



STATE OF CONNECTICUT  
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 92-21

Application Of Conn. Gen. Stat. §1-84(d) To Administrative  
"DWI" Hearings Held Pursuant To Conn. Gen. Stat. §14-227b

Ethics Commission Staff Attorney Brenda M. Bergeron has asked whether administrative hearings which are held following a driver's arrest for driving while intoxicated are excepted from the general prohibition of Conn. Gen. Stat. §1-84(d) against appearances, by public officials and state employees and their associates, before the Department of Motor Vehicles (DMV).

Conn. Gen. Stat. §14-227b provides, in pertinent part, that a person who has been arrested for operating a motor vehicle while under the influence of alcohol or drugs and who either refuses to submit to a blood, breath or urine test, or who takes such a test and is found to have been legally intoxicated, shall have his driver's license immediately revoked and replaced, twenty-four hours later, with a temporary operator's license. Upon receipt of the report of the arrest, the Commissioner of Motor Vehicles suspends the person's driver's license.

Any person whose license has been suspended, as above, is entitled to an administrative hearing "before the commissioner [of motor vehicles]," which hearing is limited to four issues: 1. Did the arresting office have probable cause to make the arrest; 2. was the person arrested; 3. did the person refuse or fail a blood, breath or urine test; and 4. was the person driving the car. If the answer to any one of the questions is "no," the person's license is reinstated. If the answers to all questions are "yes," or if the person fails to request a hearing, the commissioner affirms the suspension for a term ranging from ninety days to two years. See Conn. Gen. Stat. §§14-227b(d)-(h).

The above-referenced hearings, known as "per se" hearings, are conducted by attorneys hired by the State to act as hearing officers, on a part-time basis, for hourly compensation. In general, attorneys who accept positions as per se hearing officers are also engaged in the private practice of law. Hearing officers transmit their findings to the DMV within twenty-four hours of each hearing, and within forty-eight hours of each hearing the DMV issues its decision letter, based upon the hearing officer's findings.

It has been suggested that representing a client before a per se hearing officer, under the above circumstances, may not constitute an appearance before the Department of Motor Vehicles, within the meaning of Conn. Gen. Stat. §1-84(d). The Ethics Commission finds that it does. Section 14-227b requires that persons who have been arrested for driving while intoxicated be provided the opportunity for a hearing before the Commissioner of Motor Vehicles. A hearing officer's findings form the sole basis of the DMV's decision to reinstate, or suspend, a driver's license. To conclude that per se hearing officers act other than as agents of the Commissioner and of the DMV would be to ignore the unambiguous language of §14-227b. An appearance before a per se hearing officer is, therefore, an appearance before the DMV, within the meaning of Conn. Gen. Stat. §1-84(d).

By order of the Commission,



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Christopher T. Donohue  
Chairperson

Dated 9-14-92