



PERMANENT MEMORANDUM 67

CONTRACTS BETWEEN THE UNIVERSITY AND ITS FACULTY MEMBERS

POLICY DIGEST

Monitoring Unit:
Initially Issued: June 29, 1993
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Memorandum to: Chancellors Cavanaugh, Jenkins, Marsala, Nunez, O'Brien, Richardson, Trail, Interim Chancellor L'Enfant, and Executive Director Bray.

The University recognizes the benefits to the State of Louisiana, to the private sector, and to its employees in allowing, under limited circumstances, contracts between itself and its faculty members or a legal entity in which a faculty member has an interest.

The purpose of this Permanent Memorandum is to clarify those situations in which a faculty member, research staff employee, athletic coaching staff employee, or a legal entity in which such an employee has an interest can now contract with the University.

I. BACKGROUND

Prior to the passage of Act 229 of the 1987 Regular Session of the Louisiana Legislature, Louisiana law prohibited a University employee, and any company in which he owned an interest, from bidding on or entering into a contract with the University or involving the University. However, Act 229, which became R.S. 42:1123 (10), amended the Ethics Code to authorize contracts between a university and members of its faculty or a company in which faculty members have an interest.

For this exception to apply, the contract must regard either:

- A. The disposition of a patent, copyright, licensing right or royalty which is attached to a discovery, technique, or technology resulting from research done by a faculty member in the course of his employment with LSU, or
- B. An activity related to or resulting from research activity of a faculty member conducted in the course of his employment with LSU.

By Act 1107 of the 1997 Legislative Session, the applicability of Section 1123(10) was broadened to include members of a university's research staff or athletic coaching staff regarding research activities or athletic coaching activities.

LSU employees or faculty members, and their immediate families, who were not involved in the research or activity in question may not have an interest in the contract or the private entity if:

- A. They are in the same department or area as the faculty member whose research or activity is

the basis of the discovery, technique or technology; or

- B. They participated on behalf of LSU in the negotiation or confection of the contract between LSU and one of its employees or an entity in which an employee has an interest.

The Act requires that the following procedure be followed for all such contracts.

- A. The contract must be approved through a procedure established by the LSU Board of Supervisors.
- B. The procedure must be approved by the Board of Regents and the Commission on Ethics for Public Employees.
- C. There must be a finding and certification by the University to the Board of Regents that entering into the contract will contribute to the economic development of the State and will not interfere or conflict with the performance of the employee's obligations to the University.
- D. The Board of Regents reports those certifications semiannually to House and Senate Commerce Committees or Subcommittees designated thereby.

This amendment to the Code of Ethics affects the area of technology transfer, among others. For example, a fledgling Louisiana company receiving the license of a particular technology from LSU may need to employ the services of the LSU employees who were instrumental in the discovery or technology. The ability to provide that employee with an ownership interest in the corporation may insure the viability and success of the venture. Also, those University faculty members who desire to be entrepreneurs as well as academicians will have the opportunity to promote and market their own discoveries if the appropriate procedure is followed and approval is received.

II. POLICIES AND PROCEDURES

This statement of policy and procedure sets forth general guidelines for every campus within the LSU System. The Chancellor of each campus may modify these guidelines, provided such modifications are more limiting than the provisions herein.

If an employee or entity in which the faculty member has an interest intends to enter into a contract with the University, and that contract would be a violation of the Code of Governmental Ethics but for the exemption contained in La. R.S. 42:1123(10) (see copy of Act 229 attached), the procedures set forth herein must be followed. All such contracts must be in writing

If an entity in which an LSU faculty member or research or coaching staff employee has an interest wishes to contract with LSU, the following procedures must be followed:

- A. The ownership interests in the entity must be disclosed in writing to the appropriate Chancellor or designee. The owner's name, address and interest, as well as the names of every officer, director, and 10 percent or larger shareholder, must be stated in the written disclosure. Notice of any change from the original disclosure shall be given to the appropriate dean and chancellor if such change affects the status of the contract.
- B. All negotiations between a faculty member, or an entity in which he/she has an interest, and

LSU must be arm's length. Therefore, the employee must recuse himself/herself in writing from participation in negotiation or decision making on behalf of LSU with respect to the contract. At LSU's option, the employee member may be consulted by LSU with respect to the technical or scientific aspects of the proposed contract.

- C. A designated University employee must be appointed to negotiate and confect the contract, which employee shall not be under the direct supervision or a member of the department of the faculty member submitting the contract.
- D. A standing committee appointed by the President shall be established to review all such proposed contracts after the terms have been agreed to by the appropriate Chancellor or his designee and the employee and/or legal entity in which the employee has an economic interest. Membership on this committee may include representatives from both the public and the private sector. The committee shall be chaired by the President or designee. This committee is authorized and empowered by the LSU Board of Supervisors to certify to the Board of Regents semi-annually that entering into the contract will contribute to the economic development of the state and that, among readily available alternatives, entering into the contract serves the public interest.
- E. The appropriate Chancellor or his designee shall certify to the committee that entering into the contract will not interfere or conflict with the performance of the employee's obligation to the University.
- F. An employee with a joint appointment must receive the approval of both Chancellors; provided, however, that where agreement on approval cannot be reached, the President shall make the final decision on such approval.

With respect to payments pursuant to any contract confected under this policy, the following standards should be adhered to:

- A. Compensation to the University for the use of services, facilities, equipment or technology must be paid at the same rate that such services, facilities, equipment or technology would be available to the general public or to others under arms-length negotiated contracts.
- B. Compensation from LSU to its employee, or to an entity in which the employee has an interest, for services rendered, cannot be more than normally would be paid for similar services.
- C. Where LSU and an employee or entity in which the employee has an interest together provide services to a third party, a fair apportionment of the remuneration should be made and specified based on the value of the respective contributions in services, investments, technologies, equipment or facilities utilized.

Attachment
cc: System Offices

ATTACHMENT

Regular Session, 1987

Senate Bill No. 646

By Messrs. Hudson, Nunez, Bares, Brinkhaus, Hollis, Jefferson, Kelly, Lauricella, Poston, Swearingen and Turnley and Representatives Leach, Ackal, Alario, Ater, Blanco, Borne, Bradley, Deano, Delpit, Dewitt, Gee, Heitmeier, A. Jackson, Jetson, Kimball, LaLonde, Landrieu, J.D. Long, Lynn, Miller, Reilly, F. Thompson, and Tinnerello

An Act

To amend and reenact R.S. 42:11223 (9) and to enact R.S. 42:1123 (10), relative to governmental ethics; to authorize faculty or staff of public institutions of higher education to perform certain consulting services; to provide for an approval procedure for the allowance of such consulting services; to authorize faculty members of public institutions of higher education or legal entities in which such persons have a substantial economic interest to enter into certain contracts with the faculty members agency; to provide an approval and certification procedure for such contracts; to provide for legislative oversight; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 42:1123 (9) is hereby amended and reenacted and R.S. 42:1123 (10) is hereby enacted to read as follows:

S1123. Exceptions

This Part shall not preclude:

9.

- a. The receipt of or sharing in the proceeds of any patent, copyright, licensing right, or royalty by faculty or staff members of a public higher education institution or management board resulting from any activity of the faculty or staff member, which is consistent with and pursuant to the mission of the college or university to advance knowledge or further the economic development of the state and which activity has been approved by the campus head and the management board of the employing college or university.
- b. The performance of services for compensation for any person, by faculty or staff members of a public higher education institution, provided the services consist of consulting related to the academic discipline or expertise of said public employee and provided the services have been approved in writing by the chief administrative officer of the public employee's institution in accordance with rules and procedures established by the management board of the institution, which rules and procedures have been approved by the Board of Regents and the Commission on Ethics for Public Employees.

10.

- a. The negotiation or entering into a contract as defined in Subparagraph (b) of this Paragraph, provided that such contract has been approved in accordance with a procedure established by the appropriate higher education management board which procedure has been approved by the Board of Regents and the Commission on Ethics for Public Employees. Such an approval procedure shall require a finding and certification by the appropriate management board to the Board of Regents that entering into such contract will contribute to the economic development of the state and that entering into such contract will not interfere or conflict with the employee's obligation to the university. Semiannually, the Board of Regents shall report all such certifications to the committees on commerce of the Senate and House of Representatives or any subcommittee designated by either standing committee.
- b. A contract between an institution of higher education and a member of its faculty or a legal entity in which such employee has a substantial economic interest, regarding the disposition of any patent, copyright, licensing right, or royalty which is attached to a discovery, technique, or technology resulting from the research done by such employee in the course of his employment with the institution, or regarding an activity related to or resulting from the research activity of such employee conducted in the course of his employment with the institution.