

CONNECTICUT STATE ETHICS COMMISSION
30 TRINITY STREET
HARTFORD, CONNECTICUT 06115



~~George S. Writer, Jr., Vice-Chairman~~
George S. Writer, Jr., Vice-Chairman
James F. English
John M. Lupton
Rev. Thomas J. Lynch, Chairman
Robert W. MacGregor
Gerard M. Peterson
Sheila M. Hennessey

ADVISORY OPINION NUMBER 78-20

"Administrative Action" in Public Act Number 77-605

A public service company has applied to the Public Utilities Control Authority, as required by sections 16-43 and 16-47, Connecticut General Statutes, for approval of a corporate reorganization and merger and for approval of the formation of a holding company. As part of its application, the public service company asked for rulings regarding four issues which would be of concern after the reorganization. Rulings were requested on the method of allocating charges among the various subsidiaries of the holding company, treatment of tax benefits, the mechanism for determining the price of a commodity sold by one subsidiary of the holding company to another, and the allocation among shareholders of particular benefits and risks of loss.

The attorney who represents the public service company has asked the State Ethics Commission whether participation in these proceedings before the Public Utilities Control Authority requires him and the company to register as lobbyists and file financial reports concerning their activities before the Authority.

"Lobbying" includes communicating with an official or his staff for the purpose in influencing any administrative action. Public Act Number 77-605, section 1(k). "Administrative action" is defined as any action or non-action of any executive agency of the State with respect to the amendment, adoption, or repeal of any rule, regulation, guideline, or hearing. Id., section 1(a). The Public Utilities Control Authority is unquestionably an "executive agency of the State." Id., section 1(e).

The decision on the basic request of the public service company for reorganization of its corporate structure will apply to that company alone. Similarly, rulings on the four questions posed to the Authority will apply to the peculiar circumstances of the company's post-reorganization situation. They will not be statements of general applicability and thus will not be "regulations". Section 4-166(7), Connecticut General Statutes; State Ethics Commission Advisory Opinion 78-5, 39 Conn. L.J. No. 40, p. 18. For the same reason,

they will not be "rules" or "guidelines," which also are quasi-legislative in nature. State Ethics Commission Advisory Opinion 78-7, 39 Conn. L.J. No. 45, p. 20; cf. Cheshire Convalescent Center, Inc. vs. Commission on Hospitals and Health Care, 34 Conn. Sup. 225, 39 Conn. L.J. No. 45, p. 12 (1978).

Decisions the Authority reaches incident to passing on the merger, corporate reorganization, and formation of a holding company will, no doubt, affect the future operating expenses, operating income, or both of the company. The rulings likewise will affect future operating expenses or income. However, the rates paid by ratepayers will not thereby be changed. Those rates would not be amended until the company petitioned the Authority for a revised schedule of rates in accordance with section 16-19, Connecticut General Statutes. That statutory provision would allow the company, in future rate proceedings, to cite any changes in operating income and expenses as justification for a change in rates to be paid by ratepayers. See Public Utilities Control Authority Regulations, sections 16-1-53 through 16-1-57. Those future rate proceedings, not the present one, would be rate hearings. They would be "proceedings to consider a formally proposed schedule of rates". Ethics Commission Regulations, section 1-92-42. The present ones clearly are not. See Public Utilities Control Authority Regulations, sections 16-1-60 and 16-1-61, 16-1-64 and 16-1-65.

In their present appearance before the Authority, the public service company and its representative are not trying to influence the action of the Authority with respect to any rule, regulation, guideline, or rate hearing. Consequently, neither is lobbying as defined in Public Act Number 77-605. Participation in the proceedings will not result in either being a lobbyist.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated September 12, 1978