



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 82-4

CATV Stock Ownership by Commissioner of
Motor Vehicles

A corporation has applied to the Department of Public Utility Control (DPUC), as required by Chapter 289, General Statutes and sections 16-1-84 through 1-86, Regulations of Connecticut State Agencies for a certificate of public convenience and necessity in order to construct and operate a community antenna television system (CATV) in an area of Connecticut which does not now enjoy that service. The corporation is one of several competing for a certificate for the area.

Twenty per cent of the corporation's common stock is owned by persons who reside within the area to be served. The local shareholders have entered into an agreement with the corporation concerning the number of shares of common stock they are obligated to purchase -- a small investment initially, a much more substantial one if the corporation is awarded the franchise. The agreement has a number of other provisions. One of them requires local shareholders to use their best efforts to assist the corporation in preparing its application for the certificate and in presenting the application before appropriate governmental authorities. Another requires the local shareholders, when requested by the corporation, to represent the corporation with governmental agencies and third party contractors, and to assist in making presentations and filing documents as required by governmental bodies.

Most of the local shareholders are active in the affairs, including politics, of their communities. Among them are the Commissioner of Motor Vehicles and his wife, who reside in the franchise area. Together they own less than 5 per cent of the common stock of the corporation. (Under the agreement, it might be possible for one of them to acquire 5 per cent or more of the common stock. In that case, or if one of them became a director or accepted certain offices in the corporation, the corporation would become a business with which the Commissioner was "associated", for purpose of the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes. Subsection 1-79(a), General Statutes.) The Commissioner has asked how sections 1-84 through 1-86 of the Code apply to his and his wife's ownership of stock in the corporation.

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Their request for advice notes that in their case they considered they had only two obligations to the corporation, outside of purchasing stock. They would be working with citizens, citizen groups, business groups, and municipal bodies in the franchise area to explain the features and the benefits of the proposal for a franchise submitted by the corporation. Additionally, they would be required to testify before the DPUC as to their ability as shareholders to meet their financial obligations under the agreement with the corporation. Beyond that, any testimony before DPUC would be dependent upon questions propounded by participants and allowed by DPUC.

Generally speaking, there is no relationship or connection between the Department of Motor Vehicles and its Commissioner, on the one hand, and the certification, construction, and operation of a community antenna television system on the other hand. The corporation and others pursuing the same franchise need appear before the Department of Motor Vehicles for nothing, except perhaps to register some motor vehicles, to be driven by operators who may be licensed by the Department.

As a regulated business, the corporation has to appear before DPUC for a number of reasons. It cannot operate without winning a franchise from DPUC. If granted a CATV certificate it will need DPUC approvals during the construction and operation phases. Great care has been taken to ensure that the governing body of DPUC is independent and remains so, with its decisions reached upon proper grounds. See section 16-2, General Statutes. Consequently, there seems little danger that DPUC will be influenced in the least during the application or regulatory process by the fact that the Commissioner of Motor Vehicles and his spouse own a small percentage of an applicant's stock. The only part the Commissioner and his spouse will have to play in person before DPUC is that assigned all local stockholders: validating their financial capability to meet their commitment under the agreement.

Beyond buying and holding stock in the corporation, and convincing DPUC that they are financially capable to fulfil their stock purchase agreement, the only other obligations assumed by the Commissioner and his spouse incident to participation in the corporation's activities relate to promoting the corporation's proposal with local residents and governmental (municipal level), business, and other groups within the franchise area and, possibly, representing the corporation with third party contractors. Local governments and citizens do not appear to have much influence over awarding cable television franchises or their construction and operation. Local influence seem to be exercised mainly through an advisory council which is, as its name reveals, only advisory. See sections 16-333-24 through 16-333-30, Regulations of Connecticut State Agencies. The contact that the Commissioner and his spouse have with local citizens and private groups can hardly lead to violations of the Code of Ethics for Public Officials. In his contacts, if any, with third party contractors or municipal governments the Commissioner will have to make clear that any decisions

of the contractors or municipalities with regard to the cable television service will have no bearing on their business relationships, if they have any, with the Department of Motor Vehicles. The Commissioner's request for advice indicates he will not be representing the corporation before any third party contractors, which would avoid the possibility of a violation of the Code in that area.

One of the factors which DPJC considers in determining the suitability of an applicant for a CATV certificate of public convenience and necessity is "participating owners resident in the proposed service area as well as involvement in local civic and community activities." Subdivision 16-331(b)(2), General Statutes, as amended in 1981. Persons active in politics, and their spouses, tend to be active in local civic and community activities. Therefore, it is understandable that the corporation here would solicit participation in its venture by the Commissioner and his spouse. Nothing in the Code of Ethics for Public Officials prevents the participation. Conformance to the Code should present no difficulty because there appears to be essentially no interrelationship or interaction between the Department of Motor Vehicles and a cable television operation. See sections 14-3, 14-6, 14-372, General Statutes. Therefore, there seems to be no opportunity for use of office, use of confidential information, etc. in violation of section 1-84 of the Code. The Commissioner may, of course, take no actions which directly affect his financial interests. Subsection 1-84(a), General Statutes. If perchance he is required to take official action which would affect his wife's financial interest in the corporation (or the corporation's financial interests if it becomes a "business with which he is associated"), section 1-86 of the Code provides a procedure for avoiding any potential conflict of interest. Under the circumstances given, the only likely application of the Code appears to be the requirement for him to disclose in his Statement of Financial Interests his and his spouse's interests in the firm if they meet the requirements of subdivision 1-83(b)(1), General Statutes.

By order of the Commission,

Lucille E. Brown
Commissioner, State Ethics Commission

Dated 16 April 1982

