

STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 81-18

Teaching at State College of which Spouse is President

The Ethics Commission has been asked the propriety of an individual being appointed to, and serving in, a teaching position at a State college of which the individual's spouse is president.

The president of a State college and members of the college's professional staff are State employees. Subsections 5-198(g) and 5-198(l), respectively, General Statutes; subsection 1-79(k), *id.* Thus they are subject to the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes.

The State colleges (section 10-116a, General Statutes) are administered by a board of trustees. Section 10-109b, General Statutes. The Board employs faculty and other personnel needed to operate and maintain each State college. *Id.* It fixes the compensation of personnel employed at the colleges, establishes the terms and conditions of their employment, and prescribes their duties and qualifications. *Id.*

The Board is a part-time body whose members serve without compensation. Section 10-109a, General Statutes. In fulfilling its responsibilities it must rely heavily on the staff work and the recommendations of the personnel who serve the Board and the colleges full time. With regard to members of the professional staff of each of the State colleges, this reliance is formalized in the collective bargaining agreement between the Board and the professional staff's bargaining unit, which also contains the terms and conditions of employment of the professional staff.

That agreement details a number of duties assigned to the president of a State college. The president makes appointments, subject to the approval of the Board, to the faculty of his State college, and makes the final college judgment of eligibility, equivalency, and merit in determining the instructional rank to which a candidate will be appointed. Faculty committees evaluate faculty members for promotion, tenure, and, in the case of non-tenured members, renewal of contract. The president may have some input into the membership of an evaluation committee. The evaluation and review process culminates in a recommendation to the president. The president then

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makes his recommendation regarding these matters to the Board. In the case of promotions, the president can recommend a member for promotion although the member's department has refused to do so. In the case of tenure, the president similarly may recommend tenure if he believes advice to him against tenure constitutes an extraordinary injustice. The president participates in the process of imposing on members of the faculty of his college sanctions other than dismissal. If he decides that sanctions are not appropriate his decision is final. The case does not go to the Board. The president plays a leading role in dismissals for cause. He or his designee is part of the grievance process. The president may authorize faculty members to take certain sick leave and at his discretion allow educational or professional leave. Leave without pay is granted faculty members by the Board on the recommendation of the president, as is sabbatical leave.

The president of a State college is the chief planning officer of the college, responsible for the proper allocation of resources and the effective use of the personnel and facilities available. Working within the concept of tenure, he may be required to solve problems of obsolescence, reallocating personnel and resources. He can suggest programs for discontinuation, and makes the recommendation to the Board in all cases of proposed program discontinuation. When retrenchment is required, nominations for involuntary separation of faculty members are made by the president.

By virtue of his office, a State college president has considerable power over faculty members and over the allocation of resources among departments and faculty members. Some he can exercise on his own. In other areas he makes recommendations to the Board, and is required by the collective bargaining agreement to do so. In some instances the agreement states that action can be taken, or recommendations made, by a president or his designee. In other cases it appears that only the president can take the actions or make a recommendation to the Board. The part-time Board necessarily places great reliance on the views of a president concerning matters which affect his college.

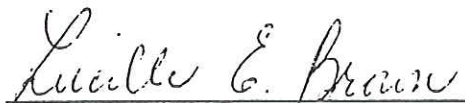
A State employee may not use his public office to obtain financial gain for his spouse. Subsection 1-84(c), General Statutes. The appointment, continued employment, promotion, discipline, and termination of a member of the faculty of a State college, and the vitality of programs with which the faculty member is associated, depend upon official actions which the president of the college is required to take, either at his own discretion or with the approval of the Board. Should the actions affect the financial interests of the spouse of the president, the actions would constitute use of public office in violation of subsection 1-84(c) if taken by the president.

Subsection 1-86(c), General Statutes, provides a procedure for avoiding conflicts of interest when a State employee such as the State college president here is required, in the discharge of his

official duties, to take an action which would affect a financial interest of his spouse. He must prepare a written statement, signed under penalty of false statement, describing the matter requiring action and the nature of the potential conflict. In the case of the president the statement would be delivered to the Board which, under the terms of the subsection, "shall assign the matter to another employee". The president should follow this procedure whenever required to take official action affecting significantly his spouse's financial interests. It must be done, for example, not only when personnel actions involve his spouse but when they affect someone in immediate competition with his spouse regarding the matter requiring action. (One would think most often this would include those faculty members in her department.) By taking official action affecting a competitor of a firm or individual, a public official or State employee can favor the financial interests of the firm or individual. See, among others, Ethics Commission Advisory Opinions No. 80-7, 42 Conn.L.J. No. 37, p. 21, (Mar. 11, 1980); 80-11, 41 Conn. L.J. No. 42, p. 30, (Apr. 15, 1980); 80-17, 42 Conn. L.J. No. 20, p. 30, (Nov. 11, 1980); 80-20, 42 Conn. L.J. No. 26, p. 21, (Dec. 23, 1980).

Section 1-36, above, assumes that the immediate superior of the employee with the potential conflict of interest can assign the matter to a peer or to a superior of the employee, not to a subordinate who is subject to the control or influence of the employee with the potential conflict. This could pose insurmountable problems when the employee involved is the senior member of an institution. Nevertheless, unless the president disqualifies himself from every action he must take, from appointment to dismissal, affecting his spouse's financial interest as a member of the college faculty and unless the Board has an alternate to whom it can assign the action normally required to be taken by the president, the president's wife may not be appointed to or serve on the faculty of his State college without a certainty of his being involved in recurring violations of at least one provision, subsection 1-84(c), of the Code of Ethics for Public Officials.

By order of the Commission,



Commissioner, State Ethics Commission

Dated 11 November 1981

