STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 91-1

Application of the Code of Ethics for Public Officials to Governor Weicker's Loaned Executive Program For State Service

Attorney Lawrence Halloran, representing Governor-Elect Weicker, has asked the Ethics Commission for guidance regarding the implementation of the Governor-Elect's Loaned Executive Program for State Service.

The Loaned Executive Program was first announced during the recently completed campaign. The Program called upon Connecticut's corporations, unions, non-profit organizations and other institutions to donate the time and talent of some of their most qualified executives to the State. The response from the private sector has been positive, and the Governor-Elect's Office now wishes to proceed in accordance with the requirements of the Code of Ethics.

Specifically, Attorney Halloran has asked whether, under the conflict of interest and post-state employment provisions of the Code of Ethics for Public Officials, Connecticut General Statutes Chapter 10, Part I, the State may employ individuals from the private sector, principally in positions such as executive assistant, unit chief, or consultant, while these individuals retain employment relationships with their present employers. As currently envisioned, these employment relationships could assume various forms. One plan would have the private employer continue to pay the executive's current private sector salary and benefits while the individual is "on loan" to the State. Alternatively, the employment relationship could involve a return agreement or address such matters as pension, insurance and seniority rights.

As the Ethics Commission has previously stated, when a private entity which is regulated by, does business with, or lobbies the State voluntarily pays for state services or functions, there is the inherent potential for conflicts of interest, both real and apparent. Ethics Commission Advisory Opinion No. 88-3, P.2, 49 Conn. L.J. No. 38, p. 5C (March 22, 1988). Nonetheless, in recognition of the valid role these

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"gifts to the state" can play (and in grudging recognition of their seemingly inexorable advance) the Commission, by regulation and opinion, has established a gift to the State exemption to the Codes' gift restrictions. The regulation and rulings state that the Codes' gift limitations, which deal with gifts for personal use or benefit, shall not prohibit gifts of goods and services to the State, which gifts facilitate the execution of state action or functions. Regulations of Conn. State Agencies §1-92-51; Ethics Commission Advisory Opinion No. 89-35, 51 Conn. L.J. No. 28, p. 1C (January 9, 1990).

The donation to the State of the services of an executive by a private entity would clearly qualify under the above standard as a gift of services which facilitate the execution of state action. Additionally, the Loaned Executive Program, even in its fullest manifestation, would not appear <u>ab initio</u> to violate any specific conflict of interest or post-state employment provision of the Code. (Thus, for example, under the conflict of interest provisions, the outside employment relationship would not violate §1-84(b)'s proscription on <u>acceptance</u> of other employment which impairs independence of judgment, since the relationship in question is a preexisting one. Similarly, under the post-state employment provisions, §1-84b(C)'s one-year ban on certain senior regulatory officials <u>accepting</u> employment with a business subject to regulation by their agency would not be breached when the individual returned to the private sector, again because the preexisting employment relationship eliminates the requisite act of acceptance.)

The fact that the Program in question can be implemented in technical compliance with the provisions of the Code of Ethics does not, however, alleviate all the Ethics Commission's concerns. One scenario will serve to illustrate these misgivings. If a large regulated entity (<u>e.g.</u>, bank or insurance company) donates the services of an executive to work as an executive assistant in the department or agency which regulates the entity, the potential for misuse of public office for the financial benefit of the private employer/benefactor would seem apparent.

Under the provisions of the Code, official actions and other uses of office which significantly affect the financial interests of the officeholder, his or her family, or an associated business are strictly regulated. <u>See</u> Conn. Gen. Stat. §§1-84(c), 1-85, and 1-86. The Code's definition of an associated business, however, includes only those entities in which the individual, or a member of his or her immediate family, is a director, officer, owner, limited or general

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Under the provisions of the Code, official actions and other uses of office which significantly affect the financial interests of the officeholder, his or her family, or an associated business are strictly regulated. See Conn. Gen. Stat. §§1-84(c), 1-85, and 1-86. The Code's definition of an associated business, however, includes only those entities in which the individual, or a member of his or her immediate family, is a director, officer, owner, limited or general partner or holder of 5% or more of the total outstanding stock of any class. Conn. Gen. Stat. §1-79(b). Under this definition, "officer" refers only to the president, executive or senior vice-president or treasurer of the business. Id. As a result, if, as part of the Loaned Executive Program, the vice-president of investment at a large Connecticut financial institution was appointed to the position of executive assistant in the department which regulates the institution, the individual could, under the Code of Ethics, act without restriction on matters affecting the financial interests of the private employer.

Given the unique financial ties between the executive/officeholder and the private employer/donor under the Loaned Executive Program, the Ethics Commission believes the current restrictions of the Code regarding acts affecting one's employer are inadequate to protect fully the public interest. Therefore, the Commission recommends to the Governor-Elect that participants in the Program serving as public officials or state employees agree to treat their private employer as an associated business for purposes of the Code, regardless of whether required to do so by virtue of their interest or position in the private entity. Additionally, the Commission recommends that consultants appointed under the Program agree to abide by all applicable provisions of the Code and to similarly treat their private employer as an associated business for Code purposes, irrespective of their private position. (At present, despite Commission attempts to enact remedial legislation, consultants functioning as independent contractors are not considered "public officials" or "state employees" under the Code and are, therefore, not legally subject to any of its restrictions.)

Under ordinary circumstances, the Ethics Commission is loath to use its advisory powers to suggest such extralegal procedures. The innovative approach proposed by the new administration in the form of the Loaned Executive Program, however, presents extraordinary circumstances that call for an extraordinary response. The proposed additional safeguards should help insure Connecticut's citizens of the integrity of the Program and its personnel and will serve as significant impediments to any attempt to misuse the public trust.

The Ethics Commission acknowledges the potential benefits of the Loaned Executive Program in State Service to the State and its citizens. In recognition of these potential benefits, the Commission is willing to give its qualified endorsement to a program which is unquestionably fraught with possible conflicts of interest. In issuing this endorsement, the Commission relies in large part on the new administration's obvious sensitivity to ethical issues and its pledge to place individuals in positions which minimize the opportunity for actual conflicts. Additionally, the Commission chooses to presume that the participants in the Loan Executive Program will be honest and ethical in their conduct. The Ethics Commission will be vigilant in assuring that this is, and remains, the case.

By order of the Commission,

Rabbi Michael Menitoff

Rabbi Michael Menitoff
Chairperson

Dated 1-7-91