



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 85-2

Actuarial Member of the State Employees
Retirement Commission

An actuary is being considered for appointment as one of the two actuarial trustees on the State Employees Retirement Commission. The actuary is part owner of a firm which is a consulting actuary to the Commission with respect to several of the retirement and pension plans overseen by the Commission. If appointed a trustee, the actuary would not participate or vote on any matter relating to the firm. The Ethics Commission has been asked whether the actuary could serve on the Commission, in the circumstances described, without violating the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes.

The State Employees Retirement Commission is composed of eleven trustees: four representing employees, elected by the exclusive bargaining agents; four management trustees appointed by the Governor; two actuarial trustees who are enrolled actuaries and Fellows of the Society of Actuaries, one nominated by the four management trustees, one nominated by the four trustees representing employees, and both appointed by the Governor for three-year terms; and a neutral trustee, appointed by the Governor, who must be enrolled in the National Academy of Arbitrators and who is Commission Chairman. Subsection 5-155a(a), General Statutes, as modified by subsequent labor-management agreements. The chairman and the actuarial trustees are compensated at their normal and usual per diem fee, plus travel expenses. *Id.* Each trustee is a fiduciary with respect to the Retirement System and its members (subsection 5-155a(c), General Statutes) and takes "an oath of office that so far as it devolves upon him, he will diligently and honestly administer the affairs of the commission, and will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the state retirement system" (subsection 5-155a(a), General Statutes).

The Retirement Commission administers the retirement system established by the State Employees Retirement Act, Chapter 66, General Statutes, the Municipal Employees' Retirement System established by Chapter 113, Part II, General Statutes and all other State retirement and pension funds except the Teachers' Retirement Fund. Subsection 5-155a(c), General Statutes.

Perusal of Chapter 66, General Statutes, the State Employees Retirement Act, makes clear why it was considered desirable to have actuaries on the State Employees Retirement

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Commission. The State Employees Retirement System, for example, must be funded on an actuarial reserve basis; annually the Commission has to certify to the General Assembly the amount necessary, on the basis of an actuarial determination, to establish and maintain the retirement fund on the actuarial reserve basis. Subsection 5-156a(a), General Statutes. Annually, until December 31, 1986, the Commission must prepare a valuation of the assets and liabilities of the System, and redetermine the normal rate of contribution and, until it is amortized, the unfunded past service liability. Subsections 5-156a(a), 5-156a(e), id. The expected unfunded past service liability has to be adjusted when the Commission approves changes in the actuarial assumptions or actuarial cost methods under which it was computed previously. Subsection 5-162h(b)(2), id. The Commission also must determine on an actuarial basis the normal rate of contribution by the State to meet the actuarial cost of current service. Subsection 5-156a(b), General Statutes. The General Assembly may not liberalize plan benefits until the Commission has certified the cost of the change under the actuarial funding basis. Subsection 5-156a(d), id.

The Commission is authorized to hire actuaries to carry out the actuarial duties assigned it. Section 5-156b, id. Periodically, an actuary is to make actuarial investigations into the mortality, service, and compensation experience of the members and beneficiaries of the State Employees Retirement System. Id. The Commission adopts System mortality, service, and other necessary tables based on the actuarial investigations and the biennial valuation of the assets and liabilities of the System's funds. Id. Consulting actuaries provide similar services with respect to other retirement and pension plans administered by the Commission.

The firm of the actuary considered here is consulting actuary to three of the retirement and pension plans administered by the Commission. The State Employees Retirement System, the largest plan for which the Commission is responsible, is not one of them, but the second largest plan under the Commission's jurisdiction is.

Appointed by the Governor and authorized, with fellow trustees, to exercise the power of the State and expend State funds, an actuarial trustee is a public official, subject to the Code of Ethics. Subsection 1-79(j), General Statutes.

The actuary's share in her firm is such that it is a "business with which she is associated". Subsection 1-79(a), id. If appointed a Retirement Commission trustee, she could

not use or disclose confidential information gained as a trustee for the benefit of herself or her firm, and could not take any action as a Commission trustee which would affect the financial interests of herself or her firm. Subsections 1-84(a), 1-84(b), 1-84(c), General Statutes. This requires more than not participating in discussion and voting on matters affecting her firm directly. In many instances, she will not be able to participate in discussion and voting concerning actuarial firms which compete with hers for business. By taking action affecting a competitor, one can favor the financial interests of one's firm. Ethics Commission Advisory Opinion No. 81-18, 43 Conn. L.J. No. 23, p. 43A.

If the actuary were, in her private role, to use or disclose no confidential information gained as a trustee and were, in compliance with section 1-86, General Statutes, to refrain from taking any official action affecting the financial interests of her firm, most violations of the Code would be avoided. To do this, she could not participate in evaluating actuarial work done for the Commission by her firm, or take part in employing consulting actuaries if her firm were one of the candidates. If also her firm represented no one for compensation before the agencies listed in subsection 1-84(d), General Statutes, the actuary should be able to serve as a member of the Retirement Commission and comply with the Code of Ethics for Public Officials.

An additional consideration is compliance with the scheme established for the Retirement Commission. The body is composed of five trustees, including an actuary, representing management, five trustees, including an actuary, representing employees and their exclusive bargaining agents, and a neutral chairman. The reason for having actuaries as members of the Commission is because it appears that some Commission functions are performed best, and perhaps can be performed only, by someone who is qualified to be an enrolled actuary and a Fellow of the Society of Actuaries. The candidate for the Commission who is under discussion here must appreciate that the work produced by her firm for the Commission will receive only half the analysis and evaluation contemplated by the statute, and the review will be one-sided. The actuary will have to determine whether, under the circumstances, she can serve with the "care, skill, prudence and diligence" required by subsection 5-155a(c), General Statutes, and her oath of office, and be a fiduciary to the Retirement System and its members. These, however, are questions for the candidate actuary and the

appointing authority. The actuary could serve without violating the Code of Ethics for Public Officials if the advice given in this opinion is observed.

By order of the Commission,

R. W. MacPherson

Dated March 9 / 85