

*sent via email to barbara.housen@ct.gov*

March 1, 2017

Barbara E. Housen  
General Counsel  
Office of State Ethics  
18-20 Trinity Street  
Hartford, CT

Dear Attorney Housen-

I am writing to follow up on various communications between the University of Connecticut's (UConn) Director of Compliance and Ethics Liaison, Kim Fearney, and your office over the last few months concerning the employment of Corey Edsall in the hope of clarifying where things currently stand and to facilitate resolution of any remaining issues.

On December 22, 2016, pursuant to Connecticut General Statutes § 1-81(f), Ms. Fearney contacted your office in writing to seek guidance concerning a potential candidate for hire. Specifically, Ms. Fearney inquired as to (1) whether a candidate for employment may negotiate a position for an immediate family member as a condition of employment; and (2) whether it would be permissible for the family member to work within the same department. Consistent with past practice, Ms. Fearney's inquiry was in the form of a hypothetical and did not identify the candidate.

On December 23, 2016, Attorney Brian O'Dowd, Deputy General Counsel to your office confirmed that both of these actions were permissible. Specifically, he advised that the Code of Ethics for Public Officials does not apply to candidates for hire and therefore it is acceptable for a candidate to negotiate the employment of his family member. Attorney O'Dowd further advised that the code does not prohibit family members from serving in the same department "provided (as you note below) that the safeguards in Advisory Opinion Nos. 88-8 and 94-5 are followed." This informal guidance from your office is consistent with formal guidance opinions issued by the State Ethics Commission, as well as informal guidance previously provided by your office to UConn.

In reasonable reliance on this guidance, on December 28, 2016 UConn proceeded to offer the candidate, Randy Edsall, the position of Head Football Coach. UConn also agreed to offer employment to Mr. Edsall's son, Corey Edsall and, in doing so, expressly advised Mr. Edsall as follows:

[Y]ou may not be a direct supervisor of your son or take any action which would affect your son's financial interest as a UConn employee. Therefore, your son will report to an individual designated by the Athletic Director who does not report to you. The individual will be responsible for supervising and taking any employment action concerning your son's employment at UConn. You are prohibited from taking any employment action regarding your son or any action on behalf of your son, except in compliance with the procedure established under UConn policy, including completion of the Conflict of Interest Disclosure forms when required. You may not use your position to influence an employment action of any other employee if such action would benefit your son.

In compliance with established procedures, Mr. Edsall submitted a Conflict of Interest Disclosure form and a Proposed Conflict Resolution Plan to his supervisors. Under the proposed plan, which was approved by UConn's Athletic Director on January 4, 2017, Mr. Edsall would have no involvement in any decisions that would affect the financial interests of his son. Instead, any such decisions would be made by Beth Goetz, Chief Operating Officer in the Division of Athletics and Sport Administrator for football. Ms. Goetz is a direct report to the Athletic Director and is not subordinate to Mr. Edsall.

A formal management plan was prepared on January 10, 2017 describing in detail the steps in place to eliminate Mr. Edsall's ability to take any action that would affect his son's financial interest as a UConn employee. Under the management plan, which I understand was shared with you on January 26<sup>th</sup>, Corey Edsall's salary was to be and in fact has been set by the Athletic Director/designee based on market research and an analysis of American Athletic Conference salary ranges. Because the position falls within the AAUP, any future changes to his salary will be consistent with AAUP contract requirements and practice for all AAUP members. Performance evaluations will be conducted by the Athletic Director or his designee, as will any decision to renew his contract. UConn is confident that the management plan comports with the guidance conveyed by your office in December 2016 and is entirely consistent with the many formal and informal guidance opinions issued by your office and the Citizens Ethics Advisory Board over the years. UConn is committed to ensuring strict adherence to that management plan.

Notwithstanding all of the above, in January 2017 following some criticism of Corey Edsall's hiring, your office reached out to Ms. Fearney and asserted that UConn could not rely on the informal guidance provided by Attorney O'Dowd just a few weeks earlier. In response to her efforts to understand the basis for this assertion, you advised Ms. Fearney that your office did not have "all of the facts" at the time the informal guidance was provided. Ms. Fearney has attempted on a number of occasions to understand the basis for your concerns. You more recently elaborated that "the issue presented appears to violate the Code of Ethics 'use of office' and conflicts provisions." You have also asserted that this question "was never addressed by the former Ethics Commission or the Citizen's Ethics Advisory Board (Board)." You have declined to provide any specific basis for these assertions other than

that you have “some concern” over how the day-to-day supervision of Corey Edsall will work, but you have not elaborated on the specifics of or offered guidance on how to mitigate that concern.

Frankly, we are extremely puzzled by your current position in light of the long history of advisory opinions on this issue and the record before us. Formal and informal guidance opinions issued by the Office of State Ethics going back at least thirty (30) years make abundantly clear that state employees and their immediate family members may serve in the same department. (See, by way of example only, Advisory Opinions 88-8, 94-5, 94-18, RAO #8215). These formal and informal guidance opinions consistently provide that as long as steps are taken to ensure that a state employee does not take any action that would affect the financial interest of their family member, such as by relegating the responsibility for promotion, transfer, discipline, raises, etc. to another employee of higher rank, then the employment arrangement is permissible. Indeed, as you are undoubtedly aware, this is relatively commonplace in institutions of higher education.

Moreover, the law contemplates that a potential conflict of interest may arise even with an appropriate relegation of responsibility and “provides a mechanism for avoiding the potential conflict.” (See Advisory Opinion No. 88-8, relying on general statutes section 1-86(a), which provides that when an employee would be required to take an action that would affect a financial interest of a family member, “then the employee shall, in the case of a substantial or potential conflict, prepare a written statement signed under penalty of perjury of false statement describing the matter requiring action and the nature of the conflict and deliver a copy of the statement to such . . . employee’s immediate superior, if any, who shall assign the matter to another employee.” Emphasis added.)

With respect to the employment positions at issue, appropriate steps have been taken to remove from Mr. Edsall’s purview all matters which may affect the financial impact of Corey Edsall. That responsibility has been relegated to the University’s Athletic Director and/or the Sport Administrator as his designee, who serve as Mr. Edsall’s supervisors. In addition, the day-to-day supervision of Corey Edsall will be handled by Offensive Coordinator Thomas Lashlee, who also reports to the Athletic Director/Sport Administrator. Thus, there is no conflict of interest presented by having Corey Edsall employed within the same department as Mr. Edsall.

In the event of a *potential* conflict of interest during the course of Mr. Edsall’s employment, he is aware of his obligations under section 1-86(a) and understands that - at such time - he would be obligated to prepare the required written statement. Under the circumstances, the University does not anticipate even the potential for a conflict of interest until Corey Edsall’s employment contract is up for renewal as the terms of his employment and compensation are dictated by that contract, which terms and conditions were set by the Athletic Director.

Given this background, we do not understand or agree with your assertion that this issue has never been presented before. On the contrary, this very issue, employment of an immediate family member whose position normally would fall under the supervision of another family member, is precisely the

issue addressed in the advisory opinions referenced herein. Further, general statutes section 1-86(a) expressly contemplates that the family member may be the child of the state employee.

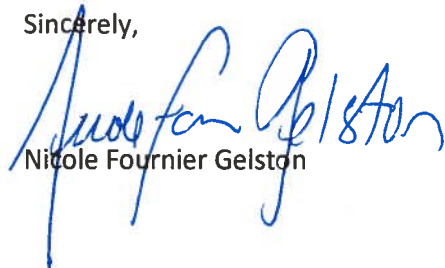
Your position suggests that state agencies and their employees are unable to rely on the informal guidance of your office or existing formal advisory opinions simply because that guidance may not have specifically addressed the precise position of the inquiring employee, as opposed to some other type of state employment position. That posture is untenable as it would render previous guidance virtually meaningless. Further, it undermines a central foundation of the Code of Ethics, as it is intended to apply to all state employees, regardless of rank and position, and its application is to be "unswayed by" among other things "public clamor or fear of criticism." See General Statutes § 1-80(h)(4).

I understand that Ms. Fearney already provided you with a copy of the management plan. In response, you reaffirmed that your review of the plan did not change your position but you did not provide any further clarity as to the basis for your position or how UConn could remedy any potential conflict with the code.

The University of Connecticut is committed to assuring the highest standard of integrity. It is for this very reason that Ms. Fearney sought guidance from your office prior to UConn moving forward with the then-potential hires. We have and continue to seek from your office informal advice on how to ensure that this employment arrangement adheres to the Code of Ethics. Specifically, we would like to understand the basis for your opinion that previous advisory opinions do not apply, for your assertion that the employment arrangement appears to violate the Code of Ethics 'use of office' provisions, and that the employment arrangement appears to violate the Code of Ethics conflicts provisions. With respect to your latter two positions, please identify for us the employee or employees who you believe may have violated those provisions and how. This will allow for a full discussion of the steps UConn can take to ensure that employment of Mr. Edsall and Corey Edsall are in full compliance with the law.

To the extent you would need additional information before providing the requested explanations and suggestions for resolution, please feel free to contact me directly.

Sincerely,



Nicole Fournier Gelston

*sent via email to barbara.housen@ct.gov*

March 14, 2017

Barbara E. Housen  
General Counsel  
Office of State Ethics  
18-20 Trinity Street  
Hartford, CT

Dear Attorney Housen-

The University of Connecticut (UConn or University) is in receipt of your letter dated March 9, 2017 in which you have advised that the Chairman of the Citizen's Ethics Advisory Board (Board) has petitioned the Board for a formal Advisory Opinion, and that the Petition will be considered by the Board at its meeting of March 16, 2017.

UConn is happy to provide the Board with information necessary to resolve the issues raised in the Petition. As you are aware, UConn has been asking the Office of State Ethics since January to articulate any specific concerns about Corey Edsall's employment so that we may have an opportunity to address them, including most recently through my letter of March 1. The University did not seek a formal Advisory Opinion from the Board because the informal guidance provided by your office in December, as well as ample existing precedent in formal Advisory Opinions, confirmed the University's interpretation of the Code of Ethics. Further, while we fully understand that your guidance is "informal" and not binding on the Board, we trust that it is nonetheless accurate and reliable, as well as consistent with the longstanding precedent found in formal Advisory Opinions.

The Petition, which was enclosed with your letter, indicates that the Chairman seeks the Board to opine on two issues. The first, "[w]hether Coach Edsall's negotiation of a job at UConn for his son is permissible under the Code of Ethics?" The second, "[w]hether Corey Edsall's position with UConn may be as Assistant Football Coach?"

The University hopes the following information is helpful to the Board in considering the issues presented by the Petition.

With respect to the first issue presented by the Petition, in the course of the University's negotiations with Mr. Edsall for the position of Head Football Coach, Mr. Edsall sought, as a

condition of employment, to have the University hire a number of specifically identified individuals, including his son Corey, to be part of his coaching staff. These discussions took place prior to the University extending an offer of employment to Mr. Randy Edsall.

UConn sought guidance from your office on this specific question prior to moving forward with negotiations with Mr. Randy Edsall. Specifically, the University inquired as follows:

The University is recruiting a candidate for a position. As part of the negotiations, one of the conditions sought is a position for their immediate family member. This would be part of the contract agreed to by the candidate and the University and signed before they begin employment. Can you confirm for me this is permissible?

We disagree that the University's question in this regard was not clear or based on a "very sparse and generic hypothetical scenario" with "minimal facts [that] did not identify any positions or other details that may have impacted the advice that was given." Certainly, it was sufficiently clear for your office to be able to respond, which it did as follows:

Because the candidate is not yet a "public official" or "state employee," the Code of Ethics for Public Officials, General Statutes § 1-79 *et. seq.*, does not apply to him or her, meaning that what would otherwise be a clear use-of-office violation under General Statutes § 1-84(c)- namely, using one's state position to help one's spouse obtain a state job-is nonetheless technically permissible.

That guidance from your office is consistent with the statutory provisions of the Code itself, as well as established and very recent formal Advisory Opinions. (See A.O. 2017-1, quoting A.O. 82-5 "[p]ersons generally subject to [the Code] . . . are described . . . as either 'public officials' or 'State employees'.")

Accordingly, the University believes the answer to the first question raised by the petition is an indisputable "yes". At the time Randy Edsall sought employment for his son as a condition of his own employment, he was neither a state employee nor a public official. Therefore, he could not have violated the Code of Ethics because, as neither a public official nor a state employee, he was not subject to the Code of Ethics.

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With respect to the second question presented by the Petition, the informal guidance from your office<sup>1</sup> as well as formal Advisory Opinions of the Board make clear family members may work

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<sup>1</sup> The guidance provided by your office in December 2016 was consistent with guidance your office has provided to the University previously in connection with other potential hires.

within the same department and not run afoul of the Code of Ethics as long as certain safeguards are in place. (See AO 94-18 “This issue has been addressed by the Commission many times, both in advisory opinions and in enforcement actions . . .”). Further, immediate family members may work in the same department even if one would normally supervise the other position. (See, AO 88-8 “One of two immediate relatives in the same department can serve as department chairperson without violation of the Code, as long as the restrictions of subsections 1-84(c) and 1-86(a) are adhered to”; see also AO 94-5, permitting spouse to serve in capacity that would normally require supervision of husband finding that the supervising spouse’s “relegation, to another department chairperson, of all responsibility for supervising her husband or other part-time faculty members effectively addresses the issues raised by §1-84(c).”)

Based on this existing precedent, the University believes it was permissible to offer Corey Edsall an employment position in the same department in which his father worked, as long as all responsibility for decisions that may financially impact Corey Edsall is relegated to others. For this reason, the University’s offer of employment to Mr. Randy Edsall made clear that, if his son became an employee of UConn, he could have no direct supervision over or take any action which would affect his son’s financial interest as a UConn employee.

Similarly, the offer of employment to Corey Edsall made clear that Corey would not report to Randy Edsall but instead to Beth Goetz, Chief Operating Officer and Senior Woman Administrator in the Division of Athletics. Ms. Goetz reports directly to UConn’s Athletic Director, David Benedict, and has over twenty years of experience in coaching and sports administration. Corey Edsall’s day-to-day supervisor, Thomas Lashlee, also reports to Ms. Goetz.

Randy Edsall had no involvement in setting Corey Edsall’s salary, and there is no potential for him to financially benefit his son for at least the term of Corey Edsall’s current employment agreement. Under the terms of the signed offer letter, Corey Edsall’s employment commenced on January 9, 2017 and, unless specifically renewed, terminates on January 14, 2018. Even when that term of employment is nearing end, any decision to renew his employment agreement will be made by Mr. Benedict and/or Ms. Goetz.

As is customary when immediate family members serve in the same department, a management plan was developed to establish the safeguards endorsed under existing law through the formal Advisory Opinions. We have previously shared with you the University’s Management and Oversight Plan of Corey Edsall which the University believes appropriately addresses and implements these safeguards. To the extent the Board believes the Management Plan is not adequate for any reason, however, the University welcomes suggestions for improvement.<sup>2</sup>

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<sup>2</sup> As you know, the University has repeatedly requested this guidance from your office but for reasons we do not understand your office has declined to provide any such guidance.

In addition to the information which we have previously provided, enclosed herewith for the Board's review and consideration is a Conflict of Interest Disclosure form, dated January 4, 2017; Offer of Employment letter to Randy Edsall, dated December 28, 2016; Offer of Employment letter to Corey Edsall, dated January 6, 2017; and Offer of Employment letter to Thomas Lashlee, dated January 11, 2017.<sup>3</sup>

The University will be available to answer questions from the Board at its meeting of March 16<sup>th</sup>.

Sincerely,



Nicole Fournier Gelston

Enc.

cc: Rachel Rubin, Chief of Staff  
David Benedict, Athletic Director  
Kim Fearney, Director of Compliance and Ethics Liaison

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<sup>3</sup> The contracts contemplated by these offers of employment have not been finalized.