



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 91-5

Restrictions Placed on Legislator's Actions Due
To His Financial Interest In a Project Seeking
State Funding

Senator Gary A. Hale has asked the Ethics Commission whether under the Code of Ethics for Public Officials his involvement in the sale of real estate to a nonprofit agency financed by state bond funds constitutes a conflict of interest.

Training, Employment, and Manpower, Inc. (TEAM), a nonprofit organization, has applied for a grant through the Department of Human Resources (DHR) to purchase and renovate four buildings to provide temporary housing for the homeless and victims of domestic violence. Three of the buildings are located on Hawkins Street in Derby and the fourth is located on Beaver Street in Ansonia. Senator Hale has stated that at one time he was the co-signer on a promissory note secured by the property in Derby but that note has since been released. However, he has been involved in several other real estate ventures with the current owners, Mr. William Eheman and Mr. John Coughlin. At one point, Senator Hale did have an ownership interest in the Ansonia property but transferred that interest several years ago to Mr. Eheman. He still, however, remains as a co-signer of \$250,000 mortgage note to the bank. Senator Hale further states that Mr. Eheman and Mr. Coughlin have agreed to hold him harmless against any liability he might have under the note or other obligations related to this real property. TEAM's grant application contains two recent independent appraisals which indicate an average assessment of \$370,000 for the Ansonia property.

Specifically, Senator Hale has asked the following: (1) Does he have a possible conflict of interest in relation to the three Derby properties because of his business association with the current owners? (2) Does he have a financial interest in the Beaver Street property and if so what restrictions should be placed on him in his capacity as senator? and (3) Do the restrictions change if he is assigned to the General Assembly's Joint Committee on Finance, Revenue and Bonding or its subcommittee on bonding?

The Commission has previously addressed the issue raised by Senator Hale's first question. In general, the Code of Ethics for Public Officials, Conn. Gen. Stat. Chapter 10, Part I, attempts to prevent abuse of the public trust by prohibiting state servants from using their office or position for the private financial benefit of oneself, one's family, or one's business. In a prior advisory opinion, it was held that a "legislator cannot have a conflict when his or her actions benefit a client, customer, business associate, or friend, unless the official (or his or her family or business) also benefit". Ethics Commission Advisory Opinion No. 90-6, 51 Conn. L.J. No. 35, p. 3D (February 1, 1990). The fact that Senator Hale owns several other parcels of property with either Mr. Eheman or Mr. Coughlin is not relevant under the Code. Therefore, since Senator Hale has no financial interest in the three Derby properties, he may act without restriction in regards to those specific properties.

Senator Hale states that he did, however, previously have an ownership interest in the Ansonia property. In fact, he still is named as an obligor on the mortgage note. As far as the bank/mortgagee is concerned, Senator Hale remains financially and legally responsible for the balance of the amount owed on the property. Neither the existence of a hold harmless agreement nor the appraisal value of the property is a controlling factor in determining whether or not he has a financial interest. If the other mortgagors are not able to meet the financial obligations of the terms of the mortgage, then the hold harmless agreement will not relieve Senator Hale of his obligation under the indebtedness. Likewise, an appraisal of the property which exceeds the debt does not guarantee that the proceeds from a sale of such property will be sufficient to satisfy the indebtedness, especially in today's real estate market. Consequently, it is the Commission's position that when one is personally liable for a debt secured by real estate then that individual has a financial interest in such real property under the Code. This interpretation of the term "financial interest" is consistent with other sections of the Code. For example, the annual statement of financial interests which must be filed by members of the General Assembly includes the disclosure of debts. See Conn. Gen. Stat. §1-83(b)(1)(F).

Since Senator Hale has a financial interest in the Ansonia property, his actions regarding this property must be restricted. Specifically, Conn. Gen. Stat. §1-85 prohibits a public official, including an elected state official, from taking official action "if he has reason to believe or expect

that he . . . will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity". Included in the term "official 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. See Ethics Commission Advisory Opinion No. 90-17, 52 Conn. L.J. No. 1 p. 3E (July 3, 1990). Therefore, Senator Hale must refrain from the above-described actions as they relate to the TEAM proposal, since the approval of bonding funds for the project would result in the certain sale of the property and his subsequent release from any potential liability on the mortgage note. If, however, the TEAM proposal becomes part of an overall bonding package, Senator Hale is not barred by §1-85 from taking action on the package. See Ethics Commission Advisory Opinion No. 90-5, 51 Conn. L.J. No. 32, p. 8C (February 6, 1990).

Under the Code, there are two additional provisions of possible relevance to the questions Senator Hale has posed. Conn. Gen Stat. §1-84(b) prohibits acceptance of outside employment (i.e. any form of endeavor for profit) which will impair independence of judgment as to official duties or require or induce disclosure of confidential state information. Conn. Gen. Stat. §1-84(c) forbids use of public position or office, or confidential information acquired through such position or office, for the financial benefit of oneself, one's family, or an associated business. The Commission has been disinclined, however, to adopt a strict interpretation of the use of office and acceptance of outside employment provisions as they apply to members of Connecticut's part-time General Assembly.

A great number of legislators must, of economic necessity, pursue outside employment while in public service. Consequently, a bar on outside economic endeavors has been mandated only "when these conflicts, both real and apparent, are so significant as to require prohibiting the conduct in question". Advisory Opinion No. 89-7, 50 Conn. L.J. No. 44, p. 1C (May 2, 1989) (Chairman of the Labor and Public Employees Committee should not accept employment representing clients before the Workers' Compensation Commission because of his significant authority over the Commission). See also Advisory Opinion Nos. 89-28, 51 Conn. L.J. No. 17, p. 3C (October 24, 1989) (Chairman of the Banks Committee should not accept employment as an agent for investors seeking to purchase a bank, if the bank in question is subject to his Committee's authority or interested in legislation pending before the Committee) and 87-13, 49 Conn. L.J. No. 20, p. 1C (November 17, 1987) (Chairpersons and ranking members of Finance, Revenue, and

Bonding Committee as members of Bond Commission, should not participate in bond funded State Farmland Preservation Program). As the above referenced opinions indicate, in general, the Commission has found an unacceptable conflict when a Legislative Committee Chairperson engages in certain outside economic activity before or involving entities directly subject to his or her official cognizance. The Commission has not, however, extended this rationale to the rank and file of the General Assembly. To do so, in the Commission's opinion, would unnecessarily restrict the outside employment of legislators. Furthermore, a ban on all legislator appearances before state agencies, or other similar restrictions, could well exceed the Commission's authority and amount to legislation by administrative fiat.

Therefore, since Senator Hale is not Chairperson of a committee with jurisdiction over the matter under review, he may, as a private person, appear before the committee on Finance, Revenue and Bonding (including its subcommittee on Bonding) or the Bond Commission regarding a matter that advances his own financial interests. He may not, however, in any way trade on his position as a Senator in order to receive favorable treatment from a state agency or legislative committee, including taking official action as a quid pro quo for any other business deal, opportunity, or advantage, without violating the Code. See Conn. Gen. Stat. §§1-84(c), 1-84(f), 1-84(g).

Lastly, Senator Hale has asked if the restrictions described above would be different if he were to become a member of the General Assembly's Joint Committee on Finance, Revenue and Bonding or its sub-committee on bonding. As discussed supra, membership on the committee of cognizance is, in and of itself, not sufficient to require barring the outside activity or transaction in question. If, however, Senator Hale becomes Chairperson of the Committee, TEAM may not submit its application to the Committee for approval, if it includes property in which Senator Hale has a financial interest (i.e. the Ansonia property). Additionally, the same restriction would apply if Senator Hale was made Chairperson of the subcommittee on Bonding, because of the unique authority that position has over bonding requests. Absent Senator Hale assuming either of these two chairpersonships, the TEAM request may go forward. If it does, as discussed previously, Senator Hale must recuse himself from official action regarding the matter including official action on any competitor of TEAM, since there are a limited amount of state funds available for such programs funded via DHR. If Senator Hale finds that he must recuse himself so frequently that he cannot adequately fulfill his role on the

committee or if he is unable to properly serve his constituents because of the conflict, then he should not remain a member of the committee.

Finally, although TEAM's application for state funds does not fall within the parameters of Conn. Gen. Stat. §1-84(i) because Senator Hale's financial interest, the debt, does not make the property partnership a business with which he is associated under the Code, it appears that the open and public process for awarding state contracts mandated by that subsection has been followed. The Commission must presume that the agency which received the initial request for funds and any subsequent oversight agency, both DHR and the Bond Commission in Senator Hale's case, will take all the necessary steps to ensure the public that the applications, appraisals, or any other required information have been filed in good faith. The open and public process involved in the application and approval of funding should preserve the integrity of the program.

By order of the Commission,

Rabbi Michael Menitoff

Rabbi Michael Menitoff
Chairperson

Dated 1-7-91

