Ethical Principles and Code of Conduct Opinion

Opinion Number: 1001-14

Issued: September 16, 2014

Issue

Is a violation of Ethical Principles and Code of Conduct for Paula Hanson (hereinafter Hanson), a Community Advisory Member of the University Athletics Committee (hereinafter UAC) of the Board of Trustees (hereinafter BOT) to be an employee of the Dean Dorton Allen Ford PLLC (hereinafter DDAF), an accounting firm, that has an engagement letter (contract) with JMI Sports (hereinafter JMI)?

Facts

Hanson revealed to President Capilouto that the company (DDAF) where she is employed has an engagement letter to provide accounting and technology services to JMI and sought an opinion as to whether or not there was a conflict of interest or a violation of University policy with her situation.

Hanson is a Community Advisory Member of the UAC of the BOT. Pursuant to Governing Regulation (GR) Part II. E.2.g., the membership of the UAC is composed of five voting Trustees members and up to three non-voting Community Advisory members. Hanson became a member of the UAC when the USC was form as a Board committee in 2012. Earlier this year, the University, pursuant to the Request for Proposal process as provided in Kentucky Revised Statutes Chapter 45A, awarded a contract to JMI. JMI is to provide the University of Kentucky and the Athletic Department with "...a comprehensive and exciting program of national marketing, creative opportunities at all levels of marketing rights and sponsorships...." Over the fifteen years of the contract, JMI will furnish the University with a total payment of $210 million. Hanson had no involvement in that RFP process.

JMI engaged DDAF for basic "back door" accounting services and technology support. The total value of that engagement was originally estimated for the provision of services valued at $30-50,000. JMI is new to the Commonwealth of Kentucky and has never done business in Kentucky prior to the UK-JMI contract; thus, they had no "in house" accounting or technology support employees for such services. This recent letter of engagement is a month to month agreement and may be terminated at any time by JMI, if, for example, JMI were to bring its accounting and/or technology services "in house".

Hanson is a partner with DDAF; she is a tax accountant. She has no direct or indirect involvement in DDAF/JMI engagement. Hanson receives her annual compensation from DDAF and the DDAF/JMI agreement has no bearing on her annual compensation.

Applicable Regulations

GR Part 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.

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.

Discussion and Conclusion

In an earlier Opinion the University Ethics Committee stated that "Ethical Principles and Code of Conduct" (GR XIV) applies to Community Advisory Committee members of the committees of the Board of Trustees. Thus, the provisions of GR XIV are applicable to Hanson.

It is the Committee's opinion that there is no conflict of interest in this situation. A conflict of interest is where one's personal interest conflict with one's interest/obligations to the University. Because the DDAF/JMI engagement is for a relatively small amount, because she does not work on that engagement, because she receives no benefit from that engagement, and, mostly, because the engagement is between DDAF and JMI and the University is not a party to the contract, Hanson has not real, personal interest in that contract that would conflict with her obligations to the University and its Athletics Department.

Further, it is the Committee's opinion that there is not any appearance of a conflict of interest. It is the opinion of the Committee that there might be an appearance of a conflict of interest is if the person did not understand that the contract is between DDAF and JMI, and that the DDAF engagement agreement does not involve the University. That appearance would be based on a misunderstanding. Again, Hanson does not work on this contract and receives not direct compensation as a result of this engagement with JMI; thus, there is also no financial advantage to Hanson.
Hanson has fulfilled her obligation to University and its Ethical Principles by divulging these facts.
Since at issue here is an engagement letter (contract) between DDAF and JMI, since the University has a contract with JMI, and since Hanson is an employee with DDAF, there obviously is not an issue of a University Community member having a contract or an interest in a contract with the University, per GR XIV.b.14 (above) and KRS 164.367.

The Ethics Committee does not believe that any violation of University policy has occurred.

Recommendations

The Committee recommends that Hanson avoid any workplace discussions that involve the JMI contract and, in particular, the University's Athletic Department. For example, if there were a question/discussion among DDAF employees as to whether or not a particular source of income was taxable or not, Hanson should not join in the discussion. She should specifically not give an advice concerning tax issues with the Athletic Department. Obviously, it is permissible for Hanson to discuss wins and losses, refrees' call and performance of plays, band and cheerleaders. But she should not have discussions of business interests of the DDAF/JMI engagement and the Athletics Department with other employees of DDAF.

The Committee recommends that, in the unlikely event there is an discussion of JMI's relationship with DDAF in an UAC meeting, Hanson should recluse herself by informing fellow committee members of the relationship between her employer and JMI; Hanson should leave the room, not join in any discussion on such a matter and not vote on any such issues.

Members of the Ethics Committee

Dr. Jeannine Blackwell, Modern and Classical Languages
Dr. Jeff Bieber, Professor, College of Education and University Senate Representative
David Melanson, College of Pharmacy
Brett Short, Chief Compliance Officer, UK HealthCare
Jack Supplee, Director, Administrative & Fiscal Affairs, Office of the VP for Research
T. Lynn Williamson, Sr. Associate General Counsel
Kim Wilson, Associate Vice President for Human Resources

Mr. Joseph Reed, Senior Director, Internal Audit
Mr. Bill Harris, Director of Purchasing

C: Dr. C. B Akins, Sr., Board of Trustees, Athletics Committee, Chair
Dr. Eli Capilouto, President
Dr. Lisa Cassis, Acting Vice President for Research
Dr. Michael Karpf, Executive Vice President for Health Affairs
Eric Monday, Executive Vice President for Finance and Administration
Mitch Barnhart, Director of Athletics
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