

ETHICS INTERPRETATION EI-1992-004
ISSUED DECEMBER 10, 1992

The Ethics Commission, in its regular meetings on November 6 and December 10, 1992, discussed your request for an ethics interpretation as to the following question:

How much can a member of the Oklahoma House Of Representative earn in commissions from a company that does business without violating the "substantial financial interest" provision of Title 74 Oklahoma Statutes Section 4202, subsection 35?

FACTUAL BACKGROUND

We note that you have provided us with the following factual background with respect to this question:

1. the contemplated situation entails that a legislator would be acting as a salesperson for a company which manufactures an energy saving reflector device for light fixtures;
2. the legislator would be making direct sales, or as an alternative, others would be making direct sales of the product; if the latter were the case, the legislator would then receive an "override" or some sort of share in the profits from such sales;
3. sales would be made both to state agencies and to businesses in the private sector;
4. since sales with the state would be aimed at all state agencies, some of those targeted will fall within the purview of committees to which the legislator has been assigned;
5. the legislator's projected share in the profits would be twenty eight per cent (28%) of the net profits, were the legislator to be the direct salesperson, and a part of that amount if someone else were to function as the salesperson.

The question is whether, under these facts, the legislator has a "substantial financial interest" in this venture, which would bring him or her under the statutory prohibition hereinafter set forth.

ANALYSIS

The Ethics Commission Act [74 O.S. 1991, § 4200 et seq.] includes provisions which speak to prohibitions upon legislators' activities. These are found in Title 74, Oklahoma Statutes, Section 4246 (e) and (h), which provide:

Legislators--Prohibited Acts

No Legislator shall:

* * *

(e) Sell or cause to be sold, rent or lease either as an individual or through any business enterprise in which he holds a *substantial financial interest*, goods, services, buildings, or property to any state agency except by condemnation or threat of condemnation;¹

* * *

(h) Receive or agree to receive compensation for representing or *assisting any person or business in any transaction involving the state...*

* * *

[74 O.S. 1991, § 4246 (e) (h)]

[emphasis added]

The Commission construes the clause "substantial financial interest" as modifying and explaining the words "business enterprise". Thus, it finds that subparagraph (e) of 74 O.S. 1991, § 4246 prohibits individual legislators from selling or causing to be sold, rented or leased to the state any goods, services, buildings or property. That being so, the Commission holds that this provision prevents legislators from engaging in direct sales of the instant product with the state or any of its agencies.

The Commission also finds that legislators may not receive compensation for assisting any person or business in any transaction involving the state. Compensation, as used in this sense, is defined as:

"**Compensation**" means money, service, facility or thing of value or financial benefit which is received in return for or in connection with services rendered or to be rendered;...

[74 O.S. 1991, § 4202 (8)]

As the foregoing makes clear, commissions earned or shared in fall squarely within this definition. Thus, the Commission finds that a legislator cannot accept a commission on goods or services sold to the state or its agencies, nor can he or she participate in commissions earned in such cases by others.

¹The Act defines the term as follows:

"**Substantial financial interest**" means an interest that could result in directly or indirectly receiving a substantial pecuniary gain or sustaining a substantial pecuniary loss as a result of ownership or interest in a business entity, or as the result of salary, gratuity, or other compensation or remuneration from any person, partnership, organization or association.

[74 O.S. 1991 §4202 (35)]

Still, a business could engage in such sales and a legislator could derive compensation from it, provided he or she did not assist with transactions involving the state and his or her interest in this entity were less than a "substantial financial" one.

Thus, two questions arise: first, "What, for present purposes, is a business?" and, second, "What, under these facts, is a substantial financial interest?"

With respect to the first, the Commission adopts the definition set forth in the Ethics Commission Act, *supra*, which provides:

"**Business**" means any corporation, partnership, sole proprietorship, firm enterprise, franchise, association organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;...

[74 O.S. 1991, § 4202 (1)]

With respect to determining "substantial financial interest", the Commission has examined other authorities. It finds most persuasive those provisions set forth in the term "associated" contained in its Final Rules:²

"**Associated**", when used with reference to an organization, includes an organization in which an individual or a member of his or her immediate family is a director, officer, fiduciary, trustee, agent, or partner, or owns or controls, in the aggregate, at least two percent (2%) or a value of five thousand dollars (\$5,000.00) of the outstanding equity.

[257:15-1-2. Definitions]

Thus, the Commission finds that a legislator could be an owner in a business which sells goods or services to the state or its agencies, so long as the degree of ownership was less than two percent (2%) in the aggregate or a value of five thousand dollars (\$5,000.00) of its outstanding equity.

CONCLUSION

It is, therefore, the ethics interpretation of the Ethics Commission as voted on at its regular meeting held December 10, 1992, that:

- 1. a member of the legislature is prohibited under Oklahoma Statutes, Title 74, Section 4246 (e) from engaging in direct sales with the State of Oklahoma or any of its agencies;**

²These rules were promulgated and delivered to the Oklahoma House of Representatives and Senate on the second day of the legislative session in 1992. They were subsequently disapproved in House Joint Resolution 1077 and are of no further legal effect. The Commission feels, however, that this provision was well reasoned and finds its terms to meet the instant situation.

2. a member of the legislature is prohibited under Oklahoma Statutes, Title 74, Section 4246 (h) from assisting in a transaction with the State of Oklahoma or its agencies;
3. a member of the legislature may possess an ownership interest in a business enterprise which does business with the State of Oklahoma, so long as that interest remains below that of a "substantial financial interest", which the Commission finds to be no more than two percent (2%) in the aggregate, or a value of five thousand dollars (\$5,000.00) of the outstanding equity of said business.
4. nothing herein would apply to sales made to businesses in the private sector.

Please be aware that state law requires this agency to publish the Ethics Interpretations it issues. This will be done in such a way as to protect the name of the requesting party.