



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

ADVISORY OPINION NO. 86-3

### Members of the Codes and Standards Committee Representing Others before the Committee

The Ethics Commission has been asked whether a professional member of the State Codes and Standards Committee may represent another before the Committee.

The State Codes and Standards Committee has been established within the Department of Public Safety to work with the State Building Inspector in the enforcement of Part I (State Building Code) and Part II (Fire Marshals and Fire Hazards. Fire Safety Code) of Chapter 541, General Statutes. Section 29-251, General Statutes. The Committee is composed of 14 members, residents of Connecticut, appointed by the Commissioner of Public Safety, as follows: one registered architect; three registered professional engineers (two practicing structural, mechanical, or electrical engineers, one a practicing fire protection engineer); one builder or superintendent of building construction; one public health official; two building officials; two local fire marshals; and four public members. Id. There is no statutory provision for paying compensation or per diem to Committee members. They are not even reimbursed for expenses, although section 4-16, General Statutes, may permit reimbursement. The Committee is authorized to employ necessary assistants, within the limits of available appropriations. Section 28-251, General Statutes.

Duties of the Codes and Standards Committee include:

jointly with the State Building Inspector, and with the approval of the Commissioner of Public Safety, adopt, promulgate, amend, and administer the State Building Code (sections 29-252, 29-256, General Statutes);

with the State Fire Marshal adopt, promulgate, amend, and administer the Fire Safety Code (section 29-292, General Statutes);

jointly with the State Building Inspector grant variations or exemptions from the State Building Code (subsections 29-254(b), 29-269(b), General Statutes);

jointly with the State Building Inspector and with the approval of the Commissioner of Public Safety,

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in the case of building officials, and jointly with the State Fire Marshal in the case of fire marshals, deputy fire marshals, and fire inspectors, establish standards of qualification for such local officials, prepare and conduct training programs for them, prepare and administer examinations to determine their qualifications, and license or certify them (sections 29-262, 29-298, General Statutes);

hear and decide appeals from municipal boards of appeals and from decisions of local fire marshals or the State Fire Marshal (sections 266, 309, General Statutes).

Except as prevented by statute, it has been the practice of the Committee for hearings, appeals, and requests for modification, variation, or exemption to be heard before a request-related subcommittee or appeal panel. This may be accomplished entirely by correspondence in some cases. In others, the interested person, his representative, or both may appear before the subcommittee or panel.

Some of the professional members of the Committee have represented others before the cognizant subcommittee or panel, or the full Committee. The Ethics Commission is advised that they have excused themselves from consideration of the matter when it comes to the full Committee. (Presumably, they also do not serve on the subcommittee or panel considering their case.)

In determining how the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes) applies to the situation, the first question is whether the Code applies to Committee members at all. Some professional members believe they are not subject to the Code, since they may be members of an advisory board as defined in subsection 1-79(g), General Statutes. That status would exempt them from the definition of "public official". Subsection 1-79(j), General Statutes.

They cannot be considered members of an advisory board. The Committee has clear authority to exercise the power of the State, sometimes alone, sometimes jointly with a State official. It may expend public funds to hire assistants. Therefore, Committee members do not meet the provisions of subdivision 1-79(g)(3), General Statutes, as is necessary to be members of an advisory board.



On the other hand, these unpaid volunteers are not State employees. Subsection 1-79(k), General Statutes. Appointed by the Commissioner of Public Safety, they are not public officials. Subsection 1-79(j), General Statutes.

Neither public officials nor State employees, they are subject to no provision of the Code except the very few which apply to any member of the general public. Probably the common law standards of conduct enunciated in Low v. Madison, 135 Conn. 1 (1948), and cases following it do apply to members of the Committee. Low v. Madison and later cases simply require an official with a financial or personal interest, direct or indirect, in a matter to abstain from taking official action on the matter. This members have been doing when representing others before the Committee.

It is possible that some of the members of the Committee who are professionals in areas regulated by the Committee--the architect, the professional engineers, the builder or superintendent of building construction -- cannot practice their profession without being able to represent their clients before the Codes and Standards Committee. There may be an implicit waiver of any conflict-of-interests considerations in their case. See Advisory Opinion No. 80-20, 42 Conn. L.J. No. 26, p. 21 (December 23, 1980). On the other hand, the Ethics Commission suspects that the public may question the objectivity and fairness of decisions by the Committee in cases brought before it by one of its members. The professional members who might wish to represent a client before the Committee are a substantial proportion of the Committee. It would be human nature for professional member A not to oppose the request of fellow professional member B, realizing that sometime member B will be taking action on member A's request. Further, while the question to the Commission was posed in terms of the application of the Code of Ethics to professional members representing others before the Committee, there appears to be nothing to prevent public members from carryng out the same representation. There can be no implicit waiver of conflict-of-interests rules in their case, but neither are there any rules to guide them.

It is recommended that the Codes and Standards Committee consider including in the procedural rules and regulations to be promulgated pursuant to section 29-251 any conflict-of-interest standards which it deems appropriate for the various categories of members--practicing professionals, local officials, public members--serving on it. The Ethics Commission would be happy to

comment on any ethical regulations proposed, should the  
Committee wish.

By Order of the Commission,

Julie Peck  
Julie Peck  
Chairperson

Dated 1/16/86