

**INFORMAL OPINION IO-1997-002  
ISSUED APRIL 10, 1997**

You asked the following question:

*Is there a possible conflict of interest for a legislator to own a partnership interest in a Home Health Agency?*

Legislative conflicts of interest are addressed in two sections of the Constitutional Ethics Rules [257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S.Supp.1996, Ch. 62, App.]. The applicable rules read in pertinent part:

**Votes, deliberations, and discussions by legislators or statewide elective officers**

(a) A legislator or statewide elective officer shall not introduce or cause to have introduced, request the introduction of, promote, or vote on any legislation if the statewide elective officer or legislator or a member of the immediate family of the officer or legislator or a business or entity with which the legislator or officer or a member of the immediate family of the legislator or officer is associated has:

- (1) a pecuniary interest in; or
- (2) a reasonably foreseeable benefit from;

the legislation. A reasonably foreseeable benefit includes detriment to a business competitor to the legislator or statewide elective officer, to a business competitor of a member of the immediate family of the legislator or officer, or to a business competitor of a business or entity with which the legislator or officer or an immediate family member of the legislator or officer is associated.

(b) A legislator or statewide elective officer may introduce or cause to have introduced, request the introduction of, promote, or vote on legislation if the only pecuniary interest or reasonably foreseeable benefit that may accrue to the legislator or officer, member of the immediate family of the legislator or officer, or business or entity with which a legislator or officer or a member of the immediate family of a legislator or officer is associated is incidental to the legislator's or officer's, immediate family member's or business or entity's position, or which accrues to the legislator or officer, member of the immediate family of the legislator or officer, or business or entity as a member of a profession, occupation, or large class, whichever is applicable, to no significantly greater extent than the pecuniary interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

257:20-1-7

As an equity owner of a Health Care Organization, you may vote on issues affecting such organizations only when the vote affects all such organizations in the same way. If it would profit your company more than another, or if a business competitor would suffer a detriment, you must make your conflict a matter of record and recuse from attempting to influence or voting on the matter.

Another provision affecting a state agency's ability to contract with legislators reads:

## **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 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.

(b) **Contracting with current or former legislators and statewide elective officers--Exceptions.** No legislator or statewide elective officer shall 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. 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 that a person who is then or has been a legislator within the previous year, or a member of such person's immediate family, has a substantial financial interest. The provisions of this subsection shall not apply to:

(1) a contract of employment with an immediate family member of a legislator, together with any renewal, promotion or lateral transfer of such employment contract to another governmental entity, which is:

- (A) in existence on July 1, 1994;
- (B) in existence prior to the legislator's term of office;
- (C) in existence prior to marriage to the legislator; or

(D) with a student employed on a part-time basis, which shall be seventy-five percent (75%) of a normal forty-hour work week or thirty (30) hours per week, or less, and who are regularly enrolled, as defined in Paragraph 11 of Section 840.8 of Title 74 of the Oklahoma Statutes, in an institution of higher education comprising the Oklahoma State System of Higher Education;

(2) a contract entered into with a sole provider within a reasonable geographic area of the services or goods for which the contract is made; and

(3) *a contract to serve as a provider of goods or services for which no consideration is paid pursuant to which a third party beneficiary has a choice of providers, but for which a governmental entity is obligated to pay.*

No legislator or state wide elective officer shall attempt to influence or perform an official function requiring the exercise of discretion relating to a contract with any governmental entity if a member of the legislator's or state wide elective officer's immediate family has a substantial financial interest in such contract.

\* \* \*

257:20-1-10(a)(b)

[emphasis added]

The effect of this provision is to allow a business with which a legislator is associated to provide services to a citizen when that person has a choice of providers from which to choose. This is true even when the state pays the bill.

## CONCLUSION

**In conclusion, there is no provision of the Constitutional Ethics Rules that would prevent a legislator from owning an interest in a Home Health Care Organization. If legislation comes before the legislature that would benefit such an organization in a unique way, separate from all other home health care organizations, or cause a detriment to a competitor of the organization, the legislator must refrain from attempting to influence or casting a vote on the matter. Such an organization may serve as a provider to persons who are free to choose among a list of home health care providers even though payment for the services is made by the state.**

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 Constitutional Ethics Rules and the Political Subdivisions Ethics Act. These are known as Ethics Interpretations. They are official and bind the future action of the Commission.