



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 80-16

Private Rehabilitation Counseling by a Division
of Vocational Rehabilitation Counselor

A counselor in the Division of Vocational Rehabilitation, Connecticut Department of Education, has asked whether he can, with propriety, form a private corporation which would assist in the rehabilitation of disabled individuals referred to his corporation by insurance companies. The counselor would meet with his private clients, and develop rehabilitation plans for them, during evening and weekend hours. He anticipates that the vast majority of his private clients would either be persons for whom the Division of Vocational Rehabilitation does not have primary responsibility or would be persons ineligible for the Division's services. He claims that by being selective in determining what clients he will accept, and avoiding use of information acquired during the course of his State employment, he can avoid any conflicts of interest.

A principal mission of the Division of Vocational Rehabilitation is to provide, at public cost, vocational rehabilitation service (as defined in subsection 10-100(c), General Statutes) to individuals who have a physical or mental disability (exclusive of blindness) which constitutes or results in a substantial handicap to employment, and who may reasonably be expected to benefit in terms of employability from the Division's services. Subsection 10-102(a), General Statutes. The Division provides vocational rehabilitation service to any handicapped individual regardless of the individual's means or income. If another government agency has primary responsibility in a given case--for example, the Division of Workers' Rehabilitation with regard to rehabilitation programs for an employee suffering compensable injuries (section 31-283a, General Statutes)--the Division of Vocational Rehabilitation will furnish goods and services which are needed for a complete rehabilitation program and are not provided by the primary agency. While a handicapped individual need not contribute to the cost of the rehabilitation program developed for him, the Division does attempt to get part or all of various portions of the program funded by a responsible source--veterans' benefits in the case of a veteran, applicable medical insurance, etc.

A counselor in the Division of Vocational Rehabilitation receives his clients by assignment. He is also charged with conducting an out-reach program which will locate disabled individuals eligible for Division services. The counselor determines whether a person is eligible for vocational rehabilitation service from the Division; that is, that the individual has a medically documentable disability which poses

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a serious impediment to employment and there is a reasonable expectation that the individual has the potential to benefit from vocational rehabilitation service in terms of either gaining or retaining employment. If he determines a person eligible to be a Division client he develops a vocational rehabilitation program which may include physical restoration; education; job training; other specialized training; provision and training in the use of equipment such as motorized wheel chairs, specially-equipped motor vehicles; etc. The purpose of the rehabilitation plan the counselor develops for a client is to provide vocational adjustment affording the client the maximum economic and social satisfaction and permitting the individual to live as normal a life as possible. Cf. section 4, Public Act No. 79-344. Critical to the plan is job placement. Counselors are expected to develop their own job leads, keeping in touch with industry and the business community in the area to learn the types of jobs available and the training required for them. They are encouraged to work on this task outside working hours as necessary. A counselor's responsibility to his client continues after a plan has led to employment. He must determine that the placement has been successful, and try to help solve any problems which may have been found on a job.

Apparently most of the disabled persons referred to him as a private counselor by insurance companies would have been working when they were disabled. The counselor asking the Commission for advice understands that the main interest of the insurance companies in referring a client to him would be to minimize the time the client is absent from work as a result of or incidental to the client's primary handicap.

Several conflicts between the person's duties as a State counselor and as a private counselor, with potential clients in each case coming from the handicapped individuals in Connecticut, are apparent. As a State counselor he is supposed to seek out disabled persons and determine whether they are eligible for services from the Division of Vocational Rehabilitation. Each one located and found eligible reduces the number available to be clients of private counselors. Even a person sensitive to the possibility of conflicts of interest might be influenced subconsciously when determining the eligibility for services from the Division of Vocational Rehabilitation of a disabled individual covered by medical insurance from a company from which the counselor gets private referrals. Jobs for persons with disabilities are scarce, and essential to a successful vocational adjustment plan. Disabled persons who have not been found eligible for services from the Division could not learn of jobs located by a State counselor. A counselor might be able to steel himself not to use for a private client a job opening, no matter how appropriate, discovered during his service for the State. But if the job opening is identified at a function occurring outside working hours, the type of event the State encourages him to attend, is the opening to be available to his private or his State clientele? The greater the contribution made by outside sources to the cost of the rehabilitation plan of a State client, the more State money remains for other clients and potential clients of the

Division of Vocational Rehabilitation. Yet a State counselor could be in a difficult position when he is trying to get, from an insurance company referring private clients to him, the maximum contribution under the client's insurance policy.

As a private counselor, a responsibility at the start of working with a handicapped individual would be to determine whether the client might be eligible for vocational rehabilitation service, including counseling, from the Division of Vocational Rehabilitation. Each client sent to the Division for counseling and other services is one on whose behalf the private counselor will not be reimbursed for a vocational rehabilitation plan and follow-up services which could extend for months. The issue here is not simply whether the State or an insurance company pays the counselor. The motives of his two employers would be different. It is in the interest of the insurance company to have its insured back to work as soon as possible, to terminate such expenditures by the company as disability payments. The purpose of the State is to find a disabled person a job with meaning, which utilizes his remaining capabilities to the fullest extent, even if a less satisfying job or one taking less training or education might have been found sooner.

There may well be other conflicts of interest between the duties of a State and a private vocational rehabilitation counselor, conflicts unavoidable by even the most sensitive to ethical considerations. Some of those described show that a State counselor who also counsels privately engages in employment which is in substantial conflict with the proper discharge of his employment in the public interest and of his responsibilities as prescribed in State laws, in violation of subsection 1-84(a) and section 1-85, General Statutes. He would be accepting employment which could not help but impair to some extent his independence of judgment as a State employee. Subsection 1-84(b), General Statutes. It could well prove impossible for him to avoid using, for his financial gain and that of his corporation, information not generally available to the public which he has acquired in the course of his State employment. Subsection 1-84(c), General Statutes.

The conflicts of interest are such that a counselor for the Division of Vocational Rehabilitation should not form a private business to provide rehabilitation counseling to disabled individuals referred to him by insurance companies.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated September 5, 1980

