



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 84-8

State Employee Representing Others Before a State Agency

A professor at the University of Connecticut is a widely respected soils scientist. He conducts research both for the University and, as permitted by University personnel regulations, for outside clients. His area of expertise is a vital factor in many land use decisions. The professor frequently prepares soil reports and other studies directed to, and intended for use by, municipal planning, zoning, wetlands, and other land use boards or commissions. In some instances, the municipal board or commission will forward material submitted to it, including the professor's report or study, to a State agency for advice or comment. In other instances, an application or proposal, containing material prepared by the professor which was originally submitted to a local agency, becomes part of an application before a State agency.

The Ethics Commission has been asked three questions with regard to the application of subsection 1-84(d), General Statutes, to this situation:

- (1) may the professor represent others before the State agencies listed in subsection 1-84(d) if no compensation is involved?
- (2) will the answer to question (1) change when section 4 of Public Act No. 83-586 becomes effective January 9, 1985?
- (3) can a report or study, prepared by the professor, which was commissioned for a municipal use and paid for in that context, be rejected by a subsection 1-84(d) agency, when it shows up as part of an entirely different State application, on the basis that its use would result in a violation of subsection 1-84(d)?

There is no doubt that a professor at a State university is a State employee (subsection 1-79(k), General Statutes) for purposes of provisions, including subsection 1-84(d), of the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes.

(1) Subsection 1-84(d) forbids a State employee to accept, or agree to accept, any employment, fee, or other thing of value for appearing, or agreeing to appear, or taking any other action on behalf of another before the agencies listed in the subsection. The statute is clear that acceptance or agreement to accept some sort of compensation for the appearance or action

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before one of the agencies is what is prohibited. If the appearance or action is truly uncompensated, the Code of Ethics allows a State employee to make it. Advisory Opinion Number 80-1, 41 Conn. L.J. No. 29, p. 5 (January 15, 1980).

(2) The answer to the first question will not change on or after January 9, 1985, when section 4, Public Act No. 83-586, becomes effective. Section 4 adds four more agencies to the list of agencies in subsection 1-84(d), General Statutes, and declares that nothing in the subsection shall be construed as applying "...to the actions of any professional employee of a public institution of higher education if such actions are not compensated and are not in violation of any other provision of this chapter...." Since the prohibition in subsection 1-84(d) already applies only to actions which are compensated, the amendment seems merely to emphasize that the allowance for uncompensated action applies to professional employees of public institutions of higher education.

(3) The answer to the third question is the same as the first two: a report or study identified as prepared by a State employee, initially for a municipal use, may be utilized in an application before a subsection 1-84(d) agency so long as the State employee is not compensated for appearing or taking action before the agency. While the answer is the same, determining whether no compensation has been received or agreed to for action or appearing before a subsection 1-84(d) agency, as the subsection requires, is more difficult because some compensation will have been provided for the State employee's product at the municipal level. "Paid for in that context" will have to be interpreted in a common-sense way. For example, if a State employee were to prepare a report or study for a developer whose project undoubtedly was going to require not only municipal but State approval, the State employee would have a most difficult time explaining that he had based his fee for use of his work at the municipal level only, unless he had some agreement that it would be so restricted. The soil scientist in the case at hand, for example, must be well aware that if a report or study of his is used at the State level he may have to appear before the State agency to authenticate, explain, and defend his report or study. If he knew this when he prepared his study and was aware he could not accept compensation for his appearance before the State agency without violating subsection 1-84(d), he could not build compensation for the likely State-level action into his fee for his municipal work. Unless a State employee believed some other study or report was to be used for the State application, a State employee who prepared a study or report for municipal use in a situation where it was obvious approval by a subsection 1-84(d) agency also was required should have a

difficult time proving he was genuinely surprised and had charged merely for use of his product at the municipal level. On the other hand, if a municipal board or commission with final action authority were to send an application for municipal approval to a subsection 1-84(d) agency for advice from its experts, an assurance by a State employee that use of a study or report of his which was included in the application was uncompensated could be believable. In summary, a report or study commissioned for municipal use, and paid for in that context, should not always be rejected if it shows up as part of an entirely different State application. Of course, if the author must appear before a subsection 1-84(d) agency in connection with the report or study, he may not be compensated for it without violating the subsection. If the soil scientist whose studies and reports are "uniquely vital to many land use decisions", as the application for advice describes him, were to prepare a study or report in a situation in which its use for an application to a subsection 1-84(d) agency could be expected, it is not unlikely that the agency would reject his report or study. If it were used by the State agency, a complaint for violation of subsection 1-84(d) of the Code of Ethics for Public Officials could well be filed against him. He should be prepared to convince the agency and the Ethics commission that the document was "commissioned for a municipal use, and paid for in that context."

By order of the Commission.

Lucille E. Brown
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Chairperson

Dated 4 April 1984

