



Office of the Attorney General
State of Connecticut

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May 31, 2019

Edwin S. Greenberg, Chairman
State Properties Review Board
450 Columbus Boulevard, Suite 202
Hartford, CT 06103

Dear Chairman Greenberg:

You have requested a formal legal opinion on the scope of the State Properties Review Board's ("Board") statutory authority to review certain state contracts. In particular, you seek clarification regarding the standards applicable to the Board's review of four types of state contracts under (i) Conn. Gen. Stat. § 4b-91(g) (No-Bid Construction Contracts); (ii) Conn. Gen. Stat. §§ 4b-23(i) and 4b-55 through 4b-59 (two types of No-Bid Consultant Contracts); and (iii) Conn. Gen. Stat. § 4b-24b (Design Build Contracts) (collectively, the "No-Bid Construction, No-Bid Consultant and Design Build Contracts"). You further ask whether the Board's statutory review of these state contracts is "in any way limited." Because the Department of Administrative Services (DAS) and the Board are not in complete agreement regarding the applicable review standards for No-Bid Construction, No-Bid Consultant and Design Build Contracts, clarity regarding the review standards will assist both DAS and the Board in fulfilling their statutory functions. Upon review of the statutory language, the Public Acts and the legislative history, we conclude that the Board is limited to its statutory authority, but within that statutory authority, the Board's scope of review of the state contracts is broad.

Background

The legislature established the Board in 1975 as a watchdog entity to ensure that the State's real estate acquisitions and leases would be in the State's best interest and free from "political patronage, cronyism, personal spoils systems, and friendship." *See* Final Report of the Sub-Committee on Leasing, Joint Standing Committee on Appropriations, p. 30, January 7, 1975. While DAS remains responsible for managing the state's real estate, the legislature has vested the Board with independent decision-making authority and charged it with reviewing real estate acquisitions, sales, leases and subleases proposed by the

DAS Commissioner. Conn. Gen. Stat. §§ 4b-1, 4b-3(e), 4b-3(f), and 4b-23(e). The Board reviews similar transactions by the Chief Court Administrator and the Department of Transportation (DOT). Conn. Gen. Stat. § 4b-3(f). The No-Bid Construction, No-Bid Consultant and Design Build Contracts at issue here all require Board review.

From its inception in 1975, the Board has been granted a broad scope with respect to the Board's review of state contracts. Specifically, as currently enacted, subsection (f) directs in pertinent part that:

Such review shall consider all aspects of the proposed actions, including feasibility and method of acquisition and the prudence of the business method proposed. . . . The board shall have access to all information, files and records, including financial records, of the Commissioner of Administrative Services and the Commissioner of Transportation, and shall, when necessary, be entitled to the use of personnel employed by said commissioners.

Conn. Gen. Stat. § 4b-3(f). *See* P.A. 75-425, § 1(f) for similar operative language. *See also* Conn. Op. Atty Gen. 2010-006, 2010 WL 5088187 (Conn. A.G., Dec. 9, 2010) (Attorney General Opinion upholding the Board's broad authority under § 4b-3(f)).

Analysis

Summary

Your question requires us to construe multiple statutes that have been repeatedly amended for more than forty years. In construing a statute, its meaning "shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes." Conn. Gen. Stat. § 1-2z. "If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." *Id.* "When a statute is not plain and unambiguous, [the Court] also look[s] for interpretive guidance to the legislative history and circumstances surrounding its enactment,

to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.” *Marchesi v. Board of Selectmen of Town of Lyme*, 328 Conn. 615, 628 (2018). “It is a basic tenet of statutory construction that the intent of the legislature is to be found not in an isolated phrase or sentence but, rather, from the statutory scheme as a whole.” *Williams v. City of New Haven*, 329 Conn. 366, 378–79 (2018) (internal citations omitted).

Applying these rules, we look first at the statutes’ text. The baseline standard for the scope of the Board’s review is established by the broad standard set forth in Conn. Gen. Stat. § 4b-3(f) (above), requiring review of “all aspects” of the transaction, including full access to all documents and assistance from DAS staff, if necessary. Conn. Gen. Stat. § 4b-91(i) explicitly incorporates the broad review standard established by § 4b-3. Thus § 4b-3 governs the Board’s review of § 4b-91 No-Bid Construction Contracts, and further provides that if such review does not occur within thirty (30) days after the commissioner submits the contract to the Board, the contract shall be deemed to be approved.

While the statutes pertaining to the other three types of contracts do not explicitly incorporate the scope-of-review standards set forth in § 4b-3(f), the structure of those statutes does not suggest that a lesser standard of review should apply. Review of the No-Bid Consultant Contracts authorized by Conn. Gen. Stat. § 4b-23 was incorporated into the 1975 Public Act that established the Board. The same public act also established the § 4b-3(f) scope of review standards. *See* P.A. 75-425, §§ 1(f), 2(e). The two provisions are linked in the statutory language and there does not appear to be any basis for applying a lesser standard of review for the § 4b-23 contracts. The No-Bid Consultant Contracts authorized by Conn. Gen. Stat. §§ 4b-55 through 4b-59 directly link to § 4b-23 and there is no textual statutory basis to treat the two types of No-Bid Consultant Contracts differently. Finally, considering the statutory scheme as a whole, in the absence of limiting language, there is no reason a lesser standard of review would apply to the Design Build Contracts authorized by Conn. Gen. Stat. § 4b-24b.

Each of the four types of contracts concern unique circumstances, whether because they are “no-bid” contracts, or are large design-build contracts. Given the unusual aspects of these types of contracts, Board oversight is consistent with the overall legislative purpose. The broad standards set forth in § 4b-3(f) should govern the Board’s review of the No-Bid Construction, No-Bid Consultant and Design Build Contracts.

Conn. Gen. Stat. § 4b-91(g) – No-Bid Construction Contracts

Conn. Gen. Stat. §4b-91(g) establishes a process by which the Commissioner of Administrative Services may enter into a contract to perform services on certain enumerated types of projects without following the competitive bidding process. Pursuant to the “no-bid” provisions of Conn. Gen. Stat. § 4b-91(g), the DAS Commissioner is authorized to select and interview at least three general contractors who are prequalified by statute and, after a selection process utilizing a construction services panel, negotiate a contract with the successful contractor to build specific types of governmental facilities. In 2004, the legislature amended the statute to require that the Commissioner,

prior to entering any such contract or performing any work on such project, shall submit such contract to the State Properties Review Board for review and approval or disapproval by the board, *pursuant to subsection (i) of this section.*

Public Act 04-141, §1, codified as Conn. Gen. Stat. § 4b-91(g) (emphasis added). Subsection (i), in turn, provides that the Board’s review must be completed in thirty days or the contract is deemed approved, and that the Board’s review “*shall be conducted in accordance with the provisions of section 4b-3.*” Conn. Gen. Stat. § 4b-91(i) (emphasis added). Thus, for No-Bid Construction Contracts under § 4b-91(g), the review standards of subsection (f) of § 4b-3 are expressly incorporated, namely the Board “shall have access to all information, files and records, including financial records, of the Commissioner of Administrative Services,” and “shall consider all aspects of the proposed actions, including feasibility and method of acquisition and the prudence of the business method proposed.” Conn. Gen. Stat. § 4b-3(f).

Conn. Gen. Stat. §§ 4b-23(i) and 4b-55 through 4b-59 – No-Bid Consultant Contracts

You also ask about two different types of no-bid consultant contracts – No-Bid Consultant Contracts pursuant to Conn. Gen. Stat. § 4b-23(i) and No-Bid Consultant Contracts pursuant to Conn. Gen. Stat. §§ 4b-55 through 4b-59. Both types of contracts utilize the definition of consultants set forth in Conn. Gen. Stat. § 4b-55(2), namely consultants associated with real estate transactions and

development.¹ The statutes are silent as to their scope of review, but are linked such that § 4b-23(i) standards also apply to § 4b-58 No-Bid Consultant Contracts. As explained below, based on the statutory structure and history of legislative amendments, we see no reason why the scope should be any less than the standard established by Conn. Gen. Stat. § 4b-3(f).

a. The No-Bid Consultant Contracts Pursuant to Conn. Gen. Stat. § 4b-23(i)

Conn. Gen. Stat. § 4b-23(i) authorizes the DAS Commissioner to enter into no-bid contracts for consultant services for certain specified types of projects. These consultant contracts “shall be subject to the approval of the Properties Review Board prior to the employment of such consultant or consultants by the commissioner.” Conn. Gen. Stat. § 4b-23(i). If the Board’s decision on a § 4b-23(i) consultant contract is not made within thirty days, the contract or selection is deemed to be approved. *Id.* The text of § 4b-23(i) does not specify the scope of the Board’s review, nor does it expressly incorporate Conn. Gen. Stat. § 4b-3(f). However, the timing of its enactment, and related subsequent legislative history support that the scope of review should be as extensive as that authorized by § 4b-3(f).

Conn. Gen. Stat. § 4b-23(i) was enacted in 1975 as part of the original Act establishing the Board, P.A. 75-425. That Public Act, entitled “An Act Implementing the Report of the Appropriations Committee’s Special Subcommittee on Leasing,” established the Board and made other statutory changes to address improper state contracting practices, including political patronage, cronyism, and collusion, which were exposed by a legislative investigation into state leasing. *See* Final Report of the Sub-Committee on

¹ The term “consultant” is defined in Conn. Gen. Stat. § 4b-55(2) as

(A) any architect, professional engineer, landscape architect, land surveyor, accountant, interior designer, environmental professional or construction administrator, who is registered or licensed to practice such person’s profession in accordance with the applicable provisions of the general statutes, or (B) any planner or financial specialist;

Leasing, Joint Standing Committee on Appropriations, January 7, 1975; Public Act 75-425.

In forming the Board in P.A. 75-425, the legislature bestowed broad powers of oversight upon the Board. P.A. 75-425 provided in § 1(f) that the Board's review of all real estate acquisitions proposed by the public works commissioner would "consider all aspects of the commissioner's proposed actions, including feasibility of acquisition, method of acquisition and the soundness of the business method proposed," and directed that the Board "shall have access to all information, files and records of the commissioner, and shall, when necessary, be entitled to the use of personnel employed by the commissioner." P.A. 75-425, § 1(f), now codified at Conn. Gen. Stat. § 4b-3(f). Thus from the very beginning, the Board was required to evaluate the soundness of the proposed action, was granted access to all information, files and records, and was permitted to use agency personnel to assist the Board in its review. Section 1(f) is the only section of the 1975 Act to specify a scope of review.

In other sections of the Act, P.A. 75-425 simply added the requirement that the Board review and approve particular types of real estate transactions, without specifying the scope of the review. *See, e.g.*, P.A. 75-425, §§ 8, 11, 12, 16-19, 25-26, 28-31, 33-36, 41, 48, 51, 53-55. This includes the original enactment of Conn. Gen. Stat. § 4b-23(i), P.A. 75-425, § 2(e), that stated:

[a]ny architects, landscape architects, professional engineers or land surveyors selected by the commissioner for employment on any project under the provisions of section 2 of this act shall be subject to the approval of the properties review board prior to their employment by the commissioner.

The consultants encompassed by P.A. 75-425, § 2(e) are professionals directly connected to the core competency of the Board, namely, real estate transactions and development.

Moreover, there is nothing in the structure or language of P.A. 75-425 that would suggest that the references to Board review that do not explicitly define the scope of review would be any different than the Board review applicable to review of real estate contracts expressly covered by § 4b-3(f).

Public Act 75-425, § 2(e) (now codified as § 4b-23(i)) and P.A. 75-425, §1(f) (now codified as § 4b-3(f)) were closely related. They were both adopted as part of the same Act and intended to address the same legislative concern that state contracts were being entered into that were not in the state's best interest. Furthermore, § 1(f) of the Act, which set forth the scope of the Board's review, specifically referenced § 2 of the Act, of which § 2(e) was a part.

Given the relationship between P.A. 75-425, §§ 1(f) and 2(e), the fact that both were adopted to address the same concerns with the state contracting process, and the lack of any other standard of review in Public Act 75-425 or discussion of any other standard in the Act's legislative history, we conclude that the legislature intended no less a scope of review than that set forth in § 1(f) (now § 4b-3(f)) to apply to the Board's approval of consultants' professional services under § 2(e) (now § 4b-23(i)).

This conclusion is bolstered by the legislature's adjustment to the Board's review power enacted the following year. In Public Act 76-116, § 1, the legislature expressly limited the scope of the Board's review powers when reviewing Department of Labor ("DOL") leases funded by federal funds. Specifically, the legislature required the Board to render a decision within sixty days and to

issue its approval or disapproval based solely upon whether the proposed location and rent are reasonable when compared to available space and prevailing rents in the same geographic area.

Conn. Gen. Stat. § 31-250(c). The proponents of P.A. 75-425 strongly opposed the change and the bill was passed with repeated assurances that the limited scope of review only applied to the DOL leases that were entirely federally funded. 19 H. R. Proc., Pt. 4, 1976 Sess., pp. 1382-1386; 19 S. Proc., Pt. 2, 1976 Sess., p. 541; 19 S. Proc., Pt. 3, 1976 Sess., p. 1190. In the over forty years since P.A. 75-425 was enacted, P.A. 76-116 is the only provision enacted to limit the scope of Board review.

Indeed, there have been at least ten revisions to the original 1975 statutory language of Conn. Gen. Stat. § 4b-23(i).² The gravamen of Conn. Gen. Stat. § 4b-23(i), however, remains constant, namely that professional consultant contracts entered into by DAS are subject to review and approval by the Board.³ If the legislature had wanted to limit or constrict the scope of review of consultant contracts pursuant to § 4b-23(i), it could have done so at any time over the past forty-four years and included such restrictions within any of the ten statutory revisions.

We further note that well-established rules of statutory construction forbid us to read language into the statute that is not there. *See McCullough v. Swan Engraving, Inc.*, 320 Conn. 299, 309 (2016). Therefore, we cannot read limitations into the Board's powers under § 4b-23(i) that the legislature has chosen to omit. Furthermore, we must construe statutes relating to the same subject matter to create a harmonious and consistent body of law. *See Connecticut Housing Finance Authority v. Alfaro*, 328 Conn. 134, 143 (2018); *Williams v. City of New Haven*, 329 Conn. 366, 378-79 (2018).

Accordingly, because § 4b-23(i) makes no mention of any limitation on the Board's review, and § 4b-3(f) is a related statute that expressly describes the scope of the Board's review, it seems clear that the legislature intended to apply that scope of review to such consultant contracts to ensure that the contracts are in the state's best interest. We cannot read language into § 4b-23(i) that would create a new and more limited scope of review, and we conclude that when the Board reviews consultants' contracts pursuant to § 4b-23(i), it should apply a scope of review no less than the standard set forth in § 4b-3(f).

² Conn. Gen. Stat. § 4b-23(i) is the codification of P.A. 75-425, § 2(e), as modified by P.A. 76-253, 79-450, 82-446, 96-235, 98-235, 99-241, 07-213, Sept. Sp. Sess. P.A. 09-7, 14-182 and 16-81.

³ In 1991, the legislature eliminated the requirement of Board approval for consultant selection and architectural design contracts for the DOT as part of § 4b-3(f) but left intact the requirement of Board approval for DAS consultant contracts pursuant to § 4b-23(i). *See* P.A. 91-124, §1; OLR Amended Bill Analysis for Public Act 91-124, SB 706 (File 261, as amended by Senate "A").

b. The No-Bid Consultant Contracts Pursuant to Conn. Gen. Stat. §§ 4b-55 through 4b-59

Conn. Gen. Stat. §§ 4b-55 through 4b-59 describe the process by which the Commissioner of Administrative Services may enter into contracts with certain other specified consultants. Section 4b-58 states that whenever consultant services are required for those specified types of projects, the DAS Commissioner may select and interview at least three consultants or firms and negotiate a contract with the firm that is most qualified, in the Commissioner's judgment, at compensation that the Commissioner deems fair and reasonable to the State. Conn. Gen. Stat. § 4b-58(a)(3). Section 4b-58 requires the Commissioner to "...notify the State Properties Review Board of the commissioner's action not later than five business days after such action for its approval or disapproval *in accordance with subsection (i) of section 4b-23.*" Conn. Gen. Stat. § 4b-58(a)(3) (emphasis added). Thus, because § 4b-58 expressly incorporates § 4b-23 the same review standards apply to both types of consultant contracts. Further, as discussed above, the legislative structure and history of § 4b-23(i) support a scope of review standard at least as robust as § 4b-3(f); thus, that same standard also applies to review of § 4b-58 No-Bid Consultant Contracts.

Conn. Gen. Stat. § 4b-24b – Design Build Contracts

The final statute that you have asked about is Conn. Gen. Stat. § 4b-24b, which concerns state design-build construction contracts. Subsection (b) of § 4b-24b permits the DAS Commissioner to designate certain state projects to be built on a total cost basis that covers both the design and construction of the project. To pursue such a project, the DAS Commissioner selects a developer from among those recommended by an awards panel and has sole responsibility for almost all aspects of the contract. Subsection (b) provides, however, that

[n]o such contract may be entered into by the commissioner without the prior approval of the State Properties Review Board and unless funding has been authorized pursuant to the general statutes or a public or special act.

Conn. Gen. Stat. 4b-24b(b). The text of § 4b-24b(b) imposes no express time limitations upon its review.

As with § 4b-23(i), the design-build statutory provisions of § 4b-24b(b) do not provide specific guidelines for the scope of review. For the same reasons discussed above, if the legislature had intended to limit the scope of the Board's review, it could have done so. *Compare* Conn. Gen. Stat. § 31-250 (limitation to review of federal leases to the DOL, enacted in 1976, discussed above).

Conclusion

In summary, we recognize that both DAS and the Board play important, interlocking roles. DAS bears the overall responsibility for managing and developing the state's real estate. The Board performs a quality control function with respect to DAS's real estate and development decisions. Under the legislature's statutory scheme, we conclude that the Board's review of the No-Bid Construction, No-Bid Consultant and Design Build Contracts may, consistent with Conn. Gen. Stat. § 4b-3(f), consider "all aspects of the proposed transactions," and include "access to all information, files and records, including financial records, of the Commissioner of Administrative Services."

Very truly yours,



WILLIAM TONG