

DECLARATORY RULING 90-A

Post-employment Restrictions on Former Director of
Operations of Commission on Hospitals
and Health Care

Attorney George Levine has asked the Ethics Commission to issue a declaratory ruling regarding the application of the revolving door provisions of the Code of Ethics for Public Officials, Conn. Gen. Stat., Chapter 10, Part I, to Sue Ellen Stanley, former Director of Operations of the Commission on Hospitals and Health Care ("CHHC").

Specifically, Mr. Levine has posed the following questions:

1. During the one-year "cooling off" period of Conn. Gen. Stat. §1-84b(b), may Ms. Stanley accept employment with an entity which, in connection with its own business affairs, will be represented before the Hospital Commission? During that one-year period, someone other than Ms. Stanley would provide the representation.

2. May Ms. Stanley, under the same factual situation presented in Question 1, become employed by an entity which, like a trade association, represents other entities before CHHC, as long as someone other than Ms. Stanley provides the representation?

3. Is it a violation of Conn. Gen. Stat. §1-84b(b) for the members or staff of CHHC to be made aware of the name of Ms. Stanley's employer, even though the employer may be represented, or may represent others, before the agency? That representation would be provided by someone other than Ms. Stanley.

4. May Ms. Stanley make generic inquiries (e.g., inquiries relating to statutory and regulatory interpretations, procedural matters and/or factual data) to members and staff of CHHC, whether under the Freedom of Information Act or otherwise, during the statutory one-year period?

5. If Ms. Stanley initiates the inquiries described in

Question 4 by telephone, and the person she wishes to reach is not then available, may Ms. Stanley leave a message (a) requesting that her call be returned, and (b) containing the telephone number at which she can be reached, if that number is that of an entity which will be represented before CHHC during the statutory one-year period by someone other than Ms. Stanley?

6. May Ms. Stanley, during the statutory one-year period, attend hearings and scheduled meetings of CHHC as a member of the audience if her employer is not representing itself or another entity at that hearing or meeting?

7. May Ms. Stanley, during the statutory one-year period, attend hearings and scheduled meetings of CHHC as a member of the audience if her employer, through someone other than Ms. Stanley, is representing itself or another entity at the hearing or meeting?

Taking Attorney Levine's questions in turn:

1. Conn. Gen. Stat. §1-84b(d) states that:

No former public official or state employee who participated substantially in the negotiation or award of a state contract obliging the state to pay an amount of fifty thousand dollars or more, or who supervised the negotiation or award of such a contract, shall accept employment with a party to the contract 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 is signed.

Substantial participation in, or supervision of, the negotiation or award of a contract includes discretionary authority to affect the terms of the contract, the authority to review and make recommendations, and the responsibility to exercise, and/or the actual exercise of, supervisory authority. See Ethics Commission Advisory Opinions No. 87-8, 49 Conn. L. J. No. 4, p.1C (7/28/87); No. 89-27, 51 Conn. L. J. No. 17, p.2C (10/24/89). Provided that, while an employee of CHHC, Ms. Stanley took no action which would place her within the prohibition of §1-84b(d), she may take a position with an entity which may appear before the agency.

Of course, the other revolving door provisions of the Code also apply. Ms. Stanley may never use confidential information gained in her state office for the private financial benefit of anyone. Conn. Gen. Stat. §1-84a.

She may never represent anyone other than the State concerning any particular matter in which she participated personally and substantially while in state service, and in which the State has a substantial interest. Conn. Gen. Stat. §1-84b(a).

For a year after leaving state service, she may not represent anyone, other than the State, for compensation before CHHC concerning a matter in which the State has a substantial interest. Conn. Gen. Stat. §1-84b(b).

2. The answer to Question 1 applies to Question 2 as well.

3. It is a violation of Conn. Gen. Stat. §1-84b(b) for Ms. Stanley to represent anyone for compensation before CHHC for a year after she leaves state service. The Ethics Commission has consistently held that to "represent" means to do any activity that reveals the identity of the former state employee, e.g., appearing in person, signing a document, or identifying oneself on the telephone. See Ethics Commission Advisory Opinion No. 86-11, 48 Conn. L. J. No. 18, p.1D (10/28/86). Similarly, it is improper for former state employees to deliberately inform former colleagues of their new position and employer, if their new employer is involved in representation before the state agency. For example, a former state employee should not specifically publicize his or her new role by sending announcements to his or her former agency. See Declaratory Ruling No. 88-D, (10/11/88).

In his letter requesting this ruling, Attorney Levine suggested that by allowing former state employees to ask for and receive advisory opinions relating to their post-state employment, which opinions are thereafter published in the Connecticut Law Journal, the Ethics Commission has somehow approved of former state employees revealing their new employers to their former agencies. That suggestion is inaccurate. The Ethics Commission recognizes that there will be occasions when, through inadvertance or in a good faith effort to ensure compliance with the Code, the former employee's new position will be revealed. But this recognition of the realities of changing jobs does not constitute a waiver of the revolving door provisions of the Code. Deliberate and/or repeated efforts by the former state employee to reveal his or her new role do violate the Code.

4. A former state employee may, during the one-year "cooling off" period of §1-84b(b), contact his or her former agency to request generic information. For example, a former

state employee may phone the agency and request a set of the latest regulations or a list of all agency opinions which address a certain regulation or statute. He or she may not, however, ask someone at the agency to interpret how a particular statute or regulation would apply in a specific situation, nor may he or she request information regarding the status of a particular application, case or other matter. In short, a request for general information is acceptable, but any request which specifically or by implication reveals the entity for which the information is needed is a violation of §1-84b(b).

5. The Ethics Commission has consistently held that in order to prevent former state employees from using contacts and influence gained during state service to obtain an improper advantage in their subsequent compensated dealings with their former agency, a former state employee must refrain, for the one-year period, from doing anything to reveal his or her identity and/or purpose to former colleagues. See Ethics Commission Advisory Opinion No. 88-13, 50 Conn. L. J. No. 8, p.4C (8/23/88). Here, if Ms. Stanley's purpose in calling CHHC is truly to receive generic information only, there is no reason why she cannot call back later, or have someone else place the call. Also, Ms. Stanley held a high level position as Director of Operations while at the agency. With the wealth of technical knowledge which she must be able to provide to her new employer (and which she can legitimately use to assist them without contact with her former agency), the fact that Ms. Stanley herself would telephone the CHHC for generic information and leave a phone number or other information which identifies both herself and an entity being represented before CHHC calls into question the purpose of the conversation.

Finally, Attorney Levine apparently uses the word "represent" more narrowly than the word has been interpreted by the Ethics Commission. By leaving the telephone number of an entity for which Ms. Stanley is working with someone at CHHC, Ms. Stanley would be representing that entity in violation of §1-84b(b) even though another person might be handling other aspects of the representation before the agency.

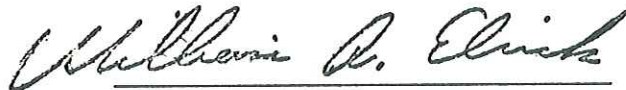
6. It is not a violation of the Code of Ethics for Ms. Stanley to sit in on agency hearings or meetings (whether scheduled or unscheduled), if her new employer is not representing itself or another entity at that hearing or meeting.

7. Again, Attorney Levine's use of the word "represent" is overly narrow. He has suggested that CHHC has no way of

knowing why a person would be sitting in the audience of a hearing or meeting. The Ethics Commission cannot verify that statement. However, in any event, by sitting in at a hearing or meeting (whether scheduled or unscheduled) at which her employer is representing itself or another entity, Ms. Stanley is providing compensated representation in violation of §1-84b(b), even though someone else may also be providing representation. To hold otherwise would vitiate the provision in question.

The Ethics Commission is aware that, when taken question by question, the restrictions imposed under §1-84b(b) may seem excessive. It should be remembered, however, that the §1-84b(b) prohibition is only a one-year ban, and that the underlying goal is to prevent the improper use of influence and contacts for that one year. Individual violations, while they often may be minor, are therefore troublesome because, when taken as a whole, they demonstrate the very improprieties which the law is designed to prevent.

By order of the Commission,



William A. Elrick
Chairperson

Dated 1 - 8 - 90

