HIGHER EDUCATION ETHICS & CONFLICTS OF INTEREST

Those challenging situations with no easy answers!
Presented by:

• Bruce A. Androphy, Executive Director, Tennessee Ethics Commission

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IMPORTANT REMINDER

• Public institutions of higher education ARE different from private institutions as officials/employees are public officials/employees and may be subject to rules governing public employment. Those RULES may be hard to fit with the very nature and practice of higher education. WHY?
BECAUSE... 

- Public Institutions of Higher Learning: 
  - Often operate like private institutions; they run hospitals, health centers, and other for-profit programs; 
  - They are heavily involved with research sponsored by private entities with which the institution may conduct other business and may have inherent conflicts; 
  - Officials may be involved in fund raising on behalf of the institution again from interested parties;
MORE . . .

- Academics are encouraged to engage in outside work;
- Officials may be encouraged to sit on outside boards;
- Public higher education institutions usually have closely affiliated not-for-profit research corporations that may/may not be covered by the same rules;
- Recruitment for top stars may be intense.
AND PROBLEMS WILL OCCUR: MESS#1 – STUDENT LOANS

- **Student Loan Fiasco:** University officials and employees accepting outside employment and gifts from student loan companies. (See Bloomberg.com article.)
- **Led to Investigation:** Of practice by NY Attorney General Cuomo and agreements with lenders and universities
- **See State of Texas response:** Extraordinary rules to cover a particular problem. Enhanced gift provisions apply to both the institution and university employees from accepting gifts and outside positions from student lenders.
MESS #2 BIG PHARMA

• Because public universities also run or manage hospitals and because the past practice of pharmaceutical companies has been to provide meals, tickets, and other “gifts”, both have been subject to repeated investigations and efforts by both to clean up their act.

• Topic deserves a separate session.

• Pennsylvania situation is a good example but there are numerous other cases. Received $$ from Pfizer at the same time he was on a state panel which chose medications for the state’s formulary.

• Larger Issue of how to limit gifts/consulting/outside employment from Big pharma.
ETHICS SCENARIO #1- the case of the textbook

• A group of students file a complaint with the university. A noted professor requires that his class purchase his textbook as part of the required reading. The textbook costs $150 and the textbook was only referred to briefly during the coursework. As part of your review, you come to learn that the professor, pursuant to his contract with the publisher, makes $100/book.
• The Provost for Academic Affairs, concerned about this issue, has asked you to respond to the students complaint and draft a policy. The professors’ union also received a copy of the complaint and have made known its belief that any regulation will impose upon academic freedom.
OPTIONS

• Have no policy and place no limits on professors requiring their own textbook for which they earn royalties;
• Require professors to demonstrate that their book is important to the coursework;
• Permit professors to require their own textbook but any royalty or profit must be turned over to the university;
• Prohibit professors from assigning their own textbook as it is an inherent conflict of interest or the appearance of a conflict.
• In addition, see CT Bill No. 1315 (disclosure by publisher)
As the university’s ethics officer, it has been brought to your attention that the long time college president sits on the board of the local bank in which the campus keeps several accounts which come up for review every 3 years. The President is not directly involved in the review. You have come to learn that this is a practice quite common to private college presidents. Your college president receives a director’s fee of $1000/meeting to attend board of director meeting.
OPTIONS

• Permit the activity because it is a common practice.
• Permit the activity because it has been disclosed.
• Permit the activity because the President is not directly involved in the review process.
• Prohibit because of the outside compensation.
• Prohibit because it entails an inherent conflict of interest.
• Most states would require disclosure.
• Most would likely permit as it is a common practice. (See Serving Two Masters article.)
• New York takes an aggressive approach and prohibits the service.
• See Advisory Opinion No. 91-7
• Appearance of a conflict even if the President is not directly involved in the review.
• Banks profit from the business.
• President has a conflicting fiduciary obligation to the campus and to the bank.
HOWEVER . . .

- President could be on an advisory board to the bank because the advisory board does not have the same fiduciary relationship.
- President could be on the board of a bank which does not conduct business or is not seeking to conduct business with the campus.
DISTINGUISHED FROM

- New York Opinions No. 96-29 and 95-21.
- Campus President served on board of corporation which conducted an “insignificant amount of business.” The particular campus awarded less than $5000 contract to the $2.1 billion dollar revenue generating company.
- However, she was not permitted to receive as compensation an equity interest in the corporation that was in any way dependent on its success.
- Any income to the President had to be fixed.
YOU DECIDE

• Florida State President Article.
• Takes gift a cruise from big donor to university, but
• Donor hopes to use university as a means for promoting a life insurance program.
• New Jersey board members resign because they were associated with firms that conducted business with the state university medical center.
ETHICS SCENARIO #3 – the Connecticut problem.

- The university’s revered basketball coach regularly receives outside compensation to endorse products and invitations to participate for free in swank events sponsored by interested parties. In those endorsements, he refers to his position as the university coach. You have received several media inquiries whether this outside compensation and gifts are an improper benefit as result of the coach’s public employment.
• CT Advisory Opinion No. 2005-4 was asked to review its celebrity status rule recognizing that it has been used by the ethics commission to permit well known state employees to accept outside employment which arguably impairs their independence of judgment with regard to their state duties or permits them to potentially use their state position for their financial gain. Under the celebrity status rule, the Commission had permitted the famous basketball coach to accept gifts in the form of golf tournaments bases solely on his public position from otherwise disqualified sources and to profit from his coaching position was deemed acceptable although the rationales for doing so were convoluted and treated the coaches differently than other state employees.
While coach is technically a state employee, does it make sense to apply the same rules when the reality is that you know your revered coach could be recruited by a private university with no restrictions. Is it relevant that the coach is already highly paid? And if you make an exception, how do you justify?
ETHICS SCENARIO #4 The Professors

• Unlike most other state employees, academic employees are permitted (and even encouraged) to engage in outside work using the university’s resources.

• How does a compliance offer make certain that such outside employment does not conflict?

• There will be a myriad of fact situations including many that you will not be able to anticipate.

• Remember, the duty of loyalty is first to the university and not to the individual’s outside employer.
SUGGESTIONS

• Disclosure, disclosure, disclosure,
• Review outside of the Department and perhaps outside of College administration.
• Time and Income caps (conflict of commitment – there should not be the perception that the teaching business is just a front for outside employment.)
• Creative solutions to unusual circumstances.
• Get a handle on those actual, obvious conflicts. For example, a professor cannot compete against the university on a business opportunity.
• See Texas, California, and Connecticut examples.
• Where does one draw lines and can there be any bright line tests?
RESEARCHERS

• New York Advisory Opinion 97-22.
• Sponsored research is fine but one cannot accept outside compensation from the same corporation that is sponsoring the research.
• Professor, to maintain the outside employment, will want to have good relations with the corporation which could affect his decision making ability with regard to the research.
• Professor is also a best selling author of two books promoting a healthy lifestyle.
• The University maintains a website which contains a link to the Professor’s personal commercial website which markets the book.
• The Professor has disclosed his outside income and you are asked to write the opinion about the propriety of this arrangement.
• Permit or Bar.
• New York Advisory Opinion 92-5.
• Permits provided that the university has a set policy on permissible links to its website;
• The university’s website contains a disclaimer that it is not an endorsement;
• The link is primarily educational, does not favor university employees over other outside members of the public; and
• Commercial benefit from the link to the Professor is incidental.
• Not sure if the specific situation meets the conditions.