



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 91-13

Meaning of "Party To The Contract" As Used in §1-84b(d)

In February, 1990, the Tennis Foundation of Connecticut (TFC) entered into an agreement with Jewel Productions Ltd. (Jewel), owner of the right to produce the Volvo International Tennis Tournament (VITT), to relocate the VITT to a stadium which the TFC proposed to build in New Haven on property owned by Yale University. The applicant, as the Deputy Commissioner of the Department of Economic Development (DED), was instrumental in securing support and funding for the project of bringing the VITT to New Haven and, in August, 1990, signed an assistance agreement on behalf of DED which granted \$18 million to TFC for construction of a tennis stadium and appurtenant facilities. The applicant, who left state service less than one year after the agreement was signed, has requested an advisory opinion on the issue of whether he may now accept employment with Jewel and, if so, whether he may become involved in soliciting an additional \$2 million from the State of Connecticut for further improvements to the stadium, which is currently under construction.

Conn. Gen. Stat. §1-84b(d) states that "[n]o former public official or state employee who participated substantially in the negotiation or award of a state contract obliging the state to pay an amount of fifty thousand dollars or more, . . . shall accept employment with a party to the contract other than the state for a period of one year after his resignation from his state office or position if his resignation occurs less than one year after the contract is signed." The applicant participated substantially in the negotiation and award of the State's \$18 million grant to TFC. The purpose of the grant was to allow the TFC to build a stadium suitable for the VITT, based upon Jewel's commitment to relocating the tournament. Jewel, while not a named beneficiary of the grant from the state, is at least a third party beneficiary of the contract. See Stowe v. Smith 184 Conn. 194 (1981). Jewel is also a member of the TFC.

In Ethics Commission Advisory Opinion No. 88-5, 49 Conn. L.J. No 43, p. 46B (April 26, 1988), the Commission considered whether a partnership which entered into a contract with the State was distinguishable from a corporation whose president was one of the partnership's general partners. In that case the Commission found that for purposes of Conn. Gen. Stat. §1-84b(d), the extent to which the corporation and the

partnership overlapped prevented a state employee who had participated in the contract process from accepting employment, within one year, with either the partnership or the corporation. In the instant case, the purpose of the agreement between DED and TFC was not merely to build a stadium, but to build one which would be suitable for the major tennis tournament operated by Jewel. The mutual obligations between TFC and Jewel both predated and were contingent upon the funding of the facility by the State of Connecticut. As a result not only of its membership in the TFC but of its role in the underlying premise of the contract, Jewel must be considered a "party to the contract" between DED and TFC within the meaning of Conn. Gen. Stat. Sec. 1-84b(d). The applicant, therefore, may not accept employment with Jewel within one year after leaving state service.

Subsection 1-84b(a), General Statutes, states that "[n]o former executive branch or quasi-public agency public official or state employee shall represent anyone other than the state, concerning any particular matter (1) in which he participated personally and substantially while in state service and (2) in which the state has a substantial interest." The construction of a tennis facility in which the State has invested \$18 million is unquestionably a matter in which the State has a substantial interest. The solicitation of support and funding for the tennis facility is a particular matter in which the applicant participated personally and substantially while in state service. He may never, therefore, represent Jewel, or any other person or entity other than the state, concerning the solicitation of funds from the State for construction of the stadium.

In addition, the applicant is cautioned that, as a former state employee, he may never use or disclose confidential information gained in state service for the financial benefit of any person and he may not, for one year after leaving state service, for compensation, represent anyone, other than the state, before the DED concerning a matter in which the state has a substantial interest. Conn. Gen. Stat. §§1-84a, 1-84b(b).

By order of the Commission,

Rabbi Michael Menitoff

Rabbi Michael Menitoff
Chairperson

Dated 5-6-91