

**INFORMAL OPINION IO-98-001
ISSUED MARCH 13, 1998**

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. 1997, Ch. 62, App., permit an agency board member, who is required to be a certified psychiatrist, to be employed by a hospital which contracts with a community mental health center, certified by and under contract with the agency?

FACTS

You have advised that the agency board is governed by statute, which stipulates that its seven members include a licensed physician, a certified psychiatrist, a practicing attorney and an licensed psychologist.

There are no specific requirements for the remaining three members. Each serves a seven-year term. All are nominated by the Governor and confirmed by the Oklahoma Senate.

The agency’s responsibilities include certifying community health, as well as substance abuse treatment centers, residential care facilities and domestic violence shelters. Certification is accomplished in accordance with statute and the agency rules. It occurs only upon official action of the agency’s board.

In addition to certifying nonprofit community mental health centers, the agency contracts with these facilities for mental health services. The Commissioner of the agency and the Department of Central Services [“DCS”] approve these contracts. The agency’s board neither lets, awards nor otherwise acts on any of these transactions.

With reference to your specific question, you have advised that:

- An agency board member is employed full-time as a psychiatrist by a certain hospital. Approximately 75% of his job consists of patient care. The balance of his work time is devoted to serving as the facility’s Medical Director. The member has no ownership interest, shares in or stock options with respect to the hospital.
- The agency certifies and contracts with a community mental health center located in a different city. The certification of this facility is voted on by the agency board. The contract is executed by the agency Commissioner and DCS. The agency board is not involved in the contracting process, except for approving the agency’s general budget.
- The member has no ownership interest or stock options in the mental health center.

- The mental health center contracts with the hospital for psychiatric crisis beds for short-term care. The member may or may not provide psychiatric services to individuals occupying the beds under contract with the mental health center. Apart from his hospital salary, the member receives no compensation as a result of his contract between the hospital and the mental health center. The member does not approve, nor is he involved in, the acquisition of the contract between these entities.

ANALYSIS

The Rules encompass those on the agency’s board within the definition of “public member.”

“**Public member**” means a member appointed to a compensated or uncompensated part-time position on a board, commission, council, authority, bureau, committee, state beneficial public trust, or other establishment of the executive, legislative or judicial branch of the State of Oklahoma...

257:1-1-2

As such, the member is subject to restrictions upon state officers’ private interests in public contracts. In pertinent part, that provision provides:

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...*

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257:20-1-10

[emphasis added]

Thus, provided they make the requisite disclosure and abstain from voting, discussing, influencing or attempting to influence the transaction, public members may actually retain a "substantial financial interest" in contracts with the governmental entity they serve. As to what constitutes such interest, the Rules provide:

"Substantial financial interest" means an interest that could result in directly or indirectly receiving a substantial pecuniary gain or sustaining a substantial pecuniary loss as a result of ownership or interest in a business entity, or as a result of salary, gratuity or other compensation or remuneration from any person, partnership, organization or association. The term "substantial financial interest" includes, but is not limited to, an ownership interest of five percent (5%) or more in a business enterprise or an interest in an entity from which dividends of one thousand dollars (\$1,000.00) or more were derived during the preceding calendar year.

257:1-1-2

With regard to the instant facts, the contract involving the hospital and the mental health center are separate agreements between two distinct entities. The agency contracts with the mental health center, not with the hospital which employs the member. The member psychiatrist here has no ownership interest in either entity. He thus has no conflict within the meaning of Section 257: 20-1-10. We therefore find nothing in the Rules to prohibit this licensed psychiatrist from serving on the agency's board.

CONCLUSION

It is therefore the informal opinion of the Ethics Commission staff that under these facts, nothing in the Rules prohibits an agency board member, who is a licensed psychiatrist, from working for a hospital which contracts with a mental health center, which itself contracts with the agency and is certified by the board.

Please be advised that, like ethics interpretations, informal opinions are fact specific. They answer only the question or questions put forth in the underlying request.

The Commission staff can issue informal opinions, upon approval of the Chair or Vice Chair, provided the matter is reasonably susceptible to a single analysis and is not the subject of litigation, investigation or legislation. We hope they shed light on the issue and provide guidance. They are not, however, official pronouncements.

This letter has been approved by the Chair. Please be advised that, like ethics interpretations, informal opinions are published with sufficient deletions to prevent identification of the person or persons involved.