



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 90-2

Restrictions on Employees of the Department of
Public Works Imposed by Conn. Gen. Stat. §4b-4

Ms. Susan Amenta Hooper, the Property Management Supervisor in the leasing section of the Department of Public Works, has asked the Ethics Commission to issue an advisory opinion as to whether she can maintain her directorship and ownership of 45.45% of the outstanding stock of a company which manages and leases property in Connecticut.

Conn. Gen. Stat. §4b-4 states:

"(a)...nor shall...any nonclerical employee in the unit in the department of public works which is responsible for acquiring, leasing, and selling real property on behalf of the state, be directly involved in any enterprise which does business with the state or be directly or indirectly involved in any enterprise concerned with real estate acquisition or development...[E]ach such employee of the department shall file, with the department and with the state ethics commission, a financial statement indicating all sources of business income of such person in excess of one thousand dollars, and the name of any business with which he is associated, which shall have the same meaning as defined in section 1-79...

(b)[Certain provisions of the Code of Ethics for Public Officials] shall apply to any alleged violation of this section."

Under Conn. Gen. Stat. §4b-4(b), the Ethics Commission has the authority to enforce the provisions of §4b-4. Therefore, the Commission has the inherent authority to interpret this section of the General Statutes.

Ms. Hooper and her husband are directors of the Hooper Company which manages and leases shopping centers in Florida, Georgia, South Carolina, Maryland, New York and Connecticut. She also owns 45.45% of the outstanding stock of the Hooper Company. According to Ms. Hooper, the Hooper Company does not do business with the State of Connecticut.

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Under §4b-4, Ms. Hooper cannot "be directly or indirectly involved in any enterprise concerned with real estate acquisition or development." Although the Hooper Company does not own any real estate at the present time, it is involved in the management and leasing of shopping centers and, therefore, is involved in real estate development. Mr. Hooper has also stated that the company might be interested in purchasing real estate in the future.

The phrase "directly or indirectly involved" is not defined in the statute. Clearly, the meaning of "directly or indirectly involved in any enterprise" is broader than that of "business with which associated", which is used in the next sentence of §4b-4. Conn. Gen. Stat. §1-79(b) defines "business with which associated" as follows:

"any sole proprietorship, partnership, firm, corporation, trust or other entity through which business for profit or not for profit is conducted in which the public official or state employee or member of his immediate family is a director, officer, owner, limited or general partner, beneficiary of a trust or holder of stock constituting five per cent or more of the total outstanding stock of any class."

"The use of different terms within the same sentence of a statute plainly implies that differing meanings were intended." Hinchliffe v. American Motors Corporation, 184 Conn. 607, 613 (1981). By analogy, if the legislative intent had been to establish a more limited prohibition for affected employees in the Department of Public Works, more restrictive language, such as "business with which associated", would have been used.

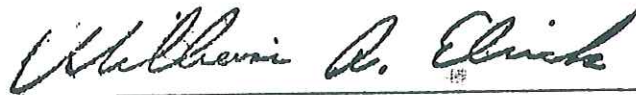
Under §4b-4, an employee of the Department of Public Works responsible for acquiring, leasing and selling real property on behalf of the State may not own stock in or be a director or employee of any enterprise concerned with real estate acquisition or development. Therefore, while Ms. Hooper holds her position in the Department of Public Works she may not maintain her directorship and/or ownership of stock in the Hooper Company.

The restrictions of §4b-4 apply equally to the spouses of employees of the Department of Public Works since indirect involvement with an enterprise concerned with real estate acquisition or development is also prohibited. Therefore, the spouse of an affected employee cannot be a director or employee of or own stock in an enterprise involved in real estate

acquisition or development. Otherwise, an employee of the Department of Public Works could avoid the restrictions of §4b-4 by simply conveying his or her interest in the enterprise to his or her spouse. Such an arrangement would be inconsistent with the intent of §4b-4.

The Ethics Commission recognizes that the guidelines established by this advisory opinion are very strict. However, the plain language of the statute does not give the Commission any discretion in interpreting the provisions of Conn. Gen. Stat. §4b-4.

By order of the Commission,



William A. Elrick
Chairperson

Dated 1 - 8 - 90

