



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

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96-24
per Alan
9/11/97

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ADVISORY OPINION NO. 96-²⁴~~X~~

Application Of The Provisions Of The Code Of Ethics
To A Commissioner Previously Employed In
The Regulated Industry

Alan S. Plofsky, Executive Director and General Counsel for the Ethics Commission, has asked the Commission to issue an advisory opinion determining whether George M. Reider, Jr., State Insurance Commissioner, has a conflict of interest, real or apparent, in participating in a public hearing concerning the acquisition of The Aetna Casualty and Surety Company and the Standard Fire Insurance Company (Aetna) by the Travelers Insurance Group, Inc. (Travelers).

The Commission's Counsel has asked that the Ethics Commission, through its Opinion, address various issues which had been raised by a prior declaratory ruling request (now withdrawn) from Attorneys Steven H. Meyer and Richard A. Bieder. Specifically, that request stated, on information and belief, that Mr. Reider was, for many years, employed by Aetna; and, as a result, may be entitled to certain benefits from the Company, such as a pension and health care. It was further claimed that Mr. Reider owned stock in Aetna; and that it was also probable that shares in the company were held by one or more of the following: his spouse, dependent children, children, spouses of children, parents, brothers or sisters. Finally, the request asked that the Commission determine whether these claims were, in fact, true; and, if so, whether Commissioner Reider had either a real, potential, or the appearance of, a conflict of interest in participating in the aforementioned hearing.

By way of background, the Commission notes the following:

On April 7, 1995, Mary Ann Hanley, Legal Counsel for the Governor, wrote to Alan Plofsky, General Counsel for the Ethics Commission, regarding Mr. Reider's proposed appointment as Insurance Commissioner. In her memorandum, Attorney Hanley stated that, upon confirmation, Mr. Reider would accept a lump sum payment from the Aetna and officially retire; and would also place his Aetna stock in a blind trust.

On April 11, 1995, the Commission's Counsel responded that, as had been previously discussed, the above described

steps would fully address any potential for a conflict of interests under the Code of Ethics.

Next, on February 23, 1996, Commissioner Reider wrote to the Commission's Counsel seeking a specific review of whether the Commissioner serving as hearing officer and rendering a decision regarding the proposed acquisition of Aetna by Travelers would constitute a conflict of interests under the Code of Ethics.

By letter of February 28, 1996, the Commission's Counsel reiterated his prior position. Specifically, he stated that Commissioner Reider's creation of a blind trust for his Aetna interests (i.e., stock options) was a legally authorized device for the avoidance of a conflict of interests which would permit him to act on the Travelers application.

The Ethics Commission now formally endorses the prior informal advice of its Counsel, with one significant amendment necessitated by the receipt of additional information.

Conn. Gen. Stat. §§1-85 and 1-86 define and proscribe substantial and potential conflicts of interests for purposes of the Code of Ethics. Under §1-85 (substantial conflict) one must have "...reason to believe or expect that he, his spouse, a dependent child, or a business with which he is associated will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity." Under §1-86 (potential conflict) the applicable standard is that the individual's actions "...would affect a financial interest of himself, his spouse, parent, brother, sister, child or the spouse of a child or a business with which he is associated, other than an interest of a de minimis nature...."

By establishing a blind trust for his (and his wife's) Aetna stock options Commissioner Reider has taken all necessary and proper steps, under the Code of Ethics for Public Officials, in an attempt to avoid any substantial or potential conflict of interests. Such blind trusts are widely recognized as an appropriate device for avoidance of conflicts, and are specifically referenced in the Code as a legally sanctioned method for "...divestiture of all control and knowledge of assets." Conn. Gen. Stat. §1-79(a). The Ethics Commission has now been informed, however, that despite Commissioner Reider's good faith efforts the blind trust is not absolute. Specifically, certain 1994 Aetna stock options will not vest until March 25, 1996 (1200 shares) and March 25, 1997 (1200 shares); and, therefore, it is impossible for the Commissioner to divest himself of knowledge of these assets.

With regard to the 1994 options vesting in 1997, any possible effect that the Commissioner's decision on the proposed acquisition might have on the price of Aetna stock would, given

the myriad forces at work in the financial markets, be obviously attenuated by the time the options in question could be exercised. Therefore, the objective standards of §§1-85 and 1-86 i.e., "...reason to believe or expect...a direct monetary gain" and "would affect a financial interest..." are clearly not present in this case. (In contrast, see, e.g. Ethics Commission Docket No. 89-2 (August 8, 1989). Legislator guilty of a conflict of interests when he took official action on legislation authorizing a bank merger; and, under the merger agreement, the legislator's bank stock would be purchased for 250% of book value.)

With regard to the options which vest in less than two weeks, however, the potential for a foreseeable financial effect resulting from the Commissioner's decision on the proposed acquisition is far greater. Unlike Ethics Commission Docket No. 89-2, supra, the acquisition under review is an asset purchase and does not establish a stock buyout price. Nonetheless, it is reasonable to assume that a decision by the Insurance Commissioner to reject the acquisition would have a near term negative impact on the value of both Aetna and Travelers stock. Given the fact that Commissioner Reider's trustee will acquire the right to purchase a not insubstantial amount (1200 shares) of Aetna stock at the very time the Commissioner is being called upon to render a decision on Travelers' proposed acquisition of Aetna, a conflict of interests exists under the provisions of the Code of Ethics for Public Officials. When advised of this conclusion, Commissioner Reider immediately agreed to legally postpone his vesting rights in the options at issue until March, 1997; thereby eliminating the conflict.

Finally, with regard to the remaining assets in the trust, given Commissioner Reider's lack of knowledge as to his holdings, the statutory standards of §§1-85 and 1-86 cannot possibly obtain in this instance. Consequently, no impermissible conflict now exists, under the Code of Ethics for Public Officials, by virtue of the stock options Commissioner Reider received as an Aetna employee.

Turning to the issue of Commissioner Reider's Aetna benefits, he has, by letter of March 8, 1996, disclosed the following: a 100% joint annuity payable on a monthly basis during his lifetime and/or his wife's; an Incentive Savings Plan, which is a 401K retirement plan. (All contributions by Mr. Reider and the company ceased at the time of his retirement. Stock equivalent units in the Plan were converted to an interest bearing account at the time the blind trust was established); medical and dental benefits, the costs of which are paid by a standard company contribution and an additional amount paid by Mr. Reider; and group term life insurance.

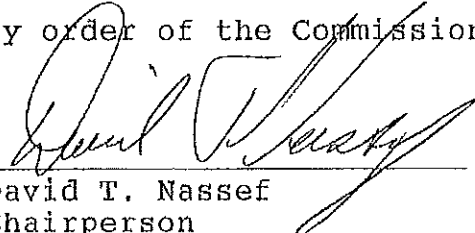
Simply stated, neither the enumerated retirement benefits nor the interest bearing account will be affected, in any foreseeable fashion, by the Commissioner's decision on the proposed Travelers acquisition of Aetna. As a consequence, there is no conflict, substantial or potential, under the Code of Ethics for Public Officials.

With regard to the possible stock holdings of the relatives listed in the prior request for a declaratory ruling, Commissioner Reider's March eighth letter discloses that the only individual with any Aetna stock is one of his sons. Specifically, this son, through a 401K plan, owns the equivalent of 48 shares of stock valued at \$3,751 as of March 8, 1996. The Commissioner further discloses that his son was hired as an Aetna employee in November, 1991 and holds the position of Planning Consultant with Aetna Health Plans.

Again assuming, for purposes of this Ruling, that Commissioner Reider's decision on the proposed acquisition would have a foreseeable effect, at least in the near term, on the price of Aetna's stock; any resultant effect on his son's 48 share interest would be clearly de minimis. (See, Declaratory Ruling 89-G (September 11, 1989). Spouse of Chairperson of the Connecticut Hazardous Waste Management Service held 373 shares of Northeast Utility stock. This asset was found to be de minimis when viewed in the context of a one million dollar assessment against the Company's 109 million outstanding shares.) Therefore, no conflict of interests exists under the applicable provisions of the Code of Ethics for Public Officials.

Finally, the Ethics Commission declines to respond to the request for a determination of whether there exists, in this instance, any appearance of a conflict of interests. As the Commission has often stated, "The Code of Ethics for Public Officials does not speak of appearances of conflict, only actualities." Advisory Opinion No. 90-6, 51 Conn. L. J. No. 35, p. 3D (2/27/90).

By order of the Commission;



David T. Nassef
Chairperson

Dated _____

4/4/96