

ETHICS INTERPRETATION EI-1996-009
ISSUED September 27, 1996

In the executive session portion of its regular meeting held September 27, 1996, the Ethics Commission considered your request for an ethics interpretation. You have asked:

Do the Constitutional Ethics Rules [“the Rules”], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp.1996, Ch. 62, App., permit a state employee of the Oklahoma Department of Transportation [“ODOT”] to work part time for an educational institution of the Oklahoma State System of Higher Education [“State System”] when his independence of judgment in either job is not impaired, the hours of the two jobs are not contemporaneous and no confidential information is being used or revealed on either?

FACTS

You have advised that you are a state employee classified as a Manager of Reproduction Services, Printing and Photo, who is a supervisor over the print shop and photo lab for ODOT. You work at this job during regular hours on weekdays. For several seasons, you have filmed local football games for an educational institution of the State System. You have explained that neither job requires independence of judgment, you deal with no confidential information with respect to either and the work hours are not contemporaneous. You have asked whether your weekend and seasonal job for another governmental entity, under these facts, in any way constitutes a rule violation.

ANALYSIS

The Rules contain provisions on conflicts of interest. Sections 257:20-1-4 and 257:20-1-10(a) regulate both supplemental employment of state officers and state employees and their ability to contract with the state. Since you are a state employee, this interpretation is restricted to your situation. It does not address that of Legislators or statewide elective officers, who may not be otherwise employed by the state except in their elected offices.

Applicable provisions of the Rules are Section 257:20-1-4(a) through (c), which read as follows:

Misuse of office

- (a) No state officer or state employee shall use his or her official position to solicit or secure special privileges, exemptions or compensation for himself, herself or others, except in the performance of his or her duties or as may be allowed by law. Such prohibited activity, except as provided by statute, shall not include writing letters or orally communicating recommendations for hiring, reclassifying, terminating or promoting a state employee.

(b) No state officer or state employee, except in the performance of his or her duties, shall disclose or offer to *disclose confidential information* acquired by reason of his or her official position to any person, group or others not entitled to receive such confidential information, nor shall he or she *use such information for his or her personal gain or benefit*.

(c) No state officer or state employee shall:

(1) *receive or solicit any compensation that would impair his or her independence of judgment* for his or her services as an officer or employee of any state agency, from any source other than the state, unless otherwise provided by law; or

(2) *accept or solicit other employment which would impair his or her independence of judgment* in the performance of his or her public duties.

* * *

257:20-1-4(a)(b)(c)

[emphasis added]

Section 257:20-1-10 was amended effective July 1, 1996, leaving a question as to whether part-time employment by another governmental entity constitutes a conflict of interest. Section 257:20-1-10(a) of the Rules, as amended, reads as follows:

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 financial 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 unless real property is acquired from the state officer or state employee either by condemnation proceedings or the price to be paid for such property is approved in writing by the appointing authority of the agency acquiring such property and by the Governor. A public member shall be required to disclose in detail any attempt to 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 financial interest, goods, services, buildings or property to any governmental entity with which the public member is associated or to any business entity licensed or regulated by the governmental entity which the public member serves. Such disclosure shall be made part of the minutes of the meeting of the entity on which the public member serves and the public member shall be disqualified from participating in the discussion on, voting on, influencing or attempting to influence any action taken by the entity on the proposed transaction as provided in Section 8 of this chapter. This section shall not apply to students who are engaged in bona fide work-study programs at institutions of higher education within the Oklahoma State System of Higher Education.*

(2) **Limited exceptions.** Except for a legislator or a statewide elective officer, Paragraph (1) of this subsection shall not apply to a state employee or state officer:

~~_____ (A) if real property is acquired from the state officer or state employee either by condemnation proceedings or the price to be paid for such property is approved in writing by the appointing authority of the agency acquiring such property and by the Governor; or~~

~~_____ (B) to contracts of employment with the state.~~

* * *

257:20-1-10

[emphasis added]

There is no question in this case about contemporaneous hours, in properly utilizing state time or influence, revealing confidential information or impairment of judgment with respect to your full-time employment. The only question is whether your part-time state employer is licensed or regulated by your full-time state employer.

ODOT contracts, pursuant to 69 O.S.1991, § 502, work for universities on streets, parking lots and street overlaps. It also approves utilization of the County Road Improvement Revolving Fund, pursuant to 69 O.S.1991, § 687(B)(3), to match federal funds for a program at Oklahoma State University. The latter trains individuals to test and certify asphalt. However, none of these interactions constitute “licensing” or “regulating” with respect to an educational institution of the State System. For this reason, the Commission finds that ODOT is not a licensing or regulating agency within the meaning of the above cited provision.

The rules thus contain no provisions which prohibit you from the proposed activity.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held September 27, 1996, that since ODOT does not license or regulate any educational institution of the State System, and the state employee’s independence of judgment in either job is not impaired, the hours of the two jobs are not contemporaneous and no confidential information is being used or revealed on either, neither Sections 20-1-4 nor 257:20-1-10(a) of the Rules prohibit a state employee of ODOT, under these facts, from working part time for a state educational institution of the State System.

Please be advised that ethics interpretations are published with sufficient deletions to prevent identification of the person or persons involved in the situations presented in the ethics interpretation.