



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 84-6

### State Employee with Private Legal Practice

Persons applying for or receiving general assistance who have been denied aid under the Federal Supplementary Security Income Program (SSI), or whose benefits under the Program have been terminated, may appeal the adverse SSI determination. 42 U.S.C.A. §1383(c); section 17-273c, General Statutes. Local legal counsel, selected by the general assistance applicant or recipient, is available to assist in the appeal. Section 17-273c, General Statutes. The attorney takes the appeal on a contingency basis for his reasonable fees; if the appeal is successful, the fee approved by the Social Security Administration is paid by the Department of Income Maintenance, not by the general assistance applicant or recipient or his estate. Id.; section 17-273c-1, Regulations of Connecticut State Agencies.

A State employee who is an attorney represented, on his own time, a general assistance applicant or recipient, referred to him by the local lawyer referral service, who had appealed an adverse SSI decision. The attorney, a full-time State employee, heads one of two teams of investigators at a State mental hospital. The investigators on the teams interview hospital patients to obtain health insurance and financial information. This information is used to file a claim against a patient's health insurance benefits or against the patient himself if he has assets or income available to reimburse the State in whole or in part for his care at the mental hospital. The State employee has asked the Ethics Commission whether the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes prevents him from representing general assistance applicants or recipients, referred to him by a lawyer referral service, on SSI appeals or forbids him to accept his fee from the State when an appeal is successful.

Under the Code, the State employee may not take any official action, or use or disclose confidential information gained in State service, which would benefit financially him or a "business with which he is associated" (subsection 1-79(a), General Statutes). Subsections 1-84(a), 1-84(c), section 1-85, General Statutes. Any outside employment, such as his law practice, must not impair his independence of judgment as a State employee or require or induce him to disclose confidential information gained as a State employee. Subsection 1-84(b), General Statutes. Any contract, valued at \$100 or more, he or his business enters into with the State must, with exceptions not pertinent, be reached through an open and public process. Subsection 1-84(i), General Statutes.

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(The Code restriction on representing others for compensation before certain State agencies, subsection 1-84(d), General Statutes, is not applicable to the case at hand. SSI administrative appeals are conducted before federal administrative law judges.)

Applying these principles to the situation presented, the attorney should not accept SSI appeals by patients or former patients of the mental hospital to which he is assigned. There would be both the possibility and the appearance of using his State position to the financial advantage of his private law practice, even if cases were referred to him by an outside agency such as a private referral service. Cf. Advisory Opinion Number 84-3, 45 Conn. L.J. No. 33, p. 17C (February 14, 1984). For the same reason, should one of his legal clients be admitted to the mental hospital the investigation on behalf of the State into the patient's insurance and financial affairs should be made by the other investigating team.

By separating his public duties and private activity, as described above, his outside employment should not impair his independence of judgment as a State employee, require or induce him to disclose confidential information in State service, or allow him to use his State position to his private financial advantage.

No other Code provisions appear applicable. With regard to subsection 1-84(i), above, a system in which a person is authorized a contingent fee, to be approved by a federal agency, pursuant to a State statute could not be interpreted as containing a contract entered into by the person with the State. Even if it could, the process is open and public.

In summary, so long as the State employee accepts no client who is a present or former patient at the mental hospital, and has no official relationship with any client admitted to the hospital, he may represent clients under the provisions of section 17-273c, General Statutes. It is assumed that he will not only obey the Code of Ethics for Public Officials in his public life but as an attorney will abide by the Code of Professional Responsibility, 1 Conn. Prac. Bk. 1 et seq., the provisions of which reinforce the Code of Ethics in preventing conflicts of interest.

By order of the Commission,

*Lucille E. Brown*

Lucille E. Brown, Chairperson

Date 4 April 1984