STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NO. 90-26

Regional Ombudsman Accepting Internship at Nursing Home and Social Worker Providing Private Conservator Services

The Commissioner of the Department on Aging has requested an advisory opinion regarding two issues: First, whether a Regional Ombudsman who is required by statute to report suspected abuse of a patient in a nursing home facility may accept an internship at a nursing home outside of the region for which he is responsible and second, whether an employee whose state duties include acting as conservator of the estate for certain elderly individuals may conduct a private business which consists of acting as a conservator of the estate for certain elderly clients.

Connecticut General Statutes §17-135a establishes within the Department on Aging a nursing home ombudsmen office, whose state ombudsman and assistant ombudsmen are required by §17-135h(a) to report suspected abuse, neglect, exploitation or abandonment of a patient in a nursing home facility. Although each regional ombudsman is assigned a geographical area for which he or she is primarily responsible, §17-135h(a) does not limit the reporting responsibilities of the ombudsmen to such areas. The Regional Ombudsman in question is enrolled in the Long Term Care Administrators program at the University of Connecticut in which, as a prerequisite to certification, he must complete a 900-hour internship at a nursing home.

Conn. Gen. Stat. §1-84(b) is designed to prevent conflicts of interest with state employment by prohibiting the acceptance of other employment which will impair a state employee's independence of judgment with respect to his or her state duties or which will result in his or her disclosure of confidential information acquired in the course of state service. In addition, Conn. Gen. Stat. §1-84(c) prohibits a state employee from using public position or confidential information acquired as a result of such position to obtain personal financial gain.

Although the Ethics Code does not define the term "employment," the Commission, in Advisory Opinion No. 80-18, 42 Conn. L.J. No. 22, p. 23 (November 25, 1980), stated that

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"[b]ecause of the emphasis on the problem of private gain throughout the Code, it seems reasonable to confine 'employment' to work which is compensated." "Compensation" has been defined as "salary, fees, pay, remuneration for official services performed, in whatever form or manner, or at whatsoever periods the same may be paid." Anderson v. Pension & Retirement Board, 167 Conn. 352, 355-356 (1974); 15A C.J.S., Compensation, p. 104.

In the present case, it is not clear whether the employee would receive a salary for his proposed work, but he most certainly would receive compensation. That is, he would be rewarded for his efforts with credits toward certification as a Long Term Care Administrator, without which he could not complete his educational program. Such efforts are distinguishable from volunteer services at a hospital, membership on a local board or other public service or eleemosynary activities.

Clearly, a Regional Ombudsman may not accept employment with any nursing home facility in the State of Connecticut. By accepting compensation in any form from such a facility, an ombudsman would impermissibly jeopardize his independence of judgment, particularly with respect to his statutory duty to report pursuant to §17-135h(a). On the ground that the proposed internship is not a volunteer or uncompensated activity, the Commission concludes that such activity constitutes "employment" within the meaning of §1-84(b) and further concludes that the employee in question may not accept such an intership while acting as a regional ombudsman.

The Commission does not intend by the above to prevent the employee from completing his course requirements. Nothing herein should be interpreted as preventing a Regional Ombudsman from accepting an internship with an out-of-state nursing home to which the jurisdiction of the ombudsmen's office would not extend, and the Commission would hope that such an opportunity would be made available. In the alternative, the Commission suggests that the University of Connecticut consider offering credit for relevant work experience to eliminate the need for the internship in question. Finally, the Commission notes that a 900-hour internship represents a significant commitment to an activity other than one's state employment. If proposed outside employment interferes with an employee's ability to devote to his or her full-time state employment the requisite time and energy, the Commission would view such outside work as having impaired such employee's independence of judgment in violation of Conn. Gen. Stat. §1-84(b).

The second question raised by the applicant was previously

addressed by the Commission. In brief, pursuant to Conn. Gen. Stat. §45-70g, the Commissioner on Aging accepts appointments from probate courts to act as conservator of the estate for incapable persons meeting certain statutory criteria for whom no other suitable conservator can be found. Pursuant to Conn. Gen. Stat. §45-70g(b), the conservatorship responsibilities are delegated to designated employees of the department, including the employee in question. The employee's proposed activity involves acting as conservator for persons who, based upon their income or other factors, are not eligible for the services provided by the Department on Aging, such persons including both those who may be sufficiently capable to select their own conservator and those subject to involuntary conservatorships.

In Advisory Opinion No. 89-16, 50 Conn. L.J. No. 52, p. 9C (June 27, 1989) the Commission concluded that a social worker employed by the Department on Aging could offer private conservator services provided he or she observed certain restrictions designed to avoid impairment of independence of judgment or use of confidential information in violation of Conn. Gen. Stat. §1-84(b) or the use of state position for financial gain in violation of Conn. Gen. Stat. §1-84(c). The Commission further cautions that the extreme vulnerability of a clientele composed entirely of persons in need of a conservator will perhaps subject the employee's activities to greater scrutiny than would a clientele not similarly impaired.

By order of the Commission,

Rabbi Michael Menitoff

Rabbi Michael Menitoff
Chairperson

Dated 7-30-90