



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 84-2

Representing another for Compensation before the
Department of Environmental Protection

A professor at the University of Connecticut has developed a septic tank system utilizing principles so novel that he is having the sewage disposal technique patented. He proposes to license a consulting engineering firm to design septic systems based on his principles. The consulting engineering firm will pay the professor a royalty for each septic system it designs. The professor will share with the University of Connecticut, the proceeds from the licensing fee and royalties. He has asked whether his plan is permitted by subsection 1-84(d), General Statutes, in view of the fact that the larger septic systems will have to be approved by the Department of Environmental Protection (DEP).

A professor at the State's University is a State employee (subsection 1-79(k), General Statutes) subject to the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes. Subsection 1-84(d) of the Code says, in part, that no "... state employee or his employee shall agree to accept, or be a member or employee of a partnership, association, or a professional corporation which partnership, association or professional corporation agrees to accept, any employment, fee or other thing of value, or portion thereof, for appearing, agreeing to appear, or taking any other action on behalf of another person before ... the department of environmental protection"

No subsurface sewage disposal system with a capacity of 5,000 gallons per day or more may be built or operated in Connecticut until its plan or design and method of operation have been approved by DEP and a permit for the system granted by DEP. Sections 22a-416, 22a-430, General Statutes; sections 25-54i-4.0, 25-54i-5.0, Regulations of Connecticut State Agencies; see also Ethics Commission Advisory Opinion No. 82-11, 44 Conn. L.J. No. 28, p. 11B (January 11, 1983). In Advisory Opinion No. 82-11, above, the Commission concluded that drafting and submitting an engineering design of a subsurface sewage disposal system to be built for a person other than the engineer would be "taking ... action

on behalf of another person before ... the department of environmental protection" and submission of the design showing the designer's signature and seal as a professional engineer would amount to "appearing" on behalf of the other person before DEP.

Under the circumstances the professor has described, however, subsection 1-84(d), General Statutes does not appear to prevent him from carrying out his plan. Even if the activities in support of his venture were "appearing" or "taking action" before DEP, they would be uncompensated and on his own behalf, not on that of another.


The professor's participation in the plan seems to be (1) his invention, (2) presumably education of the consulting firm he licenses in the septic system concept, and (3) collection of license fees and royalties. It is the consulting engineering firm which will design a specific installation and obtain from DEP approval of the design and perhaps a permit for its installation and operation. So long as the professor merely licenses and educates the consulting firm and collects royalties from it, leaving to the engineering firm the design of a system and acquisition of necessary DEP approval for it, the consulting firm is an independent contractor, not an employee of the professor. See F.A.S. Intern., Inc. v. Reilly, 179 Conn. 507, 513-514 (1980). This is a distinction which is likely to make a practical difference. An engineering consulting firm, acting as an independent contractor, has a professional reputation to uphold. There is substantially less chance of an independent contractor being either willing or able to bring pressure on or seek favoritism with a State agency, activities subsection 1-84(d) seeks to prevent, than if a State employee were handling matters himself or through an employee, the details of whose work and the manner of doing it were controlled by the employer. The professor is not a member or employee of the consulting firm, under the facts given. Therefore, it seems that neither he, an employee of his, nor a partnership, association, or professional corporation of which he is a member or employee will be "appearing" or "taking action" before DEP.

The professor has advised that the details of the new septic system concept he has created have appeared in a textbook and several professional journals. It could be that someone in DEP may realize that a septic system design for which approval is sought is based upon the invention of a

particular State employee. This possible incidental exposure does not seem to constitute an "appearance" before DEP, as that term is used in subsection 1-84(d). Even if it did, the professor has no stake in the approval process once the concept of his invention has been accepted. In the case at hand, gaining acceptance of the concept is the responsibility of the consulting firm. Thereafter, the professor is to receive his royalty for a design, whether or not it is approved by DEP. DEP will be approving the application by the consulting firm of the professor's invention to a specific sewage disposal situation. Should knowledge that the professor invented the concept upon which the design is based be thought an "appearance", it is not on behalf of another and it is uncompensated.

In view of the foregoing, subsection 1-84(d), General Statutes does not prevent the professor from licensing an engineering consulting firm to design underground sewage disposal systems based upon his invention, even if the design and installation of a system must be approved by DEP. There is no indication that other Code of Ethics provisions with which the professor must conform apply to the situation presented.

By order of the Commission,


Robert W. MacGregor
Vice-Chairman

Date Jan. 4 / 54

