



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 84-4

Flight Operations in Connecticut by an Airline
with which a State Employee is Associated

The founder of a newly-formed scheduled airline has entered State service as a senior official in the Office of the Attorney General. The official is a director of the airline company. He expects to receive, and retain while in State employment, more than five per cent of the outstanding shares of at least one class of its stock. While he is in State service he will not serve as an officer of the company, and may not continue as a director. The airline is considering providing service in Connecticut.

To avoid any conflicts of interests while he is in State service the official states he will not represent the company in any capacity, legal or otherwise, before any governmental authority--federal, state, or municipal. He has directed personnel in the Attorney General's office that he is not to be involved in any way in matters which concern the regulation or taxation of air carriers. Such matters which normally would be given to him for any purpose are to be referred to his immediate superior.

The official has asked the Ethics Commission for its advice on avoiding any violation of the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes, particularly if the airline decides to extend its service to Connecticut. In that event the company will undoubtedly need facilities, at a State airport, which are owned or leased by the State.

As a State employee (subsection 1-79(k), General Statutes), the official is subject to the Code of Ethics for Public Officials. His stock ownership will make the airline company a "business with which he is associated" (subsection 1-79(a), General Statutes), for purposes of the Code.

The steps the official has taken thus far--removing himself from any action involving air carriers and confining his company activities to stock ownership plus, at the most, his directorship--will prevent him from possible violation of most provisions of the Code which are applicable to his situation. His financial interest in the company should not cause a

substantial conflict with his public duties and responsibilities. Subsection 1-84(a), 1-85, General Statutes. He was not a State employee when he became entitled to stock and became a director of the company, and does not intend to accept another compensated position with it. Therefore, subsection 1-84(b), General Statutes, is not applicable. Having excused himself from any official action affecting air carriers, there should be no use of his public position to benefit financially either him or the business with which he is associated, forbidden by subsection 1-84(c), General Statutes. Should he find that incident to his holding his public position he acquires information, not generally available to the public, which could be used to the financial benefit of the airline company, he may have to resign as one of its directors to avoid use or disclosure, unintentionally or otherwise, of the information for his or the company's financial advantage. Subsection 1-84(c), General Statutes. Subsection 1-84(d), General Statutes has no applicability since he will not be representing the company before any governmental agency.

The actions the official has taken already, along with resignation of his membership on the company's board of directors, if that should prove necessary, ought to ensure that most provisions of the Code will not be violated. There appears to be only one Code provision of possible applicability remaining.

Subsection 1-84(i), General Statutes, provides that, with some exceptions not pertinent, no State employee, member of his immediate family, or a business with which he is associated may enter into a contract, valued at \$100 or more, with the State unless the contract has been awarded through an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded. If the airline decides to provide service in Connecticut, it undoubtedly will have to lease some facilities from the State. A lease is a contract. Robinson v. Weitz, 171 Conn. 545 (1976).

The Commissioner of Transportation has jurisdiction over and general responsibility for aeronautics in Connecticut. Section 13b-39, General Statutes. The Commissioner manages and operates all State airports. Subsection 13b-42(a), General Statutes. He may sell, lease, or grant any interest in any airport, hangars, shops, or other buildings or property owned by or leased to the State. Subsection 13b-42(b), General Statutes; sections 15-41-43 through 15-41-51, Regulations of Conn. State Agencies. Even though leases must be approved

by the State Properties Review Board, the Secretary of the Office of Policy and Management, and the Attorney General (section 13b-42(b), General Statutes), they are still subject to the subsection 1-84(i) requirement that they be entered into through an open and public process if the other party is a business with which a State employee is associated.

The Commissioner of Transportation has considerable discretion as to whom he leases State airport facilities, and as to the terms, conditions, and limitations under which a flight operator will be permitted to engage in commercial operations at a State airport. Subsection 15-41-44a(b), Regulations of Connecticut State Agencies. The fact that airline regulation is almost entirely by federal agencies is unlikely to limit the Commissioner's discretion to any great extent. Airports developed using federal funds (as State-owned airports were) must, for example, be available for use on fair and reasonable terms and without unjust discrimination, with air carriers using an airport subject to nondiscriminatory and substantially comparable rates, fees, rentals, and other charges. 49 U.S.C.A. §2210(a). That same section, however, has a number of qualifications allowing the Commissioner considerable flexibility. Subdivision 15-41-44a(b)(2), Regulations of Connecticut State Agencies lists a number of factors which the Commissioner must consider in establishing rates he charges for use of a State-owned airport. These, and the charges to current lessees, give reviewing authorities a basis for determining whether a new lease is fair and equitable. Nevertheless, that subsection allows the Commissioner to "consider such additional factors as he shall find to be in the best interest of the state". Further, with respect to the broad issue of the terms, conditions, and limitations under which flight operators may engage in commercial operation at State airports, there are no factors or criteria spelled out for the Commissioner. Subdivision 15-41-44a(b)(1), Regulations of Connecticut State Agencies. Both federal and State statutes and regulations appear to give the Commissioner the discretion in leasing facilities at State airports that is necessary considering the diversity of the facilities and of the operations conducted at the airports, and the finite amount of the facilities. By the same token, they allow a Commissioner of Transportation the opportunity to favor others which subsection 1-84(i) was intended to curb in the case of public officials, State employees, members of their families, and their businesses when entering into leases with the State.

The Commission understands that the Commissioner of Transportation uses at least three different business procedures

with potential lessees. He may use a competitive bidding process, issue a request for proposals, or enter into negotiations. In the first case, the terms and conditions of the public bid are fixed. The lease goes to the bidder who proposes the return most financially beneficial to the State. A request for proposals, on the other hand, solicits less rigid responses. The final conditions of a lease are negotiated after a proposal is selected. Both of these procedures appear to meet the standards of subsection 1-84(i), General Statutes: "an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded". Authorities reviewing a lease, unsuccessful applicants, and members of the public can decide whether the Commissioner has been fair and has properly served the State's interests in arranging the lease. Clearly, the Commissioner's third procedure, negotiating a lease, does not meet the Code's requirements when the potential lessee is a business with which a State employee is associated.

Competitive bidding and request for proposals procedures work best when the State initiates the lease process. When an airline opens the process by requesting the Commissioner for facilities at a State airport, negotiations leading to a lease provide the most practical procedure. If the negotiations are conducted at arm's length, federal and State rules, including the review process, should protect the public interest adequately in most cases. If a fellow State employee, his family, or his business is a party to the lease, however, the public cannot have confidence in the integrity of the leasing process unless the lease is arrived at through some open and public procedure. When it is the potential lessee who initiates the lease process it is admittedly somewhat artificial for the lessor then to seek bids or proposals for leasing the facilities desired. Arriving at a lease will be delayed, probably, and the process may be more expensive than if negotiations are employed. Nonetheless, the open and public procedure is required by the Code, and the benefit to the public may well outweigh the extra time and money required.

In summary, the actions the official has taken to remove himself from the regulation and taxation of air carriers should prevent violation of the Code of Ethics for Public Officials on his part should the airline company commence flight operations in Connecticut. So long as the airline company remains a business with which the official is associated, leases for any State-owned facilities its needs at a State-owned airport must

be arranged through an open and public process meeting the requirements of subsection 1-84(i), General Statutes.

By order of the Commission,

Lucille E. Brown
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Chairperson

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