

CONNECTICUT STATE ETHICS COMMISSION
30 TRINITY STREET
HARTFORD, CONNECTICUT 06106

83-13

In the Matter of a Request
for a Declaratory Ruling

Timothy S. Hollister,
Applicant

Representation by a State Employee Before
a Subsection 1-84(d) Agency

A private developer is currently seeking municipal approval for an industrial park it wishes to build. Due to the discovery of wetlands soils on a portion of the proposed site, the developer must also obtain State Department of Environmental Protection (DEP) approval before commencing construction. Subsections 22a-38(13), 39(i), (k), and 42(f), General Statutes. An attorney for the law firm representing the developer has asked whether, and under what circumstances, it may use the services of a University of Connecticut (UCONN) professor relative to the application that must be submitted to DEP.

Specifically, advice is sought on three related questions: (1) What, if any, limits does subsection 1-84(d), General Statutes, place on the professor's compensated participation in the application process? (2) Whether, if the professor's desired participation is restricted by 1-84(d), a recent UCONN graduate student may, for compensation, provide the necessary consulting services under the professor's supervision? (3) Alternatively, whether 1-84(d) would allow the professor to provide the required services, with the developer making a contribution to UCONN in lieu of remuneration to the individual?

(1) As a member of the professional staff of the State university, the professor is a State employee, subsections 5-196(i) and 198(1), General Statutes; subsection 1-79(k), id. Thus, he is subject to the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes, including subsection 1-84(d).

Subsection 1-84(d), in pertinent part, states that "No...State employee or his employee shall agree to accept, or be a member or employee of a partnership, association, or a

professional corporation which...agrees to accept, any employment, fee or other thing of value, or portion thereof, in consideration of its appearing, agreeing to appear, or taking any other action on behalf of another person before...the department of environmental protection...." In essence, this broad prohibition 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. As a consequence, the Ethics Commission has interpreted the phrase "...appearing...or taking any other action on behalf of another person before..." to refer not only to physical appearances before the restricted agencies, but also to any communications, including written submissions, that identify the individual State employee or public official involved. See Ethics Commission Advisory Opinion No. 79-6, 40 Conn. L.J. No. 38, p. 27 (March 20, 1979).

Therefore, in the instant situation, the professor may, for compensation, conduct tests and other research, prepare reports, and even assist in drafting the application required by DEP. However, his name may not appear on the application or any supporting documents submitted to DEP, nor may he be compensated for testimony, or any other appearance, before the agency relative to his client's application.

(2) The petitioner next queries whether 1-84(d) allows a former UCONN graduate student to serve as principal consultant for the developer's DEP application, with supervision from the UCONN professor. The propriety of this arrangement is controlled by two points; the former student's status as a State employee and the nature and extent of the professor's supervisory role.

Since graduating in the spring of this year, the former student has had no employment relationship with the State which would make him a State employee subject to the strictures of the Code of Ethics for Public Officials. Further, it does not appear that the supervisory role envisioned for the professor is of the required character to bring the student within the terms of 1-84(d). The proposed supervision, basically a limited review of the individual's work, establishes no employer/employee relationship or other formal business association between the two. Rather, both would be employed by the developer as independent contractors. The former student, a qualified soil scientist, would sign and submit the technical documents required by DEP and furnish any necessary testimony. The professor's supervisory role would require no contact with DEP, nor should his participation in the project be made known to the agency. On these facts, 1-84(d) would not be applicable to the former student and the developer may proceed to use the

individual's services. In addition, the professor may exercise a supervisory role in the process, as long as he does not exceed the bounds established in section (1), supra.

(3) The Commission has also been asked whether the developer may utilize the private consulting services of the UCONN professor relative to its DEP application, if a contribution is made to UCONN in lieu of any direct payment to the individual. More particularly, instead of compensating the professor, the developer proposes making a grant to the university for research and professional development in the area of soil sciences.

To rule on the legality of this proposal it must be determined whether, as a result, the professor would be accepting "...any employment, fee or other thing of value, or portion thereof..." as those terms are used in 1-84(d). In construing a related conflict of interests provision, subsection 1-84(b), General Statutes, the Commission has decided that use of the term "employment" in the Code denotes "work which is compensated--involving outside income, not just outside activity." Ethics Commission Advisory Opinion No. 80-18, 42 Conn. L.J. No 22, p. 23 (November 25, 1980). Thus, to be violative of the Code the suggested arrangement must impart on the professor some financial compensation "...or other thing of value..."

Due to the specificity of the grant and the relatively small number of professional staff involved in this area of study at UCONN, it is quite probable that at least a portion of the grant will be awarded to the professor in question. However, several factors militate against concluding that the arrangement is therefore prohibited by 1-84(d). Under the proposal, grant monies will be disbursed by the department chairperson for State, not private, purposes. Furthermore, any interested and qualified personnel at the university will have equal opportunity to apply for and receive funding in compliance with established university and departmental procedures. To characterize any authorized use of these funds by the subject professor as receipt of financial compensation for representation of a private client before DEP would be to extend the scope of 1-84(d) beyond its plain meaning and fundamental intent.

Nor does it appear appropriate to describe a potential grant award to the professor as a receipt of any "...other thing of value..." as that phrase is used in 1-84(d). As with "employment", discussed in this section, supra, it would seem proper to limit the meaning of this phrase to receipt of tangible items that can be valued in monetary terms. To adopt an alternative construction that included intangibles such as possible goodwill or professional esteem would go beyond the

central emphasis of the Code on prevention of improper private financial gain by State employees and public officials. The fallacy of such a broad construction becomes more apparent when one recognizes that intangible benefits can often be expected in return for completely free representation, which would clearly be allowed under 1-84(d). See Ethics Commission Advisory Opinion No. 80-1, 41 Conn. L.J. No. 29, p. 5 (January 15, 1980).

Therefore, an arrangement whereby the developer obtains the private consulting services of the UCONN professor for its DEP application and in return makes a grant to the university, under the terms set forth in this section, supra, is acceptable under 1-84(d).

Lastly, considering the professor's lack of any special access to, or regulatory power over, DEP, compliance with the other provisions of the Code of Ethics for Public Officials which have possible applicability to the situation should pose no particular problem for the parties involved, as long as they are cognizant of them.

By order of the Commission,

Lucille E. Brown

Lucille E. Brown
Chairperson

Dated

5 August 1983