

# PR 5

Office of the President  
June 16, 2017

Members, Board of Trustees:

PROPOSED EXCEPTION ON CONFLICT OF UK EMPLOYEE HAVING  
AN INTEREST IN A UK CONTRACT

Recommendation: that the Board of Trustees approve an exception to Kentucky Revised Statute (KRS) 164.390, through KRS 164.367 and Governing Regulation XIV and as outlined in the attached opinion and recommendation of the University Ethics Committee for National Science Foundation Award IIA-1355438; and delegate to the President the authority to grant any future exceptions to National Science Foundation Award IIA-1355438.

Background: KRS 164.390 provides that no university employee may have an interest in a contract with the university where s/he is employed. KRS 164.390 permits a governing board to establish procedures for exceptions. *Governing Regulation (GR) XIV, Ethical Principles and Code of Conduct* includes the Board of Trustees' approved procedures for exceptions.

UK faculty employee in the Center for Applied Energy Research, Dr. Rodney Andrews, has received a \$20,000,000 National Science Foundation (NSF) award, part of the Commonwealth of Kentucky's Experimental Program to Stimulate Competitive Research (EPSCoR). As a part of this award, Dr. Andrews' program issues Request for Proposals (RFP) and then makes sub-awards to small Kentucky companies. Among other investments, these sub-awards provide funds for student internships. Two of the companies that responded to the RFP, and were eventually selected to receive sub-awards (for student internships), are owned by University employees. The companies are (1) MEP Equine Solutions, owned by Dr. Martin Nielsen, a faculty employee in the Gluck Equine Research Center in the College of Agriculture, Food and Environment; and (2) MosquitoMate, owned by Dr. Stephen Dobson, a faculty employee in the Department of Entomology, also in the College of Agriculture, Food and Environment. The recommended exception is that Dr. Andrews be permitted to make sub-awards to the two UK faculty-owned companies, which will use the awarded funds to hire student interns.

This recommendation has been reviewed and endorsed by the Vice President for Research and the Dean of the College of Agriculture, Food and Environment. In accordance with the exception procedures in *GR XIV*, the University Ethics Committee reviewed this matter and forwarded their opinion and recommendation for approval to the President. The President accepts the University Ethics Committee's recommendation and recommends that the Board approve Dr. Andrews' request. Further, the President recommends that the Board delegate to the President, as may be recommended by the University Ethics Committee, continued approval of similar sub-awards to UK employee-owned companies under this NSF award for 2017-18 and 2018-19, and, if Dr. Andrews receives additional NSF awards, pursuant to the EPSCoR, for an additional five years.

A copy of GR XIV is also attached. Procedures for exceptions are underlined.

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Action taken:     Approved     Disapproved     Other \_\_\_\_\_

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Action taken:     Approved     Disapproved     Other \_\_\_\_\_



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301 Main Building  
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317 Charles T. Werhington Building  
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859 323-1161  
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**MEMORANDUM**

TO: Eli Capilouto, President

FROM: T. Lynn Williamson, University Ethics Committee, Chair

A handwritten signature in black ink, appearing to read "T. Lynn Williamson".

DATE: June 5, 2017

RE: RECOMMENDATION FOR EXCEPTION

**FACTS:**

The Experimental Program to Stimulate Competitive Research (EPSCoR) was initiated by the National Science Foundation (NSF) in 1979 as a unique infrastructure-building effort to encourage local action to develop long-term improvement in states science and engineering enterprises. The Commonwealth of Kentucky joined EPSCoR in 1985.

Dr. Rodney Andrews, a UK faculty employee in the Center for Applied Energy Research, has received a large National Science Foundation (NSF) program project award, as a part of Kentucky EPSCoR. On behalf of this award, Dr. Andrews' program issues Request for Proposals (RFPs) and then makes subawards to small Kentucky companies. These subawards often fund student projects at these small companies; specifically, the subawards provide funds for student internships, although some portions of subawards go toward materials/supplies, as well as, administrative and facility's costs at the companies. Two of the companies that responded to the RFPs and that were selected to receive subawards (for student internships) are owned by University employees. The companies are (1) MEP Equine Solutions, owned by Dr. Martin Nielsen, a faculty employee in the Gluck Equine Research Center in the College of Agriculture, Food and Environment and (2) MosquitoMate, Inc., owned by Dr. Stephen Dobson, a faculty employee in the Department of Entomology, also in the College of Agriculture, Food and Environment.

## **APPLICABLE KENTUCKY LAW AND UK REGULATIONS:**

### **Kentucky Revised Statutes 164.390**

#### **164.390 Interest In Contracts Prohibited.**

Unless specifically approved by the governing board of an institution under the provisions of KRS 164.367, no president, professor, teacher, member of the executive council, or other officer or employee shall be interested in any contract or purchase for the building or repairing of any structure or furnishing of any supplies for the use of a university or college.

**Effective:** June 26, 2007

### **Kentucky Revised Statutes 164.367**

#### **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.

**Effective:** June 26, 2007

### **University of Kentucky Governing Regulation, Part XIV** **Ethical Principles and Code of Conduct**

#### **B 14. "Financial Advantage"**

"Members of the University community must 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 of Kentucky 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."

Furthermore, at the end of "Financial Advantage," there is a section, as provided by KRS 164.367(3), whereby an exception for an unusual case concerning financial interest may be approved by the Board of Trustees. The language notes that one seeking approval of an exception "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."

The GR's language permitting the exception continues: "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."

#### **THE ISSUE:**

The issue for the Ethics Committee is as follows: whether the Ethics Committee views that the facts of this case sufficiently met the criteria (a through e, above) to warrant a recommendation for an exception to the state law and the University regulation that prohibits a University employee from having an interest in a contract with the University. It should be noted, however that this case is different than the usual cases where a company in which a UK employee owns or in which a UK employee has an interest desires to sell product/service to UK or buy product/service from UK. In this case, the University, through its employee, Dr. Andrews, has asked to contract with the UK employee-owned company.

#### **DISCUSSION:**

#### **RECOMMENDATIONS FOR MANAGING THE CONFLICT OF INTEREST:**

The Ethics Committee believes that the exception criteria of Financial Advantage in this case are being, or will be managed by the following actions:

- a) The first criteria for an exception is that the "contractual relationship is in the best interest of the University". The basic provision of the subawards to the companies is the awarding of internships to UK students. A lesser amount of the subaward goes to administration and supplies. Awarding internships to UK students is in the best interest of UK.
- b) The second criteria is that the "employee has taken whatever actions are necessary to avoid any conflict of interest or any appearance of a conflict of interest". Dr. Andrews issues a RFP for making the subawards and uses the same criteria for all companies, whether the

company is at UK or at another state University, whether the company owned by someone who is a UK employee or someone who has no affiliation with UK. The UK employees who own companies that are given subawards have no input in awarding the subawards through the RFP process. Further, Dr. Andrews has no interest in the companies that receive the awards; he is not related to the owners of the companies; his only relationship with the owners is that they are faculty employees at UK. Finally, the subawards are relatively small amounts and since the funds go to students with some small overhead, the gain to the company (UK employee-owner) is insignificant.

- c) The third criteria is that, "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". The awarding of the subawards from this NSF grant is not subject to the provisions of KRS Chapter 164. However, Dr. Andrews decided to use a RFP process that he developed. Thus, Dr. Andrews' process meets the spirit of this criteria, even though not bound by it.
- d) The fourth criteria is that the "employee's interest in the contract does not present a conflict with the employee performing his or her job". There is no conflict with the employees' employment or work assignments. As required by UK Administrative Regulations, the UK faculty employee/owner has disclosed any conflict of time, commitment, or resources and referred to the University's Research Conflict of Interest Committee for development of an appropriate management plan, as described in Administrative Regulation 7:2, Financial Conflicts of Interest in Research.
- e) The fifth and final criteria is that 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". Once completed and awarded, the RFP process (the RFP issuing document and the responses) are public documents, obtainable by anyone through the Open Records process. If recommended by you and if granted by the Board, this exception to the law and thus the nature of the subaward to the two faculty employee's companies will become a part of the permanent minutes of the Board of Trustees. The meeting whereby this exception may be approved is a public meeting of the BOT, attended by numerous members of the media. Further, if approved, Dr. Andrews will request that the University's Office of Public Relations or the College of Agriculture, Food and Environment's (CAFÉ) Public Relations Office, release an article on Kentucky EPSCoR and the nature of the student internships with the UK employee-owned companies.

#### **CONCLUSION and RECOMMENDATION:**

The appropriate procedure for an employee seeking an exception under KRS 164.367 is the criteria set forth in GR XIV.B.14. Having reviewed these criteria and the facts of this case, this Committee concludes that this set of facts meets the required criteria for an exception under the Governing Regulation, "Ethical Principles and Code of Conduct." This Committee recommends that you forward a recommendation to the Board of Trustees, and that they approve Dr. Rodney Andrews' awarding contracts (subawards) with University employee-owned businesses.

Furthermore, this NSF grant (EPSCoR Track-1) is for five years. The 2017-18 year is the fourth (4<sup>th</sup>) year of the current award. Thus, there are two more rounds of subawards which may be granted. Dr. Andrews is preparing a proposal for the next Track-1 award by NSF. If he receives the next grant under Track-1, there will be a further five (5) year period for subawards for student internships with companies, some of which may be owned by UK employees. Therefore, the Ethics Committee recommends that, in its action, the BOT delegates to you, upon recommendation of the University Ethics Committee, approval of subawards under this grant (EPSCoR) to UK employee-owned businesses for as many as seven years. We recommend this action because (a) the subawards are relatively small, (b) the RFP process is in place for fairness, (c) the awards are for the UK students to receive internships, (d) the subawards are in the best interest of the University, not an enrichment of a company in which a UK employee has an interest, and (e) this action means that a similar approval will not have to be sent to the BOT for action every year for the next seven years.

C: Dr. Rodney Andrews, Faculty, Center for Applied Energy Research  
Dr. Nancy Cox, Dean, College of Agriculture, Food and Environment  
Dr. Lisa Cassis, Vice President for Research

Members of the Ethics Committee:

Jeff Bieber, Professor, College of Education and University Senate Representative  
Kakhil Baker, Director, Martin Luther King Center  
David Melanson, Public Relations Office & Staff Senate Representative  
Brett Short, Chief Compliance Officer, UK HealthCare  
Jack Supplee, Director, Administrative & Fiscal Affairs, Office of the Vice  
President for Research, Associate Director & Secretary for UK Research Foundation  
Kim Wilson, Associate Vice President for Human Resources  
Joseph Reed, Senior Director, Internal Audit  
Bill Harris, Director of Purchasing



UNIVERSITY OF  
**KENTUCKY**<sup>®</sup>  
Regulations

**Governing Regulation, Part XIV**

Responsible Office: Board of Trustees

Effective: 5/8/2015

Supersedes Version: 6/11/2013

## Governing Regulation, Part XIV Ethical Principles and Code of Conduct

### Major Topics

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- A. Ethical Principles
- B. Code of Conduct
  - 1. Nondiscrimination Policy
  - 2. Confidentiality of Information
  - 3. Use of the University's Name
  - 4. Civic Responsibility of the Individual
  - 5. Discrimination and Harassment
  - 6. Personal Relationships
  - 7. Employment of Relatives (Nepotism)
  - 8. Intellectual Property
  - 9. Conflict of Commitment
  - 10. Conflict of Interest
  - 11. Auditing Services
  - 12. University Resources
  - 13. Fiscal Responsibility
  - 14. Financial Advantage
  - 15. Compliance Responsibilities
  - 16. Compliance (Whistle Blower) Protection
  - 17. Truth, Honesty, and Integrity
  - 18. Acceptance of Gifts or Benefits
  - 19. Clarifications and Reporting Violations



#### 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;
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**Effective:** June 26, 2007

**History:** Amended 2007 Ky. Acts ch. 113, sec. 3, effective June 26, 2007. -- Amended 1978 Ky. Acts ch. 392, sec. 3, effective June 17, 1978. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4527-48.

**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.**

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- (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.

**Effective:** June 26, 2007

**History:** Created 2007 Ky. Acts ch. 113, sec. 1, effective June 26, 2007.