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ADVISORY OPINION NUMBER 79-9 (Amended)

Substantial Conflict with the Discharge of
a Legislator's Duties

A member of the General Assembly who is also a practicing attorney has asked whether, without violating section 1-84(a), General Statutes, he may vote on a bill which would enable nonprofit corporations to establish prepaid legal services plans in Connecticut. A subscriber to one of the legal services plans which the bill would allow could retain any attorney admitted to practice in Connecticut, provided the attorney was willing to accept such employment.

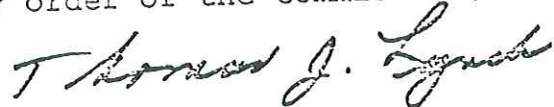
Section 1-84(a), supra, provides in part that no public official shall, while serving as such, "have any interest, financial or otherwise, direct or indirect, ... which is in substantial conflict with the proper discharge of his duties ... in the public interest and of his responsibilities as prescribed in the laws of this state". A public official has such a substantial conflict "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." Section 1-85, General Statutes. There is not a substantial conflict, however, "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." Ibid. A member of the General Assembly is a public official. Section 1-79(j), id.

The bill concerns nonprofit corporations which would provide legal services utilizing a so-called "open panel"; that is, any attorney licensed in Connecticut would be eligible to provide legal services if he were requested by a subscriber to do so. On the surface, it appears that any attorney, including the legislator who has requested advice of the Ethics Commission, would be affected by the program which the bill would establish to the same extent as any other member of his profession. However, the proposed legislation would have many ramifications for attorneys. The attorney-legislator has not revealed what impact, if any can be foreseen, the bill, enacted into law, might have on his income, his workload for a given income, his professional reputation as it affects future income, etc. It may be difficult for the legislator to forecast the impact such a bill might have upon his interests as an attorney. It is a practical impossibility for someone else to speculate on the bill's effect for it depends in great part on actions the attorney-legislator may take after the bill, if enacted, becomes law.

Sections 1-84(a) and 1-85, concerning substantial conflicts of interest, supersede essentially identical provisions of the General Statutes, sections 1-66(a) and 1-68. Section 1-36, General Statutes, takes the place of a former section, section 1-67, which controlled legislators when they found they had a conflict of interest, substantial or not. The former statutes were administered by the Joint Legislative Ethics Committee, the predecessor of the State Ethics Commission. In giving guidance, under the old provisions, to legislators who faced the same situation as the legislator here, the Joint Legislative Ethics Committee referred the legislators to the statutory provisions and told them to use their own judgment in complying with them. The legislators on the Committee were peculiarly capable of identifying and assessing conflicts of interest in which a legislator might become involved. They were also aware, however, of the almost infinite variety of legislators' circumstances. Thus, their guidance to use the individual's judgment under the statutes. See Minutes of Meeting of Joint Legislative Ethics Committee, March 11, 1976 and May 28, 1974.

The Ethics Commission is in no better position to evaluate the situation of a particular legislator, nor need it be. The provisions of the Code of Ethics for Public Officials, are reasonably clear and understandable. Provision is made for avoiding the conflict should a potential conflict of interest exist. Section 1-86, General Statutes. A legislator himself is more aware than anyone else how particular legislation probably would affect his special circumstances. In this case, and normally, he must determine on his own whether he can expect to gain a benefit or suffer a detriment to an extent different from that of other members of his profession.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated May 13, 1980