



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 91-9

Application of the Post-State Employment
Provisions to those Terminated from
State Service

Mr. Clifford J. Laube is currently the Deputy Director of the Connecticut Alcohol and Drug Abuse Commission (CADAC). Both the Regional Youth Substance Abuse Project (RYSAP) and the CADAC Institute of Addictions (Institute) are conducting a search for a new Executive Director. Mr. Laube does not anticipate being reappointed to his present position by the new administration. Consequently, he is interested in applying for both the RYSAP and Institute positions and has asked the Ethics Commission whether Conn. Gen. Stat. §1-84b would preclude him from accepting employment at either of the two agencies.

Four post-state employment provisions of the Code apply to Mr. Laube:

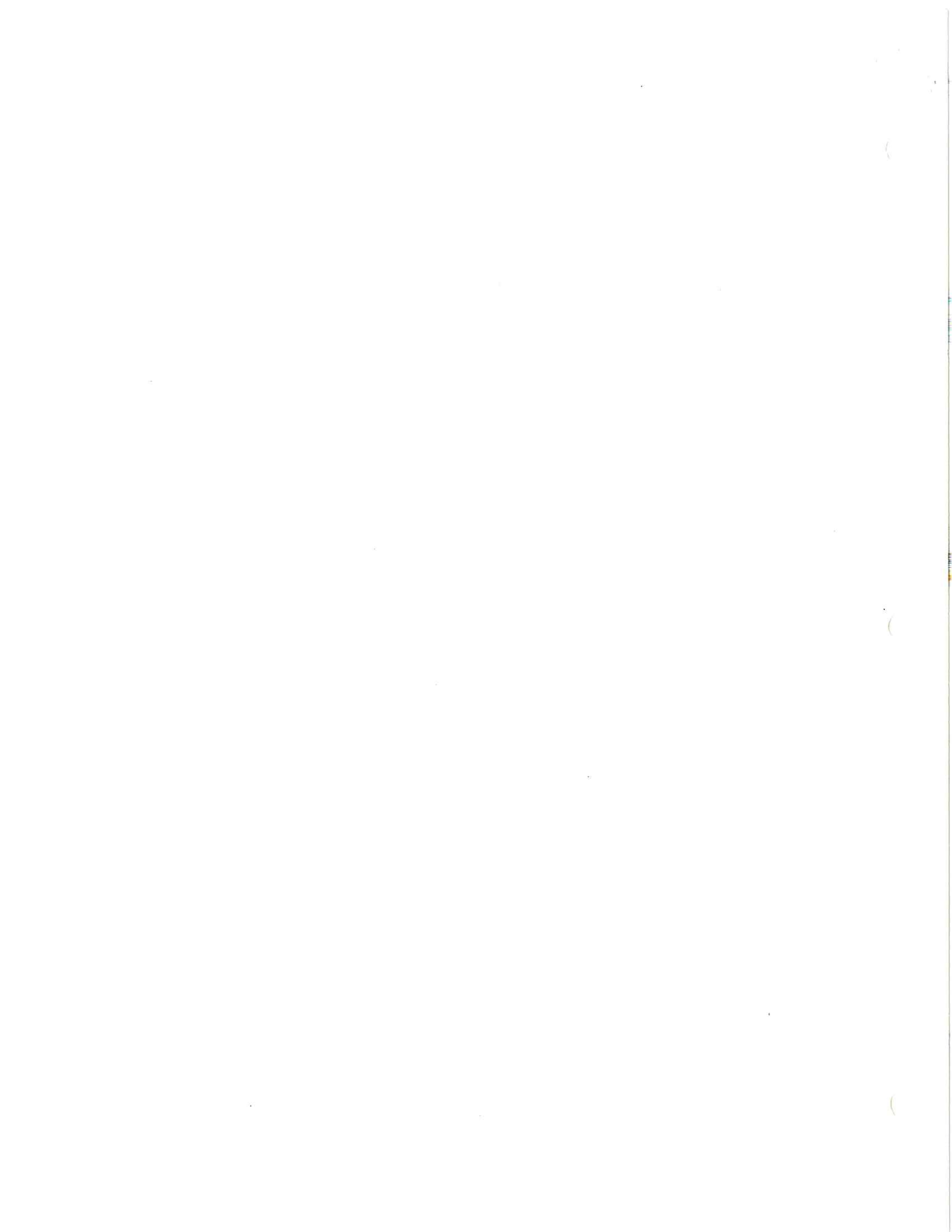
He may never use confidential information gained in state service for the financial benefit of any person. Conn. Gen. Stat. §1-84a.

He may never represent anyone other than the State concerning any particular matter in which he participated personally and substantially as a state servant, if it is one in which the State has a substantial interest. Conn. Gen. Stat. §1-84b(a).

For one year after leaving state service he may not represent anyone, other than the State, for compensation before CADAC, his former agency, concerning a matter in which the State has a substantial interest. Conn. Gen. Stat. §1-84b(b).

If he participated personally and substantially in the negotiation or award, or supervised the negotiation or award, of a contract, valued at \$50,000 or more, with either RYSAP or the Institute within a year before resigning from state service, he could not accept employment with that agency for a year after his resignation. Conn. Gen. Stat. §1-84b(d).

In the performance of his duties as Executive Director for either agency, Mr. Laube would have no apparent reason or opportunity to utilize any confidential state information he may possess. Therefore, §1-84a poses no problem. Similarly, he does not anticipate having to switch sides on any particular matters in which he was involved as a state servant. As a result, §1-84b(a) should not be a bar to accepting either



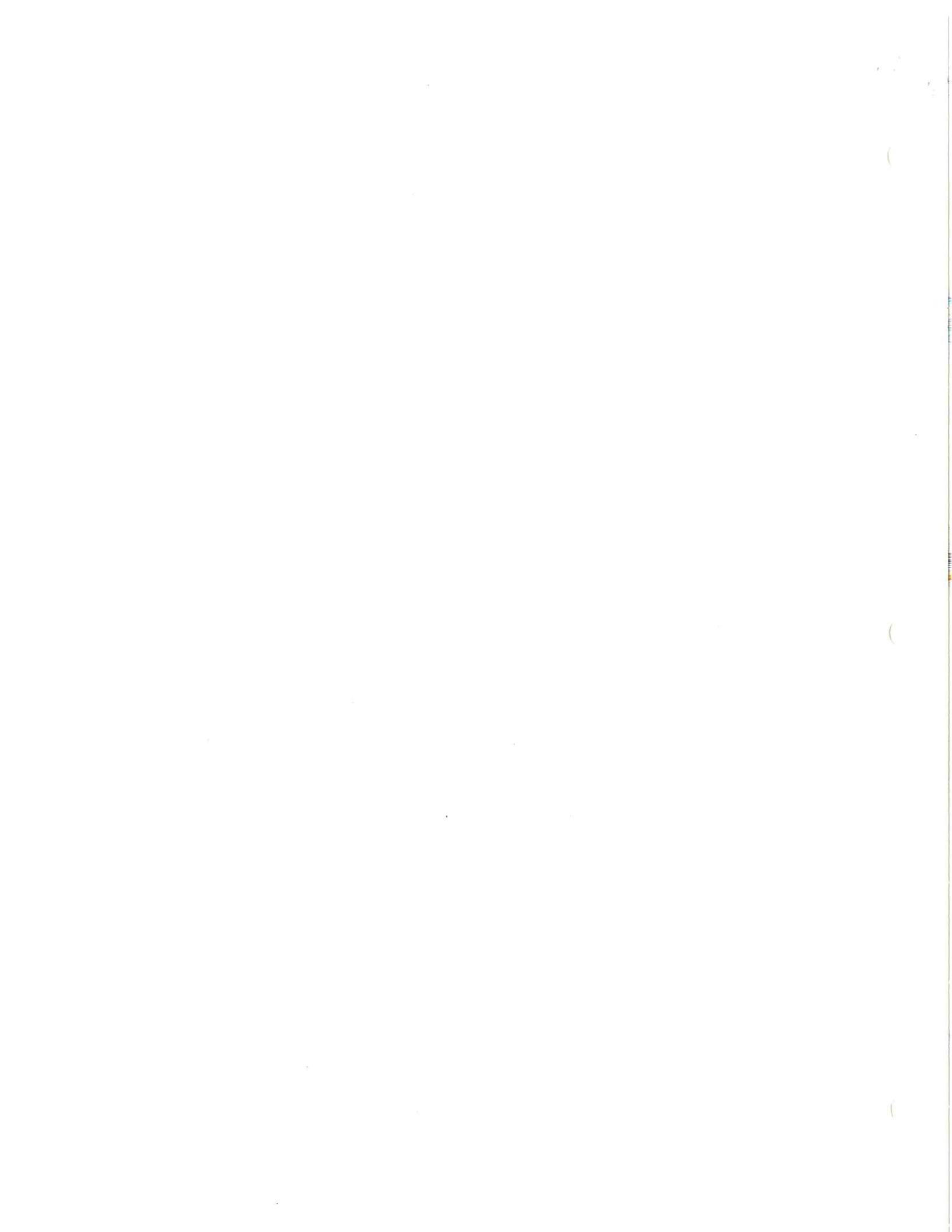
position. However, if an issue ever does arise which poses a conflict per §1-84b(a), he must be able to recuse himself from the matter.

Mr. Laube has stated, however, that the Executive Director's responsibilities at either RYSAP or the Institute would include contact with CADAC. For example, the Executive Director of RYSAP attends the CADAC regional council meetings. Approximately fifteen percent of RYSAP's budget is funded through CADAC. Therefore, funding reapplications and various budget reports are periodically submitted to CADAC under the Executive Director's signature. Similarly, the Executive Director of the Institute must submit budget and progress reports and training plans to CADAC staff people for review and approval.

The Commission has previously ruled that such activity, i.e. attendance at an agency meeting or the submission of reports for approval, does constitute representation which would be in violation of §1-84b(b). See Ethics Commission Advisory Opinion No. 86-11, 48 Conn. L.J. No. 18, p. 1D (October 28, 1986). However, Mr. Laube has further stated that any contact with the two agencies can be easily avoided by assigning these tasks to his assistant for the one year time frame. As long as Mr. Laube limits his contact with CADAC in the manner he has indicated, then he may act as Executive Director of either RYSAP or the Institute without breaching the provisions of §1-84b(b).

The most problematic section of the Code for Mr. Laube is §1-84b(d). On September 28, 1990 CADAC entered into a contract of \$645,000 with ETP, Inc. to operate the Institute. The Executive Director of the Institute is an employee of ETP, Inc. Mr. Laube has stated that he did not serve on the committee which reviewed or selected the candidates competing for the Institute contract. However, he did serve as a member of the executive staff which accepted the review committee's selection of ETP, Inc. Subsequently, this recommendation was submitted to CADAC for final approval.

It has been the Commission's consistent position that the fact of a subsequent review does not eliminate the possibility of impropriety since any point in the review process is bound to shape action at higher levels. See Advisory Opinion Nos. 80-11, 41 Conn. L.J. No. 42, p. 30 (April 15, 1980) and 89-30, 51 Conn. L.J. No. 25, p. 1E (December 19, 1989). Therefore, Mr. Laube's input as a member of the executive staff constitutes personal and substantial participation in the award of the contract. As a result, he may not accept employment with the



Institute for one year from his resignation from state service unless his resignation occurs after September 28, 1991. He may, however, accept a position with RYSAP without being in violation of §1-84b(d) since he was not involved in the award or negotiation of a contract with that entity.

It has been suggested that §1-84b(d) should not apply when a public official or state employee is asked to leave state service, i.e. is not reappointed or is laid-off. It is argued that since the language in that section refers to "resignation" from state service it implies voluntary separation from service. However, this interpretation is contrary to the original intent of the post-state employment legislation. This section of the Code was adopted as a blanket prohibition in order to prevent both the appearance or actuality of unethical conduct. Otherwise, it was concluded, it would be almost impossible to prove that an understanding existed that future private employment would be forthcoming as a reward for the individual's State action. See The Codes of Ethics Study Committee, Report to the General Assembly of 1983, at 25 (1983) (this report became the basis for the legislative adoption of the post-state employment rules). This interpretation is also consistent with the draft regulations implementing the Code of Ethics for Public Officials which have been approved by the Attorney General's Office and are now pending before the Legislative Regulations Review Committee. These regulations state that "resignation shall be interpreted to include all forms of separation from state service". Ethics Commission Draft Regulations, Section 1-81-40(g).

The fact that a state employee has been or may be laid-off does not remove the possibility of impropriety. This possibility remains, and is perhaps more real, from the time an employee suspects he or she may be laid-off until such time as lay-offs are implemented. Similarly, an appointed public official knows from the outset that his or her position is only for a limited number of years with the distinct possibility that he or she will be replaced as a result of a change in the political climate. The Ethics Commission recognizes the legitimate concerns of state employees who face the possibility of lay-offs and appointed public officials who are being replaced as a result of the recent change in administration. These concerns cannot, however, be addressed by reinterpreting the intent of the General Assembly in enacting the Ethics Code's post-state employment provisions.

By order of the Commission,

Rabbi Michael Menitoff

Rabbi Michael Menitoff
Chairperson

Dated 4-1-91