

CONNECTICUT STATE ETHICS COMMISSION  
30 TRINITY STREET  
HARTFORD, CONNECTICUT 06115

In the Matter of a Request  
for a Declaratory Ruling

81-A

Hollace P. Brooks, Esq.  
Applicant

Serving as a Hearing Examiner for the  
Commission on Human Rights and Opportunities

The Commission has been asked several questions related to the position of hearing examiner for the Commission on Human Rights and Opportunities:

1. Is a hearing examiner for the Commission on Human Rights and Opportunities a public official as defined in the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes?

2. Would serving as a hearing examiner conflict with the lobbying activities of the partners in the hearing examiner's law firm?

3. Would serving as a hearing examiner prevent the hearing examiner or partners in his law firm from appearing before any State agencies?

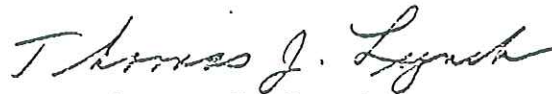
With regard to the first question, hearing examiners are appointed by the Governor to a State position for a term of years. Subsection 46a-57(a), General Statutes. It appears that following a hearing the hearing officer issues orders which he has found to be appropriate. Section 46a-86, *id.*; cf. subsection 46a-95(a), *id.* Unlike some hearing officers, who merely gather evidence and make recommendations, a hearing officer for the Commission on Human Rights and Opportunities exercises the power of the State. Holding an office, Kelly v. Bridgeport, 111 Conn. 667, 671 (1930), to which he is appointed by the Governor, he is a public official for purposes of the Code of Ethics for Public Officials. Subsection 1-79(j), General Statutes. Because he exercises the power of the State, he cannot be considered a member of an advisory board. Subsection 1-79(g), General Statutes.

The only limitation on the lobbying activities of members of a hearing examiner's law firm would be that they could not lobby on matters involving the Commission on Human Rights and Opportunities. The Ethics Commission has determined that a public official may lobby so long as he does not lobby in the area of his public responsibility. Ethics Commission Advisory Opinion No. 79-4, 40 Conn. L.J. No. 36, p. 17. The hearing examiner would be similarly barred. So would be the members of his law firm. See Ethics Commission

Advisory Opinion No. 78-21, 40 Conn. L.J. No. 13, p. 11. Otherwise, the hearing examiner and the others in his firm may carry on legislative and administrative lobbying activities.

In 1979, subsection 1-84(d), General Statutes was amended to exempt from its restrictions those who serve the State in positions for which they receive only per diem, reimbursement of expenses, or both. See Ethics Commission Advisory Opinion No. 79-23 (amended). The per diem was specified to be a "flat per diem rate". The legislative history does not reveal precisely what is meant by this term. Therefore, it should be construed according to the commonly approved usage of the language. Subsection 1-1(a), General Statutes. One of the meanings of "flat", as used in "flat rate", is unvarying, not varied from a fixed or normal amount, standard. Webster's New International Dictionary, Unabridged (2d ed. 1957). The per diem for hearing examiners is established by statute. Each receives \$75 per day for each day the examiner conducts hearings; \$75 per day prorated for the time during a day devoted to the preparation of findings, decisions, orders, or rulings; and reimbursement for reasonable expenses. Subsection 46a-57(c), General Statutes. Established by statute, the per diem is paid at a fixed, "flat" rate. It does not vary from examiner to examiner, as it might if the per diem were one of the terms of a personal services contract negotiated with each hearing examiner. Set by statute at a standard rate for all hearing examiners, the per diem paid the hearing examiners for the Commission on Human Rights and Opportunities is the type of per diem described in the last sentence of subsection 1-84(d), General Statutes. The hearing examiners receive no compensation other than per diem, paid at a flat rate, and reimbursement for expenses incurred in the course of their duties for the Commission. Therefore, they meet the requirements of the last sentence of subsection 1-84(d) and are excepted from the terms of that subsection. Any prohibitions against appearing before certain State agencies applicable to members of a public official's organization derive from the public official. Since a hearing examiner is not prevented from representing others for compensation before the State agencies listed in subsection 1-84(d), General Statutes, members of the hearing examiner's law firm are similarly free of the restrictions imposed by subsection 1-84(d).

By order of the Commission,



Rev. Thomas J. Lynch  
Chairman

Dated

April 14, 1981