

80-2

In the Matter of a Request
for a Declaratory Ruling

Laurence L. Hannafin, et al.
Applicants

Connecticut Real Estate Commission Staff
Members Teaching Real Estate Courses

The Ethics Commission has been asked whether members of the staff of the Real Estate Commission may teach real estate courses without violating the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes. The staff members who have asked the question include the Executive Director of the Commission and persons who hold a position of Real Estate Associate Examiner, Real Estate Examiner II, or Real Estate Examiner I.

The duties of the Real Estate Commission, an agency in the Department of Consumer Protection, are set forth in Chapter 392, General Statutes, and were described in some detail in State Ethics Commission Advisory Opinion 80-5, 41 Conn. L.J. No. 37, p. 19. The Commission has overall responsibility for enforcement of the real estate laws, and general supervision of the real estate business in Connecticut to ensure it performs in a manner which best protects the interests of the public. Section 20-328-19, Regulations of Connecticut State Agencies. The Licensing Division of the Commission determines whether an applicant for a real estate broker's or salesman's license meets statutory requirements. Section 20-314, General Statutes; subsections 20-328-19.1, 20-328-23(a), Regulations of Connecticut State Agencies. A person may not act as a real estate broker or salesman without such a license. Section 20-312, General Statutes. The Education Division assists the Commission in advising the Commissioner of Consumer Protection in qualifying and monitoring schools and instructors teaching real estate courses, evaluates instructors and courses, conducts instructors' training seminars, and develops and distributes materials to be used in the classroom. Section 20-314a, General Statutes; sections 20-314a-1 through 20-314a-11, Regulations of Connecticut State Agencies. Staff members of the Division have basic responsibility for the qualification and evaluation of real estate instructors, courses, and their schools. Completion of one or more real estate courses approved by the Commission is one way of fulfilling a requirement for applying for a salesman's or a broker's license. Section 20-314(c), General Statutes.

The positions on the Commission staff of the persons who teach real estate courses and who have requested this declaratory ruling include the following, in descending order of seniority:

Executive Director of the Real Estate Commission--responsible under the Commission for overall management of the Commission and supervision of its staff.

Real Estate Associate Examiner--supervises a complete unit in the examination of real estate firms; assists in establishment of procedures for licensing of real estate salesmen and brokers;

assists in directing, and supervises subordinates involved in, investigations of complaints against licensees.

Real Estate Examiner II--supervises and conducts examinations of real estate agencies; performs technical work in the administration of laws pertaining to licenses; investigates, or supervises investigation of, complaints against licensees; coordinates and assists with the evaluation of real estate courses, examinations, and instructors.

Real Estate Examiner I--assists in the office and field program of examination of real estate agencies and personnel; assists in determination of the fitness of applicants for real estate licenses; investigates complaints against licensees.

The staff members teach at various schools, including the University of Connecticut. They instruct outside their normal working hours. Other than their salary, they have no financial interest, direct or indirect, in the school in which they serve on the faculty. State institutions involved utilize an open and public process in the hiring and retention of faculty members. All the schools use pay scales for, and apply criteria and standards for the Commission staff members which are the same as those for other teachers.

It would be natural for a person teaching a course which by some is taken in preparation for an examination for a license to wish his students to do well on the examination. Considerable effort has been exerted to prevent conflicts of interest, in the case of Commission staff members, arising from this normal concern.

The examination questions are prepared by the Center for Real Estate and Urban Economic Studies, School of Business Administration, University of Connecticut. The Real Estate Commission selects the questions which compose the examination. Thereafter, the examinations, blank answer sheets, and answer sheets completed when an examination has been given, are secured under a system which makes them unavailable to members of the Commission staff. Examinations are graded by a unit of the Department of Consumer Protection which is outside the Real Estate Commission. Lists of those who took the examination, indicating whether they passed or failed, are supplied to the Commission.

It is not clear what involvement staff members had initially in compiling the current series of examinations. The examinations having been given at least weekly for several years, a person over the years probably could acquire a rather complete knowledge of the entire set of examination questions. It is claimed, however, that the examination is so comprehensive that a person teaching the answers to all the questions would end up imparting the knowledge which the course is designed to instill in an applicant for a license. In any event, the greatest danger of improper intervention in the examination process appears avoided by the security system which prevents staff members from being able to modify examination results

during the examination and thereafter. Were licensing of individuals and agencies to carry on real estate business the Commission's only responsibility, perhaps staff members could teach potential licensees courses they are required by the Commission to take. It is apparent that courses are mandated in order to maintain high standards in the real estate business in Connecticut, not to provide employment for members of the Commission staff. The examination system minimizes opportunities for staff members to favor, in the course of the licensing process, persons who have been their students. Furthermore, under Public Act No. 80-150 the Commissioner of Consumer Protection is permitted to contract with a national testing service for the preparation and administration of Real Estate Licensing Examinations. If this is done, the Real Estate Commission staff would appear to be so insulated from the testing process as to eliminate any possible remaining conflict of interest concerns with regard to the examination process.

The Commission, under the Commissioner of Consumer Protection, also qualifies and monitors schools offering real estate courses, the courses, and instructors teaching them. It evaluates the caliber of instructors and courses. In this area of Commission responsibility, the public is likely to believe that the Commission, which hired and relies on the staff members, and Commission staff members would be reluctant to refuse to certify a staff member as a competent teacher, or deny approval of the courses they develop, or declare unfit schools which have staff members on their faculty. In this respect, at least, the staff members who teach will be suspected of having taken employment which impairs their independence of judgment. See subsection 1-84(b), General Statutes. There is a possibility of their using their office, albeit perhaps unwittingly, for personal gain. It is doubtful that a subordinate of a senior staff member/teacher would fail to recommend certification, or would recommend decertification as unqualified, of his superior as a teacher, or of the superior's course or school. See subsection 1-84(c), *id.* There is the appearance, at least, of a substantial conflict of interest. Subsection 1-84(a), and section 1-85, *id.*

The legislation establishing the Real Estate Commission and assigning it duties--Chapter 392, General Statutes--suggests that a major purpose of the Commission is to raise to a high level and to maintain the standards of the real estate industry in Connecticut in order to protect residents who rely on the knowledge and integrity of industry members. It can be argued that the Commission's purpose of establishing and maintaining proper professional standards in the real estate business is fostered by having staff members teaching those who are in the business. Surely, the Commission places on its staff persons it considers to be highly qualified. If staff members are the instructors of those coming into or advancing in the real estate business the Commission can be certain that the teachers are knowledgeable and that courses contain the material best suited to achieve the Commission's goals. Staff members who teach in schools are in the best position to help evaluate the quality of the schools.

On the other hand, as has been previously stated the public

hardly can have confidence in a system in which the evaluators have

the authority to participate in evaluating themselves. The Code

of Ethics for Public Officials and State Employees does not assume

that everyone is corrupt. It is based on the premise that if situa-

tions offer sufficient temptation, some public officials or State

employees are likely to succumb. To maintain public confidence in

the integrity of the governmental process, such tempting situations are

prevented from occurring. The evidence presented to the Ethics Com-

mission by those Real Estate Commission staff members requesting

this declaratory ruling indicates that they have not, in fact, parti-

cipated directly in the process of policing themselves, and have only

rarely engaged in investigation or submitted opinions to the Commission

with regard to the participating schools and their real estate courses.

Nevertheless, the situation in which part-time Commissioners, assisted

by full-time staff, are responsible for certifying or recertifying

certain senior members of this full-time staff as instructors for

courses which can meet a prerequisite to applying for a real estate

license suggests the obvious possibility of undue influence or favori-

tism. Furthermore, the statutory authority of these same senior staff

members to assist the Commission in evaluating, certifying, and monitor-

ing the real estate courses and the schools which offer them, when

coupled with the fact that these staff members are hired and paid by

the regulated institutions to teach the courses, creates a situation

where the public cannot be confident that the Commission and staff

will impartially enforce proper standards of quality. It might per-

haps be different if only one or two junior staff members, not involved

in licensing or certification, were involved.

The member of the staff of the Real Estate Commission who have

requested this declaratory ruling should not teach courses which can

meet a prerequisite to applying for a real estate license and which,

with their instructors and the schools offering the courses, are

required by statute to be approved by the Real Estate Commission, under

the Commissioner for Consumer Protection.

By order of the Commission,

Thomas J. Lynch

Rev. Thomas J. Lynch

Chairman

Dated June 24, 1980