STATE OF CONNECTICUT
OFFICE OF STATE ETHICS

Draft Advisory Opinion No. 2019-3

December 12, 2019

Question Presented: **The petitioner, a State Senator who recently accepted and "commenced employment as the Vice President for Advancement for The Village for Families and Children, Inc." (The Village), asks if he may "continue to serve as the Co-Chair of the Legislature's Committee on Children, and, if so, would such service be subject to any provisos, including recusal from matters affecting the significant interests of The Village . . . ."**

Brief Answer: **Because the Committee on Children has jurisdiction over both The Village and the state agency from which The Village receives millions of dollars in state funding, the petitioner may not continue to serve as the Committee's Co-Chair.**

At its November 21, 2019 regular meeting, the Citizen's Ethics Advisory Board (Board) granted the petition for an advisory opinion submitted by Senator Derek Slap. 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).

Background

In his petition, the petitioner provides the following facts for our consideration:

Phone (860) 263-2400 Fax (860) 263-2402
18-20 Trinity Street – Hartford, Connecticut 06106-1660
www.ct.gov/ethics
An Equal Opportunity employer

I am the State Senator from the 5th District and am subject to the provisions of the Code . . . .

I have enthusiastically commenced employment as the Vice President for Advancement for The Village for Families and Children, Inc., a non-profit agency in Hartford whose mission, according to its website is ". . . 'to build a community of strong, healthy families who protect and nurture children' by providing a full range of behavioral health, early childhood and youth development, substance abuse treatment, and support services for children, families and adults in the Greater Hartford region."

My specific questions are, in compliance with the Code, may I continue to serve as the Co-Chair of the Legislature's Committee on Children, and, if so, would such service be subject to any provisos, including recusal from matters affecting the significant interests of The Village for Families and Children, Inc.?

***

Pursuant to the Joint Rules, the Committee on Children has cognizance "of all matters relating to (A) the Department of Children and Families (DCF), including institutions under its jurisdiction, and (B) children."

The Village is licensed by DCF as: a Child Care Facility to provide Group Home Services, a Child Care Facility to provide Temporary Shelter Services, a Child Placing Agency including Foster Care and Adoption Services, an Extended Day Treatment Outpatient Psychiatric Clinic for Children; and, for Residential Treatment.

In FY 19, General Fund support to The Village totaled $10,821,762.00 with approximately $8.6 million in total payments made by DCF, likely under contracts. (figures provided by the Office of Fiscal Analysis). There are no direct line item appropriations to the Village in the state budget.

It is anticipated that there could be legislation raised in the upcoming session which may be supported or opposed by

DCF, and which could potentially have some impact on The Village.

The job description for this position with The Village is copied below. The job appealed to me because of the very worthy work of The Village and its compatibility with my prior professional interests, experience and education. I previously worked as the Chief of Staff for the Senate Democratic Caucus. Legislative priorities for the Caucus during that period included gun safety, school security and mental health reforms; GMO labeling; and access to high quality pre-k education opportunities.

My communications experience also includes serving for four years as Director of Communications for the Senate Democrats, Deputy Chief of Staff/Communications Director for the Secretary of the State, Communications Director for the DeStefano for Governor campaign, and Director of Public Information for the City of New Haven. From 1999 until 2004 I was a news anchor and reporter at NBC Connecticut, and before that worked at TV stations in Florida and at CNN Headline News in Atlanta.

I earned an MBA from the UConn School of Business and bachelors' degrees in Broadcast Journalism and International Relations from Syracuse University.

My most recent positions as Vice President of Marketing and Communications for the UConn Foundation and President and CEO of Connecticut Technology Council meld very well with the advancement/development functions of my position at The Village.

I will not have any role in negotiating or seeking contracts with the state, nor do I anticipate being involved in proposing or advocating for a legislative agenda for The Village. The Village is considered a client lobbyist and has retained communicator lobbyists registered with your office. . . .

Analysis

Before getting to the petitioner's question, we must address the question

of jurisdiction. Persons generally subject to the Code are described therein as either "public officials" or "state employees." The Code defines the term "Public official" to include (among many others) any "member . . . of the General Assembly . . . ." General Statutes § 1-79 (11). As a State Senator, the petitioner is a member of the General Assembly, meaning he is subject to the Code, including its outside employment provisions.

The Code's primary outside employment provisions are found in subsections (b) and (c) of General Statutes § 1-84, which the Office of State Ethics regulations paraphrase and expound as follows:

> Pursuant to Subsection (b) and (c) of Section 1-84 . . . no public official or state employee may accept outside employment which will impair independence of judgment as to state duties or require or induce disclosure of confidential state information, nor may such an individual use state position or confidential information acquired through state service to obtain personal financial gain. . . . *Generally, Subsection (b) and (c) . . . are violated when the public official or state employee accepts outside employment with an individual or entity which can benefit from the state servant's official actions . . . .*

(Emphasis added.) Regs., Conn. State Agencies § 1-81-17.

If our task were simply to apply that language to the facts at hand, the conclusion would be clear, namely, that the petitioner was prohibited by subsections (b) and (c) of § 1-84 from accepting employment with The Village because it can benefit from his official actions. After all, he is Co-Chair of the legislature's Committee on Children, which (as noted above) has jurisdiction not only over DCF—from which The Village receives millions of dollars in state funding—but also over entities under DCF's jurisdiction, including The Village. In fact, the Village is licensed by DCF in no fewer than five categories (i.e., as a Child Care Facility to provide Group Home Services, a Child Care Facility to provide Temporary Shelter Services, an Extended Day Treatment Outpatient Psychiatric Clinic for Children, etc.).

But our task isn't so simple. Although neither the Code nor the regulations exempt legislators from the prohibitions in subjections (b) and (c) of § 1-84, the State Ethics Commission (Commission), in its advisory opinions, "consistently differentiated between full-time public servants and Connecticut's part-time legislators" when it came to matters of outside employment. Advisory Opinion No. 91-8. The Commission was (in its

words) "disinclined . . . to adopt a strict interpretation of the use of office and acceptance of outside employment provisions as they apply to members of Connecticut's part-time General Assembly." Advisory Opinion No. 91-5; see also Advisory Opinion No. 2001-28 ("[t]he Commission . . . has historically been reticent to utilize these provisions to restrict the outside employment of the part-time members of the . . . General Assembly"). The reason for its reticence was this: "The great majority of legislators must, of economic necessity, pursue outside employment while in public service," and "[u]nder the circumstances, conflicts of interests are inevitable." Advisory Opinion No. 89-28. Because it could not "prevent every [such] conflict . . . without virtually eliminating outside employment for legislators"; Advisory Opinion No. 89-7; the Commission "sought to allow Connecticut's part-time legislators a maximum degree of latitude in their private business dealings, including matters involving the State." (Internal quotation marks omitted.) Declaratory Ruling No. 2011-B.

There were limits to that latitude, however, and occasionally, the Commission would bar a legislator's "outside economic endeavors . . . when [the] conflicts, both real and apparent, [were] so significant as to require prohibiting the conduct in question." (Internal quotation marks omitted.) Advisory Opinion No. 91-5. In just five of its roughly twenty-seven rulings concerning legislators' outside employment did the Commission find a conflict "so significant" as to justify prohibiting it. Of those five rulings, four involved committee chairs.

The first such ruling involved whether legislators could participate in the State Farmland Preservation Program. Advisory Opinion No. 87-13. The program—under which owners of agricultural land could "apply to have the development rights of [their] land purchased by the State"—was overseen by the Department of Agriculture (DOA). The Commission concluded that all but a few legislators could participate in the program, the excluded few including the Chairs of the Environment Committee (which had jurisdiction over DOA matters) and the Chairs of the Appropriations Committee (which had jurisdiction over the DOA's appropriations).[1] Id. The Commission justified their exclusion on the ground that "[t]hey wield such power that inadvertent use of office probably could not be avoided. . . . [DOA] staff might well not be able to evaluate objectively and fairly the application of a legislator who can almost singlehandedly decide what the [DOA's] programs will be, and how adequately they will be funded." Id.

[1]The Commission also excluded legislators who served on the State Bond Commission, which was responsible for funding the program. Id.

A year later, the Commission addressed whether the Chair of the Labor and Public Employees Committee—which had "full cognizance over all matters relating to workers' compensation, including the Workers' Compensation Commission" (WCC)—could accept outside employment with a union to represent its members before the WCC. Advisory Opinion No. 88-9. The answer was no:

> Acceptance of such employment . . . will inevitably create the appearance that the *Union is attempting to ingratiate itself with the individual who . . . has such sweeping, continuing control over its members' fortunes*. Regardless of [the legislator's] expertise or performance, many will believe that *he has obtained the employment in question by virtue of his State office*. Regardless of his subsequent public conduct, many will believe that his independence of judgement as to his official duties has been impaired . . . [and] that the *Union has retained* [*the legislator's*] *services because of the obvious possibility that his influence over workers' compensation matters will redound to its members' benefit* . . . .

(Emphasis added.) Id.

The next year, that same legislator was the subject of a second opinion, in which he posed a slightly different question: whether, as Chair of the Labor and Public Employees Committee, he could accept outside employment "represent[ing] an individual in a Workers' Compensation case, either before the [WCC] or through simple meetings with their adjusters[.]" Advisory Opinion No. 89-7. Quoting heavily from its prior opinion, the Commission, for a second time, answered no. Id. In doing so, it stressed that "[i]t can and will . . . advise against outside employment involving the State, when the legislator's authority over the program or agency in question is so great as to create the distinct possibility of inadvertent use of office for financial gain and an inevitable appearance of impropriety." Id.

That same year, the Commission considered the outside work of the Chair of the Banks Committee, which had "cognizance of all matters relating to banks . . . ." (Internal quotation marks omitted.) Advisory Opinion No. 89-28. The legislator, owner of a real estate company, was approached by a group of investors, who offered to compensate him if he could locate a bank for them to purchase. Id. The Commission deemed the work impermissible to the extent it involved a Connecticut bank or an out-of-state bank with a known interest in legislation within the Banks Committee's jurisdiction. Id. "[I]t is only logical," said the Commission, "to assume that many bankers

subject to [the legislator's] official authority will, if at all possible, seek to enter into an agreement which would financially benefit one who wields such sweeping powers over Connecticut banking." Id. Not only that, "many will believe that by arranging and directly benefitting from the sale of a Connecticut bank the Chairman of the Banks Committee has accepted outside employment which will impair his independence of judgement as to his official duties . . . ." Id.

For the next decade, the Commission had no occasion to opine, via advisory opinion, on the outside work of any committee chairs. Informally, however, Commission staff regularly cited the just-discussed string of rulings and twice relied on those rulings to justify barring committee chairs from accepting certain work. In a 1997 informal opinion, Commission staff concluded that the Chair of the Committee on Commerce, which had jurisdiction over certain quasi-public agencies, was barred from representing clients before those agencies. Request for Advisory Opinion No. 1836 (1997). In another 1997 informal opinion, Commission staff concluded that the Chair of the Insurance and Real Estate Committee was barred from accepting outside work that involved "secur[ing] provider contracts from insurance companies" and "solicit[ing] employers for their Workers' Compensation injuries." Request for Advisory Opinion No. 1819 (1997).

If we were to stop right there and apply that precedent to the facts before us, the answer would be clear (as it was above under a plain reading of subsections (b) and (c) of § 1-84): The petitioner was barred from accepting employment with The Village because he chairs the legislative committee that has jurisdiction over that entity and over the state agency from which that entity receives millions of dollars in state funding (i.e., DCF).

But we can't stop there, for after the decade-long drought in advisory opinions involving committee chairs, the Commission issued Advisory Opinion No. 99-29, which threw a proverbial wrench in the gears of the Commission's precedent. There, the Chair of the Judiciary Committee—which "has cognizance over '…all matters relating to the courts, judicial procedure, criminal law, [and] probate courts' "—asked if he could accept employment as the Director of Professional Development for the Connecticut Bar Association (CBA). Id. The CBA is "a professional organization representing and serving Connecticut's attorneys," and "[a]s part of its work, it maintains a legislative affairs department, with two in-house lobbyists," and "has lobbying contracts with two outside firms." Id. The legislator's CBA work would "not involve government relations (i.e., lobbying) . . . [nor would it] entail practice before any state agencies or

courts," but would involve "developing and producing programs and services . . . to further the professional development of [CBA] members . . . ." Id.

In considering the employment's propriety, the Commission looked to the string of rulings discussed above, noting its longstanding concern "over possible conflicts involving . . . committee chair[s]. . . ." Id. It then acknowledged that, in "[a]pplying the precedent established by these decisions to the question under review, *[the legislator's] acceptance of employment with the CBA would appear problematic*." (Emphasis added.) Id. But that wasn't the end of it, for the legislator "proposed a resolution"—to which the Commission gave its blessing—that would "allow him to accept the CBA position, retain his Co-Chairmanship, and, at the same time, address the ethical concerns raised by the Commission." Id. That is, he offered

> not only to recuse himself from matters affecting his substantial financial interests, as required by law, *but also to voluntarily recuse himself from matters affecting the significant interests of his employer*. In essence, this additional recusal would encompass both legislation specifically affecting the financial interests of the CBA as an association (e.g., a proposal to combine the current functions of the Association with regulation of the profession) and legislation which the CBA has endorsed as an Association priority (i.e., the legislative program adopted by the CBA for each session of the General Assembly and lobbied by the CBA's registrants).

(Emphasis added.) Id. The Commission viewed the resolution as not only allaying its "ethical concerns," but also representing a "balanced approach" that would "maintain public confidence in the integrity of the legislative process while, at the same time, allowing Connecticut's part-time legislators to pursue legitimate opportunities for career advancement." Id.

That opinion leaves us with this question: Did the Commission announce a new general rule (or "approach") in Advisory Opinion No. 99-29 regarding legislators' outside work, or did it announce a limited exception to the general rule set forth in the string of rulings discussed above? We think it's the latter (i.e., a limited exception), particularly in light of subsequent formal and informal Commission opinions.

After issuing Advisory Opinion No. 99-29, the Commission issued just two more advisory opinions concerning legislators' outside employment before being legislatively disbanded. Neither opinion involved a committee

chair, but the Commission's discussion in one of them, Advisory Opinion No. 2001-28, is telling.[2] The issue was whether a legislator could "consult for clients and vendors" of a particular state agency when she was a member (but not a Chair) of the Legislative Regulations Review Committee (LRRC) and of a LRRC subcommittee responsible for reviewing the regulations of that particular state agency. Id. The Commission's answer—namely, yes—isn't important here; what's important is the Commission's statement of existing law regarding legislators' outside employment:

> The Commission . . . has historically been reticent to utilize [subsections (b) and (c) of § 1-84] to restrict the outside employment of the part-time members of Connecticut's General Assembly. *Specifically, only when a legislator wields essentially unique and direct authority over a particular state agency or department has the Commission prohibited his or her representation of clients before that entity. See, e.g., State Ethics Commission Advisory Opinion Nos. 88-9 . . . and 89-7* . . . wherein the Commission ruled that the House Chairperson of the Labor and Public Employees Committee should not represent clients before agencies under the jurisdiction of the Committee.
>
> *Applying this line of precedent* to the question posed, the LRRC and subcommittee member will not be prohibited, under §§1-84(b) and (c), from engaging in outside representation before the regulated agency.

(Emphasis added.) Id. Notice that, in discussing relevant "precedent" involving legislators' outside employment, the Commission mentioned Advisory Opinion Nos. 88-9 and 89-7 (i.e., two of the string of four opinions we discussed above), but not Advisory Opinion No. 99-29 (which was issued just two years earlier). Clearly, the Commission didn't intend the latter opinion to supplant the former ones.

That conclusion is bolstered by informal opinions issued by Commission staff following Advisory Opinion No. 99-29. Specifically, in a 2001 informal opinion, Commission staff concluded—consistent with the string of opinions discussed above—that the Chair of the Commerce Committee could "not appear before or seek funding from an agency subject to [his] Committee's cognizance." Request for Advisory Opinion No. 2964 (2001). Further, in a 2005 informal opinion, which didn't involve a committee chair,

[2]The other opinion, Advisory Opinion No. 2003-20, provides no insight into the Commission's thinking on this topic.

Commission staff, in articulating the existing law on legislators' outside employment, stated, in relevant part:

> Outside employment of state employees and officials is regulated in large part by . . . §§ 1-84(b) and 1-84(c) . . . . Because Connecticut's legislature is part-time, however, the application of the . . . Code to the outside employment of legislators is quite narrow. . . . *The . . . Commission has, however, limited the outside employment of certain legislators in leadership positions. For example, the Commission . . . prohibited [the Banks Committee Chair] from, on . . . investors' behalf, "seeking to arrange the purchase . . . of a Connecticut Bank or an out-of-state bank known by him to have an interest in legislation that must come before the Banks Committee." Ethics Commission Advisory Opinion No. 89-28. . . .*

(Emphasis added.) Request for Advisory Opinion No. 3871 (2005). Once again, reference was made—not to Advisory Opinion No. 99-29—but to one of the string of four opinions discussed earlier (i.e., Advisory Opinion No. 89-29).

Given the Commission's treatment of its own precedent, both formal and informal, we read Advisory Opinion No. 99-29 as nothing more than a limited exception to the general rule established in the string of opinions discussed above. See Declaratory Ruling 2011-A (in which we noted that "[t]he one exception to that general rule regarding committee chairpersons is found in Advisory Opinion No. 99-29"[3]).

That leaves us with just one remaining question: Does the petitioner's employment with The Village fit within that limited exception? When we juxtapose the facts in Advisory Opinion No. 99-29 and those here, the answer becomes clear.

Although the facts there and here are similar in some respects, there are two critical differences. First, nothing in Advisory Opinion No. 99-29 suggests that the legislator's proposed employer (i.e., the CBA) received *any* state funding, whereas the petitioner's employer (i.e., The Village), *in fiscal year 2019 alone*, received $10,821,762, with roughly $8.6 million coming from DCF—the very (and only) state agency of which the committee chaired by

[3]Declaratory Ruling 2011-A discussed the law concerning legislators' outside employment, but it didn't deal, nor have any of our other rulings dealt, with the outside employment of a committee chair. This is our first opportunity to opine on the issue.

the petitioner (i.e., the Committee on Children) has express cognizance. Second, nothing in Advisory Opinion No. 99-29 suggests that the committee chaired by the legislator in question (i.e., the Judiciary Committee) had jurisdiction over the CBA itself, whereas the Committee on Children has express jurisdiction over all "institutions under [DCF's] jurisdiction," which presumably includes The Village, which (as noted earlier) is licensed by DCF in five separate categories. In light of these significant differences, we conclude that the limited exception established in Advisory Opinion No. 99-29 doesn't apply here.

Because that exception doesn't apply here, the general rule established concerning committee chairs does, meaning (in answer to the petitioner's specific question) that he may not continue to serve as the Co-Chair of the Committee on Children.

By order of the Board,

Dated_____ _____
Chairperson