



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 92-17

Interpretation Of Conn. Gen. Stat. §1-80(h)

Conn. Gen. Stat. §1-80(h) states: "Notwithstanding the provisions of Chapter 67, the commission may, upon the concurring vote of five of its members, appoint an executive director and general counsel, who shall serve at the pleasure of the commission. The executive director and general counsel may be removed only upon the concurring vote of four members of the commission." This subsection was promulgated during the 1983 legislative session. In 1988, based on this language, the Department of Administrative Services (DAS) moved the position from the classified to the unclassified service.

In general, any position in state service is in the classified service, unless otherwise specified by statute. See Conn. Gen. Stat. §5-197. "Persons filling positions expressly exempted by statute" are exempt from the classified service. Conn. Gen. Stat. §5-198(s). The apparent basis for the move from the classified to the unclassified service was DAS's interpretation of §1-80(h) as such an express exemption. It is the Ethics Commission, however, which has the authority to interpret the provisions of Chapter 10, Part I. Conn. Gen. Stat. §1-81(a)(3). Consequently, Attorney Christopher T. Donohue, Chairperson of the Ethics Commission, has asked for a formal advisory opinion as to the Ethics Commission's interpretation of §1-80(h).

In proposing to the General Assembly the provision that became Conn. Gen. Stat. §1-80(h), the Ethics Commission intended to make clear its authority to direct the activities of its Executive Director and General Counsel. Specifically, it was believed that the operations of a citizen Commission "would be threatened by incompatibility between the Commission and its staff director" if the Commission was restricted by "the slow and cumbersome procedures of the State Personnel Act" (i.e. Chapter 67). See, The Codes of Ethics Study Committee, Report to the General Assembly of 1983, at 2 (1983) (this report became the basis for the legislative changes to the Codes of Ethics in 1983).

The above was the Commission's sole purpose in endorsing §1-80(h). Most particularly, the Commission did not intend to substantively alter the salary classification of its Director, and was not aware that the section would be subsequently interpreted (five years after passage of the provision) to

require placement of the Director position in a pay plan where compensation is determined by the Governor. It was clearly the Commission's and the Codes of Ethics Study Committee's contemporaneous intent that the "present pay scale could apply". Id.

The Commission notes that its clear and specific intent is embodied in the current language of §1-80(h). Specifically, the provision does not expressly remove the Director's position from the classified service. In general, Chapter 67 is the State Personnel Act which provides a uniform and equitable system of personnel administration of employees in state service. See Conn. Gen. Stat. §5-195. It encompasses such items as recruitment, selection, appointment, development, promotion, transfer, layoff, classification, compensation, discipline, and separation. Id.

It was the intent of the Commission in promulgating §1-80(h), to have the executive director and general counsel subject to all of the provisions of Chapter 67 except for the rules on separation. Hence, the use of the term "notwithstanding" was intended to have its commonly understood meaning of "in spite of". The American Heritage Dictionary 850 (2nd ed. 1985). If the Commission had intended to place the executive director and general counsel in the unclassified service then the statute would have been revised to "expressly" state that the "executive director and general counsel shall be exempt from classified service". (See, for example, the analogous statutory provision of the Siting Council, Conn. Gen. Stat. §16-50. Here, the intent to make the Council's Director exempt from the classified service is made manifest: "The executive director shall be exempt from classified service.") Any other interpretation would render the 'notwithstanding clause' superfluous and would be contrary to the plain language meaning of the subsection.

In issuing this Opinion the Commission, is, of course, cognizant that §1-80(h) has been removed from the Code by Public Act No. 92-149. However, the question posed is not moot, since the proper application of the provision to the Commission's executive director and general counsel from 1988 to the present remains to be determined.

By order of the Commission,



Christopher T. Donohue
Chairperson

Dated 6-1-92