

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: OSE Employees and Board Members Volunteering Personal Time for Municipal, State, and Federal Political Campaigns

DATE: December 11, 2009

Introduction

The Citizen’s Ethics Advisory Board issues this advisory opinion at the request of Michael A. Winkler, first vice-president of the Administrative and Residual Employees Union Local 4200. In a letter to the Office of State Ethics (“OSE”), he asks a series of questions regarding the extracurricular political activities of classified OSE employees. Some of those questions were addressed in a prior advisory opinion,¹ some we save for a future opinion, and one we address here.

Question

Specifically, we consider whether OSE employees and members of the Citizen’s Ethics Advisory Board (“board members”) may “[v]olunteer time and/or services for federal, state or municipal campaigns,” without violating the Code of Ethics for Public Officials, chapter 10, part 1, of the General Statutes.²

Conclusion

We conclude that OSE employees and board members may, in their personal capacities, provide “uncompensated services . . . volunteering their time” for federal, state, or municipal campaigns—even if the candidate is subject to the Code’s provisions—without violating the Code of Ethics for Public Officials.

¹See Advisory Opinion No. 2009-4 (defining “public office” and what it means to hold “office in any political party or political committee,” for purposes of General Statutes § 1-80 (b)).

²Letter from Michael A. Winkler, first vice-president, Administrative and Residual Employees Union Local 4200, to Barbara Housen, general counsel, Office of State Ethics (March 7, 2009) (on file with the Office of State Ethics). Although Mr. Winkler asks whether classified OSE employees may engage in the proposed conduct, we address whether all OSE employees (classified and unclassified) and board members may do so.

Analysis

To resolve the question before us, “we must examine the relevant statutes, mindful of the dictates of General Statutes § 1-2z and [the] well established rules of statutory construction.”³ Under § 1-2z, when construing a statute, we look first to its text and its relationship to other statutes, and if, after doing so, “the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” When a statute is not plain and unambiguous, we seek interpretive guidance from, among other things, “the legislative history and circumstances surrounding its enactment”⁴

We begin with General Statutes § 1-80 (i), which provides as follows: “No member or employee of the board or Office of State Ethics may make a contribution, as defined in section 9-601a, to any person subject to the provisions of this part.” Because § 1-80 (i) is located in part I of chapter 10 of the General Statutes, it is clear that, by “this part,” the legislature meant the “Code of Ethics for Public Officials” (“Code”).⁵ Thus, it is to persons subject to the Code’s provisions that OSE employees and board members may not make a “contribution.”

Which raises the question, what is a “contribution”? Again, § 1-80 (i) forbids OSE employees and board members from making a “contribution, *as defined in section 9-601a*,” to persons subject to the Code’s provisions.⁶ Section 9-601a is located in chapter 155 of the General Statutes, entitled “Elections: Campaign Financing.” There, it states in subsection (a) what the term “contribution” means, and then goes on to state in subsection (b) what it does not mean: “‘contribution’ does not mean . . . (4) Uncompensated services provided by individuals volunteering their time”⁷

Taking that and reducing it to syllogistic form, we are left with the following:

- Major premise: Under § 1-80 (i), OSE employees and board members may not make a “contribution,” as defined in § 9-601a, to persons subject to the Code’s provisions.

³*State v. Nathan J.*, 294 Conn. 243, ___, ___ A.2d __ (2009).

⁴(Internal quotation marks omitted.) *Rainforest Cafe, Inc. v. Dept. of Revenue Services*, 293 Conn. 363, 372, 977 A.2d 650 (2009).

⁵See Advisory Opinion No. 2003-7.

⁶(Emphasis added.)

⁷General Statutes § 9-601a.

- Minor premise: The term “contribution,” as defined in § 9-601a, *explicitly* excludes “[u]ncompensated services provided by individuals volunteering their time”
- Conclusion: OSE employees and board members may, without violating § 1-80 (i), provide “[u]ncompensated services . . . volunteering their time” to persons subject to the Code’s provisions.

And from that, at least this much is plain and unambiguous: OSE employees and board members may, in their personal capacities, provide “uncompensated services . . . volunteering their time” for federal, state, or municipal campaigns—even if the candidate is subject to the Code’s provisions—without violating § 1-80 (i).

But would they be violating any other Code provision? The only other provisions that might prohibit such activity are subsections (b) and (h) of General Statutes § 1-80. Under § 1-80 (b), OSE employees and board members may not “(1) hold or campaign for any public office . . . [or] (3) hold office in any political party or political committee” But in simply providing “[u]ncompensated services . . . volunteering their time” for federal, state, or municipal campaigns, they would not be violating the prohibitions on holding public office,⁸ or holding office in a political party or political committee.⁹ Nor would they be violating the prohibition in § 1-80 (b) (1) on “campaign[ing] for any public office,” given that, in Advisory Opinion No. 2009-4, we concluded that those words mean “being a candidate” for public office.¹⁰

That leaves § 1-80 (h), an eleven-part code of conduct that applies only to OSE employees and board members. Of the eleven subdivisions in § 1-80 (h), three of them arguably could be read to prohibit the volunteer activity at issue.

⁸To hold “public office,” for purposes of § 1-80 (b), means to hold “elective office—be it municipal, district, state, or federal.” Advisory Opinion No. 2009-4.

⁹As to the prohibition in § 1-80 (b) (3) on OSE employees and board members holding office in any “political party or political committee,” in Advisory Opinion No. 2009-4, we adopted the definitions of the terms “political party officer” and “political committee” from General Statutes §§ 9-7a and 9-601 (3), respectively.

¹⁰Our reasoning, although not explicit, proceeded as follows: Under subdivisions (1) and (2) of § 1-80 (b), OSE employees and board members may not “(1) hold or campaign for any public office; (2) have held public office or have been a candidate for public office for a three-year period prior to appointment” Parsing that language, they may not “hold” (present tense) or “have held” (past tense) public office; *nor may they “campaign” for public office (present tense) or “have been a candidate for public office” (past tense)*. That said, the context in which the words “campaign for any public office” are used suggests that they were intended simply to express the present tense of the words “have been a candidate for public office.”

Those three—subdivisions (1), (2), and (4)—provide, respectively, that OSE employees and board members shall “[o]bserve high standards of conduct so that the integrity and independence of the Citizen’s Ethics Advisory Board and the Office of State Ethics may be preserved”; “conduct themselves at all times in a manner which promotes public confidence in the integrity and impartiality of the board and the Office of State Ethics”; and “be unswayed by partisan interests, public clamor or fear of criticism”¹¹

But to read those exceedingly general provisions in § 1-80 (h) to forbid what is clearly permitted under the specific language in § 1-80 (i) would be to violate this basic rule of statutory construction: “When general and specific statutes conflict they should be harmoniously construed so the more specific statute controls.”¹² In other words, “[h]owever inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment.”¹³ Thus, to paraphrase the United States Supreme Court, “a specific statute, here subsection [(i)], controls over a general provision such as subsection [(h)], particularly when the two are interrelated and closely positioned, both in fact being parts of § [1-80] relating to” restrictions on OSE employees and board members.¹⁴ (Indeed, subsections (h) and (i) of § 1-80 could not be any more “closely positioned”; to state the obvious, they abut each other.)

¹¹The other subdivisions in § 1-80 (h) provide that OSE employees and board members must “(3) be faithful to the law and maintain professional competence in the law . . . (5) maintain order and decorum in proceedings of the board and Office of State Ethics; (6) be patient, dignified and courteous to all persons who appear in board or Office of State Ethics proceedings and with other persons with whom the members and employees deal in their official capacities; (7) refrain from making any statement outside of a board or Office of State Ethics proceeding, which would have a likelihood of prejudicing a board or Office of State Ethics proceeding; (8) refrain from making any statement outside of a board or Office of State Ethics proceeding that a reasonable person would expect to be disseminated by means of public communication if the member or employee should know that such statement would have a likelihood of materially prejudicing or embarrassing a complainant or a respondent; (9) preserve confidences of complainants and respondents; (10) exercise independent professional judgment on behalf of the board and Office of State Ethics; and (11) represent the board and Office of State Ethics competently.”

¹²(Internal quotation marks omitted.) *State v. Whitford*, 260 Conn. 610, 640-41, 799 A.2d 1034 (2002); see also *Gifford v. Freedom of Information Commission*, 227 Conn. 641, 653-54, 631 A.2d 252 (1993) (“[i]f there are two provisions in a statute, one of which is general and designed to apply to cases generally, and the other is particular and relates to only one case or subject within the scope of a general provision, then the particular provision must prevail”).

¹³(Internal quotation marks omitted.) *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228, 77 S. Ct. 787, 1 L. Ed. 2d 786 (1957).

¹⁴*HCSC-Laundry v. United States*, 450 U.S. 1, 6, 101 S. Ct. 836, 67 L. Ed. 2d 1 (1981).

To illustrate, we consider two court decisions from other states involving interpretations of state codes of judicial conduct—decisions that are particularly relevant given that, according to its legislative history, § 1-80 (h) was “drawn from provisions of the Code of Ethics applying to Judges of the Superior Court” (that is, the Connecticut Code of Judicial Conduct).¹⁵

In the first, *In the matter of: Honorable George W. Hill, Jr., Judge, Circuit Court of Wood County*, the Supreme Court of Appeals of West Virginia addressed whether the named judge had violated the state Judicial Code of Ethics by endorsing a candidate for public office during his own judicial reelection campaign.¹⁶ It was argued that his conduct violated (among other provisions) Canon 2, under which a judge “should avoid impropriety and the appearance of impropriety in all his activities,” and “should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.”¹⁷ Rejecting that argument, the court noted that another canon (Canon 7A (1) (b)) dealt directly with the conduct in question and thus controlled over Canon 2:

Canon 7A (1) (b) is plain and unambiguous. It clearly states that a judge *who is not* a candidate may not publicly endorse a candidate for public office. Just as clearly, this canon does not prohibit the endorsement of a candidate by a judge *who is* a candidate. Unlike . . . Canon 2 . . . Canon 7A (1) (b) specifically addresses the question of whether a judge can publicly endorse a candidate for public office. A specific section of a statute controls over a general section of the statute. . . . Canon 2 is general in nature.¹⁸

In the second decision, *Adair v. Michigan*, the Michigan Supreme Court addressed a motion to disqualify two of its justices from the case because their spouses were employed by the Attorney General’s Office.¹⁹ It was argued that their participation in cases involving that office would violate Canon 2 of the Michigan Code of Judicial Conduct, “which indicates that judges should avoid all impropriety and appearance of impropriety.”²⁰ Disagreeing, the court explained that the general language of Canon 2 had to give way to the specific language of Canon 3(C), which pertained specifically to questions of judicial disqualification.²¹ According to the court:

¹⁵31 H.R. Proc., Pt. 8, 1988 Sess., p. 2617.

¹⁶190 W. Va. 165, 437 S.E.2d 738 (1993).

¹⁷*Id.*, 167.

¹⁸ (Citations omitted; emphasis in original; internal quotation marks omitted.) *Id.*

¹⁹474 Mich. 1027, 1028, 709 N.W.2d 567 (2006).

²⁰*Id.*, 1038.

²¹*Id.*

Canon 3(C) is specific and directly on point. The “appearance of impropriety” standard [in Canon 2] is relevant not where there are specific court rules or canons that pertain to a subject, such as judicial disqualification, but where there are *no* specific court rules or canons that pertain to a subject and that delineate what is permitted and prohibited judicial conduct. Otherwise, such specific rules and canons would be of little consequence if they could always be countermanded by the vagaries of an “appearance of impropriety” standard. Here, there are specific rules and canons that pertain to judicial disqualifications, and these must be understood as defining what does and what does not constitute an impropriety in this realm.²²

So were we to read the general provisions of § 1-80 (h) to prohibit what is plainly and unambiguously permitted under the specific language of § 1-80 (i) (i.e., the volunteer activity at issue), we would violate the basic rule of statutory construction that the specific governs the general—a rule that is especially relevant “if applying the general provision would render the specific provision superfluous, as it would here.”²³ “A statute is rendered superfluous . . . if a general statute can cover every possible circumstance covered by the specific.”²⁴ That said, if we read § 1-80 (h) to *prohibit* what § 1-80 (i) *permits*, it follows logically that § 1-80 (h) *must also* prohibit what § 1-80 (i) prohibits—thus robbing the latter of all practical effect. Put differently, such a broad reading of § 1-80 (h) would render § 1-80 (i) superfluous, with the general provision swallowing the specific one. We decline to read it that way.

Nor does the legislative history of § 1-80 (h) or the circumstances surrounding its enactment suggest that we should read it that way.²⁵ Starting with the legislative history, during the debate in the House of Representatives on the language in § 1-80 (h), the provision’s purpose was expressed no fewer than three times. First: “[I]t’s simply to ensure that members of the Commission who occupy a very sensitive position of trust, if you will, will abide by certain basic standards

²²(Emphasis in original.) *Id.*, 1039.

²³*Norwest Bank Minnesota National Assn. v. FDIC*, 312 F.3d 447, 451 (D.C. Cir. 2002); see also *Carmel Hollow Associates Ltd. Partnership v. Bethlehem*, 269 Conn. 120, 135, 848 A.2d 451 (2004) (“It is a basic tenet of statutory construction that the legislature did not intend to enact meaningless provisions. . . . Statutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant” [Internal quotation marks omitted.]).

²⁴*Bobb v. United States AG*, 458 F.3d 213, 224 (3d Cir. 2006).

²⁵Because § 1-80 (h) is not plain and unambiguous, we look for interpretive guidance to these extrinsic aids. See *Rainforest Cafe, Inc. v. Dept. of Revenue Services*, *supra*, 293 Conn. 372.

of decorum and also sensitivity to the people which they regulate.”²⁶ Second: “It simply, I think, sets forth a minimum set of standards about the respect with which they are to apply towards the parties that come before the Ethics Commission.”²⁷ And third: “[I]t was thought fit to make clear that we would like our Ethics Commission to conduct themselves in their judicial proceedings the same way that we would like our judges to conduct themselves in our judicial proceedings. It’s as simple as that.”²⁸ Thus, the apparent intent of § 1-80 (h) was to establish basic standards of conduct expected of Ethics Commission employees and members during the course of ethics proceedings (e.g., “be patient, dignified and courteous”; “maintain order and decorum”; “preserve confidences of complainants”)—*not* to prohibit them from engaging in volunteer political activity in a personal capacity.²⁹

That makes perfect sense in light of the circumstances surrounding the enactment of § 1-80 (h). As noted above, § 1-80 (h) was drawn from the provisions of the Connecticut Code of Judicial Conduct. And what is most revealing is not which of those provisions the legislature chose to include in § 1-80 (h), but which of them it chose to omit: namely, Canon 5, under which “A Judge Should Regulate the Judge’s Extrajudicial Activities to Minimize the Risk of Conflict with His or Her Judicial Duties”; and—even more tellingly— Canon 7, under which “A Judge Should Refrain from Political Activity Inappropriate to the Judicial Office.”³⁰ The latter canon starts with very specific prohibitions on political activity (e.g., a judge should not “publicly endorse a candidate for public office”), and it concludes by stating that “[a] *judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.*”³¹ Section 1-80 (h) contains nothing of the sort, and we must assume therefore that the legislature did not intend such activities to fall within its scope.

To summarize, § 1-80 (i) is plain and unambiguous in permitting OSE employees and board members to provide “[u]ncompensated services . . . volunteering their time” to persons subject to the Code’s provisions. Further, nothing in § 1-80 (b) can be read to prohibit such volunteer activity; and to read §

²⁶31 H.R. Proc., supra, p. 2616.

²⁷31 H.R. Proc., supra, p. 2617.

²⁸31 H.R. Proc., supra, p. 2627.

²⁹But that is not to say that an OSE employee or board member can never violate the provisions of § 1-80 (h) while engaging in such volunteer political activity. For example, if while volunteering his or her personal time for a Connecticut gubernatorial campaign, an OSE employee makes a “statement . . . which would have a likelihood of prejudicing a board or Office of State Ethics proceeding,” he or she would violate § 1-80 (h) (7). As to the consequences of violating a provision of § 1-80 (h), we leave that issue for another day.

³⁰Code of Judicial Conduct.

³¹(Emphasis added.) Code of Judicial Conduct, Canon 7.

1-80 (h) as prohibiting it would violate the rules of statutory construction that the specific controls the general, and that no word in a statute should be treated as superfluous. Moreover, such a reading of § 1-80 (h) is justified neither by its legislative history nor by the circumstances surrounding its enactment.

Accordingly, we conclude that OSE employees and board members may, in their personal capacities, provide “uncompensated services . . . volunteering their time” for federal, state, or municipal campaigns—even if the candidate is subject to the Code’s provisions—without violating the Code.