



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 92-10

Application Of Revolving Door Limitations To Activities Of
Former Head Of Special Revenue As Employee Of Pequot
Gaming Commission

William Hickey, former Executive Director of the state Division of Special Revenue ("DOSR") and ex officio member of the Gaming Policy Board, has asked how the revolving door provisions of the Code of Ethics for Public Officials apply to specific actions he has taken as an employee of the Mashantucket Pequot Tribal Gaming Commission ("Tribal Commission").

In the course of his job with the Tribe, Mr. Hickey met with the new director of DOSR and his deputy director in August of 1991 to advise them of the position he had accepted with the Tribal Commission and the role he would be playing in its regulatory functions. In September, he and other tribal representatives met with DOSR's deputy director and another DOSR employee to discuss the Tribal Commission's planned regulatory program and DOSR's plans regarding licensing and background investigations, and to tour the casino construction site. As a result of the September meeting, Mr. Hickey made inquiries to DOSR regarding the progress of draft casino employee application forms. In November, he received the final draft form from DOSR. The Tribe was asked to review the form prior to printing. After other tribal officials performed the review, Mr. Hickey advised DOSR that the Tribe had no objection to the forms and told DOSR how many forms were needed..

Under the Compact between the State and the Tribe, other types of gaming (e.g., off-track betting) are permitted on the reservation. In connection with discussions regarding whether to tie in to the state system, Mr. Hickey met and corresponded with DOSR people to gather information on the practicality of doing so. He also attended a public DOSR meeting held in part to educate prospective bidders regarding the State's plans to privatize the off-track betting system.

In October, Mr. Hickey attended a Gaming Policy Board public meeting, intending to listen and report back to the Tribal Commission on the current status of the State's gaming regulation and operations. At one point during the meeting (and without prior notice) Mr. Hickey was called upon to present an update on the casino's construction.

Finally, in connection with a Compact provision which requires certain Tribal Commission game rules to mirror similar

state provisions, Mr. Hickey contacted DOSR's Manager of Charitable Gaming for information regarding the State's Las Vegas night rules.

In September of 1991, the Ethics Commission issued an advisory opinion holding that Mr. Hickey's employment by the Tribal Commission did not fall within the limits of Conn. Gen. Stat. §1-84b(c) (which prohibits the employment of certain top state officials by businesses regulated by their former agencies in the first year after leaving state service) because the term "business" was not intended to include a governmental entity such as the Tribal Gaming Commission. The Commission stated that Mr. Hickey's employment was subject to the Code's other revolving door provisions, however. See Ethics Commission Advisory Opinion No. 91-23, 53 Conn. L. J. 15, p. 1D (10/8/91).

Conn. Gen. Stat. §1-84b(b) prohibits a former public official or state employee from representing anyone, other than the state, for compensation before the agency in which he served at the time of his termination from state service, concerning any matter in which the state has a substantial interest. "Representation" includes any action which reveals the identity of the individual, e.g.; a personal appearance, phone call, signature on a document, or designation on a firm's letterhead. See, Ethics Commission Advisory Opinion No. 91-24, 53 Conn. L. J. 16, p. 1C (10/15/91).

The Tribe and Mr. Hickey have stated that they believed that in working for a governmental entity like the Tribal Commission, Mr. Hickey was not providing representation prohibited by the Code. However, the fact that Mr. Hickey has accepted employment with a governmental entity rather than with a private business does not vitiate the applicability of this prohibition. Whether Mr. Hickey goes to work for another nation or another state, the rule remains the same: he may not represent his new employer before his former agency for a year.

The Ethics Commission has recognized one limited exception to the blanket prohibition of §1-84b(b). See Ethics Commission Advisory Opinion No. 88-15, 50 Conn. L. J. 15, p. 3D (10/11/88). In that opinion, a mid-level state employee who worked for the Office of Policy and Management ("OPM") was allowed to meet and work with OPM employees within a year of her separation from state service. Under the opinion, contact with her former agency was limited to technical implementation of a project which was already in place when she left state service.

The Commission held that, provided there was no opportunity for the exercise of any discretionary authority on the part of OPM, the legislative intent of the Code section (to prevent the improper use of contacts within the one-year cooling off period)

was not circumvented by this employee's contact with her former agency in connection with the technical implementation of an already-executed contract, no portion of which was in dispute. In effect, the former state employee was performing technical work which aided the State, although her salary was paid by her private employer.

Mr. Hickey's situation is quite different. First, at the time of his contacts with DOSR, at least some matters were still at issue between the State and the Tribe. Although both the State and the Tribe clearly share the goal of proper law enforcement, they are two sovereign entities with their own interests, answerable to two separate constituencies. While it is true that the Compact's content in large part dictates the relationship between the parties, it is equally true that a number of issues, all dealing with the sensitive subject of gaming, were left to be resolved. Therefore, two aspects of the exception -- the lack of opportunity for the agency to exercise discretionary authority and the technical implementation of an executed, undisputed contract -- were not present here.

Furthermore, although most, if not all, of Mr. Hickey's activities when taken separately may appear ministerial in nature, together they constitute an inappropriate reminder of his new role. The former head of an agency has been too involved in all aspects of running that agency to be able to return within a year even for purely technical matters. It is not practical to expect his former subordinates or replacement to discuss only the most noncontroversial matters with the former chief policy-maker of the agency. See Ethics Commission Declaratory Ruling No. 90-A, (1/8/90).

The exception found in Advisory Opinion No. 88-15 applies to former state employees who exercised little influence in their state jobs, and whose subsequent contact with the State in the first year after leaving state service is limited in the ways described above. Although not expressly set forth in that opinion, this exception was not intended to, and does not, apply to former senior-level state officials or employees.

By order of the Commission,


Astrid T. Hanzalek
Chairperson

Dated 3-2-92