

Office of State Ethics

Advisory Opinion No. 2004-11

Application Of Code Of Ethics For Public Officials To Commissioner Of The Public Utility Control Authority When Law Firm Of Commissioner's Husband Files An Appearance Before The Authority

Anne C. George, a Commissioner serving on the Public Utility Control Authority ("Authority") has asked the Ethics Commission how the Code of Ethics for Public Officials, Conn. Gen. Stat. § 1-79 et seq., applies to her when her husband's law firm, Pullman & Comley, LLC ("firm"), files an appearance in a matter pending before the Authority. In her role at the Authority, Commissioner George hears and decides matters concerning public service companies, including rate cases, bond issuances, and mergers. Commissioner George's husband is employed as an associate of the firm and his practice is primarily limited to the area of corporate transactions. Mr. George does not perform any duties related to the firm's utility practice. The firm explains that as an associate, Mr. George's salary is comprised of a base salary and a bonus that is based on performance and longevity. The firm confirms that the performance or profitability of the law firm's utility law practice does not have any influence on Mr. George's compensation.

Conn. Gen. Stat. §§1-85 and 1-86 define and proscribe substantial and potential conflicts of interests for purposes of the Code of Ethics. Pursuant to §1-85, in pertinent part, a public official has a substantial conflict of interest and may not take official action on a matter if she has reason to believe or expect that she, her spouse, dependent child or business with which she is associated with, will derive a direct monetary benefit or suffer a direct monetary loss by reason of her official activity. The official does not, however, have a substantial conflict of interest if any benefit or detriment accrues to her as a member of a profession, occupation or group to no greater extent than any other member of such profession, occupation or group.

Pursuant to §1-86, in pertinent part, a public official has a potential conflict of interest if she would be required to take official action that would affect the financial interests of the individual, her spouse, parent, brother, sister, child, spouse of a child or a business with which she is associated, unless such interest is de minimis in nature or not distinct from that of a substantial segment of the general public. If confronted with a potential conflict, a Commissioner, such as Commissioner George, has two alternatives. She may either recuse herself from the matter; or prepare a written statement, signed under penalty of false statement, describing the matter requiring action and the nature of the potential conflict and explaining why, despite the potential conflict, she is able to vote and participate fairly, objectively and in the public interest.

In pertinent part, the term "business with which he is associated" is defined in the Code to include businesses in which the public official or an immediate family member is an owner, limited or general partner, the holder of five percent or more of the outstanding stock, a member of the board of directors or an officer. Conn. Gen. Stat. §1-79(b). The term does not encompass the employer of an immediate family member. For the purposes of the Code, therefore, the law firm is not a business with which the Commissioner is associated.

In applying these conflict of interest provisions to the question posed, it is clear that none of the concerns raised by Commissioner George creates either a substantial or potential conflict of interest, as there is no direct monetary benefit that will accrue to her or her spouse as result of her official action. As a consequence, there is no impediment, under the Ethics Code, which would prevent the Commissioner from hearing matters in which Pullman & Comley has filed an appearance.

The Commission notes, however, that Commissioner George has acknowledged that certain provisions of the Code of Judicial Conduct may apply when the firm appears before her. See

Regulations of Connecticut State Agencies § 16-1-32. ("Where applicable, the canons of professional ethics and the canons of judicial ethics . . . govern the conduct of the commissioners . . . ") If applicable, the Code of Judicial Conduct may require disclosures based on the appearance of a conflict. See Code Of Judicial Conduct, Canon 3(c). The Code of Judicial Conduct may, therefore, impose additional restrictions on the Commissioner's ability to hear such matters that are beyond the requirements of the Code of Ethics.

It is commendable that Commissioner George has sought guidance to avoid any conflict of interests, real or apparent. The interpretation of the Code of Judicial Conduct, however, is beyond the jurisdiction of this Commission. As the Commission has often stated, "The Code of Ethics for Public Officials does not speak of appearances of conflict, only actualities." Advisory Opinion No. 90-6, 51 Conn. L.J. No. 35, p. 3D (2/27/90). This Commission may only conclude that consistent with the Code of Ethics, Commissioner George may hear matters in which the firm has filed an appearance.

By order of the Commission,

Rosemary Giuliano
Chairperson

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