



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

Draft Advisory Opinion No. 2025-2

April 16, 2025

Question Presented:

Whether members of the boards of directors of the Connecticut Arts Council and the Connecticut Arts Council Foundation are required, by virtue of serving as such, to file a Statement of Financial Interests under General Statutes § 1-83 (a) (1).

Brief Answer:

We conclude that (1) board members of the Connecticut Arts Council are required to file a Statement of Financial Interests under § 1-83 (a) (1) if the Commissioner of the Department of Economic and Community Development determines that they meet the Governor's Standard; and (2) board members of the Connecticut Arts Council Foundation are not required to do so, because they are not "members of the Executive Department" or "employees of quasi-public agencies", meaning they are not subject to the Governor's Standard.

At its April 17, 2025 meeting, the Citizen's Ethics Advisory Board (Board) granted the petition for an advisory opinion submitted on April 8, 2025, by Daniel O'Keefe, Commissioner of the Department of Economic and Community Development (DECD), and the Board now issues this advisory opinion under General Statutes § 1-81 (a) (3) of the Code of Ethics for Public Officials (Code).

Background

In his petition, Commissioner O'Keefe provides, in relevant part, as follows:

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The Connecticut Arts Council is within the Department of Economic and Community Development (“DECD”), per C.G.S. § 10-408a.

The Connecticut Arts Council Foundation is a nonprofit foundation which was established by the Arts Council, under C.G.S. § 10-408b.

DECD has designated Arts Council members as required filers of Statements of Financial Interests (“SFI”) for a number of years. The reasoning was that by statute and prior practice, Council members have the authority to review, approve, and disburse public funds. About two years ago, Council members stopped approving public funding due to the increase in number of grants being awarded, but the members still retain the authority to do so.

When the DECD Legal Unit recently completed our annual process of updating our SFI filer list, a question arose about whether Arts Foundation members should be required to file SFIs. We have internally reviewed and discussed this matter at length. DECD has also recently been contacted by Arts Foundation members with questions and concerns regarding the requirement to file a SFI. They have argued that their members do not meet the definition of a required filer under C.G.S. § 1-83 because they are a private 501(c)(3) foundation comprised of volunteers who serve on the board without compensation and who are not state employees.

Although we understand the Foundation may not be considered a quasi-public agency, their purpose and mission as laid out in statute corresponds with DECD’s own (per § 10-400), which includes the promotion and development of artistic and cultural programs and providing grants to individuals or organizations that plan to administer these programs or activities within the state. Likewise, under C.G.S. § 10-400(4) DECD has been granted the authority “to establish a nonprofit foundation for the purpose of raising funds from private sources to encourage, within the state or in association with other states, or both, participation in, and promotion, development, acceptance and appreciation of, artistic and cultural activities.”

While evaluating this matter, DECD also considered the Governor's Standard regarding guidelines for designation of specific individuals as required filers, including "members, officers, and employees of state boards, commissions, and quasi-public agencies if they have the authority to expend, or to approve expenditure of, public funds ... or if they have authority to recommend any particular private company or person for a state contract exceeding \$10,000, or authority to recommend the standards for such state contract" as well as a "person who is a voting member of any committee that, during the calendar year, votes on, awards, or approves a contract to expend public funds of \$10,000 or more."

It is also important to note that the Arts Foundation has been for the last few years and is continuing to seek state funds for the purpose of administering an arts-related regranting program.

In conclusion, DECD would like the Office of State Ethics' opinion on whether members of the CT Arts Council and/or the CT Arts Council Foundation should be designated as required SFI filers. If it is recommended that members of one or both boards should not be required to file, DECD would like to know whether there are any circumstances that would change the filing requirement status for those members.

Two days after receiving the petition, the Legal Division of the Office of State Ethics (on the Board's behalf) gave notice to the subjects of it, namely, members of the boards of directors of the Connecticut Arts Council (Arts Council) and the Connecticut Arts Council Foundation (Arts Foundation), as required by § 1-92-39 (a) of the Regulations of Connecticut State Agencies. That same day, Attorney Gary Fellner, a principal with the law firm of Porzio, Bromberg & Newman, submitted written argument on the Arts Foundation's behalf, arguing that Arts Foundation members are not required to file a Statement of Financial Interests (SFI) under General Statutes § 1-83 (a) (1), but taking no position concerning Arts Council members.

Analysis

To determine whether members of the Arts Council and the Arts Foundation are required to file an SFI, we look to the language of § 1-83 (a) (1), which mandates that certain state employees and public officials file an SFI "for the preceding calendar year on or before the May first next in any year in which

they hold such an office or position. . . .” Specifically, § 1-83 (a) (1) identifies six categories of required filers:

1. state-wide elected officers,
2. members of the General Assembly,
3. department heads and their deputies,
4. members or directors of each quasi-public agency,
5. members of the Investment Advisory Council, and
6. *such members of the Executive Department and such employees of quasi-public agencies as the Governor shall require.*

Of those categories, we can dispense quickly with the first five, because it is patently clear that members of neither the Arts Council nor the Arts Foundation fit within any of them, leaving the sixth category as the only potential option. The question, then, is whether members of those entities are “members of the Executive Department” or “employees of quasi-public agencies”, and hence subject to the (soon-to-be-discussed) Governor’s Standard.

1. Arts Council members

As to whether Arts Council members are “members of the Executive Department” or “employees of [a] quasi-public agenc[y]”, they are certainly not the latter, for the Code defines the term “Quasi-public agency” in General Statutes § 1-79 (12), and the Arts Council is not among the 16 entities listed in that definition. As for the former—i.e., “members of the Executive Department”—the State Ethics Commission said this: “without question . . . the term ‘members’ as used in §1-83(a) encompasses both public officials and state employees.” Advisory Opinion No. 91-17. So, to be “members of the Executive Department”, Arts Council members must be *either* “state employees” or “public officials” *and* be within the “Executive Department”.

The Arts Council’s enabling statute provides, in relevant part, that “[t]here is established a Connecticut Arts Council *within the Department of Economic and Community Development . . .*” (Emphasis added.) General Statutes § 10-408a (a). Further, DECD is listed in General Statutes § 4-38c as one of the “Departments within the executive branch.” Logically, then, because the Arts Council is within DECD, which is within the “Executive Department”, the Arts Council too

must be within the “Executive Department”.

That leaves the issue of whether Arts Council members are either “state employees” or “public officials”, and we conclude that they are the latter. The Code defines “Public official” in § 1-79 (11) as follows (the pertinent language here being italicized):

“Public official” means any state-wide elected officer, any member or member-elect of the General Assembly, *any person appointed to any office of the legislative, judicial or executive branch of state government by the Governor* or an appointee of the Governor, with or without the advice and consent of the General Assembly, any public member or representative of the teachers’ unions or state employees’ unions appointed to the Investment Advisory Council pursuant to subsection (a) of section 3-13b, *any person appointed or elected by the General Assembly or by any member of either house thereof*, any member or director of a quasi-public agency and the spouse of the Governor, *but does not include a member of an advisory board*, a judge of any court either elected or appointed or a senator or representative in Congress.

We have already determined that the Arts Council is within the “executive branch”, and the Arts Council’s enabling statute makes clear that (aside from two ex-officio members who are employed by DECD), the remaining members are appointed by the Governor or by members of the General Assembly. General Statutes § 10-408a (a). Accordingly, they are “Public officials”, unless they fit within the exception for “member[s] of an advisory board”.

To be a Code-defined “Member of an advisory board”, § 1-79 (8) requires that the individual

- be “appointed by a public official as an advisor or consultant or member of a committee, commission or council established to advise, recommend or consult with a public official or branch of government or committee thereof,”
- “receive[] no public funds other than per diem payments or reimbursement for his or her actual and necessary expenses incurred in the performance of his or her official duties,” *and*
- “ha[ve] no authority to expend any public funds or to exercise the power of the state.”

Here, Arts Council members do not satisfy the third requirement, because, according to the petition, they “have the authority to review, approve, and disburse public funds” (regardless of whether they exercise it). That said, they are not “member[s] of an advisory board” but rather are “public officials”.

Having concluded that Arts Council members are “public officials” within the “Executive Department”, it follows that they are “members of the Executive Department” for purposes of § 1-83 (a) (1), and are thus required to file an SFI *if so designated by the Governor*. That is, “[i]n addition to listing specific categories of public officials required to file the annual Statement of Financial Interests [see the first five categories listed on page four above], §1-83(a)(1) also allows the Governor to impose the filing requirement on certain employees [and officials] of the executive department and quasi-public agencies [see the sixth category listed on page four above].” Advisory Opinion No. 2002-15.

How it works is this:

- The Governor establishes a standard—the so-called Governor’s Standard—requiring employees and officials of the Executive Department and employees of quasi-public agencies who exercise certain state authority to file an SFI.
- “Each such agency [is] apprised of this standard” Advisory Opinion No. 2002-15.
- “The decision to designate or remove a name from that list rests with the appropriate agency authority”, namely, the agency head. *Id.* (concluding that, “[w]ith regard to the selection of [University of Connecticut] Health Center employees to file, the appropriate decision-maker is the President of the University of Connecticut, who also heads the Health Center”).
- Each state agency “annually provides the [Office of State Ethics] with a list of the names of individuals designated by the agency to file the statement.” *Id.*
- The Office of State Ethics does “not . . . designate, or ‘un-designate,’ the positions to file, but . . . provide[s] certain notifications and . . . enforce[s] the designations” *Id.*

As applied here, because the Arts Council is, according to § 10-408a (a), “within” DECD, it is the responsibility of the DECD Commissioner to

determine whether Arts Council members must be designated under the Governor's Standard, and if so designated, they are required to file an SFI.

2. Arts Foundation members

As for Arts Foundation members, we must answer the same question, namely, whether they are, for purposes of § 1-83 (a) (1), "members of the Executive Department" or "employees of quasi-public agencies", and hence subject to the Governor's Standard. We can, again, move quickly past the latter category, for the Arts Foundation is not among the 16 entities listed in § 1-79 (12)'s definition of "Quasi-public agency", meaning that its members cannot be deemed "employees" of one of them. Left, then, with the issue of whether they are "members of the Executive Department", we must determine (as we did above) whether they are *either* "state employees" or "public officials" *and* are within the "Executive Department". We conclude that the Arts Foundation is not within the "Executive Department", reasoning as follows:

The Arts Foundation's enabling statute, General Statutes § 10-408b, provides, in relevant part, that, "[i]n accordance with *subdivision (4) of section 10-400*, the Connecticut Arts Council is authorized to establish and manage a *nonprofit foundation*, the Connecticut Arts Council Foundation." (Emphasis added.) Heading over to § 10-400 (4), it mandates that "[a]ll funds received by the foundation shall be held in the manner prescribed by *sections 4-37e to 4-37j*, inclusive" (Emphasis added.) Section 4-37e, in turn, defines "Foundation" as follows:

"Foundation" means an organization, fund or any other legal entity which is (A) exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, and (B) established for the principal purpose of receiving or using private funds for charitable, scientific, cultural, educational or related purposes that support or improve a state agency or for coordinated emergency recovery purposes. *Such an organization, fund or other legal entity shall not be deemed to be a state agency or a public agency, as defined in section 1-200.*

(Emphasis added.) In other words, a "Foundation" is *not* any of the following, as set forth in § 1-200:

(A) *Any executive, administrative or legislative office of the state or any*

political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official

(Emphasis added.)

Based on those statutory provisions, it is clear, we believe, that the Arts Foundation—a 501 (c) (3) nonprofit foundation—is not within the “Executive Department”, and, by extension, that its members cannot be deemed “members of the Executive Department”. And because they are not “members of the Executive Department” or (as concluded above) “employees of quasi-public agencies”, they are not subject to the Governor’s Standard. Accordingly, we conclude that Arts Foundation members are not, solely by virtue of serving as such, required to file an SFI under § 1-83 (a) (1).

Conclusion

Based on the facts presented, we conclude that (1) Arts Council members are required to file an SFI under § 1-83 (a) (1) if the DECD Commissioner determines that they meet the Governor’s Standard; and (2) Arts Foundation members are not required to do so, because they are not “members of the Executive Department” or “employees of quasi-public agencies”, and are thus not subject to the Governor’s Standard.

By order of the Board,

Dated _____

Chairperson