



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 91-26

Application of §1-84(d) To Legislator Who Is "Of Counsel"
To Law Firm

A representative currently serving in the General Assembly is considering whether or not he should become a principal in a law firm. The firm has been retained by the Office of the Attorney General to represent certain state agencies in various matters. Richard G. Convicer, Esq. has asked the Commission how Conn. Gen. Stat. §§1-84 and 1-85 would apply if the representative were to vote on a matter in which a member of the firm has acted as an advocate. Attorney Convicer has stated the representative, if necessary, would refrain from participating or voting in the matter. In addition, Attorney Convicer has asked how Conn. Gen. Stat. §1-84(d) applies to an attorney/legislator who becomes "of counsel" to a law firm.

The Code of Ethics attempts to prevent public officials from using the authority of their state position for the financial benefit of themselves, their families, or their businesses. See Conn. Gen. Stat. §§1-84(a), 1-84(c), 1-84(d), 1-84(i), 1-84(f), 1-85, and 1-86(a). It does not prevent a public official from taking official action which may benefit the financial interest of a client or customer. Therefore, although it would prevent the appearance of a conflict of interests if the legislator abstained from taking official action on a matter in which the firm acted as an advocate, it would not be required by the Code.

If, however, the legislator becomes a partner in the law firm or acquires some other type of ownership interest in the firm, the firm may be a "business with which he is associated" for purposes of the Code. See Conn. Gen. Stat. §1-79(b). If so, the firm would not be able to accept any further work from the Office of the Attorney General, unless the work is awarded through an open and public process. See Conn. Gen. Stat. §1-84(i).

Conn Gen. Stat. §1-84(d) states that no public official "shall agree to accept, or be a member or employee of a partnership, association, professional corporation or sole proprietorship which partnership, association, professional

corporation or sole proprietorship 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" certain state agencies. Whether a legislator may accept employment with a firm which practices before the listed agencies depends on whether or not the legislator is considered to be "a member or employee" of the law firm when he is "of counsel".

The prohibition in §1-84(d) is intended to prevent improper influence which a public official might be able to exert because of his or her office or position on an agency of the State. In a prior advisory opinion, the Commission determined that regardless of the title or status one has with the firm, "the appearance of impropriety is the same whether the attorney is an associate, a partner, or has some other position in the firm. A public official occupies a position of trust and confidence. He should not place himself in a situation which allows public doubt about possible undue influence to arise." See Advisory Opinion No. 78-21, 40 Conn. L.J. No. 13, p. 11 (September 26, 1978). In another advisory opinion, the Commission ruled that regardless of the particular organizational arrangement the law firm may have in place, if an attorney's name appeared on the letterhead, the attorney would be treated as a member or employee of the firm "for that is the impression which the letterhead will create in the public and in the members and staff of the State agencies listed in section 1-84(d)". Advisory Opinion No. 79-25, 41 Conn. L.J. No. 17, p. 7 (October 23, 1979). Therefore, if a firm represents to the public that the legislator is associated with the firm in any way, including an affiliation such as "of counsel", then the restrictions of subsection 1-84(d) must apply.

Finally, in Advisory Opinion No. 78-9, 39 Conn. L.J. No. 50, p. 13 (June 13, 1978), a relationship between an attorney and law firm was discussed which the Commission indicated would satisfy the language of §1-84(d) and not prohibit the entire firm from accepting compensated services before the listed agencies. In that Opinion, the attorney received desk space, telephone service, and secretarial services in the office of the law firm. In return, the attorney paid to the firm a portion of the fees she generated. She, however, received no compensation from the law firm and no part of its fees. In this arrangement, the attorney was clearly independent from the firm.

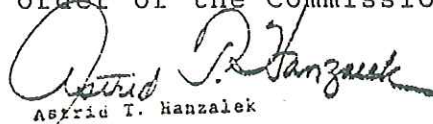
In summary, if the attorney/legislator is in any way associated with the law firm so that the impression the public

has is that the attorney is part of the firm, then the prohibition of §1-84(d) must be extended to the entire firm. On the other hand, if the attorney/legislator is an independent contractor, then the subsection is not applicable, any member of the firm may appear before the listed agencies, and the legislator will not be in violation of Conn. Gen. Stat. §1-84(d).

This conclusion is consistent with one of the comments to the Rules of Professional Conduct as adopted by the Connecticut Bar Association. In determining which attorneys fit within the definition of the term "firm", it states "[W]hether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules." See Rules of Professional Conduct Rule 1.10 comment (October 1986).

It should be emphasized that §1-84(d) prohibits only compensated appearances before the various agencies. Therefore, a firm with an attorney/legislator member or employee may still represent any individual before the listed agencies if it chooses not to charge a fee for such representation. Of course, the firm may not then adjust their fee schedule for other matters they may be handling for the client, as a means to obviate the law. See Advisory Nos. 80-1, 41 Conn. L.J. No. 29, p. 5 (January 15, 1980), 84-8, 45 Conn. L.J. 45, p. 23C (May 8, 1984), 84-17, 46 Conn. L.J. No. 26, p. 3D (December 25, 1984).

By order of the Commission,



Astrid T. Hanzalek

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Chairperson

Dated 12-9-91

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