



STATE OF CONNECTICUT OFFICE OF STATE ETHICS

Draft Declaratory Ruling No. 2015-B

May 14, 2015

Question Presented: The petitioner asks whether members of the Healthcare Innovation Steering Committee, its subcommittees, and the Consumer Advisory Board are subject specifically to the Code of Ethics for Public Officials, and more generally prohibited from financial or other gain from committee activities or service.

Brief Answer: We conclude that members of the Healthcare Innovation Steering Committee, its subcommittees, and the Consumer Advisory Board are not subject to the Code of Ethics for Public Officials. Consequently, this board lacks jurisdiction over said members and, therefore, is not in the position to answer whether they are prohibited from financial or other gain from committee activities or service.

At its April 2015 regular meeting, the Citizen's Ethics Advisory Board ("board") granted the petition for a declaratory ruling¹

¹Although the petitioner completed the "Petition for Advisory Opinion" form and not the "Petition for Declaratory Ruling" form (both located on OSE's website), her request is technically for a declaratory ruling. The primary difference between a declaratory ruling and an advisory opinion is that General Statutes § 1-81 (a) (3) permits the issuance of advisory opinions only to persons subject to the Code of Ethics for Public Officials,

submitted by Ellen Andrews, on January 18, 2015. The board now issues this declaratory ruling pursuant to § 1-92-39b of the Regulations of Connecticut State Agencies.

Facts

The following facts and argument, including those set forth by the petitioner, are relevant to this ruling:

The entities at issue, the Healthcare Innovation Steering Committee (“Steering Committee”), its subcommittees², and the Consumer Advisory Board (“CAB”) were all created to implement healthcare reforms in Connecticut. In March 2013, Connecticut received a \$2.8 million planning grant from the Center for Medicaid and Medicare Innovation to develop a State Healthcare Innovation Plan (“Innovation Plan”). The charge was to design a model for healthcare delivery that will promote better health while eliminating health disparities, improved healthcare quality and experience, and reduction of growth in healthcare costs. The Innovation Plan was developed and subsequently completed on December 30, 2013. The Steering Committee, its subcommittees, and the CAB comprise key elements of the governance, implementation and oversight of the Innovation Plan.

The establishment of the Steering Committee and its subcommittees is not referenced in any way in the Connecticut General Statutes. Although the CAB is referenced in Public Act No. 11-58, which required the Office of Health Reform and Innovation to convene such board by date certain, the manner of appointment and authority of the CAB was not articulated by statute.³

The general guidance regarding the formation and authority of the organizations at issue can be found in the Innovation Plan. The Innovation Plan, initially administered by the Office of Health

chapter 10, part I, of the General Statutes. All others may request declaratory rulings. See Regs., Conn. State Agencies §§ 1-92-38 and 1-92-39a.

²Healthcare Information Technology Council; Practice Transformation Taskforce; Quality Council; Equity and Access Council; and Workforce Council.

³General Statutes § 19a-724, which contained the provisions set forth in Public Act 11-58, was subsequently repealed in 2013.

Reform and Innovation,⁴ has been managed since January 2014 by the successor agency, the State Innovation Model Program Management Office.

Under the Innovation Plan, the Lieutenant Governor is responsible for establishing a Steering Committee, comprised of various stakeholders, including representatives from a number of state agencies, hospitals, healthcare organizations, insurance industry, and nonprofit/community organizations.⁵ Members of the Steering Committee are appointed by the Lieutenant Governor.⁶ Service on the Steering Committee is unpaid. According to the Innovation Plan, the Steering Committee is responsible for providing strategic guidance regarding the State Innovation Model.

In turn, according to the Final Workgroup Composition Guidelines reviewed and recommended by the Steering Committee at its February 18, 2014 meeting, the Steering Committee will determine the size, composition and membership of the CAB and Councils/Taskforces⁷ for the State Innovation Model Initiative. Similarly, service on the CAB and the five subcommittees is unpaid. Based on the minutes of the Steering Committee proceedings from 2014, the Steering Committee voted and approved a number of members to the CAB and subcommittees who represent various stakeholders.⁸ In fact, many members of the Steering Committee, its subcommittees and the CAB hold high level positions in organizations that have interest in the proceedings and deliberations of the governance structures formed under the Innovation Plan.

According to the Innovation Plan, the Steering Committee

⁴Although the Office of Health Reform and Innovation was established in the Office of Lieutenant Governor, pursuant to Public Act No. 11-58, its functions were subsequently inherited by the State Innovation Model Program Management Office.

⁵Connecticut Healthcare Innovation Plan, dated December 30, 2013, page 17, 139.

⁶Connecticut SIM Test Proposal – Project Narrative, page 34.

⁷The term “Councils/Taskforces” applies to the five subcommittees referenced in the petitioner’s question.

⁸See, for example, Steering Committee Special Meeting Minutes of April 22, 2014. The Steering Committee minutes are posted on the Healthcare Innovation Central website (last visited on May 13, 2015).

receives guidance and input from the CAB.⁹ Whereas, the five subcommittees will provide specialized advice and recommendations to the Steering Committee regarding various issues within their purview, including design and program development.

The Steering Committee approves budgetary items in its execution of the Innovation Plan. The Steering Committee, relying on work by subcommittees and the CAB, drafted and submitted a successful application for \$48 million in federal funds.

For example, the CAB was allocated \$1.4 million in the Innovation Plan budget and developed their own budget for those funds. The budget included travel and technology tools for the CAB members, as well as at least \$200,000 in funding to community organizations. The CAB members work for organizations that could apply for those funds.

Analysis

In order to determine whether members of the Steering Committee, its subcommittees and the CAB are subject to the Code of Ethics for Public Officials, chapter 10, part I, of the General Statutes (“ethics code”), we must ascertain whether such members are “state employee[s],” as defined in General Statutes § 1-79 (13), or “public official[s],” as defined in General Statutes § 1-79 (11). The members are certainly not “state employee[s]” as they are appointed to unpaid positions. Therefore, we look to the definition of “public official,” which states as follows:

“Public official” means any state-wide elected officer, any member or member-elect of the General Assembly, any person appointed to any office of the legislative, judicial or executive branch of state government by the Governor or an appointee of the Governor, with or without the advice and consent of the General Assembly . . . any person appointed or elected by the General Assembly or by any member of either house

⁹Connecticut Healthcare Innovation Plan, dated December 30, 2013, page 86.

thereof, any member or director of a quasi-public agency and the spouse of the Governor¹⁰

Based on this definition, it becomes readily apparent that members of the Steering Committee, its subcommittees and CAB are not “public official[s].” The definition of the “public official” does not include a person appointed by the Lieutenant Governor or an appointee of a Lieutenant Governor. Because members of the Steering Committee are appointed by a Lieutenant Governor, as opposed to the Governor, they do not meet the appointment requirements set forth in the definition of a “public official.” In turn, members of the CAB and the five subcommittees also are not considered “public official[s]” because their appointments are approved by the Steering Committee and not by any appointing authority required for appointment of a “public official.”

Hence, to answer the petitioner’s specific question, because members of the Steering Committee, its subcommittees and the CAB are neither “state employee[s]” nor “public official[s],” they are not subject to the ethics code.¹¹

Consequently, this board lacks jurisdiction over said members and, therefore, is not in the position to answer the petitioner’s general question whether they are prohibited from financial or other gain from committee activities or service.

Nevertheless, based on the facts presented, it appears that members of the Steering Committee, its subcommittees and the CAB exercise considerable authority in approving the design and development of various programs as they relate to healthcare reform and innovation in Connecticut, including funding. Therefore, the board takes this opportunity to recommend that members of the entities discussed herein, if they have not already done so, adopt internal ethics policies to address any conflicts of interest concerns.

¹⁰General Statutes § 1-79 (11).

¹¹We note that certain members of the Steering Committee are state employees or public officials by virtue of holding other state office or position.

Conclusion

We conclude that, because members of the Steering Committee, its subcommittees and the CAB are neither “state employee[s]” nor “public official[s],” they are not subject to the ethics code. Consequently, this board lacks jurisdiction over said members and, therefore, is not in the position to answer whether they are prohibited from financial or other gain from committee activities or service.

By order of the Board,

Dated _____

Chairperson