



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 89-32

Member of the General Assembly Serving As Corporate
Counsel For A Municipality

Representative Juan A. Figueroa has asked whether there are any conflicts, potential conflicts, or prohibitions under the Code of Ethics for Public Officials, Conn. Gen. Stat. Chapter 10, Part I, that would preclude him from serving simultaneously as a state representative and corporate counsel for the City of Hartford.

The Ethics Commission has previously considered the analogous situation of a member of the General Assembly serving as a town attorney. In that opinion, Ethics Commission Advisory Opinion No. 79-29, 41 Conn. L.J. No. 28, p. 14 (January 8, 1980), the Commission held that the Code did not preclude the outside employment in question. The Commission now reaffirms its conclusion that there is no inherent conflict between serving in the General Assembly and holding the paid position of counsel for one's municipality.

There is, however, one provision of the Code, Conn. Gen. Stat. §1-84(d), that will specifically restrict Representative Figueroa's actions, if he becomes Hartford's corporate counsel.

Section 1-84(d), states, in pertinent part, that:

No public official or his employee or state employee or his employee shall agree to accept, or be a member or employee of a partnership, association, professional corporation or sole proprietorship which partnership, association, professional corporation or sole proprietorship agrees to accept, any employment, fee or other thing of value, or portion thereof, for appearing, agreeing to appear, or taking any other action on behalf of another person before the banking department, the claims commissioner, the commission on hospitals and health care, the insurance department, the department of liquor control, the department of motor vehicles, the state insurance purchasing board, the department of environmental protection, the department of public utility control, the connecticut siting council, the

division of special revenue within the department of revenue services, the gaming policy board within the department of revenue services or the Connecticut real estate commission; provided this shall not prohibit any such person from making inquiry for information on behalf of another before any of said commissions or commissioners if no fee or reward is given or promised in consequence thereof. For the purpose of this subsection, partnerships, associations, professional corporations or sole proprietorships refer only to such partnerships, associations, professional corporations or sole proprietorships which have been formed to carry on the business or profession directly relating to the employment, appearing, agreeing to appear or taking of action provided for in this subsection. Nothing in this subsection shall prohibit any employment, appearing, agreeing to appear or taking action before any municipal board, commission or council.

Pursuant to §1-84(d), Representative Figueroa may not as corporate counsel appear or take any other action on behalf of Hartford before the twelve listed agencies. Specifically, he may not personally represent the city before the §1-84(d) agencies, nor may he take any other actions (telephone contact, signature on a document, etc.) that would reveal his compensated involvement in a matter to any of the agencies. Ethics Commission Advisory Opinion No. 79-6, 40 Conn. L.J. No. 38, p. 27 (March 20, 1979). He may, however, work on matters that involve §1-84(d) agencies (e.g., preparation of legal documents) as long as he does not engage in any prohibited appearance or other action before these agencies. Id.

In Ethics Commission Advisory Opinion No. 79-29, discussed supra, the Commission further held that not only the legislator/town attorney but also his assistants were barred from appearing before §1-84(d) agencies. Specifically the Commission stated that "while the law office of a town attorney may not be the 'partnership, association, or...professional corporation' named in subsection 1-84(d)...most of the same policy considerations which bar all members of a public official's firm from representing others before the listed agencies apply in a town attorney's office. The town will have to make other arrangements for representation should it be involved in proceedings before the agencies listed in 1-84(d), General Statutes."

This extension of §1-84(d) is not supported by the statutory language, nor, upon review, does the Commission believe it is required by the basic public policy consideration which

underlies the provision, i.e., prevention of use of improper influence for the financial benefit of one's self or one's firm. Specifically, the earlier ruling does not address the requirement in §1-84(d) that "...For the purpose of this subsection, partnerships, associations, professional corporations or sole proprietorships refer only to such partnerships, associations, professional corporations or sole proprietorships which have been formed to carry on the business or profession directly relating to the employment, appearing, agreeing to appear or taking of action provided for in this subsection...." This language was inserted by the General Assembly to limit the application of §1-84(d) to those individuals and firms in the business of representing others for compensation, including representation before the listed agencies, e.g., law firms, accounting firms, etc. It was intended to exclude organizations such as municipalities, corporations, or labor unions which, while they may have a legal department, are not engaged in the business of representing those outside the organization for compensation. Furthermore, the previous ruling ignores the requirement in §1-84(d) that the representation be "...on behalf of another person...." When a public official or state employee appears for compensation on behalf of a municipality before a §1-84(d) agency, he or she is acting "...on behalf of another person...", i.e., the municipality, in violation of the Code. However, when the in-house law department of a municipality (or a corporation, a union, etc.) represents that entity it is representing itself, not "another person" as that term is used in §1-84(d), and, hence, there is no violation of that subsection. This analysis is consistent with public policy considerations, since, unlike a private law firm which would earn a fee for the representation, no improper gain accrues to the municipal law department. Based on the foregoing legal and policy considerations, that portion of Ethics Commission Advisory Opinion No. 79-29 which applies the §1-84(d) prohibition to a public official's municipal law office is hereby overruled.

In summary, under the Code of Ethics for Public Officials a member of the General Assembly may simultaneously serve as corporate counsel for his or her municipality. While the individual may not appear as counsel on behalf of the municipality before a §1-84(d) agency, that prohibition does not extend to other members of the municipality's law department.

By order of the Commission,



William A. Elrick
Chairperson

Dated 11/13/89

