

CONNECTICUT STATE ETHICS COMMISSION  
97 ELM STREET (REAR)  
HARTFORD, CONNECTICUT 06106

In the Matter of a Request  
for a Declaratory Ruling

88-D

David Silverstone, Esq.  
Applicant

Attorney David Silverstone has requested the Ethics Commission's opinion regarding the interpretation of Section 1-84b, General Statutes.

Attorney Silverstone's firm, Silverstone and Koontz, represents private and municipal clients before the Department of Public Utility Control (DPUC). The firm has hired an attorney who, until August, 1988, was employed by the Prosecutorial Division of the DPUC.

Pursuant to Section 16-19j, General Statutes, the Prosecutorial Division is an advocacy unit of the DPUC, and is a distinct party in proceedings before the Public Utilities Control Authority (Authority). In essence, the Prosecutorial Division is authorized to present an alternative case and propose modifications to the rate filings of utilities with more than 75,000 customers. Id.

Attorney Silverstone has requested the Commission's advice on the following questions:

1. May his firm include their new attorney's name in its letterhead on stationary used to communicate with the DPUC prior to one year from the date of his departure from the Prosecutorial Division?
2. May the attorney appear before the DPUC on behalf of a client in the following scenarios?
  - a. The client is a Connecticut municipality which jointly with the Connecticut Resources Recovery Authority and The Connecticut Light & Power Company seeks a

declaratory ruling on approval of a proposed energy contract. During the attorney's tenure with Prosecutorial, the Division was not involved in the docket or any similar docket.

- b. The client is a small water company filing a general rate application. The State is not a customer of the company. Prosecutorial has never been involved in any litigation involving the company.

The provision of the Code of Ethics applicable to the questions posed is subsection 1-84b(b), General Statutes. That subsection states:

No former executive branch public official or state employee shall, for one year after leaving state service, represent anyone, other than the state, for compensation before the department, agency, board, commission, council or office in which he served at the time of his termination of service, concerning any matter in which the state has a substantial interest.

With regard to question 1., Attorney Silverstone suggests that since State law allows his firm to hire a former State employee the firm also should be allowed to include the employee's name on its letterhead. He states that prohibiting this action will elevate form over substance. Furthermore, he questions whether the term "represent" as used in 1-84b(b) should extend to a situation where the former State employee neither appears before the DPUC nor is assigned to a DPUC proceeding.

Concerning questions 2.a. and b., Attorney Silverstone proposes that the questions turn on how "substantial interest" is interpreted. He states that, although not defined by statute, "substantial" should not be deemed superfluous. Specifically he seeks to differentiate between 2a. and 2b. He notes that in 2a. the State, through CRRA, is directly and financially affected by the DPUC proceedings. However, in 2b. the State has no financial interest. Rather, its primary function is to adjudicate the competing interests of consumers and public utilities pursuant to Section 16-19e, General Statutes.



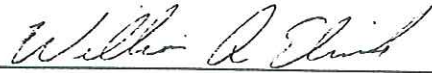
The Ethics Commission cannot agree with the conclusions suggested by Attorney Silverstone's comments.

1. The Commission has previously had occasion to interpret "represent" as that term is used in 1-84b(b). In defining the parameters of "represent" the Commission specifically included submitting a document on which the former State employee's name appears. Ethics Commission Advisory Opinion No. 86-11, 48 Conn. L.J. No. 18, p. 1D (October 28, 1986). The Commission does not wish to elevate form over substance. However, when dealing with Ethics issues form, i.e., appearance, is frequently of consequence. Furthermore, form and substance often overlap in cases such as the one at hand. For use of the former State employee's name on the firm's letterhead may, however inadvertently, allow the firm to obtain an improper advantage in dealing with the individual's former Agency. Therefore, the Commission consistently has held that any activity which reveals the identity of the former State employee amounts to prohibited representation in violation of subsection 1-84b(b). See, e.g., Ethics Commission Advisory Opinions Nos. 87-8, 49 Conn. L.J. No. 4, p. 1C (July 28, 1987) and 88-13, 50 Conn. L.J. No. 8, p.4C (August 23, 1988).

2.a. and b. As Attorney Silverstone has pointed out, the State, through CRRA, has a financial interest in the outcome of scenario a. Undoubtedly, this amounts to a "substantial interest" as that term is used in subsection 1-84b(b). However, "substantial interest" is not limited to situations where the State's finances are involved. As the Commission previously has held, the State has a substantial interest under 1-84b(b) whenever "...the matter affects the State's rights, duties, or property in a significant way." Ethics Commission Advisory Opinion No. 86-11, 48 Conn. L.J. No. 18, p. 1D (October 28, 1986). Although the State does not have a financial stake in the outcome of scenario b., its duties most certainly are involved. As Attorney Silverstone has noted, pursuant to Section 16-19e, General Statutes, the State is required to adjudicate the competing interests of consumers and public utilities. Specifically, it has the duty to insure that the public utilities' rates are sufficient to cover costs, attract capital, and maintain financial integrity. At the same time, the State also must insure that consumers' interests are protected, economic development promoted, and energy conservation encouraged. Id. The Commission finds that these

mandated responsibilities clearly give the State a "substantial interest" under subsection 1-84b(b) in the rate application at issue.

By order of the Commission,



William A. Elrick  
Chairperson

Dated 10/11/88