



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 89-9

Application of Outside Employment Provisions of Code
to State Assessment Advisers' Acceptance of Related
Municipal Employment

The Under Secretary for the Intergovernmental Relations Division of the Office of Policy and Management has asked three questions regarding the application of the outside employment provisions of the Code of Ethics for Public Officials, Connecticut General Statutes, Chapter 10, Part I, to state assessment advisers.

The first question involves whether an assessment adviser, employed full-time by the State of Connecticut, can accept and perform the duties of a part-time assessor in one or more municipalities within the State.

The state duties of an assessment adviser are set forth in Connecticut General Statutes §12-2b. Under §§12-2b(4) and (5), an assessment adviser's duties include "to provide advice and technical assistance to municipal assessors..." and "to assist municipal assessors by preparing manuals, handbooks of rules and regulations...." According to OPM officials, the assessment advisers also audit requests from municipalities for reimbursement under various grant programs. See e.g., Conn. Gen. Stat. §12-19, P.A. 88-321 and P.A. 88-348.

Under the provisions of the Code of Ethics, a state official or employee is not prohibited from using his or her expertise for outside financial benefit. However, one may not use official authority, or confidential information gained in state service, for private financial gain. Conn. Gen. Stat. §§1-84(a) and (c). Also, one may not accept outside employment which will impair independence of judgment as to official duties, or require and/or induce disclosure of confidential information. Conn. Gen. Stat. §1-84(b).

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Each state assessment adviser is responsible for a certain geographical area within the State. Obviously, there are many instances of interaction between assessment advisers and municipal assessors. Nonetheless, it does not appear that there would be significant opportunities for an assessment adviser to use his or her state position, or confidential information gained in it, for financial advantage as a municipal assessor, in violation of Conn. Gen. Stat. §§1-84(a) or 1-84(c).

The Intergovernmental Relations Division has already shown great sensitivity to the possibility of conflict of interest by instituting a policy that no assessment adviser is responsible for the town(s) in which he or she works or lives.

If, however, the assessment adviser, in the discharge of official duties, would be required to take any action with regard to the municipality for whom he or she is the assessor, the assessment adviser must comply with the provisions of Conn. Gen. Stat. §1-86(a); i.e., he or she must execute a sworn written statement describing the action and the potential conflict of interest, and deliver a copy to his or her superior, who shall then assign the matter to another assessment adviser or to a superior. This precaution will protect the adviser from a possible §1-84(b) violation.

The foregoing interpretation would apply in most situations, since in most Connecticut municipalities, the assessor's position is an appointed one. In those municipalities where the assessor is elected, however, the interpretation is different. Under Ethics Commission Regulations, there is deemed to be a conflict of interest which precludes a person in classified state service from continuing to hold elective municipal office when the state employee's agency or department has discretionary power to affect any grants or subsidies administered by the State, for which the municipality is eligible, provided that the classified state employee's position, inter alia, "allows him to exercise discretion in the course of monitoring, approving periodic payments for, or conducting the final audit review of, any municipal grant or subsidy administered by the employee's department or agency." See subdivision 5-266a-1(a)(2)(E)(ii), Regulations of Connecticut State Agencies.

Thus, a state assessment advisor cannot also hold an elected municipal assessor position, since the assessment adviser's duties include auditing municipal grant reimbursements, and conducting final audits of municipal grants for certification to the comptroller's office. This would

clearly constitute a conflict of interest under the regulations. See "In The Matter of a Request for Declaratory Ruling, Shannon A. Rogelstad, Applicant", April 4, 1988.

The second question raised by the Under Secretary concerns whether an assessment adviser involved directly with the responsibility of "monitoring" revaluation projects throughout the State, who also acts as an assessor for a municipality, can, in his or her role as municipal assessor, enter into a revaluation contract with an independent contractor.

The duties of an assessment adviser include developing regulations setting forth standards and tests for certifying revaluation companies and their employees. Through the regulations, assessment advisers ensure the competence of the revaluation company, certify the companies and their employees, advise and assist municipalities in drafting contracts with revaluation companies, and conduct investigations and withdraw the certification of any nonconforming revaluation company or employee. Conn. Gen. Stat. §12-2b(7).

Again, it does not seem that, in contracting with a revaluation company to perform revaluations for the municipality where he or she also works as an assessor, there would be significant opportunities for the assessment adviser to use the state position, or confidential information gained in it, for financial gain. §§1-84(a) and (c). If, however, a potential conflict arises, the assessment adviser must again comply with the provisions of §1-86(a).

Furthermore, assessment advisers in their roles as municipal assessors should not hire themselves as the independent contractors to perform the revaluation work, as that would clearly impair their independence of judgment as to their official duties. For example, an assessment advisor/revaluation contractor would have a far different interest in the standards and tests imposed by the assessment advisers than would an assessment adviser not occupying such a dual role. And, if an investigation arose regarding the competence of an assessment adviser/revaluation contractor, his or her desire to maintain the position as a revaluation contractor might be in substantial conflict with the proper discharge of his or her public responsibilities. §§1-84(a), 1-85. Additionally, even if another assessment adviser is responsible for monitoring the work of the assessment adviser/revaluation contractor, the monitoring adviser would be put in the untenable position of monitoring, and perhaps criticizing, his or her co-worker.

The third question raised by the Under Secretary asks whether an assessment adviser, assigned to the monitoring of revaluation projects throughout the State, can accept the position of "revaluation consultant" for a municipality entering into a revaluation contract with an independent contractor.

In this instance, the assessment adviser would be paid by a private party to do what he or she is essentially already required to do as part of his or her state duties. The temptation to be paid by two sources for the same work might very well impair the independence of the assessment adviser's judgment as to his or her official duties, as well as create a substantial conflict between the assessment adviser's state responsibilities and those private responsibilities he or she would take on as a "revaluation consultant". §§1-84(a) and (c), 1-85. Therefore, an assessment adviser should not accept the position of "revaluation consultant" for a municipality.

By order of the Commission,



William A. Elrick
Chairperson

Dated 3-6-89