



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 91-8

Application of the Code To A Legislator's
Private Real Estate Transaction

In response to a request for review from the Attorney General and an essentially contemporaneous request from Representative Oskar Rogg, the Ethics Commission has decided to issue an advisory opinion regarding the following situation.

Approximately two years ago, Environmental Recovery Systems (ERS) determined to build a garbage recycling and composting plant in New Milford. The site selected by ERS for the project was in the northern section of the town. In response, certain town residents began to organize against the proposed plant. As a result, some 2500 citizens of New Milford have signed a petition opposing the ERS project.

In mid-November of 1990 ERS announced that it was abandoning plans to construct its plant at the site initially chosen. Instead, the company stated that it had signed a two-year option to purchase a 30 acre parcel in the southern part of New Milford for the project in question. This parcel is owned by Representative Rogg and his family. Subsequent to the announcement, Representative Rogg stated that, because of his family's financial interest in the project, he will not become involved in any state proceedings regarding the issue. No materials received by the Ethics Commission incident to the issuance of this Opinion show official involvement by Representative Rogg in any state proceeding concerning ERS, either before or after the option agreement was signed.

In a letter to the Attorney General which initiated this process, Arthur L. Carter, publisher of The Litchfield County Times, questioned both the timing of the option agreement and the fact that, as a result of the agreement, the residents of New Milford are now being denied Representative Rogg's representation concerning this issue. In his letter, Mr. Carter asks whether Representative Rogg's conduct in this matter constitutes an "...illegal conflict of interest or other violation of law."

The Ethics Commission has been called upon with increasing frequency of late to address the issue of possible conflicts of interest engendered by business dealings involving a member of the General Assembly or his or her clients or associates. As the resultant advisory opinions have stated, in applying the provisions of the Code of Ethics for Public Officials, Connecticut General Statutes, Chapter 10, Part I, the Commission has consistently differentiated between full-time public servants and Connecticut's part-time legislators. Ethics Commission Advisory Opinion No. 90-6, 51 Conn. L.J. No. 35, p. 3D (February 27, 1990).

In essence, recognizing the economic necessity for the vast majority of the members of the General Assembly to engage in outside financial endeavors, the Commission has sought to prohibit or restrict these activities only when presented with an unavoidable conflict of interest or other specific violation of the Code. See, e.g., Ethics Commission Advisory Opinion Nos. 89-7, 50 Conn. L.J. No. 44, p. 1C (May 2, 1989) and 89-28, 51 Conn. L.J. No. 17, p. 3C (October 24, 1989). Simply stated, absent such a conflict or other impermissible course of conduct (e.g., quid pro quo for use of office, misuse of confidential information, etc.) it is beyond the authority of the Commission to prohibit a private transaction, such as the sale of property in question.

Once having entered into such a transaction, however, a public official is, of course, required to abide by all applicable Code provisions. Specifically, pursuant to Conn. Gen. Stat. §1-85, Representative Rogg is required to recuse himself from any official legislative action (including both discussion and voting at both the committee level and on the floor of the House) which would specifically and directly affect the proposed plant and, consequently, affect his, and his immediate family's, financial interests in the project. Additionally, pursuant to Conn. Gen. Stat. §1-84(c), Representative Rogg is precluded from in any way using his official authority to seek to advance the project (e.g., contacting the Department of Environmental Protection in his official capacity to seek to obtain any necessary permits or approvals for the ERS plant).

While strict adherence to these Code provisions will insure that Representative Rogg does not misuse his office for private gain, this solution does not address, nor can it, Mr. Carter's stated concern that "[t]he people of New Milford have, in effect, been disenfranchised". Concerns of this nature, while understandably of great importance to those affected by the ERS project, are beyond the scope of the Code of Ethics for Public

Officials. Rather, any claim that Representative Rogg may, in this instance, have placed his private financial gain above or against the interests of his constituents must, in the Commission's judgment, be addressed through the political process.

Finally, the request for review also encompassed the conduct of Representative Rogg's brother, New Milford Mayor Walter Rogg. The State's Code of Ethics for Public Officials does not, however, extend to municipal officials. Therefore, the Commission has no authority to address this facet of the matter.

By order of the Commission,

Rabbi Michael Menitoff

Rabbi Michael Menitoff
Chairperson

Dated 3-4-91

