

CONNECTICUT STATE ETHICS COMMISSION
30 TRINITY STREET
HARTFORD, CONNECTICUT 06106

84-A

In the Matter of a Request
for a Declaratory Ruling

Laurence L. Hannifin, et al.
Applicants

Connecticut Real Estate Division Personnel
Teaching Real Estate Courses

In early 1980 five members of the Real Estate Commission staff--its Executive Director, his principal assistant, and three real estate examiners--asked whether they could teach real estate courses without violating the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes. In a Declaratory Ruling dated June 24, 1980 the Ethics Commission concluded that the staff members were not permitted to teach courses which could be a prerequisite to applying for a real estate license and which, with their instructors and the schools offering the courses, were required to be approved by the Real Estate Commission, under the Commissioner of Consumer Protection.

Four years later the same five petitioners have again asked the same questions. It is their claim that statutory, organizational, and procedural changes made in the administration of the real estate laws in the intervening years compel the conclusion that they may, without violating the Code of Ethics, teach real estate courses which are a prerequisite to applying for a real estate license.

According to an organizational chart provided by the Department of Consumer Protection, the five petitioners occupy positions in the Real Estate Division which are analagous to those they held on the Real Estate Commission staff. The former Executive Director is now Division Director. His former assistant is still his assistant. Two other petitioners head the two branches of the Division. All have responsibilities for one or several areas of the Division's responsibilities. Each also has responsibility for oversight of the real estate industry in a geographic area of Connecticut. They have continued to teach real estate courses during the appeal of the Commission's initial declaratory ruling in their case. Presently all are teaching, at one or more approved schools, the real estate principles and practices course which can satisfy a prerequisite to applying for a real estate salesman's or broker's license. Subsection 20-314(c), General Statutes.

In documents supporting their request for a declaratory ruling, and in a hearing granted pursuant to section 1-92-39b(b), Regulations of Connecticut State Agencies, the petitioners described the following changes occurring since the Ethics Commission issued its previous Declaratory Ruling:

The Department of Consumer Protection has been reorganized insofar as administration of the real estate laws is concerned.

As permitted by Public Act No. 80-150, examination for real estate licenses is now accomplished by a national testing service, with no input or participation by members of the Real Estate Division.

Passing grades for examinations are fixed by regulations adopted by the Commissioner of Consumer Protection. Section 6, Public Act No. 82-422.

The Real Estate Commission no longer approves the instructors who teach real estate courses. Section 7, Public Act No. 82-422.

Under Real Estate Commission procedures, approval of real estate courses and the schools teaching them is accomplished by Commission members, with no evaluative input from the Real Estate Division.

Of these changes, the reorganization within the Department of Consumer Protection seems of modest significance. Formally, the Real Estate Division is part of the Bureau of Licensing and Regulation in the Department of Consumer Protection. The four divisions in the Bureau provide staff support to sixteen boards and commissions, including the Real Estate Commission, in the Department. Because of the magnitude of the Real Estate Commission's responsibilities, a separate division was established to service it. Basically, the Real Estate Division, alone, provides staff support to the Real Estate Commission, and to no other board or commission. In many respects the relationship of members of the Division to the Commission appears to be the same as when the members made up the staff of the Commission. The organizational change has created one difference: performance of the members of the Division is evaluated by the Commissioner of Consumer

Protection, not the Real Estate Commission.

The changes in the system of examinations for real estate licenses also have little bearing on the application of the Code of Ethics to the teaching of real estate courses by members of the Real Estate Division. Isolation of the petitioners from the examination process in 1980 was fairly complete. The Ethics Commission anticipated that transferring responsibility for examining license applicants from the Department of Consumer Protection to a national testing service would remove completely the examination process as an issue. Under the authority of subsection 20-314(c), General Statutes, as amended by Public Act No. 80-150, that transfer has occurred. Petitioners claim to have no participation whatsoever in the examination which most applicants for a real estate salesman's or broker's license must pass. Subsection 20-314(c), General Statutes. Applications for the examination are processed by a real estate examiner who is not teaching real estate courses. Four of the five petitioners appear to be superior to that examiner in the chain of supervisory authority. They claim, however, no involvement in, or even supervision of, processing the examinations applications. The examinations are developed by groups which contain none of the petitioners. Petitioners have no advance information as to their contents. The national testing service administers and grades the examinations. At no time do petitioners have access to them. Other qualifying elements for a real estate license, or exemptions from them (sections 20-314, 20-314a, General Statutes), such as education, experience, competency, reputation for honesty and fair dealing, etc., apparently are reviewed and considered only by the examiner processing examination applications and the members of the Real Estate Commission.

The change with the most impact on the issue of conflicts of interests under the Code of Ethics is the removal of the requirement that the Real Estate Commission approve the instructors teaching approved real estate courses. In 1980 the Real Estate Commission had substantial discretion in determining whether or not an instructor would be approved to teach a real estate courses. See Section 20-314a-3, effective November 29, 1978, Regulations of Connecticut State Agencies. In 1980 the Ethics Commission believed that the public would have little faith in the objectivity of the Real Estate Commission's review and action on the qualifications of instructors of real estate courses when among the instructors were the senior members of the Real Estate Commission staff. Because of their long service on the Commission staff, its members might well have been the most qualified to teach

approved real estate courses. However, in discussing the consequence of the most senior members of the Real Estate Commission staff being instructors who had to obtain approval from the Commission, the Ethics Commission in 1980 stated:

"...the public is likely to believe that the Real Estate Commission, which hired and relies on the staff members, and Real Estate Commission staff members would be reluctant to refuse to certify a staff member as a competent teacher, or deny approval of the courses they develop, or declare unfit schools which have staff members on their faculty. In this respect, at least, the staff members who teach will be suspected of having taken employment which impairs their independence of judgment. See subsection 1-84(b), General Statutes. There is a possibility of their using their office, albeit perhaps unwittingly, for personal gain. It is doubtful that a subordinate of a senior staff member/teacher would fail to recommend certification, or would recommend decertification as unqualified, of his superior as a teacher, or of the superior's course or school. See subsection 1-84(c), *id.* There is the appearance, at least, of a substantial conflict of interest. Subsection 1-84(a), and section 1-85, *id.*...."

This issue, perhaps the major basis for the conclusion reached by the Ethics Commission in 1980, no longer is a factor.

The Real Estate Commission does still approve the schools offering approved real estate courses and the courses themselves. Section 20-314a, General Statutes; sections 20-314a-1 through 20-314a-11, Regulations of Connecticut State Agencies. Petitioners, four of whom are the four most senior members of the Real Estate Division, claim they make no evaluative contribution to this process. One of them collects applications from the schools. He states he does no more than check that the application regarding the school and its real estate courses is complete. Once it is, he submits it without comment. None of the other four petitioners are involved in any way with approval of schools or courses. The Real Estate Commissioners, four of whom must be engaged in the real estate business at the time of their appointment (section 20-311a, General Statutes), decide whether schools or courses will be approved. Lists of the 40 or so schools which have been approved are maintained in the offices of the Real Estate Commission, and are passed out without recommendation to anyone requesting information about schools teaching real estate courses.

Today there is a substantial difference in the duties of the petitioners in the areas where there formerly were conflicts between their duties as State employees and their interests as Real Estate Commission-approved off-duty instructors in Commission-approved schools of Commission-approved courses which could meet a prerequisite for applying for a real estate license. They claim no part whatsoever in the process of examining applicants for real estate licenses. They appear to be removed from the qualification and monitoring of schools teaching real estate courses, and the qualification and monitoring of the courses and those who teach them. Consequently, there is not the danger of a substantial conflict of interest, subsection 1-84(a), section 1-85, General Statutes, which existed in 1980. Their private employment should not impair their independence of judgment as State employees, subsection 1-84(b), and it does not appear likely that they will be able to use their State position for their private financial gain, subsection 1-84(c), General Statutes.

The Chairman, Real Estate Commission has expressed to the Ethics Commission his concern that the school approval process and the broker-salesman licensing process be seen by the public as free from corrupt practices and conflicts of interest. The Commissioner of Consumer Protection, in this and other situations, has evidenced a sensitivity to and support for the principles of the Code of Ethics for Public Officials.

Considering all these circumstances, the Ethics Commission is persuaded petitioners can teach approved real estate courses, including those which serve as a prerequisite for a real estate salesman's or broker's license, without violation of the Code of Ethics for Public Officials.

This Declaratory Ruling does not address in any respect the issue of continuing education for real estate brokers and salesmen. See Public Act No. 83-472.

By order of the Commission,

Lucille E. Brown
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Chairperson

Date 8 June 1984

