



STATE OF CONNECTICUT OFFICE OF STATE ETHICS

Advisory Opinion No. 2016-1

February 18, 2016

Question Presented: Whether a retired state trooper may work as a police officer or constable for a municipality that is provided police services and supervision by the Department of Emergency Services and Public Protection either by statute or an enhanced contract for services, without violating the post-state employment provisions of the Code of Ethics for Public Officials.

Brief Answer: We conclude that a retired state trooper may engage in the subject post-state employment.

At its January 2016 regular meeting, the Citizen's Ethics Advisory Board ("Board") granted the petition for an advisory opinion submitted by Janet K. Ainsworth, Staff Attorney with the Department of Emergency Services and Public Protection ("DESPP"). The Board now issues this advisory opinion, which interprets the Code of Ethics for Public Officials¹ ("Ethics Code"), is binding on the Board concerning the person who requested it and who acted in good-faith reliance thereon, and is based on the facts provided by the petitioner.

Facts

The petitioner seeks an opinion regarding General Statutes § 1-84b (b), a "revolving door" provision of the Ethics Code, and its effect

¹Chapter 10, part I, of the General Statutes.

on DESPP state troopers who have left state service. The pertinent facts provided by the petitioner are set forth below and are considered part of this opinion:

Some state troopers ... upon retirement seek employment with other police agencies. As part of its statutory responsibilities, DESPP provides police services to municipalities without organized police departments. Many such municipalities enter into contracts directly with DESPP for the more enhanced police services provided by the resident trooper program. In such municipalities, a state police sergeant will supervise local constables or police officers that are employees of the municipality. Some retired troopers seek these constable or local police officer positions following retirement from DESPP.

In reviewing CGS § 1-84b, it does not appear that a trooper working as a police officer in a town that has entered into a contractual relationship with DESPP is “representing” anyone for compensation before DESPP. Rather, he or she has sought and successfully obtained employment with a municipality because the retiree has law enforcement knowledge and experience that is valued by the municipal employer

[T]here is no obvious benefit that a constable or police officer who once was a trooper obtains because of that status. The retiree is hired by the municipality. The retiree would be treated the same as any other municipal employee working as a peace officer as his or her terms and conditions of employment would be regulated by employer policy and the applicable collective bargaining agreement. The retiree also would not be involved in negotiating the contract between DESPP and the municipal employer. The resident trooper contracts, which are drafted and executed under the supervision of the DESPP commissioner’s legal staff, employ standard language and only vary as to the number of DESPP employees that will be assigned to that municipality’s Resident Trooper Office. The payment rate is set by statutes. See CGS § 29-5.

Analysis

As noted by the petitioner, the provision primarily relevant to this matter is General Statutes § 1-84b (b), under which for *one year* after leaving state service a retired state trooper may not “represent anyone, other than the state, for compensation before [DESPP] concerning any matter in which the state has a substantial interest.” The term “represent” has been defined broadly to include such things as making phone calls, attending meetings at which representatives of the former agency are present, submitting documents with the former employee’s name on them, or engaging in any other action that places the former employee in contact with his former agency as the representative of his new employer.² The purpose of § 1-84b (b) is to establish “a ‘cooling-off’ period to inhibit use of influence and contacts with one’s former agency colleagues for improper financial gain.”³

The former State Ethics Commission (“Commission”), in Advisory Opinion No. 88-15, “reasoned that the principal legislative purpose behind § 1-84b (b) – prevention of use of contacts, influence or other insider’s advantage gained during state service to obtain improper benefit in subsequent compensated dealings with one’s former agency – could be fulfilled by applying the subsection only *when the ‘representation’ involved a matter in which the State exercised discretionary authority* (e.g., contract or grant award, contested cases, or permit application).”⁴

Pursuant to General Statutes § 29-7,⁵ DESPP is required to provide police services throughout the state. Under General

²See Advisory Opinion No. 91-24, Connecticut Law Journal, Vol. 53, No. 16, (October 15, 1991).

³Advisory Opinion No. 98-21, Connecticut Law Journal, Vol. 60, No. 10, p. 4C (September 8, 1998).

⁴(Emphasis Added.) Advisory Opinion No. 90-21, Connecticut Law Journal, Vol. 52, No. 4, p. 6D (July 24, 1990).

⁵General Statutes § 29-7 states in part: The Commissioner of Emergency Services and Public Protection shall devise and make effective a system of police patrols throughout the state, exclusive of cities and boroughs, for the purpose of preventing or detecting any violation of the criminal law or any law relating to motor vehicles and shall establish and maintain such barracks or substations as may prove necessary to accomplish such purpose.

Statutes § 29-5,⁶ a municipality lacking an organized police force may contract with DESPP to be provided more enhanced police services under the Resident Trooper Program. Pursuant to § 29-5, DESPP may provide state police services and appoint resident state policemen to any such municipality and the associated costs to the municipality for the program are set by the statute. By entering into this contract with DESPP, the municipality delegates to the State Police the authority to supervise and direct the law enforcement operation of appointed constables and police officers in the town. Based on information provided by the petitioner, in practice, if a municipality makes a request for the Resident Trooper Program, the request will be granted.

Because, as stated in Advisory Opinion No. 88-15, “the principal legislative purpose behind § 1-84b (b) [is] prevention of use of contacts, influence or other insider’s advantage gained during state service to obtain improper benefit in subsequent compensated dealings with one’s former agency,” the provision would not apply to this matter where the program is always provided by DESPP when requested by a municipality and the services and funding are governed by statute. In this situation, there is no means by which the retired state troopers can obtain unfair advantage for either their new employer (the municipality) or themselves. As an employee of the municipality, although the retired state trooper would be supervised by a resident trooper, any and all final discretionary authority concerning his or her work (i.e., hiring,

⁶General Statutes § 29-5 (a) states: The Commissioner of Emergency Services and Public Protection may, within available appropriations, appoint suitable persons from the regular state police force as resident state policemen in addition to the regular state police force to be employed and empowered as state policemen in any town or two or more adjoining towns lacking an organized police force, and such officers may be detailed by said commissioner as resident state policemen for regular assignment to such towns, provided each town shall pay eighty-five per cent of the cost of compensation, maintenance and other expenses of the first two state policemen detailed to such town, and one hundred per cent of such costs of compensation, maintenance and other expenses for any additional state policemen detailed to such town, provided further such town shall pay one hundred per cent of any overtime costs and such portion of fringe benefits directly associated with such overtime costs. Such town or towns and the Commissioner of Emergency Services and Public Protection are authorized to enter into agreements and contracts for such police services, with the approval of the Attorney General, for periods not exceeding two years.

overtime assignment, discipline, evaluations, etc.) lies with the town and not DESPP.⁷ As stated by the petitioner, the town police officers and constables are municipal employees and their terms and conditions of employment are regulated by town policy and the applicable collective bargaining agreement.

In addition to the post-state employment restriction under § 1-84b (b), discussed above, for one year after leaving state service, a former state employee may not accept employment with a party to a state contract (or grant) valued at \$50,000 or more, if two things are true: (1) he participated substantially in, or supervised, the negotiation or award of that contract, and (2) it was signed within his last year of state service.⁸ Based on the facts presented by the petitioner, the retired state troopers do not participate in negotiating the Resident Trooper Program contracts between DESPP and the municipalities. These contracts which, per the petitioner, are mainly boiler plate, are drafted and executed under the supervision of the DESPP commissioner's legal staff. Thus, the retired state troopers would not be in violation of § 1-84b (f).

Lastly, the information provided by the petitioner notes that in order to be eligible for these municipal positions, the retirees must obtain certification from DESPP's Police Officer Standards and

⁷Contract Between the State of Connecticut Department of Emergency Services and Public Protection, Division of the State Police and the Town of Preston for the Services of Resident State Police Troopers, Contract Period July 1, 2015 to June 30, 2017, (on file with the Office of State Ethics) states in part: The Town shall retain administrative responsibility for its personnel, including but not limited to, ensuring compliance with entry level standards for newly hired police officers or constables and training and certification requirements established by the Police Officer Standards and Training Council (POSTC) in accordance with the provisions of Connecticut General Statutes Section 7-294a *et seq.* and associated Regulations of Connecticut State Agencies or as otherwise required by law, compensation for services rendered, hours or shifts to be worked, and provisions of uniforms and equipment.

⁸General Statutes § 1-84b (f) states in part: No former public official or state employee (1) who participated substantially in the negotiation or award of ... a state contract valued at an amount of fifty thousand dollars or more, or ... (2) who supervised the negotiation or award of such a contract or agreement, shall accept employment with a party to the contract or agreement other than the state for a period of one year after his resignation from his state office or position if his resignation occurs less than one year after the contract or agreement is signed.

Training Council Division (“POSTC”). In Advisory Opinion No. 2002-18, the Commission was asked how § 1-84b (b) “applies to situations where the former employee must seek a license or other regulatory authority [from his or her former state agency] after leaving state service in order to pursue an occupation, profession or other employment.” In response, the Commission concluded: “To the extent that one must appear before his former agency to apply for a permit or license for himself that is necessary for him to pursue future employment, it is not representation for compensation before one’s former agency. Nevertheless ... it would violate § 1-84b (b) if the former employee went outside the usual licensing or permitting process to contact former agency colleagues to ensure that he or she received the requested license or permit.”

As applied here, to the extent that it is necessary for the retired state troopers to appear before POSTC in order to register or obtain certification, it would not constitute prohibited representation under § 1-84b (b). However, their contact with POSTC must not stray from the normal agency certification process.

Conclusion

We conclude, based on the facts presented, that a retired state trooper may engage in post-state employment as a police officer or constable with a municipality that is provided police services and supervision by DESPP.

By order of the Board,

Dated 2/18/16

/s/ Charles F. Chiusano
Chairperson