

CONFLICT OF INTEREST

What constitutes a conflict of interest is both a moral/ethical question as well as a legal question and is dependent upon a number of factors. It involves situations wherein “regard for one duty tends to lead to disregard of another.”ⁱ When the employer is a governmental entity, it is important to ensure that its employees refrain from outside activities that conflict with their duties or may expose them to the temptation of acting in a manner other than in the best interest of the people they serve.ⁱⁱ Conflicts of interest also include conflicts of commitment - those situations in which external activities, either paid or unpaid, interfere with an employee’s primary obligation and commitment to the governmental entity.

Creation and adoption of a policy that recognizes the negative impact of actual or perceived conflicts and creates a procedure for identification of such conflict situations in advance is particularly important for a governmental entity such as STI. However, in light of the broad spectrum of activities that could create an actual or perceived conflict, it is virtually impossible for a conflict of interest policy to specifically identify every various circumstance or relationship that could constitute an actual or perceived conflict of interest. Each employee is expected to apply a sense of integrity and common sense to disclose circumstances that are, may become, or may give the appearance of a conflict of interest.

STI’s commitment to serve the public is borne out by STI Policy GA. Policy GA recognizes that the STI is committed to recruiting and retaining the highest qualified personnel who devote themselves to the education and welfare of all students, are committed to quality education, have high capabilities, and great probability of

effectively achieving STI's mission: To educate individuals for employment opportunities, professional growth and lifelong learning. STI employees should refrain from taking part in, or exerting influence by conduct or actions in, activities in which their own interests may conflict with the best interest of the STI and the students and public it serves. Policy GBEAA appropriately recognizes that public confidence in the impartiality, independence and integrity of STI employees is essential for the proper administration of STI's affairs.

In light of the above, the potential for an actual or perceived conflict is always present and STI staff members should avoid entering into any agreement for outside employment involving obligations which may conflict or appear to conflict with STI interests, including its interest in the full- or part- time services of any staff member. This includes, but is not limited to, outside employment to provide instructional or consulting services of any kind to another postsecondary institution in competition with services STI offers/provides. The potential for a conflict exists whether or not the course of instruction or services are offered at STI and whether or not those services are provided outside the dates of active contractual service.

Policy GBEAA appropriately recognizes that each situation must be individually examined. The policy contains a procedure for determining whether an employee's outside activity would be in violation of the conflict of interest policy. Under the established procedure, the employee must provide full disclosure and receive approval before engaging in the activity. The employee should initially discuss the situation with his/her immediate supervisor; however, the immediate supervisor does not have the authority to determine whether the outside activity constitutes an actual or perceived

conflict. Rather, after each specific situation is examined by the immediate supervisor, it must then be examined and approved in writing by the President. The immediate supervisor is to examine whether the activity will have an effect, or potentially affect, the performance of the employee's specific duties (conflict of commitment), while the President ensures that the activity complies with STI's overall philosophy and mission and Policy GBEAA (conflict of interest).

Approval must be contingent on assurance that the primary commitment to STI will be fulfilled. Release time from STI for paid activities that are primarily personal in nature, that do not enhance the faculty member's professional skills, or that are not a potential benefit to STI must be closely reviewed prior to participating in the activity. A leave of absence or reduction in FTE may be appropriate or necessary if engaging in the external activity compromises the employee's ability to meet the responsibilities of his/her position with STI.

Actual and perceived conflict of interests, particularly with a governmental entity, must be identified and avoided at all costs. Situations wherein regard for one duty tends to lead to disregard of another must be avoided so that public confidence in the impartiality, independence and integrity of STI is maintained and to ensure that personnel hired by the STI devote themselves to the education and welfare of STI and its students. STI and the community must be seen as working as a unified whole to accomplish the mission of STI.

ⁱ Black's Law Dictionary (6th Ed. 1991).

ⁱⁱ See *Hang v. City of Winner*, 2005 SD 10, 692 N.W.2d 202.