



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 83-8

State Work by a Member of the State Commission
on Capitol Preservation and Restoration

The Ethics Commission has been asked two questions concerning an architect serving on the State Commission on Capitol Preservation and Restoration (the Capitol Commission). The first is whether the architect could be appointed to the Capitol Commission if, at the time, he was doing business with the State. The second is whether, if appointed, he could do additional business with the State, provided that the additional work was in no way related to the Capitol restoration.

Before these questions may be addressed, it must be determined whether a member of the Capitol Commission is a public official or State employee and, consequently, subject to the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes.

The Capitol Commission was established in 1973. Public Act No. 73-460. Originally an independent body within the Department of Administrative Services, for administrative purposes only, in 1982 it was made an independent body within the Legislative Department for administrative purposes only. Section 1, Public Act No. 82-438. Its membership comes from various sources. Two are appointed by the Governor, six by the legislative leadership, two are members of the Joint Committee on Legislative Management, one is a member of the Connecticut Historical Commission, and the Commissioner of Administrative Services is an ex officio member. Members serve without compensation. Although most of them would appear to be entitled to reimbursement of official expenses under section 4-1, General Statutes, it has been the practice not to give them reimbursement.

The Capitol Commission's statutory duties are to undertake a continuing review and study of the State Capitol Building and grounds with a view to developing a master plan for the preservation and restoration of the Capitol, and to report periodically to the Joint Committee on Legislative

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Management. Subsection 4-241(b), General Statutes. It may consult with State, Federal, and private agencies with respect to its preservation and restoration planning, disseminate information on its activities, and accept from private and public sources gifts, donations, and grants for Capitol preservation and restoration. Subsections 4-241(b) and (c), General Statutes. The Capitol Commission approves the plans and specifications for capital expenditure programs undertaken by the Joint Committee on Legislative Management in connection with preservation and restoration of the Capitol. Subsection 4-241(d), General Statutes. It is directed to adopt regulations establishing basic artistic standards to assist the Committee in the preparation of the plans and specifications. Id. Finally, when the Joint Committee on Legislative Management requires the services of a design professional (a term which includes architects among others) the Capitol Commission selects, from those who apply, the three it considers most qualified. The Joint Committee on Legislative Management attempts to negotiate a contract with the design professional on the list who is most qualified, in the Committee's judgment. If it is unable to negotiate a contract with any design professional on the list, it issues a finding giving the reason for its inability and may negotiate with any design professional it determines to be the most qualified to perform the services at a reasonable price. Section 4-24m, General Statutes.

As can be seen, the duties of the Capitol Commission are almost entirely advisory. It develops a plan to guide the Joint Committee on Legislative Management in carrying out the Committee's responsibilities with regard to Capitol preservation and restoration. It establishes basic artistic standards to assist the Committee in preparing plans and specifications for capital preservation and restoration projects. (These have not been promulgated as regulations, but as "guidelines" established at a Capitol Commission meeting, perhaps because they were adopted in 1982 after the Capitol Commission had been transferred by statute to the Legislative Department.) It recommends that certain design professionals be considered when services of one are needed. The only instance in which the Capitol Commission takes action other than planning, assisting, informing, recommending, or consulting is when it acts on the plans and specifications of a capital preservation or restoration project. Its veto power over a proposal of the Joint Committee on Legislative Management would appear to be an exercise of State power. Consequently, the Capitol Commission is not simply an "advisory

board", subsection 1-79(g), General Statutes. Considering the manner of their appointment and the State power that the Capitol Commission can, in one instance at least, exercise, members of the Capitol Commission are public officials, subsection 1-79(j), General Statutes, bound to observe the provisions of the Code of Ethics for Public Officials.


The Code basically attempts to prevent a public official or State employee from taking official action, or using information acquired incident to one's State duties and not generally available to the public, for private financial advantage. Turning to the question of an architect who is doing business with the State being appointed to the Capitol Commission, until appointment the architect is not a public official or State employee subject to the Code. The Code would not prevent the appointment so long as the architect's State business had no connection with preservation or restoration of the State Capitol. If there were a connection, the architect would be appointed to a position in which there would be an inherent conflict of interest because the architect in some sense would be supervising or reviewing his own work.

Following the architect's appointment, several Code provisions would have to be kept in mind. They should not prevent the architect from participating fully in the Capitol Commission's work. There seems to be no reason that he should not contribute to the selection of a list of design professionals, unless a close relationship with design professional brethren could somehow result in financial benefit if he were to participate. In that and similar cases section 1-86, General Statutes, provides a mechanism for avoiding any potential conflict of interest. (The architect should use the procedure in section 1-86, as amended by section 8, Public Act No. 83-249, for one not a member of a legislative body or State regulatory agency. Even though the Capitol Commission is in the Legislative Department, the option of participating or not when a potential conflict of interest exists should be restricted in the case of legislative bodies to those which are composed of legislators.) Within limits, additional State work as a private architect could be sought, since none related to preservation or restoration of the Capitol would be considered. (Taking work in any way connected with Capitol preservation and restoration would violate the prohibition against accepting employment impairing the independence of judgment of a Capitol Commission member, and perhaps requiring or inducing him to disclose confidential information gained in State office. Subsection 1-84(b), General Statutes.) He could

not take any official action, or use or disclose confidential information gained in office, to the financial advantage of himself or any "business with which he is associated". Subsections 1-84(c), 1-79(a), General Statutes. Despite the fact that a person on the Capitol Commission does not receive per diem or even reimbursement of expenses, because a Capitol Commission member serves in the Legislative Branch of State government any contract with the State entered into by the member would have to be reached through the open and public process described in subsection 1-84(i), General Statutes. Were an architect to do business with the State it would presumably be as an independent contractor. Consequently, the "contract of employment as a State employee" exception to subsection 1-84(i) would not apply. As in the case of any public official or State employee, there is a limit on gifts he could receive from a registered lobbyist. Subsection 1-84(j), General Statutes.

It would seem quite helpful to the State to have someone with the education and experience of an architect on the State Commission on Capitol Preservation and Restoration. Unless an architect's current State business were somehow involved in Capitol preservation and restoration, doing business with the State should not prevent appointment of the architect to the Capitol Commission. Once the architect is a member of the Capitol Commission and, thus, a public official subject to the Code, the Code would restrict, as described above, but not prevent, him from conducting additional work with the State.

By order of the Commission,


Lucille E. Brown
Lucille E. Brown
Chairperson

Dated 3 August 1983