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ADVISORY OPINION NUMBER 79-14

Substantial Conflict with the Discharge of
a Legislator's Duties

A member of the General Assembly has asked whether a conflict of interest exists when members of the General Assembly's Education Committee who are themselves teachers vote on matters which directly affect teachers' conditions of employment and teacher contract negotiation procedures. The legislator advises that one Co-Chairman of the Committee, who is a teacher, has abstained from voting on matters which affect the employment of teachers. The other Co-Chairman, considering the matter, has ruled that each Committee member must decide for himself whether or not a conflict of interest exists.

As public officials (section 1-79(j), General Statutes), legislators are subject to the Code of Ethics, Chapter 10, Part I, General Statutes. The Code provides that "[n]o public official or state employee shall, while serving as such, have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, as defined in section 1-35." Section 1-84(a), General Statutes. Section 1-85 explains that a public official "has an interest which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, if he has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. He does not have an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to him as a member of a business, profession, occupation or group to no greater extent than any other member of such business, profession, occupation, or group." Section 1-86, General Statutes, specifies a procedure to be followed when a public official, in the discharge of his official duties, faces a substantial conflict of interest.

The short answer to the legislator's question is that a General Assembly member who is a teacher is permitted by the

Code provisions quoted to vote on matters affecting teachers' employment so long as any benefit or detriment arising from the legislation accrues to him as a teacher to no greater extent than any other member of the teaching profession. As the Committee Co-chairman has ruled, this is a question which a public official, considering his particular situation and the standards quoted above, must decide for himself. See also State Ethics Commission Advisory Opinion 79-9, 40 Conn. L.J. No. 38, p. 28.

Connecticut has a relatively strict common law standard regarding conflicts of interest involving public officials. "Public office is a trust conferred by public authority for a public purpose. State ex rel. Stage v. Mackie, 82 Conn. 398, 401, 74A. 759. His status forbids the public officer from placing himself in position where his private interest conflicts with his public duty. The good faith of the official is of no moment because it is the policy of the law to keep him so far from temptation as to insure the exercise of unselfish public interest. He must not be permitted to place himself in a position in which personal interest may conflict with his public duty." Low v. Madison, 135 Conn. 1, 8 (1948). "The test is not whether it does conflict but whether it might conflict." Josephson v. Planning Board, 151 Conn. 489, 495 (1964). While the cases following Low v. Madison have dealt mainly with municipal officials, the same high standards have been applied to public officials at the State level. See, for example, Opinion of the Attorney General to the Chairman, Commission on Hospitals and Health care, August 11, 1975, 37 Conn. L.J. No. 14, p. 5. Where financial or personal interests have created the appearance of possible partiality, yet the public official has not disqualified himself, any action by the body of which he was a member has been held void. Low v. Madison, *supra*. Public officials have consistently been held to the requirement that there be no appearance of a conflict of interest when they act in an administrative or quasi-judicial capacity. However, for a number of reasons the standard has not been applied to members of legislative bodies. La Torre v. Hartford, 167 Conn. 1, 8-9 (1974).

In 1971 the General Assembly enacted a code of ethics, to be effective in 1973, which applied to all members and employees of the Legislative, Executive, and Judicial Branches of State Government, except judges. That statute, in former sections 1-66 and 1-68, General Statutes, prohibited interests in substantial conflict with one's official duties, using the same language as the current statute, quoted above. Section 1-68 also contained the exception, which is in the present statute, when any benefit or detriment accrues to the public official as a member of a business, profession, occupation, or group to no greater extent than any other member of such business, profession, occupation, or group.

When the bill which was to become the present Code of Ethics for Public Officials was being debated, an amendment to delete the above exception was proposed. After extensive debate, the

amendment was defeated. 20 Connecticut General Assembly House Proceedings 1977, pp. 6459 - 6475. As a consequence, a public official does not have a substantial conflict of interest if his interests are affected no differently than other members of his business, profession, occupation, or group.

A member of the Education Committee may, if he chooses, hold himself to the common law standard and disqualify himself whenever he wishes to avoid being placed in a position in which personal interest may conflict with public duty. On the other hand, the standard with which he must comply is that stated in sections 1-34(a) and 1-35, General Statutes. As previously noted, those sections permit a teacher who is on the Education Committee to discuss and vote upon matters involving the employment of teachers so long as they affect him no differently than other members of the teaching profession.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated May 9, 1979

