Ethics

Original Implementation: August 8, 1995
Last Revision: July 25, 2017

General Policy Statement

It is the policy of Stephen F. Austin State University that all officers and employees maintain high ethical standards in the performance of their official duties. The following guidelines regarding state ethics laws for state employees are applicable to the Board of Regents, the administration, faculty and staff of the university. Other university policies that affect ethical standards include but are not limited to: Discrimination Complaints (2.11); Sexual Misconduct (2.13); Dual Employment (11.7); Nepotism (11.16); Purchasing Ethics and Confidentiality (17.22); Fraud (2.7); Discipline and Discharge (11.4); Purchases from Employees (17.21); and Financial Aid Code of Conduct (4.7). Officers and employees of the university will receive regular training on the provisions of this policy.

Ethics Laws for State Officers and Employees

State officers and employees owe a responsibility to the people of Texas in the performance of their official duties. See Texas Government Code §572.001. High institutional standards and high personal standards are critical to fulfilling that responsibility. There are a variety of both civil and criminal statutes that set out the ethical responsibilities of state officers and employees. The Texas Ethics Commission is charged with interpreting, issuing advisory opinions, and enforcing certain ethics laws including Chapter 572 of the Government Code and Chapters 36 and 39 of the Penal Code. Those statutes contain provisions relating to conflicts of interest, bribery, gifts, official misconduct, and misuse of state property, among other things. Additionally, §556.004 of the Government Code contains a list of prohibited acts of agencies and individuals with regard to political activity. A variety of other Texas statutes contain specific ethics provisions applicable to state employees and officers. All employees and officers are required to abide by applicable state and federal laws and regulations regardless of whether they are specifically stated in this policy. Any employee determined to be in violation of this policy is subject to disciplinary action, up to and including termination. The general counsel should be contacted on matters arising under this policy.

1. Conflicts of Interest, Commitment, Bribery and Gifts

While the law regarding conflicts of interest may be legally complex, §572.051 of the Government Code outlines standards for state officers and employees, which if followed, should prevent most conflicts of interest from occurring. It does not provide any penalties or sanctions at law for failure to comply with the standards it sets, though in cases of egregious noncompliance a person's behavior could constitute a crime under one of the Penal Code provisions governing the conduct of state officers and employees. However, failure to comply with the standards may result in disciplinary action, up to and including termination.

The acceptance of gifts by state officers and employees is addressed in §572.051(1), which provides that a state officer or employee should not accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct.

A state officer or employee should never accept anything if it might make him do his job differently, or if he thinks the person giving it has the hope he will do his job differently. Section 572.051(5) provides, in effect, a "no tipping" rule for state officers and employees. It states that a state officer or employee should not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

For most state employees, compliance with §572.051(1) and (5) eliminates worry about compliance with either the Penal Code or the lobby law with respect to the acceptance of gifts.

Section 572.051(2), (3), and (4) states that state officers and employees should not engage in economic activities even on their own time that might affect decisions at their state job, or that might lead them to disclose confidential information learned on the job. Simply put, state officers and employees should not engage in business or investments that might make them want to do their state job differently. Additionally, university policy requires university approval prior to engaging in outside employment. If approved, performance of the employee’s responsibilities to the university is paramount and outside work must assume a position secondary to university responsibilities. See Outside Employment (11.19).

Section 572.051(2), (3) and (4) of the Government Code specifically reads as follows:

572.051. STANDARDS OF CONDUCT; STATE AGENCY ETHICS POLICY.

(a) A state officer or employee should not:

(2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by: Acts 2007, 80th Leg. R.S., Ch. 629, Sec. 1, eff. September 1, 2007

The Texas Penal Code also includes provisions regarding conflicts of interest, bribery and gifts. A state employee commits the offense of bribery if he intentionally or knowingly solicits, offers, or accepts a "benefit" in exchange for his decision, opinion, recommendation, vote, or other exercise of discretion as a state employee. Penal Code §36.02.

Most state employees are subject to a prohibition on the acceptance of "benefits." Penal Code §36.08. For example, an employee of a regulatory agency may not accept a benefit from a person the employee "knows to be subject to regulation, inspection, or investigation by the public servant or his agency." *Id*. §36.08(a). Also, an employee of a state agency who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions may not accept a benefit from a person the employee knows is "interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion." *Id*. §36.08(d). These prohibitions apply regardless of whether the donor is asking for something in return.

The statutory definition of "benefit" is "anything reasonably regarded as pecuniary gain or pecuniary advantage." Penal Code §36.01(3). In advisory opinions, the Ethics Commission has stated that the following gifts may be benefits: a $50 clock, a hotel room, a hunting trip, football tickets, a $160 rifle, and a $60 restaurant meal. Ethics Advisory Opinions Nos. 97, 94, 90, 69, 60 (1992). Benefits such as food, lodging, transportation, football tickets, etc., may however be permissible if accepted as a "guest." Penal Code §36.10(b). To accept something as a guest, the donor must be present.

Other advisory opinions have concluded that certain items are not benefits. A cup of coffee is not a benefit. Ethics Advisory Opinion No.118 (1993). Small amounts of perishable food delivered to government offices are generally not benefits. Ethics Advisory Opinion No. 62 (1992). Trinkets of minimal value such as coffee mugs, key chains, and "gimme" caps are generally not benefits. Ethics Advisory Opinion No. 61 (1992). A plaque is not a benefit.

Ethics Advisory Opinion No. 36 (1992). Of course, a state officer or employee may accept a gift from a person such as a friend, relative, or business associate with whom he has a relationship independent of that official status if the gift is given on account of that relationship rather than the officer's or employee's official status. Penal Code §36.10(a)(2).

Honoraria may also be considered as gifts or benefits under the Penal Code. A state officer or employee may not solicit, agree to accept, or accept an honorarium in consideration for services he would not have been asked to provide but for his official position. Penal Code §36.07. Thus, for example, the officer or employee may not take a speaker's fee for speaking in his official capacity. Although questions about honoraria come up most frequently in regard to speeches, the prohibition applies to fees or gifts for any service that the officer or employee would not have been asked to provide but for his official position. It is permissible to accept food, transportation, and lodging in connection with a speech or other service performed in an official capacity.

Except as otherwise permitted by law or policy, university employees are prohibited from having a direct or indirect financial or other interest, engaging in a business transaction or professional activity, or incurring any obligation that is in substantial conflict with the proper discharge of their duties. This includes, but is not limited to, engaging in non-employment related activities that interfere with the employee's duties and responsibilities to the university.

2. Official Misconduct and Misuse of State Property

A state employee would commit an offense if, with intent to obtain a benefit or harm another, he intentionally or knowingly violated a law relating to his office or employment. Penal Code §39.02(a)(l). This catchall prohibition applies to any violation of a law relating to the employee's state employment. This means, for example, that a violation of a rider to the Appropriations Act, done with intent to obtain a benefit or harm another, could be the basis of a criminal prosecution.

Also, an officer or employee would commit an offense if, with intent to obtain a benefit or harm another, he misapplied anything of value belonging to the government that has come into his custody or possession by virtue of his state employment. Penal Code §39.02(a)(2). This provision is the basis for criminal prosecutions regarding the misuse of state property for personal use or otherwise. Additionally, university policy 17.14, Property Inventory and Management, and Government Code § 2203.004 specifies that university property may only be used for state/university purposes. This includes electronic resources. See Use of Electronic Information Resources (16.32).

Under Government Code §552.352, misuse or improper distribution of confidential information is also considered a specific type of crime involving official misconduct.

In addition to criminal liability, employees may be responsible for the negligent loss, damage or destruction to university property under Property Liability (16.22).

Financial Disclosure Statements

Regents and the president must file financial disclosure statements with the Texas Ethics Commission by April 30 of each year, or as otherwise required under the Government Code Chapter 572.

3. Prohibited Acts of Agencies and Individuals Regarding Political Activity

The university, its officers and employees may not use any money under its control, equipment or official authority to influence an election as prohibited by §556.004 of the Texas Government Code. Sections 556.004-.009 of the Government Code specifically read as follows:

556.004 PROHIBITED ACTS OF AGENCIES AND INDIVIDUALS.

a. *A state agency may not use any money under its control, including appropriated money, to finance or otherwise support the candidacy of a person for an office in the legislative, executive, or judicial branch of state government or of the government of the United States. This prohibition extends to the direct or indirect employment of a person to perform an action described by this subsection.*
b. *A state officer or employee may not use a state-owned or state-leased motor vehicle for a purpose described by Subsection (a).*
c. *A state officer or employee may not use official authority or influence or permit the use of a program administered by the state agency of which the person is an officer or employee to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose.*
d. *A state employee may not coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of anything of value to a person or political organization for a political purpose.*
e. *For purposes of Subsection (c), a state officer or employee does not interfere with or affect the results of an election or nomination if the individual's conduct is permitted by a law relating to the individual's office or employment and is not otherwise unlawful.*

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 1498, Sec. 1, eff. Sept. 1, 1999

556.005 EMPLOYMENT OF LOBBYIST.

a. A state agency may not use appropriated money to employ, as a regular full-time or part- time or contract employee, a person who is required by Chapter 305 to register as a lobbyist. Except for an institution of higher education as defined by Section 61.003, Education Code, a state agency may not use any money under its control to employ or contract with an individual who is required by Chapter 305 to register as a lobbyist.
b. A state agency may not use appropriated money to pay, on behalf of the agency or an officer or employee of the agency, membership dues to an organization that pays part or all of the salary of a person who is required by Chapter 305 to register as a lobbyist. This subsection does not apply to the payment by a state agency of membership fees under Chapter 81.
c. A state agency that violates Subsection (a) is subject to a reduction of amounts appropriated for administration by the General Appropriations Act for the biennium following the biennium in which the violation occurs in an amount not to exceed
$100,000 for each violation.
d. A state agency administering a statewide retirement plan may enter into a contract to receive assistance or advice regarding the qualified tax status of the plan or on other federal matters affecting the administration of the state agency or its programs if the contractor is not required by Chapter 305 to register as a lobbyist.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 1498, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 249, 4.11, eff. Sept. 1, 2003.

556.0055. RESTRICTIONS ON LOBBYING EXPENDITURES.

a. A political subdivision or private entity that receives state funds may not use the funds to pay:
  1. lobbying expenses incurred by the recipient of the funds;
  2. a person or entity that is required to register with the Texas Ethics Commission under Chapter 305;
  3. any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (2); or
  4. a person or entity that has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, ordinances, or other government policies.
b. A political subdivision or private entity that violates Subsection (a) is not eligible to receive additional state funds.

Added by Acts 1999, 76th Leg., ch, 1498, Sec. 1, eff. Sept. 1, 1999.

556.006 LEGISLATIVE LOBBYING.

a. *A state agency may not use appropriated money to attempt to influence the passage or defeat of a legislative measure. This section does not prohibit a state officer or employee from using state resources to provide public information or to provide information responsive to a request.*

Added by Acts 1997, 75th Leg., ch. 1035, Sec. 86, eff. June 19, 1997.
Amended by Acts 1999, 76th Leg., ch. 1498, Sec. 1, eff. Sept. 1, 1999.

556.007 TERMINATION OF EMPLOYMENT

A state employee who causes an employee to be discharged, demoted, or otherwise discriminated against for providing information under Section 556.006 (b) or who violates Section 556.004 (c) or (d) is subject to immediate termination of employment.

Added by Acts 1999, 76th Leg., ch. 1498, Sec. 1, eff. Sept. 1, 1999.

556.008 COMPENSATION PROHIBITION.

A state agency may not use appropriated money to compensate a state officer or employee who violates Section 556.004(a), (b), or (c) or Section 556.005 or 556.006(a), or who is subject to termination under Section 556.007.

Added by Acts 1999, 76th Leg., ch. 1498, Sec.1, eff. Sept. 1, 1999.

556.009 NOTICE OF PROHIBITIONS.

a. *A state agency shall provide each officer and employee of the agency a copy of Sections 556.004, 556.005, 556.006, 556.007, and 556.008 and require a signed receipt on delivery. A new copy and receipt are required if one of those provisions is changed.*
b. *A state agency shall maintain receipts collected from current officers and employees under this section in a manner accessible for public inspection.*

Added by Acts 1999, 76th Leg., ch. 1498, Sec. 1, eff. Sept. 1, 1999."

As required by these statutory provisions, all employees shall receive and sign for (or electronically acknowledge receipt of) a copy of this policy as administered by the university's Department of Human Resources.

4. Disclosure Statement for Employees Involved in Purchasing, Contracting, and Investments

Section 2261.252 of the Government Code requires each employee or official involved in procurement or contract management for the university to disclose any potential conflict of interest specified by state law or university policy that is known by the employee or official with respect to any contract with a vendor or bid for the purchase of goods or services from a vendor by the university. This disclosure applies at any time during the procurement process, from the initial request for bids for the purchase of goods or services from a vendor until the completed final delivery of the goods or services, or through the term of a contract with a vendor. Additionally, this provision of state law is applicable to contracts for goods or services solicited through a purchase order if the amount of the purchase order exceeds $25,000.

As required by §2262.004 of the Government Code, university personnel who make decisions or recommendations regarding the preparation of a solicitation, evaluation of a bid or proposal, who should be awarded the contract, or contract terms or conditions of a major contract award must disclose in writing to the president on a form prescribed by the state auditor direct or indirect pecuniary interests (10% interest or $25,000 threshold) or family relationships (nepotism) which that employee may have in the major contract award. A major contract award involves a contract of at least $1 million in value. Use the referenced disclosure form developed by the Office of the State Auditor.

Additionally, to the extent such provision is applicable to the transaction, §2254.032 of the Texas Government Code requires officers and employees who have any financial interest in an offer to provide consulting services to the university to report that interest to the president no later than the tenth day after the date that the offer is submitted. University personnel must also report any individual related to them within the second degree by consanguinity or affinity (as determined by Section 573 of the Government Code) who has an interest in any consulting offer made to the university.

In addition to the specific reporting requirements and thresholds of §2262.004 of the Government Code, university personnel have broader reporting and ethics requirements outlined in Purchasing Ethics and Confidentiality (17.22). Officers and employees also have a legal disclosure requirement to declare any interest in property that is to be acquired by the university as outlined in Government Code Chapter 553.

Investment officers responsible for the investment of public funds under the Public Funds Investment Act, Government Code Chapter 2256, must disclose personal relationships and interests involving investment transactions.

Officers and employees are encouraged to contact the general counsel if they have questions or concerns about the applicability of this disclosure form and to disclose possible indirect or direct pecuniary interests which do not meet the minimum threshold limits outlined in these statutory provisions. Disclosure of all possible pecuniary interests in major or non-major contract awards or procurements is required by Purchasing Ethics and Confidentiality (17.22) to avoid other possible conflict of interest concerns. Potential transactions with relatives of employees should also be disclosed to the general counsel for advice and counsel to initiate measures that avoid any appearances of a conflict of interest.

5. Disclosure by Public Servant of Interest in Property

Section 553.002 of the Government Code requires individuals who are elected, appointed, employed or designated as an officer of government and who have a legal or equitable interest in property that is to be acquired with public funds to file an affidavit with the county clerk of the county the individual resides in and the county clerk of each county in which the property is located. The affidavit must be filed within 10 days before the date on which the property is to be acquired by purchase or condemnation. The contents of the affidavit are included in this section.

6. Conflicts of Interest for Officers (Regents)

In addition to the statutory restrictions outlined above or in referenced policies, officers of the university, namely regents, are held to relatively strict standards for conflicts of interest under law. Conflicts of interest may involve indirect or direct pecuniary interests as established in Texas common law. Specific statutory exceptions have been carved out to allow regents to recuse themselves from specific actions. Section 572.058 of the Government Code permits regents to disclose a personal or private interest in a measure, proposal, or decision pending before the board and not participate in board action involving that matter. Section 51.923 of the Education Code allows the university to contract with nonprofit corporations which may have one or more regents serving on their board or a regent serving as an officer or employee of the nonprofit. The statute also permits the university to contract with business entities in which a regent has an interest. If a regent has a "substantial interest" in the business entity and board approval is required, that regent must recuse himself or herself from the decision on behalf of the university. A regent has a "substantial interest" if the regent or the regent's spouse, child, parent, father or mother in-law, son or daughter in-law, stepparent, or stepchild: owns one percent or more of the voting stock or shares of the business entity or owns either one percent or more or $15,000 or more of the fair market value of the business entity; funds received by the regent from the business entity exceed one percent of the regent's gross income for the previous year; or the regent is an officer of the business entity or its governing board.

Regents should contact the general counsel on possible conflict of interest matters and disclose to counsel potential direct or indirect pecuniary interests in matters pending before the Board of Regents. Potential transactions with relatives of regents should also be disclosed to the general counsel for advice and counsel to avoid any appearances of a conflict of interest.

7. Nepotism

Officers and employees are reminded that hiring certain relatives as defined in Nepotism (11.16) and/or under state law is prohibited.

8. Discrimination and Sexual Harassment

Discrimination and sexual harassment are prohibited by university policies 2.11 and 2.13, respectively, and also under state and federal law.

9. Equity Ownership and Management Participation relating to Research, Development, Licensing and Exploitation of Intellectual Property

Ownership of any equity interest in a business entity that has an agreement with the university relating to research, development, licensing, or exploitation of intellectual property created or discovered by an employee shall be disclosed to the president or his designee. The president shall take any necessary steps to avoid injury to the university as a result of potential conflicts of interest arising out of such equity ownership.

No employee may serve as a director, officer, or employee of a business entity that has an agreement with the university relating to research, development, licensing, or exploitation of intellectual property in which the university has an ownership interest except upon request of, or prior approval by, the Board of Regents. Authorization to serve as a director, officer, or employee of such a business entity may be subject to one or more conditions established to avoid injury to the university as a result of potential conflicts of interest.

In accordance with §51.912 of the Texas Education Code, the names of all business entities that have an agreement with the university relating to the research, development, licensing, or application of intellectual property in which employees own an equity interest, or for which such persons serve as director, officer, or employee, shall be reported to the governor and legislature on an annual basis. The university may accept equity interests as partial or total compensation for rights conveyed in agreements with business entities relating to intellectual property owned by the university. The university may negotiate, but shall not be obligated to negotiate, an equity interest on behalf of any employee as a part of an agreement between the university and a business entity relating to intellectual property created, discovered, or developed by the employee and owned by the university.

10. Acting as an Agent

An officer or employee of the university is prohibited from acting as an agent for another person in the negotiation of the terms of an agreement relating to the provision of money, services, or property to the university.

Summary

In this age of high ethical standards and unrelenting public scrutiny, it is imperative that all state officers and employees be aware of applicable ethics laws. Texas governmental entities are run under an open government system, and all public officers and employees are subject to review. Anyone who has questions or concerns should contact the university's general counsel. A copy of this policy shall be annually filed with the Texas Higher Education Coordinating Board as required by the General Appropriations Act.

Cross Reference: Article III, § 22 of the General Appropriations Act as adopted by the 85th Legislature; Tex. Gov't Code §§ 403.271(a)-.278, 552.352, 556.004-.009, 2203.004, 2254.032, 2261.252, 2262.004, Ch. 553, 572-573, 2256; Tex. Penal Code Ch. 36, § 39.02; Tex. Educ. Code §§ 51.912, .923 and other applicable state and federal laws; Discrimination Complaints (2.11); Sexual Misconduct (2.13); Dual Employment (11.7); Nepotism (11.16); Use of Electronic Information Resources (16.32); Property Inventory and Management (17.14); Purchasing Ethics and Confidentiality (17.22); Fraud (2.7); Discipline and Discharge (11.4); Outside Employment (11.19); Purchases from Employees (17.21); Financial Aid Code of Conduct (4.7); Property Liability (16.22)

Responsible for Implementation: President

Contact for Revision: General Counsel

Forms: Disclosure Statement for Purchasing Personnel

Board Committee Assignment: Finance and Audit