



# STATE OF CONNECTICUT OFFICE OF STATE ETHICS

## Advisory Opinion No. 2015-1

January 22, 2015

**Question Presented:** The petitioner asks whether Representative Luxenberg's current employment at the Governor's Prevention Partnership ("GPP") presents a conflict under the Codes of Ethics, particularly in her continued interaction with the Governor and his staff on behalf of the GPP.

**Brief Answer:** We conclude that Representative Luxenberg's current responsibilities and position at the GPP, including her continued interaction with the Governor and his staff on behalf of the GPP, do not present a per se conflict with the Codes of Ethics, but that she must be sure to adhere to the restrictions discussed herein.

At its January 2015 regular meeting, the Citizen's Ethics Advisory Board ("Board") granted the petition for an advisory opinion submitted by Brendan M. Fox, Jr., on December 24, 2014. The Board now issues this advisory opinion in accordance with General Statutes § 1-81 (a) (3) of the Code of Ethics for Public Officials<sup>1</sup> ("Ethics Code").

### **Facts**

The following facts and argument, as set forth by the petitioner,

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<sup>1</sup>Chapter 10, part I, of the General Statutes.

are relevant to this opinion:

On behalf of our client, the Governor's Prevention Partnership (the "GPP"), we respectfully request an advisory opinion from the Citizen's Ethics Advisory Board (the "Board") with regard to a person in its employ who recently was elected to the State House of Representatives. In particular, Kelly Luxenberg has been employed by the GPP for a period of time and recently was elected to the State House to represent the 12<sup>th</sup> District. Representative-Elect Luxenberg will be sworn into office in early January 2015. Both the GPP and Representative-Elect Luxenberg are sensitive to the restrictions on "lobbying" by elected officials and, accordingly, wish to seek a formal opinion from the Board on what is and what is not permissible.

Representative-Elect Luxenberg is employed by the GPP in the capacity of Manager of Corporate Resource and Partnership Development, and I attach a description of the job for the Board's information. As you will see, the essential functions of the position are focused on developing financing and investor prospects among potential benefactors in the private sector. Although the GPP is the recipient of funds from the State, Representative-Elect Luxenberg has no responsibility in this area and is not involved with seeking State/public funding opportunities; to the extent any State funds are invested in the GPP, this is overseen by outside counsel and the GPP staff other than Representative-Elect Luxenberg.

Nevertheless, the GPP is somewhat unique since the Governor serves as Co-Chairman of its Board and, as a result, there may be interaction between Representative-Elect Luxenberg and the Governor or members of his staff in the context of the Governor's service as Co-Chair of the Board. In fact, prior to her election, Representative-Elect Luxenberg did interact with the Governor and his office with regard to such matters, and it remains the desire of the GPP and Representative-Elect Luxenberg to continue that type

of interaction with the Governor and his staff.

Based upon my understanding and interpretation of the statutory and regulatory restrictions, Representative-Elect Luxenberg, on behalf of the GPP, would continue to be allowed to engage in this type of interaction after she is sworn into office in January 2015. Specifically, such functions may include extending invitations to the Governor to attend GPP events, following up on those invitations, or having him sign letters, in his capacity as Co-Chair of the GPP, which letters would be used to raise funds as part of a fundraising campaign that is overseen by the Board of the GPP. However, if the interaction gravitated toward an effort, for example, of attempting to persuade the Governor or his advisors to take certain administrative or executive action, this would not be allowed because such action may very well fall within the definition of "lobbying." As an aside, I recognize that the compensation threshold for such activity is \$2,000 per year in order to meet the strict definition of the term; however, it is the desire of both the GPP and Representative-Elect Luxenberg to be as diligent as possible to avoid even the appearance of a conflict with the statutes or regulations.

It is the mutual desire of the GPP and Representative-Elect Luxenberg to be as judicious as reasonably possible. All parties appreciate the relatively high profile positions that they enjoy, and they wish to take all reasonable steps to ensure that their respective actions and interactions are within the allowances permitted by applicable statute and regulations and defensible against all criticism, should such criticism occur.

Therefore, on behalf of the GPP and Representative-Elect Luxenberg, we respectfully request an advisory opinion from the Board that will confirm that Representative-Elect Luxenberg's current responsibilities and position do not present any conflict with statutory and regulatory restrictions and that Representative-Elect Luxenberg will continue to

be allowed to engage in the type of interaction with the Governor and his staff that is described above without conflict with those aforementioned restrictions.

### Analysis

As a newly elected member of the General Assembly, Representative Kelly Luxenberg is a “public official”<sup>2</sup> and, therefore, subject to the Ethics Code.

Based on the facts presented, the Ethics Code provision most pertinent here is General Statutes § 1-86 (c), under which “[n]o member of the General Assembly shall be a lobbyist.” The term “Lobbyist” is defined, in relevant part, as,

a person who in lobbying and in furtherance of lobbying makes or agrees to make expenditures, or receives or agrees to receive compensation, reimbursement, or both, and such compensation, reimbursement or expenditures are two thousand dollars or more in any calendar year or the combined amount thereof is two thousand dollars or more in any such calendar year.<sup>3</sup>

“Lobbying”, in turn, is defined, in relevant part, 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 legislative or administrative action . . . .”<sup>4</sup> And finally, “Administrative action” is defined to include “any action or nonaction of any executive agency of the state with respect to . . . any . . . matter which is within the official jurisdiction or cognizance of such an agency.”<sup>5</sup>

Based on those definitions, Representative Luxenberg, in her capacity as a GPP employee, may continue to communicate with the Governor and his staff, without violating the “lobbyist” ban in § 1-86 (c), provided that the intent of those communications is not to influence any action or nonaction of the Office of the Governor with

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<sup>2</sup>General Statutes § 1-79 (11).

<sup>3</sup>General Statutes § 1-91 (12).

<sup>4</sup>General Statutes § 1-91 (11).

<sup>5</sup>General Statutes § 1-91 (1).

respect to any matter within its cognizance.<sup>6</sup> In other words, if, as noted by the petitioner, Representative Luxenberg's communications with the Governor and his staff are limited to matters involving the Governor in his capacity as GPP Co-chair—e.g., inviting him to attend GPP events, following up on those invitations, or requesting that he sign letters that would be used to raise funds as part of a fundraising campaign overseen by the GPP Board—then she will not run afoul of § 1-86 (c). If, however, the intent of any of her communications with the Governor or his staff is to influence any action or nonaction of the Office of the Governor with respect to any matter within its cognizance, then she will be “lobbying”; and if she engages “in lobbying with an annual pro rata compensation of \$2000 or more”,<sup>7</sup> then she is a “lobbyist” and will be in violation of § 1-86 (c).

Although the focus of this inquiry is the application of the “lobbyist” ban under § 1-86 (c), we will highlight a few other provisions within the Ethics Code that Representative Luxenberg should keep in mind while engaging in outside employment with the GPP.

As a legislator, Representative Luxenberg may not take official action<sup>8</sup> that will directly affect her position as an employee of the GPP. Specifically, under General Statutes § 1-85, a public official has a substantial conflict and may not take official action on a matter if she will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Therefore, Representative Luxenberg will be required to recuse herself from taking legislative action on a specific matter dealing with GPP, if such matter will directly affect her financially (e.g., providing state funding to increase GPP staff compensation). However, even if a specific piece of legislation dealing with the GPP creates a substantial conflict for her, she may still “[take] official action on a general matter into which the specific issue creating the substantial conflict has been incorporated, provided that [she] does not speak or

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<sup>6</sup>See Advisory Opinion No. 78-13, Connecticut Law Journal, Vol. 40, No. 8, p. 11 (August 22, 1978).

<sup>7</sup>State Ethics Commission, Request for Advisory Opinion No. 2969 (2002).

<sup>8</sup>Official action includes discussion and voting at both the legislative committee level and on the floor of the House. See Advisory Opinion No. 91-8, Connecticut Law Journal, Vol. 52, No. 40, p. 5C (April 2, 1991).

otherwise provide comment on the specific issue during any debate, discussion or consideration of the general matter.”<sup>9</sup>

Further, under General Statutes § 1-84 (c), Representative Luxenberg may not use her office to obtain financial gain for herself, among others. This so-called “use of office” prohibition restricts, for example, the following activities: exploiting contacts made in state service to further outside employment; creating or permitting the impression that she is acting on the state’s behalf; trading on her state position in order to receive favorable treatment in her business dealings; or using state resources in furtherance of her outside employment.<sup>10</sup>

Although the facts presented make it unlikely that Representative Luxenberg will represent GPP’s interests before state agencies, we note that she may not appear on behalf of her employer before the eleven state agencies enumerated under General Statutes § 1-84 (d).<sup>11</sup>

As a final note, Representative Luxenberg may become subject to stricter outside employment provisions should she, in the future, assume legislative leadership positions or become a chairperson of a legislative committee. The GPP and Representative Luxenberg are encouraged to contact the Office of State Ethics for further guidance should such changes occur.

### **Conclusion**

We conclude that Representative Luxenberg’s current responsibilities and position at the GPP, including her continued

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<sup>9</sup>Regs., Conn. State Agencies § 1-81-28 (g). “For example, a legislator with a substantial conflict regarding a specific bonding or appropriations issue is not precluded under Section 1-85 from taking official action when the overall bonding package or budget comes before his or her committee or the General Assembly for consideration.”

<sup>10</sup>Citizen’s Ethics Advisory Board, Declaratory Ruling 2011-A.

<sup>11</sup>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 or the Connecticut Real Estate Commission.

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interaction with the Governor and his staff on behalf of the GPP, do not present a per se conflict with the Codes of Ethics, but that she must be sure to adhere to the restrictions discussed herein.

By order of the Board,

Dated 1/22/15

/s/ Charles F. Chiusano  
Chairperson