



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 89-16

State Social Workers Providing Private Conservator Services

Two social workers, one employed by the Department of Human Resources and the other employed by the Department of Aging, plan to start their own business. They intend to provide conservator services to persons through Probate Court appointment. The business will deal only with persons who are financially able to pay for their own care and for the costs involved in conservatorship. They intend to start and operate this business on non-state time and to hire an employee to handle matters which must be done during normal working hours. Both persons in their official capacities as state employees deal with persons who are essentially assetless and must rely on the state for conservator services.

A person may apply to the probate court for a hearing to request voluntary representation and designate a particular person to be named as conservator. Conn. Gen. Stat. §§45-70(a), 45-70e. An appointment for involuntary representation is made after a hearing where the court receives evidence regarding the condition of the respondent. Conn. Gen. Stat. §45-70d(a). The court may consider any relevant evidence which may include reports from appropriate state agencies. *Id.* In general, the Commissioner on Aging and Commissioner of Human Resources are appointed if no suitable conservator can be found, the individual is at least sixty years old and the individual's assets do not exceed \$1,500. Conn. Gen. Stat. §45-70g.

A state employee may use information and experience he has acquired in state service for his private financial benefit. *See, e.g.,* Advisory Opinion No. 88-20, 50 Conn. L.J. No. 23, p. 3C (December 6, 1988). He may not, however, use the authority of his governmental position, or confidential information gained in it, for private benefit. Conn. Gen. Stat. §§1-84(a), 1-84(c). He is also prohibited from accepting private employment which will impair his independence of judgment as a state employee or require or induce him to disclose confidential information acquired in his state position. Conn. Gen. Stat. §1-84(b).

Applying these principles to the situation presented, the social workers can offer private conservator services provided they observe certain restrictions. Clearly, if the social workers were personally involved in the preparation of a report which was part of a probate proceeding's record and then accepted the subject of the report as a client, they would be accepting outside employment which would impair independence of judgment as to official duties in violation of Conn. Gen. Stat. §1-84(b). Additionally, if the decision to place the person under conservatorship was based on a report prepared by another employee of the regional office of either of the state agencies, the social workers still should not accept the individual as a private client. Otherwise, the possibility and the appearance of using state position for financial gain would be unavoidable. Conn. Gen. Stat. §1-84(c).

Court appointments, including appointments by a Probate Court, are exempt from the open and public contract process. Conn. Gen. Stat. §1-84(i). Therefore, if the social workers "receive such appointments, it must be under circumstances which assure the public that improper influence is not involved." In the Matter of a Request for a Declaratory Ruling, Attorney Carl V. Pantaleo, Applicant (August 1, 1988). Since the social workers may have frequent contact with the Probate system in their state position, "any impartial review of a Probate Court's actions on appointments and fees should reveal no inordinate number of appointments, inconsistent and excessive fees, or other abnormalities. Any such deviation from the norm which resulted in financial benefit....would create the appearance that the official had violated the Code by using his public position to obtain private gain." Id.

Finally, the social workers, during the course of performing their official responsibilities, may have access to the names of individuals who could benefit from the services of their private business. If the social workers use this information to contact potential clients, an obvious violation of Conn. Gen. Stat. 1-84(c) will have occurred.

By order of the Commission,



William A. Elrick
Chairperson

Dated 6-5-89