

**INFORMAL OPINION IO-1994-008
ISSUED SEPTEMBER 19, 1994**

This is to respond to your question in July as to whether you, as a legislator and owner of a pharmacist, when filling prescriptions ultimately paid for with state and/or federal funds through the Department of Human Services ["DHS"], have a conflict of interest under 257:20-1-10 (b) of the new constitutional ethics rules.

The new rule reads:

(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.

257:20-1-10 (b)

Its purpose is to prevent conflicts between public duties and private interests.

The following facts are significant:

1. DHS is a state governmental entity.
2. A pharmacy must contract with DHS as a "provider" in order to provide prescriptions to persons covered by medicaid.
3. No monetary consideration is paid for the contract with the DHS. The benefit to be gained by the provider is subject to third parties [medicaid beneficiaries] purchasing prescriptions from the provider. Then, and only then, is payment made by DHS to the provider. Rates of payment are set by a pre-publicized schedule that pays maximum allowable costs [usually below average costs] for prescriptions.

DHS is a governmental entity, therefore, a contract between it and a pharmacy owned by a Legislator would be covered by the rule. However, since there is no consideration paid by DHS to a pharmacy, other than payment for allowable prescription items are purchased from the pharmacy by third parties [medicaid beneficiaries], the legislator/pharmacy owner has no substantial financial interest in the contract. Hence, it would not be prohibited by the rule.

CONCLUSION

As a legislator/pharmacy owner, you are not prohibited from contracting with DHS as a provider who can fill medicaid prescriptions since you have no substantial financial interest in the contract. The only benefit comes from third parties contracting with your pharmacy for prescriptions for which DHS is contractually obligated to pay.

Please be aware that informal opinions are not official pronouncements of the Commission. Hence, this letter carries no greater weight than the views of any other citizen. The Commission is available to issue interpretations on matters arising from the Ethics Commission Act and the Constitutional Ethics Rules. These are known as Ethics Interpretations. They are official and bind the future action of the Commission.