



STATE OF CONNECTICUT OFFICE OF STATE ETHICS

Advisory Opinion No. 2017-2

July 20, 2017

Questions Presented: The petitioner asks (1) whether Randy Edsall’s “negotiation of a job at UConn for his son is permissible under the Code of Ethics”; and (2) whether his son’s “position with UConn may be as [an] Assistant Football Coach[.]”

Brief Answers: Based on the facts presented, we conclude (1) that, because Randy Edsall was a “state employee” as of December 28, 2016, the date he and UConn executed a binding and enforceable employment contract, his subsequent negotiations with UConn concerning his son’s salary (among other things) were impermissible under General Statutes § 1-84 (c); and (2) that § 1-84 (c) prohibits Randy Edsall’s son from being employed by UConn as one of his father’s assistant football coaches.

At its March 16, 2017 regular meeting, the Citizen’s Ethics Advisory Board (Board) granted the petition for an advisory opinion submitted by its Chairperson, Charles F. Chiusano. The Board now issues this advisory opinion in accordance with General Statutes § 1-81 (a) (3) of the Code of Ethics for Public Officials (Code).¹

¹General Statutes § 1-79 *et. seq.*

Background

On December 22, 2016, Kimberly Fearney, the Director of Compliance and Ethics Liaison for the Storrs and Regional Campuses of the University of Connecticut (UConn), sent an e-mail to the Legal Division of the Office of State Ethics (OSE). In it, Ms. Fearney asked for an informal staff opinion concerning a “hypothetical”:

The University is recruiting a candidate for a position. As part of the negotiations, one of the conditions sought is a position for their immediate family member. This would be part of the contract agreed to by the candidate and the University and signed before they begin employment. Can you confirm for me that this is permissible?

In addition, I know from prior guidance that it would be permissible for the family member to work within the same department, if they are not reporting, either directly or indirectly, to their family member. This would all be reviewed and signed off by the appropriate individuals with the proper controls in place. It would follow the same guidance, etc. as shared in AO 94-5 and AO 88-8.

Can you confirm for me that my understanding is correct and the above is permissible under the Code?

Though Ms. Fearney didn’t name the candidate, the candidate’s family member, the positions to be filled, or the department in which those positions are housed, she did refer to Advisory Opinion Nos. 88-8 and 94-5. Issued by the State Ethics Commission, the opinions conclude that immediate family members may—with certain caveats—serve in the same academic department. Assuming that Ms. Fearney’s hypothetical involved a similar situation—namely, family members serving in the same academic department (say, the History Department)—the OSE Legal Division responded with this:

Because the candidate is not yet a “public official” or “state employee,” the Code . . . does not apply to him or her, meaning that what would otherwise be a clear use-of-office violation under General Statutes § 1-84 (c)—namely, using one’s state position to help one’s spouse

obtain a state job—is nonetheless technically permissible.

As for family members serving in the same department, it is likewise permissible, provided (as you note . . .) that the safeguards discussed in Advisory Opinion Nos. 88-8 and 94-5 are followed.²

Fast forward to January 9, 2017, the date the Hartford Courant published an article titled, “Edsall Names 4 to UConn Staff, Including Son Corey, Who Won’t Report to Coach.”³ After reading it, the OSE Legal Division phoned Ms. Fearney, asking if the candidate mentioned in her hypothetical was Randy Edsall, and she answered yes. She was informed that the December 2016 informal staff opinion—which was based on generic facts and relied on advisory opinions involving family members serving in the same academic department—should not be read to suggest that “Randy Edsall’s son [may] be employed as an assistant UConn football coach.”⁴ She was also encouraged to petition the Board for an advisory opinion because the issue of family members serving on the same coaching staff has never been addressed.

The next few weeks saw some back and forth on the matter between the OSE Legal Division and Ms. Fearney, who submitted a management plan concerning Corey Edsall on January 26, some highlights of which are as follows:

- “Initial decisions regarding Corey’s salary, will be dictated by the Director of Athletics or his designee (not subordinate to the Head Coach).”
- “Performance evaluations will be conducted by the Director of Athletics or his designee (not subordinate to the Head Coach).”
- “The decision to renew his employment on an annual basis will be made solely at the discretion of the Director of Athletics or his designee (not subordinate to the Head Coach).”

²OSE Request for Advisory Opinion No. 15052 (2016).

³Mike Anthony, *Edsall Names 4 To UConn Staff, Including Son Corey, Who Won’t Report To Coach*, Hartford Courant, January 9, 2017.

⁴OSE Request for Advisory Opinion No. 15159T (January 9, 2017).

- “Corey’s status/employment as an assistant coach/position coach on the football staff will only be able to be modified at the direction of the Director of Athletics or his designee (not subordinate to the Head Coach). This would include any significant change in responsibility for position group, special teams, recruiting or coordination of the offense.”
- “Corey Edsall will work with the Offensive Coordinator day to day. The Offensive Coordinator has a three year contract that was approved by the Athletic Director. Amendment or renewals of his contract will be approved by the Athletic Director and not the Head Coach.”
- “[T]he Director or his designee (not subordinate to the Head Coach) will” do as follows:
 - “Frequently attend football practice . . . with dedicated time being spent observing Corey Edsall.”
 - “Attend all scheduled competitions, to observe and provide feedback, both directly and indirectly about performance.”
 - “[R]andomly attend individual position meetings that are being led by Corey Edsall.”
 - “[S]chedule monthly meetings to discuss job performance and any corrective measures necessary.”
 - “Review the following performance metrics: annual academic performance, annual statistics of tight ends and their performance in game, number of recruits signed annually that Corey was the lead recruiter and social accountability measures.”
 - [P]erform an annual performance review . . . based on the Director of Athletics and this designee’s observations, performance metrics, student-athlete exit interviews and comprehensive discussions with other football and non-football staff that interact with Corey.”

Three weeks after UConn submitted the management plan, a member of this Board independently raised the issue of Corey Edsall’s

hiring at the Board's February 2017 meeting. The Board discussed the matter, including the December 2016 informal staff opinion issued to Ms. Fearney. It then directed the OSE General Counsel to "reach out to UConn and ask them to seek an Advisory Opinion on this matter which would allow the Board to gather and fully understand all pertinent facts and address this issue formally."⁵ The plan was to "follow up on this issue at" the Board's March 2017 meeting.⁶

As directed, the OSE General Counsel contacted Ms. Fearney, asking that UConn request an advisory opinion on the Edsall matter. UConn, through its Associate General Counsel, Nicole Fournier Gelston, responded with a four-page letter to the OSE General Counsel, dated March 1, 2017. In it, Attorney Gelston details the steps UConn has taken to comply with the Code; argues that the Code and the opinions interpreting it support UConn's position; notes that family members serving in the same department "is relatively commonplace in institutions of higher education"; and suggests that the OSE Legal Division's reason for disallowing UConn to rely on the December 2016 informal staff letter was fear of public clamor: "[I]n January 2017 following some criticism of Corey Edsall's hiring, your office reached out to Ms. Fearney . . ."⁷ (For the record, the OSE Legal Division contacted Ms. Fearney after reading the Courant article because it was the first time it had learned of the hiring. Further, the article is hardly critical; if anything, it is supportive, noting that "[f]athers and sons being part of the same coaching staff is not uncommon in college football," and following that with no less than six examples.⁸)

A week later—with UConn still not having submitted an advisory-opinion petition—Charles F. Chiusano, Chairperson of this Board, submitted his own. In his petition, he asks the Board to address two issues under the Code: first, whether Randy Edsall's "negotiation of a job at UConn for his son is permissible under the Code of Ethics," and second, whether his son's "position with UConn may be as [an]

⁵Citizen's Ethics Advisory Board, Minutes of February 16, 2017 meeting.

⁶Id.

⁷Attorney Gelston levels a similar charge at the letter's end, stating that the OSE Legal Division's position here "undermines a central foundation of the Code . . . as it is intended to apply to all state employees, regardless of rank or position, and its application is to be 'unswayed by' among other things 'public clamor or fear of criticism.'"

⁸See, *supra*, footnote 3.

Assistant Football Coach[.]” The petition was sent to UConn, which was notified that the Board would vote on whether to grant it at the Board’s March 16 meeting, and that UConn would have an opportunity to address the Board.

At the Board’s March 16 meeting, Attorney Gelston—accompanied by Ms. Fearney, the UConn Athletics Director, and the Chief Operating Officer of UConn Athletics—argued to the Board that it would be “unnecessary and inappropriate” to issue an advisory opinion. Specifically, she argued that, because the issues Chairman Chiusano raised in his petition have already been addressed by the OSE and its predecessor (the State Ethics Commission), the Board should deny the petition. The Board rejected Attorney Gelston’s argument, voting unanimously (6-0) to grant the petition, and asking UConn to cooperate with the OSE Legal Division in its attempt to obtain the relevant facts.

Five days later, the OSE Legal Division sent UConn a “Document and Information Request.” It contained twenty document requests and ten multi-part questions. UConn responded to that request on April 12 with numerous documents (e-mails, contracts, etc.); answers to the ten questions; and a letter arguing that the information requests are overly broad and (for the most part) irrelevant, and reiterating its prior argument that the employment of the Edsalls “is fully consistent with the principles of the Code . . . and in accordance with longstanding precedent found in formal Advisory Opinions.”

We will set forth additional facts below as necessary.

Analysis

Before us, there are two questions, the first being whether, based on the facts presented, it was permissible for Randy Edsall to negotiate a job at UConn for his son. The follow-up question is whether the Code permits that position to be as one of Randy Edsall’s assistant football coaches. To both questions, we answer no.

1. Randy Edsall’s negotiation of a job at UConn for his son

In Advisory Opinion No. 94-18—which involved immediate family members serving in the same department of a state agency—the State Ethics Commission explained: “the individual who is in a position of superior authority may not take any action which furthers

the financial interest of his or her [family member].”⁹ That is, “[f]rom the hiring process to the evaluation process, the [family member] of greater rank must refrain from taking any such action.”¹⁰ The Commission based its conclusion on General Statutes § 1-84 (c), under which “no . . . *state employee* shall use his public . . . position . . . to obtain financial gain for . . . his spouse, child, child’s spouse, parent, brother or sister”¹¹

The key term there is “state employee,” for UConn’s entire argument on this first question rests on its assumption that Randy Edsall wasn’t a “state employee” when he sought and negotiated a position for his son. Specifically, in an April 11, 2017 letter to the OSE General Counsel, Attorney Gelston argues that this question

is resolved on showing that Randy Edsall was not a state employee when he sought, as a condition of his own employment, a position for his son. [UConn] has already represented to the Board that Randy Edsall was not employed by UConn when he sought a position for his son. Further, at no time since commencing employment with UConn has Randy Edsall taken any steps to influence Corey’s salary or other terms and conditions of his employment, or any other steps that would have a financial impact on Corey Edsall.

But the question’s answer isn’t nearly as clear cut as UConn would have us believe. In its submission to the OSE, UConn attached a January 1, 2017 e-mail from Beth Goetz, Chief Operating Officer of UConn Athletics, to Randy Edsall, in which Ms. Goetz stated:

I need the following information to draft an offer letter to Corey.

Start date

Salary

Position

Moving Expenses & temporary housing?

⁹Advisory Opinion No. 94-18, Connecticut Law Journal, Vol. 56, No. 11, p. 5B (September 13, 1994).

¹⁰Id.

¹¹(Emphasis added.)

That same day, Randy Edsall sent an e-mail response to Ms. Goetz, who (minutes after receiving it) forwarded it to David Benedict, the UConn Athletic Director. In the e-mail, Randy Edsall states:

Corey will start on Monday, January 9th and I would like to pay him \$100,000.00. He will coach one of the skilled positions on offense. If it has to be specific right now, it would be Tight Ends. Could change, but don't think so.

Moving Expenses = yes (shouldn't be too much)

Temporary Housing = I would have him stay with me in the House until he gets an apartment on his own.

The next day, January 2, Ms. Goetz responded to that e-mail, stating: "We don't have any concerns with the range we discussed with Corey. AAC salary data (prior to several coaching changes) shows the lowest coach at 85k, so no concerns going with the higher end."

Two days later, UConn issued an offer letter to Corey Edsall, offering him "the full time position of Assistant Football Coach (Specialist IIA) at [UConn] with a start date of Monday, January 9, 2017," and giving him what his father asked for: "an annual salary of \$100,000." Two days after that, UConn issued a "Revised Offer Letter," this time offering him the reduced salary of \$95,000. (When asked for any communications between UConn employees, including the Edsalls, concerning the initial and revised offer letters, UConn responded that it has none.)

Although it is unclear on what date they settled on that salary, it is clear that—as of January 1 and 2, 2017—Randy Edsall was still negotiating with UConn concerning his son's salary (among other things). The question, therefore, is whether he was a "state employee" as of those dates, for if so, § 1-84 (c) would have barred him from engaging in the negotiations.

In answering that question, we start with Randy Edsall's December 28, 2016 employment contract with UConn. In the contract, Mr. Benedict opens with this:

It is with great pleasure that *I offer you the position of Head Football Coach for the University of Connecticut (“UConn”), effective January 3, 2017.* This letter represents the material terms of UConn’s employment offer and will be incorporated into a formal employment contract with UConn for execution at the earliest possible date.

*Your acceptance of this offer will constitute a binding agreement between you and UConn and, in advance of the execution of a formal employment contract, this letter and the terms set forth herein will exist as the enforceable agreement between you and UConn. . . .*¹²

The contract goes on to set out Randy Edsall’s terms of compensation and “Other Terms,” including that “UConn agrees to make an employment offer to your son to serve in the Division of Athletics.” (The contract doesn’t specify what his son’s position within the Division of Athletics would be, nor does it discuss his son’s salary or other benefits.) Finally, the contract reiterates that “this letter and the terms set forth herein will continue to exist as the *binding agreement* between the parties until the execution of a formal employment contract.”¹³

Randy Edsall signed the employment contract that very day, December 28, 2016.

As of December 28, 2016, then, there was a binding and enforceable employment contract between UConn and Randy Edsall under which he would take over as Head Football Coach for UConn “effective January 3, 2017.” Obviously, UConn takes the position that he didn’t become a “state employee” until the January 3 effective date, meaning that his January 1 negotiations with UConn concerning his son were permissible, as he wasn’t yet a “state employee” and thus wasn’t yet subject to § 1-84 (c). The question, however, is whether Randy Edsall became a “state employee”—for purposes of the Code’s definition of that term—before that date, specifically, on December 28, 2016, the date he and UConn executed the employment contract.

The answer to that question is a matter of statutory construction,

¹²(Emphasis added.)

¹³(Emphasis added.)

the objective of which “is to ascertain and give effect to the apparent intent of the legislature.”¹⁴ “In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply.”¹⁵ General Statutes § 1-2z requires that we first consider the statute’s text and its relationship to other statutes to determine its meaning. If, after such consideration, the meaning of the statutory text is plain and unambiguous and does not yield absurd or unworkable results, we may not consider “extratextual evidence of the meaning of the statute.”¹⁶ Only if we determine that the text of the statute is not plain and unambiguous may we look to extratextual evidence of its meaning,” such as “the legislative policy it was designed to implement”¹⁷

Starting with the relevant statutory text, General Statutes § 1-79 (13) defines “state employee,” in part, as “any *employee* in the executive . . . branch of state government, whether in the classified or unclassified service and whether full or part-time”¹⁸ That definition, alone, offers no help in determining when Randy Edsall became a “state employee.” The key lies in the word “employee,” and because the Code does not define it, we look to General Statutes § 1-1 (a), which directs that, “[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language” “[T]o ascertain [a word’s] commonly approved meaning,” “[w]e look to [its] dictionary definition.”¹⁹

The Court of Appeals of Michigan did just that in *McCloughan v. Public School Employees Retirement System*.²⁰ There, the petitioner and a local board of education had “executed an employment contract dated May 13, 1968,” under which he would teach and coach at a local

¹⁴(Internal quotation marks omitted.) *Perodeau v. Hartford*, 259 Conn. 729, 735 (2002).

¹⁵(Internal quotation marks omitted.) *Picco v. Voluntown*, 295 Conn. 141, 147 (2010).

¹⁶E.g., *Saunders v. Firtel*, 293 Conn. 515, 525 (2009).

¹⁷(Internal quotation marks omitted.) *Thomas v. Dept. of Developmental Services*, 297 Conn. 391, 399 (2010).

¹⁸(Emphasis added.)

¹⁹*14 R. C. Equity Group, LLC v. Zoning Commission*, 285 Conn. 240, 254 n. 17 (2008).

²⁰*McCloughan v. Public School Employees Retirement System*, No. 300750, 2011 WL 6378825 (Court of Appeals of Michigan Dec. 20, 2011).

public school.²¹ The contract was for the next school year (1968-1969), and its effective date was September 3, 1968, at which point the petitioner would start receiving a paycheck. Before the contract's effective date, the petitioner was drafted into the armed forces, where he served for two years. After returning home, he executed another employment contract to teach and coach at the local public school, where he worked for the next 40 years.

An issue in *McCloughan* was whether, under the Public School Retirement System, the petitioner was an "employee" of the local public school when he was drafted into the armed forces.²² The retirement board thought not, stating:

Obviously had [the petitioner] taught or coached on or after the contract's effective date, September 3, 1968, he would have been a public school employee. However, that never occurred because of his induction into the Army on August 28, 1968. Since he did not perform under the employment contract, he never became an employee of the public local school district.²³

Michigan's Court of Appeals rejected that conclusion, noting that the Random House Webster's College Dictionary (1992) defines "employee" as "a person who has been hired to work for another."²⁴ Thus, said the court, "the proper test was whether the petitioner was 'a person who has been hired to work for another' at the time he was

²¹Id., *1.

²²Id., *3.

²³Id. Even under the retirement board's reasoning, Randy Edsall would be an "employee" of UConn before the January 3 effective date, because he was apparently performing under the employment contract before that date. In fact, in a separate letter of December 28, 2016, from the UConn Athletic Director to Randy Edsall (which was not submitted to us by UConn, but was located on the internet), the Athletic Director states: "The University asked you to begin work immediately." And in an e-mail of January 1, 2017, from Beth Goetz to Randy Edsall discussing the interview process for assistant coaches, she states: "We do need those you are interested in to officially apply . . . and then we need to officially request permission to interview. This shouldn't slow any conversations *you are having*." (Emphasis added.) Randy Edsall responded later that day with an e-mail of his own, listing seven individuals and the positions they would hold.

²⁴Id.

inducted into the army.”²⁵ And the answer “was clearly yes”: the petitioner “was hired when he and representatives of the [local board of education] signed the employment contract.”²⁶ According to the court, then, the petitioner was an “employee” of the public school once the employment contract was executed—rather than when the contract’s effective date was reached.

Clearly, therefore, the word “employee” can be read to capture an individual who has entered into an employment contract, but who has not yet reached the effective date for assuming the position.²⁷ And it is this interpretation that makes the most sense when read in the context of the entire Code.²⁸ Indeed, in other instances, the Code expressly subjects individuals to some or all of its provisions even though they’ve not yet assumed a state position. For example, not only are members of the General Assembly subject to the Code in its entirety, but so too are “*member[s]-elect* of the General Assembly.”²⁹ In other words, an individual who is elected to the General Assembly in November is subject to the Code *on Election Day*, despite that he or she doesn’t assume the office until January of the next year.³⁰ Still more, the Code subjects “candidate[s] for public office”³¹ to its gift and anti-bribery provisions, despite that they (unlike “member[s]-

²⁵Id., *4.

²⁶Id.

²⁷An example of a *statutory* (rather than dictionary) definition of “employee” that would capture such an individual is found in General Statutes § 31-275 (9) (A) (i) of the Connecticut Workers’ Compensation Act, which defines the term, in part, as someone who “[h]as entered into or works under any contract of service or apprenticeship with an employer.” See *Bugryn v. State*, 97 Conn. App. 324, 330 (concluding that decedent, who died of a heart attack shortly after completing a physical fitness test as part of the job application process to become a correction officer, was not an “employee” of the state at the time because he had not yet “entered into a contract of service with the state”), cert. defined, 280 Conn. 929 (2006).

²⁸See *State v. LaFleur*, 307 Conn. 115, 129 (2012) (“[i]n accordance with § 1-2z, we continue our analysis by looking to the relationship of the statute to other statutes”).

²⁹General Statutes § 1-79 (11) (defining “public official”).

³⁰See Conn. Const., art. III, § 10.

³¹“Candidate for public office’ means any individual who has filed a declaration of candidacy or a petition to appear on the ballot for election as a public official, or who has raised or expended money in furtherance of such candidacy, or who has been nominated for appointment to serve as a public official” General Statutes § 1-79 (3).

elect”) haven’t yet even been elected or appointed to the office.³²

That said, the plain language of § 1-79 (13), when read in connection with other Code provisions, demonstrates that the legislature intended the word “employee,” as used in that statute, to mean a person who has been hired to work for the state. And if we apply that definition here, Randy Edsall became an “employee” of UConn—not on the January 3, 2017 effective date for assuming the position of Head Football Coach—but on December 28, 2016, the date he and UConn executed the binding and enforceable employment contract. As such, he was, as of December 28, 2016, a “state employee” for purposes of the Code, meaning that he was subject to its use-of-office ban and, as a result, barred from negotiating with UConn concerning his son’s employment after that date. Accordingly, his January 1, 2017 negotiations with UConn concerning his son’s salary (among other things) were impermissible under § 1-84 (c).

To conclude otherwise—that is, to hold that Randy Edsall was not a “state employee” at the point he and UConn executed the employment contract—would defy common sense and lead to an absurd result.³³ It would mean that an individual who has executed a binding and enforceable employment contract with a state or quasi-public agency, but whose effective date for assuming the position is a few days off, could—without any repercussions under the Code—

- accept bribes;
- accept gifts from state lobbyists and contractors;
- solicit gifts from state lobbyists and contractors for himself and his immediate family members;
- demand that his immediate family members get state contracts without going through an open-and-public process;
- require his soon-to-be subordinates to clean his house, walk his dog, pick up his groceries, etc.

³²General Statutes § 1-84 (f), (g), and (j).

³³See *Shortell v. Cavanagh*, 300 Conn. 383, 388 (2011) (“[w]e must interpret [the statute] so that it does not lead to absurd results”).

Surely the General Assembly couldn't have intended such a bizarre result.

Finally, even if, for argument's sake, we were to conclude that the language of § 1-79 (13), as read in connection with other Code provisions, was ambiguous, it would simply mean that we would be allowed to "look to extratextual evidence of its meaning," such as "the legislative policy it was designed to implement" ³⁴ Indeed, according to our Supreme Court, if—as is the case here—"the word to be interpreted [i.e., "state employee"] is found in a legislative prescription, the overall purpose of the legislation is of particular relevance in arriving at the appropriate meaning." ³⁵

The Commission articulated the Code's purpose in Advisory Opinion No. 86-8. The question there was whether a person remains a "State employee" under "the Code . . . while on [a six-month, unpaid] leave of absence." ³⁶ To answer it, the Commission looked to the Code's purpose—namely, "to prevent a person from *using a State position . . . for private financial benefit*" ³⁷—and concluded as follows: "To fulfill the purposes of the Code . . . and as its language allows, a State employee on leave of absence remains a 'State employee.'" ³⁸ Its rationale for doing so was this:

A person leaving active service in a State position for a period from six working days to a calendar year and then returning to the same or, perhaps, a similar position often would be almost as capable of using the *prospective position* for private gain as one who continues in a position. *The payoff might be delayed until the end of the leave of absence, but not necessarily. . . .* If limitations must be placed on the activity of former State employees in order to maintain public confidence in the integrity of the operations of State government . . . *it is even more important to circumscribe the activity of persons leaving active State*

³⁴(Internal quotation marks omitted.) *Thomas v. Dept. of Developmental Services*, supra, 297 Conn. 399.

³⁵*Planning & Zoning Commission v. Synanon Foundation, Inc.*, 153 Conn. 305, 309 (1966).

³⁶Advisory Opinion No. 86-8, Connecticut Law Journal, Vol. 48, No. 6, p. 1D (August 5, 1986).

³⁷(Emphasis added.) *Id.*

³⁸*Id.*, 2D.

*service with the expectation or possibility of returning to a State position.*³⁹

The Commission's rationale for concluding as it did applies with equal (if not more) force here. There, the person was leaving state service for six months—with the mere "possibility" of returning to her state position—yet the Commission still felt compelled to "circumscribe [her] activity," so as to prevent her from using a "prospective position for private gain," be it delayed or not. Here, Randy Edsall and UConn executed a binding and enforceable employment contract—at which point he possessed a position that he could use for private gain—and his official start date⁴⁰ was not six months off, but a mere six days. Hence, under the Commission's rationale in Advisory Opinion No. 86-8, it would defy logic for us *not* to circumscribe his activity.

Accordingly, we conclude that, because Randy Edsall was a "state employee" as of December 28, 2016, the date he and UConn executed an employment contract, his subsequent negotiations with UConn concerning his son's salary (among other things) were impermissible under § 1-84 (c).

2. Randy Edsall's son serving as an assistant on his father's coaching staff

Turning to the second issue, we must address whether Corey Edsall may serve as one of his father's assistant coaches. UConn argues that he may do so, and it relies on three advisory opinions issued by the State Ethics Commission for support. But in our view those opinions don't countenance the arrangement in question (and even if they did, we're not bound by them⁴¹).

Of the three advisory opinions UConn relies on, two of them address the issue of immediate family members serving in the same

³⁹(Emphasis added.) *Id.*

⁴⁰As noted earlier, although the December 28, 2016 employment contract lists January 3, 2017, as Randy Edsall's effective date as UConn Head Football Coach, he was apparently expected to, and apparently did in fact, begin work before that date.

⁴¹See Advisory Opinion No. 2009-1 ("[a]lthough we will not lightly overturn precedent, if, after reconsidering a prior opinion and discussing it with our counsel, we are left with the 'firm conviction' that it was wrongly decided, we will not compound the error by following suit").

university department (Advisory Opinion Nos. 88-8 and 94-5), and one addresses spouses working in the same department of a state agency (Advisory Opinion No. 94-18). We will address each one.

In Advisory Opinion No. 88-8, the Commission was asked this question: “Because of the *quasi*-supervisory role of the department chairperson in a department’s activities, can either of two immediate relatives in the same *department* serve as chairperson without creating a situation in substantial conflict”⁴² Yes, concluded the Commission, “as long as the restrictions of subsections 1-84 (c) and 1-86 (a) are adhered to.”⁴³ That is, “when required to take an action which would significantly affect the financial interest of [an immediate relative], the Chairperson must proceed as mandated by 1-86 (a)” —namely, abstain and file a conflict statement with his immediate superior, who must assign the matter to one of the Chairperson’s peers or superiors.⁴⁴ Actions that could have a significant financial impact would include those involving “promotion, tenure, reappointment, and appointment,” as well as those involving “teaching assignments and scheduling conflict.”⁴⁵ Further, “[w]hen the requisite financial impact is present, the Chairperson must not only avoid acting with regard to the immediate relative, but also with regard to *any competitor* of that relative.”⁴⁶ And if “a chairperson must abstain and file statements pursuant to 1-86 (a) on frequent occasions, *e.g., when the immediate relative of the Chairperson is an untenured junior member of the department*, the Chairperson should consider whether the potential conflicts are so substantial as to significantly interfere with official responsibilities. If so, the Chairperson should resign.”⁴⁷

After the Commission issued the opinion, its Executive Director/General Counsel sent a copy of it to the individual who requested it, along with a letter, saying this:

As you will note, the Opinion states that immediate family relatives can be employed in the same

⁴²(Emphasis added.) Advisory Opinion No. 88-8, Connecticut Law Journal, Vol. 49, No. 48, p. 3D (May 31, 1988).

⁴³Id., 4D.

⁴⁴Id.

⁴⁵Id.

⁴⁶(Emphasis added.) Id.

⁴⁷(Emphasis added.) Id.

department, as long as applicable provisions of the Code . . . are followed. However . . . the Commission felt that such employment would *almost inevitably lead to problems, and would best be avoided*. In fact, the Commission suggested that the University and the Union explore the possibility of establishing policies that would *bar immediate relatives from serving in the same department*.

On more than one occasion, the Ethics Commission has been called upon to investigate complaints alleging nepotism at State institutions of higher education. These matters have been exceptionally acrimonious, and have had significant negative consequences for the institutions and individuals involved. It is with these experiences in mind that the Commission submits the above advice for your consideration.⁴⁸

In light of that post hoc letter, we can't imagine that the Commission would have approved the arrangement before us. Indeed, the Commission clearly had reservations about the situation before it, which involved an academic department that was headed by a Chairperson with a "*quasi-supervisory* role." Here, by way of sharp contrast, there is nothing "quasi"—meaning: "seemingly, apparently but not really"⁴⁹—about the Head Football Coach's supervisory role over his assistant coaches.

Further, in Advisory Opinion No. 88-8, the Commission gave a single example of a situation that it deemed particularly problematic (even in a situation with an individual with a "*quasi-supervisory* role"): "when the immediate relative of the Chairperson is an untenured junior member of the department[.]"⁵⁰ Well, Corey Edsall is certainly "untenured" (he has a one-year contract), and it appears that he is *the* junior member of the UConn football coaching staff, having the lowest salary and the least amount of experience, and serving in a position (tight ends coach) that is "typically the lowest rung for an assistant."⁵¹

⁴⁸(Emphasis added.)

⁴⁹New Oxford American Dictionary (Oxford Univ. Press, 2010).

⁵⁰Connecticut Law Journal, Vol. 49, No. 48, *supra*, p. 4D.

⁵¹Ted Miller, *In College Football Coaching Fraternity, It's All Relative*, Seattle Post-Intelligencer, August 31, 2005.

Moving on to Advisory Opinion No. 94-18, the Commission there dealt with the issue of spouses working in the same department of a state agency. After looking to the Code's use-of-office provision, § 1-84 (c), it stated that, "[f]rom the hiring process to the evaluation process the spouse of greater rank must refrain from taking any . . . action" that would affect the financial interests of his spouse and of anyone in competition with his spouse.⁵² It also distinguished between performance evaluation, on the one hand, and supervision, on the other. That is, the spouse of greater rank was barred not only from evaluating his spouse and those in competition with her, but also from supervising them. Finally, the Commission explained that, "[i]f the number and quality of potential conflicts are so great that they interfere significantly with the performance of the [individual's] duties, then it might become necessary for [one of the family members] to transfer to a different assignment."⁵³

Advisory Opinion No. 94-5 is to the same effect. Titled "Spouses Serving In Same University Department," it involved whether the petitioner, a faculty member at a state community-technical college, could serve as the head of an academic department in which her husband was a part-time faculty member.⁵⁴ Said the Commission, the Code "does not bar spouses from working in the same department," but "any exercise of the petitioner's authority to enhance her husband's position, or to harm the position of other part-time faculty members against whom he competes, would be an illegal use of office within the meaning of . . . § 1-84 (c).⁵⁵ The Commission concluded, therefore, that the petitioner could serve as head of the academic department provided that she relegates all responsibility for supervising her spouse and other part-time faculty members to another department chairperson.

Those opinions were nicely summed up in a 1997 informal staff opinion:

[A state employee] must have nothing to do with the hiring, promotion, evaluation or supervision of his

⁵²Advisory Opinion No. 94-18, Connecticut Law Journal, Vol. 56, No. 11, p. 6B (September 13, 1994).

⁵³Id.

⁵⁴Advisory Opinion No. 94-5, Connecticut Law Journal, Vol. 55, No. 41, p. 3D (April 12, 1994).

⁵⁵Id.

[family member] or of those in competition with his [family member] for benefits. Of course, if [the state employee] supervises those who supervise his [family member], this too is a problem under the Code.⁵⁶

If we apply that summation of prior advisory opinions here, Randy Edsall may have nothing to do with, not just the promotion and evaluation, *but also the supervision*, of (1) his son, (2) anyone who supervises his son, and (3) anyone in competition with his son for benefits. Let's take those in turn.

As for Corey Edsall, his father—“[t]heoretically”⁵⁷—has been insulated from taking action concerning his son's promotion and evaluation. That is, under the management plan, the UConn Athletic Director “or his designee (not subordinate to Randy Edsall)” will conduct Corey Edsall's evaluations, decide annually whether to renew his contract, and determine whether to modify his “status/employment as an assistant coach/position coach on the football staff” (i.e., “any significant change in responsibility for position group, special teams, recruiting or coordination of the offense”). On paper, then, Randy Edsall will have nothing to do with his son's evaluation or promotion.

That leaves whether he will have anything to do with his son's supervision. When the OSE asked UConn whether Randy Edsall would “direct or supervise” his son, and whether he would, for example, communicate with his son if the tight ends were performing below par, UConn responded:

Coach Edsall is responsible for the overall direction and programmatic goals of the football program. It is expected that he will have contact with Corey Edsall in that capacity. However, Coach Edsall will not supervise Corey Edsall as Tight Ends Coach.

⁵⁶State Ethics Commission, Request for Advisory Opinion No. 1933 (1997).

⁵⁷In the 1990s, Florida State University set up a scheme similar to the one here in order for the son of then head football coach Bobby Bowden to be hired as one of his father's assistants. Under the arrangement, the son would report to the defensive coordinator, “who's in charge of [the son's] annual written evaluation, and not the head coach, his father. ‘*Theoretically*,’ explained the elder Bowden.” See, *supra*, footnote 51.

We disagree that Randy Edsall will not “supervise” his son. The word “supervise” means “to watch over and direct (a process, work, workers, etc.); oversee; superintend.”⁵⁸ Similarly, a “supervisor” is “one having authority over others, to superintend and direct.”⁵⁹ It beggars belief to suppose that Randy Edsall—the head coach of a Division I football program—will not oversee and have authority over each and every one of his assistant coaches, including the tight ends coach, his son. And UConn’s argument to the contrary amounts to what has aptly been described as “a counterintuitive bureaucratic technicality that claims assistant coaches aren’t supervised by their head coaches.”⁶⁰

But even if we were to buy into UConn’s argument that Randy Edsall won’t supervise his son, he’s also barred from supervising and evaluating anyone who supervises his son. And UConn concedes (albeit unintentionally) that Randy Edsall supervises at least one individual who supervises his son, namely, Rhett Lashlee, the offensive coordinator.

With respect to Rhett Lashlee, UConn had a handful of communications in the context of drafting the management plan concerning Corey Edsall. For instance, on January 13, 2017, Rachel Rubin, Chief of Staff to the UConn President, e-mailed those involved in drafting it, stating:

One more point now that you have the [offensive coordinator] in place. He has a three year contract. They might argue that since the [offensive coordinator] reports to Randy that he may be under pressure to treat Corey a certain way. So, I would add to the document something that describes that the [offensive coordinator] has a three year contract (approved and negotiated by the [athletic director] through the [offensive coordinator’s] agent) and that Randy has no ability to financially benefit the [offensive coordinator] separate from the terms of his contract.

A few weeks later, Ms. Rubin sent another e-mail on the subject, noting that she had “added a section to [the management plan] about

⁵⁸Random House Webster’s College Dictionary.

⁵⁹Black’s Law Dictionary (Abridged 6th Ed. 1991).

⁶⁰See, supra, footnote 51.

the [offensive coordinator],” and explaining:

I think it is important to let them know that the [offensive coordinator] who reports to the Head Coach is a buffer between Corey and his father and that we also understand that the father should not be in a position to put pressure on the [offensive coordinator] to give favorable reviews of the son in order to keep his contract or get future salary increases.

As with Corey Edsall, it appears that Randy Edsall—again, “[t]heoretically”⁶¹—will have nothing to do with Rhett Lashlee’s evaluation. But that still leaves supervision. When asked by the OSE whether Randy Edsall will supervise Rhett Lashlee, UConn gave a telling response:

Coach Edsall is responsible for the overall direction and programmatic goals of the football program. In connection with that responsibility, it is expected he will *provide direction* to Rhett Lashlee on the field during practices and games. Notwithstanding that direction, Coach Edsall is not Rhett Lashlee’s supervisor.⁶²

The definition of the word “supervise,” recall, is to “watch over and *direct*” Thus, despite UConn’s claim to the contrary, Randy Edsall does, in fact, supervise Rhett Lashlee, meaning that the latter’s supervision of the former’s son is, as noted earlier, impermissible under the Code.

Finally, Randy Edsall is also prohibited from supervising (and evaluating) anyone who competes with his son for benefits, which raises this question: With whom does Corey Edsall compete for benefits? We find guidance in Advisory Opinion No. 81-18. The issue was whether an individual could accept a teaching position in a department “at a State college of which the individual’s spouse is president.”⁶³ After noting that the president could not take “official action affecting significantly his spouse’s financial interests,” the

⁶¹See, *supra*, footnote 51.

⁶²(Emphasis added.)

⁶³Advisory Opinion No. 81-18, Connecticut Law Journal, Vol. 43, No. 23, p. 43A (December 8, 1981).

Commission explained that the same holds true with respect to his spouse's competitors.⁶⁴ The reason: "By taking official action affecting a competitor of a[n] . . . individual, a public official or State employee can favor the financial interests of the . . . individual."⁶⁵ As to who would be a competitor of the president's spouse, the Commission concluded: "faculty members in her department."⁶⁶

Applying that logic here, Corey Edsall's competitors would be all UConn assistant football coaches. This makes perfect sense in the hyper-competitive world of college football coaching, "the annual shuffling" of which has been "referred to as the 'coaching carousel,'" a "game of musical chairs," and a "swap meet."⁶⁷ As a matter of fact, to illustrate, we need look no further than UConn's last football season, when Bob Diaco, then UConn Head Football Coach, swapped two of his assistant coaches in the middle of the season, "demot[ing] offensive coordinator Frank Verducci and promot[ing] running backs coach David Corley."⁶⁸ Further, when it comes to sons who've been hired as assistant coaches on their fathers' football teams, they rarely (if ever) stay put in their initial positions. For instance:

- In 1990, Skip Holtz was hired as the wide receivers coach for Notre Dame University, coached by his father Lou Holtz, and in 1992 was promoted to offensive coordinator.
- In 1994, Jeff Bowden was hired as the wide receivers coach for Florida State University, coached by his father Bobby Bowden, and in 2001 was promoted to offensive coordinator.
- In 1995, Jay Paterno was hired as the tight ends coach and recruiting coordinator for Penn State University, coached by his father Joe Paterno, and in 1999 was promoted to quarter backs coach.
- In 2005, Steve Spurrier, Jr., was hired as the wide receivers

⁶⁴Id., 44A.

⁶⁵Id.

⁶⁶Id.; see also Connecticut Law Journal, Vol. 55, No. 41, supra, p. 3D (concluding that competitors of department head's spouse, who was a part-time faculty member, would be all part-time faculty members).

⁶⁷Jesse Dougherty, *A Look At First-Year College Football Coaches*, Los Angeles Times, August 22, 2016.

⁶⁸Mike Anthony, *Diaco Makes Move: Verducci Demoted, Corley New UConn Offensive Coordinator*, Hartford Courant, November 1, 2016.

coach for the University of South Carolina, coached by his father Steve Spurrier; in 2009 was promoted to wide receivers coach and passing game coordinator; in 2011 was promoted to wide receivers coach, passing game coordinator and recruiting coordinator; and in 2012 was promoted to co-offensive coordinator.

- In 2008, Kendal Briles was hired as the inside receivers coach and offensive recruiting coordinator for Baylor University, coached by his father Art Briles; in 2012 was promoted to passing game coordinator, receivers coach and offensive recruiting coordinator; and in 2015 was promoted to offensive coordinator.
- In 2012, Brian Ferentz was hired as the offensive line coach for the University of Iowa, coached by his father Kirk Ferentz, and in 2017 was promoted to offensive coordinator.

More than just showing that sons who serve as assistant coaches for their fathers have a habit of scaling the coaching ladder, that list also shows that the father-son coaching scheme at issue here isn't uncommon in the world of college football. As to how it is justified, Mike Price, the former head coach of the University of Alabama, whose sons served as his assistants, stated: "That's a good question; how can I answer around this? . . . 'Most of the time, the head football coach gets to make his staff selections without consulting anyone. It's like the captain gets to pick his crew.'"⁶⁹ Or as put by Bobby Bowden, former head coach of Florida State University, whose son served as his assistant: "A lot of guys go into the family business' But I'm in a profession where you can't—unless you get special permission. So I got special permission. I imagine all of these guys did, if they were at a state university."⁷⁰

We don't have the statutory authority to grant such "special permission" in this instance, nor do we have the inclination to participate in what amounts to a "wink-and-a-smile" at the Code's conflict rules. In fact, UConn's assertion that its Head Football Coach will refrain from supervising (and evaluating) not just his tight ends coach, but also his offensive coordinator is, to quote a former Supreme

⁶⁹See, supra, footnote 51.

⁷⁰Id.

Court Justice, “so absurd as to be self-refuting.”⁷¹ Not only that, it doesn’t even go far enough, for to satisfy § 1-84 (c) (as interpreted in prior opinions), Randy Edsall would also have to refrain from supervising and evaluating his son’s competitors, which, as shown earlier, would mean each and every one of his assistant football coaches.

Accordingly, we conclude that § 1-84 (c) prohibits Randy Edsall’s son from being employed as one of his father’s assistant football coaches.

Conclusion

Based on the facts presented, it is the opinion of the Board (1) that, because Randy Edsall was a “state employee” as of December 28, 2016, the date he and UConn executed an employment contract, his subsequent negotiations with UConn concerning his son’s salary (among other things) were impermissible under § 1-84 (c); and (2) that § 1-84 (c) prohibits Randy Edsall’s son from being employed as one of his father’s assistant football coaches.

By order of the Board,

Dated July 20, 2017


Chairperson

⁷¹*NLRB v. Noel Canning*, 134 S. Ct. 2550, 2597 (2014) (Scalia, J., concurring).