

INFORMAL OPINION IO-1998-006
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:

Do the Oklahoma Constitution, state statutes 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., prohibit a legislator from:

- a. being directly or indirectly involved in a joint venture with a business entity which contracts with the State or any of its agencies; or*
- b. being on retainer with a business entity which contracts with the State or any of its agencies?¹*

ANALYSIS

By definition, legislators are “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 and the State. Restrictions are triggered when the State, or any of its agencies, seeks to contract with a business in which a state officer owns a “substantial financial interest,” defined as:

“**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

¹In 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 jurisdiction over interpretation of the constitution and statutes.

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 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... 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...

* * *

(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.

(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

[emphasis added]

According to their terms, Subsections (a) and (b) set forth prohibitions on state officers and specifically legislators with "substantial financial interests" contracting with the State.

Certain exceptions apply, however. The first permits such contracts with respect to sole suppliers "within a reasonable geographical area." The second pertains to service providers where, although the agency pays for the service, the individual is free to choose the provider. The third speaks to nominal contracts, meaning those for goods or services valued at less than \$5,000. The fourth permits such contracts after public notice and with competitive bidding.

With regard to the instant facts, legislators may directly or indirectly own an interest in, or be on retainer with, a firm or business entity which contracts with the State or its governmental agencies only under these limited exceptions.

CONCLUSION

It is therefore the informal opinion of the Ethics Commission staff that where a legislator owns a substantial financial interest in a business entity, that firm is prohibited from doing business with the State, including any of its agencies, with the following exceptions:

- a. **the firm or entity is the sole supplier of particular goods or services "within a reasonable geographical area" of the State governmental entity;**

- b. the legislator, firm or business entity is a service provider where, although the state governmental entity pays for the service, the individual is free to choose the provider;**
- c. the contract is for goods or services valued at less than \$5,000; or**
- d. the contract is entered into by the governmental entity after public notice and competitive bidding.**

Legislators may directly or indirectly own an interest in, or be on retainer with, a firm or business entity which contracts with the State or its governmental agencies only under these limited circumstances.

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.