

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 # 4317

DATE: June 13, 2006

INTRODUCTION

The Citizen's Ethics Advisory Board issues this advisory opinion in response to a request submitted by the ethics liaison for the state Department of Public Works (DPW). In that request, the ethics liaison asked the following question: For purposes of the gift provisions in the Code of Ethics for Public Officials, chapter 10, part 1, of the General Statutes (Code of Ethics), whether a professional organization is deemed to be "doing business with or seeking to do business with" DPW by virtue of the fact that its membership includes individuals from companies that engage in such activity.

RELEVANT FACTS

The following facts, presented by the ethics liaison for DPW, are relevant to this opinion. DPW is responsible for, among other things, designing and constructing state buildings, negotiating and entering into leases, purchasing and disposing of real property, and maintaining state buildings. Consequently, architects, engineers, developers, lessors, and facility managers are among those who do business with or seek to do business with DPW. Individuals from those groups often are members of professional organizations, including, for example, the Connecticut Building Congress, Inc., Associated General Contractors of America, and the American Council of Engineering Companies. On occasion, an organization of that type would like to bestow an honor upon a DPW employee (e.g., a distinguished professional award) or grant an award in connection with a specific DPW project. Those awards and honors generally are presented at an event that includes food, beverage, a commemorative plaque, and/or entertainment.

QUESTION

For purposes of the gift provisions in the Code of Ethics, whether a professional organization is deemed to be "doing business with or seeking to do business with" DPW by virtue of the fact that its membership includes individuals from companies that engage in such activity.

ANALYSIS

In Advisory Opinion No. 99-31, the former State Ethics Commission (Commission) addressed a similar question in the context of another provision in the Code of Ethics, General Statutes § 1-84b (c). Section 1-84b (c) prohibits individuals serving in specifically-designated positions at certain state regulatory agencies from accepting employment with any business subject to regulation by his or her agency within one year after leaving the agency. The Commission was asked whether that revolving-door restriction “would apply to the acceptance of employment with a trade association made up of businesses regulated by a § 1-84b (c) agency[.]” Advisory Opinion No. 99-31.

According to the Commission, under the “most literal interpretation” of § 1-84b (c), a trade association that is made up of businesses regulated by a § 1-84b (c) agency is not—itsself—a “business subject to regulation” by the § 1-84b (c) agency. Advisory Opinion No. 99-31. It rejected that interpretation, noting that it would circumvent the purpose underlying the provision, namely, “to decrease the likelihood that an official will tailor his conduct in office to enhance his opportunities for subsequent private employment in the same field.” *Id.* To be consistent with that purpose, the Commission concluded as follows: If a trade association essentially is a collection of the member/businesses in the field regulated by the § 1-84b (c) agency, and the funding for the trade association (and, therefore, the funding for the position in question) stems primarily from those regulated member/businesses, then the trade association “may not employ a designated official of that agency until the one year mandated ‘cooling off’ period has elapsed.” Advisory Opinion No. 99-31. Stated differently, the trade association would constitute a “business subject to regulation” by the § 1-84b (c) agency—at least insofar as that provision is concerned.

In the case at hand, the relevant statutory provision, General Statutes § 1-84 (m), prohibits a public official or state employee from knowingly accepting, “directly or indirectly, any gift . . . from any person the official or employee knows or has reason to know . . . [i]s doing business with or seeking to do business with the department or agency in which the official or employee is employed . . .” (Emphasis added.) As above, under “the most literal interpretation” of that provision, a professional organization made up of persons doing business with or seeking to do business with DPW is not—itsself—an entity doing business with or seeking to do business with DPW. We likewise decline to adopt such an interpretation, as it would undermine § 1-84 (m)’s purpose of reducing “both actual and apparent outside influences on state servants”; Advisory Opinion No. 97-25; and could be used by regulated donors (e.g., persons doing business with DPW) as a way to avoid the gift ban in § 1-84 (m)—by, in effect, permitting them to make expenditures for the benefit of a public official or state employee by way of a pass-through entity.

Instead, we conclude that, for purposes of the gift ban in § 1-84 (m), if a professional organization’s membership essentially is a collection of persons doing business with or seeking to do business with DPW, and its funding stems mainly from

those persons, then it is considered to be doing business with or seeking to do business with DPW—i.e., it is considered a regulated donor. As a regulated donor, it may not give “gifts,” as defined in General Statutes § 1-79 (e),¹ to DPW employees and officials; but it may use all but two² of the statutory exceptions to the Code of Ethics’ definition of the term “gift.” For example, it may give a DPW employee a ceremonial award costing less than \$100 and/or food and beverage costing less than \$50 in the aggregate per calendar year (provided that a representative of the organization is in attendance). General Statutes § 1-79 (e) (6) and (9). This result, we believe, achieves the balance sought by the Code of Ethics, in “allowing legitimate and traditional social interaction; while prohibiting apparent efforts to improperly influence state decision-makers through the provision of substantial benefits.” Declaratory Ruling 93-B.

CONCLUSION

It is the opinion of the Citizen’s Ethics Advisory Board that, for purposes of the gift ban in § 1-84 (m), if a professional organization’s membership essentially is a collection of persons doing business with or seeking to do business with DPW, and its funding stems mainly from those persons, then it is considered to be doing business with or seeking to do business with DPW.

¹Under § 1-79 (e), the term “gift” is defined as “anything of value, which is directly and personally received, unless consideration of equal or greater value is given in return. . . .”

²As a regulated donor under § 1-84 (m), the professional organization may not use the “major life event” exception in General Statutes § 1-79 (e) (12). See General Statutes § 1-84 (m) (“[f]or purposes of this subsection, the exclusion of the term ‘gift’ in subdivision (12) of subsection (e) of section 1-79 for a gift for the celebration of a major life event shall not apply”). Nor may it use the “gift to the state” exception in General Statutes § 1-79 (e) (5). See General Statutes § 1-84 (q); see also Advisory Opinion No. 2006-03 (“as a result of § 1-84 (q), goods or services provided to the state under § 1-79 (e) (5) may no longer be accepted from regulated donors”).