



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 90-17

Legislator Taking Official Action Regarding a Non-profit
Entity With Which He Is Associated

After the issuance of a recent Ethics Commission advisory opinion (Advisory Opinion No. 90-5, Legislator Taking Official Action On State Bonding For A Business With Which Associated) the Majority Leader of the House of Representatives, Robert F. Frankel, wrote to the Commission for guidance regarding the following situation.

Representative Frankel is a member of the board of trustees (the Board) of the Discovery Museum in Bridgeport. Although Representative Frankel is not on the Board's twelve person executive committee, he notes in his request for advice that under the Museum's charter the entire Board is the policy making body for the institution. This past session Representative Frankel joined with approximately fifty other members of the General Assembly in co-sponsoring a bill to provide bonding for expansion and renovation of the Discovery Museum. Subsequent to this action and in response to Ethics Commission Advisory Opinion No. 90-5, Representative Frankel suspended his membership on the Board and sought this opinion from the Commission as to whether, in the future, he may take official action on bonding for the Discovery Museum while remaining on its Board of Trustees.

In Advisory Opinion No. 90-5 the Commission held that a legislator who serves on the board of directors of a non-profit entity may not take official action which will directly and specifically benefit that entity. Ethics Commission Advisory Opinion No. 90-5, 51 Conn. L.J. No. 32, p. 8C (February 6, 1990). In reaching that decision the Commission noted that under the "Definitions" section of the Code of Ethics for Public Officials, Conn. Gen. Stat. Chapter 10, Part I, service on the board of directors of a non-profit organization makes that organization a business with which one is associated. Conn. Gen. Stat. §1-79(b).

In this instance, Representative Frankel serves on the board of trustees of a non-profit entity. Although the term trustee,

not director, is used, the board in question has the same type and degree of policy making authority which a board of directors would normally possess in a business organization. In the Commission's opinion, a member of the board of trustees of a non-profit entity should be deemed to fall within the parameters of §1-79(b) whenever he or she possesses the general authority which a member of the board of directors of a for profit corporation would customarily exercise. To hold otherwise would frustrate the obvious legislative intent to include non-profit organizations within the current §1-79(b) definition of business with which associated.

Under §1-85 of the Code, a public official, including a member of the General Assembly, may not take official action on a matter, if the official has reason to believe or expect that an associated business will derive a direct monetary gain as a result. An exemption in §1-85 allows the official to act, however, if the benefit accrues to the associated business as a member of a group and is no greater than to any other member of the group of affected businesses. If a non-profit institution is awarded state bonding for expansion and renovation of its facilities, the institution will unquestionably derive a specific, direct financial benefit distinct from that accruing to any other similar entity. Therefore, since board membership makes the institution a business with which one is associated, a legislator/board member would be forbidden by §1-85 from taking any official state action on the specific bond authorization in question. Included in the term "official state action" are introduction of, debate on, or vote concerning the particular matter at issue, whether in committee or on the floor of the General Assembly.

If, however, the specific authorization becomes part of an overall bonding package, the legislator is not barred by §1-85 from taking action on the package. As the Commission has previously stated:

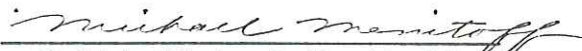
To hold otherwise would result in a legislator being precluded from taking official action on the State's budget, revenue plan, or bonding package, when the official has a substantial conflict regarding only a small portion of the overall matter under consideration. Such an interpretation would, in the Commission's opinion, go beyond the legislative intent, and too frequently deprive constituents of fundamental representation by their elected officials. The public interest is

sufficiently served, under the requirements of the Code of Ethics, if the legislator abstains from official action only when the matter posing the substantial conflict is specifically being considered. The legislator must, of course, continue to refrain from comment on the specific matter creating the conflict during any debate on the overall legislation. Ethics Commission Advisory Opinion No. 90-5, 51 Conn. L.J. No. 32, p. 8C (February 6, 1990).

In closing, the Commission notes that during the recently concluded legislative session it proposed an amendment to §1-79(b). The amendment reads as follows: "A public official or state employee, or member of his or her immediate family, shall not be deemed to be associated with a business solely by virtue of service as an unpaid director or officer of a not for profit entity." The Commission believes it is anomalous and unnecessary to include in the Code of Ethics a provision which results in restrictions on uncompensated activity for charitable, educational, and other non-profit organizations. When a legislator serves on the board of a local hospital, school or similar institution and also supports bonding or other beneficial legislation for that non-profit entity, he or she is merely engaging in the type of community service and representation which his or her constituents would normally expect and approve. Such conduct is clearly distinguishable from the misuses of public office for personal profit which the Ethics Code is primarily intended to prevent.

Regrettably, the proposed amendment to §1-79(b) was not enacted by the General Assembly. Unless and until such a change is approved, the Ethics Commission has no alternative but to apply the requirements of the Code of Ethics to unpaid members of boards of non-profit entities in the same way as the requirements are applied to compensated corporate directors.

By order of the Commission,


Rabbi Michael Menitoff
Chairperson

Dated 6-8-90

