



STATE OF CONNECTICUT OFFICE OF STATE ETHICS

Advisory Opinion No. 2020-1

February 20, 2020

Question Presented:

The petitioner asks if faculty members at the Connecticut Community Colleges (“CCC”) may accept free trips from private travel vendors in exchange for recruiting CCC students to sign up (and pay thousands of dollars) for the trips, helping to organize the trips, and chaperoning the students on the trips, which take place during school breaks, when faculty members are off-contract and on their personal time.

Brief Answer:

Based on the facts presented, we conclude that the Code of Ethics for Public Officials does not permit this faculty-led travel model.¹

At its September 19, 2019 regular meeting, the Citizen’s Ethics Advisory Board (“Board”) granted the petition for an advisory opinion submitted by Attorney Ernestine Yuille Weaver (“Petitioner” or “Attorney Weaver”) on behalf of the Connecticut Community Colleges (“Community Colleges” or “CCC”). The Board also ordered the matter set for a hearing pursuant to § 1-92-39 of the Regulations of Connecticut State Agencies.²

¹We stress that our conclusion here is confined to the specific facts outlined in the “Facts” section, and that there may be other models that present no concerns under the Code.

²The regulations provide, in relevant part, that “[i]f the Citizen’s Ethics Advisory Board deems a hearing necessary or helpful in determining any issue concerning the request for an advisory opinion, the Citizen’s Ethics Advisory Board may schedule such hearing and give such notice thereof as is appropriate.” Regs., Conn. State Agencies § 1-92-39 (c).

The Office of State Ethics (“OSE”) issued notice of the hearing on September 30, 2019, announcing a 30-day public comment period to run from October 1 to October 31, 2019, to allow those interested in the petition to submit relevant facts, legal arguments, and opinions. By the period’s end, the OSE received a single comment, from an anonymous person (“Anonymous Commenter”), which detailed many concerns with the activity that is the subject of this opinion.

Meanwhile, at its October 17, 2019 regular meeting, the Board designated members Attorney Beth Cook and Vice Chairman Jason Farrell as Hearing Officers, pursuant to General Statutes § 1-80 (e).

The hearing to receive public comments (relevant facts, legal arguments, and opinions) from persons interested in the matter was scheduled for and held on November 13, 2019 (“November 13th hearing”).³ Four persons appeared and provided comments at the hearing:

- Attorney Weaver;
- Kevin Bechard, former professor at Manchester Community College;
- William J. Dunn, General Counsel for EF Education First (“EF General Counsel”); and
- Mark Comeau, a professor at Three Rivers Community College.

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”), chapter 10, part I, of the General Statutes.

Facts

In her petition, Attorney Weaver inquired specifically as to the following:

How to comply with the . . . Code . . . while enabling educational travel opportunities for CCC students when these opportunities must be purchased from third parties who rely on CCC faculty to recruit and coordinate students to travel during breaks and while faculty are on their personal time; and, in exchange, faculty are provided the opportunity to participate on the excursion free of cost.

Petition for Advisory Opinion (Sept. 16, 2019). She noted that the Community

³An audio recording of the November 13th hearing is available at the OSE.

Colleges recognize “the educational value of travel,” but do not “contract directly” with private travel vendors due to the “[a]dditional liability for international travel; personnel costs and collective bargaining issues for employment of faculty while off contract, and the collection of funds from students and providing them to a third party.” *Id.* She noted too that, although some of the Community Colleges have “allowed a private travel organization to work with faculty to provide travel opportunities,” the faculty members do not act on behalf of the respective colleges, and “the trips occur when classes are not in session and the faculty are engaging in the activity on their personal time.” *Id.*

At the November 13th hearing, Attorney Weaver presented comments submitted by the heads of nine of the twelve Community Colleges, and Professor Comeau provided verbal comments on behalf of one of the other community colleges. *Testimony of Attorney Weaver; Testimony of Mark Comeau; Exhibit 2 (Comments submitted at hearing by Counsel Ernestine Weaver on behalf of 9 of the 12 Connecticut Community Colleges).* Attorney Weaver noted that the “fervor” in support of the travel model at issue—under which faculty members receive a free trip in exchange for recruiting students for the trip, helping to organize the trip, and chaperoning the students on the trip—diminished significantly upon dissemination of the comments submitted by the Anonymous Commenter, which raised “concerns” amongst the CCC heads. *Testimony of Attorney Weaver.*

The Anonymous Commenter expressed several concerns with what he or she described as the “educational travel abroad practices that have occurred in at least one Connecticut Community Colleges,” including the following:

- The significant dollar cost of the trip to the students (who are “often economically disadvantaged”), in contrast to the zero-dollar cost to the faculty members “in exchange for recruiting and coordinating students”; and
- The lack of academic rigor, in that the trips were typically not tied to specific lessons or assignments, and that sometimes the faculty member did not have specific expertise related to the particular trip.⁴

Exhibit 1 (Comments submitted by Anonymous Commenter (Oct. 30, 2019)).

⁴In his testimony at the November 13th hearing, Kevin Bechard expressed many of the same concerns with the existing travel model.

Presenting a different perspective at the November 13th hearing was the EF General Counsel. He stated that EF Education First (“EF”) provides various tour packages to different types of travelers, including EF College Study Tours (“EFCST”), which is a division of EF targeted to college and university populations. *Testimony of EF General Counsel.* In turn, EFCST offers several models. *Id.* In some instances (but not with the community colleges at issue here), colleges and universities contract directly with EF to administer the travel abroad (the “college-led travel model”). *Id.* In other instances (such as here), individual faculty members sign a contract (Group Leader Release) in their individual capacity with EFCST, and the students sign a separate contract (Booking Conditions) with EFCST. *Id.*

It is this second model—referred to as the “faculty-led travel model”—that is the subject of this opinion. The testimony and exhibits stemming from the November 13th hearing indicate that the model generally works like this:

- A faculty member contacts EFCST and either selects a pre-existing itinerary or works with EFCST to customize a unique itinerary for a trip abroad. *Testimony of EF General Counsel.*
- Functioning as the “group leader,” the faculty member takes on certain responsibilities, including organizing and selecting a travel program, recruiting travelers (mostly, if not entirely, comprised of students), and supervising travelers during the trip. *Testimony of EF General Counsel; Exhibit 4 (EFCST Group Leader Release).*
- With respect to recruiting travelers, the faculty member typically does so by discussing the trip with students in his or her classes, sending emails to students (sometimes via the CCC email system), communicating with other faculty members, and posting material about the trip on bulletin boards at the college where the faculty member teaches. *Testimony of Attorney Weaver; Testimony of Kevin Bechard; Testimony of EF General Counsel.*
- The EFCST website expressly provides that EF will assist faculty members in recruiting student travelers. *See* EF College Study Tours website, link for “[Leading a Program](#)” (“Step 2 – Enroll Students. At EF, we’ll help you get administrative approval, spread the word about your program, and inform, excite, and prepare students to travel in no time. Plus, each Faculty Group Leader’s travel is funded for each six students enrolled”).

- If requested by a faculty member, EF provides materials for the faculty member to use to recruit travelers. *Testimony of EF General Counsel; see also EF College Study Tours website, link for “Leading a Program” (“Resources and Materials. We’ll provide all the tools you need to promote your program, including emails, recruiting support, and customized materials”).*
- In return, EFCST allows its group leaders to go on the trip, without personal cost, as a “removal of a barrier that would otherwise be there” and would otherwise prevent this travel model from operating. *Testimony of EF General Counsel.*
- For every six paying travelers recruited, EFCST provides one complimentary package, which it refers to in its Group Leader Release as a “free place ratio,” for a faculty member group leader. *Testimony of EF General Counsel; Exhibit 4 (EFCST Group Leader Release).*⁵
- A typical tour package includes round-trip airfare, lodging, airport transfers and transportation between destination cities, transportation to all included activities, most meals, a Tour Director available 24 hours a day, sightseeing tours and excursions led by licensed local guides, and entrance fees to museums, theatres, and other sites. *Testimony of EF General Counsel; Exhibit 3 (EFCST Booking Conditions).*
- Although faculty members serve as group leaders, there is no requirement that the trip be structured around a faculty member’s area of expertise. *Testimony of Kevin Bechard; Testimony of EF General Counsel; Exhibit 1 (Comments submitted by Anonymous Commenter (Oct. 30, 2019)).* As noted above, EFCST provides tour guides to lead the excursions. *Testimony of EF General Counsel; Exhibit 3 (EFCST Booking Conditions).* In some instances, the faculty member group leader may have contacts in the destination country who provide additional services to the students, or may provide further information based on his or her knowledge and experience. *Testimony of EF General Counsel; Testimony*

⁵In some instances, at least some of these “free place ratios” have been used to provide scholarships to students. *Testimony of Mark Comeau.* Alternatively, the faculty members organizing the trip could, if they so chose, opt to split the value of the free place ratio amongst *all* travelers, which would defray the cost to the students. *Exhibit 1 (Comments submitted by Anonymous Commenter (Oct. 30, 2019)* (“EF Tours offered two options for funding the trip: accept a blanket discount for all travelers, students and faculty, **or**, enroll a certain number of students (6, 10, etc.) so one faculty member can go for free.”)

of Mark Comeau.

- Although each trip is different and there is no “one size fits all” price, a typical trip costs each traveler at least several thousand dollars. *Testimony of EF General Counsel; see Exhibit 6 (EFCST sample Program Price quote for a seven-day trip to London: the City Experience (2015))* (departing from Boston and quoting a price of \$3,153 (triple occupancy room) or \$3,303 (double occupancy room), with a base program price of \$2,638); EF College Study Tours [link to Professor Comeau’s March 2020 nine-day trip to Greece \(last accessed Feb. 5, 2020\)](#), departing from Hartford CT (\$4,835 for individuals under 30 years of age, and \$5,235 for travelers 30 years of age or older).

Additional facts will be set forth as necessary.

Analysis

As to the preliminary issue of jurisdiction, the Code defines “State employee” to include, among others, “any employee in the executive . . . branch of state government, whether in the classified or unclassified service and whether full or part-time” General Statutes § 1-79 (13). According to the [Connecticut State Register and Manual \(2019\)](#), the State System of Higher Education is part of the executive branch of state government. And according to General Statutes § 10a-1, the state system of public higher education includes, among other entities, “the regional community-technical colleges” Accordingly, as employees of the regional community-technical colleges, CCC faculty members are “state employees” and thus are subject to the Code, including its conflict provisions.

1. Application of General Statutes § 1-84 (c): “use” of “public position” for personal “financial gain”

The core issue here is whether the faculty-led travel model outlined above violates any of those conflict provisions, particularly § 1-84 (c), which provides, in relevant part, as follows: “no . . . state employee shall use his public . . . position . . . to obtain financial gain for himself” That language, broken into its essential parts, requires that, for § 1-84 (c) to be violated, there must be three things: (1) a “state employee” who (2) “uses his public . . . position” to (3) “obtain financial gain for himself” We have already concluded that CCC faculty members are “state employees,” so we need only concern ourselves with § 1-84 (c)’s second and third prongs.

A. “Use” of “public position”

As for the second prong, we must determine whether, under the faculty-led travel model, CCC faculty members “use” their “public positions,” as those terms are employed in § 1-84 (c), to recruit students for the trips. To do so, we turn to a relatively recent court decision involving not just § 1-84 (c) but, more specifically, the meaning of the term “use,” namely, *Dickman v. Office of State Ethics*, Superior Court, judicial district of New Britain, Docket No. CV-10-6003844-S (August 31, 2011); *aff’d* 140 Conn. App. 754; *cert. denied*, 308 Conn. 934 (2013).

In *Dickman*, the Superior Court reviewed whether this Board had properly concluded that the respondent, a University of Connecticut Health Center microbiologist, violated § 1-84 (c) by using state resources (i.e., state time, computers, telephones, etc.) to conduct her private businesses. *Dickman v. Office of State Ethics*, *supra*, Superior Court, Docket No. CV-10-6003844-S. In claiming that the Board erred, the respondent argued that § 1-84 (c) “only censures personal use of state facilities for private financial gain to the extent that such use directly relates to her *position*, that is, the employment for which she was hired.” (Emphasis in original.) *Id.* She offered this example: “[I]f a microbiologist furnishes a lab report prepared on state time to a physician in exchange for private compensation, § 1-84 (c) is violated; but if the microbiologist conducts a jewelry business at work using a state computer, § 1-84 (c) is not violated.” *Id.* The Board responded that “the legislature passed § 1-84 (c) to halt the use of one’s position for financial gain, whether such use was directly or indirectly related to one’s state position or job description.” *Id.*

In siding with the Board, the Superior Court discussed a series of in-state and out-of-state court decisions, but zeroed in on a decision of the Oregon Supreme Court, involving an interpretation of language “identical” to that in § 1-84 (c). *Id.* About that decision, the Superior Court said this:

In *Davidson v. Oregon Ethics Commission*, 300 Or. 415, 712 P.2d 87 (Or. 1985), the court held that a state employee had used his office for financial gain when he obtained an automobile for himself at a discount as an “add-on” to a state fleet purchase order. *Davidson* did not accept the argument made there, and here as well, that the Oregon (and hence the Connecticut) statute applied only to misusing the power and influence inherent in the public office itself. *Id.*, at 92.

According to *Davidson*, the employee “*used his public office because he ‘availed himself of the add-on purchase by buying a car at a price available only to him only as a public official.*” As a private citizen he could not have walked into the car dealership, asked for an add-on purchase fleet discount and received it. Only because he was an employee [of the agency] did he qualify for the [agency] purchase price discount. The term ‘use’ is not restricted only in influence peddling. The concept of public trust extends to all matters within the duties of the public office. The broad policy of the ethics laws is to ensure that government employees do not gain personal financial advantage through their *access to the assets and other attributes of government.*” *Id.*

(Emphasis added.) *Dickman v. Office of State Ethics*, supra, Superior Court, Docket No. CV-10-6003844-S. Applying the reasoning in *Davidson*, the Superior Court concluded that “the [respondent’s] use of state facilities [to support her private businesses] logically falls within the jurisdiction of § 1-84 (c) as the [respondent] obtained financial gain through ‘her access to the assets and other attributes of government.’” *Id.*

The respondent appealed, arguing that the Superior Court erred, in that “there must be a nexus between the objectionable conduct and the duties, obligations and responsibilities that she had as a state employee microbiologist in order to find a violation of § 1-84 (c).” *Dickman v. Office of State Ethics*, supra, 140 Conn. App. 766. The Appellate Court disagreed:

[Section 1-84 (c)] prohibits the *use* of the state employee’s position to obtain financial gain. Here, the board found that the [respondent] used state computers and telephones, as well as the time for which she was paid by the state to perform her duties as a microbiologist, to conduct a jewelry business and to provide services as a travel agent. *The [respondent’s] access to the state equipment was made possible because of her position as a state employee at the health center.*⁶

(Emphasis added.) *Id.*, 768-69.

⁶The Appellate Court continued: “Even if the statutory language could be deemed ambiguous, the legislative history supports the board’s interpretation. Representative Patricia T. Hendel stated that the intent of the proposed bill was ‘to pass a stronger code of ethics bill this year. I think its important that we help increase public trust and improve the total image of our state government. . . .’” *Id.*, 679.

So too here: CCC faculty members' access to CCC students and resources is made possible because of their positions as state employees at the Community Colleges. Indeed, at the November 13th hearing, the petitioner was asked the following question:

And in terms of *access* to the students . . . if any member of the public wanted to engage in this type of activity that the faculty members are engaging in . . . soliciting students [for the travel abroad trips], would they have the . . . exact same *access* that these faculty members have? Could they come in there and start putting stuff up on the bulletin board? Can they . . . speak to classes?

(Emphasis added.) The petitioner's answer: "No, there's not a random solicitation on our campuses."

Not only that, the viability of the faculty-led travel model hinges *entirely* on CCC faculty members' access to, and relationship with, CCC students. This truth was borne out clearly at the November 13th hearing, during which a Hearing Officer posed the following questions to the EF General Counsel:

But for the professor bringing it to the attention of the students, there would not be a trip run by you guys . . . in the model where you contract with the professor, not the university or college? So it's but for this professor's relationship with his class?

The EF General Counsel's response:

I think that's probably a . . . fair characterization in terms of . . . the importance of the faculty member. I think . . . that the faculty member is an important component of it. . . . I think if the faculty member wasn't motivated or inspired to do the program, then it would be some other, it would be outside of our educational division.

(Emphasis added.) Put more bluntly, CCC faculty members' access to, and relationship with, CCC students is the glue that binds the faculty-led travel model, and without it the model crumbles.⁷

⁷Bolstering that conclusion is the EF General Counsel's response to the question of whether outside professors (e.g., a professor at the University of Hartford) would ever be asked by his company to recruit CCC students for these trips: "The short answer is no."

At bottom, then, *but for* CCC faculty member's access to, and relationship with CCC students, the faculty-led travel model is stripped of its viability, and *but for* their public positions, CCC faculty members would not have that access or those relationships. We conclude, therefore, that, under the faculty-led travel model, CCC faculty members "use" their "public positions," as those terms are employed in § 1-84 (c), to recruit students for the travel abroad trips at issue.⁸

B. "Financial gain"

Having so concluded, we turn to the third prong of the § 1-84 (c) analysis, namely, whether CCC faculty member's use of their public positions as described above is "to obtain *financial gain* for" themselves. (Emphasis added.) Although the Code does not define "financial gain," the regulations do—and in very broad terms:

Pursuant to subsection (c) of section 1-84 . . . "financial gain" shall mean *any benefit valued in excess of one hundred dollars* per person per year that is received by or agreed to be received by a state employee or public official, his spouse, child, child's spouse, parent, brother or sister or a business with which he is associated.

(Emphasis added.) Regs., Conn. State Agencies § 1-81-16a. The question, then, is whether, under the faculty-led travel model, a typical travel package provided to a CCC faculty member by a private tour vendor constitutes a "benefit" valued more than \$100. From the November 13th hearing, we glean that such a package has a fair market value of several thousand dollars, meaning that the \$100 threshold is easily met, and that we need only focus on whether the package constitutes a "benefit."

Neither the Code nor the regulations define the word "benefit," and "[i]f a statute or regulation does not sufficiently define a term, it is appropriate to

⁸At the November 13th hearing, the EF General Counsel argued that CCC faculty members are not using their state positions, because (in his words) "[t]hese professors and faculty are doing this on their personal time. They're doing it during breaks; it's not during the school year." While this may be true for the chaperoning portion of the group leader's duties (the trip itself), it is not true for the recruiting portion (the time period prior to the actual trip), where CCC faculty members, as noted above, clearly use their access to CCC students and resources (e.g., discussing trips with students in their classrooms, communicating with students and other CCC faculty members about the trips via state e-mail, posting trip flyers on CCC property).

look to the common understanding of the term as expressed in a dictionary.” (Internal quotation marks omitted.) *Connecticut Ins. Guaranty Assn. v. State*, 278 Conn. 77, 84 (2006). In that case, our Supreme Court looked to the common understanding of “benefit” as expressed in two dictionaries, noting as follows: “The American Heritage Dictionary (4th Ed. 2000) defines ‘benefit’ as ‘[s]omething that promotes or enhances well-being; an *advantage*’ Similarly, Black’s Law Dictionary (6th Ed. 1990) defines the word ‘benefit’ as an ‘*[a]dvantage; profit; fruit; privilege; gain; interest. . . .*’ (Emphasis added.) *Id.*

Applying those definitions here, a CCC faculty member’s receipt of what the EF General Counsel described as an “all inclusive” travel package certainly affords faculty members an “advantage” (as well as a “privilege,” “fruit,” “gain,” etc.)—namely, the advantage of free world travel. As noted earlier, the travel package includes round-trip airfare, lodging, airport transfers and transportation between destination cities, transportation to all included activities, most meals, a Tour Director available 24 hours a day, sightseeing tours and excursions led by licensed local guides, and entrances to various museums and theatres and other sites. In the EF General Counsel’s words, faculty members “are getting what the student is getting, but they’re not paying.” Not having to pay the several thousand dollars that student travelers have to pay is an “advantage” and thus a “benefit.” Because the “benefit” is (as noted above) easily valued over \$100, we conclude that it constitutes “financial gain” under § 1-81-16a’s definition of that term.⁹

Other ethics commissions have reached similar conclusions in addressing similar scenarios. In *Advisory Opinion No. 2000-04*, the Ohio Ethics Commission (“Ohio Commission”) was asked if “Ohio Ethics Laws . . . prohibit . . . public school officials and employees from accepting compensation from a private tour company for performing administrative and other duties associated with a school trip, or acting as chaperones on school trips.” *Id.* Under one such law, public officials and employees could not “use or authorize the use of the authority or influence of office or employment to secure anything of value” *Id.* In assessing whether

⁹At the November 13th hearing, the EF General Counsel argued, to the contrary, as follows: “[T]his is not a situation where a state employee is getting a direct *monetary* personal gain. *They’re not being paid anything. They are receiving . . . the ability to go on a tour without expending further costs*” (Emphasis added.) In so arguing, the EF General Counsel mistakenly assumed that the term “financial gain” is confined to “monetary” (i.e., money) gain, but as noted above, the term sweeps much more broadly, defined as it is to include “*any benefit* valued in excess of one hundred dollars” Regs., Conn. State Agencies § 1-81-16a. It is certainly a “benefit” (i.e., “advantage”) to be able to (as the General Counsel puts it) “go on tour without expending further costs”

“anything of value” included an “expense-paid trip,” the Ohio Commission concluded that it did, reasoning as follows: “[t]he term ‘anything of value’ is defined . . . to include . . . everything of value”; “[a] definite, pecuniary benefit is considered to be a thing of value”; and because an expense-paid trip is a definite, pecuniary benefit, it would “be within the definition of ‘anything of value.’” *Id.*

Further, in *Advisory Opinion No. 2000-62*, the Alabama Ethics Commission (“Alabama Commission”) addressed whether “a complimentary travel package for a public employee, who is accompanying and supervising students on an officially sanctioned school field trip, constitutes a thing of value as defined by Alabama Ethics Law[.]” *Id.* After noting that the term “thing of value” is defined to include, among other things, any “gift” or “benefit,” the Alabama Commission concluded that “a free trip . . . for the chaperones does fall within the definition of a thing of value.” *Id.*

Moreover, in *Advisory Opinion No. 2015-1*, the Hawaii State Ethics Commission (“Hawaii Commission”) tackled the issue of “whether teachers and other [Department of Education] employees . . . who serve as chaperones on student educational trips . . . [could accept] free travel and other benefits from tour companies through which the teachers plan and organize these trips.”¹⁰ *Id.* As to whether the “free travel and other benefits” were prohibited “gifts,” the Hawaii Commission stated:

[T]he free travel and other benefits offered to teachers by a tour company are intended both as an incentive for the teachers to promote the trip to as many students/parents as possible and a reward for the teachers’ efforts in generating revenue for the tour company. Therefore, the free travel and other benefits are prohibited gifts.

Id. In so concluding, the Hawaii Commission rejected the teachers’ argument to the contrary (an argument that has been asserted here too), namely, “that the trip is a ‘working trip’ for them, and they do not construe the free travel . . . as a ‘gift.’” *Id.* Its response (with which we agree) was this: “The Commission does not doubt that a teacher who serves as a chaperone takes

¹⁰The Hawaii State Teachers Association appealed Advisory Opinion 2015-1 to the Hawaii Circuit Court of the First Circuit, which did not rule on the merits, but invalidated the opinion, ruling that the Hawaii Commission violated the administrative statutes by failing to engage in the formal rulemaking process. The parties subsequently reached a settlement agreement. See [HSTA v. Hawaii State Ethics Comm’n, CV 15-1-2453-12 \(RAN\) Settlement Agreement](#).

on additional responsibilities. *At the same time, however, the free travel package has substantial monetary value that provides a personal benefit to the teacher by allowing the teacher to travel for free.*¹¹ (Emphasis added.) *Id.*

To sum up, then, all three of § 1-84 (c)'s essential prongs are satisfied under the faculty-led travel model: We have (1) "state employees" (i.e., CCC faculty members) who are (2) "using" their "public positions" (i.e., availing themselves of their access to CCC students and resources to recruit such students for trips) (3) in order to "obtain financial gain" for themselves (i.e., all-inclusive travel packages valued at several thousand dollars). Accordingly, we conclude that the faculty-led travel model is prohibited by § 1-84 (c).

2. Application of the Code's outside employment rules

Even assuming, for argument's sake, we were to accept the argument that the trips are "working trips" for CCC faculty members, and the free travel is remuneration for the work they perform on behalf of the private travel vendors, the arrangement would still be barred, under the Code's primary outside "employment" provisions, subsections (b) and (c) of § 1-84.¹²

Section 1-84 (b) bars a state employee from "accept[ing] other employment which will . . . impair his independence of judgment as to his official duties or employment," and § 1-84 (c), again, bars a state employee from "us[ing] his public . . . position . . . to obtain financial gain for himself" As explained in the OSE regulations,

[t]hese provisions do not, however, prevent a . . . state employee from using his or her expertise, including expertise

¹¹The Anonymous Commenter echoed this sentiment in his or her submittal during the comment period: "EF Tours handles the registration of students, itinerary planning, and supports throughout the trip. *There is not such an undue burden on faculty to recruit and chaperone students on their 'personal time' as to warrant a nice trip abroad, free of cost.*" (Emphasis added.)

¹²Section 1-81-14 of the Regulations of Connecticut State Agencies defines "employment" as follows:

[T]he term employment shall be construed to include any work or endeavor, whatever its form, undertaken in order to obtain financial gain (e.g., employee of a business, sole practitioner, independent contractor, investor, etc.). The term shall not, however, include any endeavor undertaken only as a hobby or solely for charitable, educational, or public service purposes, when no compensation or other financial gain for the individual, his or her immediate family or a business with which the individual is associated is involved.

gained in state service, for personal financial gain as long as no provision of the Code . . . is violated. Generally, [these provisions] are violated when the . . . state employee accepts outside employment with an individual or entity which can benefit from the state servant's official actions. . . .

Regs., Conn. State Agencies § 1-81-17.

This Board and its predecessor have interpreted that language myriad times, and stemming from those interpretations are various outside employment rules, many of which would be violated under the facts here:

First, “a state employee may never use state time, materials or personnel to further his private work.” [Advisory Opinion No. 2005-2](#). Here, CCC faculty members use state time and resources to recruit CCC students for the trips, by, for example, discussing trips with students during class time (when the faculty members are “on the clock”), sending emails about the trips via the CCC email system, posting trip materials on CCC bulletin boards, etc.

Second, “it must be clear . . . that the employee is not being hired [for outside employment] because of his or her state position” [Advisory Opinion No. 93-3](#); see also [Advisory Opinion No. 2001-24](#) (concluding that a Community College president could not accept a stipend for serving on a bank's advisory board because “the authorization of compensated work resulting directly from one's state position creates an unacceptable precedent under . . . [t]he Code”). Here, as discussed earlier, private tour vendors select CCC faculty members more for their “public positions”—and their consequent access to, and relationships with, CCC students—than for their expertise. See footnote 3 (EFCST typically would not engage faculty members from another university system to solicit students for EFCST trips).

Third, “it is . . . troublesome that the state employee may be offered a position at least in part because the outside employer believes that the state employee may have an ‘in’ at the agency, thereby allowing the outside employer to receive special treatment.” [Advisory Opinion No. 94-7](#). Here, private tour vendors select CCC faculty members precisely because they believe they will have an “in” at the Community Colleges—more specifically, an “in” with CCC students. Recall that the EF General Counsel testified that, but for CCC faculty members' relationships with the students, the faculty-led travel model would not be viable. And, when asked whether EFCST would seek individuals with expertise *outside* the college (i.e., individuals who are *not* affiliated with the college) to serve as group leaders

and solicit students, or whether faculty members at a specific community college were sought because students would tend to trust their professors, the EF General Counsel explained that for “practical reason[s]” and “from a business perspective”

if there were a community member that was an expert in [a particular subject], ... that wouldn't be who we were generally looking for what would be the outside expert's real motivation to run [a program]? They just practically wouldn't really want to do it, where we find faculty members who want to ... participate in these programs is usually because usually they want to provide something, an opportunity or an experience, to the students that they know or that they have a relationship with.

Testimony of EF General Counsel.

Fourth, “use of one's state title to promote one's outside employment, including a paid promotion for an unrelated third party, would be an impermissible use of state position.” [Advisory Opinion No. 98-11](#); see also [Advisory Opinion No. 2000-1](#) (state employee may not, in efforts to market private products, “use any indicia of state authority in such endeavors”). Here, CCC faculty members use their state titles and—by discussing trips during classes and using the CCC email system and campus bulletin boards to promote the trips—use other “indicia of state authority” to recruit students for the trips.

And fifth, “it is not appropriate for [a state employee or official] to accept outside employment as a consultant with a private [entity] targeting the very population served by [his or her state agency].” [Advisory Opinion No. 1998-15](#); see also *Request for Advisory Opinion No. 3060* (2002) (school resource officer at a State Technical School who accepted outside employment selling prepaid legal service plans could “not attempt to market said . . . plans to anyone at the State Technical School where he works, or anyone within the Technical School system that he comes into contact with through his state employment”). Here, as noted above, in recruiting students at the Community Colleges where they teach, CCC faculty members are targeting the very population over which they have state authority.

This non-exhaustive list of outside employment concerns stemming from the faculty-led travel model shows that, even if the arrangement is deemed outside employment, it is still barred by the Code.

3. Discussion of other ethics agencies' opinions

Although neither this Board nor its predecessor have previously addressed this issue, other states have formally determined that a faculty-led travel model—under which faculty members solicit students to sign up for trips and, in exchange, receive a free travel spot—violates their respective ethics codes. As noted above, the ethics agencies in Ohio, Alabama, and Hawaii have issued advisory opinions addressing scenarios similar to the one before us, and in each opinion, the faculty-led travel model would be barred:

- In *Advisory Opinion No. 2000-04*, the Ohio Commission concluded that public school officials and employees are barred from “accepting or soliciting any form of compensation from a private tour company . . . except their public employer, for scheduling, organizing, chaperoning, or performing any other duties associated with, a school trip”; but that they may accept “necessary travel expenses to accompany students on a school trip, so long as the travel expenses are provided in connection with the contract between the [school] district and the tour company to provide tour services” (Emphasis added.)
- In *Advisory Opinion No. 2000-62*, the Alabama Commission concluded that “[e]mployees of the Jefferson County Board of Education may accept an expense-paid trip to Washington, D.C. while serving as chaperones for County students in a Board-sanctioned event; provided, the School System determines which employees will attend the event as chaperones, and that the School Board employees did not solicit students to participate in the event, as the number of students participating dictates the number of free trips offered to chaperones.” (Emphasis added.)
- In *Advisory Opinion No. 2015-1*, the Hawaii Commission concluded that “[t]he State Ethics Code . . . prohibits teachers from accepting free travel and other benefits from tour companies for serving as chaperones on student educational trips, where the teachers are directly involved in planning a trip and selecting a tour company to help organize the trip, promoting the trip to students and their parents, deciding who will chaperone the students, and/or requesting [Department of Education] approval of the trip.”

Although the language of the states’ statutes varies, and is not identical to our Code, the ultimate conclusions are resoundingly consistent: that this type of faculty-led travel model raises serious ethics concerns and typically triggers multiple ethics code violations.

4. Application of General Statutes § 1-84 (r)

Before closing, we must address a tangential issue raised in the petition, wherein the petitioner states:

In accordance with . . . General Statutes § 1-84(r), CCC faculty as members of bargaining units may enter into consulting agreements provided the agreement does not conflict with the member's employment with the College. CCC's administrators support travel activities and view the opportunity as a benefit to the students."

(Emphasis added.) We do not dispute the general educational value of travel abroad (which is not at issue here). We do, however, take issue with the suggestion that the arrangements between CCC faculty members and the private tour vendors (under the faculty-led travel model) are “consulting” agreements, as that term is used in § 1-84 (r), such that they fit within the carve-out set forth in that provision.

Section 1-84 (r) operates as a carve-out from the Code's main outside employment rules—§ 1-84 (b) and (c)—for certain employees of the state colleges and universities who engage in “consulting” agreements or “research” projects. In its first subdivision, § 1-84 (r) sets forth the general rule:

Notwithstanding the provisions of subsections (b) and (c) of this section, a member of the faculty or a member of a faculty bargaining unit of a constituent unit of the state system of higher education may enter into a consulting agreement or engage in a research project with a public or private entity, provided such agreement or project does not conflict with the member's employment with the constituent unit, as determined by policies established by the board of trustees for such constituent unit.¹³

¹³In its second subdivision, § 1-84 (r) defines “consulting” and “research,” and requires each constituent unit's board of trustees to establish policies and procedures governing the “consulting” and “research” of its faculty members (e.g., “prior to any such member entering into any such agreement or engaging in any such project,” he or she must get “approval by the chief academic officer of the constituent unit, or his or her designee”). In its third subdivision, § 1-84 (r) requires each constituent unit to create a nine-member committee to (among other things) monitor the unit's compliance with those policies and procedures. And in its last subdivision, § 1-84 (r) provides that, if a faculty member “enters such a consulting agreement or engages in such a research project without prior approval” of the chief academic officer of the constituent unit, the carve-out does not apply.

(Emphasis added.) In other words, if a faculty member’s “consulting” agreement or “research” project does not conflict with the member’s state employment—as determined under policies created by the constituent unit’s board of trustees—then the § 1-84 (r) carve-out applies, meaning that § 1-84 (b) and (c), as interpreted by the Office of State Ethics, do not.

But the § 1-84 (r) carve-out does not apply here. For it to be triggered, the arrangements between CCC faculty members and the private tour companies must fit within § 1-84 (r)’s definition of either “consulting” or “research.” The petitioner attempts to squeeze the arrangements into the former, i.e., “consulting,” which subdivision (2) of § 1-84 (r) defines as follows:

“consulting” means the provision of services for compensation to a public or private entity by a member of the faculty or member of a faculty bargaining unit of a constituent unit of the state system of higher education: (I) *When the request to provide such services is based on such member’s expertise in a field or prominence in such field, and (II) while such member is not acting in the capacity of a state employee*

(Emphasis added.) Neither prong of that definition is met here.

As to the first prong, testimony from the November 13th hearing sinks the claim that CCC faculty members are asked to provide services based on their “expertise” or “prominence.” As noted above, the EF General Counsel was asked whether, *but for CCC faculty member’s relationship with CCC students*, the faculty-led travel model would be viable, and his answer, recall, was no, suggesting that CCC faculty members are targeted by private tour companies—not for their expertise—but for their relationship with CCC students. Bolstering that suggestion is testimony showing the lack of any requisite nexus between CCC faculty member’s expertise and the services they provide for private tour companies. Kevin Bechard, the former Manchester Community College professor, noted: “[T]he . . . trip for EF Tours was shopped around trying to tie into a course. It wasn’t in the faculty members’ area of expertise. The faculty members also being recruited were not content experts in that area.” In a similar vein, at the November 13th hearing, a Hearing Officer asked the EF General Counsel this question: “So do they [CCC faculty] have to show some sort of a nexus to an academic pursuit, or can it be just, I’m on the faculty and I’d like to do this?” He responded: “Is there a firm requirement that an Italian professor has to go

to Italy? No [T]here's no rule that is enforced in terms of a direct nexus between a specific specialty area and specific tour that they're allowed to do."

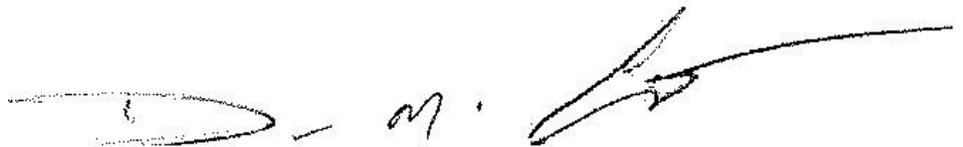
As to the second prong, testimony from the November 13th hearing suggests that CCC faculty members are indeed "acting in the capacity of . . . state employee[s]" in performing at least some of the services on behalf of private tour vendors. Although the actual travel occurs during school breaks, while CCC faculty members are "off-contract," there was ample and uncontroverted testimony (discussed at length above) that, *during the period leading up to the trip*, CCC faculty members use state time and resources to promote the trips. The most conspicuous evidence of CCC faculty members "acting in the capacity of . . . state employee[s]" is the fact that they promote trips to CCC students in the context of their own classes.

Given, then, that neither prong of § 1-84 (r)'s definition of "consulting" is met here, the § 1-84 (r) carve-out does not apply, meaning that § 1-84 (b) and (c), as we interpreted those provisions above, do.

Conclusion

Based on the facts presented, we conclude that the faculty-led travel model is not permitted by the Code, and that it does not fit within carve-out set forth in § 1-84 (r).

By order of the Board,



Dated: February 20, 2020

Dena M. Castricone
Chairperson