



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 80-11

Official Action by a State Employee Affecting
a Private Firm which Employs Him Part Time

The State Ethics Commission has been asked whether a State employee, who also works part time for a private firm, may participate in the review of contract proposals submitted by the private firm to the State department in which he serves. The State employee in question works for the Department of Transportation. He also has a part time position with a private firm. The private firm occasionally submits contract proposals to the Department of Transportation. A proposal may or may not be a matter in which the employee was involved as a part time employee of the private firm. Contract proposals are farmed out for initial review to various persons, including the employee in question, on a random basis. All the initial reviewers hold the same rank and job title. When the employee in question is assigned review of a proposal made by the private firm, he discloses to his supervisor his connection with the firm and his connection, if any, with the particular proposal. The facts given indicate that the State employee is only an employee of the private firm; it is not a "business with which he is associated". Subsection 1-79(a), General Statutes. Final action on contract proposals is taken by a senior official of the department, after an extended review process.

The Code of Ethics for Public Officials and State Employees, Chapter 10, Part I, General Statutes, contains provisions applicable to the conduct of the employee both in his part time work for the private firm and in his service to the State.

In his part time private employment, the State employee must refrain from using or disclosing any confidential information acquired by him in the course of and by reason of his official duties. Subsections 1-84(b) and 1-84(c), *id.* He must ensure that his part time employment does not in any way create a substantial conflict with the proper discharge of his duties in the public interest and his responsibilities as prescribed in Connecticut's laws. Subsection 1-84(a) and section 1-35, *id.*

As a State employee, his independence of judgment as to his official duties must not be impaired by private employment which he commences after entering State service. Subsection 1-84(b), *id.* He must not use his public office to obtain financial gain for himself. Subsection 1-84(c), *id.* Should he be required to take official action which would affect his financial interest, he must excuse himself or take action in accordance with subsection 1-86(c), General Statutes.

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In some cases -- the use of confidential information, for example -- the application of these rules to the situation which has been given is obvious. A major purpose of the rules is to give the public confidence that State employees consider only the best interests of the State when they take official action. The public could not be certain of the motives of the State employee here if he were to take action on contract proposals, whether or not he helped prepare them, of a private firm to which he owes a duty of loyalty as an employee and to which he looks for continued employment and, possibly, advancement. For the same reason, the employee should not review contract proposals of a competitor of the private firm which employs him. He may be impeccably honest and able to prevent his private financial affairs from affecting his official actions. The public cannot be certain of this in every case, however, because the opportunity to please his private employer by favoring his proposals or downgrading those of his competitors could tempt someone whose rectitude is not unwavering. The significance of this possibility of impropriety is not eliminated by the fact that the employee's review is only the first part of a chain of review. If the initial review has any value at all, it is bound to shape action at higher levels in a number of cases. As a consequence, at a minimum, the employee should either excuse himself from review of proposals by his private firm and its competitors or prepare a written statement signed under penalty of false statement describing the nature of the potential conflict and deliver a copy to his immediate supervisor. Subsection 1-86(c), id. The immediate supervisor should assign the matter to another employee. Ibid. (It could serve the department well to issue its own rules governing this and similar matters. Cf. subsection 1-89(b), id.)

If a substantial portion of the employee's duties is to review contract proposals submitted by the private firm employing him or by its competitors, and disqualifying himself from such reviews renders the State employee unable to execute the duties of his position properly, it would appear that he has accepted other employment which impairs his independence of judgment as to his State employment, in violation of subsection 1-84(b), above, and invites improper use of office, in violation of subsection 1-84(c), above. Additionally, he may have a substantial conflict of interest, in violation of subsection 1-84(a), above. At the least, the appearance of impairment and of a substantial conflict, and the potential for abuse of office, are such that the employee should not retain both that State position and the part-time position with the private firm.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated April 7, 1980