



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 80-18

Service by a Senior State Employee on
a Municipal Committee

The Deputy Commissioner of Administrative Services has been asked to serve as a member of a municipal committee, the Financial Advisory Committee, in one of the State's major cities. He has requested the State Ethics Commission to advise whether service on the municipal committee would pose problems for him under the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes.

Members of the municipality's Financial Advisory Committee study municipal projects and improvements proposed to be funded by the proceeds of municipal bond issues and estimate the feasibility and cost of a project or improvement. Officers and agencies of the municipality must furnish the Committee any information and documents in their possession which the Committee requests to assist it in its investigation. The city's legislative body may not authorize the issuance of bonds for the construction or acquisition of buildings, bridges, or other facilities, or the acquisition of land necessary for their construction, until the matter of issuance of the bonds has been referred to the Financial Advisory Committee for its approval. Bonds issued for such projects and improvements do not become legal obligations of the city until the Committee has approved their issuance. (There is a procedure under which such bonds may be issued, and become legal obligations of the city, without the Committee's approval. It requires an extraordinary vote of the legislative body.) Committee members receive no compensation.

Among the many responsibilities of the Department of Administrative Services, the one most likely to have a bearing on the question at hand is that relating to real estate. The Commissioner of Administrative Services is assigned the administrative functions of planning and construction of all capital improvements, except highways and bridges, undertaken by the State. Section 4-126, General Statutes. The Commissioner is also responsible for the acquisition of property and space to house State agencies. Section 4-128, *id.* A deputy commissioner is not only normally the principal assistant to a commissioner, but has statutory authority to exercise the powers of the department head during the latter's absence or disqualification. Section 4-8, *id.* Thus, the Deputy Commissioner here could well be involved in a transaction such as State leasing of a building which has been constructed using proceeds of bonds issued by the municipality on whose Financial Advisory Committee he has been invited to serve.

Also of importance, the Deputy Commissioner may exercise, when designated by the Commissioner, and has exercised the full powers of a member of the State Bond Commission. Section 3-20(c), *id.* When a bond act empowers the State Bond Commission to authorize

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general obligation bonds of the State for any project or purpose, the Bond Commission determines whether authorization of the bonds is in the best interests of the State before it approves the bonds, and may establish various terms and conditions for the bonds. Subsection 3-20(g), *id.* To aid the Commission in its deliberations the members, all of whom serve *ex officio*, have available to them not only the information acquired in the course of their official duties but also that made available to them, or requested by them, pursuant to subsection 3-20(g), General Statutes, as amended by section 4, Public Act No. 79-607. The State Bond Commission fulfills, at the State level, a function quite similar to that performed by the Financial Advisory Committee at the municipal level.

The Code of Ethics for Public Officials and State employees, Chapter 10, Part I, General Statutes, applies to the Deputy Commissioner. Section 4-8, subsection 1-79(k), General Statutes. The fundamental objective of the Code is a narrow one; namely, to prevent a State servant from gaining financially as a result of his official actions. As a member of the Financial Advisory Council the Deputy Commissioner is uncompensated. Therefore, it is difficult to see how he could violate subsection 1-84(a), General Statutes, as substantial conflict of interest is defined in section 1-85, for his actions as Deputy Commissioner could not result in a direct monetary gain or loss to him as a member of the Financial Advisory Committee. Similarly, improper use of office, or disclosure or use of confidential information gained through his State office, for pecuniary gain in violation of subsection 1-84(c), General Statutes does not seem possible. There could be no financial benefit to him as a member of the municipal committee.

The only remaining portion of the Code of Ethics for Public Officials and State Employees which might appear applicable speaks of other employment which impairs a State employee's independence of judgment or requires or induces the disclosure of confidential information acquired in the course of and by reason of the employee's official duties. Subsection 1-84(b), *id.* In this context "employment" can be construed in different ways. It can mean activity in which one engages and employs his time and energies; occasional activity engaged in as an avocation, pastime, habit, or expedient; work (as a customary trade, craft, service, or vocation) in which one's labor or services are paid for by an employer; or temporary or occasional work or service for pay. Webster's Third New International Dictionary (1971). The legislative history of the Code does not disclose the meaning of "employment" intended. Because of the emphasis on the problem of private gain throughout the Code, it seems reasonable to confine "employment" to work which is compensated -- involving outside income, not just outside activity. That is quite clearly the connotation of "employment" in another part of the Code, subsections 1-84(f) and 1-84(g), General Statutes. See also *Knybel v. Cramer*, 129 Conn. 439, 442-443 (1942); *Darling v. Burrone Brcs., Inc.*, 162 Conn. 187, 193 (1972). With subsection 1-84(b), above, inapplicable to the situation at hand because unpaid service as a municipal official is not "employment", there would appear to be no potential violations

of the Code of Ethics for Public Officials possible. The situation of the Deputy Commissioner of Administrative Services serving without compensation as a member of the municipal agency simply is not reached by the Code.

There may still be problems under Connecticut law, however. By virtue of his position, the Deputy Commissioner of Administrative Services has a great deal of information, and has access to information, which is not generally available to the public. In the case of a building constructed by the municipality and leased by the State, for example, the Deputy Commissioner may have information on the State's interest in a building in that area, and on the amount which it is willing to pay in rent, before such information is released to the public. While he is designated to be a member of the State Bond Commission, the Deputy Commissioner may acquire considerable information, needed to determine whether authorization of particular bonds is in the best interests of the State, which is not available to the general public either at the time or ever. For example, the State Bond Commission may authorize the issuance of bonds to carry out the purposes of Chapter 579, General Statutes, concerning the purposes, powers, and duties of the Connecticut Development Authority. Section 32-22, *id.* Information contained in applications for financial assistance, or obtained by the Authority or the Department of Economic Development with respect to an application, is confidential and exempt from the Freedom of Information Act. Section 32-11a(i), *id.*

The Deputy Commissioner has either actual or imputed knowledge incident to his State service, some of which is not generally available to the public, which may bear on decisions he would have to make as a member of the municipal Financial Advisory Committee. It would not seem possible for him to isolate this State information from his judgmental processes as a municipal official, yet other municipalities and perhaps the State could be unfairly disadvantaged if the State information were utilized, consciously or subconsciously, in reaching decisions as a municipal official. There is a possible conflict of governmental interests, as distinguished from personal or private interests. If the duties of a member of the Financial Advisory Committee are understood correctly, it appears that as a member attempting to discharge them conscientiously and efficiently the Deputy Commissioner might use information gained in the course of his State duties which is confidential in the sense that term is used in subsections 1-84(b) and 1-84(c), General Statutes. Therefore, the two offices appear incompatible, under the common law, because of the clash of obligations caused by a person attempting to discharge the duties of both faithfully and impartially. See State ex rel. Schenck v. Barrett, 121 Conn. 237 (1936); State Ethics Commission Advisory Opinion No. 79-13, 40 Conn. L.J. 48, p. 13.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated October 15, 1980

