



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 89-11

Application of the Code's Post-State Employment
Provisions to the Department of Public Utility
Control's Collaborative Conservation Effort

Mr. Paul A. Horowitz, an employee in the Prosecutorial Unit of the Department of Public Utility Control (DPUC), has asked the Ethics Commission for an advisory opinion regarding the application of Conn. Gen. Stat. §1-84b(a).

§1-84b(a) states that "No former executive branch or quasi-public agency public official or state employee shall represent anyone other than the state, concerning any particular matter (1) in which he participated personally and substantially while in state service and (2) in which the state has a substantial interest".

Specifically, Mr. Horowitz has asked the following questions:

1. Is his involvement in representing the Prosecutorial Division of the DPUC in the collaborative process on conservation and load management for the electric utility side of the Connecticut Light and Power Company (CL and P) a "particular matter" as that term is used in §1-84b(a); and, therefore, would not preclude him from working after state service on conservation and load management issues of other utilities in the State?
2. The process of developing and implementing a conservation and load management program can be divided into the following distinct phases: conservation and load management program design; budget allocation; implementation plan; monitoring/evaluation plan; actual implementation; and monitoring/evaluation of the programs while they are being implemented. Is each of these phases a "particular matter" as that term is used in §1-84b(a)?
3. Is the 1988 CL and P electric conservation and load management program a "particular matter", as that term is used in §1-84b(a), distinct and separate from the 1989 CL and P conservation and load management program and from a proposed CL and P long term, multi-year conservation and load management program?

For a number of years the DPUC reviewed energy conservation and load management plans developed by the State's utilities, and issued orders to the utilities regarding various aspects of their programs. (Load management plans consist of cost-effective techniques developed by a utility to reduce the maximum kilowatt demand on that utility.) In February, 1988, as part of a CL and P rate case decision, the DPUC altered the process somewhat. Instead of ordering CL and P to expend funds for conservation and load management programs mandated by the Department, it ordered the commencement of a more collaborative effort. As a result, representatives of CL and P began meeting with representatives of the Department, the Office of Consumer Counsel, the Prosecutorial Division, the Energy Division of the Office of Policy and Management, and the Conservation Law Foundation of New England to develop conservation and load management plans for CL and P that all participants could endorse. It is Mr. Horowitz's involvement in this collaborative process which forms the basis for his queries to the Ethics Commission.

A utility's conservation and load management budget, and often its plan and specific programs, are reviewed in the context of DPUC rate case dockets. However, by its nature, conservation and load management is an on-going process, with meetings taking place and periodic reports being filed between dockets. By necessity, activities undertaken in response to an order in an earlier decision are reviewed and commented on in a future docket.

With this brief overview in mind, we turn to Mr. Horowitz's questions:

1. It is a cardinal rule of statutory construction, applicable to administrative agencies, that "In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language..." Conn. Gen. Stat. §1-1(a). The commonly approved and understood meaning of "particular" is "...of, relating to, or being a single definite...thing as distinguished from some or all others-opposed to general..." Webster's Third New International Dictionary at p. 1646 (1961).

The Commission finds that the collaborative process on an electric conservation and load management plan for CL and P commenced in response to the DPUC's order in Docket No. 87-07-01 constitutes a specific, discrete part of the overall issue of energy conservation and load management by Connecticut's utilities. It, therefore, qualifies as a "particular matter" as

that term is used in §1-84b(a). As a result, Mr. Horowitz's personal and substantial involvement as a representative of the Prosecutorial Division in the CL and P collaborative effort does not preclude his post-state employment as a representative of other Connecticut utilities regarding conservation and load management issues.

2. The Commission does not find that each phase of a conservation and load management program (program design; budget allocation; implementation plan; monitoring/evaluation plan; implementation; and monitoring/evaluation) constitutes a separate "particular matter". As the Commission has previously ruled in an analogous case, "...if, a State employee...was personally and substantially involved in the review and approval of a particular...plan, he may never represent a party, other than the State, in any subsequent proceedings concerning that plan". Ethics Commission Advisory Opinion No. 88-13, 50 Conn. L.J. No. 8, p. 4C (August 23, 1988).

To hold otherwise would frustrate a principle purpose of §1-84b(a): prevention of side-switching in the midst of on-going state proceedings. Such an interpretation would undermine public confidence that the official or employee in question had only the State's interests, not his or her subsequent employment interests, in mind when the initial decisions on a particular plan, permit, contract, or case were made.

3. The question of whether there is a 1988 CL and P conservation and load management plan separate and distinct from a 1989 plan and a proposed multi-year plan is a difficult and complex one.

It is apparent that there is one on-going, collaborative effort regarding an electric conservation and load management plan for CL and P. Commenced in response to Order 3 in Docket No. 87-07-01, this effort is clearly not restricted to calendar year 1988, 1989, or any other specific time period. However, in designing, implementing, and funding the collaborative effort the five parties and the DPUC have chosen to proceed through the adoption of essentially discrete, annual plans. It is the prevailing view of the five parties that each annual plan constitutes a particular matter. The Ethics Commission concurs. The Commission further finds that the long-term plan, containing proposals for multi-year budgets and programs, which CL and P has put forth, but which has not yet been supported by the other parties in the collaborative effort, constitutes a

separate particular matter. Such an interpretation is sufficient to protect the public interest, while not unduly restricting the post-state employment opportunities of those subject to §1-84b(a).

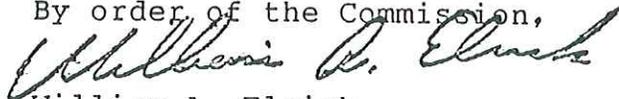
It must also be remembered that, regardless of one's involvement in a particular matter, Conn. Gen. Stat. §1-84b(b) prohibits a former executive branch public official or state employee from representing anyone, other than the State, for one year for compensation before the agency or board in which the individual served at the time of his or her termination of state service. Additionally, Conn. Gen. Stat. §1-84a establishes a lifetime ban on use or disclosure of confidential information by a former executive or legislative branch public official or state employee for the financial benefit of anyone.

Finally, it should be noted that the Commission has previously decided that a former state employee can work for a private party on a particular matter that he or she was personally and substantially involved in while in state service without engaging in representation prohibited by §1-84(a). Specifically, in Ethics Commission Advisory Opinion No. 88-15, Conn. L.J. No. 15, p.3D (10/11/88) the Commission held that a former state employee could perform such work, if it was technical in nature and didn't involve the individual in any matter at issue between the State, or any other party, and the individual's employer.

The Commission stated that such an application of §1-84b(a) would prevent use of contacts, influence, or other insider's advantage gained during state service to obtain improper benefit in subsequent dealings involving the State's interests. At the same time, by so limiting the application of the provision in question, former state employees would not be unnecessarily and unfairly restricted in their subsequent employment opportunities.

Applying this reasoning to the case at hand, Mr. Horowitz could, regardless of his involvement in a particular matter, perform work for a private entity implementing a plan agreed to by the parties to the CL and P collaborative effort. He could also conduct research, analysis, etc. for his private employer regarding the plan. He cannot, however, on behalf of a private party, be involved in any aspect of the negotiation or determination of a CL and P conservation and load management plan, if he was personally and substantially involved in the matter while in state service, without engaging in representation prohibited by Conn. Gen. Stat. §1-84b(a).

By order of the Commission,


William A. Elrick
Chairperson

Dated 4/3/89