



STATE OF CONNECTICUT  
STATE ETHICS COMMISSION

May 6, 1994

P R E S S R E L E A S E

On March 25, 1994 David M. Shea, State Trial Referee, issued a Memorandum of Decision in the matter of a complaint against John J. Farrell (Respondent), former member of the Commission on Hospitals and Health Care (CHHC). The complaint alleged a violation of §1-84b(b) of the Code of Ethics for Public Officials, which prohibits former executive branch and quasi-public agency public officials and state employees, for one year after leaving state service, from representing anyone, other than the state, for compensation before their former agencies. A copy of the Memorandum is attached.

The state trial referee found that shortly after leaving state service in March, 1992, the Respondent agreed to lend his services to a proposal which KPMG Peat Marwick was preparing in response to a CHHC request for proposals. The Respondent signed a Statement of Intent, provided Peat Marwick with a copy of his resume, identified certain clients and discussed compensation with a Peat Marwick representative. The state trial referee concluded that the Respondent violated Conn. Gen. Stat. §1-84b(b) by "implicitly consenting, with the expectation of compensation, to the use of his name and resume in [a] proposal of [Peat Marwick], which he knew would be submitted to his former agency, the CHHC, and would disclose his connection with the project as a subcontractor."

At a meeting held pursuant to Conn. Gen. Stat. §1-88(a), the Ethics Commission, on May 6, 1994, imposed against the Respondent a civil penalty of \$1,000, the maximum available under the Code.

FOR FURTHER INFORMATION CALL:

Marianne D. Smith  
Staff Attorney  
State Ethics Commission

566-4472

DOCKET NO. 92-14 ) STATE ETHICS COMMISSION  
IN THE MATTER OF A )  
COMPLAINT AGAINST )  
JOHN J. FARRELL ) MARCH 25, 1994

MEMORANDUM OF DECISION

The complaint filed with the State Ethics Commission charges the respondent, John J. Farrell, with a violation of General Statutes §1-84b(b), which provides: "No former executive branch or quasi-public agency public official or state employee shall, for one year after leaving state service, represent anyone, other than the state, for compensation before the department, agency, board, commission, council or office in which he served at the time of his termination of service, concerning any matter in which the state has a substantial interest." After a preliminary

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STATE ETHICS COMMISSION

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investigation and hearing, the Commission found probable cause to believe that such a violation had occurred.

Pursuant to General Statutes §1-82(b), the chief court administrator assigned the matter to the undersigned state trial referee to conduct an open hearing to determine whether the respondent had committed the violation alleged. The hearing took place on two days, October 19 and December 20, 1993, and post-hearing briefs were filed on December 20, 1993. A response by letter to some of the claims raised in the brief of the Commission's staff attorney was filed on December 23, 1993. The Commission replied to that letter by its letter dated December 28, 1993.

Section 1-82(b) provides that "not later than fifteen days after the public hearing..., the trial referee shall publish his finding and a memorandum of his reasons therefor." This time limit could not be met because the parties did not complete briefing their arguments until twenty-five days after conclusion of the hearing. In the interim this referee became occupied with several other cases, which resulted in additional delay. In any event, statutory provisions concerning the time when some step in a legal proceeding is to be completed are generally regarded as merely directory and not jurisdictional. 73 Am. Jur. 2d, Statutes §18

### I. Stipulation of Facts

The following facts are contained in a stipulation filed by the parties at the hearing:

1. On March 12, 1992, John J. Farrell resigned from the Commission on Hospitals and Health Care as a Commissioner representing the health insurance area.

2. As a member of the Commission on Hospitals and Health Care, Mr. Farrell was a public official as that term is defined in General Statutes §1-79(k), serving in the executive branch of state government, and, therefore, subject to General Statutes §1-84b(b).

3. Subsequent to Mr. Farrell's termination of service, the Commission on Hospitals and Health Care, in response to a legislative mandate, published notice of a Request for Proposals for a contract to create a Statewide Health Facilities Plan.

4. The creation of a Statewide Health Facilities Plan is a matter in which the state has a substantial interest.

5. The Commission on Hospitals and Health Care did not ultimately select KPMG Peat Marwick as a contractor on the Statewide Health Facilities Plan project.

## II. Facts Found from Evidence

From the evidence produced at the hearing, the following additional facts are found:

1. A few months after the respondent had resigned from the Commission on Hospitals and Health Care (CHHC), he received a telephone call from Jack Gleason, manager of the New York office of the firm of KPMG Peat Marwick (KPMGPW), which was interested in submitting a bid in response to a CHHC request for proposals issued on June 22, 1992, concerning a Statewide Health Facilities Plan. (T. 10/19/13, pp. 49-58)

2. The respondent told Gleason that he was interested "in lending his services to that proposal." (Id., p. 49)

3. At some time prior to July 31, 1992, the respondent received a telephone call from a woman at the Chicago office of KPMGPW, who was preparing its proposal for submission to CHHC under the direction of Catherine Sreckovich, a partner in the firm. (Id., pp. 55-59)

4. In this conversation the respondent indicated that he was willing to participate in the work involved in the proposal as a subcontractor. (Id., pp. 58-59)

5. Soon after the conversation, the respondent received from KPMGPW a copy of a document entitled "Statement of Intent", which he signed and returned because he understood it was a prerequisite for his participation in the project. (Id. pp.58-60)

6. The document the respondent signed stated that, as a subcontractor, he agreed to perform "specific tasks described in the [KPMGPW] proposal", including supervising and participating in obtaining data sources for analysis and supervising the development of health facilities in Connecticut. (Ex. E, F)

7. In later conversations with Cathy Nelson or John O'Brien, the two KPMGPW employees who were working on the proposal under the supervision of Catherine Srekovich, the respondent furnished or agreed to furnish certain information and documents pertaining to his experience to be included in the proposal. (T. 12/3/93, pp.7-8)

8. The respondent furnished the information contained in an exhibit (Ex. C, pp. 3-10), included in the KPMGPW proposal, that lists five Connecticut hospitals for which the respondent's firm, J. J. Farrell Associates, had performed financial planning services. (Id., p. 8)

9. The respondent also furnished a resume of his experience as an expert in hospital and health care planning, which was included with the proposal. The resume mentions the respondent's former position as a commissioner of CHHC during the period 1989-1992.

10. The respondent had a telephone conversation with Catherine Srekovich concerning the hourly rate that he would expect to receive from KPMGPW for his services, if its proposal should be selected by CHHC. This information was

included in the proposal together with estimates made by KPMGPW of the time required for completion of the respondent's phase of the work and the total cost of his work. (Id., pp. 9-13; Ex C, "Cost Proposal")

11. The respondent was aware that the information he furnished to KPMGPW, including his resume, would be used in preparing the proposal to be submitted to CHHC. He never saw a copy of the proposal, however, until some time after its submission on July 31, 1992. (T. 10/18/93, pp. 67-68)

12. The respondent must have realized that his resume and the "statement of intent" that he had signed would be included in the KPMGPW proposal and would disclose that he was to be a participant in the work contemplated by KPMGPW.

### III. Decision and "Reasons Therefor"

The principal issue in this case is whether the respondent's participation in the KPMGPW proposal constitutes a representation of that firm before the CHHC, of which he had been a member four months before submission of the KPMGPW bid. Section 1-84b(b) prohibits a former state agency official, such as the respondent, "for one year after leaving state service", from representing "anyone, other than the state, for compensation before the ...commission...in which he served at the time of his termination of service, concerning any matter in which the state has a substantial interest."

The respondent claims that two of the statutory elements required to prove a violation of 1-84b(b) have not been

established: (1) representation of KPMGPW before the CHHC by the respondent and (2) such representation for compensation. According to the facts found, however, this second element has clearly been proved. The respondent did testify that, if KLPMGPW's proposal was accepted, he had expected to contract directly with the state to perform his portion of the project, but this testimony is simply incredible in the light of all the evidence. He never claimed that he was motivated to participate in KPMGPW's proposal for any reason but his expectation of compensation. It has been found that the respondent discussed his hourly rate for the work with the person in charge of preparing the proposal.

The respondent claims that the ordinary meaning of the word "represent" in the statute does not apply to the acts he performed or agreed to perform with respect to KPMGPW's proposal. He maintains that the Ethics Commission has gone far beyond the plain meaning of the word in seeking to convert his subcontractor relationship into a representation of that firm before his former agency. He relies on the definition of the word in Webster's Third New International Dictionary: "8a: to supply the place, perform the duties, exercise the rights, or receive the share of: take the place of in some respect: fill the place of for some purpose: substitute in some capacity for: act the part of, in the place of, or for (as another person) usu(ally) by legal right...." In support of his claim that the Commission has unduly expanded the



lexicographical meaning of "represent", he argues that the statutory language does not fairly inform public officials and employees of the state of the broad scope of the prohibition as interpreted by the Commission.

Webster's definition does not preclude the conclusion that the respondent's subcontractor relationship with KPMGPW concerning the proposal submitted to the CHHC constituted a representation of that firm. A subcontractor may be said to represent the general contractor with respect the portion of the work covered by the subcontract. To the extent of such work, the subcontractor does "fill the place of...substitute in some capacity for: act the part of, in the place of, or for..." the general contractor, who remains responsible for the performance of the subcontractor. The Commission, however, has not interpreted §1-84b(b) to preclude an official or employee, during the year after he has left his former agency, from entering into a subcontract to perform a portion of the work required by a contract awarded by that agency to another person, even though the work performed under the subcontract would ordinarily be reviewed by the agency. The Commission has focused on the element of consensual use of the name of the former official or employee in documents or other communications transmitted to the former agency that disclose his connection with some matter before the agency. In several cases and advisory opinions, it has consistently held that any activity that reveals the identity of an official or employee

to his former agency in connection with a pending matter constitutes a prohibited representation in violation of the statute. E. g. Declaratory Ruling No. 88-D (name of former employee appearing on letterhead of firm communication with agency)

Dictionary definitions are useful, but not wholly persuasive as to the intention of the legislature in enacting a statute. More significant is the purpose of the legislation. The evident purpose of §1-84b(b) was to prohibit influence peddling during the year following termination of his service by a former state official or employee. Similar statutes have been characterized as "revolving door" legislation with a purpose "to ensure that no public official or employee will...realize personal gain at public expense from the use of inside information." State v. Nipps, 66 Ohio App. 2d 17, 419 N.E.2d 1128, 1132 (1979) A like sentiment was expressed by Representative Krawiecki during the debate on our revolving door statute that preceded its enactment in 1983: "What we are attempting to do is bar an individual from gaining a benefit because of the type of work that they (sic) used to do." 26 House Proceedings (1983), p.8004 Betty Gallo, a member of the Ethics Study Committee that had drafted the bill, at the legislative committee hearing summarized the impact of the proposed legislation thus: "A limited number of executive branch officials in regulatory agencies could not go to work for that regulated industry for one year." Government

Administration & Elections Committee Hearings (1983) Part 2, p. 409 The remarks of Krawiecki and Gallo indicate that some of the sponsors of 1-84b(b) intended to bar state officials and employees from having any arrangement involving compensation with anyone subject to regulation by their former agencies. The Ethics Commission, however, has not taken so broad a view of the statute, but bases its finding of probable cause in this case, not on the respondent's subcontractor relationship with KPMGPW, but on his implicit consent to the disclosure of that relationship to the CHHC. The Commission's interpretation is consistent with the report of the Ethics Study Committee accompanying its draft of the code of ethics bill, which the legislature adopted without amendment. The report states that the revolving door prohibition was "aimed at contact with the former agency, since any contact could result in preferential treatment because of the individual's former status....The undue influence guarded against is that which results from mere association with the former agency." Report to General Assembly by the Code of Ethics Study Committee (HB-7105 - 1/15/83) p. 21.

The Commission's interpretation of §1-84b(b) essentially follows a regulation construing another provision of the ethics code, General Statutes §1-84(d), enacted in 1971, which prohibits officials or employees while in the service of the state or their associates from "appearing, agreeing to appear, or taking any other action on behalf of another person before"

certain state agencies named in the statute. The regulation, which has been approved by the Regulations Review Committee of the General Assembly, provides: "It shall constitute a prohibited appearance or action under [§1-84d] for any public official or state employee...to transmit any document to or make any other contact with the listed agencies which reveals the identity of the individual to the agency in connection with any pending matter (e.g., appearing in person, submitting a document with one's signature or professional stamp, identifying oneself over the telephone, or submitting any materials with a letterhead which includes the individual's name)."

The universality of the prohibition in §1-84(d) against taking "any action on behalf of another person before" a state agency would encompass the conduct proscribed by the regulation, any consensual contact with a specified state agency that reveals the identity of the official or employee to that agency in relation to a pending matter. The Commission was not compelled to adopt the same construction of the phrase, "to represent anyone...before...the agency" in §1-84b(b), but could have limited its application to those having direct contact with an agency, such as attorneys or others representing clients having business with a state agency. Such an interpretation, however would not bar the more subtle forms of influence peddling, which the legislative history indicates that the statute was intended to address. It would

allow a former state official or employee during the year after leaving his agency to disclose through other persons his connection with some matter under consideration by his acquaintances at the agency. The Commission properly concluded that there was no good reason to permit those subject to the one year restriction on representation in §1-84b(b) to engage in activities clearly prohibited by §1-84(d) to state officials and employees still in state service and that the legislative intention in enacting the former was to subject state officials and employees during the year after termination of their service to the same restrictions on contacting their former agencies as had applied before such termination.

The Commission has not formalized its interpretation of §1-84b(b) into a regulation, as it has done with respect to §1-84(d). This case would have been less troublesome if it had done so and had promulgated the regulation in such a manner as to inform departing officials and employees of the scope of the restriction imposed by the statute. It would not require a Herculean effort for state agencies to inform officials and employees of their obligations under §1-84b(b) upon termination of their state service. There is no evidence of any standard procedure for informing public officials and employees of the Commission's interpretation of the statute to prohibit any indirect consensual contact with their former agencies.

In this case the respondent testified that, when he left his position as a commissioner of the CHHC, he was aware of the terms of 1-84b(b) and realized that it would be a violation of the statute to represent anyone before that agency for one year. It must be conceded that the statutory language is not sufficiently clear to inform the less sophisticated of all its ramifications, especially with respect to activities of the kind involved in this case. The same contention, however, can be raised concerning many statutes, but their enforceability cannot be challenged on that basis. The presumption that everyone knows the law and is, accordingly, bound thereby, is founded, not on actuality, but on necessity. Even with respect to criminal statutes, "the legislature may, if it so chooses, ignore the concept that criminal acts require the coupling of the evil-meaning mind with the evil-doing hand and may define crimes which depend on no mental element, but consist only of forbidden acts or omissions." State v. Husser, 161 Conn 513, 515 (1971) "The touchstone is not the reprehensibility of the offender but the nature of the evils to be avoided and the extent of the probable frustration of the regulatory scheme which a requirement of scienter would create." State v. Kreminski, 178 Conn. 145, 150 (1979)

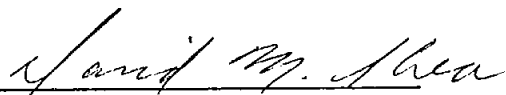
The presumption of knowledge of the law is applicable to an interpretation of a statute that the text does not make obvious, inevitable, or exclusive, so long as it is reasonable

and effectuates the legislative purpose. The interpretation adopted by the Ethics Commission fulfills these requirements, and the respondent is, accordingly, bound thereby. That interpretation appears in several advisory opinions that have been published in the Connecticut Law Journal. Ethics Commission Advisory Opinion Nos. 87-8, 49 Conn. L. J. No. 4, p. 1C (7/28/87) ("representing" means "any activity that reveals the identity of former employee"); 87-14, 40 Conn. L. J. No. 20, p. 4C (11/17/87) (restriction applies to independent contractor); 88-13, 50 Conn. L.J. No. 8, p. 4C (8/23/88) (former DEP employee may not sign or put his stamp on plans submitted to DEP for one year) It has also been the basis for complaints filed with the Commission that have been disposed of by agreement.

The respondent argues that §1-84b (b) is penal in nature because of the provision in General Statutes §1-87 for a fine not exceeding one thousand dollars as one of the alternative dispositions upon a finding of a violation of §1-84b(b). The canons of ethics governing the conduct of judges and attorneys have not been given a strict construction, however, "even though the application of the canons to particular circumstances may not be readily apparent." Patterson v. Council on Probate Judicial Conduct, 215 Conn. 553, 567 (1990) Not every statute that imposes a penalty must be regarded as penal and warrant a narrow construction. Hinchcliffe v. American Motors Corporation, 184 Conn. 607, 615 (1981)

(punitive damages under CUTPA); Pierce v. Albanese, 144 Conn. 241, 251 (1957) (liability without fault under dram shop act); Barco Leasing Corporation v. House, 202 Conn. 106, 116 (1983) (punitive damages under RISFA) Even when dealing with a criminal statute, however, "[t]he rule of strict construction does not require that the narrowest technical meaning be given to the words employed...in disregard of their context and in frustration of the obvious legislative intent." United States v. Corbett, 215 U.S. 233, 242 (1909); see State v. Roque, 190 Conn. 143, 151 (1983) To construe §1-84b(b) so narrowly as to confine its ban to direct contact with an official's or an employee's former agency would leave a wide loophole in the application of the statute and would be inconsistent with the purpose of the statute as revealed by its legislative history.

The undersigned state trial referee, pursuant to §1-82(b), has found that the respondent violated §1-84b(b) by implicitly consenting, with the expectation of compensation, to the use of his name and resume in the proposal of KPMGPW, which he knew would be submitted to his former agency, the CHHC, and would disclose his connection with the project as a subcontractor.

  
David M. Shea  
State Trial Referee





STATE OF CONNECTICUT  
STATE ETHICS COMMISSION

C O N F I D E N T I A L

DOCKET NUMBER 92-14 ) STATE ETHICS COMMISSION  
IN THE MATTER OF A ) 97 ELM STREET (REAR)  
COMPLAINT AGAINST ) HARTFORD, CT 06106  
JOHN J. FARRELL ) SEPTEMBER 17, 1992

COMPLAINT

COUNT ONE

1. On March 12, 1992 John J. Farrell (hereinafter "the respondent") resigned from the Commission on Hospitals and Health Care (hereinafter "CHHC") as a Commissioner representing the health insurance area.

2. As a member of CHHC, the respondent was a public official as that term is defined in Conn. Gen. Stat. §1-79(o), serving in the executive branch of state government.

3. In response to a legislative mandate, CHHC published notice of a Request for Proposals ("RFP") for a contract to create a Statewide Health Facilities Plan.

4. In response to its RFP, CHHC, in July, 1992, received a proposal from KPMG Peat Marwick which identified the respondent as a subcontractor and technical advisor on the project, referenced his previous affiliation with CHHC, and emphasized the "important roles" he would play in the project. The proposal stated that the respondent would work 74 hours on the project at an hourly rate of \$240, for a total of \$17,760.

5. Pursuant to Conn. Gen. Stat. §1-84b(b), no former executive branch public official shall, for one year after leaving state service, represent anyone, other than the state, for compensation before the agency in which he served at the time of his termination of service, concerning any matter in which the state has a substantial interest.

6. The creation of a Statewide Health Facilities Plan is a matter in which the State has a substantial interest.

7. The respondent's participation in KPMG Peat Marwick's submission to CHHC less than one year after the termination of his state service constituted representation of KPMG Peat Marwick before his former agency, in violation of Conn. Gen. Stat. §1-84b(b).

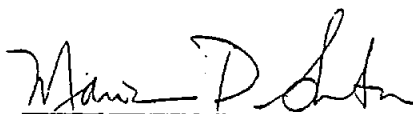
COUNT TWO

1. Paragraphs 1 through 4 of Count One are hereby incorporated as if more fully set forth herein.

5. Conn. Gen. Stat. §1-84b(d) provides that no former public official who participated substantially in the negotiation or award of a state contract obliging the state to pay fifty thousand dollars or more, or who supervised the negotiation or award of such a contract, shall accept employment with a party to the contract other than the state for one year after his resignation from his state office if his resignation occurs less than one year after the contract is signed.

6. While a member of CHHC, the respondent participated substantially in the awarding of two contracts to KPMG Peat Marwick; one, for \$50,000 and the other for \$1,071,000, both of which were signed less than one year prior to his resignation.

7. The respondent's agreement to act as a subcontractor on KPMG Peat Marwick's project constituted an acceptance of employment with KPMG Peat Marwick, in violation of Conn. Gen. Stat. §1-84b(d).



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Marianne D. Smith  
Staff Attorney

9/17/92  
Dated