



STATE OF CONNECTICUT OFFICE OF STATE ETHICS

Draft Advisory Opinion No. 2015-5

November 12, 2015

Question Presented: Whether a permanent legislative employee is considered “part-time” for purposes of an exemption under General Statutes § 1-84 (d) while working on a reduced work schedule of less than 40 hours and using compensatory, vacation and/or personal time to cover the remaining hours.

Brief Answer: We conclude that such a permanent legislative employee is not “part-time” and, therefore, may not make use of the relevant exemption under § 1-84 (d).

At its October 2015 regular meeting, the Citizen’s Ethics Advisory Board (“Board”) granted the petition for an advisory opinion submitted by Attorney Richard Baltimore, Chief Legal Counsel to the Speaker of the Connecticut House of Representatives. The Board now issues this advisory opinion, which interprets the Code of Ethics for Public Officials¹ (“Ethics Code”), 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.

Facts

The pertinent facts provided by the petitioner are set forth below and are considered part of this opinion:

¹Chapter 10, part I, of the General Statutes.

Pursuant to § 1.2 of the Connecticut General Assembly Employee Handbook², “regular part-time employees” are defined as “those employed for an indefinite duration and work fewer than the established number of hours for fulltime employment.” Under the same section, full-time employees work 40 hours per week.

Connecticut General Statutes § 1-84 restricts state employees from engaging in certain types of outside employment, with certain exceptions. One exception is for “part-time legislative employees.”

Accordingly, I ask: Whether a permanent legislative employee is considered “part-time” for purposes of § 1-84 exemption while working on a reduced work schedule of less than 40 hours and using compensatory, vacation and/or personal time to cover the remaining hours. (For example, if the employee reduced their work schedule to 20 hours per week and used 20 hours of compensatory time to charge those hours.)

In the absence of a statutory definition of “part-time” in § 1-84, the definition used by the agency the statute governs should control.

In construing the statute and in subsequent amendments, the legislature failed to statutorily define part-time. However, under CGS § 2-71b, the Joint Committee on Legislative Management is vested with the authority to “establish personnel policies,

²Connecticut General Assembly Employee Handbook. Part I: Personal Policies

§1.2 – Definitions

The following definitions apply to the terms as used in this Handbook:

(2) **Regular Full-time Employees:** Regular full-time employees are those employed for an indefinite duration and work the established number of hours for full-time employment, which is 40 hours per week effective July 1, 1998.

(3) **Regular Part-time Employees:** Regular part-time employees are those employed for an indefinite duration and work fewer than the established number of hours for full-time employment.

guidelines, and regulations” for legislative employees. The Joint Committee on Legislative Management, which is comprised of the legislative leaders from each chamber, has defined “part-time” in § 1.2 of the Connecticut General Assembly Employee Handbook described above.

Section 1-84 was amended in 1992 to exempt part-time legislative employees from the outside employment restriction. (See § 1 of Public Act 92-149.) Subsequently, the Joint Committee on Legislative Management adopted the current definition of full-time employee and accordingly, the current definition of part-time employee. (The update went into effect on July 1, 1998.) Because the exception in § 1-84 applies directly to part-time legislative employees, a term not defined by the ethics code, it is a fair inference that the Committee adopted the handbook definition knowing and intending that it would be applied to the term in § 1-84.

In the absence of a statutory definition of “part-time” in § 1-84, the definition used by the agency the statute governs should control.

Analysis

General Statutes § 1-84 (d), an outside employment provision of the Ethics Code, contains two restrictions and various exceptions, one of which is relevant to this matter. As for the restrictions, under § 1-84 (d), a public official or state employee may not do either of two things:

1. May not “agree 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 eleven listed state agencies.³

³The state agencies listed in § 1-84 (d) include “the Department of Banking, the Claims Commissioner, the Office of Health Care Access division within the Department of Public Health, the Insurance Department, the Department of Consumer Protection, the Department of Motor Vehicles, the State Insurance and Risk Management Board, the

2. May not “be a member or employee of a partnership, association, professional corporation or sole proprietorship which [entity] ... agrees 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 listed state agencies.

For this case, there is a relevant exception in § 1-84 (d) to the above restrictions and it reads as follows:

Notwithstanding the provisions of this subsection to the contrary, a legislator, an officer of the General Assembly or *part-time legislative employee* may be or become a member or employee of a firm, partnership, association or professional corporation which represents clients for compensation before agencies listed in this subsection, provided the legislator, officer of the General Assembly or *part-time legislative employee* shall take no part in any matter involving the agency listed in this subsection and shall not receive compensation from any such matter.⁴

According to the petitioner’s facts and argument, a permanent (i.e., full-time) legislative employee working a reduced hour work schedule, but using compensatory, vacation, and/or personal time to cover the remaining hours in order to receive compensation for 40 hours per work, should be considered a “part-time legislative employee” and, thus, be permitted to make use of the above exception to the outside employment restrictions of § 1-84 (d).

Whether the term “part-time legislative employee,” as used in § 1-84 (d), includes the scenario presented by the petitioner is a question of statutory construction. When construing a statute, “[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature.”⁵ General Statutes § 1-2z directs

Department of Energy and Environmental Protection, the Public Utilities Regulatory Authority, the Connecticut Siting Council or the Connecticut Real Estate Commission....”

⁴(Emphasis added.)

⁵(Internal quotation marks omitted.) *State v. Brown*, 310 Conn. 693, 702 (2013).

us to consider, first, the text of the statute itself and how it relates to other statutes. If the meaning of the text is “plain and unambiguous and does not yield absurd or unworkable results,” we may not consider “extratextual evidence of the meaning of the statute”⁶ “The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation.”⁷

The term “part-time legislative employee” is not defined in § 1-84 (d) (or elsewhere in the Ethics Code), so we look to General Statutes § 1-1 (a), which directs that, “[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language ...” “[T]o ascertain [a word’s] commonly approved meaning,” “[w]e look to [its] dictionary definition.”⁸ Webster’s Unabridged Dictionary (Random House 2d ed. 1998, at 1415) defines “part-time” as ‘*employed to work, used, expected to function, etc., less than the usual or full time*’ (emphasis added).⁹

In the scenario presented by the petitioner, the permanent legislative employee is not “employed to work” *less than full-time*. She is, in fact, “employed to work” full-time but is choosing to reduce her hours to less than full-time.

As stated by the petitioner in his petition, § 1-84 was amended in 1992 pursuant to Section 1 of Public Act 92-149 and that amendment added the exemptions to the outside employment restrictions of § 1-84 (d) for legislators, officers of the General Assembly and part-time legislative employees. The petitioner notes that the term “regular part-time employees” is defined in the Connecticut General Assembly Employee Handbook as, “those employed for an indefinite duration and work fewer than the established number of hours for full-time employment.” The petitioner further notes that the aforesaid Employee Handbook, with this definition, went into effect in 1998, approximately six years after the enactment of Public Act 92-149. Thus, to properly

⁶General Statutes § 1-2z.

⁷(Internal quotation marks omitted.) *State v. Brown*, *supra*, 702.

⁸*14 R.C. Equity Group, LLC v. Zoning Commission*, 285 Conn. 240, 254 n. 17 (2008).

⁹(Emphasis added.) *Fathauer v. United States*, 566 F.3d 1352, 1357 (Fed. Cir. 2009).

address the intent of the legislature as to the meaning of the term “part-time legislative employee,” we cannot look to the definition offered by the petitioner, as it was not in existence at that time.

Prior to the enactment of Section 1 of Public Act 92-149, the term “part-time employee” was, however, defined in the State Personnel Act,¹⁰ which Act is intended to “provide a uniform and equitable system of personnel administration of employees in the state service.”¹¹ The State Personnel Act defines “part-time employee” as “an employee holding a position *normally requiring* less than thirty-five hours of service in each week.”¹²

A permanent (full-time) legislative employee who *voluntarily* reduces her hours to less than thirty-five hours each week is not an employee holding a position “normally requiring” less than thirty-five hours of service in each week and, thus, would not be a “part-time employee,” under the State Personnel Act’s definition.

Such an interpretation resulting from both the dictionary definition and the State Personnel Act’s definition does not yield absurd or unworkable results and because the meaning of the term is plain and unambiguous, as applied here, we need not resort to extrinsic aids, such as legislative history and policy. But even if we were to seek additional interpretive guidance by looking to the legislative history, the same conclusion would be reached.

The legislative history of Section 1 of Public Act 92-149 indicates that the amendment was to alleviate a restriction perceived as being too onerous in that it, in essence, prevented certain members of the General Assembly from being gainfully employed. As explained by Representative William Kiner, “this amendment would add to line 88 where we’re talking about legislators in effect being *gainfully employed* ... but would also include not only legislators, but officers of the General Assembly and part-time legislative employees as well ...”¹³ Representative Kiner further stated, “I think what we’re trying to do ... is seek a balance really between the public interests

¹⁰Chapter 67 of the General Statutes.

¹¹General Statutes § 5-194.

¹²(Emphasis added.) General Statutes § 5-196 (17).

¹³(Emphasis added.) 35 H.R. Proc., Pt. 17, 1992 Sess., p. 5699, remarks of Representative William Kiner.

and the need for part-time legislators to be *gainfully employed*,”¹⁴ and “we are allowing ... legislators and other officers of the General Assembly to indeed be *gainfully employed*.”¹⁵

This history illustrates that the purpose of the amendment was to create an exception allowing legislators, officers of the General Assembly, and part-time legislative employees to be “gainfully employed” outside the General Assembly, suggesting that these positions within the General Assembly were not, therefore, gainful employment. A quick internet search of the term “gainfully employed” leads to the result that “[i]n broad language, gainful employment refers to an employment situation where the employee receives consistent work and payment from the employer.”¹⁶ A permanent (full-time) legislative employee voluntarily reducing her hours, but still receiving full time compensation by using compensatory, vacation and/or personal time, making use of this exception was clearly not the intent of the legislature.

Conclusion

We conclude, based on the facts presented, that a permanent legislative employee choosing to work a reduced work schedule of less than 40 hours per week and using compensatory, vacation and/or personnel time to cover the remaining hours is not a “part-time legislative employee” under § 1-84 (d) and, therefore, is not permitted to make use of the relevant outside employment exemption under § 1-84 (d).

By order of the Board,

Dated _____

Chairperson

¹⁴(Emphasis added.) *id.*, p. 5696.

¹⁵(Emphasis added.) *id.*, p. 5702.

¹⁶https://en.wikipedia.org/wiki/Gainful_employment