



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 91-22

Application Of The Code Of Ethics To The Selection Of A
Developer/Contractor For The State's Low-Level
Radioactive Waste Disposal Facility

Questions have been raised with the Office of the Attorney General regarding the propriety of two individuals participating in the State's selection of a developer/contractor for a low-level radioactive waste (LLRW) disposal facility. As a result of these queries, Attorney General Blumenthal has referred the matter to the Ethics Commission "...for appropriate inquiry, guidance or action...".

The essential facts under review are as follows:

In December, 1990 the Connecticut Hazardous Waste Management Service (CHWMS) received two responses to its Requests for Proposals for a LLRW disposal facility developer/contractor: Chem-Nuclear Systems, Inc. and Westinghouse Electric Corporation. A panel was established by CHWMS to review the proposals and make a recommendation to the CHWMS Board of Directors. On February 13, 1991, the review panel recommended Chem-Nuclear to the CHWMS Board. Among those voting in support of the Chem-Nuclear proposal were Mr. Carl Fink and Mr. Richard Graves, the individuals whose actions are now under review.

Specifically, questions regarding possible conflicts of interest have been raised based on the following information:

1. Mr. Carl Fink, President, DA Services: Approximately thirteen years ago the company which employed Mr. Fink (Atcor, Inc.) was acquired by Chem-Nuclear. At the time of the acquisition, Mr Fink had two weeks accrued vacation. The responsibility to pay Mr. Fink for this benefit passed to Chem-Nuclear upon transfer of company ownership. At that time, or immediately thereafter, Mr. Fink took his two weeks vacation and was paid by Chem-Nuclear. Also at the time of the acquisition, Mr. Fink was offered a position by Chem-Nuclear, but declined.

Mr. Fink's current employer, DA Services, supplies protective clothing and related items to the nuclear industry. Sales during the last year included approximately \$90,000 to Westinghouse and \$1,300 to Chem-Nuclear. (Mr. Fink has stated that DA Services' sales to specific customers are in large part geographically determined and will fluctuate from year to year based on the locations of the work being performed by those customers.)

2. Mr. Richard Graves, Assistant to Vice-President, Northeast Utilities: Northeast Utilities has and continues to contract with both Chem-Nuclear and Westinghouse. Mr. Graves' most direct involvement in these business dealings occurred when he was supervisor of the Connecticut Yankee Nuclear Plant. At that time (prior to 1987) Mr. Graves was authorized to recommend companies for disposal of the Plant's low-level radioactive waste, but did not have final approval authority. Chem-Nuclear was the company which managed the Plant's low-level radioactive waste during this period.

The provisions of the Code of Ethics for Public Officials, Connecticut General Statutes, Chapter 10, Part I, apply to the Directors and employees of the CHWMS. Conn. Gen. Stat. §§1-79 (k)(1) and (m). The Code does not, however, extend to individuals, such as Mr. Fink and Mr. Graves, who serve solely as a "Member of an advisory board". See, Conn. Gen. Stat. §§1-79(h), (k) and 22a-163(u). Therefore, the conflict of interest and financial disclosure provisions of the Code do not legally govern Mr. Fink's or Mr. Grave's conduct in the matter under review, and the Ethics Commission has no jurisdiction over either individual.

Nevertheless, because of the significant public interest in this issue, and with the consent of the affected parties, the Commission will render its opinion on the question posed. This ruling, although not legally binding, should provide useful guidance to all concerned, particularly since the majority of the members of the review panel, i.e. its public members, are subject to the Code by virtue of their State positions.

Under the Code of Ethics for Public Officials, an individual has a substantial conflict of interest and may not take official action on a matter if he has reason to believe or expect that he, his immediate family or an associated business will derive a direct monetary gain as a result. Conn. Gen. Stat. §1-85. A substantial conflict does not exist, however, if any benefit to the individual accrues to no greater extent than to any other member of the profession, occupation, or group affected by the action. Id.

An individual, other than an elected state official, required to act on a matter that will affect his financial interest no differently than any other member of his profession, occupation or group has a potential conflict of interest, unless the effect is deminimis, i.e., inconsequential, or the interest is not distinct from that of a substantial segment of the general public (e.g., all taxpayers). Conn. Gen. Stat. §1-86(a). A member of a regulatory panel confronted with a potential conflict of interest may either recuse himself from the matter or act after preparing a written statement, signed under penalty of false statement, describing the potential conflict and explaining why he is nonetheless able to act objectively and in the public interest. Id. A copy of the statement is to be delivered to the Commission and copy entered into the minutes of the individual's agency. Id.

Applying the requirements of §§1-85 and 1-86 to Mr. Fink's and Mr. Graves' actions as members of the review panel:

1. The fact that some thirteen years ago, by virtue of a contractual liability, Chem-Nuclear paid Mr. Fink for two weeks accrued vacation and the fact that, at approximately the same time, the Company also offered Mr. Fink a position, which he declined, are of no consequence under the Code of Ethics for Public Officials.

The fact that DA Services, of which Mr. Fink is President, does business with both Chem-Nuclear and Westinghouse is of significance under the Code. Specifically, Mr. Fink's position with the Company makes DA Services a "Business with which he is associated" for purposes of the Code of Ethics. Conn. Gen. Stat. §1-79(b). Upon analysis, however, it is apparent that Mr. Fink's review panel recommendation engendered neither a substantial nor potential conflict of interest. The recommendation in question was not whether to site a LLRW disposal facility in Connecticut, a decision which potentially could affect DA Services financial interests, but which developer/contractor would operate the facility. Even assuming, for purposes of this Opinion, that the disposal facility will require items marketed by Mr. Fink's Company and assuming that the Company would be a likely supplier for a Connecticut facility, the decision as to which applicant will operate the site has no foreseeable effect on the amount of any items to be purchased, nor, under the circumstances, did it in any way predetermine the choice of vendor. Consequently, there was no foreseeable effect on DA Services financial interests. Therefore, under the applicable provisions of the Code of

Ethics for Public Officials, neither recusal nor disclosure was required, and Mr. Fink's actions as a review panel member were entirely appropriate.

2. Mr. Graves' position as Assistant to the Vice-President does not make Northeast Utilities a "Business with which he is associated." Therefore, since the review panel recommendation clearly had no financial implications for Mr. Graves or his family, there is no application of the Code of Ethics to his actions. As with Mr. Fink, under the Code Mr. Graves was neither required to recuse himself from the matter nor to disclose his Company's financial ties to the applicants under review. Consequently, his actions as a review panel member were entirely in keeping with the requirements of the Code of Ethics for Public Officials.

In closing, the Ethics Commission wishes to state that it recognizes the legitimate concerns of those citizens potentially affected by the siting and operation of a LLRW disposal facility, and this Opinion in no way seeks to dismiss or minimize those concerns. Finally, it should be unequivocally understood that the issuance of this ruling does not prevent or limit the CHWMS from utilizing more rigorous conflict of interest or financial disclosure requirements for those individuals participating in the decision making process regarding a LLRW disposal facility.

By order of the Commission,



Astrid T. Hanzalek

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Chairperson

Dated 3-5-91