



# STATE OF CONNECTICUT OFFICE OF STATE ETHICS

## Draft Advisory Opinion No. 2014-4

March 20, 2014

**Question Presented:**      **The petitioner asks whether, as a State Representative, he may accept outside employment as the Executive Director of the Cancer Support Community of Southern Connecticut, and whether any changes in committee or leadership responsibilities will “create future potential conflicts.”**

**Brief Answer:**              **We conclude that the petitioner may accept the proposed outside employment, provided that he abides by the limitations discussed herein.<sup>1</sup>**

At its March 2014 regular meeting, the Citizen’s Ethics Advisory Board granted the petition for an advisory opinion submitted by State Representative Matthew Lesser. The Board now issues this advisory opinion, which interprets the Code of Ethics for Public Officials (“Ethics Code”),<sup>2</sup> is binding on the Board concerning the person who requested it and who acted in good-faith reliance thereon, and is based on the facts provided by the petitioner.

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<sup>1</sup>With respect to any changes in committee or leadership responsibilities, those not addressed herein should be brought to the attention of the Office of State Ethics as they arise.

<sup>2</sup>Chapter 10, part I, of the General Statutes.

### Facts

State Representative Matthew Lesser would like to accept employment with the Cancer Support Community of Southern Connecticut (“CSC-SCT”).<sup>3</sup> The employment position in question, as described in the position description submitted by petitioner, is that of Executive Director, and the duties are as follows:

The Executive Director serves as the chief executive officer of The Cancer Support Community of Southern Connecticut (CSC-SCT), carries out the policies of the Board of Directors, directs staff and volunteers, and is the key interface with the community, funders and ... healthcare partners.

CSC-SCT, while an affiliate in development of a larger national organization (The Cancer Support Community), is currently focused on raising the funds necessary to open a cancer support center and provide support programs/services for anybody impacted by cancer in the Eastern Fairfield/Western New Haven Counties. The ideal candidate is someone who has experience in fundraising efforts, has ties to the New Haven/Fairfield County areas and is comfortable building something from the ground up.

The immediate responsibilities of the position will be to:

- (a) Identify and secure donations and funding to support programming and a facility from which we will expand our programming
- (b) Manage the organization’s 3 major fundraisers
- (c) Manage limited programming activities while we raise the necessary funding to open a fully operating center

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<sup>3</sup>“The Cancer Support Community of Southern Connecticut (CSC-SCT) is an affiliate in development of the Cancer Support Community – an international network of independently chartered nonprofits that provide professional programs of emotional support, education and hope for people impacted by cancer so that no one faces cancer alone.” See the Cancer Support Community of Southern Connecticut website, available at <http://www.cancersupportcommunitysct.org/> (last visited March 17, 2014).

The petitioner added that:

1. I am Vice-Chairman of the Government Administration and Elections [Committee].
2. I am Ranking Member of the Internship Committee.
3. I am a member of the Appropriations Committee, and co-chair of the Legislative Subcommittee.
4. I am a member of the Energy and Technology Committee.
5. I am an Assistant Majority Leader.
6. Prior to extending an offer of employment, the organization applied for and received a one-time Small Business Express matching grant from the Department of Economic and Community Development. The funds from this grant would partially pay for my salary in the first year. I had no knowledge of or conversations about this grant application with anyone.
7. This is a salaried position. I will not be eligible for commission.

### Analysis

As a member of the General Assembly, Representative Lesser is a “public official”<sup>4</sup> and thus subject to the Ethics Code, including its two principal outside-employment provisions, General Statutes § 1-84 (b) and (c). Generally, these provisions prohibit a public official from accepting outside employment that would impair his independence of judgment as to his official duties or that would be deemed a use of office for personal financial gain.

The former State Ethics Commission (“former Commission”) was historically reluctant to use these provisions to limit the outside employment activities of part-time members of the General Assembly. It did, however, set stricter outside-employment limitations when it came to the chairpersons of legislative committees. In light of their “enormous power,” they were prohibited by the former Commission “from accepting employment

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<sup>4</sup>See General Statutes § 1-79 (11).

in an industry or engaging in an activity over which their committee ha[d] jurisdiction.”<sup>5</sup> In this case, Representative Lesser is not chairperson of any committee and is thus currently unaffected by the line of opinions restricting chairpersons of legislative committees.

Changes in committee or leadership responsibilities that could affect Representative Lesser include<sup>6</sup>:

- Becoming chairperson of the appropriations committee or any other committee that could provide funding to CSC-SCT. See, e.g., “Advisory Opinion No. 87-13: Chairpersons of the Environment Committee, Chairpersons of the Appropriations Committee, and Chairpersons and Ranking Members of the Finance, Revenue and Bonding Committee may not participate in the state’s Farmland Preservation Program, which is administered by the Department of Agriculture, because of their authority over the Department or Program.”<sup>7</sup>
- Becoming speaker of the House.<sup>8</sup> See, e.g., Advisory Opinion No. 2014-2: Speaker may accept outside employment with an organization, provided that he does not solicit business from either client or communicator lobbyists. See also Advisory Opinion No. 2007-8: it would be an inappropriate use of his office and position for the Speaker to solicit funds from lobbyists in connection with his outside employment.

Regardless of leadership position or committee chairmanship, the following restrictions will apply:

- Representative Lesser’s hiring must occur by virtue of his expertise (rather than his state office).<sup>9</sup>

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<sup>5</sup>Citizen’s Ethics Advisory Board, Declaratory Ruling 2011-A.

<sup>6</sup>Given the many different possibilities, this list is not exhaustive. Representative Lesser should contact the Office of State Ethics if he is faced with a new leadership opportunity not addressed herein.

<sup>7</sup>Citizen’s Ethics Advisory Board, Declaratory Ruling No. 2011-A.

<sup>8</sup>Because he is not Speaker, Representative Lesser is not precluded from soliciting lobbyists for contributions to CSC-SCT.

<sup>9</sup>See, e.g., Advisory Opinion No. 2014-2 concluding that the Speaker may accept outside employment with an organization, provided that his hiring occurred by virtue of his expertise (rather than his state office).

- Representative Lesser may not, under General Statutes § 1-85<sup>10</sup>, vote on legislation that will affect CSC-SCT if his position will be uniquely affected. See e.g., RAO 3791 (2004): this opinion addresses an incoming legislator who worked as a consultant for non-profit organizations, some of which received state assistance. In that staff opinion, the Ethics Commission attorney concluded that the legislator may “continue to consult with his non-profit clients, even if they receive state funds, provided that his own contract with the client will not be directly affected by his official action. If the legislator is concerned that the funding for his work will be affected by a particular piece of legislation, he should recuse himself from any involvement with the legislation. Nonetheless, if the specific legislation becomes part of an omnibus budget bill, he can vote on that omnibus budget package.”

Finally, while engaged in the outside employment, Representative Lesser must not do as follows:

- make any promise or imply that he will take any official action in exchange for favorable treatment of a client;<sup>11</sup>
- use his state title in any way in an effort to solicit business for the outside employer;<sup>12</sup>
- exploit contacts made in state service to further his outside employment;<sup>13</sup>
- create or permit the impression that he is acting on the state’s behalf;<sup>14</sup>

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<sup>10</sup> “A public official, including an elected state official, or state employee has an interest which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, if he has reason to believe or expect that he, his spouse, a dependent child, or a business with which he is associated will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity.” General Statutes § 1-85.

<sup>11</sup>Citizen’s Ethics Advisory Board, Declaratory Ruling 2011-A.

<sup>12</sup>Id.

<sup>13</sup>Id.

<sup>14</sup>Id.

- “trade on his [state] position . . . in order to receive favorable treatment . . . including taking official action as a quid pro quo for any other business deal, opportunity, or advantage”;<sup>15</sup>
- use state resources in furtherance of his outside employment;<sup>16</sup>
- represent CSC-SCT before the state agencies listed in General Statutes § 1-84 (d);<sup>17</sup> or
- become a “lobbyist.”<sup>18</sup>

**Conclusion**

We conclude that Representative Lesser may accept the proposed outside employment, provided that he abides by the limitations discussed herein and, with respect to any changes in committee or leadership responsibilities, those not addressed herein should be brought to the attention of the Office of State Ethics as they arise.

By order of the Board,

Dated \_\_\_\_\_

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Chairperson

<sup>15</sup>Id.

<sup>16</sup>Id.

<sup>17</sup>Section 1-84 (d) prohibits, among other things, a public official from agreeing “to accept . . . any employment, fee or other thing of value, or portion thereof, for appearing, agreeing to appear, or taking any other action on behalf of another person before” the eleven state agencies listed therein. Nothing in the CSC-SCT Executive Director position description indicates that any such representation is required.

<sup>18</sup>See General Statutes § 1-86 (c). Nothing in the Executive Director position indicates that “lobbying,” as defined in General Statutes § 1-91 (11), is required or contemplated.