



STATE OF CONNECTICUT  
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 88-17

Application of the Code's Confidential  
Information Provisions to a Clerical Employee

Mr. Stephen A. Harriman, Chief of the Bureau of Health System Regulation in the Department of Health Services, has asked the Ethics Commission for an opinion regarding the propriety, under the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes, of a clerical employee of his Agency accepting outside employment with an entity regulated by the Agency.

The employee in question works in the Hospital and Medical Care Division of the Bureau. The Division is responsible for licensing and regulation of health care institutions including nursing homes. The employee has obtained outside employment as a recreational therapist with a nursing home licensed by the Division and subject to the Division's regulatory authority.

The employee asserts that her outside employment does not create a conflict of interests under the Code, because she does not participate in the licensing or regulatory activities of the Division.

The Bureau of Health System Regulation maintains that the outside employment in question is inappropriate under the Code, because the employee, in the course of her State duties, has access to confidential information concerning her private employer. Specifically, under Section 19a-531, General Statutes, it is illegal for any employee of the Department of Health Services to give any advance notice to a nursing home facility that an inspection is under consideration or impending. Schedules for both State and Federal inspections are prepared in advance, and typed by the clerical staff of the Division. The schedules also are accessible to any member of the Bureau staff.

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The Bureau believes that the outside employment in question will compromise its ability to conduct unannounced on-site inspections. In addition, the Bureau feels that the situation creates an appearance of impropriety which may affect the public's perception of the Bureau's integrity.

In pertinent part, the Code of Ethics states that no State employee shall accept other employment which will require or induce disclosure of confidential information gained in State service, nor may a State employee use such confidential information to obtain financial benefit. Subsections 1-84(b) and (c), General Statutes.

It is without question that the requirements of Section 1-84, General Statutes, apply to all State employees regardless of their status in the State hierarchy. As a practical matter, the Code's provisions concerning use of office or position will most often be applied to those public officials and senior State employees whose authority creates the opportunity for actions in violation of the Code. However, the same generalization cannot be made with regard to confidential information.

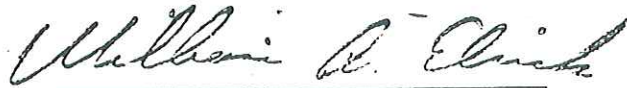
As this case illustrates, frequently a clerical employee of an agency will have access to confidential information which is equal, and sometimes superior, to that of the agency's senior officials. When, as in this instance, an employee has such access, opportunities for violation of the Code are present. Furthermore, these opportunities are magnified when the individual accepts outside employment with a regulated entity interested in the confidential information in question.

This situation creates the distinct possibility that the employee may be influenced, perhaps inadvertently, to divulge confidential information to her private employer. Even absent improper disclosure, it will appear that the individual has accepted employment which will induce her to release confidential information and has placed herself in a position to use such information for her financial benefit in violation of subsections 1-84(b) and (c). As the Bureau has pointed out, any resultant appearance of impropriety will attach not only to the employee, but also to the Agency and its regulatory mission.

Because of an appearance of impropriety and the possibility of violations of subsections 1-84 (b) and (c), General Statutes, an employee of the Bureau of Health System Regulation having access to confidential information regarding inspections of

regulated nursing home facilities should not accept outside employment with one of the facilities.

By order of the Commission,

A handwritten signature in cursive script, reading "William A. Elrick". The signature is written in dark ink and is positioned above a horizontal line.

William A. Elrick  
Chairperson

Dated 10-11-88

