



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

Phone (860) 263-2400 Fax (860) 263-2402
18-20 Trinity Street – Hartford, Connecticut 06106-1660
www.ct.gov/ethics
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Draft Advisory Opinion No. 2012-1

January 26, 2012

Question Presented: **The petitioner asks whether he has a “conflict of interest with respect to making decisions in his capacity as Commissioner of Education that either directly or indirectly affect charter schools, including Achievement First schools or Amistad Academy.”**

Brief Answer: **No. Because the petitioner has no financial interest in either Achievement First or Amistad Academy, and because neither entity is an “associated” business, he is free to take official action that either directly or indirectly affects charter schools generally or those entities specifically.**

At its January 2012 regular meeting, the Citizen’s Ethics Advisory Board (“Board”) granted the petition for an advisory opinion submitted by Stefan Pryor, Commissioner of Education for the state of Connecticut. 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.

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

Facts

The facts provided by the petitioner are set forth below and are considered part of this opinion:

I am currently serving as the Commissioner of Education for the State of Connecticut, and I am writing to ensure that by serving in this position that there are no violations of the Code of Ethics for Public Officials. While I have discussed the matter informally with one of your staff members, I would like to receive a formal opinion from the Citizen's Ethics Advisory Board.

Prior to my employment with the State of Connecticut, I was a co-founder of Amistad Academy in New Haven, Connecticut. Additionally, up to and just prior to assuming this position as Commissioner of Education, I served on the Board of Trustees for Achievement First—the charter management organization of which Amistad Academy is the flagship school. Achievement First has opened charter schools in Connecticut and New York. I have never had any financial interest in either Amistad Academy or Achievement First.

Pursuant to the Connecticut Code of Ethics for State Officials, I wish to verify that I do not have a conflict of interest with respect to making decisions in my capacity as Commissioner of Education that either directly or indirectly affect charter schools, including Achievement First Schools and Amistad Academy.²

Analysis

As a gubernatorial appointee, the Commissioner of Education is a

²Petition for Advisory Opinion submitted by Stefan Pryor to Barbara Housen, General Counsel, Office of State Ethics (December 5, 2011).

“public official”³ and is thus subject to the Ethics Code, including its conflict provisions, General Statutes §§ 1-84 through 1-86. The conflict provisions are based on the rationale that public service is a public trust and must not be used for personal financial gain or the financial gain of certain family members or an “associated” business.⁴ For example, under §§ 1-84 (c), 1-85 and 1-86, a public official, with certain caveats, may not take official action or otherwise use his state position to influence any agency action, “for his . . . own financial benefit or for the financial benefit of an ‘associated’ business, his . . . spouse, child, son- or daughter-in-law, parent or sibling.”⁵

In this case, Commissioner Pryor states that he has “never had any financial interest in either Amistad Academy or Achievement First.” Assuming then that, if he was to take official action that would affect those entities, there would be no financial gain to him personally (or to any designated family members), he would be prohibited from acting *only* if either entity constituted a “business with which he is associated,” a statutorily defined term that includes, among other things,

any . . . entity through which business for profit or not for profit is conducted in which the public official . . . or member of his immediate family is a director, officer, owner, limited or general partner, beneficiary of a trust or holder of stock constituting five per cent or more of the total outstanding stock of any class, *provided, a public official . . . or member of his immediate family, shall not be deemed to be associated with a not for profit entity solely by virtue of the fact that the public official . . . is an unpaid director or officer of the not for profit entity.* “Officer” refers only to the president, executive or senior vice president or treasurer of such business.⁶

³Under § 1-79 (k), a “public official” includes, among others, “any person appointed to any office of the . . . executive branch of state government by the Governor”

⁴Advisory Opinion No. 2011-4, Connecticut Law Journal, Vol. 73, No. 23, p. 4C (December 6, 2011).

⁵Advisory Opinion No. 95-15, Connecticut Law Journal, Vol. 57, No. 16, p. 3E (October 17, 1995).

⁶(Emphasis added.) General Statutes § 1-79 (b).

Because both Amistad Academy and Achievement First happen to be not-for-profit entities, even if Commissioner Pryor was still serving as an unpaid director on either entity's board, the entity would not (in light of the italicized exception) constitute an "associated" business, and he would be free to take official action affecting it.⁷ But Commissioner Pryor is apparently no longer associated in any capacity with Amistad Academy or Achievement First, meaning that they are not "associated" businesses and, by implication, that he is free to take official action that would affect them, directly or indirectly, without concern of an Ethics Code violation.⁸

As for appearance issues, they are beyond the reach of the Ethics Code.⁹

By order of the Board,

Dated _____

Chairperson

⁷See Advisory Opinion No. 2002-26, Connecticut Law Journal, Vol. 64, No. 30, p. 11D (January 21, 2003) ("The mere fact that a state employee . . . is an unpaid director or officer of a not-for-profit entity does not make that entity a business with which the employee is associated. . . . Therefore, for example, if a state employee sits on the board of a charitable organization and wishes to suggest [in his state capacity] that a contribution be made to that organization, the Code of Ethics would not forbid such a recommendation.")

⁸Cf. Advisory Opinion No. 94-9, Connecticut Law Journal, Vol. 73, No. 23, p. 4C (December 6, 2011) (concluding that a state employee "may interact with, or make decisions concerning her former employer or any competing vendor regarding bids for" a state project, for "although the [Ethics] Code restricts contact with one's former state agency for one year after termination of state service, there is no parallel restriction regarding contact with your former employer when coming from the private sector to state service").

⁹See Advisory Opinion No. 2009-7, Connecticut Law Journal, Vol. 71, No. 11, p. 14C (September 15, 2009) ("[t]he Code . . . does not speak of appearances of conflict, only actualities," so in "interpreting and enforcing the Code . . . [we are] limited, by statute, from addressing appearances or perceptions of conflict of interest" [internal quotation marks omitted]).