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30 TRINITY STREET
HARTFORD, CONNECTICUT 06115



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ADVISORY OPINION NUMBER 78-7

Administrative Action" in Public Act Number 77-605

An attorney at law represents several insurance companies, authorized to write automobile insurance in Connecticut, at hearings before the Insurance Commissioner. The hearings are on a petition for a declaratory ruling, in accordance with section 4-176, Connecticut General Statutes, filed by a municipality. The petition requests a ruling that the present territorial system for charging rates for automobile insurance is unfairly discriminatory, in violation of various state statutes and the Constitutions of the United States and of the State of Connecticut. By amendment to its petition, the municipality has requested that the Commissioner reject any rate filings based on the territorial concept, rather than continuing to accept and, in some instances, to approve them.

The attorney for the insurance companies has asked the State Ethics Commission to advise whether representation of the companies by his law firm and by him, and participation in the proceedings by the insurance companies, constitute lobbying as it is defined in Public Act Number 77-605.

The Insurance Commission is an executive agency. Section 1(e), Public Act Number 77-605. If involvement in the hearings before the Insurance Commissioner constitutes lobbying, it would have to be because it includes communicating with an official, or his staff, in the Executive Branch for the purpose of influencing administrative action. Section 1(k), Public Act Number 77-605.

That Act defines administrative action 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, rate hearing or guideline." Section 1(a). The issue, then, is whether hearings on a petition for a declaratory ruling as to the legality of a system of charging rates for automobile insurance amount to action or non-action with respect to the amendment, adoption, or repeal of any rule, regulation, rate hearing, or guideline.

"Regulation" does not include a declaratory ruling. Section 4-166 (7) (2), Connecticut General Statutes.

"Rule" and "regulation" are used essentially synonymously in Connecticut. See McDermott vs. Wilkinson, 88 Conn. 300 (1914); Adams vs. Rubinow, 157 Conn. 150 (1953); C.S.E.A., Inc. vs. Connecticut Personnel Policy Board, 165 Conn. 448 (1973); Wilson vs. Connecticut Product

Development Corp., 167 Conn. 111(1974); Fusco-Amatruda Co. vs. Tax Commissioner, 168 Conn. 597(1975), the statutes mentioned in those cases, and the statutes listed under "Rules and Regulations" in the Index to the Connecticut General Statutes Annotated. The words are used interchangeably elsewhere, also. See Ballantine's Law Dictionary (3d ed. 1969). "Regulation" is traditionally used in Connecticut where "rule" is used elsewhere with regard to administrative law. Compare section 41-166(7), Connecticut General Statutes, with section 1(7), Model State Administrative Procedure Act, 13 U.L.A. Civil Proc. and Rem. Laws, 1978 Pamph. 361 and with section 4, Administrative Procedure Act, 5 U.S.C. 553. "Rule" and "regulation" being words of like import, a declaratory ruling would appear to be excluded from the definition of "rule", also.

The proceedings before the Insurance Commissioner are not "rate hearings". Ethics Commission Regulations define the term "rate hearing" as "all proceedings to consider a formally proposed schedule of rates." Section 1-(3)-42. Hearings to determine whether a method for establishing rates is valid and, as an ancillary matter, to consider whether rate filings based on the method should be rejected by the Insurance Commissioner do not fit within the above definition of "rate hearing".

"Guidelines" are like regulations in that they are agency statements of general policy. They are not prepared and issued with the formality of regulations and are not, therefore, binding on anyone. Hardware Mutual Insurance Co. vs. Premo, 153 Conn. 465, 467 (1966); cf. General Electric Co. vs. Gilbert, 429 U.S. 125, 97 S. Ct. 401, 50 L. Ed. 2d 343(1976). They seem sufficiently similar to regulations, however, as to make it clear that "guideline" does not include "declaratory ruling" or an order issued as ancillary relief to a declaratory ruling.

Since the activity, incident to the hearings, of the attorney, his firm, and the insurance companies he represents does not include influencing administrative action as that term is defined in Public Act Number 77-605, none of the persons mentioned is lobbying. Therefore, none need register as a lobbyist based on involvement in the hearings before the Insurance Commissioner. Sections 1 (1), 5, Public Act Number 77-605.

By order of the State Ethics Commission:



Marilyn P. A. Seichter
Chairwoman, State Ethics Commission

Dated May 1, 1978