



# STATE OF CONNECTICUT

## OFFICE OF STATE ETHICS

### Advisory Opinion No. 2014-2

February 27, 2014

**Question Presented:**      **The petitioner asks whether the Speaker of the House may accept outside employment as the New Business Development Manager for Everyone Can Help Out.**

**Brief Answer:**              **We conclude that the Speaker may accept the proposed outside employment, provided that he does not solicit business from either client or communicator lobbyists, that he is hired by virtue of his expertise (rather than his state office), and that he abides by the limitations discussed herein.**

At its February 2014 regular meeting, the Citizen’s Ethics Advisory Board granted the petition for an advisory opinion submitted by Richard F. Baltimore, Chief Legal Counsel to the Speaker of the House. The Board now issues this advisory opinion, which interprets the Code of Ethics for Public Officials (“Ethics Code”),<sup>1</sup> is binding on the Board concerning the person who requested it and who acted in good-faith reliance thereon, and is based on the facts provided by the petitioner.

#### **Facts**

The Speaker of the House would like to accept employment with Everyone Can Help Out (“ECHO”), which, according to its website, is “the sustainability enterprise” of Energy New England, LLC, “an

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<sup>1</sup>Chapter 10, part I, of the General Statutes.

energy cooperative owned by municipal utilities.” ECHO “helps municipals, commercial customers and consumers realize the full benefits available through energy conservation and sustainability solutions.”

The employment position in question is that of New Business Development Director, and its duties are as follows:

Professional is responsible for identifying, qualifying and securing new business on behalf of ECHO SM, the sustainability enterprise of Energy New England, LLC (ENE). ECHO SM offers a comprehensive portfolio of solutions that help our customers to secure savings, optimize operations, generate revenues and promote environmental stewardship. Specific areas of focus include: the brokering of demand-side management services, including energy efficiency, energy commodities, demand response; as well as the sale of consulting and proprietary technology services; and related solutions-based offerings.

Key targets include investor and municipal utilities; water companies; and institutional, commercial and industrial accounts. The territory is located in Southern New England, and the candidate must be geographically situated in or near this territory. This position will report to ECHO’s senior officer.

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The compensation for the Business Development Manager shall be comprised of several components: 1) competitive base salary; 2) sales commissions; and 3) performance-based incentives.

The petitioner adds that the Speaker does not expect to interact with lobbyists as part of his job duties; that neither ECHO nor Energy New England, LLC, is a registered lobbyist in Connecticut; and that neither entity is currently seeking or expecting to seek any legislative action from the Connecticut General Assembly.

### Analysis

As a member of the General Assembly, the Speaker is a “public official”<sup>2</sup> and thus subject to the Ethics Code, including its two principal outside-employment provisions, General Statutes § 1-84 (b) and (c). Generally, these provisions prohibit a public official from accepting outside employment that would impair his independence of judgment as to his official duties or that would be deemed a use of office for personal financial gain.

The former State Ethics Commission (“former Commission”) was historically reluctant to use these provisions to limit the outside employment activities of part-time members of the General Assembly. It did, however, set stricter outside-employment limitations when it came to the chairpersons of legislative committees. In light of their “enormous power,” they were prohibited by the former Commission “from accepting employment in an industry or engaging in an activity over which their committee ha[d] jurisdiction.”<sup>3</sup> In this case, the Speaker is a chairperson of one committee, the Joint Committee on Legislative Management, which “conducts the business affairs of the General Assembly.”<sup>4</sup> Because this committee has no jurisdiction over the industry in which the Speaker would like to accept employment, the Speaker’s role as its chairperson does not prohibit him from accepting the proposed outside employment.

The question now is whether his role as Speaker of the House prohibits the proposed outside employment. In all but one instance, the House Speaker has been held to the same outside-employment standard as other members of the General Assembly. In fact, in Advisory Opinion No. 97-19, the former Commission specifically declined to apply a more stringent standard to the then-House Speaker. The question there was whether he could represent clients before a Connecticut quasi-public agency. Although the former

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<sup>2</sup>See General Statutes § 1-79 (11).

<sup>3</sup>Citizen’s Ethics Advisory Board, Declaratory Ruling 2011-A.

<sup>4</sup>That is, it is “responsible for the operation of the General Assembly, coordination and supervision of committee work, improvement of legislative operations and deciding on matters of organization, procedures, facilities and working conditions of the General Assembly and compensation of employees of the legislative branch.” See Connecticut General Assembly website, Joint Committee on Legislative Management, available at <http://www.cga.ct.gov/lm/> (last visited February 19, 2014).

Commission had previously concluded that a chairperson of a legislative committee could not represent clients before the state agencies over which the committee has jurisdiction, it declined to apply a similar standard to the House Speaker. According to the former Commission, “[a]lthough it may be argued that the Speaker . . . wield[s] even greater power than individual committee chairpersons, it would be too far-reaching a restriction on a part-time legislator to prohibit the Speaker’s appearances per se before all state agencies.”<sup>5</sup>

The only exception comes from Advisory Opinion No. 2007-8, in which this Board concluded that it would be an inappropriate use of office for the Speaker to be paid by a nonprofit entity to solicit funds or sponsorships from lobbyists.<sup>6</sup> The Board reached this conclusion in light of the Speaker’s “significant power and authority,” noting that he would be creating “a situation that is coercive in the eyes of those solicited.”<sup>7</sup> According to the Board, “those who have business that is, or could be affected by [the Speaker’s] official actions, are expected, or at a minimum well-advised, to contribute to the [nonprofit entity] that compensates him, in order to secure preferential access or favorable treatment.”<sup>8</sup>

Here, the Speaker does not expect to interact with lobbyists as part of his job duties; neither ECHO nor Energy New England, LLC, is a registered lobbyist in Connecticut; and neither entity is currently seeking or expecting to seek any legislative action from the Connecticut General Assembly. Provided that the Speaker does not solicit business from either client or communicator lobbyists, as defined in General Statutes § 1-91 (21) and (22), the use-of-office concerns present in Advisory Opinion No. 2007-8 are not present in this case. In that case, the Speaker may accept the proposed employment with ECHO—assuming, of course, that he is hired, not by virtue of his state office, but rather by virtue of his expertise.<sup>9</sup>

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<sup>5</sup>Advisory Opinion No. 97-19, Connecticut Law Journal, Vol. 59, No. 25, p. 3D (December 16, 1997).

<sup>6</sup>Advisory Opinion No. 2007-8, Connecticut Law Journal, Vol. 68, No. 46 (May 15, 2007).

<sup>7</sup>Id., p. 10C.

<sup>8</sup>Id.

<sup>9</sup>See Advisory Opinion No. 2003-20 (“[State] Representative . . . is clearly utilizing her expertise in securities, as well as her specific experience in hotel and industrial management, in performance of her consulting work”).

However, in engaging in that employment, the Speaker must not do as follows:

- make any promise or imply that he will take any official action in exchange for favorable treatment of a client;<sup>10</sup>
- use his state title in any way in an effort to solicit business for the outside employer;<sup>11</sup>
- exploit contacts made in state service to recruit private clients for the outside employer;<sup>12</sup>
- create or permit the impression that he is acting on the state's behalf;<sup>13</sup>
- “trade on his [state] position . . . in order to receive favorable treatment . . . including taking official action as a quid pro quo for any other business deal, opportunity, or advantage”;<sup>14</sup>
- use state resources in furtherance of his outside employment;<sup>15</sup>
- represent ECHO before the state agencies listed in General Statutes § 1-84 (d);<sup>16</sup>
- have a substantial conflict of interest, as defined in General Statutes § 1-85;<sup>17</sup> or
- become a “lobbyist.”<sup>18</sup>

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<sup>10</sup>Citizen's Ethics Advisory Board, Declaratory Ruling 2011-A.

<sup>11</sup>Id.

<sup>12</sup>Id.

<sup>13</sup>Id.

<sup>14</sup>Id.

<sup>15</sup>Id.

<sup>16</sup>Section 1-84 (d) prohibits, among other things, a public official from agreeing “to accept . . . any employment, fee or other thing of value, or portion thereof, for appearing, agreeing to appear, or taking any other action on behalf of another person before” the eleven state agencies listed therein. Nothing in the New Business Development Manager position description indicates that any such representation is required.

<sup>17</sup> Id.

**Conclusion**

We conclude that the Speaker may accept the proposed outside employment with ECHO, provided that he does not solicit business from either client or communicator lobbyists, that he is hired by virtue of his expertise (rather than his state office), and that he abides by the limitations discussed herein.

By order of the Board,

Dated 2/27/14

/s/ Charles F. Chiusano  
Chairperson

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<sup>18</sup>See General Statutes § 1-86 (c). Nothing in the New Business Development Manager position indicates that “lobbying,” as defined in General Statutes § 1-91 (11), is required.