



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

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Draft Advisory Opinion No. 2012-2

January 26, 2012

Questions Presented:

The petitioner asks whether members of the Connecticut Bar Examining Committee (“CBEC”) who are appointed by judges are “public officials”—as that term is defined in General Statutes § 1-79 (k)—and thus subject to the Code of Ethics for Public Officials.

Brief Answer:

Members of the CBEC who are appointed by judges are not “public officials”—as that term is defined in General Statutes § 1-79 (k)—and are thus not subject to the Code of Ethics for Public Officials.

At its December 2011 regular meeting, the Citizen’s Ethics Advisory Board (“Board”) granted the petition for an advisory opinion submitted by Peter Lewandowski, Assistant General Counsel at the Office of State Ethics. The Board issues this advisory opinion on the date shown below in accordance with General Statutes § 1-81 (a) (3). The opinion interprets the Code of Ethics for Public Officials (“Ethics Code”)¹ and its regulations, is binding on the Board concerning the person who requested it and who acted in good-faith reliance thereon, and is based solely on the facts provided by the petitioner.

Facts

Generally, a petitioner’s facts are set forth in this section, but because the question presented is one of legal interpretation and there are no specific facts involved, the petitioner’s detailed question is presented instead:

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

In accordance with General Statutes § 1-81 (a) (3), I write to request a formal opinion of the Citizen's Ethics Advisory Board with respect to the application of the Code of Ethics, Part I, to members of the Connecticut Bar Examining Committee (“CBEC”). Pursuant to the Connecticut Practice Book, members of the CBEC are appointed as follows:

There shall be an examining committee appointed by the judges of the superior court consisting of twenty-four members, of whom at least one shall be a judge of said court, and the rest attorneys residing in this state.²

Judges, in turn, are appointed pursuant to the Connecticut Constitution and Connecticut General Statutes, as follows:

The judges of the supreme court, of the appellate court and of the superior court shall, upon nomination by the governor, be appointed by the general assembly in such manner as shall by law be prescribed.³

Judges of all courts, except those courts to which judges are elected, shall be nominated by the Governor exclusively from the list of candidates or incumbent judges submitted by the Judicial Selection Commission.⁴

Each appointment of ... a judge of the ... Superior Court shall be by concurrent resolution. The action on the passage of each such resolution in the House and in the Senate shall be by vote taken on the electrical roll-call device. No resolution shall contain the name of more than one nominee.⁵

Specifically, my question is whether CBEC members who are appointed by judges are public officials—as that term is defined in General Statutes § 1-79 (k)—and thus subject to the Code of Ethics for Public Officials.

²Practice Book § 2-3.

³Conn. Const., art. XX, § 2.

⁴General Statutes § 51-44a (h) (1).

⁵General Statutes § 2-42.

Analysis

The issue at hand involves the Ethics Code's definition of "public official." That term is defined, in pertinent part, as

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 thereof, ... but shall not include a member of an advisory board, a judge of any court either elected or appointed⁶

Thus, to fit within the definition of "public official," CBEC members must be (1) appointed by the Governor, (2) appointed by an appointee of the Governor, or (3) appointed by the General Assembly. Under the Practice Book, CBEC members are not appointed by the Governor or by the General Assembly, but by judges.⁷ So the question is whether judges are appointees of the Governor, for if so, CBEC members would be appointed by appointees of the Governor and hence would be considered "public officials." According to the Connecticut Constitution, judges are appointed, not by the Governor (who simply nominates them), but by the General Assembly. That said, CBEC members are not appointed by appointees of the Governor and are therefore not "public officials," meaning they are not subject to the Ethics Code.

This conclusion is consistent with that reached in Advisory Opinion No. 79-28.⁸ In that opinion, the former State Ethics Commission ("SEC") considered whether members of the Public Defender Services Commission are "public officials" subject to the Ethics Code. Members of that commission are appointed as follows: "[t]wo of the members are judges, appointed by the Chief Justice; of the remaining five, four are appointed by the legislative leadership and one by the Governor."⁹ According to the SEC, members appointed by legislative leaders are "public officials." However, with respect to judges, the SEC concluded that: "as

⁶(Emphasis added.) General Statutes § 1-79 (k). This statute was amended by No. 99-56 of the 1999 Public Acts by adding "an appointee of the Governor" to the definition of "public official."

⁷Practice Book § 2-3.

⁸Connecticut Law Journal, Vol. 41, No. 26, p. 15 (December 25, 1979).

⁹*Id.*

members of the Public Defender Services Commission they are not ‘public officials’ *because they are appointed by the Chief Justice.*”¹⁰

Given the method of appointment, CBEC members fall outside the scope of the Ethics Code.¹¹ Thus, unless changed by the legislature, this body has no authority over members of the CBEC.

By order of the Board,

Dated

Chairperson

¹⁰ (Emphasis added.) Advisory Opinion No. 79-28. While the conclusion reached in Advisory Opinion No. 79-28 preceded the statutory change to “public official” in 1999, which included “appointee of the Governor,” its conclusion still holds because pursuant to the Constitution judges are not appointed by the Governor. Judges were not gubernatorial appointments prior to the statutory change and are still not. Thus, the statutory change is irrelevant.

¹¹This conclusion is consistent with that previously reached by a staff attorney of the Ethics Commission in an informal staff opinion. In that request, Attorney Marianne Smith was asked whether members of the Bar Examining Committee must file a report with the Ethics Commission when they are reimbursed for expenses associated with their attendance at conferences or meetings. Attorney Smith concluded that members of the CBEC “are not public officials within the meaning of the Code, are not subject to the jurisdiction of the Commission and, consequently, are not required to file reports of the receipt of necessary expenses.” Request for Advisory Opinion No. 1036 (1993).