



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

Draft Advisory Opinion No. 2015-3

July 9, 2015

Question Presented: The petitioner asks whether she may pursue post-state employment with the UCLA Graduate School of Education and Information Studies as Deputy Director of State Services for the Smarter Balanced Assessment Consortium, a position responsible for support of state departments of education, including the Connecticut Department of Education, her current state employer.

Brief Answer: We conclude that the petitioner may engage in the proposed post-state employment so long as she abides by the restrictions explained herein.

At its June 2015 regular meeting, the Citizen's Ethics Advisory Board ("Board") granted the petition for an advisory opinion submitted by Gail M. Pagano. 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.

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

Facts

The petitioner would like to engage in post-state employment as the Deputy Director of State Services for the Smarter Balanced Assessment Consortium. The facts, in the petition submitted by the petitioner, are as follows:

My name is Gail Pagano and I am currently employed as an Education Consultant at the Connecticut State Department of Education. I recently submitted an application for retirement benefits to the Connecticut Teacher's Retirement Board. My effective date of retirement will be October 1, 2015. I plan to apply for the position of Deputy Director of State Services for the Smarter Balanced Assessment Consortium. Since July 1, 2014, Smarter Balanced has existed under and operated as part of the UCLA Graduate School of Education Informational Studies.

I am writing to seek a formal advisory opinion from the Board on whether I may engage in post-state employment with UCLA, if I am offered the position of Deputy Director of State Services. Specifically, would accepting this position potentially violate any of the provisions of the State Ethics Code, in particular, the revolving door provisions provided in section 1-84b of the General Statutes? The relevant facts are as follows.

Connecticut has been a member of the Smarter Balanced Assessment Consortium since June 7, 2010. Connecticut continued membership in the Consortium with the execution of an MOU with UCLA dated September 30, 2014. I currently serve as Connecticut's Smarter Balanced K-12 State Lead, a position I have held since November 2012. In August 2014 I was elected by member states to serve as a member of the Smarter Balanced Executive Committee. My responsibilities as K-12 Lead and Executive Committee member are outlined in the Smarter Balance Assessment Governing Board Procedures.

I have reviewed the revolving door provisions

contained in section 1-84b and believe that accepting a position with the Consortium (if offered to me) with a start date of October 1, 2015 or later would not violate such rules. In addition to asking the Board to opine on whether my anticipated job opportunity would violate the revolving door rules contained in section 1-84b, I am also asking the Board for guidance on what activities, if any, I would be prohibited from engaging in during my first year of post-state employment.

Analysis

As a soon-to-be former “state employee” of the Department of Education, the petitioner will be subject to four of the Ethics Code’s post-state employment provisions – General Statutes §§ 1-84a, 1-84b (a), 1-84b (b), and 1-84b (f).

Addressing the most relevant provision first, pursuant to § 1-84b (f),

No former ... state employee (1) who participated substantially in the negotiation or award of ... a state contract valued at an amount of fifty thousand dollars or more, ... or (2) who supervised the negotiation or award of such a contract or agreement, shall accept employment with a party to the contract or agreement other than the state for a period of one year after his resignation from his state office or position if his resignation occurs less than one year after the contract or agreement is signed.

The word “employment,” as used in this subsection, includes “any work or endeavor, whatever its form, undertaken in order to obtain financial gain (e.g., employee of a business, sole practitioner, independent contractor, etc.)”²; and “substantial participation” includes “participation that was direct, extensive and substantive, not peripheral, clerical or ministerial.”³

Based on the facts provided by the petitioner, if she leaves state service on October 1, 2015, and the contract between the state of

²See Regs., Conn. State Agencies § 1-81-39.

³See Regs., Conn. State Agencies § 1-81-38 (a).

Connecticut and the Smarter Balanced Assessment Consortium was in fact signed by the state on September 30, 2014 (i.e., one year and a day before she anticipates leaving state service), then she is technically not barred by § 1-84b (f) from accepting post-state employment as Deputy Director of State Services with the Smarter Balanced Assessment Consortium upon leaving state service.⁴

Having addressed the most pertinent provision applicable to the petitioner's request, we now turn to the remaining restrictions that apply to the petitioner and to which she will need to abide by.

First, a former state employee may never disclose or use confidential information⁵ acquired in the course of her state position to obtain financial gain for herself or others.

Second, a former state employee may never represent anyone other than the state concerning any particular matter in which she participated personally and substantially while in state service and in which the state has a substantial interest. This prohibition, which has no time limit and applies regardless of the forum, forbids former government officials from "side-switching" in the midst of an ongoing case or controversy. "Particular matter" is defined narrowly to include actions of specific application (e.g., contracts, grants, investigations), rather than those of general application (e.g., regulations, legislation, general policy).

Third, and finally, for one year after leaving state service, the petitioner may not "represent anyone, other than the state, for

⁴See Advisory Opinion No. 1993-16, Connecticut Law Journal, Vol. __, No. __, p. __ (Date). (The state "signed the document on July 22, 1992. The clear language of 1-84b(f) bans acceptance of such employment until 'one year after the contract is signed.' Therefore, Mr. Meehan may not accept such employment until after July 22, 1993.")

⁵"The term confidential information shall include: (1) any information in the possession of the State, a state employee, or a public official, whatever its form, which is mandatorily non-disclosable to the general public under any state or federal statute, regulation, or provision; and (2) any information in the possession of the State, a state employee, or a public official whatever its form, which falls within a category of permissibly non-disclosable information under the Freedom of Information Act, Chapter 3 of the general statutes, and which the appropriate agency or individual has decided not to disclose to the general public." Regs., Conn. State Agencies § 1-81-15.

compensation before [the state entity] in which [she] served at the time of [her] termination of service, concerning any matter in which the state has a substantial interest.”⁶ This provision’s purpose is to establish ‘a cooling off’ period to inhibit use of influence and contacts with one’s former agency colleagues for improper financial gain.”⁷ To that end, “represent” is broadly defined as doing any activity that reveals one’s identity, including, for example, appearing in person, signing a document, or identifying oneself on the telephone.⁸ This provision does not bar the petitioner from contacting other state agencies, nor does it prevent her from working “back at the office” on matters that may come before her former agency (so long as her role in the matter is not apparent).⁹

Conclusion

We conclude, based on the facts presented, that the petitioner may engage in post-state employment with the UCLA Graduate School of Education and Information Studies as Deputy Director of State Services for the Smarter Balanced Assessment Consortium so long as she abides by the restrictions explained herein.

By order of the Board,

Dated _____

Chairperson

⁶General Statutes § 1-84b (b).

⁷Advisory Opinion No. 98-21, Connecticut Law Journal, Vol. __, No. __, p. __ (Date).

⁸Advisory Opinion No. 86-11, Connecticut Law Journal, Vol. __, No. __, p. __ (Date).

⁹See Advisory Opinion No. 2004-15, Connecticut Law Journal, Vol. __, No. __, p. __ (Date).