



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 84-17

Faculty of a State Institution of Higher Education
Representing Others before a Subsection 1-84(d) Agency

An associate professor at one of the constituent units of the State system of higher education has asked how the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes), particularly subsection 1-84(d), applies to the scientific and engineering studies and evaluations which he and many of his colleagues conduct for private companies and individuals.

He has presented two situations which he says occur. In one he provides consulting services to a private individual for a fee. His only assignment is to complete a written report containing findings and recommendations. He is not asked, nor does he offer, to appear on his client's behalf before any governmental agency. However, it is likely that his report will be utilized before one or more State agencies in support of a permit application. In the other situation his institution enters into a contract with a private individual or firm to produce a similar study or evaluation. Again there is no understanding that he or the others who prepared the report will appear before a State agency on behalf of the person who sought the report. It is again likely, however, that the report will be used to support some sort of application to a State agency. In both situations the names of those persons who developed the findings and recommendations will be prominently displayed in the written report.

An associate professor at one of the State's institutions of higher education is a public employee subject to the Code of Ethics for Public Officials. Subsection 1-79(k), General Statutes. A State employee may not accept outside employment which will impair his independence of judgment or require or induce him to disclose confidential information gained in State service (subsection 1-84(b), id.), nor may he utilize his public position or use or disclose confidential information gained in State service for his financial gain or that of a business with which he is associated (subsection 1-84(c), id.). Additionally, no State employee, or his employee, or any partnership, association, or professional corporation of which he is a member or employee, may, for compensation, appear or take any other action on behalf of another before certain State agencies. Subsection 1-84(d), id.

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The Commission has issued several advisory opinions which discuss the application of these Code provisions, particularly subsection 1-84(d), to the situation of a State employee providing personal services for a fee. With regard to subsection 1-84(b), the Commission has decided that "employment" means work which is compensated. Ethics Commission Advisory Opinion No. 80-18, 42 Conn. L.J. No. 22, p. 23 (November 25, 1980). Compensation is a given in the first situation. Therefore, the associate professor may not agree to provide consulting services if the employment will impair his independence of judgment or require or induce him to disclose information, gained in his State service, which has been withheld from the public. Subsection 1-84(b), General Statutes. If allowed by the Code to accept a consulting project, he may not use or disclose such confidential information, or otherwise misuse his public position, in the course of his private employment. Subsection 1-84(c), id. Finally, no portion of his compensation may be received for appearing or taking any other action on behalf of his client before the agencies listed in subsection 1-84(d), id.

The evil which the subsection 1-84(d) prohibition is intended to prevent is the improper influence which a public official or State employee might be able to exert, because of his office or position, on an agency of the State. Therefore, "appearing", or "taking any other action before", includes not only physically appearing before the agency but anything else, such as a signature on a document, which would make the agency aware that the public official or State employee is involved in the matter. Ethics Commission Advisory Opinion No. 79-6, 40 Conn. L.J. No. 38, p. 27 (March 20, 1979).

Subsection 1-84(d) applies only if the associate professor is compensated for the appearing or taking other action. If he is paid only for the study, and unbeknownst to him it is later used in a proceeding before a subsection 1-84(d) agency, there would be no violation of the Code. He would not have been compensated for the appearance before the agency. See, Advisory Opinion No. 80-1, 41 Conn. L.J. No. 29, p. 5 (January 15, 1980). However, he may not anticipate use of his report in a subsection 1-84(d) agency proceeding, build compensation for State-level action into his study fee, and then claim that he was accepting no compensation for use of the study or for his appearing before the state agency to defend or explain it. Advisory Opinion No. 84-8, 45 Conn. L.J. No. 45, p. 23C (May 8, 1984). As that Opinion notes, one who prepares a study under circumstances making clear that the study will have to

have to be utilized in a subsection 1-84(d) proceeding will have difficulty claiming surprise when it is used in the proceeding and showing that his compensation was in no way based on the possibility.

The second situation--a State institution of higher education entering into a contract with a private firm, the work to be accomplished by State employees--does not lead to greatly different results. The restrictions of subsections 1-84(b), (c), and (d), General Statutes, discussed supra, still apply if the State employees are compensated from a private source. However, the issue of compensation, for participating in a study under such a contract, is more complex than when the associate professor is offering his services directly as a consultant.

It is understood that faculty at institutions of higher education during the school year often do research or studies in support of institution contracts in addition to their normal teaching duties. No additional salary is received. That would not be "employment" for subsection 1-84(b), there would be no "financial gain" for subsection 1-84(c), or "anything of value" for subsection 1-84(d), General Statutes. If the work under the contract is substantial enough during the school year, an institution employee might have his teaching load reduced in compensation. Normally, part of his salary would be paid from contract funds, based on the percentage of time devoted to work on the contract. Also, if the work is accomplished during the summer, the person usually would receive a salary in addition to the regular salary for the school year. In both cases, reduced teaching load and summer salary, the person is employed on the contract and is receiving financial gain or something of value for purposes of subsections 1-84(b) through 1-84(d), id. The confidentiality, impairment of judgment, and improper use of public position rules of subsections 1-84(b) and (c) would apply. Inclusion of the person's name as a participant in the study or report, if used in a subsection 1-84(d) agency proceeding, or defense of the report before a subsection 1-84(d) agency, would amount to an appearance or action on behalf of another before the agency, and be a violation of the Code of Ethics.

Much of the expert knowledge in Connecticut can be found in the faculties of the State's educational institutions, particularly institutions of higher education. Members of the faculty rarely have confidential information as the term is used in subsections 1-84(b) and 1-84(c), their independence of judgment as to their official duties is unlikely to be

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impaired by outside employment in most instances, and almost none can exercise the influence which subsection 1-84(d) was intended to bar. Nevertheless, faculty members are not excused from any provisions of the Code. (The amendment to section 1-84(d) made by subdivision 4(d)(1), Public Act No. 83-586 merely emphasizes that the subsection does not apply to professional employees of a public institution of higher education if the actions are uncompensated.) If the prohibitions can be made more narrow without impairing the confidence of the public in the operation of State government, any remedy for the faculty members is with the General Assembly.

By order of the Commission,

A handwritten signature in cursive script, appearing to read "R.W. MacGyver", written over a horizontal line.

Dated

A handwritten date "Dec. 5/54" written over a horizontal line.