



STATE OF CONNECTICUT
STATE ETHICS COMMISSION
ADVISORY OPINION NUMBER 82-11

State Employee Doing Private Work Requiring
Permit From The Department Of Environmental Protection

A licensed professional engineer employed by the Department of Transportation as a highway construction inspector has asked whether it would be consistent with the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes) for him to design on behalf of a private person a subsurface sewage disposal system for domestic sewage.

One who wishes to build and operate a system, such as a subsurface sewage disposal system, discharging material which could end up in the waters of the State must obtain a permit. Sections 25-26, 25-54i, General Statutes. Approval of the design of the proposed system is a required part of the permit process. Because it is an engineering design, the system design must be shown to be prepared by a professional engineer. Cf. sections 20-300-10, 20-300-10a, Regulations of Connecticut State Agencies. The permit is issued by the Commissioner of Environmental Protection for subsurface disposal systems of the type in question which have a capacity of more than 5,000 gallons per day of domestic sewage; the Commissioner has delegated to the Commissioner of Health Services authority to issue permits for systems having a capacity of 5,000 gallons per day or less. Subsection 25-54i(g), General Statutes; sections 25-54i-4.0, 25-54i-5.1, 25-54i-5.2, Regulations of Connecticut State Agencies. Since the capacity of the system the professional engineer has been asked to design may be somewhat more or somewhat less than 5,000 gallons per day, he is not certain whether his design must be submitted for approval to the Department of Environmental Protection or the Department of Health Services.

A highway construction inspector inspects and approves the work, the materials, and the procedures of contractors performing construction for the Department of Transportation. In the performance of his State duties the construction inspector in question has little or no official relationship with the Department of Environmental Protection or of Health Services or with their personnel. He is privy to no confidential information gained in his State position which would be useful to him in his private work on the sewage disposal system. His private activity will not affect his independence of judgment as a State employee. There appear to be no provisions of the Code of Ethics for Public Officials which would prevent him from designing the subsurface sewage disposal system if his design is submitted to the Department of Health Services.

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Subsection 1-84(d), General Statutes, provides that "[n]o...state employee ...shall agree to accept...any employment, fee or other thing of value or portion thereof, in consideration of [his] appearing...or taking any other action on behalf of another person before the...department of environmental protection...." Drafting and submitting to the Department of Environmental Protection an engineering design of the sewage disposal system would be "taking...action on behalf of another person before the...department of environmental protection." Submission of the design containing his signature and seal as a professional engineer, required to show that the system was designed by a qualified person, would be "appearing" before the Department. Ethics Commission Advisory Opinion No. 79-6, 40 Conn. L.J. No. 38, p. 27 (March 20, 1979).

Subsection 1-84(c) was enacted to prevent improper use of office or position. It presupposes that the person appearing or taking action before one of the listed agencies is in a position to sway the agency's judgment because of some influence the person has by virtue of his, or his employer's, partner's, etc. State position. In this case there is no indication that the professional engineer, by virtue of his position and activities as a State employee, exercises any influence whatsoever over the Department of Environmental Protection or any of its units. Nonetheless, subsection 1-84(c) states that the highway construction inspector in question may not submit his design to the Department of Environmental Protection if he is compensated for his efforts. If he receives no compensation for preparing and gaining approval of the design, subsection 1-84(d) does not prohibit the activity. Ethics Commission Advisory Opinion No. 80-1, 41 Conn. L.J. No. 29, p. 5 (January 15, 1980).

By order of the Commission,



Lucille E. Brown, Chairperson

Dated 1 April 1982