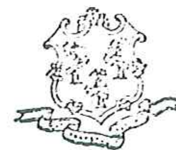
CONNECTICUT STATE ETHICS COMMISSION
30 TRINITY STREET
HARTFORD, CONNECTICUT 06115



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ADVISORY OPINION NUMBER 78-21

Appearances by a Public Official's Firm before Certain State Agencies

An attorney, appointed to the State Elections Commission by the Senate Minority Leader, is an associate in a law firm. He will not become eligible for consideration to be a partner in the firm for several years. The attorney does not and will not practice before any of the State agencies listed in section 1-66(d), Connecticut General Statutes, as amended by section 6(d), Public Act Number 77-600. Other members of his firm are likely to appear for compensation, in a representative capacity, before those State agencies from time to time. As a salaried employee, the attorney presumably does not share in fees derived from the practice of other attorneys in his firm before the State agencies. The attorney has asked the State Ethics Commission whether, under the foregoing conditions, section 1-66(d), supra, prohibits him from remaining a member of the Elections Commission.

The statutory section involved provides:

> "No public official...shall agree to accept, or be in partnership with or a member of a professional corporation which partnership or professional corporation agrees to accept, any employment, fee or other thing of value, or portion thereof, in consideration of his appearing, agreeing to appear, or taking any other action on behalf of another person before..." the State agencies listed.

The answer to the attorney's query depends upon determination of whether he is a public official, whether the prohibition applies to all members of a firm which includes a public official, and the effect of the attorney being an associate rather than a partner in his firm.

" 'Public official' means...any person appointed to any office on the legislative, judicial or executive branch of state government by the governor, with or without the advice and consent of the general assembly and any person appointed...by the general assembly or either house thereof, but shall not include a member of an advisory board...." Section 1(j), Public Act Number 77-600.

Under this definition, the attorney is a public official notwithstanding the fact that he was appointed by the Senate Minority Leader. At the outset it is clear, considering the powers bestowed upon the Elections Commission in section 9-7b , Connecticut General Statutes, that the attorney is not a member of an advisory board as defined in section 1(g), Public Act Number 77-600. As with many State agencies, including the Ethics Commission, members are appointed to the Elections Commission either by the Governor or by one of the leaders of the two Houses of the General Assembly. Section 9-7a (a), Connecticut General Statutes. A Commission member appointed by a legislative leader is, in effect, appointed by the House in which the leader serves. In the statutory sections covering appointments, the legislature delegates to its leadership authority to make appointments on behalf of each House or the General Assembly. Cf. Opinion of the Attorney General dated August 7, 1978. Were provisions concerning appointments by legislative leaders not so interpreted, sections 1(j) and 2(a) of Public Act Number 77-600 would yield the absurd result that three members of the State Ethics Commission, appointed by the Governor, are public officials for the purposes of the Act and four members, appointed by the legislative leadership, are not.

With regard to the extent of the prohibition in section 1-66(d), supra, the identical language in that section prior to its amendment was construed to prohibit appearances before the designated agencies by any member of a public official's firm as well as by the public official. Minutes of the Joint Legislative Ethics Committee dated March 14, 1975; advisory opinion, dated July 2, 1973, of the Joint Legislative Ethics Committee concerning an unidentified State Representative. There is no indication that the General Assembly, in re-enacting the language, intended to change the interpretation. To the contrary, in the House it was made clear during floor debate that the language was intended to continue the prohibition against any member of a public official's law firm representing others for compensation before the designated State agencies. Connecticut General Assembly House Proceedings, Vol. 20, Pt. 15, pp. 6507-6508. Based on the construction of the statutory language prior to re-enactment of the section in 1977, and the express intent of the General Assembly that the interpretation remain the same, the Attorney General has determined that a public official's firm, as well as the public official, is prohibited from engaging in the activities set forth in section 1-66(d), supra. Opinion of the Attorney General dated August 7, 1978.

Before amendment in 1977 section 1-66(d), supra, contained language governing a public official who was "in association", as well as "in partnership" or a "member of a professional corporation".

In deleting "association" (and "union or professional association") the General Assembly did not intend to make the prohibition depend upon a person's status in the firm. Floor debate noted specifically that the ban applied to partners and associates. Connecticut General Assembly House Proceedings, supra. See also Office of Legislative Research Special Analysis, File Number 1085, dated June 2, 1977, which observed, in discussing on page 3 prohibitions retained in Public Act Number 77-600 as passed by the Senate, that the then-current ban forbidding a public official to appear "either personally or through an associate or employee, before certain state agencies as a paid representative of a third party" was continued.

In the related field of professional ethics of attorneys, the status in his firm has no bearing on an attorney's ethical responsibilities. If one attorney is disqualified from appearing in a case, the firm and all its attorneys are similarly disqualified. Weidlich v. Weidlich, 147 Conn. 160 (1960); Consolidated Theatres v. Warner Bros. Cir. Man. Corp., 216 F. 2d 920 (2d Cir. 1954); Laskey Bros. of W. Va. Inc. v. Warner Bros. Pictures, Inc. 224 F. 2d 824 (2d Cir. 1955), cert. denied 350 U.S. 932 (1956); Kramer v. Scientific Control Corp., 534 F. 2d 1085 (3d Cir. 1976); U.S. v. Standard Oil Co., 136 F. Supp. 345 (S.D. N.Y. 1955); Drinker, Legal Ethics 106 (1953). Throughout the Code of Professional Responsibility, Connecticut Practice Book, provisions apply without specifying the position of an attorney within his firm (e.g., Disciplinary Rules 2-101(B)(1), 5-101(B), 5-102(A) and (B), to "partners and associates" or "members and associates" (e.g., Disciplinary Rules 2-102(A)(1) and (4), 2-103(A) and (C), 2-107, Ethical Consideration 4-2), or to those described using phrases such as "partner, associate, or any other lawyer affiliated with him or his firm" (e.g. Disciplinary Rules 2-101(A), 2-103(D), and 5-105(D)). That is to say, what is ethical or unethical for a partner in a law firm is equally ethical or unethical for any other attorney in the firm. "We do not think that titles have much to do with the real problem here." Consolidated Theatres, supra, at 927.

With regard to appearances by a public official's law firm before the State agencies listed in section 1-66(d), supra, the same ethical considerations apply whether the public official is an associate, a partner in his firm, or a member of a professional corporation. If the public official is an attorney, those affiliated with him in the firm should not represent others for pay before the agencies. Whether or not such appearances would be technical violations of section 1-66(d), supra, the appearance of impropriety is the same whether the attorney is an associate, a partner, or has some other position in the firm. A public official occupies a position of trust and confidence. He should not place himself in a situation which allows public doubt about possible undue influence to arise.

In deciding that an attorney may not remain both a public official and an attorney in a law firm which engages in the

activities described in section 1-66(d), supra, the Commission is not unmindful of the problems this may cause in finding competent citizens willing and qualified to perform unpaid public service on agencies, other than advisory boards, of the State. The General Assembly, however, has made a policy judgment, embodied in section 1-66(d), Connecticut General Statutes, as amended. Public confidence in the integrity of government cannot be maintained if interpretations of the section are premised on distinctions which have no practical relation to the ethical considerations involved.

By order of the Commission,

Rev. Thomas J. Lynch
Chairman

Dated September 12, 1978