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ADVISORY OPINION NUMBER 79-10

Operation of a Private Medical Services Corporation by  
Department of Health Services Employees

Several professional employees of the Department of Health Services are considering forming a corporation. The purpose of the corporation would be to provide medical services -- primarily risk appraisal, health maintenance, and risk counselling -- to businesses and to individuals. The corporation's personnel would review the lifestyle of individuals and employees to identify behavior that creates a high risk of disease and then provide appropriate guidance -- nutrition counselling, methods for smoking cessation, control of high blood pressure, exercise therapy, stress reduction, and so forth. All activities related to the corporation would be carried on outside of the State's working hours. No State resources would be used.

The responsibilities of the division of the Health Services Department to which the professional employees involved are assigned include developing and promoting programs for investigation and control of epidemic problems, immunization, control of venereal disease, prevention and treatment of tuberculosis and other pulmonary diseases, prevention of cancer, heart disease, and other chronic diseases, and evaluation and control coordination of toxic hazards. The division meets its responsibilities in a variety of ways, all of which emphasize development and provision of preventive programs rather than the providing of medical services. As examples, it investigates, analyzes by statistical studies, and coordinates surveillance of infectious diseases and promotes immunization programs against some of them. It attempts to prevent pulmonary diseases, and to control venereal disease through public education, contact investigation, screening, and treatment. It coordinates existing services for control of high blood pressure. It evaluates toxic hazards and sets standards for toxic exposure. The division furnishes consultant and technical services in cases of suspected communicable disease and preventable disease problems.

The Health Services Department employees have asked whether there would be any conflict between their State employment and the private employment which they contemplate.

Despite the information which the employees have given concerning their State employment and the private activity they propose, it is not possible to make conclusive determinations

regarding the application of sections 1-34 through 1-86, General Statutes, the actual code within the Code of Ethics for Public Officials and State Employees, to all the possible activities which could be conducted by a medical services corporation of the type considered here. Some guidance can be given in areas where possible conflicts can be foreseen.

There appears to be little possibility of the disclosure or use of confidential information acquired in the course of these employees' State duties. Some of the health programs which could be used by the medical services corporation no doubt were developed, at least in large part, by the State. However, the Health Services Department expends considerable effort to popularize such programs, smoking cessation for example. They are developed for use by others, and then use by anyone is encouraged. The corporation obviously should not apply for grants administered by the Department, or enter into any contract with the Department even if the contract is awarded under an open and public process. The possibility of impropriety is apparent if business dealing between the employees' corporation and their department were to occur. The corporation should not represent anyone charged with possible violation of any regulation issued by the Department of Health Services, whether the regulation is enforced by the Department or by local health authorities. A somewhat troublesome area is the possibility of employment on corporate duties impairing the independence of judgment of the State employees. The Commissioner of Health Services, for example, is charged with providing and maintaining personnel for the diagnosis, detection and treatment of lung diseases and other chronic illnesses, or entering into contracts for the provision of diagnostic and treatment programs for such diseases. Section 19-4a, General Statutes. As previously noted, a responsibility of the employees' division is to furnish consultant services in preventable disease problems, to private as well as public agencies. If the Commissioner and the top officials of the division under discussion were sufficiently persuasive, it is theoretically possible for the Department to be so heavily staffed and funded that there would be no market for firms providing the health services which the proposed corporation would offer. As a practical matter, budget constraints are such that the professional employees involved and their superiors can no doubt wholeheartedly support maximum department staffing and funding to carry out departmental responsibilities, without fear of saturating the field so that competing private corporations would have no market.

Operation of a private medical services corporation by professional employees of the Department of Health Services creates potential for violation of the Code of Ethics for Public Officials and State Employees, Chapter 10, Part I, General Statutes. If the

employees keep the Code in mind and exercise nice judgment when they review their private activities in the light of the Code, however, there seems to be no reason why they cannot operate the corporation without violating the Code or, almost as important, giving the appearance of any impropriety.

By order of the Commission,

Handwritten signature of Thomas J. Lynch in cursive script.

Rev. Thomas J. Lynch  
Chairman

Dated April 5, 1979

