

**ETHICS INTERPRETATION EI-1995-006  
ISSUED MAY 19, 1995**

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

*Does an orientation mobility specialist in the employ of the Department Of Rehabilitative Services of the State of Oklahoma qualify as a state officer or employee who must make financial disclosure pursuant to the Ethics Commission Act and the Constitutional Ethics Rules?*

**FACTS**

You have advised the Commission that you are an employee of the Department Of Rehabilitative Services. Your job entails working with physically impaired clients and recommending to a rehabilitative counselor or teacher the purchase of appropriate equipment. Thus, you make no final decision with respect to spending state funds, nor do you decide policy. You do, however, analyze needs and recommend purchase of certain products. In the vast majority of cases, your recommendation is approved. While there is no set dollar limit placed on the equipment you can recommend, your recommendations are generally within the range of one to two hundred dollars per individual purchase.

**ANALYSIS**

At present time, your question must be analyzed and answered under two separate bodies of authority: the Ethics Commission Act, 74 O.S. 1991, § 4200 et seq., as amended, and the Constitutional Ethics Rules, Section 257:1-1-1 et seq. of The Rules of The Ethics Commission, 74 O.S.Supp.1994, Ch.62, App.] The Ethics Commission Act [the "Act"], supra, currently provides one set of criteria for determining which state employees are required to make financial disclosure, while the Constitutional Ethics Rules [the "Rules"], supra, specify another. Unless and until the Legislature makes filing under the Act unnecessary, state officers and employees are bound by both.

The Act specifies those required to make financial disclosure. It provides:

**Persons required to file financial disclosure statement**

\* \* \*

D. The chief administrative officer and the first assistant administrative officer of any state agency, board or commission who make the policy decisions necessary to implement the duties imposed on the entity by law and *any state employee who is responsible for taking or recommending official action of a nonministerial nature with regard to contracting or procurement of services or products exceeding Seven Hundred Fifty Dollars (\$750.00) in cost per calendar year shall file a Financial Disclosure Statement with the Commission upon initial employment and not later than April 30 of each even numbered year thereafter.*

Thus, state employees who recommend official action of a nonministerial nature with regard to contracting or procuring services or products exceeding the cumulative figure of Seven Hundred Fifty Dollars (\$750.00) in a calendar year are required to make financial disclosure. Under the statutory system, this is done every even number year by filing the Financial Disclosure Statement ["Form F-1"].

Since you recommend purchases -- irrespective of whether you participate in the final spending decision -- the Commission finds that you will have the duty to file the statutory Financial Disclosure Statement in those even numbered years when your recommendations for the purchase or procurement of products exceed Seven Hundred Fifty Dollars (\$750.00) in the previous calendar year.

The Rules criteria is different. Present provisions provide:

**Individuals required to file**

(a) The following individuals shall file a statement of financial interest with the Commission.

\* \* \*

(3) a state employee who determines state policy or who *makes final spending decisions* for the state or any governmental entity.

\* \* \*

257:15-1-3

[emphasis added]

The Ethics Commission has voted to amend this provision. Unless disapproved by a majority vote of both Houses of the Legislature, the amendment will take effect July 1, 1995. It has also been adopted as an interpretation of the current rule in Ethics Interpretation EI-94-004. The amended rule provides:

**Individuals required to file**

\* \* \*

(b) For purposes of Chapters 15 and 20, a person who makes final spending decisions shall include persons who:

(1) participates in the review and analysis of bid specifications;

(2) assists in the review and analysis of bids;

(3) recommends for selection bidders,

(4) prepares or approves requisitions for purchases against previously bid statewide or agency issued contracts,

(5) are in the claim preparation or approval process who can exercise discretion and who can cause previously made purchasing decisions to be reviewed before payment is made.

(c) A person who makes final spending decisions shall not include a person who:

(1) performs clerical duties related to purchasing and claim processing; or

(2) is involved in substantive purchasing duties but is restricted to individual purchases of less than twenty-five hundred dollars (\$2,500).

[emphasis added]

The language of the amendment is designed to clarify which state employees are required to make financial disclosure. Since it evidences the intent of the Commission and has been adopted as an interpretation of the existing rule, it is controlling in this analysis.

The Commission finds that you are "involved in substantive purchasing duties", per paragraph (c)(1) of Section 257:15-1-3. If your recommendations for individual purchases never exceed twenty-five hundred dollars (\$2,500), you will fall outside the provision of who is required to file the constitutional rule Statement Of Financial Interests For Compensated Filers ["Form F-1R"]. If your recommendation for a single purchase ever exceeds this amount, you will be required to make financial disclosure under the constitutional rules. As distinguished from the statutory provisions, the latter is figured on a single expenditure basis. Section 257:15-1-4 makes clear that these statements must be filed by April 30 of each year or thirty (30) days after employment, whichever is later.

## CONCLUSION

**It is therefore the ethics interpretation of the Ethics Commission, as voted upon at its regular meeting held May 19, 1995, that an orientation mobility specialist in the employ of the Department Of Rehabilitative Services of the State of Oklahoma will qualify as a state officer or employee who must make financial disclosure pursuant to the Ethics Commission Act, *supra*, if and when recommending official action of a nonministerial nature with regard to contracting or procuring services or products exceeding the cumulative figure of Seven Hundred Fifty Dollars (\$750.00) in a calendar year<sup>1</sup> and under the Constitutional Ethics Rules, *supra*, if and when any individual purchase recommendation exceeds twenty-five hundred dollars (\$2,500).**

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

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<sup>1</sup>The Ethics Commission Act, *supra*, was repealed in 1995; therefore, this state employee must file a statement of financial interest ["Form F-1R"] under the Constitutional Ethics Rules, *supra*, only if and when any individual purchase recommendation exceeds twenty-five hundred dollars (\$2,500).