



Office of the Attorney General
State of Connecticut

December 11, 2017

Major General Thaddeus J. Martin, Adjutant General
Connecticut National Guard
360 Broad Street
Hartford, CT 06105-3795

Dear Major General Martin:

You have requested a formal opinion concerning two matters identified in the *State of Connecticut Auditors' Report, Military Department, for the Fiscal Years Ended June 30, 2012 and 2013* ("Auditors' Report"). First, you have asked whether the requirements under Connecticut General Statutes § 4-37e *et seq.* pertaining to foundations established for the principal purpose of supporting or improving state agencies or for coordinated emergency recovery purposes apply to the Connecticut National Guard Foundation, Inc. (CNGFI). Second, you have asked whether the authority of the Governor of the State of Connecticut pursuant to the provisions of Connecticut General Statutes §§ 27-9 and 27-10, as delegated to and administered by the Connecticut Military Department (CTMD), is restricted to ordering members of the Connecticut State Guard to active service under the "State Active Duty" (SAD) program only for "emergency situations" as suggested by the Auditors' Report.

We conclude that the CNGFI is not a "foundation" as that term is defined in Conn. Gen. Stat. § 4-37e *et seq.*, and is, therefore, not subject to the requirements pertaining to foundations established for the principal purpose of supporting or improving state agencies or for coordinated emergency recovery purposes. We further conclude that the authority of the Governor of the State of Connecticut, as delegated to and administered by the CTMD pursuant to the provisions of Conn. Gen. Stat. §§ 27-9 and 27-10, is not restricted to ordering members of the Connecticut State Guard to service under the SAD program only for "emergency situations" as suggested by the Auditors' Report.

I. Connecticut National Guard Foundation, Inc.

You have informed us that the CNGFI is a private, nonprofit 501(c)(3) corporation and has an independent governing body that is separate from the CTMD. As stated in the CNGFI's charter, the Foundation's primary purpose is to provide need based and educational assistance to members of the Connecticut

Major General Thaddeus J. Martin
Adjutant General
Connecticut National Guard
Page 2

National Guard, the Connecticut Organized Militia, their families, and Reserve Component Family Readiness Groups (e.g. Army Reserve, Air Force Reserve, Navy Reserve, and the Marine Corps Reserve). The Foundation raises funds from the general public, corporations, and corporate and governmental employees for temporary financial assistance, scholarships, special projects, and endowment for those needs. Benefits, in the form of clothing, food, medical/surgical aid, and general care and relief, are provided to eligible candidates via an application process. The CTMD provides office space and utilities to the Foundation within the State Armory located at 360 Broad Street in Hartford, Connecticut at no cost, but offers no further support to the CNGFI.

Conn. Gen. Stat. § 4-37e(2) defines a "foundation" as "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." Conn. Gen. Stat. §§ 4-37f through 4-37k set forth specific requirements for both foundations and for the state agencies that they were established to support. These requirements include, among others, the establishment of governing boards for foundations, the annual filing of an updated list of board members, written agreements regarding use of the agency's facilities and resources, reimbursement to state agencies for expenses incurred as a result of foundation operations if the supported agencies would not have otherwise incurred such expenses, periodic audits of foundation accounts, review of audits by the Auditors of Public Accounts, procedures for foundation solicitations, and prohibitions on state officers or employees receiving compensation or anything of value from a foundation without the express approval of a competent authority.

Because you have already informed us that the CNGFI is a tax-exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code, the only remaining issue for our consideration is whether, pursuant to Conn. Gen. Stat. § 4-37e(2)(B), the CNGFI was "established for the principal purpose of receiving or using private funds for charitable, scientific, cultural, educational or related purposes that support or improve [the Connecticut Military Department]." We find that the CNGFI was not so established.

This office previously issued an opinion to the state auditors regarding a similarly situated organization, the Central Connecticut State University (CCSU) Alumni Association, Inc. See Conn. Op. Atty Gen. No. 1992-032, 1992 WL

532121 (Nov. 23, 1992). That opinion provides a useful analysis for determining whether a specific tax-exempt corporation or organization, such as the CNGFI, is one established for the principal purpose described above. This office reasoned as follows therein:

Distilled to its simplest terms, a "foundation" is a § 501(c)(3) organization whose principal purpose is to receive or use private funds to benefit a state agency. The touchstone here is the straightforward term "principal purpose." "When the words of a statute are plain and unambiguous, we need look no further for interpretive guidance because we assume that the words themselves express the intent of the legislature;" *Rhodes v. Hartford*, 202 Conn. 89, 93 (1986); and those words are read "according to the commonly approved usage of the language." Conn. Gen. Stat. § 1-1(a). The adjective "principal" is defined as "[f]irst or highest in rank, importance, value, *etc.*; chief; foremost." Webster's Encyclopedic Unabridged Dictionary of the English Language (1989); *see also*, Black's Law Dictionary (5th ed.). A purpose is thus principal when it is dominant or exceeds all others in importance. *See, e.g., Employees Ins. of Wausau, Inc. v. Crown Cork and Seal, Inc.*, 942 F.2d 862, 864 (3rd Cir. 1991); *Bobsee Corp. v. United States*, 411 F.2d 231, 238 (5th Cir. 1969). It follows, therefore, in the matter at hand that to be a foundation a § 501(c)(3) entity must exist first or foremost to receive or use private funds for the betterment of a state agency. Yet whether a particular entity so exists is usually not readily discernible from its title. Each entity must be scrutinized before its Chapter 47 status can be definitively ascertained. In other words, determinations of foundation status involve case-by-case analyses.

Id. at *1.

The 1992 opinion considered the CCSU Alumni Association's principal purpose for existence, as described in both its articles of incorporation and

bylaws, to be to "establish mutually beneficial relations between the [University] and the Alumni and to promote the aims of the [University]." *Id.* at *2. The opinion also scrutinized the minutes of the corporations meetings, and reviewed its publication, fundraising activities and financial statements. The opinion concluded that "the Association is not a Chapter 47 foundation because its 'principal purpose' is not receiving or using private funds to benefit CCSU." *Id.* at *2.

A similar review of the CNGFI yields the same result. The primary purpose of the CNGFI is to provide temporary financial assistance and support, not for the CTMD, but for the members of the National Guard, including National Guard retirees, members of the organized militia as defined by Conn. Gen. Stat. § 27-2,¹ and authorized reserve component family readiness groups, including those of the Army Reserve, Air Force Reserve, Navy Reserve, and Marine Corps Reserve. The Foundation provides benefits in the form of direct monetary grants, clothing, food, medical and surgical aid, and general care and relief to qualified applicants. A review of financial documentation (IRS Form 990s and internal

¹ Conn. Gen. Stat. § 27-2 provides the following with regard to the organized militia:

The militia shall be divided into four classes as follows: The unorganized militia, the organized militia, the National Guard and the naval militia. The National Guard for the purposes of this chapter shall consist of the National Guard and the Air National Guard. ... The organized militia shall consist of the Governor's Guards, the State Guard and such other military forces as may be designated by the Governor as commander-in-chief, which may hereafter be organized under the provisions of the laws of this state. The National Guard shall consist of such forces as may be organized and maintained by this state pursuant to the laws and regulations of the United States relating to the National Guard. The naval militia shall consist of such persons as may enlist or be appointed or commissioned therein as a special force for coast protection and as a naval reserve and shall be organized and maintained by this state pursuant to the laws and regulations of the United States relating to the naval militia and may include a marine corps branch of the naval militia subordinate thereto in all matters pertaining to command, discipline or administration. The organized militia, the National Guard, the naval militia and marine corps branch of the naval militia, whenever organized, shall be, for all purposes under the general statutes, the armed forces of the state.

Major General Thaddeus J. Martin
Adjutant General
Connecticut National Guard
Page 5

audits) indicates that no donations are made directly to the state agency to support any of its programs or personnel. While there may be some support provided to individual members of the armed forces of the state which partly comprise the CTMD, such support is provided to the individual to be used for his or her personal needs that may be, at most, only tangentially related to his or her service in the armed forces of the state. Moreover, support provided to authorized reserve component family readiness groups is, by definition, wholly unrelated to the CTMD as the Reserve components, and the National Guard when activated for federal service, are federal, not state, entities. *See generally*, 10 U.S.C. § 10101 (Reserve components named); 10 U.S.C. § 10102 (Purpose of reserve components). Finally, the CNGFI Director has stated that communication between the foundation and the CTMD is limited, that corporate business activities are conducted without regard to creating a benefit for the CTMD, and that the primary purpose of the foundation is not to support the CTMD or any other state agency. *See* Enclosure 5 to Staff Judge Advocate, Memorandum for Major General Thaddeus J. Martin, Adjutant General, Connecticut National Guard, JFHQ-CT, 360 Broad Street, Hartford, Connecticut 06105-3706 dated 10 October 2012.

By way of contrast, the CTMD is established by Conn. Gen. Stat. § 27-19,² which succinctly states that the Department shall be comprised of the armed forces of the state³ and its civilian employees, and shall be under the military command and control of the Adjutant General. Conn. Gen. Stat. § 27-20(b) makes clear that the Adjutant General is charged with the "command, discipline, employment and administration of the armed forces of the state." *Id.* There is no correlation between these duties and the primary purpose of the CNGFI. As such, the primary purpose of the CNGFI is not to support or improve the CTMD. Accordingly, we conclude that the CNGFI is not a "foundation" as that term is defined in Conn. Gen. Stat. § 4-37e, the requirements of Conn. Gen.

² Conn. Gen. Stat. § 27-19 provides, in relevant part, that "[t]he Military Department shall be comprised of (1) the armed forces of the state, as defined in section 27-2, which shall be under the military command and control of the Adjutant General, and (2) the department's civilian employees. The Military Department shall be under the command and control of the Adjutant General ..., " appointed by the Governor.

³ Conn. Gen. Stat § 27-61(a)(1) defines the term "member of the armed forces of the state" as "a member of the organized militia, the National Guard, or the naval militia and the marine corps branch of the naval militia, and includes any retired member thereof who is detailed from the retired list in accordance with section 27-54."

Stat. § 4-37e *et seq.* do not apply to the CNGFI, and the CTMD is therefore not required to establish procedures for compliance with those provisions.

II. State Active Duty Program.

The SAD program is the means by which the members of the armed forces of the state are ordered to active state service. You have informed us that, for decades, the SAD program has been successfully utilized to quickly and efficiently staff specific manpower requirements in support of the CTMD's mission when, due to federal activation of the Connecticut National Guard, or components thereof, insufficient forces remain to accomplish the state mission.⁴ The program provides the state with the necessary flexibility to meet emergent, and often rapidly evolving, military requirements with military personnel that cannot be effectively accomplished by current members of the National Guard or by regular state civilian employees. The functions that SAD service members perform depend on the military needs of the state and include wide-ranging activities such as conducting land surveys, providing security for events, cleaning armories, training officer candidates, drafting legal documents, conducting investigations, and performing other tasks that support the state's military needs and are consistent with the service members' qualifications.

The SAD program is largely federally reimbursed. When called to State Active Duty, members are paid on a military pay scale commensurate with their rank, but do not receive state benefits, and are often ordered to work during holidays, weekends and hours in excess of a normal eight-hour workday without overtime pay. Moreover, the SAD program provides for members to be ordered to duty without pay, with the consent of the member. *See* Conn. Gen. Stat. § 27-61(c) and (e). While performing duty pursuant to SAD orders, members are not considered to be state employees and are not subject to the many restrictions associated with that status.⁵

⁴ The Military Department is a unique dual-status agency, having both federal and state missions. The federal mission is to maintain properly trained and equipped National Guard units for prompt federalization in the event of war, domestic emergencies or other emergencies. The state mission is to coordinate, support and augment federal, state and local authorities in emergency response, to provide emergency response planning and to conduct community service programs. *See Mission of the Connecticut Military Department* online at <http://www.ct.gov/mil/site/default.asp>, visited on September 25, 2017.

⁵ In this regard, Conn. Gen. Stat. § 31-58(e) provides, in relevant part, that, "Employee" means "any individual employed or permitted to work by an employer but shall not include ... a member

The Auditors' Report questions whether the CTMD has been utilizing the SAD program for its intended purpose, suggesting that pursuant to Conn. Gen. Stat. §§ 27-9 and 27-10, the SAD program should be used only "for state emergencies such as natural disasters, civil disturbances, terrorism, and other threats to life or property." Auditors' Report, p. 26. The Auditors' Report further suggests that the CTMD should meet its intermittent but recurring needs not associated with emergencies with civilian state employees whose positions should be established, approved, and budgeted for as they would be by other state agencies. *Id.*

In construing Conn. Gen. Stat. §§ 27-9 and 27-10, we apply well settled rules of statutory construction. Conn. Gen. Stat. § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. The intent of the legislature is to be found in the meaning of the words of the statute; that is, in what the legislature actually said, not in what it meant to say. *Frazier v. Manson*, 176 Conn. 638, 642 (1979); *State v. Grant*, 176 Conn. 17, 20, (1978); *Friezo v. Friezo*, 281 Conn. 166, 181-82 (2007). The requirement that a statute must be construed in relationship with other statutes reflects the well-established principle that the legislature is always presumed to have created a harmonious and consistent body of law. Accordingly, in determining the meaning of a statute, we are required to read statutes together when they relate to the same subject matter and look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of its construction. *Renaissance Management Co., Inc. v. Connecticut Housing Finance Authority*, 281 Conn. 227, 238-39 (2007). If, after examining the statutory text and considering its relationship to other statutes, the meaning of the text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. Conn. Gen. Stat. § 1-2z.

The first statute cited by the Auditors, Conn. Gen. Stat. § 27-9, provides that:

[w]henver the Connecticut National Guard is called into federal service or whenever such a call,

(Footnote cont'd from previous page)

of the armed forces of the state performing military duty, as such terms are defined in section 27-61."

in the opinion of the Governor, is deemed to be imminent, the Governor shall forthwith raise, organize, maintain and govern, from the unorganized militia, a body of troops for military duty. Said body of troops, when so organized, shall be known as "the Connecticut State Guard" and for and during the time of its existence as herein provided it shall be a part of the organized militia.

The other statute on which the Auditors rely is Conn. Gen. Stat. § 27-10, which provides that:

[t]he Governor shall order the Connecticut State Guard into active service whenever he deems it necessary for the interests of the state and shall prescribe the number of officers and the enlisted personnel required for that service, from time to time, as the necessity of the public interest requires. He shall organize the Connecticut State Guard in such a manner as will best accomplish its mission. He shall appoint and commission qualified persons as officers of the Connecticut State Guard.

The text of the first statute, Conn. Gen. Stat. § 27-9, explicitly directs the Governor to "raise, organize, maintain and govern" the Connecticut State Guard for military duty "[w]henver the Connecticut National Guard is called into the federal service or whenever such a call, in the opinion of the Governor, is deemed to be imminent." There is no requirement that there be a state emergency, such as a natural disaster, civil disturbance, terrorism, or other threat to life or property. Instead, the sole criterion triggering the directive that the Governor raise, organize, maintain and govern the Connecticut State Guard is that the Connecticut National Guard has been called, or will imminently be called, into federal service. In the absence of any further requirements, we cannot read them into the statute. *DiLieto v. County Obstetrics and Gynecology Group, P.C.*, 316 Conn. 790, 803 (2015).

At the current time, the units of the Connecticut National Guard have been called into federal service, and calls to federal service have been imminent, since the terror attack against the United States on September 11, 2001. The Persian Gulf War, by definition under Conn. Gen. Stat. § 27-103(a) means the period from August 2, 1990, to the date thereafter prescribed by Presidential

proclamation or by law, and continues to the present. (38 U.S.C. § 101(33)). Likewise, the "Authorization for Use of Military Force" in response to the terrorist attacks of September 11, 2001 also continues in force today. *See* P.L. 107-40, codified at 115 Stat. 224 and passed as S.J.Res. 23 by the United States Congress on September 18, 2001. Thousands of soldiers and airmen of the Connecticut National Guard have been called to federal service under the latter authorization and continue to be called presently. Thus, the Governor's authority to "raise, organize, maintain and govern" the Connecticut State Guard as a part of the organized militia of the State of Connecticut in order to fulfill the state mission of the Connecticut Military Department while other members of the National Guard are called away to perform federal military duty exists at the present time.

Turning to § 27-10, the text of the statute grants the Governor extraordinarily broad power to "order the Connecticut State Guard into active service *whenever he deems it necessary for the interests of the state* and [to] prescribe the number of officers and enlisted personnel required for that service, from time to time, as the necessity of the public interest requires." Conn. Gen. Stat. § 27-10 (emphasis added). The Governor is further authorized to organize the Connecticut State Guard "in such a manner as will best accomplish its mission." *Id.* As in § 27-9, there is no language limiting the Governor's authority to times of state emergency, nor can we read any such limiting language into the statute. *DiLieto*, 316 Conn. at 803.

The same conclusion applies to the specific duties that the Governor may order the Connecticut State Guard to perform. Section 27-9 states that the Governor shall raise, organize, maintain and govern the Connecticut State Guard for "military duty." The term "military duty" is defined in Conn. Gen. Stat. § 27-61(a)(2) as "the performance of military service by a member of the armed forces of the state pursuant to competent state military orders, whether paid or unpaid for such military service, including training, performance of emergency response missions and traveling directly to or returning directly from the location of such military service." While the performance of emergency response missions is included in the definition of "military duty," the legislature has not limited military duty to such service.

As noted above, the provisions of §§ 27-9 and 27-10 must be read in the context of other related statutes. Two related statutes, Conn. Gen. Stat. §§ 27-11 and 27-14, support the conclusion that the legislature intended to grant broad authority to the Governor to decide how and when to use the armed forces of the state. Section 27-11 provides that, "[w]henver it appears to the Governor that the

public interest no longer requires the active service of the Connecticut State Guard or any portion thereof, he shall forthwith order so many of said troops as he believes may safely be dispensed with into inactive service as members of the Connecticut State Guard reserve or may disband and discharge them, or any portion of them, as he may see fit." Conn. Gen. Stat. § 27-11. As with § 27-10, this language ties the Connecticut State Guard's active service to the Governor's determination that their service is in the public interest, without a requirement that there be a state of emergency.⁶

Conn. Gen. Stat. § 27-14 further emphasizes the Governor's broad authority by providing that "[t]he Governor shall be the Captain-General and, as such, commander-in-chief of the militia, and of the National Guard and the naval militia, not in the service of the United States, and may employ it, or any part of it, for the defense or relief of the state or any part of its inhabitants or territory; *and shall have all the powers necessary to carry into effect the provisions of this chapter.*" (Emphasis added). The Governor exercises his expansive powers through the Adjutant General, whom he appoints as chief of staff with command and control of the CTMD. *See* Conn. Gen. Stat. §§ 27-15 and 27-19.

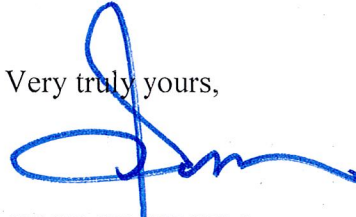
Based on the language of §§ 27-9 and 27-10 and the related authority granted by §§ 27-11, and 27-14, we conclude that the Governor's authority to activate or disband the Connecticut State Guard, or any portion thereof, "whenever he deems it necessary for the interests of the state," is not limited solely to times of actual emergency. Rather, we conclude that the Governor possesses the authority to order military personnel to State Active Duty whenever he deems it necessary for the interests of the state, "as the necessity of the public interest requires." Conn. Gen. Stat. § 27-10.

⁶ We note that Conn. Gen. Stat. § 27-16 states, in part, that "[i]n time of war, invasion, rebellion, riot or disaster, or reasonable apprehension thereof, or upon requisition by the President of the United States, the Governor shall order out for active service such portion of the militia as he deems necessary." Construing this statute so as not to conflict with §§ 27-9, 27-10, and 27-11, as we must, *Dorry v. Garden*, 313 Conn. 516, 531-532 (2014), we interpret this section to specify situations in which the Governor must call those portions of the militia that he deems necessary to active service, but not to limit the instances in which the Governor might determine that it is in the public interest to order the Connecticut State Guard to active service.

Major General Thaddeus J. Martin
Adjutant General
Connecticut National Guard
Page 11

We trust that the foregoing analysis adequately responds to your questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "G. Jepsen", with a large loop at the top and a long horizontal stroke at the bottom.

GEORGE JEPSEN
ATTORNEY GENERAL