STATE OF CONNECTICUT
OFFICE OF STATE ETHICS

NOTE: The following is a draft response to a request for an advisory opinion prepared for consideration by the Citizen's Ethics Advisory Board. It does not necessarily constitute the views of the Board.

TO: Board Members

FROM: Brian J. O'Dowd, Assistant General Counsel

RE: Further Application of the Code of Ethics for Public Officials to Members of the Children's Trust Fund Council

DATE: October 15, 2010

Introduction

The Citizen's Ethics Advisory Board ("Board") issues this advisory opinion at the request of Laura Amenta, chairperson of the Children's Trust Fund Council ("Council"). As either a current or a former "public official," depending on the conclusion reached below, Ms. Amenta ("Petitioner") is statutorily entitled to petition the Board for an advisory opinion.[1] At its September 2010 regular meeting, the Board granted her petition.

Background

The Children's Trust Fund was established "to fund programs aimed at preventing child abuse and neglect and family resource programs."[2] Its sixteen-member Council is "an interdisciplinary, collaborative private-public structure," the members of which are "are appointed by legislative officials . . . and are uncompensated for their time."[3] Although previously an independent state agency responsible for overseeing "the administration of . . . contracts and grants to public and private non-profit organizations,"[4] in late 2009 the Council was legislatively "merged . . . into the [state] Department of Social Services (DSS)

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[1]See General Statutes § 1-81 (a) (3).

[2]General Statutes § 17b-751 (a).

[3]Letter from Laura Amenta, Chairperson, Children's Trust Fund Council, to the Citizen's Ethics Advisory Board (September 7, 2010) (hereinafter, Amenta Letter).

[4]Advisory Opinion No. 99-12.

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and changed . . . into an advisory body to the Commissioner of DSS . . . ."[5]

Having been relieved of "all fiduciary responsibilities," including involvement "in the RFP process or in approval of the use of funds,"[6] the Council recently "proposed" to DSS that, in order to fulfill the Trust Fund's business needs, it enter into a contract with The Connecticut Forum, a nonprofit entity that organizes panel discussions and community outreach programs. Agreeing with the Council's proposal, DSS forwarded a no-bid contract with The Connecticut Forum to the state Office of Policy and Management, where it awaits approval.

Meanwhile, The Connecticut Forum has asked Petitioner, the Council's chairperson, to be on its board of directors. Members of the board of directors "receive no compensation but are required to provide a financial commitment to the forum in the form of cash."[7]

Question

Based on those facts, Petitioner asks the following questions: (1) whether Council members are subject to the Code of Ethics for Public Officials, chapter 10, part 1, of the General Statutes ("Code"), solely by virtue of their Council membership; (2) whether Petitioner (i.e., the Council's chairperson) may join The Connecticut Forum's board of directors; and (3) whether "a member of an agency that has or has in the past held contracts with the Trust Fund [may] be named to the Council . . . ."[8]

Conclusion

Because we conclude that Council members are not subject to the Code solely by virtue of their Council membership, it follows that the Code will not prohibit Petitioner from joining The Connecticut Forum's board of directors, or members of agencies that have or have had contracts with the Trust Fund from serving as Council members.

Analysis

Petitioner's first question, the answer to which resolves the other two, is whether Council members are subject to the Code solely by virtue of their

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[5]Amenta Letter.
[6]Id.
[7]Id.
[8]Id.

Council membership.[9] That depends on whether Council members are "public officials," who are subject to the Code's provisions, or "members of an advisory board," who are "excluded from the definition of 'public official' and therefore . . . not subject to any of the provisions of the Code."[10]

Under General Statutes § 1-79 (k), the term "public official" includes, among others, individuals appointed to any office of the legislative, judicial, or executive branch of state government by the Governor, a gubernatorial appointee, or a member of the General Assembly—but does not include a member of an advisory board. Here, Council members are appointed by members of the General Assembly (i.e., state legislative leaders) to an executive branch office (i.e., the Council, which is, by statute, within DSS, an executive branch state agency),[11] meaning that Council members meet the definition of "public official" insofar as their appointment is concerned.

The question now is whether they also meet the definition of "member of an advisory board," for if so, they are statutorily excluded from the definition of "public official" and, by implication, not bound by the Code's provisions. The term "member of an advisory board" includes, among others, "any individual

> (1) appointed by a public official as [a] . . . member of a . . . council established to advise, recommend or consult with a public official . . .
>
> (2) who receives no public funds other than per diem payments or reimbursement for his actual and necessary expenses incurred in the performance of his official duties, and
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> (3) who has no authority to expend any public funds or to exercise the power of the state."[12]

Addressing the definition's first two parts, Council members receive no public funds (i.e., they are uncompensated) and are appointed by public officials (i.e., state legislative leaders) to a council established to *advise* a public official

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[9]The Council is composed of sixteen members, including the "Commissioners of Social Services, Education, Children and Families and Public Health," who serve ex officio. General Statutes § 17b-751 (b). The Commissioners of those four state agencies are already "public officials," as defined in General Statutes § 1-79 (k), and, as such, are subject to the Code. The question at hand deals with the effect on the other twelve members of their Council membership.

[10]Advisory Opinion No. 80-2.

[11]See General Statutes § 17b-751 (b).

[12]General Statutes § 1-79 (h).

(i.e., the DSS Commissioner). In fact, the Council's enabling provision states that the Trust Fund's resources "shall be used by the . . . the *Commissioner of Social Services with the advice of the Children's Trust Fund Council* . . . ."[13] It also states that "[t]he *Commissioner of Social Services, with the advice of the Children's Trust Fund Council*, shall adopt regulations . . . to administer the fund and to set eligibility requirements for programs seeking funding."[14] Thus, Council members satisfy the first and second parts of the definition of "member of an advisory board."

That leaves the definition's third part, and the question of whether Council members have the "authority to expend any public funds or to exercise the power of the state."[15] In Advisory Opinion No. 99-12, the former State Ethics Commission ("SEC") determined that Council members did indeed have such authority, based on the fact that the "Council oversees the administration of approximately $3.5 million in contracts and grants to public and private non-profit organizations." That being the case, the SEC deemed Council members to be "public officials" (and therefore subject to the Code) rather than "members of an advisory board."

Then came, a decade later, Public Acts 2009, No. 09-5, in which the General Assembly ended the Council's status as an independent state agency; moved the Council from the Department of Children and Families, where it had existed for administrative purposes only, and placed it "within" DSS; removed its authority to employ an executive director and staff; transferred its authority to expend Trust Fund resources and draft regulations to the DSS Commissioner, who is to act "with the advice of the Children's Trust Fund Council"; and delegated its authority to administer various programs and services to DSS, which is to act "with the guidance of the Children's Trust Fund Council . . . ." Because the Council no longer has independent authority to expend state funds or exercise state power,[16] but rather acts in a purely advisory capacity to the DSS

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[13](Emphasis added.) General Statutes § 17b-751 (a).

[14](Emphasis added.) Id.

[15]General Statutes § 1-79 (h).

[16]Although it may appear that the Council is authorized to exercise state power by virtue of General Statutes §§ 17b-751a ("Eligibility for grants under the Kinship Fund and Grandparents and Relative Respite Fund") and 17b-751b ("Nurturing Families Network"), those provisions are qualified by General Statutes § 17b-751d (a), which states, in relevant part: "*The department [i.e., DSS]*, with the guidance of the Children's Trust Fund Council . . . *shall be responsible for implementing and maintaining* programs and services, including, but not limited to: (A) The Nurturing Families Network, established pursuant to subsection (a) of section 17b-751b . . . (D) the Kinship Fund and Grandparent's Respite Fund . . . ." (Emphasis added.) Thus, § 17b-751d (a) makes clear that the Council does not exercise independent authority, but rather acts in an advisory capacity to DSS, with respect to the programs and services established under §§ 17b-751a and 17b-751b.

Commissioner, its members satisfy the third part of the definition of "member of an advisory board."

Accordingly, we conclude that, having met each part of the three-part definition of "member of an advisory board," Council members are "excluded from the definition of 'public official' and therefore . . . not subject to any of the provisions of the Code."[17] It follows, in answer to Petitioner's other questions, that the Code will not prohibit Petitioner from joining The Connecticut Forum's board of directors, or members of agencies that have or have had contracts with the Trust Fund from serving as Council members.

[17]Advisory Opinion No. 80-2.