

DECLARATORY RULING 90-B

State Trooper Holding Elective Municipal Office

Attorney John W. Pickard, Town Counsel for the Town of New Hartford, has asked whether there is a conflict of interest if New Hartford's resident state trooper, Joseph Bieluch, serves as a member of the town's Board of Finance (Board). Trooper Bieluch was elected to the Board for a six year term last November. The Connecticut State Police Union (Union) and Bernard Sullivan, the Commissioner of Public Safety and the Commanding Officer of the State Police, submitted comments regarding Trooper Bieluch's right to hold the municipal office.

Under current Ethics Commission Regulations, there is a conflict of interest which precludes a person in state service from holding or continuing to hold elective municipal office when a "classified state employee has an office or position which has discretionary power to . . . institute or recommend actions for penalties against the incumbent of the municipal office incident to the incumbent's election or performance of the duties of said office". Regulations of Conn. State Agencies §5-266a-1(a)(2)(c). This regulation was recently changed. Under the prior regulation, a conflict of interest existed if the department or agency in which the employee worked had the discretionary power to institute or recommend penalties. Additionally, the prior regulation was not limited to penalties incident to the incumbent's election or performance of duties. These changes reflect the Commission's position that the prior regulation was overly broad and that the restrictions should be limited to the activities of employees with actual discretion to recommend or institute actions for penalties on the municipal official.

According to information provided to the Commission by the Labor Relations department of the Department of Public Safety, Division of State Police, "the State Police are responsible for protecting the public and enforcing all state laws, regulations and any local ordinances as they may pertain. They have state-wide police powers and jurisdiction. State troopers are subject to duty 24 hours a day. Whether on or off duty, they must take appropriate enforcement action if they become aware

of criminal activity, provide assistance when needed, and respond to emergency calls. The State Police also investigate political corruption in various towns and levels of government." Ethics Commission Advisory Opinion No. 89-21, 50 Conn. L.J. No. 28, p. 1C (January 10, 1989). Additionally, "...every trooper has access to computer-stored confidential information, although certain internal or other extremely sensitive investigations may be protected. Informal contact with confidential information through fellow officers also occurs." Id. A resident state trooper is appointed to perform his or her duties in a specific town.

State Police Commander Bernard Sullivan has indicated to the Commission that he is opposed to state troopers holding municipal office. According to Commissioner Sullivan, it is imperative for state troopers to be independent since they must often work closely with local officials. He further states that in order to maintain integrity in law enforcement, state troopers cannot serve at the political whim of local officials.

The Union believes that a state trooper should not be restricted from holding elected municipal office unless the trooper has a specialized position within the Division of State Police, such as working in the political corruption unit. It is the Union's position that troopers not in the political corruption unit do not have the discretionary authority to institute or recommend penalties in political corruption cases. The Union states that crimes of political corruption are handled by special investigators who seek to institute or recommend penalties. The Union further argues that subsequent review by the corruption unit is an independent and de novo assessment of a complaint and comes before the final decision to institute or recommend penalties. It should be noted that Commissioner Sullivan has stated that often the subsequent review is limited to a review of the factual content of the allegations and authorization of a complaint.

The Ethics Commission wishes to commend Commissioner Sullivan for his sensitivity to potential conflicts of interest and his commitment to ethics and integrity in the Department of Public Safety. At the same time, the Commission is cognizant of, and sympathetic to, the strongly held views set forth by the Union regarding their members' right to hold office and desire to serve their communities. In issuing this ruling, the Commission seeks to address the views and concerns of both Commissioner Sullivan and the Union while remaining faithful to the intent of the regulatory provisions in question. The Commission also takes this opportunity to interpret the

regulation, §5-266a-1(a)(2)(c), as it applies not just to Trooper Bieluch but to all state troopers wishing to hold elective municipal office.

The Commission believes that §5-266a-1(a)(2)(c) should not be read so broadly as to prohibit all state troopers from holding elective municipal office. As previously noted, the Commission submitted, and the Legislative Regulations Review Committee approved, an amended version of this regulation with the specific intent of narrowing its scope and allowing more classified state employees to hold municipal office when the office did not conflict with the employee's specific state position. In keeping with this intent, the Commission will apply the prohibition of §5-266a-1(a)(2)(c) only to those state troopers who in their specific assigned duties have the discretion to institute or recommend actions for penalties against the incumbent of the municipal office incident to the incumbent's election or the performance of the duties of the office. The Commission will not bar all state troopers from holding elective municipal office solely because as troopers they have twenty-four hour a day statewide police powers.

In applying this criterion the following classes of state troopers are prohibited, under §5-266a-1(a)(2)(c), from holding elective municipal office because their specific job assignments pose a conflict of interest: (1) troopers serving in the Division's political corruption unit; (2) resident troopers who reside in the municipality where they are assigned; and (3) members of patrol units who reside in a municipality within the geographical area of their assigned patrol.

Taking each class in turn, troopers serving in the Division's political corruption unit are obviously precluded from holding elective municipal office because of their integral, discretionary role in instituting or recommending actions for penalties regarding acts of municipal wrongdoing. As noted, supra, the Union does not dispute this conclusion.

Resident troopers who reside in the municipality they patrol, such as Trooper Bieluch, are barred from holding elective municipal office because, under the regulation at issue, there would be a direct conflict between their role as agents of law enforcement and their role as partisan municipal officials. As the municipality's principal law enforcement officer, a resident trooper's assigned duties clearly include the detection and reporting of incidents of possible municipal corruption by elected local officials. Therefore, under the

regulation, the resident trooper has "discretionary authority to institute or recommend actions for penalties against the incumbent of the municipal office..." and is barred from simultaneously holding any such office.

Members of patrol units who reside in a municipality within the geographical confines of their assigned area of patrol have essentially the same conflict as resident troopers who reside in the town they are assigned to police. As a result, such patrol troopers are also prohibited from holding elective municipal office under §5-266a-1(a)(2)(c).

The Union claims that subsequent review of the actions of resident or patrol troopers by superiors (including the Division's political corruption unit, state prosecutors, and, ultimately, the Courts) eliminates any discretion on the part of the local trooper, insures unbiased decisions regarding possible municipal corruption, and thereby removes any conflict of interest. The Commission is not persuaded by this line of reasoning.

To allow an inherent conflict of interest based on the fact of subsequent review would undermine public confidence in the integrity of both state and local government and invite abuse. The Commission has consistently ruled that subsequent review by a superior is irrelevant because the "possibility of impropriety is not eliminated by the fact that the employee's review is only the first part of a chain of review. If the initial review has any value at all, it is bound to shape action at higher levels in a number of cases." See, e.g., Ethics Commission Advisory Opinion No. 89-30, 51 Conn. L.J. No. 25, p. 1E (December 19, 1989).

The Union also argues that since a resident or patrol trooper must, as part of his or her assigned job responsibilities, investigate criminal conduct and disclose or relay information to a superior that the trooper has no discretion. The Commission again cannot agree. Discretion is defined as the "freedom to act or judge on one's own". The American Heritage Dictionary 404 (2nd ed. 1985). A resident or patrol trooper on many occasions will be the one to uncover or be notified by a member of the public of local corruption. This is especially true when the trooper also resides in a town and has both personal and political ties to the community. It is at this point that the trooper, in his or her own discretion, makes the initial determination whether or not the information rises to the level of requiring further action. In every case, the trooper would have the discretion to provide

the information to a supervisor or the appropriate unit within the Division. According to Commissioner Sullivan, the relay of this type of information is one of the most important responsibilities of a state trooper. The result may be that many cases would go uninvestigated because a resident or patrol trooper decides not to refer a complaint or to pass along significant information regarding his or her municipal office or local government. Consequently, under §5-266a-1(a)(2)(c), no resident or patrol trooper may hold an elected municipal position in a town which the trooper is specifically assigned to police.

Under this ruling any state trooper not specifically prohibited may hold elective municipal office without violating §5-266a-(1)(a)(2)(c). This, of course, leaves open the possibility of transfer within the Division of State Police in order to allow a trooper currently in a prohibited state position to continue to hold or seek elected municipal office. Any such transfer is a personnel matter to be decided internally by Commissioner Sullivan and the Division of State Police. Similarly, if, for whatever reason, Commissioner Sullivan, as Commander of the State Police, wishes to establish more stringent departmental rules regarding troopers holding elected municipal office than those enunciated in this opinion, he is not precluded from doing so by this decision.

By order of the Commission,


Rabbi Michael Menitoff
Chairperson

Dated March 5, 1990

