Ethical Principles and Code of Conduct Opinion

Opinion Number: 1001-2020

Issued: June 6, 2020

Issue

Whether or not it is contrary to University of Kentucky (University) policy for a College of Agriculture, Food and Environment (CAFE) Cooperative Extension Service employee to have an interest in a contract with a Cooperative Extension District (CED)?

Facts

The Kentucky Legislature created the Cooperative Extension Service (CES) as a part of the University's College of Agriculture, Environment, and Food (CAFE) with the purpose of "…disseminating among the people of Kentucky useful and practical information on subjects relating to agriculture, home economics and rural and community life…." The CES is under the direction of the Associate Dean for Extension (Associate Dean) in CAFE and employs approximately one thousand (1,000) employees in one hundred twenty (120) counties around the Commonwealth. In support of CES, the Kentucky Legislature made possible Cooperative Extension Districts (CED) '…whose boundaries shall be coexistent with the county boundaries." Further, a CED may be created by a county fiscal court. A CED is a "…governmental subdivision of the Commonwealth and a public body corporate." In most counties, the CED is a taxing district and county taxes generate funds to support the county's CES offices. In all 120 counties, funds from the CED pay the salary or part of the salary of one or more CES employees in that county.

Often, employees of the county CES have personal, private businesses that are unrelated to the CES employees' job duties. On occasions, the CED may need services or may purchase products that are offered by an employee of the CES.

As an example, an employee of the county CES may be a plumber or own a plumbing business. When a toilet overflows at the CES building, owned by CED, it is logical that whoever makes the hiring decision would consider hiring the CES employee to repair the plumbing in the building.

As another example, an employee of the county CES may have a personal wood working business. Another employee of the county CES may have a wood working 4-H project and needs numerous pieces of wood, but in a particular shape and size. The funds to pay for the wood pieces would come from the CED.

As another example, an employee of the county CES may own a janitorial cleaning service. The CES building is owned by the CED. The CED may want to contract with the CES employee's business to clean the CED's building.

Applicable Law and Regulations

Kentucky Revised Statutes 164.367 Governing board may permit its employees to have an interest in a contract between the institution and a business -- Regulations to be forwarded to the Legislative Research Commission.

(1) For the purposes of this section, 'business' has the same meaning as defined in KRS 11A.010.
(2) The governing board of each public postsecondary education institution may adopt regulations establishing the conditions under which and the procedures whereby the board may approve a specific instance of an employee having an interest in a contract between the institution and a business.
(3) Each governing board shall forward, as soon as is practicable, a copy of the regulations it adopts under provisions of this section to the Legislative Research Commission. A board shall also forward any subsequent changes to the regulations to the Commission."

Governing Regulation XIV Ethical Principles and Code of Conduct, GR XIV.B.10

Conflict of Interest

"The public's respect and confidence in the University of Kentucky must be preserved. Confidence in the University of Kentucky is put at risk when the conduct of University members does, or may reasonably appear to, involve a conflict between private interests and obligations to the University. All University members shall avoid conduct that might in any way lead members of the general public to conclude that he or she is using an official position to further professional or private interests or the interests of any members of his or her family. In conducting or participating in any transaction, full disclosure of any real or perceived conflict with personal interests and removal from further participation in such matters is required.

AR 7:2, Research Conflict of Interest and Financial Disclosure Policy, sets forth specific relationships and activities that pose a potential conflict of interest for faculty, staff, and students involved in research and related activities. The University recognizes that actual or potential conflicts of interest may occur in the normal conduct of research and other activities. A conflict of interest can also arise if an employee's professional judgment is or may appear to be influenced by personal interests. It is essential that potential conflicts be disclosed and reviewed by the University. After disclosure, the University can make an informed judgment about a particular activity and require appropriate oversight, limitations, or prohibitions in accord with this policy. It is important to remember that each relationship is different, and many factors often will need to be considered to determine whether a conflict of interest exists."

Governing Regulation XIV Ethical Principles and Code of Conduct, GR XIV.B.14

Financial Advantage

"Members of the University community shall exhibit personal integrity, honesty and responsibility in all actions. Official position or office shall not be used to obtain financial gain or benefits for oneself or members of one's family or business associates. Any action that creates the appearance of impropriety should be avoided. Except as specifically approved by the Board, purchases and contracts shall not be made with an employee of the University for any item of supply, equipment, or service, nor may an employee have any interest, directly or indirectly, in any purchase made by the University. (*See* BPM B.2.C, KRS 164.131, and KRS 164.367.) An indirect interest may be defined as a real or perceived use of a university position or office with respect to a purchase or contract, leading to financial or other benefits to the individual or a member of his or her family. An indirect interest includes situations where a business owned or controlled by a family member does business with the University area where the employee is assigned. An employee seeking approval under this section shall first make an application to the University Ethics Committee by submitting in writing a full disclosure of all aspects of his or her relationship with the contracting company or business. The Ethics Committee shall make a recommendation to the President, who shall forward to the Board the Committee's recommendation together with his or her recommendation. In recommending approval of a contractual relationship, the Committee shall determine that:

(a) the contractual relationship is in the best interest of the University;
(b) the employee has taken whatever actions are necessary to avoid any conflict of interest or any appearance of a conflict of interest;
(c) if the conflict is subject to the provision of KRS Chapter 45A, the employee's contract shall be the lowest price bid or otherwise provides the best value to the University;
(d) the employee's interest in the contract does not present a conflict with the employee performing his or her job; and,
(e) the nature of the contract and the nature of the employee's interest in the contract or business shall be fully disclosed to the University community by as broad communications as feasibly possible.

Action taken by the Board shall be in open session, by affirmative vote. The action item shall fully disclose the nature of the conflict, and the reasons for the action."

Discussion, Opinion and Recommendations

Based on the hypothetical facts and applicable University regulations, it is the opinion of University Ethics Committee (UEC) that a CES employee having an interest in a contract with a CED would be perceived as a Conflict of Interest and a violation of Financial Advantage (GR XIV.B.10 and 14). Therefore, the UEC recommends that the CAFE implement a policy to prohibit such relationships and procedures for an exception, and, if an exception is approved, procedures to disclose and sufficiently mitigate these issues.

Without approval of the Board of Trustees (BOT), no University employee may have a contract or do business with the University, outside of her/his employment relationship. It is clear and unquestionable that a CES employee may not have a contract or do business with the University, including any CES office in the Commonwealth (without approval of the BOT). Since the CED is a separate subdivision (public body corporate) than the University, the statute concerning an employee having an interest in a contract with the University where s/he works is not directly applicable. However, the relationship between the CAFE and the CED is extremely close in that the CED is to levy taxes and accept contributions "…for use in conducting extension work…." The expenditure of CED funds is often based upon the recommendation of employees of the CAFE and, in many cases, it is perceived that employees of the CAFE have the authority to spend funds of the CED. The University's CES offices and employees and the CED and its Board are so closely related that the average citizen in the counties probably does not understand that the two offices are different creations of the Legislature.

Thus, the UEC believes a CES employee having an interest in a contract or having a business relationship with the CED be a violation of both the University's regulation on Conflict of Interest and Financial Advantage (GR XIV.B.10 and 14). Furthermore, the UEC believes that such a contractual or business relationship is a conflict of interest due to the influence or perceived influence CAFE employees may have over expenditure of CED funds.

Although UEC believes such a relationship is always a violation of the University Regulations, the UEC also recognizes that there may be circumstances the services or products of the business of a CES employee may be the only reasonable choice for the CED. Therefore, the UEC is willing to consider exceptions on a case by case basis.

Any request for an exception must include a written endorsement from both the County Judge Executive of the County involved and the Chair of the CED for the County involved. The request must also include a comprehensive management plan to ensure that the evaluation of the services provided is performed by someone other than the CED. If the UEC unanimously approves the request, then an exception is created and may be renewed after three years.

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