



**Raised Bill 6999**  
**An Act Implementing The Recommendations Of The Auditors of Public Accounts**

**Testimony of Commissioner Melody A. Currey**

**Government Administration and Elections Committee**  
**March 27, 2015**

The Department of Administrative Services (DAS) thanks the Committee for the opportunity to provide comment on **Raised Bill 6999 An Act Implementing the Recommendations of the Auditors of Public Accounts.** As the agency that administers contracts for most executive branch agencies, DAS would like share the following concerns regarding sections 9 and 10 of this bill, which seek to alter the statutory provisions governing "contractual services" entered into by DAS pursuant to Conn. Gen. Stat. § 4a-51, and those governing contracts for personal services approved by the Office of Policy and Management (OPM) under Conn. Gen. Stat. § 4-212.

**BACKGROUND**

Section 4a-51 of the general statutes gives the Commissioner of DAS responsibility over, among other things, the "purchase, lease or contract for all supplies, materials, equipment and contractual services required by any state agency . . . ."

For years, the Auditors of Public Accounts have been troubled by the lack of clarity in the definition of "contractual services," found in § 4a-50 (3) of the general statutes, particularly with regard to the overlap of "contractual services," for which DAS may contract on behalf of state agencies under § 4a-51, and "personal services agreements," individual agency contracts that OPM regulates pursuant to § 4-212 of the general statutes.

- § 4a-50 (3) provides: "Contractual services" means any and all laundry and cleaning service, pest control service, janitorial service, security service, the rental and repair, or maintenance, of equipment, machinery and other state-owned personal property, advertising and photo stating, mimeographing, *and other service arrangements where the services are provided by persons other than state employees;*

(Emphasis added)

- § 4-212 provides:

(2) "Personal service contractor" means any person, firm or corporation not employed by the state, who is hired by a state agency for a fee to provide services to the agency. The term "personal service contractor" shall not include (A) a person, firm or corporation providing "contractual services", as defined in section 4a-50, to the state, . . .

(3) "Personal service agreement" means a written agreement defining the services or end product to be delivered by a personal service contractor to a state agency, excluding any agreement with a personal service contractor that the state accounting manual does not require to be submitted to the Comptroller.

Over the years, particularly as technology has changed, service offerings have changed, and new requests for contracts are brought to DAS's attention regularly. When there is uncertainty regarding whether a service falls under Chapter 58 (DAS "contractual services") or Chapter 55a (Personal Service Agreements (PSAs)), DAS and OPM confer to determine whether the service contract should be awarded under DAS's Chapter 58 authority or under the Chapter 55a rules and, if necessary, consult with the Office of the Attorney General.

Generally DAS and OPM have agreed that if the request has statewide applicability or if the service will be used by more than one agency, then it is appropriate, most efficient and in the best interests of the state for DAS to award the contract under its Chapter 58 authority. Examples of such contracts include Diversity Training services (to handle statutorily mandated training required for all state employees); Temporary Office services; Employee Assistance Provider services; LEAN consultant services; accounting; financial management; body fluid testing; genetic testing; record storage; team building; veterinary services; physician services; laboratory analysis; court reporting and transcription; debt collection; pharmaceutical consulting; educational testing; scanning and indexing; physical exams; photography; translation and interpretation; workers' compensation claims administration; document preservation; water testing; insurance brokering; dieticians; child care; aircraft piloting; HR consulting; comprehensive mail services; chemical sampling and testing; hearing board; hearing officers; imaging and archiving; dental services; x-ray services; medical testing; moving; vision testing; comprehensive graphic imaging; hazardous material abatement; soil recycling; environmental assessments; towing; document binding; drilling services; armored car services; shuttle bus services; food catering; snow removal; rubbish removal; stump removal; recycling; and ground transportation, among others.

### **Raised Bill 6999 Is Unnecessary**

Sections 9 and 10 of Raised Bill 6999 attempts to correct what the Auditors see as conflicting statutory language; but no such correction is necessary. For decades, DAS and OPM have been able to determine whether any particular service is more

appropriately procured through the requirements outlined in Chapter 58 or through the requirements outlined in Chapter 55a.

At the Auditors' urging, DAS requested a formal opinion from the Office of the Attorney General verifying that § 4a-51 provides DAS with the authority to award and administer these service contracts. In November 2014, the Attorney General issued a formal opinion, stating:

DAS may use its authority under Title 4a, Chapter 58 of the Connecticut General Statutes to enter into contracts for all types of services. The authority of DAS to enter into such contracts is not limited or restricted by the requirements of Title 4, Chapter 55a, and DAS is not subject to the requirements of that title when entering into contracts for service.

(11/18/14 letter from Attorney General George Jepsen to the Honorable Donald J. DeFronzo, attached).

### **Raised Bill 6999 Increases Costs and Creates Inefficiencies**

Even if greater clarification was theoretically desirable, the new language proposed in sections 9 and 10 of Raised Bill 6999 creates more problems than it solves. Under the current practice, if a request for services has statewide applicability or if the service will be used by more than one agency, DAS will procure it. DAS have expertise in contract preparation, negotiation, award and administration and has the authority to enter into statewide contracts that may be used uniformly by many or all state agencies, which is much more efficient than having numerous state agencies enter into their own agreements for the same or similar services.

By defining almost all consultant agreements as personal services agreements, sections 9 and 10 of Raised Bill 6999 shifts the administrative burden of procuring those services from the central agency charged with statewide procurement, DAS, and shifts it to individual agencies that will now have to re-create those previous statewide agreements, and executing a series of separate individual personal service agreements for those same services. Not only would this process force agencies to take resources away from their core missions, but undermines economies of scale and creates the very real likelihood that different agencies will pay different amounts for the same services. This is a redundant, time consuming, and costly undertaking for agencies.

DAS thanks the Committee for the opportunity to provide comment.

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Office of the Attorney General  
State of Connecticut

November 18, 2014

The Honorable Donald J. DeFronzo  
Commissioner  
Department of Administrative Services  
165 Capitol Avenue  
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Dear Commissioner DeFronzo:

You have asked my office for an opinion regarding whether Title 4a, Chapter 58 of the Connecticut General Statutes provides the Department of Administrative Services ("DAS") the authority to enter into contracts on behalf of the State of Connecticut (the "State") for all types of services, or whether DAS must use Title 4, Chapter 55a of the Connecticut General Statutes to enter into any of those contracts. Our conclusion is that DAS may use its statutory authority under Title 4a, Chapter 58 to enter into contracts on behalf of the State for all types of services.

I. Statutory Framework.

A. Title 4a, Chapter 58 of the Connecticut General Statutes.

Chapter 58 sets forth various requirements relating to the purchase of goods and services by the State. Within this chapter, two statutes are relevant to this opinion:

Conn. Gen. Stat. § 4a-51 provides, in relevant part, "(a) The Commissioner of Administrative Services shall: (1) Purchase, lease or contract for all supplies, materials, equipment and contractual services required by any state agency..." [emphasis added]

Conn. Gen. Stat. § 4a-50(3) defines "Contractual services" as "any and all laundry and cleaning service, pest control service, janitorial service, security service, the rental and repair, or maintenance, of equipment, machinery and other state-owned personal property, advertising and photostating, mimeographing, and other service arrangements where the services are provided by persons other than state employees[.]" [emphasis added]

When DAS enters into a contract for the purchase of goods and services on behalf of a state agency under Chapter 58, it must comply with the statutory requirements set forth in that chapter relating to such contracts (particularly related to competitive bidding and negotiation), as well as the regulations established by DAS pursuant to Conn. Gen Stat. § 4a-52.

B. Title 4, Chapter 55a of the Connecticut General Statutes.

Chapter 55a, consisting of sections 4-212 through 4-219, permits state agencies to enter into personal service agreements directly and sets forth certain requirements for state agencies wishing to enter into such agreements. Of particular relevance to this opinion is Conn. Gen. Stat. § 4-212, which is the definitions section for this chapter and which provides, in relevant part:

As used in sections 4-212 to 4-219, inclusive:

...

(2) "Personal service contractor" means any person, firm or corporation not employed by the state, who is hired by a state agency for a fee to provide services to the agency. The term "personal service contractor" shall not include (A) a person, firm or corporation providing "contractual services," as defined in section 4a-50, to the state... [emphasis added]

(3) "Personal service agreement" means a written agreement defining the services or end product to be delivered by a personal service contractor to a state agency, excluding any agreement with a personal service contractor that the state accounting manual does not require to be submitted to the Comptroller.

The remainder of this chapter sets forth the procedures with which state agencies must comply to enter into personal service agreements, particularly with regard to competitive negotiation and when OPM approval is required. See Conn. Gen. Stat. § 4-212, et seq. Further, OPM has adopted regulations pursuant to § 4-217 that establish additional standards that state agencies must follow to enter into such personal services agreements.

II. Discussion.

The meaning of a statute is to be ascertained from the text of the statute itself and its relationship to other statutes. See Conn. Gen. Stat. § 1-2z. If, after examining the text and considering such relationship, the meaning of such text is

plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning shall not be considered. See id.

Title 4, Chapter 55a sets forth the procedures a state agency is required to follow as part of entering into a personal service agreement. However, by means of the definition of "personal service contractor," Conn. Gen. Stat. § 4-212 clearly excludes "contractual services" (as defined in Conn. Gen. Stat. § 4a-50) from the provisions of this chapter. Thus, provided a contract is for "contractual services," it falls outside the scope of Title 4, Chapter 55a, and is governed by Chapter 58.

As noted above, under Conn. Gen. Stat. § 4a-50 the definition of "contractual services" includes a specific listing of several services, but concludes with the phrase, "..., and other service arrangements where the services are provided by persons other than state employees." The comma break prior to this final phrase indicates that the phrase was inserted as a broad category or "catchall," and was not included as a modifier of the other categories previously listed. The language of the definition includes a wide variety of services that cover a broad spectrum of activities, manifesting a legislative intent not to limit the types of services that would qualify as "contractual services" under the definition.<sup>1</sup>

Prior to the passage of Public Act 77-444, the phrase "and other service arrangements" from Conn. Gen. Stat. § 4a-50 read "and other machine service arrangements." However, Public Act 77-444 eliminated the word "machine" from this language, providing another indication that the legislature intended to give DAS broad power to enter into agreements for contractual services of all types.

We conclude that DAS may enter into contracts for all types of services without being required to comply with the terms and conditions of Title 4; Chapter 55a of the General Statutes. This conclusion is supported by the open-ended nature of the definition of "contractual services," the exclusion of "contractual services" from the definition of "personal service contractor" contained in Conn. Gen. Stat. § 4-212, and the provision of Conn. Gen. Stat. § 4a-51 that provides that DAS shall enter into, among other things, contracts for contractual services required by any State agency. (It still, of course, must comply with the terms and conditions of Title 4a, Chapter 58, and the regulations established pursuant to that chapter).

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<sup>1</sup> It is noted that the definition used to include other services such as telecommunications, data entry and keypunching, prior to those services being moved to newly-created Title 4d in 1997 and placed under the jurisdiction of the former Department of Information Technology.

Although we believe our conclusion is amply supported by plain statutory language, some confusion as to the scope of DAS' contracting authority may arise from the apparent overlap of provisions of §§ 4a-50 and 4a-51 with those of Title 4, Chapter 55a. This overlap is due to the fact that § 4-212 carves out "contractual services" from its definition of personal service contractor, and § 4a-51 provides that DAS shall enter into all contracts for contractual services required by any State agency.

While, as set forth above, we believe Conn. Gen. Stat. §§ 4-212 and 4a-50 are clear, given the possible overlap of the two statutes, we conducted a review beyond their plain text. "We also look for interpretive guidance to the legislative history and circumstances surrounding [a statute's] enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." See Friezo v Friezo, 281 Conn. 166, 181-82 (2007).

We have found nothing in the legislative history indicating an intent to in any way limit the authority of DAS to enter into agreements for services. In fact, as noted above, by the plain language of Conn. Gen. Stat. § 4-212, the legislature clearly and specifically excluded "contractual services" from being subject to the statutory scheme set forth in Title 4, Chapter 55a.

Further, the manner in which DAS has interpreted and administered Title 4a, Chapter 58 is highly relevant to determining the meaning of the statutes that make up the chapter. Although the interpretation of statutes is ultimately a question of law, it is the well-established practice of courts to "accord great deference to the construction given [a] statute by the agency charged with its enforcement." (Citations omitted.) Griffin Hospital v. Commission on Hospitals & Health Care, 200 Conn. 489, 496, appeal dismissed, 479 U.S. 1023 (1986) (Griffin Hospital II), quoting Corey v. Avco-Lycoming Division, 163 Conn. 309, 326 (1972) (Loiselle, J., concurring), cert. denied, 409 U.S. 1116 (1973). An agency's construction of a statute, if reasonable, is high evidence of what the law is. Board of Education v. State Board of Labor Relations, 217 Conn. 110, 120 (1991).

DAS has relied on Title 4a, Chapter 58 for a long period of time as authority to contract and, according to information on the State Contracting Portal website, DAS has recently relied on Title 4a to contract for what appears to be a wide variety of services including: accounting, financial management, genetic testing, record storage, veterinary, medical, lab analysis, court reporting and transcription, debt collection, pharmaceutical consulting, educational testing, real

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estate appraisal, photography, translation and interpretation, document preservation, water testing, insurance brokering, aircraft piloting, comprehensive mail services, chemical sampling and testing, imaging and archiving, storm water monitoring, exam testing, moving, comprehensive graphic imaging, hazardous material abatement, environmental assessments, towing, forest logging, drilling, food catering, landscaping, snow removal, rubbish removal, and recycling.

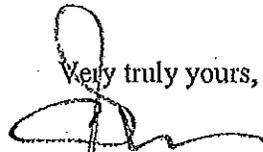
This non-exhaustive list indicates that DAS interprets and applies § 4a-50 – and, in particular, its reference to "other service arrangements" – as granting it authority to contract not only for the services specifically listed in that statute, but for a very wide range of other services. For the reasons explained above, we believe that this is an appropriate and correct interpretation of the agency's statutory authority.

### III. Conclusion.

Based upon our review of the relevant statutes, the legislative history, and the manner in which DAS has interpreted its statutory powers, it is the opinion of this office that DAS may use its authority under Title 4a, Chapter 58 of the Connecticut General Statutes to enter into contracts for all types of services. The authority of DAS to enter into such contracts is not limited or restricted by the requirements of Title 4, Chapter 55a, and DAS is not subject to the requirements of that title when entering into contracts for services.

We do acknowledge a potential overlap between Title 4, Chapter 55a and Title 4a, Chapter 58. However, based upon the information we have reviewed, this possible overlap does not act to limit the contractual powers of DAS as described in this opinion. DAS may secure contractual services for state agencies pursuant its own statutory authority under Chapter 58, following those legislative dictates along with its own promulgated regulations. It is possible that the state legislature will wish to clarify this issue at some point in the future but, unless or until that occurs, it is our opinion that DAS may enter into contracts for all types of services pursuant to the powers granted to it by Title 4a, Chapter 58 of the Connecticut General Statutes.

Very truly yours,



GEORGE JEPSEN  
ATTORNEY GENERAL