



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 89-30

State Employee's Contact With Businesses Regulated
By His Agency Through Outside Employment
Opportunities

Mr. Leonard Bruckman, Director of Planning and Standards in the Bureau of Air Management (the Bureau) (formerly the Air Compliance Unit) in the Department of Environmental Protection (DEP), has asked if it would be a violation of the Code of Ethics for Public Officials for him to accept outside employment in the following situations: (1) to work with advertising agencies to develop marketing strategies that have an environmental focus for business and industry; (2) to become involved in the development and marketing of a new environmentally-related software program; and/or (3) to market and sell for a local distributor a spray-on-concrete surfacing/sealing product.

As Director, Mr. Bruckman is responsible for the development of regulations, data processing, data analysis, air toxics activities, certain laboratory and quality assurance functions for the air monitoring network, and the Bureau's budget.

In general, a state employee may use his or her expertise, including experience acquired in state service, for private financial gain. See, e.g., Ethics Commission Advisory Opinion No. 88-20, 50 Conn. L.J. No. 23, p. 3C (Dec. 6, 1988). However, the Code of Ethics prohibits a state employee from accepting outside employment which would impair his independence of judgment as to official duties or require or induce disclosure of confidential information acquired in state service. Conn. Gen. Stat. §1-84(b). Additionally, a state employee may not use his public position or confidential information received through holding such position to obtain personal financial gain. Conn. Gen. Stat. §1-84(c).

"Conflicts of interests, both real and apparent, are almost inevitable when a State employee accepts outside employment with an entity which can benefit from the employee's official actions." See, e.g., Ethics Commission

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Advisory Opinion No. 88-14, 50 Conn. L.J. No. 15, p. 1D (Oct. 11, 1988). Mr. Bruckman would like to accept outside employment with an advertising agency which in turn has clients which may benefit from his official actions. Impairment of independence of judgment, in this case, would be inevitable if Mr. Bruckman provided services to a client or customer of an advertising agency when he could not be directly employed by that client or customer without violation of the Code. Cf. "In the Matter of a Request for a Declaratory Ruling, Elliot T. Lane, Applicant", June 6, 1988 (Application of Conn. Gen. Stat. §1-84b(d)).

Mr. Bruckman may provide the advertising agency with general information on issues affecting a particular industry. He may also work with advertising agencies as an outside consultant, as long as the work is not for those subject to regulation by the Bureau. The prohibition against doing work for those subject to regulation by the Bureau is not intended to be extended to every company which theoretically is regulated by the Bureau. Otherwise, it would include every business located in the State. He simply must avoid companies which have routinely come before the Bureau or currently have a matter pending. Additionally, although Mr. Bruckman may market his services, the Commission has previously held that a state employee "may not claim, that because of his State position he can produce better results than another consultant not a State employee, for that would imply that his State position would be used to further his private business, also a violation of Conn. Gen. Stat. §1-84(c)." Ethics Commission Advisory Opinion No. 87-2, 48 Conn. L.J. No. 40, p. 21B (March 31, 1987).

Mr. Bruckman has stated that there should not be any restrictions on his outside employment since all his work is reviewed by his superiors. This is irrelevant since the "possibility of impropriety is not eliminated by the fact that the employee's review is only the first part of a chain of review. If the initial review has any value at all, it is bound to shape action at higher levels in a number of cases." Ethics Commission Advisory Opinion No. 80-11, 41 Conn. L.J. No. 42, p. 30 (April 15, 1980).

Finally, the Commission has stated in a previous advisory opinion that a state employee may not use information obtained through his or her state position to identify potential clients for his or her private business. Ethics Commission Advisory Opinion No. 89-16, 50 Conn. L.J. No. 52, p. 9C (June 27, 1989), See also, Ethics Commission Advisory Opinion No.

87-2, supra. Therefore, Mr. Bruckman may not use information gained through his state job to identify potential clients for the advertising agency.

It is possible that Mr. Bruckman may be working on a marketing strategy for one of the advertising agency's clients and that client subsequently becomes involved with a matter before the Bureau. At that point, a situation will have arisen which would impair his independence of judgment after he accepted the outside employment. He would then have to recuse himself from the matter at the Bureau. Conn. Gen Stat. §1-84(b), See Ethics Commission Advisory Opinion No. 89-14, 50 Conn. L.J. No. 52, p. 7C (June 27, 1989).

The other outside employment opportunities in which Mr. Bruckman is interested involve the marketing and sale of two different products. The first product is a software package which has applications in the fields of demographics, economics, politics, geosciences, and environmental studies. The company which owns the software recently sold a version of it to a group of Northeastern states, including Connecticut, to facilitate the analysis of air quality data in that geographic region. Mr. Bruckman was introduced to the software product through Connecticut's participation in this group. As part of his state responsibilities, he is currently discussing with the company modifications of the product pertaining to its use in Connecticut. Mr. Bruckman would like to sell the air quality application of this software outside of the Northeast. He has stated that potential clients might include other states, nations, and businesses. Mr. Bruckman would also like to sell other applications of this software in the Northeast and elsewhere.

The second outside sales opportunity involves the distribution rights of a spray-on-concrete product. There are not any environmental issues involved with the sale of this product. He would like to participate in its marketing and sale and acquire possible management of the company, including some sort of equity participation in the future.

The sales of either product by Mr. Bruckman must be analyzed separately depending on whether he approaches the State or a private company regulated by the Bureau. Regarding sales to the State, in a previous advisory opinion, the Commission ruled that Conn. Gen. Stat. §1-84(i) provided a method for a business with which a state employee was associated to contract with the State. Ethics Commission Advisory Opinion No. 84-11, 46 Conn. L. J. 3, p. 5D (July 17,

1984). In this case, the software company is not a business with which Mr. Bruckman is associated. Therefore, the safeguards of Conn. Gen. Stat. §1-84(i) are inapplicable. Without these safeguards, the sale by Mr. Bruckman of any application of the software to DEP would be a use of his office for personal financial gain in violation of Conn. Gen. Stat. §1-84(c) unless DEP goes through the open and public bid process. It would not, however, be a use of his position for Mr. Bruckman to sell the software to other state agencies since he does not have the same authority in those agencies.

Mr. Bruckman indicated he may acquire an ownership interest in the spray-on-concrete company. If at some point he acquires five percent or more of the total outstanding stock of the spray-on-concrete company, it would become a "business with which he is associated" as defined in Conn. Gen. Stat. §1-79(b). If that company does become a business with which he is associated, the procedures outlined in Conn. Gen. Stat. §1-84(i) apply. On the other hand, if that company does not become a business with which he is associated, the reasoning applied above to his sale of software is equally applicable here.


In regard to any sales to companies regulated by the Bureau, Mr. Bruckman may not contact individuals who deal directly with the Bureau on regulatory matters. Compare, Ethics Commission Advisory Opinion No. 88-6, 49 Conn. L.J. No. 45, p. 1D (April 4, 1988) (Fair Housing Coordinator advised to avoid financial entanglements with individuals and businesses subject to her regulatory authority). Therefore, he may not sell environmental applications of the software program to regulated companies since by necessity he would have to deal with those individuals involved in environmental matters. Mr. Bruckman may sell either the non-environmental applications of the software or the spray-on-concrete to any company regulated by the Bureau. Again, he may not use his contacts with those involved with environmental issues to help him in any way in the sale of either product. Of course, he is able to sell either product to other states, nations, or companies not regulated by the Bureau.

Mr. Bruckman has indicated that in the course of his state duties, he has worked on the development of an air pollution-related education project which utilizes computers. It is possible, although no vendor has been selected yet, that a version of the software package may be purchased as part of this project. Again, to avoid a violation of Conn. Gen. Stat. §1-84(b), he should recuse himself from any participation in

the selection and/or monitoring of the software for this project.

In closing, the Commission is concerned that the scope and time commitment which may be demanded by all of the above outside interests may interfere with Mr. Bruckman's ability to devote full time to his state duties. It is apparent that many of the proposed outside activities, by necessity, would have to be done during normal working hours. Of course, Mr. Bruckman would then have to take vacation time. If Mr. Bruckman must recuse himself too frequently or is unable to perform the duties of his state position properly, he would have accepted outside employment which impaired his independence of judgment as to his state employment in violation of Conn. Gen. Stat. §1-84(b). See also, Ethics Commission Advisory Opinion No. 80-11, supra. At that point, he would have to either resign from his state position or curtail his outside employment activities.

By order of the Commission,



William A. Elrick
Chairperson

Dated 11/13/89

