



STATE OF CONNECTICUT  
STATE ETHICS COMMISSION

DECLARATORY RULING 94-A

Application Of The Code Of Ethics For Public  
Officials To A Law Firm With Which A  
Legislator/Attorney Is Associated

A partner in the law firm of Schatz & Schatz, Ribicoff & Kotkin (the Firm) has expressed an interest in running for an elected position as a member of the General Assembly. Another partner in the Firm, Attorney Mark Oland, has asked a series of questions regarding the Application of the Code of Ethics for Public Officials, Connecticut General Statutes, Chapter 10, Part I, to the Firm.

The Firm participates in matters before certain state agencies. Attorney Oland is concerned about the applicability of Conn. Gen. Stat. §1-84(d). As a member of the General Assembly, the partner will be a public official and the Firm will be a "business with which he is associated". Conn. Gen. Stat. §§1-79(k), 1-79(b). In general, §1-84(d) prohibits a public official from being a member of a partnership which agrees to accept any compensation for appearing or taking any other action on behalf of another person before certain listed state agencies. The prohibition is intended to prevent improper influence which a public official might be able to exert because of his office on a state agency; and, thereby, preserve public confidence in the integrity of the operations of the listed agencies.

During the 1992 legislative session, however, this blanket prohibition was relaxed to allow compensated representation by other members or employees of the partnership as long as the legislator "take(s) no part in any matter involving the agency listed" and does "not receive compensation from any such matter". Conn. Gen. Stat. §1-84(d) as amended by Public Act 92-149, s.1. Therefore, although other members or employees of the Firm may continue to practice before the listed agencies, the partner may not be involved in any aspect of the activity before the agency, including consultation with others from the firm. The Firm must also be careful not to disclose to the listed agency the identity of the partner/legislator. The Firm may not in any way reveal its association with the legislator, including submitting a document with his signature, or submitting any materials with a letterhead which includes the legislator's name. Regulations of Connecticut State Agencies,

§1-81-18(a). Similarly, during discussions with representatives of the listed agencies, other members and employees of the Firm should not affirmatively state its association with the legislator. Id. An additional, unique, concern is raised in this instance by the fact that the surname of the candidate is the same as one of the names contained in the firm name. The purpose of the prohibition is adequately served as long as the full name of the partner/legislator is not used. The partner/legislator may, however, contact a listed agency for the sole purpose of obtaining generic information unrelated to any specific client or matter, regardless of whether such action is compensated or not. Regulations of Connecticut State Agencies, §1-81-18(b).

This prohibition extends only to the matters before the listed agencies and does not extend to any other matters handled by the Firm for its clients. Therefore, the partner may represent the client before executive branch agencies not listed in §1-84(d) and may also appear before the judicial branch of government. See Ethics Commission Declaratory Ruling 92-B, February 5, 1992. For example, although the partner/legislator cannot be involved in an application to the banking department for approval of a merger, he would not be barred from participating in any litigation in the courts relating to the merger. The partner/legislator, however, should be careful not to cause an inadvertent violation of §1-84(d) whenever a party to the litigation is one of the listed agencies. The Commission has ruled that, even if the agency is represented by the Office of the Attorney General, attempting to negotiate a settlement during the proceeding would be equivalent to direct dealings with the listed agency and thereby constitute impermissible contact. Id.

In order to resolve the compensation issue, the Firm must segregate any fees received from such representation to ensure that the partner/legislator does not share in any profits so derived by the Firm. In order to satisfy this requirement, the Firm has indicated that it will pay the partner/legislator based on a fixed annual salary with future adjustments based upon the overall performance of the partner and the Firm. Attorney Oland has stated that any such future adjustments will exclude consideration of business derived from representation involving the listed state agencies. This method of compensation fulfills the statutory requirements of §1-84(d). It should be noted that as long as the Firm has in place such a method for compensating the partner/legislator, it need not disclose to the Ethics Commission the specific dollar amounts so paid. Additionally, it is permissible for the partner/legislator to receive his share of the distribution of the Firm's profits, including fees

from §1-84(d) agencies, which were derived prior to his becoming a member of the Legislature.

Attorney Oland has stated that the Firm currently represents the State of Connecticut on various matters and desires to continue this practice. With exceptions not relevant to this Opinion, Conn. Gen. Stat. §1-84(i) prohibits a business with which a public official is associated from entering into a contract with the State unless the contract is awarded through an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded. In civil matters, decisions to employ private counsel are ultimately made by the Office of the Attorney General. That Office maintains a list of attorneys and firms who have either responded to periodic advertisements for attorneys or who have otherwise expressed an interest in seeking contract work with the State. The list (as well as any information submitted to the office) and the firm selected are a matter of public record. This public disclosure satisfies the requirements of §1-84(i) since all decisions will be subject to public scrutiny. See also Ethics Commission Advisory Opinion No. 87-10, 49 Conn. L.J. No. 8, p. 17C, August 25, 1987 (Acceptable Procedure Utilized By The Office Of The Chief State's Attorney). Therefore, The Firm may continue to represent the State in connection with legal matters as long as this procedure continues to remain in place.

As a member of the General Assembly, pursuant to Conn. Gen. Stat. §1-83(a), the partner/legislator will have to file an annual statement of financial interests. This statement must include the names and addresses of clients who provided more than ten thousand dollars of net income to a business with which associated, except when such information is privileged against disclosure under the ethical standards of the legislator's professional group. Conn. Gen. Stat. §1-83(b)(1). This disclosure may be kept sealed and confidential at the legislator's request. Conn. Gen. Stat. §1-83(c).

Therefore, it is clear that the legislator must list all such clients which are already a matter of public record, e.g. the Firm is counsel of record in litigation. All other clients meeting the threshold must also be listed unless disclosure is specifically prohibited under the professional canons of the bar association. The public interest in avoiding conflicts of interest by public officials outweighs the limited invasion of privacy of the affected officials and their clients. See, Hays v. Wood, 25 Cal. 3d 772 (1979) (California Supreme Court upheld the requirement that attorney/public official disclose the names of his clients and rejected the argument that it was privileged

information). Since the disclosure does not include the subject matter of the representation, the exception will be allowed only under very limited circumstances. For example, when a lawyer's sole practice is limited to criminal defense work, the disclosure of a client's name, not otherwise a matter of public information, may be privileged if the disclosure would implicate the client in unlawful activities. Id.

Finally, it should be noted that once the partner becomes a "candidate for public office" as defined by Conn. Gen. Stat. §1-79(c), he will be subject to certain provisions of the Code of Ethics prior to his election to the General Assembly. Specifically, he will be subject to the gift law and bribery restrictions contained therein. See Conn. Gen. Stat. §§1-84(f), 1-84(g), and 1-84(j).

By order of the Commission,



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Christopher T. Donohue  
Chairperson

Dated 5-6-94