making or provide any financial benefit to NU or myself.

In a subsequent communication, the following additional facts were presented:

[His] primary job responsibility will be to communicate with and act as an emergency management coordinator for a specified list of municipalities. He is not specifically tasked with communicating with or coordinating activities with state agencies. [T]hat is actually part of his supervisor's job responsibilities. However, as part of the emergency management team, there will be times that he will participate in meetings, emergency drills, conferences, etc. where all stakeholders, including state emergency management officials, will be present. His function at such meetings or events will be to provide and gather information relative to emergency preparedness and response, not to attempt to influence state policy or action. Also, in an actual emergency, when it is an "all hands on deck" situation, there may be times that he will need to communicate with state employees or officials, again for the

purposes of helping to restore power to the state and its residents, not to influence any state action or obtain any benefit for CL&P.

Finally, the petitioner explained that, before accepting employment with NU, he informed NU management that, if hired, he would relinquish his position on the General Assembly's Energy and Technology Committee, on which he served as a ranking member. After he was hired, he did so.

Analysis

1. Accepting outside employment with NU

Before getting to the petitioner's specific questions, which involve what he may or may not do once working for NU, we must put the proverbial horse before the cart and address this question: whether it was permissible for the petitioner—who, at the time, was as a ranking member of the General Assembly's Energy and Technology Committee—to accept outside employment with NU.

Under the outside employment provisions in the Public Officials Code,[2] a "public official," such as a member of the General Assembly,[3] may not, among other things, "accept other employment which will either impair his independence of judgment as to his official duties"[4] or "use his public office . . . to obtain financial gain for himself . . . ."[5] "These provisions do not, however, prevent a public official from utilizing [his or] her experience or expertise for personal gain, provided no provision of the Code is violated."[6]

For example, in Advisory Opinion No. 2003-20, the former State Ethics Commission ("SEC") was asked whether a legislator who is licensed to buy and sell securities may become a paid member of the Council of Advisors of the Gerson Lehrman Group, a consulting entity for investment managers and firms.[7] In answering affirmatively, the SEC stated:

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[2]Chapter 10, part I, of the General Statutes.

[3]"Public official" is defined to include, among others, "any member . . . of the General Assembly . . . ." General Statutes § 1-79 (k).

[4]General Statutes § 1-84 (b).

[5]General Statutes § 1-84 (c).

[6]Advisory Opinion No. 2003-20, Connecticut Law Journal, Vol. 65, No. 24, p. 10C (December 9, 2003).

[7]Id.

> [The legislator] is clearly utilizing her expertise in securities, as well as her specific experience in hotel and industrial management, in performance of her consulting work. Given these factors, and given the fact that no area of proposed consulting would conflict with or trade on her official position as a Connecticut legislator, the contemplated work is permissible . . . .[8]

And so, the questions here are two-fold: (1) whether the petitioner has any experience or expertise relevant to the employment at issue, and (2) whether that employment conflicts with or trades on his official position as a member of the General Assembly.

With respect to the first question, we can look to whether the petitioner has any academic and/or professional credentials relevant to the position in question,[9] which involves developing and executing NU's emergency preparedness and response programs. The facts before us suggest that he does, in fact, have experience relevant to that position. That experience includes not only three decades as a police officer, a decade as a firefighter, and half a decade as chief of a local fire department, but also certifications in Incident Command Systems and in handling hazardous materials.

Turning to the second question, namely, whether the employment conflicts with or trades on the petitioner's state office, it has been said, many times, that "it is exceedingly difficult to apply the . . . outside employment [provisions] . . . to the members of Connecticut's part time General Assembly."[10] The reason: "The great majority of legislators must, of economic necessity, pursue outside employment while in public service," and "[u]nder the circumstances, conflicts of interests are inevitable."[11] Thus, a bar on outside economic endeavors of state legislators has been mandated only "when these conflicts are so significant as to require prohibiting or restricting the conduct in question."[12]

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[8]Id., 11C.

[9]Cf. Advisory Opinion No. 92-12, Connecticut Law Journal, Vol. 53, No. 47, p. 1C (May 19, 1992).

[10]Advisory Opinion No. 99-29, Connecticut Law Journal, Vol. 61, No. 29, p. 9C (January 18, 2000).

[11]Id.

[12](Internal quotation marks omitted.) Advisory Opinion No. 99-29, Connecticut Law Journal, Vol. 61, No. 29, p. 9C (January 18, 2000).

In determining whether a "significant" conflict exists here, we look to Advisory Opinion No. 92-4.[13] It addresses whether a legislator is barred from becoming an owner of a bank doing business in Connecticut solely by virtue of the fact that he is a ranking member of the Banks Committee.[14] According to the SEC, a "significant" conflict exists when a *committee chairperson* accepts "employment in an industry or engag[es] in an activity over which [his or her] committee has jurisdiction."[15] "Based upon the enormous power wielded by such persons, the use of their office, however inadvertent, would be inevitable."[16] With respect to ranking members, however, the SEC declined to "extend[] the Code's strictest limitations . . . ."[17] Instead, it concluded that the legislator's "role as the Ranking Member of the Banks Committee, alone, will not preclude him from becoming an owner or officer of a bank subject to the Committee's jurisdiction."[18]

Based on that opinion, we conclude that the petitioner's role as a ranking member of the Energy and Technology Committee—a role, we note, that he relinquished after accepting employment with NU—did not create a conflict so "significant" as to prohibit him from being employed by an entity subject to the Committee's jurisdiction. In light of that fact, and the fact that the petitioner has experience relevant to the employment at issue, we conclude that he was permitted to accept the employment without violating subsections (b) or (c) of § 1-84.

2. Appearing before General Statutes § 1-84 (d) agencies

That brings us to the petitioner's specific questions, the first of which is this: whether—as a salaried NU employee "tasked with developing and coordinating NU's emergency management programs"—he may "communicate with" state agencies listed in General Statutes § 1-84 (d) for a two-fold purpose: (1) to provide "such agencies, as NU power users, with information relevant to their preparation for and response to power emergencies"; and (2) to coordinate "NU's emergency preparedness and response activities with the relevant state agency personnel so as to properly prepare for anticipated power outages and emergencies when they occur . . . ."

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[13]Connecticut Law Journal, Vol. 53, No. 38, p. 8C (March 17, 1992).
[14]Id.
[15]Id.
[16]Id.
[17]Id., 9C.
[18]Id.

Section 1-84 (d)—another outside employment provision in the Public Officials Code—is the lengthiest of the conflict provisions, containing two restrictions, a definition, and various exceptions (none of which are relevant here). As for the restrictions, under § 1-84 (d), a public official, among others, may not do either of two things:

1. He may not "agree to accept . . . any employment, fee or other thing of value, or portion thereof, for appearing, agreeing to appear, or taking any other action on behalf of another person" before thirteen listed state agencies.[19]

2. He may not "be a member or employee of a partnership, association, professional corporation or sole proprietorship which [entity] . . . agrees to accept any employment, fee or other thing of value, or portion thereof, for appearing, agreeing to appear, or taking any other action on behalf of another person" before the thirteen listed state agencies.

In this case, the second restriction is irrelevant, and to explain why, we turn to the definitional language in § 1-84 (d), which reads:

> For the purpose of this subsection, partnerships, associations, professional corporations or sole proprietorships *refer only* to such [entities] . . . which have been formed to carry on the business or profession directly relating to the employment, appearing, agreeing to appear or taking of action provided for in this subsection. . . .[20]

As explained by the SEC, "[t]his language was inserted . . . to limit the application of [the second restriction in] § 1-84 (d) to those . . . in the business of representing others for compensation . . . before the listed

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[19]The state agencies listed in § 1-84 (d) include "the Department of Banking, the Claims Commissioner, the Office of Health Care Access division within the Department of Public Health, the Insurance Department, the Department of Consumer Protection, the Department of Motor Vehicles, the State Insurance and Risk Management Board, the Department of Energy and Environmental Protection, the Public Utilities Regulatory Authority, the Connecticut Siting Council, the Gaming Policy Board within the Department of Consumer Protection or the Connecticut Real Estate Commission . . . ."

[20](Emphasis added.)

agencies, e.g., law firms, accounting firms, etc."[21] In other words, "[i]t was intended to exclude organizations such as municipalities, corporations, or labor unions which, while they may have a legal department, are not engaged in the business of representing those outside the organization for compensation."[22] This understanding eventually found its way into the regulations, which now provide:

> [T]he restrictions of [§ 1-84 (d)] shall not apply to a corporation, union, municipality or other entity which employs a public official or state employee but is not in the business of representing others for compensation before [§ 1-84 (d)] agencies. *In these instances, the provisions of the subsection shall only restrict the public official or state employee.*[23]

What that means for the petitioner is this: although he may be employed by a corporation (like NU) without violating § 1-84 (d)'s second restriction, he is still subject to its first restriction.[24]

Under § 1-84 (d)'s first restriction, the petitioner is prohibited from "appearing" or "taking any other action" on NU's behalf before the § 1-84 (d) agencies. Per the regulations, a "prohibited appearance or action" includes, for example, "appearing in person, submitting a document with one's signature or professional stamp, identifying oneself over the telephone, or submitting any materials with a letterhead which includes the individual's name . . . ."[25] That is, it is a "prohibited appearance or action for any public official . . . to transmit any document to or make any other contact with the listed agencies which reveals the identity of the individual to the agency in connection with any pending *matter* . . . ."[26]

According to the petitioner, his contacts with § 1-84 (d) agencies on NU's behalf would not constitute such prohibited "appearances or actions"

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[21]Advisory Opinion No. 89-32, Connecticut Law Journal, Vol. 51, No. 26, p. 2D (December 26, 1989).

[22]Id.

[23](Emphasis added.) Regs., Conn. State Agencies § 1-81-18 (e).

[24]See Connecticut Law Journal, Vol. 51, No. 26, supra, p. 2D (State representative may be employed as city's corporate counsel, but he "may not . . . appear or take any other action on behalf of [the city] before the . . . listed agencies. Specifically, he may not personally represent the city before the § 1-84 (d) agencies, nor may he take any other actions . . . that would reveal his compensated involvement in a matter to any of the agencies.")

[25]Regs., Conn. State Agencies § 1-81-18 (a).

[26](Emphasis added.) Id.

because they would not concern any *matter involving discretionary state authority*. We agree—at least with the proposition that the restriction in § 1-84 (d) was meant to apply only to matters involving discretionary state authority. We do so primarily in light of § 1-84 (d)'s purpose, which is similar to that of General Statutes § 1-84b (b), a revolving-door provision that the SEC interpreted in a like manner.

Often referred to as the "cooling-off" provision, § 1-84b (b) provides, in relevant part, as follows:

> 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. . . .[27]

The language in § 1-84b (b) stems from a recommendation to the General Assembly by the Codes of Ethics Study Committee, which was established in 1982 to suggest changes to the Codes of Ethics.[28] The Study Committee suggested that the General Assembly implement, among other things, a one-year cooling-off provision, in order "to preclude [a] former official from exerting *undue influence* over his former agency . . . ." [29] In doing so, the Study Committee explained that the "*undue influence* guarded against is that which results from mere association with the former agency."[30] "A cooling period," it finished, "combats the exertion of *undue influence*, since that influence tends to fade with time."[31]

To fulfill § 1-84b (b)'s purpose of preventing the use of "undue influence," the SEC broadly defined the term "represent." In doing so, it looked, coincidentally enough, to § 1-84 (d) and concluded that the term "represent," as it is used in § 1-84b (b),

> *has the same meaning as that in [§] 1-84 (d) . . . concerning appearing or taking any other action on behalf of another before*

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[27](Emphasis added.)

[28]Codes of Ethics Study Committee, Report to the General Assembly by the Codes of Ethics Study Committee (January 15, 1983).

[29](Emphasis added.) Id., 21.

[30](Emphasis added.) Id.

[31](Emphasis added.) Id.

> *the listed agencies*. You may not reveal your involvement in the matter by a physical appearance before the office involved, by submitting a document on which your name appears, by making a telephone call during which you identify yourself, or by other action which discloses to the office that you represent someone in the case.[32]

Despite its broad reading of "represent" for purposes of § 1-84b (b), the SEC declined to interpret it as prohibiting contacts with one's former state agency concerning non-discretionary matters.[33] It reasoned that the purpose of § 1-84b (b)—i.e., to prevent the use of undue influence—is satisfied by applying the restriction only when the "representation" concerns a matter involving discretionary state authority (e.g., contract awards, contested cases, permit applications, etc.).[34] "It does not seem necessary," said the SEC, to extend the restriction "to a former State employee performing only technical duties that involve no matters at issue between the State" and his or her post-state employer.[35] The reason: "such activities offer no opportunity for use of improper advantage."[36]

Section 1-84 (d) warrants a similar interpretation, as its purpose—like that of § 1-84b (b)—is to prevent the use of undue influence. In the SEC's words, § 1-84 (d) "is designed to eliminate both the appearance and actuality of various forms of *improper influence* being exerted on the 1-84 (d) agencies by State employees and public officials representing private interests for personal financial gain."[37] It seeks to "*insulate* the *actions* and *decisions* of those agencies from even the appearance of *undue influence* . . . ."[38] And it "presupposes that the person appearing or taking action before one of the listed agencies is in a position to *sway* the agency's *judgment* because of some *influence* the person has by virtue of his . . . State position."[39]

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[32](Emphasis added.) Advisory Opinion No. 86-11, Connecticut Law Journal, Vol. 48, No. 18, p. 2D (October 28, 1986).

[33]See Advisory Opinion No. 88-15, Connecticut Law Journal, Vol. 50, No. 15, p. 4D (October 11, 1988).

[34]Id.

[35]Id.

[36]Id.

[37](Emphasis added.) In the Matter of a Request for a Declaratory Ruling, Timothy S. Hollister (August 3, 1983).

[38](Emphasis added.) Advisory Opinion No. 79-6, Connecticut Law Journal, Vol. 40, No. 38, p. 27 (March 20, 1979).

[39](Emphasis added.) Advisory Opinion No. 82-11, Connecticut Law Journal, Vol. 44, No. 28, p. 12B (January 11, 1983).

Putting that all together, § 1-84 (d) was designed to "insulate" the "actions," "decisions," and "judgment" of the listed agencies from the "sway" or "influence" of state employees and public officials involved in representing private interests for personal financial gain. It follows that, if in a particular instance, there are no "actions," "decisions," or "judgments" of the listed agencies to be "swayed" or "influenced," then there is nothing for § 1-84 (d) to "insulate." Stated differently, in instances that do not involve the exercise of discretionary authority by the listed agencies, there is no reason to apply § 1-84 (d)'s restriction on "appearing" or "taking any other action" before them. Accordingly, we conclude that the restriction in § 1-84 (d) applies only to matters involving the exercise of discretionary authority by the listed agencies.

Before applying that "discretionary authority" standard here, we look to see how the SEC applied the same standard, but in the context of addressing a fact pattern under § 1-84b (b). In Advisory Opinion No. 90-21, the SEC was asked whether a former state employee could prepare "progress reports" for his post-state employer and then submit the reports to his former state agency, without violating § 1-84b (b)'s one-year cooling-off ban.[40] After noting that (as discussed above) § 1-84b (b) applies only to matters involving the exercise of discretionary state authority, the SEC concluded that the former state employee could submit the "progress reports," but only if they

1. are a routine requirement of his job,

2. do not necessitate any action by his former state agency and

3. involve no matter at issue between the state agency and the former state employee's new employer.[41]

The SEC finished by cautioning that its ruling was not to be used "as an opportunity for a former state . . . employee to remind or notify former colleagues of his or her involvement with a matter pending before the former agency."[42] 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

[40]Connecticut Law Journal, Vol. 52, No. 4, p. 6D (July 24, 1990).
[41]Id.
[42]Id.

former agency to request generic information that a subordinate would normally obtain."[43]

Applying that reasoning here, we conclude that the petitioner may communicate with § 1-84 (d) agencies on NU's behalf, provided that the following holds true: the communications (such as those specifically referenced in his petition) (1) are a routine requirement of his job at NU, (2) do not necessitate or seek any action by the § 1-84 (d) agencies, and (3) involve no matter at issue between those agencies and NU. The petitioner is cautioned though, as was the individual in Advisory Opinion No. 90-21, that the communications must not be used as a subtle reminder to a § 1-84 (d) agency that he—a member of the General Assembly—is somehow involved with a matter pending before it.

3. Refraining from being a "Lobbyist"

We turn now to the petitioner's other question: whether—as a NU employee "tasked with developing and coordinating NU's emergency management programs"—he may "communicate with other state agency employees and officials without being considered a 'lobbyist' under section 1-91 (k) of the general statutes . . . ." The communications, he explains, will be "ordinary and customary [communications] between a power service provider and power users as well as fellow emergency response officials intended for informational purposes, and not . . . intended to influence any agency administrative action."

The impetus for that question is General Statutes § 1-86 (c), under which "[n]o member of the General Assembly shall be a lobbyist." The term "Lobbyist" is defined, not in the Public Officials Code, but in the Lobbyist Code, and it includes, among others,

> a person who in lobbying and in furtherance of lobbying . . . receives or agrees to receive compensation, reimbursement, or both, and such compensation [and] reimbursement . . . are [$2000] or more in any calendar year or the combined amount thereof is [$2000] or more in any such calendar year.[44]

"Lobbying," in turn, is defined, partly, as "communicating directly or soliciting others to communicate with any official or his staff in the . . . executive branch of government . . . for the purpose of influencing any . . .

[43]Id.

[44]General Statutes § 1-91 (l).

administrative action . . . ."[45] And, finally, "Administrative action" is defined exceptionally broadly to include "any . . . matter which is within the official jurisdiction or cognizance of such an agency."[46]

Based on those definitions, a few things are apparent. First, the petitioner is not completely barred from engaging in compensated "lobbying," the reason being that the prohibition in § 1-86 (c) is not on "lobbying," but on being a "lobbyist"; and for the petitioner to be a "lobbyist," the annual pro rata value of his salary for "lobbying" and activities in furtherance thereof must be at least $2000. Second, if the petitioner communicates with a state servant who is neither an "official"[47] nor a member of the official's "staff,"[48] and does not solicit the individual to communicate with "an official or his staff," then the petitioner is not "lobbying." Third, the petitioner is not "lobbying" unless the purpose of his communication with an executive branch "official or his staff" is to influence administrative action.

The SEC provided some clarification with respect to that final point in Advisory Opinion No. 78-13.[49] The question therein was whether an insurance firm was "lobbying" by "supplying information requested by members or staff of the General Assembly . . . ."[50] After noting the irrelevance of "[w]hether the information is volunteered or requested by the legislature," the SEC stated: "What determines whether the insurance firm is lobbying is its *intent* in furnishing the information. If it is for the purpose of influencing legislative action, it is lobbying. Conversely, if it is not for the purpose of influencing legislative action, it is not lobbying."[51] The SEC continued:

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[45]General Statutes § 1-91 (k).

[46]General Statutes § 1-91 (a).

[47]The word "official" means "public official," a term defined in General Statutes § 1-91 (k). See Advisory Opinion No. 2009-2, Connecticut Law Journal, Vol. 70, No. 37, p. 12D (March 10, 2009).

[48]The Lobbyist Code does not define the term "staff," and the only guidance as to the word's meaning comes from Advisory Opinion No. 78-30, in which the SEC stated: "[I]n a small agency, such as a State commission, all the employees of the commission would normally be considered 'staff.' In a large department, 'personal staff' and those chiefly responsible for carrying out the operations of the department would be considered 'staff.'" Connecticut Law Journal, Vol. 40, No. 26, p. 12 (December 26, 1978).

[49]Connecticut Law Journal, Vol. 40, No. 8, p. 11 (August 22, 1978).

[50]Id.

[51](Emphasis added.) Id.

> The insurance firm is the best judge of its intent in providing information to a legislative committee, a legislator, or staff. Intent also can be manifested objectively in a number of ways. For example, the content of the information will normally give some indication of intent. Some information is patently neutral. Other might create an impression which, if the activity is not reported as lobbying, could require an explanation by the insurance firm as to why the furnishing of it should not be held to have been done for the purpose of influencing legislative action. How provision of the information was initiated may be meaningful. Whether related matters are being considered by the legislature might have some bearing. *However proved, the intent of the firm is the central factor*.[52]

In this case, the petitioner asserts that the purpose of his communications with state servants on NU's behalf "would be to convey information regarding NU's emergency preparedness and response plans, policies, procedures and technology and how they might impact the user and to coordinate emergency response activities . . . ." That is, they would be (in his words) "ordinary and customary [communications] between a power service provider and power users as well as fellow emergency response officials *intended for informational purposes, and not . . . intended to influence any administrative action*." If that is, in fact, the case—that is, if his communications are not intended to influence any administrative action—and if those are his only communications with state servants on NU's behalf, then the petitioner will not be "lobbying" and thus will not be in violation of the legislator-as-lobbyist prohibition in § 1-86 (c).

4. Taking official action concerning NU

Finally, although not asked, we address whether the petitioner may take "official action"[53] in his legislative capacity concerning NU, without creating a substantial conflict of interests in violation of General Statutes § 1-85.

Under § 1-85, a public official has a substantial conflict and may not take official action on a matter if "he, his spouse, a dependent child, or a *business with which he is associated* will derive a direct monetary gain or

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[52](Emphasis added.) Id.

[53]"Official action" includes not only voting but also discussion of a matter, and it applies to actions both in committee and on the floor of the General Assembly. See Advisory Opinion No. 91-8.

suffer a direct monetary loss . . . by reason of his official activity." In general, an "associated" business includes any business in which the public official has a significant ownership interest or is a director or officer.[54] If the public official is not a director, officer, or owner, then his employer is not an "associated" business. Here, the petitioner is not one of NU's directors, officers, or owners, but simply one of its employees; and the "Code does not specifically prohibit a public official from taking official action which would benefit his . . . employer, unless the employer has improperly influenced the public official."[55] Thus, absent any such improper influence, and absent any specific and direct financial consequence to his position as an NU employee, the petitioner may take official action concerning NU, without creating a substantial conflict under § 1-85.

We close by noting that, if the petitioner's job duties change, he is encouraged to seek further advice.

By order of the Board,

Dated: 7/19/12

s/s David W. Gay
Chairperson

[54]Its full definition is this: "any sole proprietorship, partnership, firm, corporation, trust or other entity through which business for profit or not for profit is conducted in which the public official or state employee or member of his immediate family is a director, officer, owner, limited or general partner, beneficiary of a trust or holder of stock constituting five per cent or more of the total outstanding stock of any class, provided, a public official or state employee, or member of his immediate family, shall not be deemed to be associated with a not for profit entity solely by virtue of the fact that the public official or state employee or member of his immediate family is an unpaid director or officer of the not for profit entity. 'Officer' refers only to the president, executive or senior vice president or treasurer of such business." General Statutes § 1-79 (b).

[55]Advisory Opinion No. 99-5, Connecticut Law Journal, Vol. 60, No. 41, p. 11C (April 13, 1999).