



STATE OF CONNECTICUT OFFICE OF STATE ETHICS

Advisory Opinion No. 2021-3 (Amended)

December 16, 2021

Questions Presented:

The petitioner asks whether the Code bars him “from both (1) continuing to hold [his] appointed state position as a Deputy Commissioner at [the Department of Administrative Services (“DAS”)] and serving as Interim Director of School Construction, and (2) concurrently serving [his] community as a volunteer in an elective position on the Guilford Board of Education”; and whether his “participation on the Board of Education prohibit[s] [him] from taking any official actions in [his] role as Interim Director of the Office of School Construction[.]”

Brief Answers:

We conclude, first, that § 5-266a-1 of the regulations—which bars certain state employees from holding elective municipal office—does not apply to the petitioner in his capacity as Deputy Commissioner; second, that his unpaid service on the Board of Education would not constitute “employment” and thus would not violate the Code’s outside-employment rules; and third, that the Code’s conflict provisions would not, by virtue of his unpaid service on the Board of Education, bar him from taking any official actions as interim Director of the Office of School Construction.

At its December 16, 2021 regular meeting, the Citizen's Ethics Advisory Board ("Board") granted the petition for an amended advisory opinion submitted by Noel Petra, Deputy Commissioner of Real Estate & Construction Services at DAS. The Board now issues this amended advisory opinion in accordance with General Statutes § 1-81 (a) (3) of the Code of Ethics for Public Officials ("Code").

Background

In his petition, Mr. Petra provides the following facts for our consideration (the emphasis being his):

My name is Noel Petra, I live at 44 Old Quarry Rd, Guilford, CT, and I am the Deputy Commissioner for Real Estate and Construction Services at the Department of Administrative Services ("DAS"). I am planning to run for the Board of Education in my hometown, Guilford, Connecticut. This is an uncompensated, elective position.

On September 23, 2021, the Citizen's Ethics Advisory Board issued Advisory Opinion No. 2021-3, which concluded that (1) Section 5-266a-1 of the regulations – which bars certain state employees from holding elective municipal office – does not apply to me in my capacity as Deputy Commissioner at DAS; (2) my uncompensated service on the Guilford Board of Education would not constitute "employment" and thus would not violate the Code's outside-employment rules, and (3) the Code's conflict provisions would not, by virtue of my uncompensated service on the Guilford Board of Education, bar me from taking any official actions as Deputy Commissioner at DAS.

Last week, the current Director of the Office of School Construction resigned, and I have been asked to fill that position on an interim basis while the agency seeks a permanent replacement. Based on this change of circumstances, I would like to request an amended opinion. . . .

Analysis

We start (as always) with the issue of jurisdiction. Persons generally subject to the Code are described in it as either "Public officials" or "State employees." The Code defines the former to include (among others) "any person appointed to any office of the . . . executive branch of state government by the Governor or an appointee of the Governor . . ." General

Statutes § 1-79 (11). As a Deputy Commissioner at DAS, Mr. Petra was appointed to a state executive-branch office by the Commissioner of Administrative Services, a gubernatorial appointee. See General Statutes §§ 4-4 through 4-8. He is, therefore, a “Public official” and, as such, is subject to the Code, including its outside-employment and conflict provisions, about which he specifically inquires.

Before addressing those provisions, we stress, as did our predecessor, the former State Ethics Commission, that when it comes to political activity, our “jurisdiction . . . is limited.” Declaratory Ruling 97-A; see also Informal Request for Advisory Opinion No. 3062 (2002) (“[t]he Ethics Commission has very limited jurisdiction regarding the political activity of state employees”); Informal Request for Advisory Opinion No. 1783 (1997) (“[t]he Commission’s jurisdiction regarding political activity is limited”).

Indeed, we have “jurisdiction over only one aspect of state employee political activity.” Informal Request for Advisory Opinion No. 3168 (2002). Our jurisdiction stems from General Statutes § 5-266a (b), which mandates that “[t]he Citizen’s Ethics Advisory Board shall establish by regulation definitions of conflict of interest which shall preclude persons in the *classified state service or in the Judicial Department* from holding elective office.” (Emphasis added.) That regulation—§ 5-266a-1 of the Regulations of Connecticut State Agencies—provides that “[t]here is a conflict of interests which precludes a person in State service from holding or continuing to hold elective municipal office” in one of two instances. The first is when “[t]he Constitution or a provision of the General Statutes prohibits a *classified State employee or a person employed in the Judicial Department* from seeking or holding the municipal office.” (Emphasis added.) Regs., Conn. State Agencies § 5-266a-1 (a) (1). The second is when “[t]he *classified State employee* has an office or position which has discretionary power to” do as follows:

- (A) Remove the incumbent of the municipal office;
- (B) Approve the accounts or actions of the municipal office;
- (C) Institute or recommend actions for penalties against the incumbent of the municipal office incident to the incumbent’s election or performance of the duties of said office;
- (D) Regulate the emoluments of the municipal office;

(E) Affect any grants or subsidies, administered by the State, for which the municipality in which the municipal office would be held is eligible.

(Emphasis added.) Regs., Conn. State Agencies § 5-266a-1 (a) (2).

As is clear from the italicized language above, § 5-266a-1 applies to just two groups of persons—namely, “classified State employee[s]” and “person[s] employed by the Judicial Department”—and Mr. Petra fits within neither group. That is, as a Deputy Commissioner at DAS, he is employed by the executive, not judicial, branch of state government; see General Statutes § 4-38c; and as an appointed official under General Statutes § 4-8, he is not a “classified state employee.”¹ Accordingly, the prohibition in § 5-266a-1 does not apply to Mr. Petra in his capacity as a Deputy Commissioner at DAS. See Advisory Opinion No. 95-5 (concluding that the Deputy Commissioner of the Department of Veterans Affairs “is an appointed official rather than a classified state employee,” and that the “restriction [in § 5-266a-1 therefore] does not apply to him”).

Moving on to the Code’s outside-employment and conflict provisions, Mr. Petra asks, concerning the former, whether “the outside employment provisions of the Code of State Ethics, specifically C.G.S. Secs. 1-84(b) and 1-84(c), prohibit me from participating as a member of the Guilford Board of Education[.]” Subsections (b) and (c) of § 1-84 house the Code’s primary outside employment rules, which provide, in relevant part, as follows:

(b) No public official . . . shall accept other employment which will either impair his independence of judgment as to his official duties or employment or require him, or induce him, to disclose confidential information acquired by him in the course of and by reason of his official duties.

(c) No public official . . . shall use his public office . . . or any confidential information received through his holding such public office . . . to obtain financial gain for himself, his spouse, child, child’s spouse, parent, brother or sister or a business with which he is associated.

¹The job description for Deputy Commissioner of Construction Services at DAS states, under “Job Class Designation,” that the position is “Unclassified.” <https://www.jobapscloud.com/CT/specs/classspecdisplay.asp?ClassNumber=0692EX&LinkSpec=RecruitNum2&R1=&R3=>.

These provisions, according to the regulations, “are violated when the public official . . . accepts outside employment with an individual or entity which can benefit from the state servant’s official actions (e.g., the individual in his or her state capacity has specific regulatory, contractual, or supervisory authority over the private person).” Regs., Conn. State Agencies § 1-81-17.

In this case, it appears that the town of Guilford and its Board of Education, on which Mr. Petra wants to serve, could benefit from his position as Deputy Commissioner at DAS due to his role as interim Director of the Office of School Construction. Even so, his service on the Board of Education would not trigger the Code’s outside-employment prohibitions, given that his *uncompensated* service would not constitute “employment,” about which the regulations have this to say:

[T]he term employment shall be construed to include any work or endeavor, whatever its form, undertaken in order to obtain *financial gain* (e.g., employee of a business, sole practitioner, independent contractor, investor, etc.). *The term shall not, however, include any endeavor undertaken only as a hobby or solely for charitable, educational, or public service purposes, when no compensation or other financial gain for the individual, his or her immediate family or a business with which the individual is associated is involved.*

(Emphasis added.) Regs., Conn. State Agencies § 1-81-14. Given that Mr. Petra’s “endeavor” (i.e., service on the Board of Education) would be undertaken solely for public service purposes, and that there would be no compensation or other financial gain for him (or, presumably, for his immediate family or any “business with which he [may be] associated”), his service would not constitute “employment” and thus would not violate the Code’s outside-employment provisions. See Advisory Opinion No. 81-9 (concluding that uncompensated service on a local board of education “is not, as subsection 1-84(b) requires, ‘employment’ ”).

Turning to the Code’s conflict provisions, General Statutes §§ 1-85 and 1-86 (a), Mr. Petra asks three questions: (1) whether “there are any substantial or potential conflicts with me participating on my local board of education”; (2) whether “my participation on the Board of Education [would] prohibit me from taking any official actions in my role as Interim Director of the Office of School Construction”; and (3) whether “there [are] any matters in which I would be required by the Code . . . to abstain from taking official action[.]”

Sections 1-85 and 1-86 (a)—which define and proscribe substantial and potential conflicts of interests for Code purposes—apply to Mr. Petra’s conduct only in his state capacity (and not in his capacity as a member of the Board of Education). Under § 1-85, Mr. Petra generally has a substantial conflict (and may not take official action on a matter) if he has “reason to believe or expect that he, his spouse, a dependent child, or a *business with which he is associated* will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. . . .”² (Emphasis added.) And under § 1-86 (a), he generally has a potential conflict (and likewise may not take official action on a matter) if he “would be required to take an action that would affect . . . [his] financial interest . . . [or that of his] spouse, parent, brother, sister, child or the spouse of a child or a *business with which [he] . . . is associated . . .*”³ (Emphasis added.)

To answer Mr. Petra’s questions concerning those provisions, we must first answer whether the Board of Education is a “business with which he is associated,” which (with an exception not pertinent here) is defined, in General Statutes § 1-79 (2), as follows:

[A]ny 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 or her 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 “Officer” refers only to the president, executive or senior vice president or treasurer of such business.

That definition was the subject of Advisory Opinion No. 90-29, titled “Application of ‘Business With Which Associated’ to Governmental Entities.” One of the questions there was “whether governmental entities are excluded from the . . . Code’s definition of ‘Business with which . . . associated’” The answer, in the former State Ethics Commission’s opinion (with which we agree), was yes: “The Commission declines . . . to

²There is an exception in § 1-85 to the general rule: An individual does not have a substantial conflict, “if any benefit or detriment accrues to him, his spouse, a dependent child, or a business with which he, his spouse or such dependent child is associated as a member of a profession, occupation or group to no greater extent than any other member of such profession, occupation or group.”

³No potential conflict exists if the financial impact is *de minimis* (i.e., less than \$100 per person per year) or indistinct from that of a substantial segment of the general public (e.g., all homeowners). General Statutes § 1-86 (a); Regs. Conn. State Agencies § 1-81-30.

. . . rule that the term . . . includes municipalities and other governmental entities,” for “[n]othing in the legislative history supports such a construction,” and “no Connecticut case has held that the terms ‘business’ and ‘government’ are in any way synonymous.”

Here, then, the Board of Education would not be a “business with which [Mr. Petra] is associated” because it is not a business, but rather a governmental entity. See *Cheney v. Strasburger*, 168 Conn. 135, 141 (1975) (noting that “a town board of education is an agent of the state when carrying out the educational interests of the state,” and that its “members . . . are . . . officers of the town”). And because it would not be a “business with which he is associated,” his mere uncompensated service on the Board of Education would not create any conflicts under §§ 1-85 and 1-86 (a), meaning those provisions would not (in answer to his questions) prohibit him from taking any official actions as Deputy Commissioner at DAS, including actions in his role as interim Director of the Office of School Construction.⁴

Before concluding, we stress that this opinion interprets the Code only, and that it does not address appearance issues, which are beyond the Code’s scope. See Advisory Opinion No. 2009-7 (“[t]he Code . . . does not speak of appearances of conflict, only actualities,” so in “interpreting and enforcing the Code . . . [we are] limited, by statute, from addressing appearances or perceptions of conflict of interest” [internal quotation marks omitted]).

Conclusion

We conclude that (1) the prohibitions in § 5-266a-1 do not apply to Mr. Petra in his capacity as a DAS Deputy Commissioner; (2) his unpaid service on the Guilford Board of Education would not constitute “employment” and thus would not violate the Code’s outside-employment rules; and (3) §§ 1-85 and 1-86 (a) would not, by virtue of his unpaid service on the Guilford Board of Education, bar him from taking any official actions in his role as interim Director of the Office of School Construction.

By order of the Board,

Dated _____

Chairperson

⁴This assumes, of course, that neither Mr. Petra himself nor any of the family members listed in §§ 1-85 and 1-86 (a) would be impacted financially by virtue of such official action.