

**DECLARATORY RULING DR-1986-001
RECONSTITUTED AS ADVISORY OPINION AO-1986-001
RECONSTITUTED AS ETHICS INTERPRETATION EI-1986-001
ISSUED NOVEMBER 9, 1988**

The Oklahoma Council on Campaign Compliance and Ethical Standards [the "Council"], the successor of the Oklahoma Ethics Commission, received your request for declaratory ruling. The Council voted at its regular meeting on September 7, 1988, to reconstitute the question as a Request for Advisory Opinion [since by statute, it is not an agency for purposes of the Administrative Procedures Act--Title 74 O.S. Supp. 1988, § 4206 (B)]. The Council then addressed the request at its regular meeting on November 9, 1988.

Petitioner asked, in effect, the following question:

Is there a potential conflict of interest for a Driver Improvement Hearing Officer of the Oklahoma Department of Public Safety to own and operate a Commercial Driving Training school?

The Council considered the following laws:

Title 74 O.S. Supp. 1988, § 4241 (4) states:

"No state employee shall:

* * *

4. Sell, offer to sell or cause to be sold, either as an individual or through any business enterprise in which he holds a substantial financial interest, any goods or services to any state agency or to any business entity licensed by or regulated by the state agency, except as provided in paragraph 3 of Section 26 of this act;"

Section 26 referenced in the line above was initially codified at 74 O.S. Supp. 1985, § 841.5 (3). That Section was later recodified at 74 O.S. Supp. 1986, § 4243 (C) by the terms of Section 34 to House Bill No. 2054 of the Second Regular Session of the 40th Oklahoma Legislature. [See, Okla. Sess. Laws 1986, c. 255, § 34, p. 1037]. This Section provides for limited exceptions which are not presented in your inquiry and are not addressed here.

Title 74 O.S. Supp. 1988, § 4241 (6) provides:

No state employee shall accept or solicit other employment which would impair his independence of judgment in the performance of his public duties.

Title 47 O.S. § 801 (A) reads:

"Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation, for the education and training of persons, either practically or theoretically, or both, to operate or drive motor vehicles and/or to prepare an applicant for an examination given by the state for an operator's

or chauffeur's license or learner's permit, and charging a consideration or tuition for such services.

Pursuant to its investigation, the Council considered the following facts:

1. Hearing Officers may require drivers to be tested [take review examinations] in some cases.
2. If a driver fails such a test, an Examiner may suggest they contact a commercial driving school.
3. Hearing Officers and Examiners work closely together in the same office.
4. The Department of Public Safety claims that Petitioner was turned down because a Hearing Officer could require testing in order to solicit business for his school.
5. Petitioner's attorney states he was turned down because of a potential conflict when he heard cases involving former students and that such a conflict already existed by virtue of the fact that Petitioner and other Hearing Officers had been licensed to teach driver's education classes.
6. The wife of a Supervisor of Examiners conducted such a school in the past; it put Examiners working under him in a bad spot. The Department of Public Safety says petitioner was first Hearing Officer to apply for a school license but that wives of Hearing Officers have been turned down for licenses since the problem with the Supervisor's wife.
7. The Department of Public Safety has allowed Hearing Officers to teach the Driver Improvement Course through state colleges and universities on a part-time basis under certain guidelines [contracted through the Department of Public Safety] and that it granted petitioner a license to teach a driver's education class from 1980 to 1985 at a private school; however, such instruction was not commercial training licensed by the Department of Public Safety.

It is, therefore, the advisory opinion of the Oklahoma Council on Campaign Compliance and Ethical Standards, as voted on at its regular meeting on November 9, 1988, that:

1. **Title 74 O.S. Supp 1988, § 4241 (4) has no application to the question since the Petitioner, in seeking a license to own and operate a Commercial Driver Improvement School, was not attempting to sell or offer to sell any goods or services to the agency; and**

2. **There exists the potential for a violation of Title 74 O.S. Supp. 1988, § 4241 (6) in that a Hearing Officer's independent judgment in requiring driver testing could be affected by a desire on the part of that officer, if he also owned and operated a Commercial Driver Training School, to solicit business for his school. Such a determination of a violation cannot be made without a full review of all factual circumstances involved in the matter.**