



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 82-5

Application of the Code of Ethics for Public Officials to the Clerk of the House of Representatives

The Ethics Commission has been asked whether subsection 1-34(d), General Statutes restricts the outside activities of the Clerk of the House of Representatives, who is a practicing attorney. Subsection 1-34(d) states that "[n]o public official or his employee or state employee or his employee" shall represent others for compensation before certain State agencies listed in the subsection.

The office of the Clerk of the House of Representatives is established in Article 3, section 12 of the Connecticut Constitution. It provides that the "house of representatives, when assembled, shall choose a speaker, clerk and other officers" (emphasis added). Other statutory provisions suggest more or less convincingly that the Clerk is an officer of the House of Representatives. See sections 2-9, 2-10, 2-15, 4-1, General Statutes. There is a distinction between officers and employees of the Legislative Department. See subsection 5-198(b), *id.* Following a conclusion that the Clerk is an officer, as opposed to an employee, of the House of Representatives, and is not a public official because not elected by the public, a suggestion is made, in the request for advice, that the Clerk of the House of Representatives technically is not included among those subject to subsection 1-34(d), General Statutes. The Ethics Commission does not agree.

The Code of Ethics was designed to guide the conduct of every State servant, except judges appointed or elected. The legislative history of the Code makes clear that persons in all three branches of State government are intended to be covered, except for judges. (Judges were left out because of concern about the constitutionality of including them and because in the same session in which the Code was passed a similar statute concerning judges (now Chapter 872a, General Statutes) was enacted.) Persons generally subject to the Code of Ethics for Public Officials are described in the Code as either "public officials" or "State employees."

"Public official" means any statewide elected officer, any member or member-elect of the general assembly, any person appointed to any office of 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 or elected by the general assembly or by any

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member of either house thereof; but shall not include a member of an advisory board, a judge of any court either elected or appointed or a senator or representative in Congress. Subsection 1-79(j), General Statutes.

"Member of an advisory board" has no application to the question at hand. Subsection 1-79(g), id.

"State employee" means any employee in the executive, legislative or judicial branch of state government, whether in the classified or unclassified service and whether full or part-time, but shall not include a judge of any court, either elected or appointed. Subsection 1-79(k), id.

It would be an oversight if the House Clerk were not included in one of these two classes. In fact, the Clerk seems to fit in both.

The Clerk appears to be a public official because he is appointed to an office of the legislative branch of State Government by the members of one of the houses of the General Assembly. (In accordance with subsection 1-1(f), General Statutes, the phrase "any member" can be read as "members".) The House Clerk is also a "State employee" for purposes of the Code under the broad definition of subsection 1-79(k), above. For purposes of the subsection, he is an "employee" under the generally understood meaning of the word, "one who works or is in the service of another and whose work as to extent and manner is directed by that other". Tedesco v. Turner & Seymour Mfg. Co., 19 Conn. Sup. 192, 200 (1954). The control of the House of Representatives over its Clerk is spelled out in the sections of Title 2, General Statutes, cited above and elsewhere in Title 2. The Clerk seems also to be an "employee" as defined in the State Personnel Act. "'Employee' or 'state employee' means any person holding a position in state service subject to appointment by an appointing authority." Subsection 5-196(i), General Statutes. "State service" and "appointing authority", defined in subsections 5-196(x) and 5-196(c), id. respectively, fit the House Clerk's situation.

The House Clerk, therefore, appears to be subject to any provision of the Code of Ethics for Public Officials which applies to public officials or State employees. This would include subsection 1-84(d), General Statutes. During his term of office neither the House Clerk nor others in his law firm, should he belong to one, may represent others for compensation before the State agencies listed in subsection 1-84(d), General Statutes.

By order of the Commission,

Lucille E. Brown
Commissioner, State Ethics Commission

Dated 16 April 1982