

**ETHICS INTERPRETATION EI-1994-004
ISSUED JANUARY 12, 1995**

The Ethics Commission, in regular meeting, addressed your request for an Ethics Interpretation. You asked:

If a state agency receives a federal grant for a project and that agency contracts with a state higher education institution to perform services for that project, is the institution prohibited, under Section 257:20-1-10 of the Rules of the Ethics Commission [74 O.S. Supp. 1994, Ch. 62, App.], from contracting with or continuing a contract with a private consultant for services for the project if, after contracting with the institution, the consultant enters into an employment contract with a person who has been a legislator within the previous two years to work on the project, provided the source of funds for the consultant's contract is from the federal grant funds?

ANALYSIS

The Constitutional Ethics Rules [supra] contain a provision regulating state officers' and state employees' private rights in public contracts. It provides:

**State officers' and state employees' private
interests in public contracts**

* * *

(b) No state officer or state employee, acting in his or her official capacity, shall enter into any contract in which the state officer or state employee knows or should know that a person who is then or has been a legislator within the previous two years, or a member of such person's immediate family, has a substantial financial interest.
Section 257:20-1-10 of the Rules of the Ethics Commission, supra.

The rule does not merely prohibit state officers/employees from entering public contracts with one, whom they know or should know is – or within the previous two years has been – a legislator, or a member of the legislator's immediate family. It also prohibits state officers/employees from entering into contracts in which they know or should know the legislator, one who has served as a legislator within the previous two years, or a member of his or her immediate family holds a substantial financial interest. The constitutional rules define this term.

Definitions

"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 a result of salary, gratuity or other compensation or remuneration from any person, partnership, organization or association. The term "substantial financial interest" includes, but is not limited to, an ownership interest of five percent (5%) or more in a business enterprise or an interest

in an entity from which dividends of one thousand dollars (\$1,000.00) or more were derived during the preceding calendar year.

Section 257:1-1-2

[emphasis added]

Under the instant facts, a person who has been a legislator within the previous two years ["the legislator"] seeks to enter an employment contract with a consulting firm. The consulting firm, in turn, has a substantial financial interest in the consulting services contract it seeks to enter – or has entered – with officers/employees of the state institution of higher education. As an employee of the firm, the legislator will be receiving a salary, compensation or remuneration from his employer's contract with state officers/employees. The question then becomes whether the Commission interprets the legislator's salary from the consulting firm – which is an indirect interest – as a "substantial financial interest" such as would cause the state officers/employees who entered the contract with the consulting firm to be in violation of Section 257:20-1-10(b).

The Commission finds that such an interpretation of the rule would be over broad. It applies the indirect interest test, set forth in the definition of "substantial financial interest" to the primary contract – that between the state officers/employees and the consulting firm. It does not extend the "substantial financial interest" criteria to the secondary contract – that between the consulting firm and the legislator.

In passing, the Commission notes that how that contract is funded is not relevant to the inquiry. It likewise contains no "grandfather clause" which would permit continuing such a contract were one to have been entered in violation of the constitutional rules.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as voted upon at its regular meeting held January 12, 1995, that Section 257:20-1-10(b) of the Rules of the Ethics Commission [supra] does not prohibit a state officer or state employee from entering into or continuing a consulting contract, whether funded by state or federal dollars, in which he or she knows, or should know, an employee of such consulting firm, is a legislator, one who has been a legislator within the previous two years or a member of a legislator's immediate family.

Please be advised that ethics interpretations by law will be published by this Commission without identifying petitioners.