



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 89-10

Application of the Code's Open and Public Contract
Provisions to Environmental Emergency Responses

Mr. Peter Dunlap, President of Vapex Environmental Technologies (Vapex), has asked the Ethics Commission for an opinion regarding the application of Conn. Gen. Stat. §1-84(i) to his firm.

Vapex specializes in vapor extraction cleanups of soils contaminated with volatile organic compounds (e.g., gasoline, solvents, etc.). Dr. George Hoag, a professor in the Department of Civil Engineering at the University of Connecticut, owns approximately 25% of Vapex's stock.

§1-84(i), in pertinent part, prohibits a state employee or a business with which the employee is associated from entering into a contract with the State valued at one hundred dollars or more, unless the contract has been awarded through an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded.

As a University of Connecticut professor, Dr. Hoag is a state employee subject to the provisions of the Code of Ethics for Public Officials, Conn. Gen. Stat. Chapter 10, Part I. His stock holdings in Vapex make it a business with which he is associated as that term is defined in Conn. Gen. Stat. §1-79(b). Therefore, the open and public procedures of 1-84(i) would apply to any contracts over one hundred dollars entered into by Vapex and the State.

In June of 1988 the State's Department of Environmental Protection (DEP) contacted the Ethics Commission regarding an emergency situation at the City of Milford's Central Police Station. As the result of a leaking underground gasoline tank, the potential for an explosion existed and the building had been evacuated. DEP wished to enter into a contract with Vapex (then operating as Remediation Systems Inc.) to clean up the Milford gasoline spill. According to DEP, the Company had proposed a viable solution to the emergency and had previously demonstrated a rapid response in similar situations. Due to the nature of

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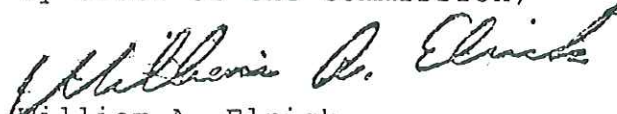
the problem, DEP requested an exemption from the requirements of §1-84(i). The Ethics Commission has no specific authority to waive the requirements of the provision in question. The Commission believed, however, that the health and safety considerations expressed by DEP clearly outweighed the benefits of complying with the open contract procedures of §1-84(i). Therefore, the Commission, acting through its Chairperson, granted the requested exemption.

In order to facilitate timely responses in any future emergency situations, Vapex is now requesting a blanket exemption from the requirements of §1-84(i). The Commission has neither the legal authority nor the desire to grant the requested exemption. The open and public process mandated by §1-84(i) helps ensure that state contracts are awarded based on merit, and not as a result of official influence or connections. The Commission believes that the provisions of §1-84(i) help maintain the confidence of Connecticut's citizens in the integrity of their state government.

As the Commission has frequently noted, the requirements of §1-84(i) are not inflexible. Working within the parameters of these requirements, DEP should be able to enter into a contract which will allow the State to quickly and effectively respond to environmental emergencies.

For example, it will be sufficient under §1-84(i) if DEP makes a public offer designed to reach a significant number of those qualified to provide the services in question. The offer could state that DEP wishes to contract with one or more firms to provide, on request, the type of rapid response cleanup utilized in the Milford situation. The contract can be for whatever time period DEP believes is appropriate. All responses to the offer and the contract awarded must, of course, be available for public inspection. This procedure, or any similar one, will comply with the language and intent of 1-84(i). At the same time, it will allow DEP to put into place a system allowing for the rapid response necessary to protect the health and safety of the citizens of Connecticut in environmental emergencies.

By order of the Commission,


William A. Elrick
Chairperson

Dated 4/3/89