



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 84-11

State Employee Contracting With Own Agency

The Ethics Commission has been asked whether the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes) prevents a business owned by a State employee from selling goods or services to the employee's State agency or institution. The request assumes that the State employee has knowledge of his agency's procedures and future planning. Furthermore, he will be acquainted with employees in the agency who are responsible for purchasing goods and services for the agency. Thus, it is stated in the request, the employee has access to privileged information and to key personnel which he can exploit to the advantage of his private business. The request suggests that the Ethics Commission issue guidelines which would automatically preclude any possibility of collusion or advantage being exercised in these circumstances by a State employee. It is suggested that the guidelines extend beyond the situation presented and forbid an employee of a State agency to act as a vendor to that agency or to the State for goods and services normally sold to the general public for profit.

That rule might prevent some conflicts of interests and some use of State position, or confidential information gained in it, for one's private profit. Those objectives would be consistent with the Code of Ethics for Public Officials, but so broad a rule is not authorized by the Code.

In fact, the Code of Ethics allows State employees and their businesses to enter into contracts for the sale of goods and services to the State, with no specific exclusion of one's own agency, under certain conditions. (Obviously, the services must be some the employee is not already obligated to provide.) Public officials, State employees, members of their immediate families (subsection 1-79(e), General Statutes), and businesses with which they are associated (subsection 1-79(a), General Statutes) may enter into a contract with the State of any value provided, in most cases, the contract is awarded through an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded. Subsection 1-84(i), General Statutes. Contracts made in compliance with that subsection (and, of course, with the provisions of law, applicable to all contracts, administered by the Department of Administrative Services) can be valid even if made with his own agency by a State employee or, as in the case at hand, a business with which he is associated. Cf. Advisory Opinion Number 84-7, 45 Conn. L.J. No.44, p. 7D, (May 1, 1984).

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The process is specified to be public so that it can be reviewed by persons required to approve a contract, by unsuccessful bidders, and by auditors. With a public process it ought to be possible to identify early most cases of collusion between one employee responsible for soliciting bids and a fellow employee who is participating in the bidding. The public process should be self-enforcing, to a large extent. That is, if a contract is of any consequence, unsuccessful bidders, in their analysis of the proposals submitted and the contract awarded, may be able to discern any violations of the Code of Ethics in the contracting -- use of inside information not generally available to the public or improper use of position for the financial benefit of oneself or one's business (subsection 1-84(c), General Statutes). These would not only constitute violations of the Code of Ethics but would render any contract involving them voidable. Subsection 1-84(i), General Statutes.

The process is open so that all, or a substantial number, of eligible suppliers, not just a public official or State employee who learns of a State requirement due to his position, may offer to supply the goods or services the State needs. With competition from several suppliers, the State should receive a better value, pay a lower price, or both as compared to dealing with a single offeror, particularly if the only offeror is an insider.

One other Code provision applicable to the situation of a State employee or his business contracting to provide goods and services to the State, including his own agency or institution, is section 1-86, General Statutes. That section would apply if a person as a State employee had an official role in the contracting process when he or a business with which he was associated sought a contract with the State. It would eliminate him from the contracting process in his State position.

When a State employee, or a business with which he is associated, wishes to provide goods or services to his own agency or institution, then, the guidelines under the Code of Ethics are:

the process must be open and public, with prior public offer and subsequent public disclosure of all proposals considered and the contract awarded (subsection 1-84(i), General Statutes);

if the State employee normally participates on behalf

of the State in the contracting process, he must disclose the matter of the contract and the potential conflict of interest to his superior, who will assign the employee's role to another (section 1-86, General Statutes);

a State employee may not use confidential information received through holding his public position to obtain financial benefit for himself, close members of his family, or a business with which he is associated (subsection 1-84(c), General Statutes);

a State employee may not use his State position to obtain financial gain for himself, his close family, or a business with which he is associated (id.).

Those in the approval chain must be scrupulous in their scrutiny of contracts between a State employee or his business and the employee's agency or institution, to ensure that the standards of the Code of Ethics have been met. The public is likely to look askance at such a contract, for it suggests favoritism. If an official in the chain of approval has even a suspicion that there has been use of inside information not generally available to other prospective contractors, or improper use of office, the official should not take action on the contract until the suspicion has been removed. At best, it will be difficult to retain the public's confidence in the contracting process under the circumstances presented.

By order of the Commission,

Lucille E. Brown

Lucille E. Brown
Chairperson

Date 6 June 1984

