

ETHICS INTERPRETATION EI-1996-007
ISSUED June 20, 1996

In the executive session portion of its regular meeting held June 20, 1996, the Ethics Commission considered your request for an ethics interpretation. You have asked:

Do the Constitutional Ethics Rules [Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 1995, Ch. 62, App.] prohibit a cabinet secretary, who advises the governor about an agency, from becoming a non-voting, limited partner in a private venture capital arrangement in which that agency is also a non-voting, limited partner?

FACTS

You have explained that, as part of his duties, a cabinet secretary advises the governor about a state agency. The secretary is not, in this instance, a director. His duties are advisory only; he has no vote, no legal authority or control with respect to the agency's activities, which include participation in a capital venture enterprise. The secretary wishes to respond to a private offering to invest in the same entity. This particular offering is open to no more than 65 investors. The partnership's purpose is to make equity investments in private companies with a target region of Oklahoma, Arkansas, Texas, Kansas, Colorado, Missouri and New Mexico. The agency's participation is contingent upon six investments being made in Oklahoma, but decisions will be made by the General Partners only. The secretary will enter the partnership on the same basis as the agency -- as a limited, non-voting member.

ANALYSIS

The Constitutional Ethics Rules [supra] contain provisions which regulate financial transactions between state officers/employees and their entities. But, as the following shows, the rules are confined to situations where the officer/employee enters a transaction with the governmental entity he or she is associated with or serves. This is the crux of the rule titled: State officers' and state employees' private interests in public contracts.

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

(a) **Prohibition on contracting with state -- Exceptions.**

(1) **State officers and state employees.** No state officer or state employee, except a public member, shall sell, offer to sell or cause to be sold, rent or lease either as an individual or through any business enterprise in which he holds a substantial interest, goods, services, buildings or property to the governmental entity with which the officer or employee is associated or to any business entity licensed or regulated by the governmental entity which the officer or employee serves ...

* * *

257:20-1-10

It is reiterated in the provision which prohibits state officers from owning securities issued by the governmental entity served.

**Ownership prohibited by certain state officers
in certain government securities**

No state officer of a governmental entity shall own any interest in any bond, obligation or security issued by or in the name of such governmental entity, unless such interest is a part of a mutual fund or similar security.

257:20-1-5

The rules do not address investment by state officers or employees in private enterprises -- even those in which another governmental entity may be an investor.

In this instance, a cabinet secretary, who has neither seat, voice nor vote on an agency concerning which he advises the governor, wishes to invest in a private enterprise in which the agency has also invested. The secretary has no power, authority or control over the agency. The agency's participation in the venture is restricted. It is a limited, non-voting member, which is the status the secretary will have. Thus, neither the secretary nor the agency will have control over the investment. Under these facts, the Commission finds the Constitutional Ethics Rules [supra] do not prevent a state officer or employee from entering the business relationship the secretary proposes. In cases where the state officer has any authority over the agency or investment, or can direct how state money is invested, the secretary would be prohibited from making the investment or ineligible from exercising such authority.

This ethics interpretation construes only the Constitutional Ethics Rules [supra]. It does not speak to other laws.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held June 20, 1996, that under the instant facts, wherein the secretary has no power, authority or control over the agency making the investment or how the agency will deal with the investment in the future and neither the secretary nor the agency control the investment, the Constitutional Ethics Rules [supra] do not prohibit a cabinet secretary, who advises the governor about an agency, from becoming a non-voting, limited partner in a private venture capital arrangement in which the agency is also a non-voting, limited partner.

Where the state officer has any authority over the agency or investment, or can direct how state money is invested, the officer [here, the secretary], would be prohibited from making the investment or ineligible from exercising such authority.

This ethics interpretation construes only the Constitutional Ethics Rules [supra]. It does not speak to other laws.

Please be advised that law requires that ethics interpretations be published without identifying the requestor.