



STATE OF CONNECTICUT  
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 79-14 (Amended)

Substantial Conflict with the Discharge of a  
Legislator's Duties

A member of the General Assembly has asked whether a conflict of interest exists when members of the General Assembly's Education Committee who are themselves teachers vote on matters which directly affect teachers' conditions of employment and teacher contract negotiation procedures. The legislator advises that one Co-Chairman of the Committee, who is a teacher, has abstained from voting on matters which affect the employment of teachers. The other Co-Chairman, considering the matter, has ruled that each Committee member must decide for himself whether or not a conflict of interest exists.

As public officials (section 1-79(j), General Statutes), legislators are subject to the Code of Ethics, Chapter 10, Part I, General Statutes. The Code provides that "[n]o public official or state employee shall, while serving as such, have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, as defined in section 1-85." Section 1-84(a), General Statutes. Section 1-85 explains that a public official "has an interest which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, if he has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. He does not have an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to him as a member of a business, profession, occupation or group to no greater extent than any other member of such business, profession, occupation, or group." Section 1-86, General Statutes, specifies a procedure to be followed when a public official, in the discharge of his official duties, faces a potential conflict of interest.

A General Assembly member who is a teacher does not have an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed by State law so long as any benefit or detriment arising from the legislation accrues to him as a teacher to no greater extent than any other member

Phone: (203) 566-4472

30 Trinity Street • Hartford, Connecticut 06115

*An Equal Opportunity Employer*



of the teaching profession. Section 1-85, supra. As the Committee Co-Chairman has held, this is a matter which a public official, considering his particular situation and the standards quoted above, must decide for himself in the first instance. See also State Ethics Commission Advisory Opinion 79-9, 40 Conn. L.J. No. 38, p. 28.

Connecticut has a relatively strict common law standard regarding conflicts of interest involving public officials. "Public office is a trust conferred by public authority for a public purpose. State ex rel. Stage v. Mackie, 82 Conn. 398, 401, 74A. 759. His status forbids the public officer from placing himself in position where his private interest conflicts with his public duty. The good faith of the official is of no moment because it is the policy of the law to keep him so far from temptation as to insure the exercise of unselfish public interest. He must not be permitted to place himself in a position in which personal interest may conflict with his public duty." Low v. Madison, 135 Conn. 1, 8 (1948). "The test is not whether it does conflict but whether it might conflict." Josephson v. Planning Board, 151 Conn. 489, 495 (1964). While the cases following Low v. Madison have dealt mainly with municipal officials, the same high standards have been applied to public officials at the State level. See, for example, Opinion of the Attorney General to the Chairman, Commission on Hospitals and Health Care. August 11, 1975, 37 Conn. L.J. No. 14, p. 5. Where financial or personal interests have created the appearance of possible partiality, yet the public official has not disqualified himself, any action by the body of which he was a member has been held void. Low v. Madison, supra. Public officials have consistently been held to the requirement that there be no appearance of a conflict of interest when they act in an administrative or quasi-judicial capacity.

However, for a number of reasons the standard has not been applied to members of legislative bodies. La Torre v. Hartford, 167 Conn. 1, 8-9 (1974).

In 1971 the General Assembly enacted a code of ethics, to be effective in 1973, which applied to all members and employees of the Legislative, Executive, and Judicial Branches of State Government, except judges. That statute, in former sections 1-66 and 1-68, General Statutes, prohibited interests in substantial conflict with one's official duties, using the same language as the current statute, quoted above. Section 1-68 also contained the exception, which is in the present statute, when any benefit or detriment accrues to the public official as a member of a business, profession, occupation, or group to no greater extent than any other member of such business, profession, occupation, or group.

When the bill which was to become the present Code of Ethics for Public Officials was being debated, an amendment to delete the above exception was proposed. After extensive debate, the amendment was defeated. 20 Connecticut General Assembly House Proceedings 1977, pp. 6459 - 6475. As a consequence, a public official does not have a substantial conflict of interest if his financial interests are affected no differently than other members of his business, profession, occupation, or group.

In addition to its provisions prohibiting official action when a substantial conflict of interest is involved, and defining "substantial" conflict, the Code of Ethics for Public Officials has instructions concerning conflicts arising from financial interests which are more than a de minimis nature and are distinct from those of the public generally.



Instructions similar to these also were contained in the 1971 code of ethics, but then applied only to members of the General Assembly. Former section 1-67, General Statutes. Now any public official or State employee who, in the discharge of his official duties, would be required to take official action affecting a financial interest of himself, certain members of his immediate family, or a business with which he is associated must, if the interest is other than one of a de minimis nature or than one not distinct from that of the general public, either excuse himself from voting, deliberating, or acting, or take certain prescribed action. Section 1-86, id. A member of the General Assembly who does not excuse himself from involvement in a matter affecting a consequential personal financial interest must prepare a written statement, signed under penalty of false statement, describing the matter requiring action and the nature of the potential conflict, and explaining why, despite the potential conflict, he is nevertheless able to vote and otherwise participate fairly, objectively, and in the public interest. Subsection 1-86 (a), id. In the case of a legislator, the statement should be delivered to both the Ethics Commission and the house in which he serves, to be recorded in its journal. Subsection 1-86(b), id.

In summary, the common law standard with which Connecticut public officials and employees formerly had to comply has been relaxed. A public official or State employee does not have a substantial conflict of interest with the proper discharge of his duties, forbidden by subsection 1-34(a), General Statutes, if any benefit or detriment accrues to him as a member of a business, profession, occupation, or group to no greater extent than to any other member of such business, profession, occupation, or group. Section 1-35, id. However, if he has a financial interest, other than one of a de minimis nature or one no different than any member of the general public, which would be affected by his official action he must either abstain from acting in the matter or must formally disclose the potential conflict and state why, despite the potential conflict, he can nonetheless participate fairly, objectively, and in the public interest. In the case at hand, a legislator who is a teacher may participate in deliberations and voting on matters directly concerning teachers if he is affected by the legislation no differently than other teachers. If the matter involves a monetary benefit or detriment to him that is not of a de minimis nature and affects him, as a teacher, differently than members of the general public, before he participates he must disclose in writing the potential conflict and justify his participation. Alternatively, he may excuse himself from acting on the matter.

By order of the Commission,

*Thomas J. Lynch*

Rev. Thomas J. Lynch, Chairman

Dated May 13, 1980

