STATE OF CONNECTICUT
OFFICE OF STATE ETHICS

Draft Advisory Opinion No. 2023-1

March 16, 2023

Question Presented: **Connecticut Housing Finance Authority ("CHFA") and Local Initiatives Support Corporation ("LISC") entered an Amendment to Agreement to extend the time period for LISC to perform services, and for CHFA to pay the outstanding $50,000 to LISC for those services, under the parties' original agreement. Did the Amendment trigger the one-year ban in General Statutes § 1-84b (f), such that the former Chief Operating Officer of CHFA, who had some involvement in the Amendment, could be barred from accepting employment with LISC?**

Brief Answer: **We conclude that the Amendment to Agreement did not trigger the one-year ban in § 1-84b (f), meaning the former Chief Operating Officer of CHFA is not barred by that provision from accepting employment with LISC, regardless of her participation in the Amendment.**

At its March 16, 2023 regular meeting, the Citizen's Ethics Advisory Board granted the petition for an advisory opinion submitted by Bhavani Daryanani, a former Chief Operating Officer ("COO") of CHFA, and it now issues this advisory opinion under General Statutes § 1-81 (a) (3) of the Code of Ethics for Public Officials.

Background

The following facts are relevant to this opinion:

- *June 8, 2020*: CHFA enters an agreement with the Hamden Economic Development Corporation ("HEDC") concerning the Housing and Community Development Leadership Institute ("Leadership Institute")—which was created via an Assistance Agreement between HEDC and the Department of Housing ("DOH")—and agrees to "provide funding of up to $50,000 from its 2021 budget and up to $50,000 from its 2022 budget for the Services," which (under the Assistance Agreement) were to be completed by December 31, 2022.

- *January 28, 2021*: By resolution, the CHFA Board authorizes the CEO of CHFA to invest up to $100,000 ($50,000 in 2021 and $50,000 in 2022) in the Leadership Institute.

- *March 3, 2021*: CHFA enters a Memorandum of Agreement with the DOH and agrees to provide funding "(a) up to $50,000 in 2021, and (b) up to $50,000 in 2022, both to be expended in connection with the administration and implementation of the" Leadership Institute.

- *September 1,* 2021: As of this date, CHFA has disbursed the first payment of $50,000 to HEDC.

- *March 22, 2022*: CHFA enters an Assignment and Assumption Agreement with HEDC and LISC, with an effective date of September 1, 2021, under which HEDC assigns the June 8, 2020 CHFA agreement to LISC, which assumes the administration and implementation of the Leadership Institute.

- *June 2022*: Ms. Daryanani commences employment with CHFA as its COO and, in that position, engages in communications with LISC and the DOH concerning the Leadership Institute.

- *November 28, 2022*: CHFA and DOH enter a "First Amendment" to the March 3, 2021 Memorandum of Agreement, and CHFA agrees to "contribute and pay the second installment of up to $50,000 to LISC for 2022, to be expended in connection with the administration and implementation of the" Leadership Institute.

- *December 16, 2022*: CHFA and LISC enter an Amendment to Agreement, which provides that "funding allocated by CHFA for the [Leadership Institute] have not been fully spent" (i.e., the outstanding $50,000 payment) and that the original (i.e., June 8, 2020) agreement terminates on December 31, 2022, and thus extends the original agreement's term through September

30, 2023, with no additional modifications to the original agreement.

- *December 30, 2022*: Ms. Daryanani resigns from her position at CHFA.

- *Now*: Ms. Daryanani seeks to accept employment with LISC.

Analysis

Concerning jurisdiction, persons generally subject to the Code are described as either "Public officials" or "State employees." The Code defines the latter to include (among others) "any employee of a quasi-public agency"; General Statutes § 1-79 (13); and it defines "[q]uasi-public agency" to include (among others) CHFA. General Statutes § 1-79 (12). It follows that, as a former CHFA employee, Ms. Daryanani is a former "state employee" and thus subject to four of the Code's post-state employment provisions, namely, General Statutes §§ 1-84a, 1-84b (a), 1-84b (b), and 1-84b (f).

Ms. Daryanani's inquiry centers on the last of those provisions, § 1-84b (f), which provides, in relevant part, as follows:

> No former . . . state employee (1) who participated substantially in the negotiation or award of (A) a state contract valued at an amount of fifty thousand dollars or more . . . or (2) who supervised the negotiation or award of such a contract or agreement, shall accept employment with a party to the contract or agreement other than the state for a period of one year after his resignation from his state office or position if his resignation occurs less than one year after the contract or agreement is signed. . . .

As applied here, Ms. Daryanani's proposed post-state employer, LISC, is a party to a state contract (i.e., the December 2022 Amendment to Agreement); the contract's value is $50,000 (i.e., the $50,000 that went unspent under the initial agreement); and the contract was signed by CHFA within a year of Ms. Daryanani's resignation from her CHFA position (i.e., 14 days before her departure). There remains one question: whether Ms. Daryanani participated substantially in, or supervised, the negotiation or award of that contract (and if so, she would be barred by § 1-84b (f) from accepting employment with LISC for one year from her resignation date). But we need not answer that question here, for there is a string of opinions, dating back to 1981, suggesting that, in a case like this—i.e., one involving nothing more than a contract extension—§ 1-84b (f)'s ban is not triggered.

First in that string is Advisory Opinion No. 81-2, which involved General Statutes § 1-84 (i), which bars a public official from entering a "contract with the state, valued at $100 or more . . . unless the contract has been awarded through an open and public process . . . ." (Internal quotation marks omitted.) The facts were as follows: A corporation and the Department of Transportation ("DOT") entered a one-year lease agreement, under which "occupancy could be continued on a monthly basis" once the one-year term expired. "A year or so later," the corporation's president "was elected to the General Assembly," and seven years after that (the one-year agreement still in existence and the corporation's president still a legislator), the DOT sought to renegotiate the initial agreement's terms "by including certain standard terms and conditions . . . and by changing the rental value if a re-evaluation indicates that is warranted." The issue was whether those facts triggered § 1-84 (i)'s open-and-public-process requirement, and the answer was no:

> A routine modification of a contract, making changes which are not seriously inconsistent with the original contract, does not appear to be "entering into a contract" as that term is used in subsection 1-84(i) . . . . Therefore, the business with which the legislator is associated may modify its lease with the State even though the [DOT] is not using an open process for doing so. It would be otherwise if the parties intended to enter into a new contract, or the terms agreed to were so inconsistent with the former ones that the old contract was impliedly revoked. . . .

Next in the string is Advisory Opinion No. 2002-21, concerning how § 1-84 (i) applied to the compensation agreements of the director of the Office of Workforce Competitiveness ("OWC"). The facts are complex, but the gist is this: In April 1999, the OWC was created via executive order, and a month later, "Ms. Hanley and the Office of Policy and Management ('OPM') entered . . . a one-year personal services agreement," under which her "duties included operating as Director of the OWC," and during the contract period, she "submitted invoices to and received payments from OPM . . . ." The next year, "the General Assembly . . . established the OWC as a separate statutory entity," after which Ms. "Hanley and the OWC entered . . . a personal services agreement," and its scope of work "was substantially the same as under the earlier agreement with OPM." Given those facts, a question was whether the second agreement and any subsequent to it were required to be "put out to a competitive bid," in accordance with § 1-84 (i). The answer, with a hat tip to Advisory Opinion No. 81-2, was this:

> [T]hese subsequent agreements do not constitute new contracts

> but, rather, were routine modifications of the initial May, 1999 personal services agreement. As noted supra, Ms. Hanley's duties have not significantly changed from year to year; nor has her hourly rate of compensation. While the number of hours has been modified (e.g., increasing 10% from 1999 to 2000) this amendment alone is insufficient to turn the annual renewals of Ms. Hanley's personal services agreement into new contracts. . . . Therefore, consistent with [Advisory Opinion No. 81-2], the routine renewals of Ms. Hanley's employment agreement did not require compliance with §1-84(i).

The string ends with Advisory Opinion No. 2004-14 (Amended), in which the previous opinions' logic was applied to a fact set involving the provision relevant here, § 1-84b (f). The opinion's subject was the OPM Secretary, who was "consider[ing] leaving state service to take a job in the private sector," with, for example, a health maintenance organization ("HMO"). In 2003, he was involved "in . . . negotiations [with participating HMOs] for contracts that were ultimately signed in December of 2003 . . . and continuing to September 30, 2004." And in 2004, he participated in a subsequent contract with the HMOs, the contractual terms of which "remained the same [as the 2003 contract] except for the additional inflationary increase and the term of the contract, which is four months." The Secretary asked if "his involvement in the 2004 contract precludes him from taking a job with one of the parties under . . . § 1-84b (f)," and the response was as follows:

> In the context of another [Code] section . . . the State Ethics Commission has held that "the routine modification of a contract, making changes which are not seriously inconsistent with the original contract, does not appear to be 'entering into a contract' as that term is used" in the open and public process contracting requirement of . . . §1-84(i). See, for example, State Ethics Commission Advisory Opinion No. 81-2 . . . . Applying this rule to Secretary Ryan's set of facts, if, as it appears, the 4-month extension did not modify the terms of the existing contract in any way other than those described above, then this new contract does not create a one-year ban under . . . §1-84b(f).

The same applies here, for as aptly articulated in a March 3, 2023 email from the CHFA General Counsel, the Amendment to Agreement between CHFA and LISC did nothing more than allow additional time for LISC to perform services, and for CHFA to pay the outstanding $50,000 to LISC for those services, pursuant to the parties' original agreement:

> The LISC Amendment relates to the MOA between CHFA and DOH. The total amount that CHFA is obligated to pay under the agreement that originally was with the Hamden Economic Development Corporation - and that was assigned to LISC - is $100,000 . . . The $50,000 is not 'new money'. It's the 2d installment due under the agreement. LISC was supposed to have completed the work by the end of 2022. CHFA was then obligated to pay the remainder of the funds, $50,000, for the services that LISC was to have performed. LISC asked for more time to perform the services, so we extended our agreement with them until the end of September 2023. That's what the Amendment to Agreement with LISC does.

Given, then, that the Amendment to Agreement between CHFA and LISC was a contract extension that made no other modifications to the original agreement between the parties, we conclude, in line with the string of opinions discussed above, that it did not trigger the one-year ban in § 1-84b (f), meaning that Ms. Daryanani is not barred by that provision from accepting post-state employment with LISC.

Of course, in engaging in such post-state employment, Ms. Daryanani must abide by the other three post-state employment provisions that were explained in detail to her via informal staff opinion.

Conclusion

Based on the facts presented, we conclude as follows: Because the Amendment to Agreement between CHFA and LISC did not trigger the one-year ban in § 1-84b (f), Ms. Daryanani is not barred by that provision from accepting post-state employment with LISC.

By order of the Board,

Dated_____ _____
Chairperson