



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

DECLARATORY RULING 98-A

*Application Of The Code Of Ethics To The Governor's
Purchase Of A Summer Cottage*

In response to requests from Attorney Edward Marcus, Chairman of the Democratic State Central Committee, the Ethics Commission issues the following Declaratory Ruling regarding Governor John Rowland's purchase of a cottage from the White Memorial Foundation (Foundation).

Specifically, in his initial correspondence with the Commission, Attorney Marcus questioned virtually every aspect of the transaction including: the role played by the Governor's appointee, Arthur Diedrick, in the matter; the means by which the Governor learned of the availability of the property; the purchase price; the mortgage rate; the size of the down payment; the renovations made to the cottage; the length of the lease on the underlying land; and the lease renewal option.

Additionally, Attorney Marcus has now questioned: whether the Governor is paying taxes on the property; whether a Department of Environmental Protection (DEP) contract with the Foundation creates a conflict of interests for the Governor; whether the DEP may have improperly reimbursed the Foundation for expense reimbursements, including reimbursements for work benefiting the Rowland cottage; whether the Foundation has other contracts with the State; and whether Mr. Diedrick failed to properly list the Foundation as a "Business with which he is associated" on his annual Statement of Financial Interests filed with the Ethics Commission.

Taking Attorney Marcus' questions in turn:

According to the Governor's Office, Mr. Diedrick, and Mr. Gene Marra, Executive Director of the Foundation, the transaction in question took place as follows: The Governor called Mr. Diedrick, who serves as the President and CEO of the Foundation, to inquire whether any cottages at the Foundation's Bantam Lake property were available for purchase or lease. Mr. Diedrick, who in his volunteer role with the Foundation does not normally become involved in its day to day operations, responded that he did not know, but that the Governor should contact Mr. Marra. Mr. Diedrick then called Mr. Marra to advise him of the Governor's interest. Subsequent to these calls, Mr. Diedrick had no involvement in the matter. Rather, the deal was negotiated between the Rowlands and Mr. Marra and concluded by attorneys representing both parties.

Based on the above, no action taken by Mr. Diedrick or Governor Rowland raises any question of impropriety under The Code Of Ethics For Public Officials, Conn. Gen. Stat. Chapter 10, Part I.

As to the availability of the property, Mr. Marra states that until two years before the events in question, the cottage had been leased by the same individual for approximately forty years. When that individual died, the Foundation determined that renovations needed to be made to the property before it would be suitable for either lease or sale. Commencing while these renovations were in progress, The Fuessenich Agency, the principal realtor the Foundation utilizes for its property listings, attempted unsuccessfully to lease or sell the site. According to Mr. Fuessenich, and consistent with his past practice, these attempts were made informally, and the cottage was never publicly multilisted for either lease or sale. The renovations to the cottage were completed in September of 1996. Thereafter, in March of 1997, Mr. Mara notified Mr. Fuessenich of the Rowlands' interest in purchasing the property.

Again, no aspect of this chain of events creates any illegality or impropriety under The Code.

The cottage purchase price, negotiated by the Rowlands and Mr. Marra, was \$110,000. Mr. Marra and Mr. Fuessenich state that Mr. Fuessenich had informally appraised the renovated cottage as having a market value of between \$100,000 and \$115,000; and, subsequently, in April of 1997, had issued a letter of appraisal. This written appraisal, based on comparable properties in the area and on an estimated capitalization of the cottage's rental value, fixed the fair market value of the dwelling at between \$100,000 and \$125,000. The purchase price is, therefore, squarely within its apparent value range.

Consequently, the sale price of the cottage raises no question of an illegal gift or improper quid pro quo under the Code.

The negotiated mortgage rate for the transaction at issue is 7¼%. Attorney Marcus questions the legality of this rate, based on published rates of approximately 8% at the time the transaction took place. His comparative analysis is, however, not completely accurate. The rates Mr. Marcus refers to are apparently those published weekly in various newspapers (e.g., The Hartford Courant's statewide listings for the period in question reflect an average thirty year fixed rate of approximately 8% APR). Mr. Marra states, however, that he based the Foundation's rate on local, not statewide statistics; and, in fact, relied on the advice of officials at two of Litchfield County's principal lending institutions. Mr. Marcus' comparison is inexact for two other reasons. First, the length of the Rowland mortgage is twenty-five, not thirty years; and commercial

rates lessen as the length of the loan decreases (e.g., The Hartford Courant's listings for the period at issue for fifteen year mortgages are approximately one-half point less than for thirty year mortgages). Secondly, and more importantly, the loan in question was not issued by a commercial lender, but by the seller of the property. Consequently, specific bank rates cannot be mechanically applied to a loan that was, in fact, negotiated by the parties as part of an overall transaction, including the purchase price of the cottage. It is also relevant to note, in judging the commercial reasonableness of the loan, that Mr. Marra has stated that the rate in question was "...significantly above the rate we receive from our fixed asset portfolio."

Upon review of the above enumerated facts, the Commission cannot conclude that the mortgage rate given the Rowlands was commercially unreasonable and, therefore, tantamount to an illegal gift.

Attorney Marcus also has questioned the amount of the Rowland's down payment, \$5,000 (4.5% of the purchase price) as opposed to the standard 20%, and has further questioned the fact that repayment of interest only is required for the first five years of the loan.

Attorney Marcus' questions, however, apparently fail to take account of the fact that, in today's real estate market, down payments of 10%, or even 5%, are not unusual; nor is an agreement providing for interest only payments during the initial years of the loan. Furthermore, as discussed supra, commercial lending practices are not necessarily determinable when the loan has been directly negotiated by the parties as part of the overall sale and lease transaction. Additionally, it is important to recognize that the gift and use of office provisions of the Ethics Code are specifically premised on personal financial benefit. While a lower down payment or reduced initial repayment may be desirable to a particular purchaser, such terms directly result in a larger, longer, and consequently more expensive, mortgage. To seek to quantify such an arrangement as necessarily equating to a gift or other financial benefit is, therefore, not accurate under the requirements of the Code.

As noted supra, the renovations to the cottage were completed months before the Governor expressed interest in purchasing a house at Bantam Lake. Therefore, any claim that these renovations were made for, or otherwise improperly benefited, the Rowlands is apparently lacking in factual accuracy.

Attorney Marcus questions the length of the Rowland's lease, twenty-five years, "when reportedly his neighbors could only secure year-to-year deals." According to Messrs. Diedrick, Marra and Fuessenich, however, this reported comparison is misleading. Rather, it has been a past practice of the Foundation to finance the sale of

cottages to the first owner, when requested, and as part of this transaction to grant a lease that coincides with the terms of the mortgage. In all other cases, only year-to-year leases are available. The Rowland lease is consistent with this past practice; and, while it does contain a renewal option, Mr. Marra states that, in keeping with Foundation policy, said renewal will be for one year only. Given these explanations, neither the lease term nor renewal option raise any questions, under the Code, of disproportionate, or otherwise improper, treatment.

Turning to Attorney Marcus' additional questions, he notes that the Governor's lease payment is \$3,000 per year. Citing published reports that taxes on the property are "approximately \$3,000", Attorney Marcus queries whether this lease payment is in fact a tax payment, allowing the Governor, in essence, to lease the property for free. In response, both the Governor's Office and Mr. Marra state unequivocally that the \$3,000 in question is the yearly lease and the Rowlands are separately obligated under the terms of the Deed to pay the taxes on the property. These statements are corroborated by the Bargain and Sale Deed and Lease Agreement. Consequently, Attorney Marcus' theory that the Governor may be receiving an illegal gift through either his lease or tax agreement with the Foundation, in violation of the Code, is not substantiated by the evidence.

In fact, the Lease Agreement provides further proof that the transaction under review reflects a fair market negotiation, not a "sweetheart deal." Specifically, the annual lease payment of \$3,000 is well above the average payment (approximately \$1,000) for leases at Bantam Lake. According to Mr. Marra, the Rowland lease is substantially higher based on objective criteria: i.e., the size of the lot and length of its lake frontage. Furthermore, the Rowlands will not benefit financially by having the lease rate remain fixed throughout its twenty-five year term. Rather, according to the Lease Agreement, the annual rate is to be adjusted based on the Consumer Price Index.

With regard to the DEP/Foundation contract which Attorney Marcus questions, the facts are as follows: In 1923 the White Family provided to the State certain property which now constitutes the Litchfield and Morris Game & Bird Sanctuary. The State, through the predecessor of the DEP, agreed to furnish a state employee to patrol this property, with payment of the employee's salary to be made utilizing income generated by a Fund (John J. White, Jr. Memorial Fund) established by the Whites. This arrangement continued until approximately eight years ago. At that time, having concluded that the state employee was not providing sufficient services, the Foundation hired its own employee and entered into a personal services agreement with DEP to reimburse the Foundation for this individual's work. The duties which qualify for reimbursement are detailed in the Agreement and the funding continues to be provided solely by the income of the Fund (at present, approximately \$32,000 per year). Costs for the employee over

this amount (approximately \$8,000 per year) are absorbed by the Foundation. Such Personal Service Agreements are valid for a term of four years, and the DEP/Foundation contract at issue was most recently renewed in January, 1996, with Mr. Diedrick signing on behalf of the Foundation. Payments under the contract are reviewed and authorized by the DEP Bureau of Parks Management; the underlying contract is reviewed and approved by the Office of the Attorney General; and the Fund itself is subject to independent audit.

To suggest, as Attorney Marcus has, that the Governor, as “the chief executor of all state contracts”, may be thereby precluded from entering into a real estate transaction with the Foundation is to advance a clearly untenable argument. To further suggest that the Governor’s subordinate, who approves the expense reimbursements in question, may have a possible “conflict of interest” is, again, to make an argument without merit. Simply stated, no aspect of the creation or renewal of the DEP/Foundation contract indicates any impropriety or illegality under the Code. And no available evidence indicates that an expense reimbursement in any way benefited the Rowland property or was otherwise inappropriate. (In response to a related question, Mr. Marra advises that the Foundation has no other contracts with the State.)

Finally, Attorney Marcus has asked whether Mr. Diedrick may have improperly failed to disclose the Foundation as a “Business with which he is associated” on his 1996 Annual Statement of Financial Interests. Mr. Diedrick, as Chairman and President of the Connecticut Development Authority and Connecticut Innovation, Inc., is required to file this statement annually with the Ethics Commission. Specifically, Attorney Marcus notes that Mr. Diedrick lists “Trustee Fees” under the section of the form requiring disclosure of all sources of gross income in excess of \$1,000 per year, but does not disclose his position as President and CEO of the Foundation.

Mr. Diedrick’s Statement of Financial Interests is complete and correct in this regard. Specifically, he states that the trustee fees were generated by virtue of his position as a trustee for certain financial trusts. He receives no fee or other remuneration whatsoever from the Foundation. Under these circumstances, the non-profit Foundation is not a “Business with which...associated” (see, Conn. Gen. Stat. §1-79(b)) and his affiliation need not be listed on the Statement. It is important to note, however, that when the real estate transaction at issue arose, no attempt was made to conceal Mr. Diedrick’s relationship to the Foundation. To the contrary, the Governor’s Counsel disclosed this fact to the Commission’s Managing Director, Attorney Rachel Rubin.

In summary, upon review, no aspect of the Governor's purchase of a summer cottage from the White Memorial Foundation suggests any impropriety or illegality under The Code Of Ethics For Public Officials.

By order of the Commission,

A handwritten signature in cursive script, appearing to read "Stanley Burdick", written over a horizontal line.

Stanley Burdick
Chairperson

Dated Jan. 14, 1998