



STATE OF CONNECTICUT

STATE ETHICS COMMISSION
ADVISORY OPINION NUMBER 87-1

Legal Services by a Legislator/Attorney or his Law Firm

An attorney has asked two questions about the effect his becoming a member of the General Assembly has upon his legal practice and that of a law firm with which he might be associated.

The first question is whether an attorney or law firm which represents clients for compensation before subsection 1-84(d), General Statutes, agencies could employ the legislator or his law firm as an independent contractor to provide legal services having nothing to do with the subsection 1-84(d) clients. None of the fees received by the first attorney or law firm from its subsection 1-84(d) clients would be used to compensate the legislator or his law firm for legal services as an independent contractor.

Subsection 1-84(d), General Statutes prohibits a public official, his employee, or a firm of which the public official is a member or employee, to represent others for compensation before the State agencies listed in the subsection.

Not long after the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes) was adopted the Ethics Commission concluded that the subsection 1-84(d) prohibition applied to the firm whether the relationship of the public official to the firm was as an associate, partner, or a member of a professional corporation. Advisory Opinion Number 78-21, 40 Conn. L. J. No. 13, p. 11 (September 26, 1978). The General Assembly had decided, it was believed, that otherwise public confidence in the integrity of the operation of subsection 1-84(d) agencies could not be maintained. The factor considered to be determinative in Advisory Opinion No. 78-21 was not whether the public official shared in the profits of the firm. An associate is normally an employee, whose salary remains fixed whatever the firm's profits so long as they are sufficient to pay him. Any attorney in the firm who was a public official, whatever the affiliation of the attorney with the firm, caused the firm to be subject to the subsection 1-84(d) restriction because of the association of the public official to the firm in the public's, and a 1-84(d) agency's, mind.

There is a distinction, however, between an employee and an independent contractor. Technically, it depends upon the

existence or non-existence of the right to control the means and methods of work. F.A.S. International, Inc. vs. Reilly, 179 Conn. 507, 512, 513 (1980). There can be a substantial difference in appearance, also, which is more significant insofar as subsection 1-84(d) is concerned. The name of an independent contractor would not appear on a law firm's letterhead or on announcements, advertisements, etc. listing the names of the firm's attorneys. An independent contractor is not likely to work in the firm's offices, and should not if association to the firm for subsection 1-84(d) purposes is to be avoided. If care is exercised, a subsection 1-84(d) agency would not know that the firm representing others for compensation before it has hired a public official or his firm as an independent contractor to provide other legal services for the firm. Widespread public knowledge of independent contractor relationship also could be avoided. In most instances it would take some effort for the relationship to acquire public notoriety.

The language of subsection 1-84(d), and the rationale for enacting it, do not dictate that a public official or his firm may not provide legal services to an attorney or law firm representing others for compensation before subsection 1-84(d) agencies when the attorney or his law firm has no relationship to the representation. The public official and his law firm, if applicable, must caution the other attorney or law firm not to publicize the relationship more than is necessary in the ordinary course of business. Exploitation, by the attorney or firm to which legal services are being provided, of the relationship in order to impress subsection 1-84(d) agencies would require the public official or his firm to sever the relationship, to avoid the appearance of use of office for personal financial gain in violation of subsection 1-84(c), General Statutes. Furthermore, working as an independent contractor is "employment" for purposes of subsections 1-84(a) through 1-84(c), General Statutes. Advisory Opinion No. 80-21, 42 Conn. L. J. No. 26, p. 23 (December 23, 1980). Therefore, the public official must not use his office to obtain work for himself or his firm as an independent contractor and must be certain that there is not even the appearance of his official judgment being influenced by the employment.

The public official has also asked whether he, or his law firm, may represent two public agencies, so long as representation before subsection 1-84(d) agencies is avoided.

One agency is a redevelopment agency, established by a municipality pursuant to section 8-126, General Statutes. A municipality may designate as a redevelopment agency its

housing authority, the State Housing Authority or other appropriate State agency, or may create a new body to be the redevelopment agency. Id. Redevelopment agencies prepare reclamation plans and carry out projects to restore blighted areas; they may acquire property by eminent domain, and issue municipal bonds to fund projects. Chapter 130, Part I, General Statutes. Redevelopment agencies have the same powers in planning and undertaking urban renewal projects pursuant to Part II of Chapter 130, General Statutes.

The other is a transit district formed by one or more municipalities pursuant to section 7-273b, General Statutes. A transit district may develop, operate, and maintain a mass transit system within the district and between the district and adjacent municipalities. Subsection 7-273e(a), General Statutes. A transit district has the power of eminent domain and may issue bonds to finance its operations. Subsection 7-273e(c), section 7-273g, General Statutes. The Department of Transportation provides some support to transit districts and may make State matching grants to transit districts to help fund demand-responsive transportation programs for the elderly and handicapped. Section 7-273n, General Statutes.

In the past the Ethics Commission has advised that a legislator or his firm may represent a State agency, when it appeared that it did not place him in a position to use his official authority for private financial gain, or threaten impairment of his independence of judgment. See Ethics Commission Advisory Opinions No. 80-21, above, and 81-1, 42 Conn. L. J. No. 32, p. 10 (February 3, 1981). There appears no reason why a legislator or his law firm may not represent a redevelopment agency or transit district, which are essentially municipal agencies, authorized by State statutes. Since State statutes, and possibly State funds, relate to redevelopment agencies and transit districts, a legislator may find that there is an interrelationship between his State duties and his private employment. If a potential conflict of interests arises, section 1-86, General Statutes provides guidance for addressing it.

It does not seem possible that a subsection 1-84(d) agency would be considered appropriate for designation as a redevelopment agency, under section 8-126. If one were designated, and the legislator or his firm asked to represent it, additional guidance from the Ethics Commission should be sought.

By order of the Commission,


Julie Peck

Dated Feb 2, 1987

