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ADVISORY OPINION NUMBER 79-15

Statements of Financial Interest

A public official required by section 1-83(a), General Statutes, to file a statement of financial interests annually has asked the advice of the Ethics Commission regarding whether certain matters should be included in his statement. The official owns a share of a thrift plan fund operated by a private organization which has employed him. His share is evidenced by one or more certificates of participation. The thrift plan fund is composed of stocks of a number of companies. Income earned by the official's share is retained in the fund until the official retires from the organization. Upon retiring the official may withdraw his share of the fund, including any capital gain attributable to his share and the income that has been earned by his share in the thrift plan fund. In addition, the official and his wife have some interest in three trusts. One is a testamentary trust established for the official's cousin, who for life receives all the income from the trust. Upon the cousin's death, the trust is to be terminated and the principal is to be divided among some nine remaindermen, of which the official is one. It is not known whether the official must survive his cousin for the official or his heirs to benefit. Under a second trust, the official's spouse is one of some two dozen beneficiaries. She receives income from the trust for life. Upon her death her share passes to the other trust beneficiaries. The third trust is a testamentary trust for the benefit of the official's sister, who receives all the income from the trust. The official is the sole trustee. Upon his sister's death the trust is terminated and the principal is divided among the official, provided he survives his sister, and the children of a deceased sibling. The official and his spouse claim to have no control over, or even knowledge of, the assets of the first two trusts.

Section 1-83, General Statutes, requires certain public officials and State employees, including the one involved here, to file annually a statement of financial interests that is to include, for the official and his immediate family, "... (C) the name of securities in excess of five thousand dollars at fair market value owned by the individual or held in the name of a corporation, partnership or trust for the benefit of such individual...; (D) all real property and its location, whether owned by the individual or held in the name of a corporation, partnership or trust...." Section 1-83(b)(1), General Statutes.

Under the thrift plan fund arrangement the official, along with some fellow employees, provides capital in the hope that profit will be generated by the efforts of others. The official's share in the

fund is evidenced by one or more certificates of participation. Such a certificate would be a "security" under the Connecticut Uniforms Securities Act (see section 36-471(m), General Statutes), the Securities Act of 1933 (see 15 U.S.C.A. 77b(1)), and the Securities Exchange Act of 1934 (see 15 U.S.C.A. 78c(10)). The term "security" is not defined in the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes. A predecessor provision concerning financial disclosure used the terms "stocks", "bonds" and "equity or creditor interest in proprietorships or partnerships or other business entity." Former section 1-76(a)(i), id. One would assume that by utilizing the general word "securities" the General Assembly meant a term that would at the very least encompass the economic interests which previously had to be reported. A word "shall be construed according to the commonly approved usage of the language; and technical words..., and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly". Section 1-1(a), id. The definitions of "security" in the State and Federal statutes cited above are essentially identical with each other and are little more inclusive than the list of interests in former section 1-76(a)(1), supra. Insofar as "security" has a technical meaning it includes, according to the foregoing statutory definitions, the certificate of participation held by the official. Since the certificate bears a similarity to a share in a mutual fund, it is likely that the certificate would be commonly understood to be a "security" by those who must file statements of financial interests.

The interests of the official and his spouse in the three trusts are varied. The official has a remainder interest in the first trust, contingent or vested depending upon whether or not the trust instrument requires him to survive his cousin. His spouse has in the second trust a vested interest to which she has a present right of use and enjoyment. The interest of the official in the third trust is that of a contingent remainderman. In addition, as trustee he is the legal owner of the trust assets.

Sections 1-83(b)(1)(C) and (D) contain no distinctions depending upon whether a person's interest in a trust is legal or equitable, vested or contingent, and if vested whether or not use and enjoyment of the benefits are postponed to some future date. Except for securities in a qualified blind trust, securities worth in excess of five thousand dollars and all real estate owned by a public official or a member of his immediate family must be reported annually in the official's statement of financial interests. Considering the purpose of the statement of financial interests, it should make no difference whether the person concerned is the legal or equitable owner, and if the legal owner whether or not he holds it for the benefit of another. Similarly, it makes little difference if use and enjoyment of the benefits of the interest are postponed. As the interest becomes more remote and eventual benefit becomes more uncertain it becomes less useful to disclose the interest. The legislature, however, has not indicated a point beyond which assets are no longer held "for the benefit of the individual". The only limitation is that securities valued at less than five thousand dollars need not be named.

Therefore, the official should report in his statement of financial interests the names of securities valued in excess of five thousand dollars and the location of real estate held in all three trusts. Additionally he must disclose the name of the thrift plan fund if his certificates of participation represent a share with a fair market value in excess of five thousand dollars.

By order of the Commission



Rev. Thomas J. Lynch
Chairman

Dated

May 25, 1979

