



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 92-22

Application Of Conn. Gen. Stat. §1-84b(c)(2) To
Acceptance Of Employment With The Mashantucket
Pequot Tribe's Gaming Enterprise

The former Deputy Executive Director of the State's Division of Special Revenue (DOSR), Mr. William Ferris, retired from State service effective March 1, 1992. He has applied for a license to be a Casino Host for the Mashantucket Pequot Tribe's Gaming Enterprise (The Enterprise). Ms. Linda J. Yelmini, the successor Deputy Executive Director of the Division of Special Revenue, has asked if the contemplated employment is permissible under Conn. Gen. Stat. §1-84b(c)(2).

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 agencies has been delegated, by statute, to the Ethics Commission. Id. Pursuant to this delegation, the Commission has designated the Deputy Executive Director of DOSR. Regulations of Conn. State Agencies §1-92-40a.

The goal of this revolving door legislation is to decrease the likelihood that an official will tailor his conduct in office to enhance his opportunities for subsequent private employment in the same field. A managed "cooling off" period between termination of public service and entry into the same field for a private concern renders an official less likely to curry favor with private employers during his government service. It also reduces the appearance that the government was "bought out" by private concerns seeking special advantage. The Codes Of Ethics Study Committee Report To The General Assembly Of 1983, at p. 21 (1983).

In a prior advisory opinion, the Commission ruled that the Tribal Gaming Commission which was established by the Tribe is not a "business" as that term is used in §1-84b(c). See, Ethics Commission Advisory Opinion No. 91-23, 53 Conn. L.J. No. 15, p. 1D (October 8, 1991). The rationale for this conclusion was that the term "business" did not include governmental regulatory entities such as the Tribal Gaming Commission. In contrast, the Gaming Enterprise was established by the Tribe in order to conduct a revenue-generating operation, i.e. the casino, and not to perform any regulatory functions. For purposes of Conn. Gen. Stat. §1-84b(c), the term "business" is its commonly understood meaning of a commercial enterprise engaged in as a means of livelihood. See Webster's Third New International Dictionary of the English Language Unabridged at p. 302, G. and C. Merriam Co. (1961). It follows, therefore, that the Enterprise is a business under this section.

The Tribe has suggested that the Enterprise is not "subject to regulation" by the DOSR. Under a Compact between the Tribe and the State, the State's role involves licensing individual employees and suppliers of the Enterprise. At the time of Mr. Ferris' termination from state service, the State also reviewed the tribal gaming operations in order to determine whether such operations are conducted in compliance with the Compact. The DOSR was responsible for both activities for the State. The Ethics Commission considers both functions to be regulatory activities since they are a means of control and supervision over the operations of the casino in order to ensure the integrity of casino operations and to protect the public interest.

Therefore, the Gaming Enterprise, which operates a multi-million dollar casino, is a business subject to regulation by DOSR for purposes of the post-employment rules of the Code. To rule otherwise would violate both the intent and spirit of the law. Consequently, it follows that Mr. Ferris may not accept employment with the Enterprise until March 1, 1993.

This opinion is limited to the issue of whether the activities of the Enterprise fall within the parameters of the post-employment rules. Since the Tribe could claim sovereign immunity over its activities on its Indian Reservation, an additional issue has been raised as to whether or not the Ethics Commission has the jurisdiction to enforce the Code against the Tribe or its Gaming Enterprise. However, the Tribe, as a matter of policy, has agreed to comply with the Code regardless of the enforcement issue. Furthermore, it has agreed that its Gaming Enterprise will not offer employment to those former officials listed in §1-92-40a

of the Regulations without first checking with the Ethics Commission. Therefore, the Ethics Commission does not deem it necessary to address this issue in this Advisory Opinion.

By order of the Commission,



Christopher T. Donohue
Chairperson

Dated 9-14-92