



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 86-3

Application of Code of Ethics to State Employee on Leave of Absence

A State employee holding a permanent, part-time position in the classified service has been granted a leave of absence, without pay, of almost six months. Her position will be held awaiting her return. She has asked the Ethics Commission whether she will be considered a State employee for purposes of the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes) while on her leave of absence.

"State employee" is defined very broadly in the Code of Ethics: "...any employee in the executive, legislative or judicial branch of state government, whether in the classified or unclassified service and whether full or part-time, but shall not include a judge of any court, either elected or appointed." Subsection 1-79(k), General Statutes. With an equally broad definition of "public official" (subsection 1-79(j), General Statutes), the Code of Ethics was designed to guide the conduct of every State servant except judges. Ethics Commission Advisory Opinion No. 82-5, 43 Conn. L.J. No. 45, p. 7B (May 11, 1982).

The State Personnel Act (Chapter 67, General Statutes) authorizes the granting of a leave of absence without pay for a period of more than five days but not exceeding one year. Subsection 5-248(a), General Statutes. An employee on an authorized leave of absence is considered a State employee, for purposes of the State Personnel Act, during the period of the leave even if the employee fails to return to service at the expiration of the leave of absence. Section 5-248-4, Regulations of Connecticut State Agencies. That section states that State employment terminates as of the termination of the leave of absence if the employee fails to return to service.

The fact that a State employee who is on a leave of absence without pay is considered a State employee for purposes of the State Personnel Act does not necessarily mean that the person must be considered a State employee for purposes of the Code of Ethics. The definitions of "State employee" in the Code and the Act are different. Compare subsection 1-79(k) with subsection 5-196(i), General Statutes. The purposes for which the two definitions are framed are different. The Act appears to define "State employee" principally for the purpose of determining benefits available--compensation, sick leave, vacation time, longevity, etc. The Code attempts to prevent a person from using a State position, or confidential information gained in and by virtue of the State position, for private financial benefit. Sections 1-84 through 1-86, General

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A person leaving active service in a State position for a period from six working days to a calendar year and then returning to the same or, perhaps, a similar position often would be almost as capable of using the prospective position for private gain as one who continues in a position. The payoff might be delayed until the end of the leave of absence, but not necessarily. A State employee on leave of absence who is expected to return to a State position might be able to persuade former, and future, subordinates or peers to take action benefitting financially the State employee, his family, or a business with which he was associated. If limitations must be placed on the activity of former State employees in order to maintain public confidence in the integrity of the operations of State government, as sections 1-84a and 1-84b, General Statutes, provide, it is even more important to circumscribe the activity of persons leaving active State service with the expectation or possibility of returning to a State position.

It would frustrate the purpose of the Code of Ethics if State employees who go on leave of absence were to be subject to no ethical restrictions on their activity, or only the rather inappropriate "revolving door" provisions of sections 1-84a and 1-84b, above. The definition of "State employee" in the Code of Ethics is at least as susceptible to being interpreted as including an employee on leave of absence as is the definition in the State Personnel Act. To fulfill the purposes of the Code of Ethics, and as its language allows, a State employee on leave of absence remains a "State employee" as defined in section 1-79(j), General Statutes.

Since a State employee on leave of absence is considered in State employment, the person is not by virtue of the leave of absence a "former" State employee for purposes of section 1-84a or 1-84b, General Statutes. Therefore, the prohibition on use of confidential information for private gain in subsection 1-84(c), rather than that in section 1-84a, applies. With regard to application of section 1-84b, to which only those who leave State service after January 7, 1987 are subject, a State employee on leave of absence on January 7 will not be considered to have left State service on or before that date so as to escape the operation of the section.

By order of the Commission,


Julie Peck
Chairperson

Dated July 7, 1986