



STATE OF CONNECTICUT OFFICE OF STATE ETHICS

Advisory Opinion No. 2015-7

December 17, 2015

Question Presented: Whether General Statutes § 1-84b (b), the “cooling off” provision, would bar the petitioner, a former employee of the Department of Children and Families (“DCF”), who left state service on April 30, 2015, from accepting employment with United Services, Inc., as Direct Service Staff, given that in this position she will have direct contact with DCF pursuant to a contract for services between DCF and United Services, Inc.

Brief Answer: We conclude that the petitioner may engage in the proposed post-state employment so long as she abides by the restrictions explained herein.

At its November 2015 regular meeting, the Citizen’s Ethics Advisory Board (“Board”) granted the petition for an advisory opinion submitted by Michelle Dwyer. The Board now issues this advisory opinion, which interprets the Code of Ethics for Public Officials¹ (“Ethics Code”), 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.

¹Chapter 10, part I, of the General Statutes.

Facts

The petitioner, a former state employee with the Department of Children and Families (“DCF”), would like to engage in post-state employment as Direct Service Staff for United Services, Inc. (“United Services”). The pertinent facts provided by the petitioner are set forth below and are considered part of this opinion:

It is now seven months since my retirement, which was effective April 30, 2015, after twenty years of service as a CT DCF Social Worker.

United Services, Inc. ... recently offered me a position to be part of their team.

United Services is a state contractor that has a services contract with DCF to provide specific services for DCF’s Reunification and Therapeutic Family Time (“RTFT”) program. Under the terms of this contract, United Services provides three types of service: 1) Reunification Readiness, 2) Reunification Services and 3) Therapeutic Family Time designed for families with children who were removed from their home due to protective services concerns. United Services is to perform these services with its personnel in three positions: 1) Direct Service Staff, 2) Supervisor and 3) Program Manager.²

The petitioner, who has been offered the position of Direct Service Staff by United Services, stated the following:

This RTFT contract provides services to children and their parents. The common goal is to permanently reunify children, who have been removed by the State of Connecticut, with either their parents or a designated family member I am suitably familiar with that which is necessary to fulfill this service and I am able to meet the responsibilities, therein.

[M]y duties at United Services would require me to collaborate with DCF solely to implement the terms of the pre-existing contract which was granted before my

²Scope of Services for Reunification and Therapeutic Family Time contract (on file with the Office of State Ethics).

retirement of April 30, 2015 My interest in accepting this position is simply a professional passion to continue to serve the children and families of our State of Connecticut.

In addition to the information provided by the petitioner, Diane Manning, President/CEO of United Services, provided the following information, which was subsequently verified by the petitioner and is, thus, considered part of this opinion:

In order to provide more detailed information to assist you in your review, I have attached the applicant's (Michelle Dwyer) resume, the United Services job Description for the position she is being considered for, and the Scope of Services from the relevant DCF contract which details the deliverables and expectations for the position as DCF defines them. ... [A]s noted in the DCF contract, [Ms. Dwyer's] position is supervised by the Program Coordinator, who in turn is supervised by the Program Manager. Primary contact for case assignment and review is with the Manager and Coordinator.

According to the Scope of Services contract, the petitioner's primary duties as Direct Service Staff are to provide in-home services to families through a flexible schedule convenient to the family and be available to respond to crisis situations/emergencies depending on case circumstances.³ A summary of additional duties with regard to the three types of services include the following:

1. Reunification Readiness Assessment: Visit with the family to assess parental capabilities, functioning and skills and observe family interaction. Review safety concerns and risk factors with the family and DCF. Provide weekly visits with the parent and child. And file reports concerning the observations made.⁴
2. Reunification Services: Schedule family visits and transport the children to each visit. Meet with the

³Scope of Services for Reunification and Therapeutic Family Time contract, p. 7.

⁴Id., p. 8.

parents at their home. Facilitate conversations with the whole family.⁵

3. Therapeutic Family Time: Assist parents in learning and practicing parenting behaviors and skills to help build or repair relationships with children.⁶

The petitioner and Ms. Manning further indicated that during the petitioner's employment with DCF, she was not involved in the negotiation or award of any contracts between DCF and United Services, including the RTFT contract that is the subject of this matter.

Analysis

The provision primarily relevant to this matter is General Statutes § 1-84b (b), under which for *one year* after leaving state service (until May 1, 2016) Ms. Dwyer may not “represent anyone, other than the state, for compensation before [DCF] concerning any matter in which the state has a substantial interest.” The provision's purpose is to establish “a ‘cooling-off’ period to inhibit use of influence and contacts with one's former agency colleagues for improper financial gain.”⁷ This provision does not bar her from contacting other state agencies, nor does it prevent her from working “back at the office” on matters that may come before DCF (so long as her role in the matter is not apparent).⁸

The question here is whether – before May 1, 2016 (i.e., within one year of having left state service) – the petitioner may work as Direct Service Staff for United Services without violating § 1-84b (b), under which she may not do as follows:

- (1) represent
- (2) anyone, other than the state,

⁵Id., pp. 8-10.

⁶Id., p. 12.

⁷Advisory Opinion No. 98-21, Connecticut Law Journal, Vol. 60, No. 10, p. 4C (September 8, 1998).

⁸See Advisory Opinion No. 2004-15, Connecticut Law Journal, Vol. 66, No. 19, p. 4C (November 9, 2004).

- (3) for compensation
- (4) before the department in which she served at the time of her termination of service,
- (5) concerning any matter in which the state has a substantial interest.

Starting with the word “represent,” the former State Ethics Commission (“Commission”) defined it, for purposes of § 1-84b (b), to mean “any activity which reveals the identity of the former employee to his former agency.”⁹ Activities deemed to fall within that definition include, for example, “making a personal appearance or phone call, being designated on a firm’s letterhead, or submitting a document on which the former State employee’s name appears.”¹⁰ Here, because the petitioner would have direct contact with DCF staff involving scheduling family visitations and submitting reports, the “represent” component in § 1-84b (b) is satisfied.

Turning to § 1-84b (b)’s other four components, the petitioner’s representation would be on behalf of someone other than the state (i.e., United Services); it would involve compensation; it would be before the department in which she served at the time of her termination of service (i.e., DCF); and it would concern a matter in which the state has a “substantial interest”¹¹ (i.e., the reunification of children and their families). Accordingly, each of the provision’s five components is met, meaning that the proposed employment would be prohibited by the plain language of § 1-84b (b).

However, the Commission, in Advisory Opinion No. 88-15, “reasoned that the principal legislative purpose behind § 1-84b (b) – prevention of use of contacts, influence or other insider’s advantage gained during state service to obtain improper benefit in subsequent compensated dealings with one’s former agency – could be fulfilled

⁹Advisory Opinion No. 98-21, Connecticut Law Journal, Vol. 60, No. 10, p. 5C (September 8, 1998).

¹⁰(Internal quotation marks omitted.) Advisory Opinion No. 2010-4, Connecticut Law Journal, Vol. 72, No. 7, p. 10D (August 17, 2010).

¹¹“The state has a substantial interest in a matter whenever the finances, health, safety, or welfare of the State or one or more of its citizens will be substantively affect by the outcome.” Advisory Opinion No. 96-6, Connecticut Law Journal, Vol. 57, No. 42, p. 1D (April 16, 1996).

by applying the subsection only when the ‘representation’ involved a matter in which the State exercised discretionary authority (e.g., contract or grant award, contested cases, or permit application).”¹² The Commission further stated that “[i]t did not seem necessary, or fair, to further limit post-state employment opportunities by extending the restriction to contacts with one’s former agency that did not present the opportunity for use of improper advantage (e.g., technical work implementing a state contract, requests for generic information, etc.).”¹³

In that opinion, the Commission created a limited exception to the one-year cooling-off ban of § 1-84b (b), and it was articulated later in Advisory Opinion No. 2003-3 as follows:

A former state employee who was not involved in the negotiation or award of the private employer’s contract with the state agency, and who has been and will continue to perform only technical duties that involve no matters of actual or potential dispute between his new employer and the state agency, may accept employment with the outside contractor to work on implementation of the existing contract, without violating ... § 1-84b ... (b).

In Advisory Opinion No. 88-15, the Commission, in reviewing the post-state employment of a former mid-level employee of the Office of Policy Management (“OPM”), 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’s cooling-off provision] was not circumvented by the 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.”¹⁴

In Advisory Opinion No. 90-18, the Commission stated that it

¹²Advisory Opinion No. 90-21, Connecticut Law Journal, Vol. 52, No. 4, p. 6D (July 24, 1990).

¹³Id., p. 6D.

¹⁴Advisory Opinion No. 2004-15, Connecticut Law Journal, Vol. 66, No. 19, p. 4C (November 9, 2004).

had “carved out a narrow exception to the definition of ‘representation’, if the former state employee’s contact with his or her former agency is limited to purely technical, *nondiscretionary* matters no longer at issue between the State and the private employer.”¹⁵

Based upon the original reasoning of the Commission in creating this “technical implementation” exception, it is apparent that it should be applied to the subject matter at hand, as the proposed activities of the petitioner (i.e., scheduling visitations, observations, evaluations) offer no opportunity for the use of an improper advantage or benefit for United Services.

Thus, provided the petitioner does not participate in any matter that is or can *potentially* become at issue between United Services and DCF (e.g., contract amendment, contract extension, compliance with contract terms) and strictly limits her work to implementation of the services contract (at least until May 1, 2016), her activities would fall within the exception to § 1-84b (b).

Having addressed the most pertinent post-state employment provision applicable to the petitioner’s request, we now turn to the remaining restrictions of which the petitioner should be aware of.

First, a former state employee may never disclose or use confidential information¹⁶ acquired in the course of her state position to obtain financial gain for herself or others.

Second, a former state employee may never represent anyone other than the state concerning any particular matter in which she participated personally and substantially while in state service and

¹⁵(Emphasis added.) Advisory Opinion No. 90-18, Connecticut Law Journal, Vol. 52, No. 2, p. 2C (July 10, 1990).

¹⁶“The term confidential information shall include: (1) any information in the possession of the State, a state employee, or a public official, whatever its form, which is mandatorily non-disclosable to the general public under any state or federal statute, regulation, or provision; and (2) any information in the possession of the State, a state employee, or a public official whatever its form, which falls within a category of permissibly non-disclosable information under the Freedom of Information Act, Chapter 3 of the general statutes, and which the appropriate agency or individual has decided not to disclose to the general public.” Regs., Conn. State Agencies § 1-81-15.

in which the state has a substantial interest. This prohibition, which has no time limit and applies regardless of the forum, forbids former government officials from “side-switching” in the midst of an ongoing case or controversy. “Particular matter” is defined narrowly to include actions of specific application (e.g., contracts, grants, investigations), rather than those of general application (e.g., regulations, legislation, general policy).

Third, and finally, for *one year* after leaving state service, a former state employee may not accept employment with a party to a state contract (or grant) valued at \$50,000 or more, if two things are true: (1) she participated substantially in, or supervised, the negotiation or award of that contract, and (2) it was signed within her last year of state service.

Conclusion

We conclude, based on the facts presented, that the petitioner may engage in the proposed post-state employment with United Services as Direct Service Staff so long as she abides by the restrictions explained herein.

By order of the Board,

Dated 12/17/15

/s/Charles F. Chiusano
Chairperson