

**INFORMAL OPINION IO-1998-004**  
**ISSUED MARCH 13, 1998**

In the executive portion of its regular meeting held March 12, 1998, the Ethics Commission considered your request for an ethics interpretation. After reviewing the matter, the Commission determined that the question you asked can be answered from a direct reading of the controlling authority. Since ethics interpretations are reserved for issues which must be construed, the Commission voted to convert your request to an informal opinion. You have asked:

*Does the Oklahoma Constitution, State law or the Constitutional Ethics Rules, Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 1997, Ch. 62, App., permit a college, which is both a member of the Oklahoma State System of Higher Education and an area vocational technical school district, after public notice and bidding, to award a contract to a bank to install on the campus for college and public use one or more automatic teller machines ["ATM's"] under any of the following conditions?<sup>1</sup>*

- a. A member of the Board of Regents of the college ["Regent"], also a member of the Board of Trustees for the overlapping area vocational technical district ["Trustee"] is an advisory member of the bank's board of directors. With respect to this position, he received only nominal compensation,, has no ownership interest in the bank, does not vote and receives no salary, but may be the beneficiary of other perquisites.*
- b. A Regent/Trustee is a member of the bank's board of directors. He is a substantial shareholder in the bank, receives a salary together with other possible compensation, and has voting rights.*
- c. Would the answer to either (a) or (b) above be different if the college, after bidding, permits more than one bank to install ATM machines on its campus (e.g., award such a contract to three or more of the best bids)?*

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<sup>1</sup>In responding to your inquiry, we restrict our examination to the Constitutional Ethics Rules [supra] since this agency has no jurisdiction to review either constitutional or statutory provisions. For informative purposes, we note that Article 10, Section 11 of the Oklahoma Constitution prohibits, "The receiving, directly or indirectly, by any officer of the State, or of any county, city, or town, or member or officer of the Legislature, of an interest, profit, or perquisites, arising from the use or loan of public funds in his hands, or moneys to be raised through his agency for State, city, town district, or county purposes..." It is punishable as a felony and includes disqualification to hold office. We leave advice on that matter to the Attorney General who has primary jurisdiction over interpretation of the constitution and statutes.

*d. Would the answer to either (a), (b) or (c) above be different if the respective Regent/Trustees abstain from voting on any item related to these issues?*

## FACTS

You have advised that, with respect to the proposal to install the ATM's, the following apply:

1. The college will receive some remuneration from the bank for allowing it to place the ATM's on campus.
2. The bank receives some profit from ATM transactions with respect to these machines.

## ANALYSIS

The Rules make the instant Regent/Trustees "public members".

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

257:1-1-2

As such, they are also "state officers".

"**State officer**" means an elective, appointed or employed officer, including a public member, in the executive, judicial or legislative branch of the State of Oklahoma.

257:1-1-2

The Rules regulate business dealings between state officers/public members and the governmental entity they serve. Restrictions are triggered when the governmental entity seeks to enter transactions with a business with which the state officer/public member is "associated". The Rules define this as:

"**Associated**", when used with reference to an entity, includes an entity in which an individual or a member of his or her immediate family is a director, officer, fiduciary, trustee, agent, or partner, or owns or controls, in the aggregate, at least two percent (2%) or a value of five thousand dollars (\$5,000) of the outstanding equity.

257:1-1-2

The same applies where the state officer/public member owns a "substantial financial interest" in such business entity.

"**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

Section 257:20-1-10 specifies the circumstances under which state officers/including public members may hold private interests in public contracts. In pertinent part it 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...*

\* \* \*

(c) **Exceptions for all state officers and state employees.** Subsections (a) and (b), except as prohibited by law, shall not apply to:

- (1) contracts for goods or services valued at less than five thousand dollars (\$5,000);
- (2) contracts entered into after public notice by the governmental entity and compliance with competitive bidding procedures; and
- (3) employment contracts entered into with former legislators.

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

[emphasis added]

Thus, provided they make the requisite disclosure and abstain from voting, discussing, influencing or attempting to influence the transaction, the Rules permit public members to be “associated” with or retain a “substantial financial interest” in contracts coming before the governmental entity they serve.

Under either scenario (a), where the Regent/Trustee is an advisory member only of the bank board of directors, or scenario (b), where the Regent/Trustee is an actual member of the board and substantial shareholder in the bank, the Rules permit the college to contract with the bank, provided these public members publicly disclose their status/interests, the disclosure is reflected in the minutes of the meeting, neither attempts to influence the vote and both abstain from voting.

Under scenario (c), where there is public notice and bidding, the restrictions on disclosure and abstention from voting do not apply. Scenario (d) has already been answered in (a) and (b).

## **CONCLUSION**

**It is therefore the informal opinion of the Ethics Commission staff that whether a Regent/Trustee of a college within the Oklahoma System of Higher Education is an advisory member of the bank board of directors, with nominal compensation and some perquisites, or is a full voting board member and owns a substantial financial interest in the bank, does not prohibit the college from contracting with said bank for installation of one or more ATM's, provided that these individuals publicly disclose their status/interests, the disclosure is reflected in the minutes of the meeting, neither attempts to influence the vote and both abstain from voting. Where there is public notice and bidding, the restrictions on disclosure and abstention from influencing the vote or voting do not apply.**

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.