



STATE OF CONNECTICUT  
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 91-24

Former Connecticut Resources Recovery Authority ("CRRA")  
Employee Contracting With CRRA And With Company Seeking  
To Do Business With CRRA

An engineer who resigned from his position as Senior Engineer at the Connecticut Resources Recovery Authority ("CRRA") in late June has asked whether, under the Code of Ethics for Public Officials, he can contract with a company which is currently trying to sell its product and services to CRRA. The former state employee, Mr. David Lysak, indicates that the engineering company which he founded, Northstar Engineering, wishes to prepare a "Study and Report on Incinerator Ash Disposal in Connecticut" and a plan for closure of the Hartford mixed waste landfill for Rolite, Inc. He states that Rolite produces a useful aggregate material from incinerator ash and also provides an ash management service.

In his August 28th letter to this Commission, Mr. Lysak states that he cannot "recall a single instance where [he] 'sat in on meetings between Rolite and CRRA personnel.'" Nonetheless, according to CRRA, Mr. Lysak sat in on at least two or three meetings between Rolite and CRRA while employed by CRRA. The meetings took place as Rolite attempted to explain how its product could be used at both the existing Hartford landfill and at a proposed Hartford ash landfill. Together, the Hartford landfills comprise at least a part of the Mid-Conn project. Mr. Lysak apparently provided background and technical assistance to the CRRA/Mid-Conn project manager at those meetings. Mr. Lysak also visited a Rolite facility in his state capacity on at least one occasion. According to Mr. Lysak, the purpose of the visit was to gather information on the physical properties of the Rolite product. Afterwards, Mr. Lysak says, he provided his opinion of the product to the CRRA/Mid-Conn project manager. According to CRRA, the purpose of the meeting was to review plans for the proposed new ash landfill and to review possible uses for Rolite's ash product.

While Mr. Lysak was still employed by CRRA, Rolite submitted a plan for Mid-Conn's "MSW ash treatment and reuse program for the 90's." In its cover letter to CRRA's project manager at

Mid-Conn, Rolite stated that, among others, "Dave Lysak contributed substantially to this proposal."

According to CRRA, Mr. Lysak's duties at CRRA were not confined to a review of the Rolite product. In general, Mr. Lysak administered design and construction contracts for various projects throughout the state and reviewed CRRA's engineering consultants' work. In addition, with regard to the Hartford landfill, Mr. Lysak developed requests for proposals that included selecting a contractor for the design and testing of a methane recovery system. He also reviewed the outside engineering consultants' assessment of the remaining capacity at that landfill.

Mr. Lysak also states that he was "intimately" involved with the preparation of a permit application filed with the state Department of Environmental Protection for the new ash landfill to be built at the Hartford site. According to CRRA, his involvement included reviewing all submissions and making significant comments on the engineering aspects of the proposal.

Although the Ethics Code limits the activities of former state employees in a number of ways, three prohibitions are of particular significance in addressing this question. First, no former state employee can disclose or use any confidential information acquired in the course of and by reason of his official duties, for financial gain for himself or another person. Conn. Gen. Stat. §1-84a. "Confidential information" is any information not generally available to the public. See Ethics Commission Advisory Opinion No. 90-7, 51 Conn. L.J. No. 35, p. 6D (2/27/90).

Secondly, no former state employee can, for one year after leaving state service, represent anyone other than the state, for compensation, before his former agency, concerning any matter in which the State has a substantial interest. Conn. Gen. Stat. §1-84b(b). "Represent" includes any action which reveals the identity of the individual, e.g.; a personal appearance, phone call, signature on a document, or designation on a firm's letterhead. See, e.g., Ethics Commission Advisory Opinion No. 88-13, 50 Conn. L.J. No. 8, p. 4C (8/23/88).

Finally, no former state employee can represent anyone other than the State concerning any particular matter in which he participated personally and substantially while in state service and in which the State has a substantial interest. Conn. Gen. Stat. §1-84b(a). This is a lifetime ban.

Addressing this last and most troublesome area first, Mr. Lysak states that his proposal to do work for Rolite has nothing to do with the new ash landfill for which he prepared the DEP application. However, CRRA has indicated that Rolite met with CRRA regarding both the new landfill and the existing landfill. The purpose of §1-84b(a) is to prevent former state employees from "switching sides" on matters with which they were involved while working for the State. In this case, the "particular matters" include the new landfill permit, since Mr. Lysak worked so closely on it, the various proposals which Rolite has made and/or will make to CRRA, and the requests for proposals which he prepared in connection with methane recovery at the Hartford landfill. Therefore, Mr. Lysak may never assist anyone other than the State on matters related to the permit. Also, he may never assist Rolite with the proposals which had already been presented to CRRA before he left that agency, since he helped CRRA to evaluate Rolite's product and services at a time when CRRA was considering those proposals. Finally, Mr. Lysak may not assist anyone other than the State with regard to the methane recovery system requests for proposals which he developed. Of course, there may be many other particular matters that Mr. Lysak worked on while at CRRA which have not been brought to this Commission's attention. Any question regarding the application of the Code in this regard should be raised in order to avoid a violation of its provisions.

With regard to the prohibition against use of confidential information, Mr. Lysak states that there is no confidential information involved in the work that he proposes to do for Rolite. He does add that he plans to interview state employees as part of his research. This raises the prohibition against appearing before one's former agency during the one-year "cooling off" period. The purpose of the one-year ban is to prevent former state employees from using contacts and influence gained during state service to obtain an improper advantage in their subsequent compensated dealings with their former agency.

The Ethics Commission has consistently held that a former state employee may, during the year following his separation from state service, contact his agency to request purely generic information. Any request or discussion which specifically or by implication reveals the entity for which the information is needed, however, is a violation of §1-84b(b). See Ethics Commission Declaratory Ruling No. 90-A. Therefore, while Mr. Lysak may interview employees from other state agencies, or ask CRRA employees for copies of current information on ash disposal, if that information would be available to the general public, he may not, for example, interview CRRA members or staff

about the status of Rolite's proposals, or about the application of the general information to specific projects or to specific companies. He should not raise issues with his former colleagues that cannot help but alert them to Rolite's interests and to his own involvement with those interests. In this vein, Mr. Lysak should not attend meetings between Rolite and CRRA personnel, such as the one which took place in early August when CRRA employees travelled to Long Island to view the Rolite operation and Mr. Lysak accompanied them.

Again with regard to the one year prohibition of §1-84b(b), Mr. Lysak has asked whether Rolite is prohibited from showing his report to CRRA and whether Rolite must delete anything which would identify Northstar Engineering as its author. Barring any problem under §1-84b(a), Rolite can certainly use Mr. Lysak's technical services to create a report which is ultimately submitted to CRRA. The report must not reveal Mr. Lysak's involvement in any way, however. Also, it was clear to the Commission staff in researching this question that personnel at CRRA are well aware that Mr. Lysak is doing business as Northstar Engineering. Therefore, under the facts presented here, neither Mr. Lysak's name or the name of his firm should appear on any such report.

Mr. Lysak also states that if he were questioned by CRRA regarding his work for Rolite he "must, in good conscience, provide the information requested." In fact, under the law, for a period of one year, he must not.

Finally, the Commission has learned from CRRA that Mr. Lysak has approached his former employer with proposals to do work on projects with which he was involved while at the agency. To date, two such proposals have been received by CRRA; one involves the Waterbury Bulky Waste Landfill and the other the Westport Transfer Station. CRRA's chief engineer states that Mr. Lysak would be finishing up work that he started while in state service. The letters from Mr. Lysak indicate that he wishes to be paid \$60 per hour for the work he proposes to perform.

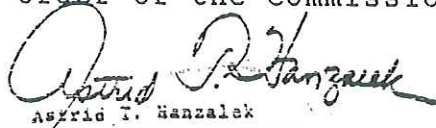
The Ethics Commission has limited the application of §1-84b(b) to allow a former state employee to contact his former agency within a year of leaving state service for the purpose of being reemployed by that agency, provided that certain restrictions are met. See Ethics Commission Advisory Opinion No. 89-25 (Amended), 51 Conn. L.J. No. 24, p. 2E (12/12/89).

At the time of that opinion, the Commission contemplated

issuing a regulation on this subject. After consultation with the Attorney General's Office, however, the Commission has decided that, at this time, it is best to proceed through advisory opinions. The language of Advisory Opinion No. 89-25 is therefore controlling: such reemployment is acceptable only if the rate of pay is at no greater level than the individual was receiving at the time of separation from state service, plus necessary expenses if the work is performed as an independent contractor. If Mr. Lysak's new contracts with CRRA do not conform to this requirement, then they are in violation of the Code and must be renegotiated. Similarly, any other proposals in the first year after leaving state service must comply. Without such a limitation on reemployment, a state employee might be sorely tempted to leave his state job and then, taking advantage of his contacts at his former agency, return to do the same job for greater pay.

That part of Advisory Opinion No. 89-25 which states that the Commission will take no action against individuals whose activities may be at variance with the Commission's interpretation of §1-84b(b) will no longer apply to any activities which take place after the date of this opinion.

By order of the Commission,



Astrid T. Hanzalek

---

Astrid T. Hanzalek  
Chairperson

Dated 9-16-91

