

University of Louisiana System

**Title: AUTHORIZING CONTRACTS
BETWEEN THE UNIVERSITY
AND A MEMBER OF THE
FACULTY, RESEARCH
STAFF, OR COACHING
STAFF OR A COMPANY IN
WHICH THE EMPLOYEE
HAS AN INTEREST UNDER
SPECIFIED
CIRCUMSTANCES**

Effective Date: March 1, 2004

Cancellation: None

Chapter: Miscellaneous

Policy and Procedures Memorandum

Introduction

The University of Louisiana System recognizes the benefits of certain types of contracts between a university and its employees or legal entities in which these employees have an interest.

A sizable body of Louisiana law (Title 42) addresses the permissible conduct, qualifications, duties, performance, compensation and benefits, and penalties for Public Officers and Employees. Prior to the passage of Act 229 of the 1987 Regular Session of the Louisiana Legislature, Louisiana law prohibited an employee of a university and any company in which he/she owned an interest from bidding on or entering into a contract with the university or involving the university. 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 under specified circumstances. Act 1107 of the 1997 Legislative Session broadened §1123(10) to include members of the university's research staff or athletic coaching staff regarding research activities or athletic coaching activities.

This policy is established to fulfill the System obligation to assist in the important mission of economic development, technology transfer, commercialization of technology, and coaching endeavors as provided for in Louisiana R.S. §42:1101 to R.S. §42:1148, especially §42:1111, §42:1112, §42:1113, and §42:1123(10).

The following definitions shall apply throughout the remainder of this policy section:

- “Employee” means any member of a faculty, research staff, or coaching staff in a university within the University of Louisiana System.
- “Private entity” means any outside foundation, corporation, company, or partnership in which the employee, or a member of his or her immediate family, has an economic interest. “Economic interest” means a five percent (5%) or larger shareholder position.

Types of Contracts Permitted

For a proposed contract between a university and an employee or between a university and the private entity to be permitted under this policy, the contract must relate to either:

1. the disposition of a patent, copyright, licensing right, or royalty which is attached to a discovery, technique, technology, or activity resulting from research done, in whole or in part, by the employee in the course of his or her employment at the university;
2. a business activity relating to or resulting from research conducted, in whole or in part, by a university employee in the course of his or her employment at the university; or
3. a business activity relating to or resulting from a coaching activity of a university employee conducted in the course of his or her employment at the university.

Exceptions

Contracts otherwise permitted will be disallowed when a members of the employee’s immediate family has participated on behalf of university in the negotiation of the contract.

Required Procedures

Each System university will submit a policy to the Board of Supervisors for review and approval covering the circumstances as outlined above. When approved, that policy must be followed whenever an employee of the university desires to enter into a contract addressed herein. The university policy must contain the following minimum essential elements:

1. All contracts and correspondence must be in writing;

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2. The ownership interests in the private entity must be disclosed in full and in writing to the appropriate university office or designee of the university president;
3. All negotiations between an employee, or the private entity, and the university must be at arm's length. Neither the employee nor his or her immediate family, when they are also employed by the university, may participate in negotiations or decision making on behalf the university. The university may, however, elect to consult the employee regarding technical or scientific aspects of the proposed contract;
4. Another university employee who is not under the direct supervision of or a member of the department of the employee submitting the contract must negotiate the contract on behalf of the university;
5. A university committee, appointed by the university president, must review all such proposed contracts after they have been negotiated and the employee and/or the private entity have agreed to their terms. Membership on this committee may include representatives from both the public and private sectors. The president or designee shall chair the committee. This committee will be empowered by the Board of Supervisors to certify to the Board of Regents, per Louisiana R.S. §1123(10)(a), semi-annually that entering into the contract will contribute to the economic development of the state and, among readily available alternatives, entering into the contract serves the public interest;
6. An appropriate university official must certify to the committee that entering into the contract will not interfere or conflict with the performance of the employee or the employee's fulfillment of his/her obligation to the university;
7. An employee with a joint appointment must receive the approval of the other institution, provided, however, that where agreement or approval cannot be reached or is unobtainable, then the university president shall make the final decision without such approval; and

With respect to payments made pursuant to any contract perfected under this policy, the following standards must be followed:

8. Compensation to the university for the use of services, supplies, facilities, equipment, or technology must be paid at the same rate that such services, supplies, facilities, equipment, or technology would be made available to the general public or to others under arm's-length negotiated contracts.
9. Compensation from the university to the employee, or to the private entity, for services rendered cannot be more than normally would be paid for similar services.
10. Where the university and an employee, as a contractor or subcontractor, or the university and the private entity provide services to a third party, a fair apportionment of the remuneration should be made and specified based on the value of their respective contributions in services, investments, technologies, equipment, or facilities utilized.

Contracts and Agreements Involving A University Foundation

Separate public not-for-profit corporations are frequently established to perform certain duties in support of the university. Among these are the tasks of accepting, buying, selling, leasing, licensing, or otherwise alienating intellectual property assigned to it by the university. When a contract, or agreement, is proposed as stipulated above except that it is between the employee and the foundation or the private entity and the foundation, then for purposes of this policy it shall be deemed to be between the employee or the private entity and university for approval and review purposes. In such cases, all of the above policy essentials apply except the negotiation and the final contract execution (signing). Approved university policy and procedures must be followed within the university prior to final approval and execution. In such a case, the tasks of negotiation and final execution of the contract reside with the foundation. Nothing in this policy is intended to preempt, influence, eliminate, or diminish the due diligence responsibilities of the foundation.

Relationship to Policy on Outside Employment

Nothing in this policy shall be used to preempt, influence, eliminate, or diminish the University of Louisiana System on outside employment.

This policy was approved by the Board of Supervisors for the University of Louisiana System on February 27, 2004.

Policy References:

- Board Rules
- Louisiana Revised Statutes

Review Process:

- Council of Vice Presidents for Academic Affairs
- University Presidents
- Legal Counsel
- Board

Distribution:

- University Presidents
- Personnel Officers
- Chief Finance Officers