



STATE OF CONNECTICUT  
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 90-23

Application Of Connecticut General Statutes §1-84b(d)  
To A Department Of Transportation Engineer

Mr. Craig Birkholz, an engineer with the Department of Transportation (DOT), has asked the Ethics Commission whether Connecticut General Statutes §1-84b(d) would preclude his acceptance of a post-state employment opportunity with the consulting firm of Roy Jorgensen Associates, Inc.

In his request for advice, Mr. Birkholz has provided the following information:

The Jorgensen consulting firm was retained by DOT in 1984 to develop a new Highway Design Manual for the State. As one of his state duties, Mr. Birkholz is the project engineer in charge of overseeing this activity.

In early 1989 it was determined by DOT that Jorgensen should do additional work relative to the Highway Design Manual. Consequently, a supplemental agreement was entered into and signed by the State and Jorgensen in October of 1989. The agreement requires the State to pay Jorgensen \$55,800 for the work in question.

Based on the above information, Mr. Birkholz has asked whether, under §1-84b(d) of the Code of Ethics for Public Officials, his involvement in negotiating and awarding the supplemental agreement would prevent his accepting employment with Jorgensen at this time.

Conn. Gen. Stat. §1-84b(d) states that:

No former public official or state employee who participated substantially in the negotiation or award of a state contract obliging the state to pay an amount of

fifty thousand dollars or more, or who supervised the negotiation or award of such a contract, shall accept employment with a party to the contract other than the state for a period of one year after his resignation from his state office or position if his resignation occurs less than one year after the contract is signed.

In his request for advice, Mr. Birkholz asserts that, although he participated in the development of the supplemental agreement, he does not feel his involvement was significant enough to bring him within the terms of §1-84b(d). The Ethics Commission cannot agree. Specifically, the Commission has held that a state employee will be considered to have "participated substantially" in the negotiation or award of a contract if he or she reviews the proposal in question and makes recommendations, other than mere clerical or ministerial ones, regarding the matter. Ethics Commission Advisory Opinion No. 86-9, 48 Conn. L.J. No. 11, p. 33 (September 9, 1986). Numerous attachments to Mr. Birkholz's request for advice detail the negotiation and award of the supplemental agreement in question. Based on a review of these documents, the Commission is compelled to conclude that as Project Coordinator Mr. Birkholz participated substantially in this process.

In his correspondence to the Commission, and in subsequent conversations with Commission staff, Mr. Birkholz has stressed that he was not the ultimate decision maker in the negotiation or award process, but, rather, that he was "...instructed by my supervisors to do the reviews of the submissions." This does not, however, eliminate the problem. The Commission has frequently stated that such initial reviews are bound to affect, and will often determine, subsequent decisions made by one's superiors. Ethics Commission Advisory Opinion No. 80-11, 41 Conn. L.J. No. 42, p. 30 (April 15, 1980). Consequently, it is the Commission's opinion that §1-84b(d) does apply to Mr. Birkholz's situation, and, as a result, he may not accept employment with Jorgensen for a period of one year from the date of the contract in question.

Lastly, Mr. Birkholz has asked whether the October 1989 date on which the supplemental agreement was signed starts the one year period or whether, alternatively, he may use an earlier date by which time the parties had agreed to all the substantive terms incorporated in the final contract. It is the opinion of the Commission that based on the clear language of the statute ("...after the contract is signed.") Mr. Birkholz must calculate

the one year period starting with the October 1989 date on which the contract between the State and Jorgensen was in fact signed by the parties.

By order of the Commission,

*Rabbi Michael Menitoff*

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Rabbi Michael Menitoff  
Chairperson

Dated 7 - 9 - 90

