STATE OF CONNECTICUT
STATE ETHICS COMMISSION

DECLARATORY RULING 92-C

Official Action Taken By Legislator/Lawyers On Insurance Reform Legislation Which May Affect Their Profession

During the last legislative session, an Act Concerning Automobile Insurance Reform, Substitute House Bill No. 5586 (the Bill) was reported by the Committee on Insurance and Real Estate to the Committee on Judiciary. The Bill made substantive changes to the No-Fault Motor Vehicle Insurance Law. The Committee on Judiciary proposed alternative reforms including an increase from $400 to $2250 for the amount of allowable expenses necessary for an accident victim to bring a personal injury lawsuit against the at-fault driver, effective for accidents occurring on or after January 1, 1993. The Bill, in its original form, as proposed by the Insurance Commissioner, suggested a threshold amount of $5000.00. Mr. Daniel J. Devlin has suggested that the two major groups which had the most interest in either the passage or defeat of the Bill were the insurance industry and lawyers. He has asked whether it was a conflict of interests for members of the Legislature with insurance industry or private sector legal ties to take official action on this Bill.

In general, the Code of Ethics attempts to prevent public officials from using the authority of their state position for the financial benefit of themselves, their families, or their businesses. See Conn. Gen. Stat. §§1-84(a), 1-84(c), 1-84(d), 1-84(i), 1-84(f), 1-85, and 1-86(a). It does not prevent a public official from taking action which may benefit the financial interest of a client or customer. Advisory Opinion No. 91-27, 53 Conn. L.J. No. 31, p. 3C (January 28, 1992). Furthermore, the Code does not specifically prohibit a public official from taking official action which would benefit one's employer, unless the employer, such as an insurance company, had improperly influenced the legislator/employee. Therefore, absent any information to the contrary, it was permissible for a legislator with insurance industry ties to take official action on the Bill.

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The applicable Code section regarding a conflict for legislator/lawyers taking official action on the Bill is Conn. Gen. Stat. §1-85. That section prohibits a public official, including an elected state official, from taking official action "if he has reason to believe or expect that he...or a business with which he...is associated will derive a direct (emphasis added) monetary gain or suffer a direct (emphasis added) monetary loss, as the case may be, by reason of his official activity"; unless "any benefit or detriment accrues to him,...or a business with which he...is associated as a member of a profession, occupation or group to no greater extent than any other member of such profession, occupation or group." A "business with which he is associated" includes any sole proprietorship, partnership, firm, corporation, trust or other entity through which business for profit or not for profit is conducted in which the legislator or a member of his immediate family is a paid director, officer, owner, limited or general partner, beneficiary of a trust or holder of five per cent or more of the total outstanding stock. See Conn. Gen. Stat. §1-79(c).

In this instance, the legislation, by its terms, did not affect the entire "profession" of lawyers; but rather, the "group" of lawyers engaged in personal injury work. The fact that the threshold amount proposed in the Judiciary Committee version of the Bill is higher than existing law and lower than that proposed by the Insurance Commissioner is irrelevant under the Code since §1-85 applies whether official action would result in a direct monetary gain or direct monetary loss.

However. the passage or nonpassage of the bill would not have had the requisite direct financial impact on a tort-attorney/legislator to require abstention from the matter. For purposes of §1-85, the term "direct" means absolute, immediate, or without intervening conditions. See, The American Heritage Dictionary of the English Language, at p. 373, Houghton Rifflin Company (1979). Utilizing this definition, any future effect on a tort-attorney/legislator's financial interests resulting from a change in the legislation would be too speculative to meet the statutory standard. Consequently, it was permissible, under the Code of Ethics for Public Officials, for tort-attorney/legislators to take official action on the Bill in question.

Because of the §1-85 requirements that any financial impact be direct and specific, and because the change in the threshold was prospective only, tort-attorney/legislators were not disqualified from voting on the 1992 legislation at issue. If,

however, similar legislation was retrospective, the tort attorney/legislator was affected differently than the group defined in this matter, and he believed or expected a resultant direct monetary benefit or detriment, he should not have taken official action on the matter.

By order of the Commission,

Christopher T. Donohue
Chairperson

Dated 12-7-92