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State Contractors Guide to the Code of Ethics

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|--|--|
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OFFICE OF STATE ETHICS

Created on July 1, 2005, under Public Act [05-183](#), the Office of State Ethics (“OSE”) is an independent regulatory agency charged with administering and enforcing the Connecticut Codes of Ethics (“Ethics Codes”), which are found in Chapter 10 of the Connecticut General Statutes.

The OSE’s duties include educating all those covered by the Ethics Codes; interpreting and applying the Ethics Codes; investigating violations of, and otherwise enforcing, the Ethics Codes; and providing information to the public.

The OSE’s jurisdiction:

Part I	Code of Ethics for Public Officials General Statutes §§ 1-79 to 1-90a
Part II	Code of Ethics for Lobbyists General Statutes §§ 1-91 to 1-101a
Part III	Lobbying: Miscellaneous Provisions General Statutes §§ 1-101aa and 1-101bb
Part IV	Ethical Considerations Concerning Bidding and State Contracts General Statutes §§ 1-101mm to 1-101rr

The OSE Executive Director has overall responsibility for the welfare and effectiveness of the OSE, which has three divisions, the legal division, the enforcement division, and the administrative division.

The OSE’s governing body is the Citizen’s Ethics Advisory Board (“CEAB”), which has nine members appointed by the Governor and legislative leadership. The CEAB holds monthly meetings that are open to the public. A schedule of CEAB meeting dates, times, and locations is available at www.ct.gov/ethics.

CEAB Members:

- Attend monthly CEAB meetings
- Appoint and evaluate the Executive Director of the OSE
- Issue advisory opinions to persons subject to the Ethics Codes
- Serve as a Hearing Officer for non-confidential hearings held under the Uniform Administrative Procedures Act, General Statutes § [4-166](#) *et. seq.*
- Attend hearings to determine if violations occurred and, if so, assess penalties
- Attend special meetings if necessary
- Oversee legislative agenda

THE BIG PICTURE

Like state employees and officials, state contractors are subject to the Ethics Codes, but in a more limited manner. That is, they are not, as [Advisory Opinion No. 99-26](#) puts it, “subject to the far more restrictive provisions . . . that apply to state employees and public officials,” but they are subject to certain “narrow constraints.”

As you read through this guide, be aware that these restraints, and those that apply to state employees and officials, were enacted to prevent persons from using their public position or authority for their own financial benefit, or for the financial benefit of certain others (for example, family members).

Also be aware that each state agency has its own ethics policy, which may be more restrictive than what follows, particularly concerning the types of benefits a state employee or official may accept from state contractors (and others).

CONFLICTS

The Ethics Codes contain two primary conflict statutes that apply specifically to state contractors: General Statutes [§§ 1-86e](#) and [1-101nn](#).

GENERAL STATUTES § 1-86e

Section [1-86e](#) applies to any “person hired by the state as a consultant or independent contractor.” Such persons may not do as follows:

- (1) Use the authority, or confidential information, provided under the contract to financially benefit the person, an employee, or an immediate family member;
- (2) Accept another state contract that would impair the person’s independence of judgment in performing the existing contract; or
- (3) Accept a bribe (that is, accept anything of value based on an understanding that the person’s actions on the state’s behalf would be influenced).

Key points from [Advisory Opinion No. 99-26](#) concerning [§ 1-86e](#):

- Section [1-86e](#) is not intended to interfere with a contractor’s business, but to prevent a private entity from using state money to, for example, hire immediate family members without appropriate state oversight.
- A conflict of interest exists only if there is a connection between the facts in question and the state money and authority granted to the independent contractor or consultant by contract.

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- The term “independent contractor” does not apply just to individuals, but also to private agencies that contract with the state.
- If a state contractor wants to hire a family member to work under a state contract, the following procedure must be followed:
 1. The contractor must notify the contracting state agency in writing and demonstrate why the individual is appropriate for the job.
 2. The state agency must determine if the person is qualified for the job and whether the compensation is market rate; and if necessary, it may require the contractor to document a job search.

NOTE: In an enforcement action, a former state contractor was alleged to have violated § [1-86e \(a\) \(1\)](#) by using confidential information gained under its contract with a state agency in its subsequent representation of clients before that agency. The contractor entered into a Consent Order with the OSE, agreeing to pay a \$10,000 penalty.

GENERAL STATUTES § 1-101nn

Subsection (a) of § [1-101nn](#) applies to persons who are, or are seeking to be:

- (1) Prequalified under General Statutes § [4a-100](#);
- (2) A party to a large state construction or procurement contract, as defined in General Statutes § [1-101mm \(3\)](#), with a state or quasi-public agency; or
- (3) A party to a consultant services contract with a state or quasi-public agency.

Such persons may not do as follows:

- (A) Solicit information from state officials or employees that is not available to other bidders;
- (B) Defraud the state (that is, charge a state or quasi-public agency for work not performed or goods not provided);
- (C) Attempt to circumvent state competitive bidding and ethics laws; or
- (D) Provide information about the person’s donation of goods and services to state or quasi-public agencies in order to influence the award of a state contract.

Subsection (b) of § [1-101nn](#) applies to a more limited group: Any consultant that is hired by the state to *help plan a state contract*, and any “associated” businesses, as defined in General Statutes § [1-101mm \(1\)](#).

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Under § [1-101nn \(b\)](#) neither the consultant nor any “associated” businesses may serve in the following roles with respect to the contract the consultant helped to plan:

- Consultant to any person seeking to obtain the contract,
- Contractor for the contract, or
- Consultant or subcontractor to the person awarded the contract.

NOTE: *If you are unsure whether § [1-101nn](#) applies to you, please contact the OSE, because any person found to have violated this section may be deemed a “nonresponsible bidder” by a state or quasi-public agency. General Statutes § [1-101nn \(c\)](#).*

ONE MORE CONFLICT RULE (of limited applicability)

General Statutes § [1-84 \(n\)](#) bars the State Treasurer from doing business with an investment services firm whose political committee or principals have contributed to, or solicited contributions for, her exploratory or candidate campaign committee.

The prohibition applies during the term of office for which the candidate is campaigning, as well as for the remainder of an incumbent treasurer’s term.

The prohibition applies only to contributions to the incumbent or victorious candidate for the office. [Advisory Opinion No. 2003-1](#).

ARE YOU REQUIRED TO REGISTER AS A LOBBYIST?

With certain exceptions, efforts to obtain a state contract can be considered administrative lobbying, requiring registration as a client lobbyist.

Some Key Terms

Client lobbyist: Generally, an individual or entity that, on its own behalf, expends or agrees to expend \$3,000 or more in a calendar year for *administrative* and/or legislative lobbying and activities in furtherance of lobbying. General Statutes § [1-91 \(12\)](#).

Lobbying: Generally, communicating directly, or soliciting others to communicate, with any public official or his or her staff in the legislative or executive branch, or in a quasi-public agency, in an effort to influence legislative or *administrative action*. General Statutes § [1-91 \(11\)](#).

Administrative action: Any matter within a state or quasi-public agency’s jurisdiction—such as any action or nonaction concerning a contract. General Statutes § [1-91 \(1\)](#).

Exceptions to Administrative Lobbying

The following activities are not considered administrative lobbying:

- Preparation of responses to an agency's request for proposals ("RFP"). OSE Regs. § [1-92-42a \(e\) \(1\)](#).
- Communications strictly for informational purposes (e.g., to determine what agency contract proposals will be forthcoming). OSE Regs. § [1-92-42a \(e\) \(3\)](#).
- Communications by a vendor's representative who acts as a *salesperson* and does not otherwise engage in administrative lobbying. General Statutes § [1-91 \(11\) \(B\)](#).
 - "Salespersons": Generally, individuals who have a set territory they routinely cover, and who are not part of a company's executive management. See [Advisory Opinion No. 95-11](#).

Thus, if your contact with state or quasi-public agencies is limited to responding to RFPs, or otherwise pursuing a contract through the **normal agency process**, then you are not required to register as a "client lobbyist."

But you are "lobbying" if you go **outside the agency process** in trying to obtain a state contract. For example:

- Entertaining state employees and officials.
- Communicating with officials outside the agency (such as the Governor or legislators).
- Communicating with officials within the agency but outside the normal process (such as the agency head).

If \$3,000 or more is spent on such lobbying activities, "lobbyist" registration is required. See General Statutes § [1-94](#).

Hypothetical from [Advisory Opinion No. 2003-6](#):

In responding to a state agency's RFP, a business entity spends \$3,500 in printing and personnel costs in taking a number of steps within the agency's normal contracting process. But in an effort to secure the contract, the entity contacts the Governor, thus taking action outside the normal agency process and, in doing so, expends an additional \$500 in personnel costs. Must it register as a lobbyist?

No. The \$3,500 spent in following the normal process to respond to the RFP is exempted from consideration as a lobbying expense. Therefore this entity would not have to register as a client lobbyist, because it has spent only \$500 towards its lobbying effort.

NOTE: If you are unsure whether you must register as a "lobbyist," please contact the OSE and/or review the "Client Lobbyist Guide to the Code of Ethics."

GIFTS

GIVING GIFTS

General Statutes § [1-84 \(m\)](#) contains the “gift”-giving bans for state contractors and potential state contractors:

- An individual or entity **doing or seeking to do business** with a state agency may not give a “gift” to any of that agency’s employees or officials.
 - This is an *agency-specific ban*, meaning: If an entity is doing or seeking to do business with State Agency X—but not with any other state agency—then it is prohibited from giving “gifts” only to employees and officials of State Agency X.
- A person **prequalified under § [4a-100](#)** may not knowingly give a “gift” to any state employee or official.
 - This ban is *not agency specific*, meaning it applies to all state employees and officials, even if the person is not doing or seeking to do business with an employee’s or official’s agency. (Registered lobbyists are subject to a similar ban. See General Statutes § [1-97 \(a\)](#).)

What is a “gift”?

General Statutes § [1-79 \(5\)](#) defines “gift” in three parts:

1. “anything of value” (for example, money, tickets to a sporting event, meals, services, etc.),
2. “which is directly and personally received” (that is, the state employee or official accepts the opportunity to partake of it),
3. “unless consideration of equal or greater value is given in return” (that is, unless the state employee or official pays fair market value for it).

Gift exceptions

There are many benefits that are not deemed “gifts,” some of which may be used by state contractors, including these:

- Token Items: Items valued less than \$10 (such as a pen or mug), provided the annual aggregate of such items from a single source is \$50 or less. General Statutes § [1-79 \(5\) \(P\)](#).

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- Food/Beverage: Up to \$50 in food/beverage annually, provided the donor or a representative is in attendance when it is being consumed. General Statutes § [1-79 \(5\) \(I\)](#).
- Training: Training provided by a vendor for a product purchased by a state entity, provided it is offered to all of the vendor's customers. General Statutes § [1-79 \(5\) \(Q\)](#).
- Ceremonial awards: A certificate, plaque or other ceremonial award valued at less than \$100. General Statutes § [1-79 \(5\) \(F\)](#).
- Gifts to the State: Goods or services given to a state entity. The gift must facilitate state action, and must (1) be for use on state property (e.g., a computer), (2) support a state event (e.g., funds to support an agency event), or (3) support the participation by a state employee or official at an event (e.g., funds for an agency employee to attend an educational conference relevant to his state duties). General Statutes § [1-79 \(5\) \(e\)](#).

NOTE: There is a "gift" exception in § [1-79 \(5\) \(L\)](#) for "major life events" (a term defined by regulation), but state contractors and potential state contractors may not use it.

Gift Reporting

If a person doing or seeking to do business with a state agency gives an agency employee or official any of the benefits found in the "gift" exceptions, the person may have a reporting obligation. See General Statutes § [1-84 \(o\)](#).

Generally, if the benefit is valued over \$10, the person (or a representative) must do as follows: Give *both* the recipient *and* the executive head of the recipient's department or agency a written report stating:

- The donor's name,
- A description of the item or items given,
- The value of such items, and
- The cumulative value of all items given to such recipient in the calendar year.

NOTE: This helps both the donor and the state employee or official keep track of the "gift" exceptions noted above, so that permissible limits are not exceeded.

ACCEPTING GIFTS

In [Advisory Opinion No. 99-17](#), the conflict language in § [1-86e \(a\) \(1\)](#) (see above) was interpreted as creating the following rule:

- If, as a state contractor or an employee thereof, you are offered benefits from a person by virtue of your authority under the state contract (for example, clients of the contracting state agency), you may accept **no more** than \$100 annually from that person.

NOTE: *In an enforcement action, a former employee of a state contractor was found to have violated § [1-86e \(a\) \(1\)](#)—and ordered to pay a \$10,000 penalty—for using his authority over a subcontractor to solicit free or discounted gifts, services and other items of value (e.g., meals and tickets to sporting events and concerts).*

NECESSARY EXPENSES

General Statutes § [1-84 \(k\)](#)—the “necessary expenses” provision—prohibits a state employee or official from accepting a fee or honorarium for participating at an event *in his or her official capacity*.

However, a state employee or official may receive payment or reimbursement for “necessary expenses” if—in his or her official capacity—the employee or official *actively participates* in the event (for example, gives a speech or runs a workshop).

“Necessary expenses” are not considered gifts and may include the cost of:

- Travel (coach),
- Lodging (standard room for the nights before, of, and immediately following the event),
- Meals (non-lavish), and
- Conference or seminar registration fees.

“Necessary expenses” do not include the cost of entertainment (tickets to sporting events, golf outings, etc.), or payment of expenses for family members or other guests.

A state contractor has *no reporting obligations* when it pays for, or reimburses, a state employee’s or official’s “necessary expenses.”

Example:

A state contractor is hosting an out-of-state conference and would like the Governor to come and give a speech in his official capacity. The contractor has offered to pay the Governor’s

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travel and lodging expenses, to waive his conference registration fee, and to give him a \$500 honorarium. Permissible?

The Governor may not accept the \$500 honorarium (because he is participating in his official capacity), but may accept payment or reimbursement for “necessary expenses,” which include coach-class travel, standard lodging for the nights before, of, and after the speech, and waiver of the conference registration fee.

HIRING CURRENT OR FORMER STATE EMPLOYEES AND OFFICIALS

Former State Employees and Officials

A state contractor wanting to hire a *former* state employee or official should be aware of the Code’s post-state employment prohibitions. See General Statutes §§ [1-84a](#) and [1-84b](#).

Most of these prohibitions are “personal” to the former state employees and officials, meaning they do not apply to their post-state *employers*. These include:

- **Confidential information:** A former state employee or official may ***never*** “disclose or use confidential information” gained in state service for anyone’s financial gain. General Statutes § [1-84a](#).
- **Side switching:** A former state employee or official may ***never*** “represent anyone other than the state, concerning any particular matter (1) in which he participated personally and substantially while in state service, and (2) in which the state has a substantial interest.” General Statutes § [1-84b \(a\)](#).
- **Cooling off:** For ***one year*** after leaving state service, a former state employee or official may not “represent” anyone for compensation before their former state agency. (“Represent” means doing any activity that reveals the former state employee’s or official’s identity.) General Statutes § [1-84b \(b\)](#).

NOTE: *Certain former employees and officials of the Department of Consumer Protection and the Department of Emergency Services and Public Protection are subject to a two-year employment ban with respect to entities engaged in Indian gaming operations. General Statutes § [1-84b \(d\)](#) and [\(e\)](#).*

Prohibitions on Employer

There are two post-state employment provisions that apply not only to former state employees and officials—but also to those that hire them:

- For ***one year*** after leaving state service, a former state employee or official may not accept employment with a party to a state contract valued at \$50,000 or more, if:

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- (1) He or she participated substantially in, or supervised, the negotiation or award of that contract, and
- (2) It was signed within his or her last year of state service.

Further, “[n]o party to such a contract or agreement . . . shall employ any such former public official or state employee in violation of this subsection.” General Statutes § [1-84b \(f\)](#).

- Individuals who held designated positions at certain state regulatory agencies may not—for **one year** after leaving state service—“accept employment with a business subject to regulation by that agency.” Further, “[n]o business shall employ a . . . former public official or state employee in violation of this subsection.” General Statutes § [1-84b \(c\)](#).

Current State Employees and Officials

State contractors wanting to hire a *current* state employee or official should be aware of the Code’s outside-employment rules, which bar the employee or official from:

- Accepting outside employment with an individual or entity that can benefit from the state servant’s official actions (e.g., the individual in his or her state capacity has specific regulatory, contractual, or supervisory authority over the private person). OSE Regs. § [1-81-17](#).
- Using state time, materials, or personnel to perform their outside work. General Statutes § [1-84 \(c\)](#).
- Accepting—or being a member or employee of an entity that agrees to accept—compensation for representing others before 11 statutorily designated state agencies. General Statutes § [1-84 \(d\)](#). The agencies include:
 - o the Department of Banking,
 - o the Claims Commissioner,
 - o the Office of Health Care Access division within the Department of Public Health,
 - o the Insurance Department,
 - o the Department of Consumer Protection,
 - o the Department of Motor Vehicles,
 - o the State Insurance and Risk Management Board,
 - o the Department of Energy and Environmental Protection,
 - o the Public Utilities Regulatory Authority,
 - o the Connecticut Siting Council, and
 - o the Connecticut Real Estate Commission.

***The prohibition on being a “member or employee” applies to entities that are in the business of *representing others* for compensation before the listed agencies (law firms, accounting firms, etc.).

OTHER OUTSIDE EMPLOYMENT CONSIDERATIONS

There are two other outside employment prohibitions, but they apply only to a limited number of state employees and officials:

- Individuals holding designated positions at certain state regulatory agencies may not—while in state service—“negotiate for, seek or accept employment with any business subject to regulation by his agency.” Also, “[n]o business shall employ a present . . . public official or state employee in violation of this subsection.” General Statutes § [1-84b \(c\)](#).
- Certain present employees and officials of the Department of Consumer Protection and the Department of Emergency Services and Public Protection may not “negotiate for, seek or accept employment with” entities engaged in Indian gaming operations. General Statutes § [1-84b \(d\)](#) and [\(e\)](#).

OTHER CONSIDERATIONS

WRITTEN AFFIRMATION CONCERNING STATE ETHICS LAWS SUMMARY

General Statutes § [1-101qq](#) contains three requirements with respect to the OSE’s state ethics laws summary:

1. State agencies must provide large state construction or procurement contractors with the state ethics laws summary; and—before accepting their bids—must obtain written affirmation that their key employees read, understand, and agree to comply with those laws.
2. Large state construction or procurement contractors must, in turn:
 - a. provide their subcontractors and consultants with the state ethics laws summary,
 - b. obtain the same written affirmation as above from their subcontractors and consultants, and
 - c. provide the affirmations to the state agency with which they have the contract—or face termination of the contract.
3. The state ethics laws summary must be included by reference in each contract with a contractor, subcontractor or consultant.

ETHICS AFFIDAVITS & CERTIFICATIONS FOR STATE CONTRACTS

The Office of Policy and Management has created ethics forms to help executive branch agencies comply with the State's contracting requirements. The forms include, for example, "Affirmation of Receipt of State Ethics Laws Summary" and "Gift and Campaign Contribution Certification." Copies of these forms and other updated information regarding state contractors can be found on the websites of the Office of Policy and Management and the Department of Administrative Services.

NOTE: *The OSE does not have jurisdiction over the ethics affidavits and certifications. Questions concerning them should be directed to the Office of Policy and Management.*

ETHICS ENFORCEMENT

Enforcement of the Ethics Codes is initiated by a complaint, which is filed by the OSE Ethics Enforcement Officer or a member of the public. In most cases, a complaint by the Ethics Enforcement Officer is preceded by a confidential staff evaluation.

A two-stage process follows:

1. Confidential investigation and confidential probable cause hearing.
2. If probable cause is found, a public hearing to determine if a violation has occurred.

At any stage of this process, the OSE and the Respondent may negotiate a settlement.

After a finding or admission of a violation, the CEAB may order the Respondent to comply with the Ethics Codes in the future, file any required report or statement, and/or pay a civil penalty.

For failure to file a report, statement, or other information required by the Ethics Codes, the CEAB may, after a hearing, impose a civil penalty of up to \$10 per day, with the aggregate penalty for any one violation being \$10,000.

The OSE may refer matters to the Chief State's Attorney for criminal prosecution. An intentional violation of the Ethics Codes is a misdemeanor for the first violation, unless the individual has derived a financial benefit of at least \$1,000. In that case, the violation is a class D felony.

The Attorney General may sue for up to three times the economic gain received through knowingly committing or knowingly profiting from a violation of the Code.

The "[*Citizen's Guide to Filing a Complaint*](#)," which is available on the OSE's website, gives a detailed overview of the complaint process and related confidentiality rules.