# STATE OF CONNECTICUT
## OFFICE OF STATE ETHICS

# Advisory Opinion No. 2016-2

May 19, 2016

**Question Presented:** **Whether a former member of the Connecticut Bioscience Innovation Fund Advisory Committee may—within a year of leaving the committee—serve as the Executive in Residence for Connecticut Innovations, Inc., a quasi-public agency, without violating the one-year cooling-off ban in General Statutes § 1-84b (b).**

**Brief Answer:** **We conclude that the Connecticut Bioscience Innovation Fund Advisory Committee is "part of" Connecticut Innovations, Inc., for purposes of § 1-84b (b), meaning that the petitioner may not accept a paid position with the latter within one year of leaving her unpaid position with the former.**

At its April 2016 regular meeting, the Citizen's Ethics Advisory Board granted the petition for an advisory opinion submitted by Eleanor L. Tandler, a former member of the Connecticut Bioscience Innovation Fund Advisory Committee. The Board now issues this advisory opinion in accordance with General Statutes § 1-81 (a) (3) of the Code of Ethics for Public Officials ("Ethics Code").

## Background

In her petition for an advisory opinion, the petitioner set forth the following facts:

I am writing to you with regards to my interest in serving as an [Executive]-In-Residence with Connecticut Innovations (CI), assisting CI's portfolio companies and their management teams to reach the next level of success in their startup business.

I have a background as a business executive with 20 years of experience working in startup leadership roles, venture capital and strategic consulting with a proven ability to conceive, develop, lead, problem solve and execute in the healthcare space. I most recently served as CEO and a founder of NovaTract Surgical, Inc. (NovaTract) a venture-backed (and CI portfolio) start-up company spun out of Yale University and founded to develop new, innovative laparoscopic medical devices for surgeons in minimally invasive surgery. In 6 years, NovaTract raised over $6MM and took an idea and developed a proof of concept, fabricated a working prototype, tested in a lab, completed regulatory milestones and brought a product to market. We trialed and revised 4 versions of the device in the marketplace, gained acceptance and usage in over 2 dozen hospitals and sold the technology to a private California-based laparoscopic company for broader commercialization worldwide. Prior to NovaTract, I served as the Director of Venture Development at UConn R&D Corporation where new business start-ups were created based on innovative technologies developed by the faculty and staff at the University of Connecticut and while there, also served as interim CEO of New Ortho Polymers, a UConn start-up focused on the development of new orthodontic appliances based on utilizing high performance polymers. Prior to that, I spent five years as a venture capital investor with Radius Ventures, an early-stage venture capital firm focused on health and life sciences, based in New York City with approximately $230 million under management where my investments were focused in the healthcare services, information technology, and medical device sectors. I have a track record of motivating and developing high-performing teams and feel that there are very valuable experiences, insights and lessons learned that I can share with the management teams of CI's portfolio

> companies to catalyze their efforts in business development.
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> I served until February 4, 2016 on the CT Bioscience Innovation Fund (CBIF) Advisory [Committee], which is managed by CI. As an Advisory [Committee] member, as you are aware, we do not vote/approve on any budgetary matters and have no control over budgetary spending, for CBIF or CI. I would not be working with any of these companies in the capacity as a fund raiser, nor have any controlling interest in any business decisions that are ultimately made by the company nor CI. I do not believe my role as an independent contractor, assisting portfolio companies on a part-time basis, would have any conflict of interest imposed by my former role as an Advisory [Committee] member of CBIF and would urge the Citizen's Ethics Advisory Board to consider allowing me to work with these companies and help accelerate milestone achievements.

In a follow-up communication, the petitioner explained that, although she was not compensated in her capacity as a CBIF Advisory Committee member, she would be compensated (on an hourly basis as a 1099 consultant) in her capacity as CI's Executive in Residence.

## Analysis

The Connecticut Bioscience Innovation Fund is a $200 million, 10-year fund that "seeks to drive innovation in the biosciences throughout Connecticut by providing focused financial assistance to startups, early stage businesses, non-profits and accredited colleges and universities."[1] The fund is "held, administered, invested and disbursed by" CI,[2] a quasi-public agency, but all expenditures from it must be approved by the CBIF Advisory Committee.[3] This thirteen member advisory committee was created under Public Acts 2013, No. 13-239, and each of its members is a "public official" and thus subject

[1]http://ctinnovations.com/cbif
[2]General Statutes § 32-41cc (a).
[3]General Statutes § 32-41cc (e).

to the Ethics Code,[4] including its revolving-door provisions.

The revolving-door provision relevant to the petitioner's inquiry is General Statutes § 1-84b (b), which contains the Ethics Code's one-year "cooling-off" ban. Established to prevent former state officials and employees from "using contacts and influence gained during State service to obtain improper advantage in their subsequent compensated dealings with their former agency,"[5] § 1-84b (b) reads, 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. . . .[6]

The main issue here—as suggested by the italicized language above—is this: What is the petitioner's former agency for purposes of § 1-84b (b)? Is it simply the CBIF Advisory Committee? If so, the one-year ban would apply to her compensated representation before *that entity alone*. Or is the CBIF Advisory Committee part of CI for purposes of that provision—given that it is (as the petitioner puts it) "managed by CI"? If so, the one-year ban would apply to her compensated representation before *both entities*. To resolve this issue, we look to advisory opinions that have tackled the question of whether one state entity was "part of" another under § 1-84b (b).

We start with Advisory Opinion No. 91-21, the issue there being whether, under § 1-84b (b), the Commission on Hospitals and Health Care ("CHHC") was "part of" the Department of Health Services ("DHS").[7] The State Ethics Commission observed that, on the one hand, all CHHS administrative matters were handled by DHS employees, but on the other: the legislature had created CHHS as an

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[4]General Statutes § 32-41bb (e).

[5](Internal quotation marks omitted.) Advisory Opinion No. 2007-10, Connecticut Law Journal, Vol. 69, No. 11, p. 9E (September 11, 2007).

[6](Emphasis added.)

[7]Advisory Opinion No. 91-21, Connecticut Law Journal, Vol. 53, No. 11, p. 3C (September 10, 1991).

"independent" commission; there was "no interaction between the two entities on any substantive issues"; and CHHS drafted its own regulations and had control over its own hearings.[8] In other words, but for the fact that DHS handled CHHS administrative matters, everything else suggested that these were "related but distinct entities."[9] The Commission concluded therefore that they were separate agencies for purposes of § 1-84b (b).[10]

The Commission concluded otherwise in Advisory Opinion No. 94-16 with respect to the Connecticut Medical Examining Board ("CMEB") and the Department of Public Health and Addiction Services ("DPHAS").[11] There, the Commission noted that the CMEB was created—not as an "independent" entity—but rather to be "within" DPHAS.[12] It then noted that DPHAS employees provide such staff to the CMEB as DPHAS deems necessary; DPHAS employees investigate all complaints whether or not they are ultimately brought before the CMEB; and DPHAS employees prosecute all matters that reach the stage of a CMEB hearing.[13] Finally, it noted that DPHAS "controls the allocation, disbursement and budgeting of funds appropriated to" DPHAS for the operation of the CMEB.[14] Given these factors, the Commission concluded that the CMEB was "part of" DPHAS for purposes of § 1-84b (b).[15]

The Commission followed suit in Advisory Opinion No. 96-17, involving the Underground Storage Tank Petroleum Cleanup Account Review Board ("Review Board") and the Department of Environmental Protection ("DEP").[16] According to the Commission, Review Board staff were DEP employees; the DEP commissioner was a Review Board member; the DEP commissioner, in consultation with the Review Board, was to adopt regulations establishing procedures for reimbursements from the cleanup fund; the statutory provisions governing the Review Board were contained in part of the general

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[8]Id.

[9]Id.

[10]Id.

[11]Advisory Opinion No. 96-14, Connecticut Law Journal, Vol. 56, No. 11, p. 2B (September 13, 1994).

[12]Id., 3B.

[13]Id.

[14](Internal quotation marks omitted.) Id.

[15]Id.

[16]Advisory Opinion No. 96-17, Connecticut Law Journal, Vol. 58, No. 21, p. 2E (November 19, 1996).

statutes over which the DEP commissioner exercised general supervision; and funding for the Review Board was provided in the budget for the DEP.[17] Accordingly, the Commission concluded with this:

> For purposes of the post-state employee rules, the Commission has consistently viewed the term 'agency' to include all subdivisions contained within that agency. . . . Based on the above enumerated factors and consistent with this precedent, for purposes of the post-state employment rules of Conn. Gen. Stat. 1-84b, the Review Board is found to be part of DEP.[18]

In Advisory Opinion No. 2009-5, we addressed whether the Office of Ombudsman for Property Rights was part of the Office of Policy and Management ("OPM") for purposes of § 1-84b (b).[19] We noted that, although OPM handled some administrative tasks for the Ombudsman Office—which was "within [OPM] for administrative purposes only"—the entities did not interact on any substantive matters.[20] In fact, OPM had no involvement whatsoever with the substantive duties of the Ombudsman Office, such as "mediat[ion] [of] disputes between private property owners and public agencies concerning the use of eminent domain . . . ."[21] Aside from some administrative interaction, we explained, "the bulk of the evidence suggested "that these [were] tenuously related but distinct state entities for purposes of § 1-84b (b)."[22]

At one end of the spectrum, then, stands Advisory Opinion Nos. 91-21 and 2009-5 (the first and last opinions discussed), in both of which the state entities involved were deemed separate entities under § 1-84b (b)—primarily given that interaction was confined to administrative or ministerial matters. At the other end stands Advisory Opinion Nos. 94-16 and 96-17 (the second and third opinions discussed), in both of which the entities were deemed a single entity under § 1-84b (b)—primarily given that interaction involved

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[17]Id., 2E-3E.

[18](Citation omitted.) Id., 3E.

[19]Advisory Opinion No. 2009-5, Connecticut Law Journal, Vol. 71, No. 1, p. 5D (July 7, 2009).

[20]Id., 6D.

[21]General Statutes § 48-50 (b) (7).

[22]Connecticut Law Journal, Vol. 71, No. 1, supra, p. 6D.

substantive, rather than merely ministerial, matters. The relationship between the CBIF Advisory Committee and CI, we believe, stands *much* closer to those in the latter opinions.

First of all, the chairperson of the CBIF Advisory Committee is none other than CI's chief executive officer.[23] Second, the enabling statute for the CBIF Advisory Committee—i.e., General Statutes § 32-41bb—is located in chapter 581 of the General Statutes, which is titled: "Innovation Capital Act of 1989. *Connecticut Innovations, Incorporated*."[24] Third, although all expenditures from the Connecticut Bioscience Innovation Fund must be approved by the CBIF Advisory Committee,[25] the fund is "held, administered, invested and disbursed by" CI.[26] Fourth, CI is responsible for providing "any necessary staff, office space, office systems and administrative support for the operation of the" fund.[27] And fifth, CI must submit to the CBIF Advisory Committee—for its review and approval—a yearly "plan of operations and an operating and capital budget for the" fund, and a yearly "report of the activities of the" fund.[28]

To paraphrase another advisory opinion, the statutory framework governing the Connecticut Bioscience Innovation Fund "requires extensive interaction on substantive issues" between the CBIF Advisory Committee and CI.[29] And "[a]s a result of this statutory framework, the opportunity clearly exists for the development of contacts between colleagues at the two entities."[30] Accordingly, we conclude that "the one year 'cooling off' period mandated by § 1-84b (b) must be applied to" the CBIF Advisory Committee and CI "as one agency in order to prevent these contacts from being used to obtain improper, preferential treatment."[31]

Because the petitioner's former agency for purposes of § 1-84b (b) includes CI, she may not, within a year of leaving the CBIF Advisory

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[23]General Statutes § 32-41bb (a).
[24](Emphasis added.)
[25]General Statutes § 32-41cc (e).
[26]General Statutes § 32-41cc (a).
[27]General Statutes § 32-41cc (f).
[28]General Statutes § 32-41cc (i) and (j).
[29]Advisory Opinion No. 96-9, Connecticut Law Journal, Vol. 58, No. 5, p. 1C (July 30, 1996).
[30]Id., 2C.
[31]Id.

Committee, "represent anyone, other than the state, for compensation before" CI, "concerning any matter in which the state has a substantial interest. . . ." As to whether this prohibition bars her from accepting the position of Executive in Residence at CI, Advisory Opinion No. 89-25 (Amended) holds the answer.

In Advisory Opinion No. 89-25, the Commission applied § 1-84b (b) to the issue of whether a former state employee could, within one year of leaving state service, return on a contractual basis to his former state agency.[32] Its analysis of the issue proceeded as follows: The language in § 1-84b (b) prevents a former state employee from representing "anyone" other than the state before one's former agency; in seeking consulting work with one's former agency, a former state employee would be representing someone other than the state—namely, oneself; and because there is no exception for "representation of oneself," § 1-84b (b) does not allow a "former employee who wishes to contract with his or her former agency to do so within one year after leaving the agency."[33]

A month later, the Commission issued Advisory Opinion No. 89-25 (Amended), in response to concerns that its previous opinion would prevent the state from carrying out its essential functions.[34] It agreed to a limited regulatory exception to § 1-84b (b) allowing "a former state official or employee to have personal contact with his or her former agency within one year after leaving state service for the purpose of being reemployed . . . by that agency."[35] To "insure that this reemployment is utilized to take advantage of the former employee's expertise, and not as an improper reward for past favors or friendships," the Commission added a caveat: "that the reemployment be at no greater pay level than the individual was receiving at the time of separation from state service, plus necessary expenses if the work is performed as an independent contractor."[36]

We discussed that exception in Advisory Opinion No. 2009-11.[37]

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[32]Advisory Opinion No. 89-25, Connecticut Law Journal, Vol. 51, No. 15, p. 2C (October 10, 1989).

[33]Id.

[34]Advisory Opinion No. 89-25 (Amended), Connecticut Law Journal, Vol. 51, No. 24, p. 2E (December 12, 1989).

[35]Id., 4E.

[36]Id.

[37]Connecticut Law Journal, Vol. 71, No. 20, p. 3B (November 17, 2009).

Asked whether a former member of the Connecticut Council on Developmental Disabilities could, within a year of leaving the council, accept paid employment as its executive director, we answered in the negative, stating:

> The problem here is two-fold. First . . . this is a *reemployment* exception, and "the word 'reemploy' assumes a prior employment relationship"—something that would not have existed between the Council and one of its former *unpaid* members. The second problem . . . is that, under this exception, a Council member may have contact with the Council within one year of leaving state service for the purpose of being reemployed, if (and only if) the reemployment is at no greater pay level than the Council member was receiving at the time of separation from state service—which was zero. Thus, no matter what the pay level of the executive-director position, because that position is a paid one, its pay level most certainly exceeds that of a former unpaid Council member.[38]

The same holds true here: The petitioner's position on the CBIF Advisory Committee was an unpaid one, meaning that she may not, for one year after leaving it, accept a paid position with CI (i.e., her former agency), as her pay level would obviously exceed what she was receiving at the time of separation from state service, i.e., $0.

## Conclusion

We conclude that § 1-84b (b) bars the petitioner from serving as CI's Executive in Residence within one year of leaving her unpaid position with the CBIF Advisory Committee.

By order of the Board,

Dated 5/19/16 /s/ Charles F. Chiusano
Chairperson

[38](Emphasis in original.) Id., 9B.