



STATE OF CONNECTICUT OFFICE OF STATE ETHICS

Draft Advisory Opinion No. 2019-3

May 9, 2019

Question Presented:

The petitioner asks whether a former Governor may accept employment, within a year of leaving state service, with businesses that received contracts with the Connecticut Health Insurance Exchange during his term, without violating General Statutes § 1-84b (k).

Brief Answer:

We conclude that the former Governor may do so, because the Connecticut Health Insurance Exchange, a quasi-public agency, is not a “department or agency of the state” under § 1-84b (k).

At its April 18, 2019 regular meeting, the Citizen’s Ethics Advisory Board (Board) granted the petition for an advisory opinion submitted by Attorney William M. Bloss of Koskoff, Koskoff & Bieder, P.C., on behalf of a former Governor of the state of Connecticut. The Board now issues this advisory opinion in accordance with General Statutes § 1-81 (a) (3) of the Code of Ethics for Public Officials (Code).

Background

In the petition, Attorney Bloss states, in relevant part, as follows:

Our office represents a person subject to the Code of Ethics for Public Officials as described below. Conn. Gen. Stat. § 1-84b(k) provides, with emphasis added, that “[n]o former Governor shall accept employment . . . pursuant to the provisions of this chapter, for one year after leaving state service, on behalf of any business that received a contract

with any *department or agency* of the state during such Governor's term." "Department" is not a defined term within the Ethics Code. "State agency" is defined in the Ethics Code as "any office, department, board, council, commission, institution, constituent unit of the state system of higher education, technical education and career school or other agency in the executive, legislative or judicial branch of state government." Conn. Gen. Stat. § 1-79(20). Conn. Gen. Stat. § 1-84b(k) expressly refers to any "department" or "agency" of the state, but it does not expressly include "quasi-public agencies," a term defined within the Code that includes "the Connecticut Health Insurance Exchange." Conn. Gen. Stat. § 1-79 (12). The Connecticut Health Insurance Exchange, in turn, is defined in its organizing statute as "a body politic and corporate, constituting a public instrumentality and political subdivision of the state created for the performance of an essential public and governmental function, to be known as the Connecticut Health Insurance Exchange. The Connecticut Health Insurance Exchange *shall not be construed to be a department, institution or agency of the state.*" Conn. Gen. Stat. § 38a-1081 (emphasis added).

If the Connecticut Health Insurance Exchange at some point from 2011-2019 had a contract or contracts with one or more businesses, would the former governor during that time period be precluded by . . . § 1-84b(k) from employment with any of those businesses for one year? Or does the preclusion in § 1-84b(k) apply to businesses that had contracts with "departments" of "agencies" and the Connecticut Health Insurance Exchange is, by statute, neither. You may assume for the purposes of this question that the former governor had no involvement whatsoever with the negotiation, oversight or performance of the contract or contracts between the business or businesses and the Connecticut Health Insurance Exchange.

Analysis

The central question here is whether the phrase "department or agency of the state," as used in § 1-84b (k), captures the Connecticut Health Insurance Exchange (Exchange), a "Quasi-public agency," as defined in General Statutes § 1-79 (12). If so, § 1-84b (k) prohibits the former Governor

from accepting employment or acting as a lobbyist, for one year after leaving state service, on behalf of any business that received a contract with the Exchange during his term.

Starting, as is required by General Statutes § 1-2z,¹ with the relevant statutory text, § 1-84b (k) reads as follows:

No former Governor shall accept employment or act as a registrant pursuant to the provisions of this chapter, for one year after leaving state service, on behalf of any business that received a contract with any *department or agency of the state* during such Governor's term. No business shall employ a former Governor in violation of this subsection.

(Emphasis added.) The Code doesn't define the words "department" or "agency," but does define the terms "State Agency"² and "Quasi-public agency"³—neither of which makes an appearance in § 1-84b (k). Had the legislature employed either (or both) of those terms, our task here would have been much easier, for the Exchange clearly fits within the latter and not the former. But it didn't, so we must turn our attention elsewhere.

Aside from § 1-84b (k), no other Code provision contains the phrase "department or agency of the state," but a few provisions contain a portion of it, namely, "department or agency," which (in those provisions) plainly includes quasi-public agencies. For example, General Statutes § 1-84 (m), one of the Code's gift provisions, provides, in relevant part:

No public official or state employee shall knowingly accept, directly or indirectly, any gift, as defined in subdivision (5) of section 1-79, from any person the public official or state employee knows or has reason to know: (1) Is doing business with or seeking to do business with the *department or agency* in

¹Under § 1-2z, "[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

²General Statutes § 1-79 (20) provides: "'State agency' means any office, department, board, council, commission, institution, constituent unit of the state system of higher education, technical education and career school or other agency in the executive, legislative or judicial branch of state government."

³General Statutes § 1-79 (12) defines "Quasi-public agency" to include 15 entities, one of which is the Exchange.

which the public official or state employee is employed; (2) is engaged in activities which are directly regulated by such *department or agency*; or (3) is prequalified under section 4a-100.

(Emphasis added.) By its terms, this gift provision applies to any “public official” or “state employee,” which terms are defined to include (among others) “any member or director of a quasi-public agency” and “any employee of a quasi-public agency,” respectively. General Statutes § 1-79 (11) and (13). So when § 1-84 (m) speaks of “the *department or agency* in which the public official or state employee is employed”; (emphasis added); the term “department or agency” clearly embraces quasi-public agencies, like the Exchange.

But unlike § 1-84 (m), § 1-84b (k) speaks not just of a “department or agency,” but rather of a “department or agency *of the state*”; (emphasis added); and the question, therefore, is whether the Exchange—which is an “agency” (albeit a quasi-public one)—is an agency “of the state.” We conclude that it is not, and do so for the following reasons.

Although the word “state” is ubiquitous in the Code (e.g., “*state* employee,” “*state* agency,” “*state* contractor”), the term “the state” appears far less frequently, and in three of its appearances, it is expressly distinguished from the term “quasi-public agency.” The first appearance is in General Statutes § 1-79 (5) (E), in which “state property” is defined to include “property owned by *the state or a quasi-public agency . . .*” (Emphasis added.) The second is in General Statutes § 1-79 (19), which defines “Legal defense fund,” in part, as follows: “a fund established for the payment of legal expenses of a public official or state employee incurred as a result of defending himself . . . in a[] . . . proceeding concerning matters related to the official’s or employee’s service or employment with *the state or a quasi-public agency*.” (Emphasis added.) And the third is in General Statutes § 1-83 (b) (1) (G), which requires filers of the statement of financial interests to disclose “any leases or contracts with *the state or a quasi-public agency* held or entered into by the individual or a business with which he or she was associated” (Emphasis added.)

Further, in three advisory opinions (two issued by the State Ethics Commission and one by this Board), it was determined, for purposes of three other Code provisions, that quasi-public agencies are not “the state”:

- *Advisory Opinion No. 93-12*: concluding that a “contract with a Quasi-Public agency . . . is [not] considered a contract with *the state* for

purposes of” § 1-83, which (at that time) required filers of the statements of financial interests to disclose, among other things, “any leases or contracts with *the state* held or entered into by the individual or a business with which he was associated.” (Emphasis added; internal quotation marks omitted.) Connecticut Law Journal, Vol. 55, No. 2, p. 5D (July 13, 1993).

- *Advisory Opinion No. 2002-3*: concluding that a contract with a quasi-public agency is not a contract with “the state” for purposes of General Statutes § 1-84 (i), under which “[n]o public official or state employee or member of his immediate family or a business with which he is associated shall enter into any contract with *the state* . . . unless the contract has been awarded through an open and public process” (Emphasis added; internal quotation marks omitted.) Connecticut Law Journal, Vol. 63, No. 32, pp. 4F-5F (February 5, 2002).
- *Advisory Opinion No. 2012-10*: concluding that General Statutes § 1-86e—the conflict provision for state consultants and independent contractors—“applies only to independent contractors hired by ‘the state,’ a term that does not include a quasi-public agency, such as Connecticut Innovations, Incorporated.” Connecticut Law Journal, Vol. 74, No. 15, p. 1 (October 9, 2012).

Moreover, opinions issued by the Connecticut Attorney General have concluded likewise in the context of statutory provisions outside the Code. For instance, a 2011 Attorney General opinion addressed whether General Statutes § 10-303—which “allows the Board of Education and Services for the Blind . . . to operate vending machines and stands in buildings owned, operated or leased by *the State* or any municipality”—applies to various entities, including the Connecticut Resources Recovery Authority, a quasi-public agency. (Emphasis added and omitted.) Opinions, Conn. Atty. Gen. No. 2011-005 (July 29, 2011) p. 1. Not so, according to the Attorney General: “We conclude that *none of the government entities about which you inquire is the State* or a municipality within the meaning of § 10-303, and therefore the statute does not apply to their buildings.” (Emphasis added.) *Id.*

Similarly, a 1990 Attorney General opinion involved whether the State Insurance Purchasing Board—which was statutorily required to “determine the method by which *the state* shall insure itself against losses by the purchase of insurance”—could obtain surety bonds for board members of the Connecticut Convention Center Authority (Authority), a quasi-public

agency. (Emphasis added.) Opinions, Conn. Atty. Gen. No. 1990-025 (June 28, 1990). Because the public act creating the Authority provides that it “is not a department, institution or agency of the State, but is a ‘public instrumentality and political subdivision’ of the state, the question [said the Attorney General] is *whether that is the equivalent of ‘the state’* for purposes of the Board’s authority to obtain surety bonds.” (Emphasis added.) Id. Answering no, the Attorney General stated: “Although the Authority is a political subdivision of the State, the language in [the public act] indicates that it is an entity distinct from the State. As indicated previously, the [public act] expressly states that the Authority is not a department, institution or agency of the State.” Id. As further evidence of such distinctness, the Attorney General pointed to the statutory language providing that the “[r]ights and properties acquired by the Authority ‘pass to and . . . vest[] in the state’ only when the existence of the Authority is terminated by law.” Id.

Identical language is found in the statutory provisions pertaining to the Exchange. That is, General Statutes § 38a-1081 (a) provides that the Exchange is “a public instrumentality and political subdivision of the state,” and that it “shall not be construed to be a department, institution or agency of the state. . . .” And General Statutes § 38a-1090 provides that, only “[u]pon the termination of the existence of the [E]xchange . . . [shall] all its rights and properties . . . pass to and be vested in the state of Connecticut.” Not only that, General Statutes § 38a-1088 (a) provides that

[t]he state of Connecticut does hereby pledge to, and agree with, any person with whom the exchange may enter into contracts . . . that the state will not limit or alter the rights hereby vested in the exchange until such contracts and the obligations thereunder are fully met and performed on the part of the exchange

Each of these provisions indicates that the Exchange (like the Authority) is indeed an entity distinct from “the state.”

To sum up, then: (1) the statutory provisions pertaining to the Exchange indicate that it is an entity distinct from “the state”; (2) two Connecticut Attorney General opinions conclude that quasi-public agencies are not “the state” for purposes of two provisions outside the Code; (3) three advisory opinions (one from this Board and two from its predecessor) conclude that quasi-public agencies are not “the state” for purposes of three other Code provisions; and (4) three Code provisions expressly distinguish quasi-public agencies from “the state.”

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Based on all that, we conclude that the Exchange is plainly and unambiguously not a “department or agency *of the state*” for purposes of § 1-84b (k), meaning the former Governor may—even within a year of leaving state service—accept employment with a business that received a contract with the Exchange during his term.⁴

By order of the Board,

Dated _____

Chairperson

⁴Because the meaning of § 1-84b (k), as applied here, is plain and unambiguous, we need not resort to extrinsic aids. See General Statutes § 1-2z. But even if we were to do so by looking to the legislative history of § 1-84b (k), there is nothing in it that would alter our conclusion. Indeed, the only comment we could locate concerning this provision was this: that it is “a prohibition on former Governors working for lobbyists or working for companies that have contracts *with the State of Connecticut*.” (Emphasis added.) 49 S. Proc., Pt. 12, 2006 Veto Sess., p. 3715, remarks of Senator DeFronzo. As demonstrated above, the Exchange is an entity distinct from the state of Connecticut.