



University of Connecticut

Philip E. Austin
President

May 20, 2005

Attorney Alice M. Sexton
State Ethics Commission
18-20 Trinity Street, Suite 205
Hartford, CT 06106

Dear Attorney Sexton:

As the State Ethics Commission reviews its prior rulings related to the application of the Code of Ethics to the outside employment and activities of State employees, we welcome the opportunity to provide comments and ask that the Commission take the factors outlined in the following paragraphs into consideration.

Let me begin by stating that the people of Connecticut and their elected representatives have every right to expect that all state agencies seek to fulfill their responsibilities at the highest level of excellence. Public colleges and universities are not unique in this regard. Moreover, the Ethics Commission is charged with assuring that employees at all public agencies, including those engaged in higher education, perform their functions in a manner that avoids conflict of interest, misuse of State position or resources, or any other ethical improprieties. We believe that the Commission has worked diligently to meet this mandate in a manner that recognizes the differences among state entities and balances competing interests appropriately.

With that said, it is important to recognize that the role, function, mandate and manner of operation of public higher education creates significant distinctions between Connecticut's public colleges and universities and most other aspects of State government. Some of the key distinctions are as follows:

- Higher education institutions are by definition communities of independent scholars who are members of national, and often international, intellectual disciplines. Research, discovery, and dissemination of knowledge well beyond

the institution's borders are important aspects of our faculty's professional obligation and generation of knowledge is itself a key part of a public research university's mission. But the research process, while often undertaken on a collegial basis, is inherently an activity of independent scholarship. External engagement, including consulting and participation in national or international professional societies, is directly relevant to the fulfillment of individual faculty members' intellectual growth and to the general dissemination of knowledge, and is recognized as such at universities across the nation. It is a generally accepted practice for faculty members to be permitted to engage in such practices for limited amounts of time, often for compensation, as long as there is no conflict with teaching or other institutional obligations.

- In ancillary activities such as intercollegiate athletics, public colleges and universities similarly operate on a regional or national stage. Regulations and norms of external bodies (such as the NCAA or the Big East Conference), which apply to private as well as public institutions, define the context within which such programs operate.
- Public colleges and universities across the nation, and here in Connecticut, now derive most of their operating budget from tuition, grants, contracts, contributions, and other sources apart from State appropriations. (At UConn such sources provide about 65% of our operating budget.) Thus external fundraising is a critical component of public higher education's ability to meet its mandates as outlined by the State of Connecticut.
- Public colleges and universities compete with one another and with private colleges and universities regionally and nationally to attract outstanding students; to recruit exceptional faculty, staff, and coaches who are vigorously pursued by other institutions; to win grants and contracts, and to raise philanthropic contributions. These are customary and normal activities in public higher education nationally, but except in very rare circumstances they are not the kinds of activities in which other State agencies are engaged.
- Most public colleges and universities rely heavily on adjunct faculty and, at UConn's Health Center, on individuals of faculty rank whose appointments are for clinical services. Such individuals often maintain professional relationships with other institutions in addition to their State employment.

These distinctions create complex questions that continue to call for careful, considered guidance from the Ethics Commission, as has been rendered in the past. For example, University employees—some well-known to the outside world, some known primarily within their disciplines, some just establishing their professional reputations—engage in

activities funded by external entities and receive benefits stemming from their participation. They do so not as State employees but as scholars or athletic leaders. If the activity does not conflict with their responsibilities to their home institution, and does not create a conflict of interest in any manner, is the benefit permissible?

A second example comes when a higher education employee with a national reputation is asked to engage in commercial ventures solely on the basis of the employee's prominence in his or her respective field. The fact that outside entities, whether charitable- or business-related, seek to engage the employee's services or attach his or her name to a project is not primarily based on the employee's connection to his or her State position. (To be more clear, even if such an employee left the college or university, he or she would still be in demand for these activities.) Such individuals play an important role for their institution, enhancing appeal to potential students, helping attract private donations, and helping generate public support. Due to their exceptional talents, these employees often receive competing employment offers from other colleges or universities or from professional organizations. A Connecticut public college or university's ability to keep the employee here, contributing to the institution and the State, depends on the college or university's ability to allow him or her to achieve financial gain equivalent to that offered elsewhere. Prohibiting State employees from earning outside income based upon expertise and competency independent of their State position would affect public colleges and universities' ability to compete for outstanding individuals in a national marketplace, and the need to match external offers would place a tremendous burden on institutions' budgets—forcing a choice between foregoing outstanding academic or athletic talent, or cutting expenditures for other important activities. Should such employees be allowed to use their independent standing in their field to engage in activities which do not conflict with their obligations as employees?

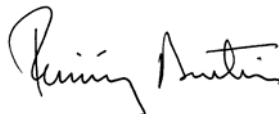
To date, many of the UConn-related cases that are relevant to such questions have come from the field of athletics, where we attained a national public identity more than a decade ago. But in years to come the issues will likely apply more and more to our core mission in the realm of teaching and research. For example, the Connecticut General Assembly is currently considering legislation that would establish a \$20 million fund for stem cell research, which is of tremendous potential value to our State's knowledge-and technology-based economy. UConn and Yale would be eligible for these funds. We respectfully ask that the Commission take great care in looking at how ethics requirements may affect incentives for faculty to license, start-up and engage in commercial activities resulting from intellectual property they create. It is essential, not just for our own university but, we believe, for Connecticut's vitality in this promising area and many others like it, that public college and university faculty not be disadvantaged vis-à-vis their peers elsewhere and that the incentive structure be allowed to work effectively to create new knowledge.

Returning to the area of athletics, we ask that the Commission similarly look at how its decisions affect public colleges and universities' ability to compete on an even playing

field with their public and private counterparts—in the case of UConn, peer institutions in the Big East Conference. Our success in this arena is a point of pride for our students, faculty, alumni and, indeed, for the people of our State. I urge that you consider how any changes in Commission policy might affect our likelihood for continued strength in this sector and, ultimately, for the continued strength of the University.

The State of Connecticut rightly prides itself on a strong Code of Ethics and it is important that the fundamental principles of that Code remain the guiding principles for employees of all State agencies, including those engaged in public higher education. Our hope, however, is that the application of these principles not unintentionally impede the accomplishment of important State and educational purposes, and that the application reflect the fundamental distinctions among agencies in terms of role and mission—as has generally been the case with regard to the Commission’s advisory opinions concerning the University of Connecticut. I am confident that this is an attainable objective, and that the University of Connecticut and its employees can continue concurrently to strive for excellence and adhere to the State’s ethics requirements. These goals are wholly complimentary.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin Austin".

By fax 860-566-3806