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ADVISORY OPINION NUMBER 78-25

Participation in Rate Hearings as Lobbying

A health care facility has requested the Commission on Hospitals and Health Care, as dictated by section 19-73i(b), Connecticut General Statutes, for approval of an increase in rates. The facility has asked the State Ethics Commission whether participation in the hearing on the increase in rates constitutes "lobbying" by the health care facility and its representatives.

Section 19-73i(b), supra, requires a health care facility to request from the Commission on Hospitals and Health Care approval of rate increases, not provided in an approved budget, which exceed a specified amount. Both the Uniform Administrative Procedure Act and the Commission's regulations term ratemaking proceedings under Section 19-73i(b) a "contested case." Section 4-166(2), Connecticut General Statutes; section 19-73a-60c, Regulations of the Commission on Hospitals and Health Care. Under the procedures in effect at the time in question, the Commission, after public notice given in the geographical area affected, had to hold a public hearing on the proposed rates. Including the information submitted by the health care facility in justification of the requested increase, and that gathered at the public hearing, in its deliberations on the factors which it is allowed to consider, the Commission could permit the increase, deny it, or approve the amount it felt to be justified.

"'Lobbying' means communicating with any official or his staff in the ... executive branch of government for the purpose of influencing any ... administrative action." Section 1(k), Public Act Number 77-605. "'Administrative action' means any action or non-action of any executive agency of the state with respect to the amendment, adoption or repeal of any rule, regulation, rate hearing or guideline." Section 1(a), id. (emphasis added). "The term 'rate hearing' in Section 1(a) applies to all proceedings to consider a formally proposed schedule of rates." Section 1-92-42, Ethics Commission Regulations.

"Rate hearing" in the statute and Commission Regulations must include the rates which evolve from the proceedings to consider a proposed schedule of rates. The term "rate hearing" in context would make no sense if read narrowly, and statutes should be construed to be rational, sensible, and effective. Milano v. Warden, 166 Conn. 178 (1974); 2A Sutherland Statutory Construction section 45.12 (4th ed. C. Dallas Sands 1973). Rates are something which can be amended, adopted, or repealed, actions set forth in section 1(a), Public Act Number 77-605. They are the result of the administrative process called rate hearings, just as "rules", "regulations", and "guidelines", the other administrative

matters listed in section 1(a), Connecticut General Statutes, are the results of an administrative process. Like the others, rates are of broad application and future effect. "The fixing of rates is a legislative act", which may be taken by the legislature directly or through an agency it creates for that purpose. St. Joseph Stock Yards Co. v. United States, 298 US 38, 50 (1938). In this case, the rate-making function cannot be categorized as entirely legislative, because the proceedings are designated a contested case. This blending of legislative and judicial functions affords the health care facility the more complete opportunities for hearing that are provided in the case of adjudication and may be required in such ratemaking cases to satisfy procedural due process. Cf. New Haven v. United Illuminating Co., 165 Conn. 478, 493-495 (1975).

From among the myriad of activities an executive agency may be authorized to conduct the General Assembly selected with care those the influencing of which would be defined "lobbying" in the Code of Ethics for Lobbyists, Public Act Number 77-605. (Compare section 1(a) of Substitute House Bill 6419, which became Public Act Number 77-605, before and after amendment by House Amendment Schedule A.) It chose basically quasi-legislative activities in which the proponent for one interest could influence an administrative action which would affect many others who were not parties to the proceedings. In the instant case the ratemaking proceedings affect more than the applicant for the increased rates and its economic future. The outcome of the proceedings also affects interests of present patients at the health care facility and of those who need the services of the facility in the future, among others. The legislature has determined that those who try to influence official action in such cases are lobbying. Sections 1(a) and 1(k), Public Act Number 77-605; cf. State Ethics Commission Advisory Opinion 78-5, 39 Conn. L.J. 40, p. 18. Therefore, a health care facility and its representatives participating in a section 19-73i(b), Connecticut General Statutes, hearing before the Commission on Hospitals and Health Care are "lobbying" within the meaning of section 1(k), Public Act Number 77-605.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated November 3, 1978