


ADMINISTRATIVE MEMORANDUM

SUBJECT Board of Governors Policy Concerning
Conflicts of Interest and Commitment

NUMBER 334
DATE June 18, 1993

Enclosed is a copy of the policy on conflicts of interest and commitment that was adopted by the Board of Governors at its meeting on April 16, 1993. By separate memorandum, Vice President Little will provide instructions concerning implementation of this policy.



C. D. Spangler, Jr.

Enclosure

POLICIES AND GUIDELINES OF THE BOARD OF GOVERNORS CONCERNING CONFLICTS OF INTEREST AND COMMITMENT AFFECTING UNIVERSITY EMPLOYMENT

The Code of The University of North Carolina affirms that the basic mission of the faculty is "the transmission and advancement of knowledge and understanding." Faculty employment entails the three responsibilities of teaching, scholarly research and publication, and other professional service to the institution and to society. Realization of those objectives is facilitated and encouraged by certain distinctive characteristics of employment within an academic community, which differs markedly from the conventional work-day and work-week employment models in most business and industrial settings.

Within the academy, time-specific assignments, such as classroom contact hours, constitute only a limited part of the workload. Typically, actual teaching hours account for no more than one quarter of a professor's time. However, activity directly affecting the education of students also includes class preparation and student evaluation, scheduled and unscheduled office hours for individual student counseling, and meetings of committees within departments, divisions and schools of the institution which are responsible for curriculum development, syllabus preparation, and program evaluation. In addition, the collective faculty has extensive authority and responsibility for the governance of the institution. Such work usually is accomplished through membership on various committees, at the department, division, school and institutional levels, which address personnel, financial and other administrative issues. Finally, every member of the faculty is expected to pursue research in his or her area of specialization. Such scholarly activity may be specifically relevant to instruction, it may add generally to the body of information and understanding in a particular field, or it may have direct practical applications, as in business, industry, government, primary and secondary education, public health and national defense.

Faculty members also pursue their specialized professional interests in other contexts, collateral to their immediate university employment. They hold memberships in and attend meetings of professional associations and learned societies; they serve on review or advisory panels; they present lectures, papers, concerts and exhibits; they participate in seminars and conferences; they review and edit scholarly publications; and they participate in accreditation reviews.

Many faculty members also have opportunities to use their specialized competencies in secondary professional employment, as paid consultants to public and private agencies, and thereby contribute to the transfer and application of knowledge.

The role of a scholar, encompassing both institutional employment responsibilities and broader applications of specialized professional interests, is complex. The university employment environment is designed to accommodate such complexity. For many purposes the faculty member is allowed, and indeed encouraged, to function more independently than employees in other settings. Aside from assigned teaching responsibilities and committee memberships, a faculty member establishes his or her own agenda and schedule in selecting and pursuing scholarly emphases. A substantial part of the value received by society in exchange for its investment in a scholar's career is attributable to that freedom of inquiry, whether the inquiry consists of basic scientific research, applied or performing art, analysis and criticism of literature, or explication of economic principles. Members of the faculty are paid to be imaginative, inquisitive and creative.

The freedom accorded faculty members carries with it a substantial responsibility. Those who display notable talent and are conscientious and productive in their pursuit of knowledge and learning are invited to establish long-term affiliations with the institution, through the award of tenure. There is the possibility, however, that members of the faculty may abuse the essential freedom attending faculty employment and neglect their responsibilities to the institution. Such neglect may become an issue when decisions are being made about reappointment or tenure, or it may require attention at other times during the employment relationship. The problem may consist of what may be denominated either a conflict of commitment or a conflict of interest.

Conflict of commitment relates to an individual's distribution of effort between obligations to one's university employment and one's participation in other activities outside of university employment. The latter may include such generally encouraged extensions of professional expertise as professional consulting. Such activities promote professional development and enrich the individual's contributions to the institution, to the profession, and to society. However, a conflict of commitment occurs when the pursuit of such outside activities involves an inordinate investment of time that interferes with the faculty member's obligations to students, to colleagues, and to the missions of the university.

Conflict of interest relates to situations in which financial or other personal considerations may compromise, may involve the potential for compromising, or may have the appearance of compromising a faculty member's objectivity in meeting university duties or responsibilities, including research activities. The bias that such conflicts may impart can affect many university duties, including decisions about personnel, the purchase of equipment and other supplies, the collection, analysis and interpretation of data, the sharing of research results, the choice of research protocols, and the use of statistical methods. A faculty member may have a conflict of interest when he or she, or any member of that person's immediate family, has a personal interest in an activity that may affect decision making with respect to university teaching, research or administration.

As relationships between university faculty members and private industry, federal and state governments, and nonprofit agencies have grown in number and scope, there has been a corresponding increase in concern about conflicts of commitment and interest. While members of the faculty are encouraged to engage in appropriate relationships with public and private agencies outside of the university, there is a need for commonly understood principles and corresponding procedures that will identify and address conflicts that would detract from or interfere with a faculty member's dedication of primary professional loyalty, time and energy to university teaching, research and service. Although faculty members are the primary subject of concern, all other university employees similarly must avoid conflicts of time and commitment.

A. Conflicts of commitment

Questions about conflict of commitment are more easily resolved than questions about conflicting interests. Although full-time faculty employment is not amenable to precise, time- clock analysis and monitoring, administrators at the department and school levels are able to and regularly do evaluate the work of employees within their jurisdiction. The formal occasions for determining whether an individual is devoting sufficient time and energy to university employment include regular reviews of performance in connection with annual salary decisions and scheduled reviews incident to promotion, reappointment or tenure decisions. In addition, complaints from students, colleagues or administrators about possible failures to meet assigned responsibilities may arise and require investigation. The issue, in each case, is whether the faculty member is meeting the requirements of the job. If presented with evidence that he or she is not meeting full-time responsibilities to the university, the Code prescribes that "neglect of duty" is a ground for disciplinary action, including the possibility of discharge. In one particularly relevant context the Board of Governors has established special policies and procedures for monitoring possible conflicts of commitment. A university employee who wishes to engage in external professional activity for pay must make a full disclosure, in advance, of the planned outside involvement and must provide satisfactory assurances that such activity will not interfere with university employment obligations. In another example of special legislation, the Board has established rules for monitoring and regulating the involvement of university employees in political candidacy and officeholding that could interfere with full-time commitment to university duties.

There is no apparent need to adopt new or additional policies or procedures to address concerns about conflicts of commitment. Existing regulations and procedures provide adequate assurances.

B. Conflicts of interest

Conflicts of interest are more difficult to define, detect and resolve. The challenge is to establish some basic parameters, of general applicability throughout the University of North Carolina, that will permit institutions and their faculties to recognize more readily and clearly those situations that are improper or that may be questionable, and to institute basic procedures for avoiding or

rectifying any problems. Thereafter, the constituent institutions, through collaborative faculty and administrative efforts, should develop more detailed policies and procedures that will accommodate any special conditions and needs of a particular campus or particular faculty.

A faculty member's professional activities and financial interests must be arranged to avoid circumstances that do or may prevent or limit objectivity in the performance of university responsibilities or that otherwise do or may affect adversely any university interests.

1. Categories of potential conflicts of interest

Activities that may involve conflicts of interest can be categorized under three general headings: First, those that otherwise might appear to involve such a conflict but that in fact do not, are allowable, and need not be reported; second, those that are questionable and must be reported, but that may be allowable with administrative approval; and third, those that generally are not allowable. The following examples are merely illustrative and do not purport to include all possible situations within the three categories:

a. Activities allowable, with no reporting required

The cited examples do involve activities external to university employment, and thus may present the appearance of a technical conflict, but they in fact do not have the potential for affecting the objectivity of the faculty member's performance of university responsibilities; at most, some such situations could prompt questions about conflicts of commitment.

- A university employee receiving royalties from the publication of books or for the licensure of patented inventions subject to the UNC Patent and Copyright Policies.
- A university employee having an equity interest in a corporation, the exclusive function of which is to accommodate the employee's external consulting activities

A university employee receiving nominal compensation, in the form of honoraria or expense reimbursement, in connection with service to professional associations, service on review panels, presentation of scholarly works, and participation in accreditation reviews.

b. Activities requiring disclosure for administrative review

The cited examples suggest a possibility of conflicting loyalties that can impair objectivity, but disclosure and resulting analysis of relationships may render the activity permissible, perhaps with certain types of limitation or monitoring.

- A university employee requiring students to purchase the textbook or related instructional materials of the employee or members of his or her immediate family, which produces compensation for the employee or family member.
- A university employee receiving compensation or gratuities (other than occasional meals, gifts of desk copies of textbooks, and the like) from any individual or entity doing business with the university.
- A university employee serving on the board of directors or scientific advisory board of an enterprise that provides financial support for university research, and the employee or a member of his or her immediate family may receive such financial support.
- A university employee serving in an executive position in a for-profit or not-for-profit business which conducts research or other activities in an area related to the university duties of the employee.
- A university employee having significant equity in a for-profit business which conducts research or other activities in an area related to the employee's university duties.
- A university employee having a financial interest in a business that competes with services provided by the university.

c. Activities or relationships that generally are not allowable

The cited examples involve situations that are not generally permissible, because they involve potential conflicts of interest or they present obvious opportunities or inducements to favor personal interests over institutional interests. Before proceeding with such an endeavor, the faculty member would have to sustain the burden of demonstrating that in fact his or her objectivity would not be affected or university interests otherwise would not be damaged.

- A university employee participating in university research involving a technology owned by or contractually obligated to (by license or exercise of an option to license, or otherwise) a business in which the individual or a member of his or her immediate family has a consulting relationship, has an ownership interest, or holds an executive position.
- A university employee participating in university research which is funded by a grant or contract from a business in which the individual or a member of his or her immediate family has an ownership interest.
- A university employee assigning students, post-doctoral fellows or other trainees to university research projects sponsored by a business in which the individual or a member of his or her immediate family has an ownership interest.
- A university employee accepting support for university research under conditions that require research results to be held confidential, unpublished, or inordinately delayed in publication (other than as allowed by University Patent and Copyright Policies or by policy of the Board of Governors dated February 12, 1988, Administrative Memorandum No. 260).
- A university employee making referrals of university business to an external enterprise in which the individual or a member of his or her immediate family has a financial interest.
- A university employee associating his or her own name with the university in such a way as to profit financially by trading on the reputation or goodwill of the university.

- A university employee making unauthorized use of privileged information acquired in connection with one's university responsibilities.

2. Avoiding conflicts of interest

Each constituent institution must adopt procedures (a) that effectively impart a clear understanding of impermissible or questionable conduct and (b) that provide for advance disclosure and periodic audits designed to permit analysis and avoidance of potential problems.

Critical to the success of any program established to address conflicts of interest is employee understanding of the problem, so that individuals are equipped to avoid such conflicts on their own initiative. While in many situations the conflict of interest would be obvious to all, in other situations the potential difficulty would not be so apparent. Since concern about conflicts of interest appropriately embraces situations in which there is a potential for or appearance of conflict, as well as actual conflict, there may be differing views about what is or is not a problematic activity or affiliation. Thus, the faculty and administration of each constituent institution first must reach agreement on and promulgate basic definitions, of the type suggested herein, and then must insure that all affected employees are fully informed, on a regular and continuing basis.

Obviously it is preferable to anticipate and avoid conflicts of interest rather than belatedly discover an existing conflict that requires remedial action, involving the possibility of charges of misconduct, the severance of institutional affiliations or the discontinuation of external activities, or other disruptions of professional or financial arrangements. Thus, an effective method of evaluating possible conflicts of interest, in advance, is indispensable. Before the beginning of each academic year, every faculty member and other affected professional employees should be required to answer a questionnaire that would elicit pertinent information about proposed or existing arrangements, coterminous with university employment, that require attention. Designated administrative and faculty officers and committees then would be equipped to analyze with the employee any apparent problem and decide whether the activity or affiliation in question actually presents a conflict of interest and, if so, what safeguards or

remedial actions should be taken. Employees further would be required to supplement the information elicited by the questionnaire at any time during the academic year when a contemplated new venture might entail conflicts of interest. In each case a designated administrative officer would provide a final ruling, subject to prescribed rights of appeal.

In combination, the required advance definition and publicity and advance screening should help all faculty members avoid any difficulties in the area of conflicts of interest.

Each chancellor shall submit to the President, for review, a copy of proposed institutional policies and procedures, including definitions of conflicts of interest, methods for publicizing institutional definitions and requirements, and procedures and forms for disclosing relationships and circumstances that may raise questions about conflicts of interest. Such proposals shall be submitted and, subject to presidential approval, shall be implemented on a schedule to be established by the President.