



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 90-8

"Discretionary Power" under Regulations of
Connecticut State Agencies §5-266a-1

Ms. Betty McCree, an Investigator with the Commission on Human Rights and Opportunities (CHRO), has asked whether she can maintain her position as an elected member of the Stamford Board of Education.

Under Regulations of Connecticut State Agencies §5-266a-1:

(a) There is a conflict of interests which precludes a person in State service from holding or continuing to hold elective municipal office when one or more of the following applies:....

(2) The classified State employee has an office or position which has discretionary power to....

(C) Institute or recommend actions for penalties against the incumbent of the municipal office incident to the incumbent's election or performance of the duties of said office....

Ms. McCree is presently assigned to the Southwest Region office of the CHRO in Bridgeport which has jurisdiction over the Stamford Board of Education. While she has been on the Board of Education, she has not been assigned to any municipal or Board of Education cases in Stamford. She has requested a transfer to the Hartford office of the CHRO where she would not have jurisdiction over the Stamford school district.

Section 5-266a-1 was recently amended. Previously, under the regulation:

(a) There is a conflict of interests which precludes a person in State service from holding or continuing to hold elective municipal office when one or more of the following applies:....

(2) The department or agency in which a classified State employee has an office or position has discretionary power to:....

(C) Institute or recommend actions for penalties against the incumbent of the municipal office....

The recent amendment to §5-266a-1 narrowed its application in two ways. Now, an employee is prohibited from holding elective municipal office only when he or she has discretionary power. Previously, an employee could not hold elective municipal office if he or she worked in an agency that had discretionary power, regardless of whether the employee had any discretionary power. The regulation has also been narrowed to apply only to the imposition of penalties related to the municipal official's election and the performance of the elective municipal office. Previously, the regulation applied to the imposition of any type of penalty against the incumbent of the elective municipal office.

These changes to §5-266a-1 indicate an intent on the part of the Commission to limit only the activities of employees with actual discretion to impose penalties on the elected municipal official. The fact that Ms. McCree has not been assigned any Board cases is not enough to bring her into compliance with §5-266a-1 since she still does have the discretionary power to institute penalties against Board members. If, however, Ms. McCree's job responsibilities can be legitimately altered so as not to include jurisdiction over the Stamford Board of Education she can maintain her position as an elected member of the Board.

By order of the Commission,



William A. Elrick
Chairperson

Dated 2-5-90