

**DATE:** April 15, 2004

**SUBJECT:** THEC Policies O5.1 – Conflict of Interest Disclosure Policy for Commission Members and O5.2 – Conflict of Interest Disclosure Policy for Executive Staff

**ACTION RECOMMENDED:** Approval

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**BACKGROUND INFORMATION:** During the 2003 legislative session, the General Assembly passed Public Chapter 327 requiring the Commission to develop a code of ethics to govern the Commission's activities. The Commission adopted a code of ethics, THEC Policy O5.0 - Code of Ethics for Commission Members, on July 17, 2003. As a continuing process to update the THEC policy manual, staff is recommending additional changes to the ethics related policies.

The current conflict of interest policies for Commission members and Commission executive staff, Policy O5.1 – Conflict of Interest Disclosure Policy for Commission Members and Policy O5.2 - Ethics Policy for Executive Staff, is based on the language of T.C.A. Section 12-4-101. During its 2003 session, the legislature also passed Public Chapter 288 to amend T.C.A. Section 12-3-106 which creates stricter standards as it relates to contracts for goods and services that result from a bidding process. These Commission policies are therefore being revised to incorporate the provisions of Public Chapter 288.

Additionally, the proposed revisions provide that the conflict of interest disclosure statements must be filed within thirty days after the Commission's regular Spring meeting, but no later than June 1 of each year. This change is being presented to address a recommendation in the most recent performance audit report issued by the Comptroller.

**Section Title:** Other Policies

**Policy Title:** Conflict of Interest Disclosure Policy for Commission Members

**Policy Number:** O5.1

Conflict of Interest Disclosure Policy for Commission Members

- 5.1.10
- (1) It shall be inappropriate for a Commission member to have a direct interest in any contract the Commission has entered into for goods or services as a result of a bid process or any other business transaction with the Commission.
  - (2) A Commission member shall disclose any of the following interests:
    - (a) Any indirect interest in any contract or other business transaction with the Commission;
    - (b) Any interest in any contract or other business transaction with any higher education institution which is coordinated by, contracted by, contracted with, or authorized by the Commission; and
    - (c) Any indirect interest created by a relative who has (to the extent the Commission member is aware) any contract or business transaction with the Commission or with any higher education institution which is coordinated by, contracted by, contracted with, or authorized by the Commission.
  - (3) “Direct interest” means any contract to provide goods or services to the Commission as a result of a bid process or any other business transaction with a:
    - (a) the Commission member;
    - (b) a relative of the Commission member; or
    - (c) a business in which the Commission member or the Commission member’s relative is:
      - (i) the sole proprietor;
      - (ii) a partner; or
      - (iii) the person having the controlling ownership or control of the largest numbers of outstanding shares owned by any single individual or corporation.
  - (4) “Indirect interest” means any contract in which the Commission member is interested but not directly so, but includes contracts where the Commission member is directly interested but is the sole supplier of goods or services.
  - (5) “Relative” includes spouse, parents, siblings, or children.
  - (6) In the event a member of the Commission has an indirect interest in a matter to be voted upon, a Commission member may abstain for cause by announcing such to the Chair of the Commission. Any Commission member who abstains from voting for cause on any issue coming to a

vote before the Commission shall not be counted for the purpose of determining a majority vote. This provision shall not be construed to prohibit any Commission member from voting on the higher education funding recommendation, or amendments thereto, unless the vote is on a specific amendment to the funding recommendation in which such person has a direct interest.

- (7) The basic underlying principle in conflict of interest is that Commission members should disclose any activity, investment, or interest that might reflect unfavorably upon the Commission, using the disclosure form. Because of the sensitive nature of the Commission's relationship with all of the postsecondary institutions, as well as the General Assembly, it is important that members resolve questions of conflict of interest by disclosure. Any activity which might constitute, or be perceived to constitute, a prohibited conflict should be fully reported. Full disclosure of any situation in doubt should be made.
- (8) The conflict of interest form must be filed within thirty (30) days after the Commission's regular Spring meeting, but in no case shall it be filed later than June 1. In the case of a member appointed to the Commission after the Spring meeting, the newly appointed member shall file a conflict of interest statement no later than thirty (30) days after the first Commission meeting following his/her appointment.
- (9) A Commission member shall amend his/her disclosure because of termination or acquisition of interests of which disclosure is required.

**Approved:** January 31, 1992

**Revised:** April 15, 2004

**TENNESSEE HIGHER EDUCATION COMMISSION**  
1900 Parkway Towers, 404 James Robertson Parkway  
Nashville, TN 37243-0830  
(615) 741-3605

TENNESSEE HIGHER EDUCATION COMMISSION  
DISCLOSURE STATEMENT FOR INDIRECT INTERESTS  
OF COMMISSION MEMBERS

I, the undersigned member of the Tennessee Higher Education Commission, in order to assure that any appearance of conflict of interest is avoided, and in order to assure that any indirect interests are publicly acknowledged, hereby make the following statements and assurances:

1. I am related to the following employees of the Tennessee Higher Education Commission or any official of any corporation, partnership, sole proprietorship, association, institution of higher education or other entities which do business with, are licensed by, or are otherwise involved with the Tennessee Higher Education Commission:

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2. I am employed or professionally affiliated with the following corporation, partnerships, sole proprietorships, associations, institutions of higher education or any other entities which ~~do business with~~ or are licensed by the Tennessee Higher Education Commission:

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3. I have an ownership interest in or serve on the Board of the following corporations, partnerships, sole proprietorships, associations, institutions of higher education or other entities which ~~either do business with the Tennessee Higher Education Commission or~~, to my knowledge, do business with postsecondary institutions coordinated or licensed by the Tennessee Higher Education Commission:

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4. In my household and among my dependents, to my knowledge, the following individuals have an ownership interest as stated in Number 3 above:

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5. I am currently the recipient of the following grants administered by the Tennessee Higher Education Commission:

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6. I hereby certify that if, during my tenure this year on the Tennessee Higher Education Commission, I become directly or indirectly interested as an owner, employee or affiliated as described in Number 1-5 above, or if there is any change in the information provided in this statement, I shall immediately disclose such information to the Tennessee Higher Education Commission. The accuracy of this statement will be reviewed within thirty (30) days after the Commission's regular Spring meeting, but no later than June 1.

By my signature below, I affirm that all of the above statements are true to the best of my knowledge and belief.

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(Signature)

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(Date)

**Section Title:** Other Policies

**Policy Title:** Conflict of Interest Disclosure Policy for Commission Executive Staff

**Policy Number:** O5.2

Conflict of Interest Disclosure Policy for Commission Executive Staff

- 5.2.10 (10) It shall be inappropriate for a Commission Executive Staff member to have a direct interest in any contract the Commission has entered into for goods or services as a result of a bid process or any other business transaction with the Commission. Additionally, it shall be inappropriate for Commission Executive Staff to be indirectly interested in any such contract or business transaction unless the Commission Executive Staff member publicly acknowledges his/her interest.
- (11) Commission Executive Staff shall disclose any of the following interests:
- (d) Any indirect interest in any contract or other business transaction with the Commission;
  - (e) Any interest in any contract or other business transaction with any higher education institution which is coordinated by, contracted by, contracted with, or authorized by the Commission; and
  - (f) Any indirect interest created by a relative who has (to the extent Commission Executive Staff is aware) any contract or business transaction with the Commission or with any higher education institution which is coordinated by, contracted by, contracted with, or authorized by the Commission.
- (12) “Direct interest” means any contract to provide goods or services to the Commission as a result of a bid process or any other business transaction with a:
- (a) Commission executive staff person;
  - (b) a relative of a Commission executive staff person;
  - (c) a business in which a Commission executive staff member is:
    - (i) the sole proprietor;
    - (ii) a partner; or
    - (iii) the person having the controlling ownership or control of the largest numbers of outstanding shares owned by any single individual or corporation.
- (13) “Indirect interest” means any contract in which Commission executive staff person is interested but not directly so, but includes contracts where the Commission executive staff person is directly interested but is the sole supplier of goods or services.
- (14) “Relative” includes spouse, parents, siblings, or children.

- (15) In the event a Commission executive staff person identifies any conflict covered by this policy, he/she shall immediately notify the Executive Director. The Executive Director may determine that such Commission Executive Staff person should not work on material related to such interests. Such interests shall be disclosed to the Commission regardless of whether the Commission executive staff person is relieved of working on the matters in question.
- (16) The basic underlying principle in conflict of interest is that Commission executive staff person should disclose any activity, investment, or interest that might reflect unfavorably upon the Commission, using the disclosure form. Because of the sensitive nature of the Commission's relationship with all of the postsecondary institutions, as well as the General Assembly, it is important that executive staff persons resolve questions of conflict of interest by disclosure. Any activity which might constitute, or be perceived to constitute, a prohibited conflict should be fully reported. Full disclosure of any situation in doubt should be made.
- (17) The conflict of interest form must be filed within thirty (30) days after the Commission's regular Spring meeting, but in no case shall it be filed later than June 1. In the case of a executive staff person is appointed to the Commission staff after the Spring meeting, the newly appointed executive staff person shall file a conflict of interest statement no later than thirty (30) days after the first Commission meeting following his/her appointment.
- (18) Commission executive staff shall amend their respective disclosure because of termination or acquisition of interests of which disclosure is required.

**Approved:** January 31, 1992  
**Revised:** April 15, 2004

**TENNESSEE HIGHER EDUCATION COMMISSION**  
1900 Parkway Towers, 404 James Robertson Parkway  
Nashville, TN 37243-0830  
(615) 741-3605

TENNESSEE HIGHER EDUCATION COMMISSION  
DISCLOSURE STATEMENT FOR INDIRECT INTERESTS  
OF COMMISSION EXECUTIVE STAFF

I, the undersigned executive staff member of the Tennessee Higher Education Commission, in order to assure that any appearance of conflict of interest is avoided, and in order to assure that any indirect interests are publicly acknowledged, hereby make the following statements and assurances:

7. I am related to the following employees of the Tennessee Higher Education Commission or any official of any corporation, partnership, sole proprietorship, association, institution of higher education or other entities which do business with, are licensed by, or are otherwise involved with the Tennessee Higher Education Commission:

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8. I am employed or professionally affiliated with the following corporation, partnerships, sole proprietorships, associations, institutions of higher education or any other entities which ~~do business with or~~ are licensed by the Tennessee Higher Education Commission:

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9. I have an ownership interest in or serve on the Board of the following corporations, partnerships, sole proprietorships, associations, institutions of higher education or other entities which ~~either do business with the Tennessee Higher Education Commission or~~, to my knowledge, do business with postsecondary institutions coordinated or licensed by the Tennessee Higher Education Commission:

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10. In my household and among my dependents, to my knowledge, the following individuals have an ownership interest as stated in Number 3 above:

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11. I am currently the recipient of the following grants administered by the Tennessee Higher Education Commission:

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12. I hereby certify that if, during my tenure this year on the Tennessee Higher Education Commission staff, I become directly or indirectly interested as an owner, employee or affiliated as described in Number 1-5 above, or if there is any change in the information provided in this statement, I shall immediately disclose such information to the Tennessee Higher Education Commission. The accuracy of this statement will be reviewed within thirty (30) days after the Commission's regular Spring meeting, but no later than June 1.

By my signature below, I affirm that all of the above statements are true to the best of my knowledge and belief.

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(Signature)

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(Date)