



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

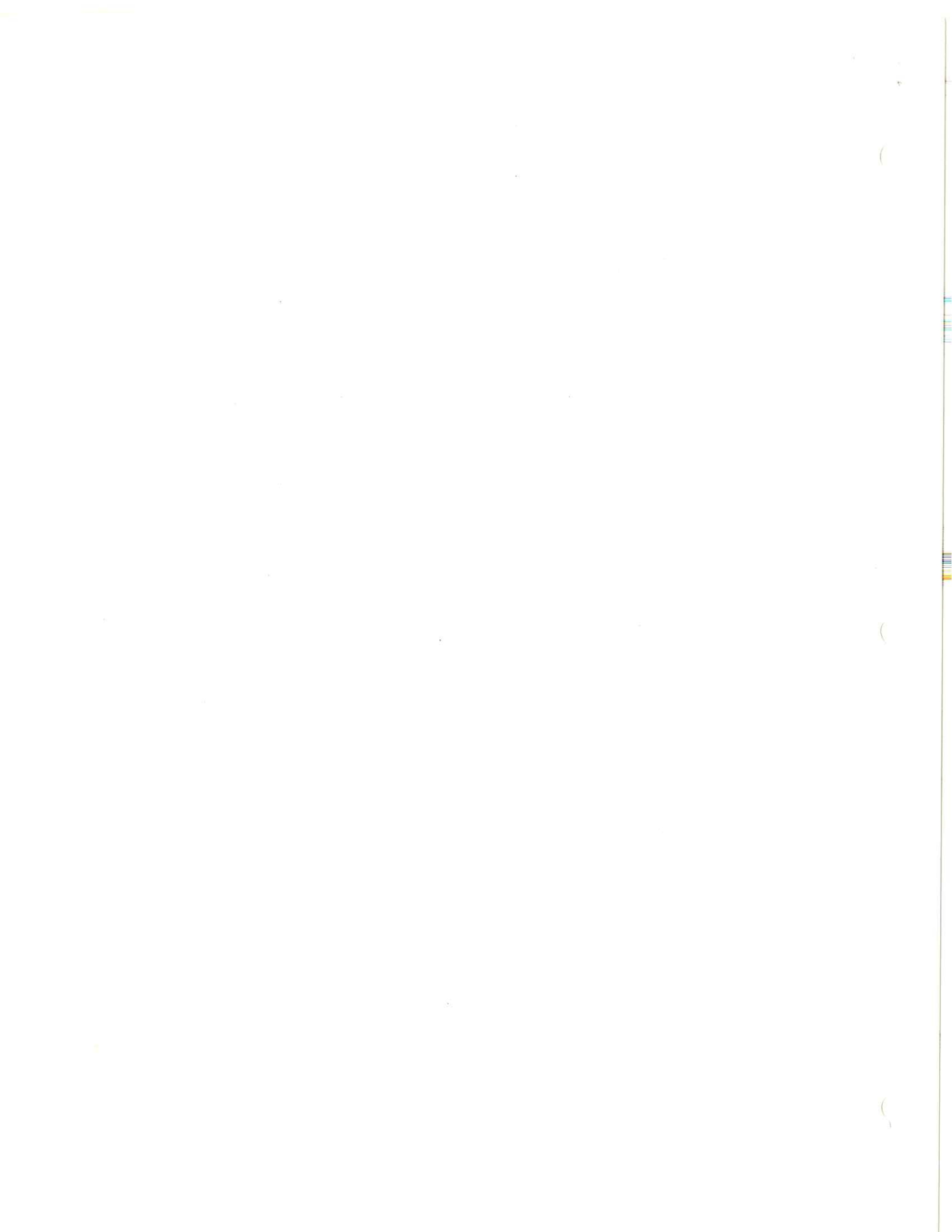
ADVISORY OPINION NO. 91-23

Application Of The Code's Post-State Employment
Provisions To One Employed By The Mashantucket Pequot
Tribal Gaming Commission

Mr. William Hickey, former Executive Director of the State's Division of Special Revenue (DOSR), has accepted employment with the Mashantucket Pequot Tribal Gaming Commission. Attorney General Richard Blumenthal has asked the Ethics Commission whether this employment "...is inconsistent with Conn. Gen. Stat. Section 1-84b(c)(2), or any other pertinent statute or regulation within the Ethics Commission's purview."

Conn. Gen. Stat. §1-84b(c)(2) states that no former public official or state employee who held a designated position in an Executive Branch regulatory agency shall, within one year after leaving state service, accept employment with a business subject to regulation by that agency. The regulatory agencies covered by this restriction are enumerated in §1-84b(c) and include the DOSR. The authority to designate specific positions in the listed agencies has been delegated, by statute, to the Ethics Commission. Id. Pursuant to this delegation, the Commission has, by regulation, designated some seventy-five senior positions as being subject to §1-84b(c)(2). Regulations of Conn. State Agencies §1-92-40a. One of the positions designated is Executive Director of the DOSR.

Attorney Barry Margolin, representing the Mashantucket Pequot Tribe with respect to this matter, has advanced the legal argument that the Tribal Gaming Commission is not a "business" as that term is used in §1-84b(c); and, consequently, Mr. Hickey's employment by that entity is not proscribed by the State's Ethics Code. See, e.g., California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987). The Ethics Commission agrees. Neither Connecticut case law nor common usage give credence to the idea that the term "business" includes governmental entities such as the Tribal Gaming Commission. Furthermore, nothing in the legislative history supports such an interpretation. See, Ethics Commission Advisory Opinion No. 90-29, 52 Conn. L.J. No. 14, p. 3D (October 2, 1990).



Therefore, the Ethics Commission rules that Mr. Hickey's acceptance of employment with the Tribal Gaming Commission was not in violation of §1-84b(c)(2) of the Code of Ethics.

The Commission wishes to emphasize that the above ruling construes only §1-84b(c), and is in no way intended to express an opinion with regard to Conn. Gen. Stat. §12-557d(c). (That provision precludes former members of the Gaming Policy Board, on which the Executive Director of the DOSR serves ex officio without voting rights, from accepting employment with a "business organization" regulated under Chapter 226 of the General Statutes for a period of two years after termination of board service.) Subsection 12-557d(c) is not part of the Code of Ethics and, consequently, is beyond the Commission's purview.

Although not subject to §1-84b(c), the Tribal Gaming Commission does fall within the parameters of the Ethics Code's other post-state employment provisions. Those sections refer not to a "business", but more broadly to "person", as defined by Conn. Gen. Stat. §1-79(i) to include an "organization or group of persons"; to "anyone, other than the state"; and to "a party...other than the state". See, Conn. Gen. Stat. §§1-84a, 1-84b(a) and (b), and 1-84b(d). Therefore, in performing his duties for the Tribal Gaming Commission, Mr. Hickey: may never use or disclose confidential information, gained in state service, for the financial benefit of his employer; may never represent the Tribal Gaming Commission concerning a "particular matter" in which he participated personally and substantially while in state service; and, for one year, may not represent the Gaming Commission before his former agency, in this case including both the DOSR and the Gaming Policy Board. Conn. Gen. Stat. §§1-84a, 1-84b(a) and 1-84b(b).

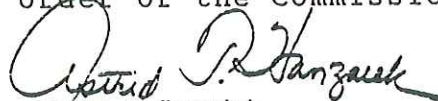
In applying the Code's post-state employment provisions, the Commission, in keeping with legislative intent, has established a limitation to the restrictions on representation imposed by §§1-84b(a) and (b). Specifically, these restrictions have been ruled not to apply to a former state servant performing only technical duties that involve no matters at issue between the State, or any other party, and his or her employer. The premise being that such activities offer essentially no opportunity for use of improper advantage. See, Ethics Commission Advisory Opinion No. 88-15, 50 Conn. L.J. No. 15, p. 3D (October 11, 1988). (Former state employee implementing a previously agreed upon contract between the State and her current employer allowed to contact her former agency.)

The Commission wishes to stress that this limitation is narrow in scope, and will apply to Mr. Hickey only when there



is, in fact, no matter at issue between the Tribal Gaming Commission and the State. In this regard, the Commission cannot accept Attorney Margolin's thesis, offered in reference to §1-84b(c), that since the Congress and Courts have intended for the Tribe and the State to work in cooperation, not conflict, as two equal sovereigns, no opportunity for improper influence exists. While this is the stated goal, and an unarguably laudable one, the reality has been and remains somewhat less ideal. And it is this reality which will govern the application of the Code's post-state employment provisions to Mr. Hickey's representation of the Tribal Gaming Commission.

By order of the Commission,


Astrid T. Hanzalek

Astrid T. Hanzalek
Chairperson

Dated

9-16-91