

STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 82-2

Housing Program Coordinator Serving
as Director of Neighborhood
Development Corporation

A State employee, a housing program coordinator in the Department of Housing, has been active in the affairs of the neighborhood in which he lives. Because of the interest he has expressed in the improvement of his neighborhood and his professional expertise in neighborhood revitalization, he has been invited to serve on the board of directors of a non-profit development corporation which has been established in his neighborhood. The directors receive no compensation for their services.

The corporation was formed to upgrade the physical, including housing, and economic environment of the neighborhood. Its goals include promoting construction of low - and moderate - income housing in the area, preferably for present residents, promoting development of the commercial district to create job opportunities for, primarily, neighborhood residents, and providing a local base for cooperative community control of urban planning in the area.

The development corporation is eligible to receive financial assistance from the State through Department of Housing programs, including two in which the State employee is involved. His responsibility in this area is to make an objective evaluation of an applicant organization's ability to carry out a State-funded program. His recommendations go through four levels of review before reaching the Commissioner of Housing, who makes the final decision on funding. The development corporation involved here has already been found viable and is being considered by the Department for State funding.

The State employee has asked whether ethical considerations, including those in the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes, would prevent him from becoming a director of the corporation. He is convinced that, as a professional who is interested in the revitalization of neighborhoods throughout the State, he could remain objective in his evaluation of all organizations applying for State financial assistance even though he was a director of one of them.

If the State employee were a director the corporation would be, under the Code of Ethics for Public Officials, a "[b]usiness with which he is associated." Subsection 1-79(a), General Statutes;


Ethics Commission Advisory Opinion No. 79-18, 41 Conn. L.J. No. 1, p. 22 (July 3, 1979). The Ethics Commission has stated that an organization of which a public official is a director may apply for and, if successful, receive a grant from the State provided the process by which the grant is awarded is an open and public one. Ethics Commission Advisory Opinion No. 78-19, 40 Conn. L.J. No. 10, p. 14 (Sept. 5, 1978). However, that Opinion concerned a legislator who was in no way involved in the grant process beyond submitting the application. The Opinion noted that should the legislator be required to take official action affecting the department which administered the State grant, he might have a potential conflict of interest demanding action pursuant to section 1-86, General Statutes. The situation presented here resembles much more closely that of the executive director of an agency established to assist the blind who asked whether it was proper for him to be chairman of the board of a private non-profit organization which, partly supported by funds and services administered by the executive director's agency, assisted persons whose vision is impaired. The Commission declared that the executive director should not also serve on the board of the private agency. Even if no provisions of the Code of Ethics were breached, it was the most fundamental kind of a conflict of interest to deal on both sides of a transaction. Ethics Commission Advisory Opinion No. 79-18, above. The same reasoning applies here. The State employee, if a director, would be a member of the body which manages the affairs of the corporation and would be charged by statute to serve the best interests of the corporation. Section 33-447, General Statutes. If the board of directors were to request State funding from the Department of Housing under a program in which the State employee is involved, the established system provides that the director, turning his hat around to that of housing program coordinator, would determine the capability of his corporation to carry out a State-funded program. This should not be too time-consuming. Presumably, he would have come to a conclusion on this question before the board applied for the financial assistance.

In addition to the basic ethical problem, there would be obvious danger of violations of the Code of Ethics for Public Officials if the State employee were to serve as director of the corporation. A State employee may not use confidential information received through his holding public office to obtain financial gain for a business with which he is associated. Subsection 1-84(c), General Statutes. It could be extraordinarily difficult for a person in the role of director, with the concomitant responsibilities to the corporation, to avoid using intentionally or subconsciously information, acquired incident to his State duties and not yet released to the public, for the benefit of his corporation.

In his State employee role he would be in a position to use his office for the financial benefit of a business with which he is associated, a violation of subsection 1-84(c), General Statutes. Under the Code, whenever he was required to take an official action which would affect a financial interest of the corporation he would have to prepare a written statement disclosing the potential conflict to his superior, who would assign the matter to another employee. Section 1-86, General Statutes. The potential conflict obviously would exist if, for example, the corporation's application for State financial assistance were to be presented to the State employee for evaluation. It would be present also if the applications of other organizations competing for the same limited pot of funds were to be assigned to the State employee for review. See Ethics Commission Advisory Opinion 81-18, 43 Conn. L.J. No. 23, p. 43A, at 44A (December 8, 1981), and Opinions cited there.

The fact that there is a series of reviews after the State employee takes action on an application does not prevent the action from being one "that would affect a financial interest of ... a business with which he is associated", under section 1-86, General Statutes. It is common, of course, for the initial reviewer in an administrative chain to be the only one with firsthand knowledge of a case and to be the one who assembles the facts upon which subsequent reviewers must depend. "If the initial review has any value at all, it is bound to shape action at higher levels in a number of cases." Ethics Commission Advisory Opinion No. 80-11, 41 Conn. L.J. No. 42, p. 30, 31 (April 15, 1980).

By order of the Commission,


Gerard E. Finn, Commissioner,
State Ethics Commission

Dated January 28, 1982

