



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

Overruled in part. See Advisory Opinion No. 2003-19

ADVISORY OPINION NUMBER 87-11

Application of Section 1-84b

The position of Director of the Securities and Business Investments Division, Department of Banking, is one the incumbent of which has restrictions placed on his employment upon leaving State service. Subsection 1-84b(c), General Statutes; section 1-92-40a, Regulations of Connecticut State Agencies. The Director has asked for advice on the scope of the restrictions as they apply to him, as well as on the application to him of another "revolving door" provision of section 1-84b, General Statutes.

The Department of Banking is responsible for the regulation and examination of financial institutions -- bank and trust companies, savings banks, savings and loan associations, credit unions, and related entities -- chartered, licensed, or registered by the State. The Securities and Business Investments Division administers the Uniform Securities Act, Chapter 662, the Connecticut Tender Offer Act, Chapter 661a, and the Business Opportunity Act, Chapter 662a, General Statutes. Another division of the Department administers a number of consumer credit laws, including the licensing and regulation of small loan companies, sales finance companies, nonbank first mortgage lenders, secondary mortgage loan brokers and lenders, consumer collection agencies, debt adjusters, and administration of the Truth-in-Lending Act, Chapter 657, General Statutes, which regulates persons subject to the Act, whether or not they are registered with the Department.

Section 1-84b, General Statutes, imposes various restrictions on persons who leave State employment. One of them, subsection 1-84b(c), applies to designated positions in certain regulatory agencies, among which is the Banking Department. It prohibits a State employee in a designated position from seeking employment "with any business regulated by his agency", or from accepting employment with any business subject to regulation by his agency for a year after leaving State service. In the Department of Banking the positions of all division directors have been designated as subject to subsection 1-84b(c).

The Securities and Business Investments Division oversees the activities of broker-dealers and their agents, investment advisers and investment adviser agents, issuers, offerors of tender offers, sellers of business opportunities, and in most cases their offices. The Division Director has no responsibility for regulating other persons, institutions, or

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activities which are subject to the jurisdiction of the Department of Banking. He has asked whether the restriction on employment would prohibit him from seeking or accepting employment with those regulated by the Department but not by his division.

The question is answered in subsection 1-84b(c) itself, which defines "agency" for purposes of the subsection. As far as the Division Director is concerned, "agency" is defined as "the Banking Department". Therefore, the Division Director is barred from seeking employment with any business regulated by any element of the Department of Banking, whether or not he or his division has formal responsibility for the regulation.

The obvious purpose of subsection 1-84b(c) is to minimize the effect a State servant's interest in subsequent private employment will have on the performance of his public duties. A cooling-off period between leaving service in a regulatory agency and employment in the regulated industry not only helps to protect the public interests but to preserve public confidence in the operation of State government. If "agency" had not been made agency-wide, in the case of the agencies to which subsection 1-84b(c) applies, it would be difficult to administer and unlikely to foster public confidence. Agencies can be reorganized to a major or minor extent. Duties can be transferred permanently from time to time or temporarily to meet transients in workload, vacations, resignations or retirements, individual capabilities and experience, etc. The Ethics Commission would be hard-pressed to carry out the purposes of subsection 1-84b(c) if it had to determine what responsibilities a person subject to subsection 1-84b(c) had had while serving within an agency. Further, senior members in an agency can have influence with each other sufficient that subsection 1-84b(c) could be largely ineffective in some agencies if "agency" were confined to the agency element to which a designated position was assigned.

The Division Director has also asked for the meaning of "business" in "business subject to regulation by his agency". Is he precluded from seeking or accepting employment with a business not involved in the securities business, for example, but whose subsidiary or affiliate is registered with his division as a broker-dealer or investment adviser?

Unlike "agency", "business" is not defined in section 1-84b. The report of the Codes of Ethics Study Committee, upon which the statute containing subsection 1-84b(c) was based, provides no guidance. Neither does the statute's legislative history.

In construing statutes, words are to be construed according to the commonly approved usage of the language. Subsection 1-1(a), General Statutes. "Business" is defined as "1.a. The occupation, work, or trade in which a person is engaged....b. A specific occupation or pursuit....2. Commercial, industrial, or professional dealings....3. A commercial enterprise or establishment...." The American Heritage Dictionary 220 (2d college ed. 1985). It can be seen that one meaning of "business" is a branch of commerce or trade -- the securities "business", for example. It need not be understood so broadly in this context. Some branches of commerce or trade regulated by the Department of Banking have elements which are not regulated by the Department because the elements are excluded by statute or do not choose to conduct operations in Connecticut. A State employee need not be delayed in seeking or accepting employment with a business organization which in fact is not regulated by the employee's agency.

"Business" also can mean a commercial or industrial establishment or organization. That is adequately broad for purposes of subsection 1-84b(c), but does not fully answer the question posed. The securities field regulated by the Director's division offers illustrations of the problem. Major national and international companies -- General Electric Corporation, Sears Roebuck and Company, Xerox Corporation -- have acquired brokerage firms. The Commission does not believe it necessary to include a corporation such as General Electric within the phrase "business subject to regulation by his agency" because its affiliate or subsidiary, even if wholly owned, is. Therefore, if an affiliate or subsidiary of General Electric is regulated by the Department of Banking, a department employee may not seek employment with the affiliate or subsidiary, or accept employment with it for a year after leaving State service, but there is no bar to accepting employment with the parent company.

This interpretation permits abuse. Affiliates or subsidiaries doubtless can offer employment with the parent company in exchange for favorable treatment of the affiliate or subsidiary, a danger subsection 1-84b(c) was enacted to avoid. If such actions occur, frustrating the purpose of the subsection, the Commission will reconsider its position.

The next question is whether the prohibition against seeking or accepting employment applies only to Connecticut-based firms regulated by the Department and Connecticut branch offices of other regulated firms, or to all firms regulated by the Department, regardless of the geographic location of the firm's principal office. That is to say, could a State employee accept

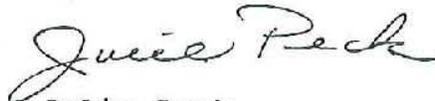
employment outside Connecticut with a firm headquartered outside Connecticut even though the firm had a branch in Connecticut which was regulated by the Department of Banking?

Again, the Commission does not believe it is necessary to interpret "business subject to regulation by his agency" to mean out-of-state branches of an out-of-state firm which has a branch in Connecticut subject to regulation by the agency. Again, this interpretation allows abuse. Reconsideration may become necessary.

The Director has asked whether, rather than seeking or accepting employment with an established business subject to regulation by the Department of Banking, he can immediately upon leaving State service start his own business which is subject to regulation by the Department. Subsection 1-84b(c) would prevent this. The situation is subject to the bargaining for personal benefit which subsection 1-84b(c) addresses. Improper favors or consideration could be granted while in State service in return for patronage being given to the business which the State employee was to establish upon leaving State service. The phrase "accept employment with a business" is sufficiently broad to cover the situation of a person being proprietor of a business from which he receives a salary or a share of the profits.

The Director's final question addresses subsection 1-84b(b), General Statutes, concerning representing others for compensation before one's former agency. He is an attorney. He understands he cannot, for compensation, represent anyone before the Department of Banking for a year after leaving State service. He has asked whether he may represent, before regulatory agencies of other jurisdictions, businesses subject to regulation by the Department of Banking. He may. Subsection 1-84b(b) language is clear that the one-year delay applies only to representation before the State agency by which the former State employee was employed at the time of leaving State service. It is in that agency that the former State employee would have the friendships and the influence which subsection 1-84b(b) allows to cool.

By order of the Commission,



Julie Peck
Chairperson

Dated

Aug. 3, 1987