



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 84-13

State Employee Contracting with State

An assistant professor at a State technical college is a professional engineer licensed to practice in Connecticut. He has established an engineering firm. In late November 1983 his firm responded to an advertisement, issued by the Department of Administrative Services, which solicited design professional services. His letter expressing interest in a project enclosed a form showing that his firm consisted of three persons, including himself: an electrical engineer, a mechanical engineer, and an architect. In early January 1984 his firm was interviewed by the Department. A contract between the Department of Administrative Services and his firm was negotiated in May 1984. The contract called for his firm to perform energy conservation building audits on 27 Department of Mental Health buildings, for a fee of more than \$100,000.

In early June the Dean of Instruction at Hartford State Technical College completed a State-supplied Dual Employment Request Form indicating that performance of the contract by the assistant professor's firm would not present a potential conflict of interest and that the secondary employment was recommended. The assistant professor also asked the State Ethics Commission whether performance of the contract by his firm was consistent with the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes), considering his State position. The Ethics Commission staff provided an informal response in writing, enclosing copies of two Commission Advisory Opinions which give guidance in the area. The reply observed that the situation met the standards of the Code so long as the procedures under which the contract was entered into met the requirements of subsection 1-84(i), General Statutes that they be open and public. About the same time the assistant professor furnished the Department an updated form disclosing that a second mechanical engineer and an administrative person would be working on the project.

In mid-July the assistant professor was advised that the contract was rejected by the Department of Administrative Services because of "a potential conflict of interest occasioned by your full time employment at Hartford State Technical College", a State institution. Shortly thereafter the Director of Management/Personnel Services, Board of Trustees for State Technical Colleges, wrote the Department declaring that (1) the assistant professor had always performed his duties satisfactorily in the more than 10 years

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he had been associated with the College; (2) the State Technical Colleges encourage faculty members to pursue related engineering activities, because it keeps them abreast of the most modern technologies; and (3) Technical College faculty members are limited by contract to a maximum of sixteen contact hours per week, plus three office hours per week, for three eleven-week semesters. Additionally, three work days are required at the beginning and end of the school year. Enclosed was a schedule showing that the assistant professor was assigned 14 contact hours for the upcoming fall term. This last information was in contrast with that supplied on the June Dual Employment Request Form, which stated that "the normal work schedule is 7 hrs. a day - 5 days a week".

The assistant professor has asked the Ethics Commission whether, under the circumstances described, there would be a conflict of interest under section 1-84, General Statutes, for him to enter into the contract with the Department of Administrative Services. Additionally, he has asked whether a "potential conflict of interest" is a violation of section 1-84, above, even though there is no actual conflict of interest.

The Ethics Commission concurs with the informal staff advice that there would be no conflict of interest under section 1-84, General Statutes, if the assistant professor's firm were to enter into the contract with the State.

The engineering work which the assistant professor's firm offered to perform does not seem in any way to be in substantial conflict (as defined in subsection 1-84(a) and section 1-85, General Statutes) with his duties at the Technical College. It should not impair his independence of judgment as an assistant professor, or require or induce him to disclose any confidential information gained as an educator. Subsection 1-84(b), General Statutes. It does not seem possible for the assistant professor to use his State position, or any confidential information gained in it, for his financial benefit or that of his firm (a "business with which he is associated", subsection 1-79(a), General Statutes). Subsection 1-84(c), General Statutes. Finally, insofar as section 1-84 is concerned, the process by which design professional services for projects are obtained by the State is an open and public one, as required by subsection 1-84(i), General Statutes when a State employee or a business with which he is associated provides them. See sections 4-134a through 4-134d, General Statutes; sections 4-134e-1 through 4-134e-12, Regulations of Connecticut State Agencies.

Responses from design professional firms are sought by newspaper advertisements circulated statewide; they are reviewed by a selection panel created by statute; the top five candidate firms are selected, under criteria established in regulations, for interview; following the interviews the selection panel chooses the three firms most qualified to be presented to the Commissioner; the Commissioner negotiates a contract with the most qualified of the design professional firms on the list submitted by the selection panel. The Ethics Commission has been advised that the responses solicited by an advertisement for design professional services are available for public inspection, as are the records of the selection panel (other than the sheet showing how each panel member voted) once a contract has been signed, and the contract itself. The selection process fully meets the requirements of subsection 1-84(i), above, in the case of a State employee entering into a contract valued at one hundred dollars or more, that it be open and public, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded.

There were no inherent conflicts of interests under section 1-84, General Statutes, created by the fact that the applicant for the contract was an assistant professor at a State institution of higher education, nor do there appear to have been any throughout the process of arriving at a contract. Likewise, there appears to have been no potential conflict of interest.

Under the Code of Ethics for Public Officials, there is a "potential conflict of interest" when a State employee, in the discharge of his official duties, is required to take an action that would affect a financial interest of his or his firm's. Section 1-86, General Statutes (disregarding exceptions which are not pertinent). Since the assistant professor had no official responsibility for the selection of design professionals, he faced no potential conflicts of interest in the course of gaining the contract.

In response to the assistant professor's questions:

(1) it would not be a conflict of interest under section 1-84, General Statutes, for the assistant professor's firm to enter into the design professional services contract with the State, and

(2) a potential conflict of interest, when there is no actual conflict of interest, is not a violation of section

1-84. (If a State employee were to have a potential conflict of interest -- the assistant professor did not -- and were not to take the avoiding action required by section 1-86, above, there could be a violation of the section 1-84 conflict of interest provisions.)

The Department of Administrative Services apparently withdrew the contract from the assistant professor's firm based upon conflict of interest provisions outside the Code of Ethics for Public Officials. Section 5-208a, General Statutes, provides that a State employee may be compensated for services rendered to more than one State agency if, among other things, there are no conflicts of interest between the services performed. There seem to be none, in the ethical sense, in this case. The section also forbids a State employee to do work for a second State agency during the hours the employee is supposed to be working for the first agency. This "conflict of hours" stipulation may be considered a conflict of interest provision by the Department of Administrative Services, which administers and interprets section 5-208a. The Ethics Commission has no authority to decide under that section whether a State employee's firm, considering the number and qualifications of those in it, the hours per week the State employee's work as a teacher is controlled by a schedule, and the number of weeks per year he must teach, could perform the contract initially assigned the firm. With regard to conflicts of interest, the Commission may interpret only the Code of Ethics for Public Officials, sections 1-79 through 1-89, General Statutes. Subsection 1-81(a)(3), General Statutes.

By order of the Commission,

Lucille E. Brown

Dated 7 November '84