

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: Draft Response to RAO # 4270

DATE: April 24, 2006

INTRODUCTION

The Citizen's Ethics Advisory Board issues this advisory opinion in response to a question raised by the assistant ethics enforcement officer for the Office of State Ethics. Specifically, he asked whether the University of Connecticut would constitute a "former agency" of any Governor of the state of Connecticut for purposes of General Statutes § 1-84b (b), a revolving-door provision in the Code of Ethics for Public Officials, chapter 10, part 1, of the General Statutes (Code of Ethics).

RELEVANT FACTS

The following facts are relevant to this opinion. The University of Connecticut (university) is governed by a Board of Trustees (board), which sets general policy at the university; that is, although the board does not manage the university's day-to-day operations, it is responsible for making major policy decisions that affect practically every aspect of university life. See General Statutes § 10a-104. Among its many responsibilities, the board is charged by statute with:

- making rules for governing the university;
- developing mission statements for the university and its branches;
- establishing schools, colleges, divisions, and departments within the university;
- managing the university's investments;
- promoting fundraising and establishing gift policies; and
- appointing a president of the university.

See General Statutes §§ 10a-104 through 10a-108.

To carry out the many responsibilities, there are twenty-one board members, twelve of whom are appointed by the Governor to six-year terms, two by university alumni to four-year terms, and two (one graduate and one undergraduate) by university students to two-year terms. General Statutes § 10a-103. The remaining five members, who serve *ex officio* (that is, by virtue of an office or position they hold) and with full

voting privileges, include: the Commissioner of Agriculture; the Commissioner of Education; the Commissioner of Economic and Community Development; the Chairperson of the University of Connecticut Health Center Board of Directors; *and the Governor—who serves as president of the board.* General Statutes § 10a-103.

QUESTION

For purposes of § 1-84b (b), whether the university would constitute a “former agency” of a Governor of the state of Connecticut by virtue of his or her role as *ex-officio* president of the board.

ANALYSIS

The Code of Ethics contains a number of what are commonly referred to as “revolving-door” provisions, which limit the activities of former state employees and officials. See General Statutes §§ 1-84a and 1-84b (a) through (j). The revolving-door provision in question, § 1-84b (b), provides in relevant part as follows:

No former executive branch . . . public official . . . shall, for one year after leaving state service, represent anyone, other than the state, for compensation *before the department, agency, board, commission, council or office in which he served at the time of his termination of service,* concerning any matter in which the state has a substantial interest.

(Emphasis added.)

Under § 1-84b (b), for example, a Governor may not, for one year after leaving state service, represent anyone for compensation before the Office of the Governor concerning a matter in which the state has a substantial interest. A “substantial interest” is “an interest in a matter before a state agency in which the state has an interest of substance . . . because the matter affects the state’s rights, duties, or property in a significant way.” Advisory Opinion No. 86-11. If the state has such an interest in a particular matter, then a former Governor must refrain, for the one-year period, from revealing to the Office of the Governor his or her involvement in the matter, whether it be, for example, appearing in person, signing a document, or identifying him- or herself on the telephone. See, e.g., Advisory Opinion No. 90-16. A former Governor may, however, use his or her expertise “back at the office” (for example, preparing documents for submission to the Office of the Governor), so long as nothing ultimately submitted to the Office of the Governor contains his or her name. See Advisory Opinion No. 93-18.

The rationale underlying § 1-84b (b) is the establishment of a cooling-off period. Advisory Opinion No. 98-21. Specifically, it was enacted to prevent former executive branch officials and employees “from using contacts and influence gained during state service to obtain an improper advantage in their subsequent compensated dealings with their former agency.” Advisory Opinion No. 88-13. Restrictions under § 1-84b (b), it has been noted, “are aimed at contact with the former agency, since any contact could

result in preferential treatment by virtue of the individual's former status." Advisory Opinion No. 86-11. That said, whether the matter "involved is one with which the individual had contact as a public employee is irrelevant. The undue influence guarded against is that which results from mere association with the former agency. . . . A cooling period combats the exertion of undue influence, since that influence tends to fade with time." *Id.*

Keeping that rationale in mind, we turn to the question presented, namely: whether, in addition to the Office of the Governor, the university would constitute a "former agency" of a Governor for purposes of § 1-84b (b). See Advisory Opinion No. 2004-16 (concluding that a "state employee or official may have more than one 'former agency' for purposes of applying the one-year ban on appearing before one's 'former department, agency, board, commission, council or office' found in . . . § 1-84b (b)"). The answer to that question turns on whether, upon leaving state service, a Governor is considered to have "served" in the university. See General Statutes § 1-84b (b) (preventing compensated representation before the state entity "in which he served" at the time of termination of state service).

The issue of "service" in more than one state entity was addressed by the former State Ethics Commission (commission) in Advisory Opinion No. 86-11. In that opinion, the commission was asked, among other questions, whether an assistant attorney general who represented, and provided legal advice to, the state Department of Consumer Protection "served" in that department for purposes of § 1-84b (b). The commission answered that question in the negative, stating that the assistant attorney general technically did not "serve" in, but rather had an attorney/client relationship with, the Department of Consumer Protection.¹

Nevertheless, the commission expressed its discomfort with that conclusion, noting that although it was consistent with the plain language of § 1-84b (b), it was essentially at odds with the statutory purpose behind that provision. "Most persons serving in state agencies," the commission stated, "are likely to develop not only friendships but to acquire debts of obligation from those hired, promoted, or otherwise benefited by them"; and the assistant attorney general in question would have acquired "such friendships and IOUs" in both the Office of the Attorney General, in which he "served," and the Department of Consumer Protection, with which he had an attorney/client relationship. According to the commission, however: "Unless [§] 1-84b (b) is amended . . . [it] must interpret the language which has been enacted, whatever the legislature intended."

Like the assistant attorney general in that opinion, a Governor likely would acquire "friendships and IOUs" in the university. (Indeed, he or she is responsible for appointing a majority of the board members.) But unlike the assistant attorney general,

¹Implicit in that conclusion is the determination that the assistant attorney general was *not* prohibited by § 1-84b (b) from representing clients before the Department of Consumer Protection upon leaving state service.

whose relationship with the Department of Consumer Protection essentially was that of *outside* counsel, a Governor, as *ex-officio* president of the board, holds a position on the university's primary policy-making authority; and in that position, he or she has exactly the same rights and privileges as do all other board members, including the right to vote on matters that impact practically every aspect of university life.

A Governor, therefore, serves in the same capacity as any other board member, including the twelve members he or she is responsible for appointing to the board—each of whom, we note, is considered a “public official” under the Code of Ethics and, therefore, subject to the one-year ban on appearing before the university found in § 1-84b (b).² It would strain logic to conclude that a Governor, who possesses the same rights and privileges as those board members, not be subject to the same prohibition. Also, it would defeat the purpose of § 1-84b (b): “to prevent contact that may result in preferential treatment by virtue of the individual’s former status at the agency in question.” Advisory Opinion No. 93-15. Accordingly, we conclude that, upon leaving state service, a Governor is considered to have “served” in the university for purposes of § 1-84b (b); and, by implication, that the university would constitute a “former agency” of a Governor for purposes of that provision.³

Our conclusion is supported by the statutory framework governing “revolving door,” in which the phrase “*ex officio*” appears once—and does so in the provision immediately following § 1-84b (b). That is, the phrase “*ex officio*” appears in § 1-84b (c), another revolving-door provision, which prohibits certain state employees and officials from (1) seeking employment with any business subject to regulation by his or her agency or (2) accepting such employment within one year after leaving the agency. Section 1-84b (c) applies to public officials and state employees who hold or formerly held specifically-designated positions (positions that involve significant decision-making or supervisory authority) in certain state regulatory agencies. Importantly, at least insofar as we are concerned, § 1-84b (c) expressly exempts from its prohibitions *ex-officio* board or commission members:

The provisions of this subsection apply to present or former executive branch public officials or state employees who hold or formerly held positions which involve significant decision-making or supervisory responsibility and are designated as such by the Office of State Ethics in consultation with the agency concerned *except that such provisions shall not apply to members or former members of the boards or commissions who serve ex officio*

(Emphasis added.)

²Cf. Advisory Opinion No. 2001-31 (concluding that members of Board of Directors of University of Connecticut Health Center are “public officials” and, therefore, subject to “revolving-door” provisions).

³Our conclusion is unaffected by the fact that a Governor may have an individual in the Office of the Governor who serves as his or her representative to the board.

Thus, the legislature knows how to exempt *ex-officio* board and commission members from revolving-door prohibitions—as it did in § 1-84b (c)—but did not do so in § 1-84b (b), the immediately-preceding provision. This fact supports but one conclusion: that a Governor, as *ex-officio* president of the board, is subject to the one-year ban on appearing before the university found in § 1-84b (b).

CONCLUSION

It is the opinion of the Citizen’s Ethics Advisory Board that, for purposes of § 1-84b (b), the University of Connecticut would constitute a “former agency” of a Governor of the state of Connecticut by virtue of his or her role as *ex-officio* president of the Board of Trustees.

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