



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION 88-23

Disclosure of Clients and Customers On
Annual Statements of Financial Interests

Effective January 1, 1989, P.A. 88-225, "An Act Applying the Code of Ethics for Public Officials to Certain Quasi-Public Agencies", will, in part, require the members and directors of these Authorities to file with the Ethics Commission the Annual Statement of Financial Interests prescribed by Section 1-83, General Statutes. The Deputy Director of the Connecticut Development Authority (CDA), an affected agency, has asked for the Ethics Commission's advice regarding the parameters and mechanics of one of the categories of disclosure mandated by Section 1-83. In pertinent part, the provision in question requires the disclosure of specific clients and customers who provided more than five thousand dollars of net income during the previous year to the individual required to file, his or her spouse, dependent children residing in the individual's household, or any business with which the individual was associated. Subdivision 1-83(b)(1)(B), id. Amounts of income are not to be specified. Id. The list of clients and customers is sealed and confidential, and may be opened only during a Commission complaint proceeding or criminal action. Id. at subsection (c).

In his request for advice CDA Deputy Director Roy W. Breward states that "...our private-sector members are primarily engaged, to varying degrees, in the real estate brokerage, management, or development business either as sole proprietors, partners, or through closely held corporations or combinations thereof. As a result they do business with many customers, in some cases thousands." Mr. Breward adds that due to the number of customers and complexity of business arrangements in the real estate industry, the CDA board members "...feel it would be onerous and immeasurably expensive to compile lists of specific clients and customers who provide more than \$5,000 of net income." He notes that these concerns may be minimized

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depending on how net income is required to be computed for purposes of the disclosure provision in question.

Specifically, on behalf of the private-sector members of the CDA, Mr. Breward has asked the following questions:

1. If Board members have a business in whatever form that has hundreds or thousands of accounts and those accounts individually provide net income in excess of \$5,000, do they have to list each and every one?

2. Related to the first question, but individually important, is how is net income to be computed? If a business has thousands or even if it has less than 100 customers, the allocation of expenses to individual sources of income can be extremely difficult and would, in fact, be very subjective.

3. What if a business experiences a net loss on a consolidated basis? The allocation of expenses under this scenario may result in net losses from each individual customer or client.

Taking the CDA's questions in turn:

1. Subdivision 1-83(b)(1)(b) is, without question, quantitatively unrestricted. It must be complied with regardless of the number of clients and customers involved.

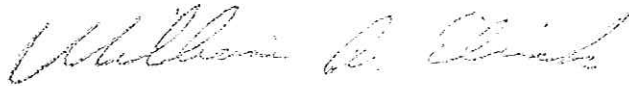
2. The term "net income" has not been defined for purposes of the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes. In determining its meaning, the well established rules of statutory construction require that, "...words and phrases shall be construed according to the commonly approved usage of the language...." Subsection 1-1(a), id. The ordinarily understood meaning of net income has been stated by the Connecticut Supreme Court to be "...the total income received..., less the legitimate expenses of realizing it, such as office expenses or the other expenses of practice." Sturtevant v. Sturtevant, 146 Conn. 644, 648 (1959). This definition is consistent with generally accepted accounting principles, and also fulfills the purpose of the disclosure requirement at issue: identification of those clients and customers who provided a significant, actual increase in the income of the filer, his or her most immediate family, or associated business.

The Ethics Commission is aware of the difficulties inherent in computing the legitimate expenses specifically attributable to various client and customer accounts, particularly when

their numbers are large and the business entities involved are complex. In administering the Code of Ethics for Public Officials the Commission has attempted, whenever proper and possible, to avoid placing unnecessary or unrealistic burdens on those in State service. In recognition of the realities of private sector business and accounting practices, the Commission will allow the legitimate, ordinary expenses of a business to be apportioned among its clients and customers, on a pro rata basis, without the necessity of specifically calculating the actual expenses of each account. In order to minimize any distortions resulting from this approach, only ordinary business expenses may be apportioned. For example, a court judgment or loan default of several million dollars related to a single client or customer should not be spread among the other clients and customers of a business. Such apportionment of extraordinary expenses could well vitiate the disclosure requirement in question, and is not permitted.

3. Consolidation of income and loss from an individual's separate businesses is, of course, well recognized as a valid tax reduction device. However, it is not applicable to the financial disclosure requirement at issue. As with extraordinary business expenses, discussed supra, consolidation could undermine, and in some cases destroy, client and customer disclosure. If, for example, in determining one's reportable clients and customers, an individual was allowed to consolidate a ten million dollar loss from one business with ten million dollars in income from ten clients of a separate business, the disclosure of clearly significant financial interests would be eliminated. To reiterate the Commission's policy, only the expenses of realizing the gross income in question are deductible in arriving at net income. Subsequent adjustments, such as tax adjustments or net operating loss carryovers, however proper and well established, are not to be applied in determining net income for the purposes of subdivision 1-83(B)(1)(b).

By order of the Commission,



William A. Elrick
Chairperson

Dated 12-13-88

