

February 2, 2001
OPINION 00-464

Senator Lambert C. Boissiere, Jr.
LA. State Senator, District 3
6305 Elysian Fields
New Orleans, LA 70122-4245

Dear Senator Boissiere:

This office is in receipt of your request for an opinion of the Attorney General in regard to dual officeholding. You ask whether a state legislative staff employee may enter into a professional service contract with Southern University to assist in the development and review of the University's intellectual property policy, and contractual provisions between faculty members and the University regarding intellectual property rights, which we find to "traditionally includes the three legal areas of patents, trademarks, and copyrights." Intellectual Property, 3rd. Ed. , Arthur R. Miller, Michael H. Davis.

This office has previously concluded where an individual enters into a professional service contract such is not considered to be a job compensated on a salary or a per diem basis, and does not constitute employment within the Louisiana Dual Officeholding Law, R.S. 42:61 et seq.. Atty. Gen. Op. Nos. 97-528, 96-359, 96-9.

As noted in Atty. Gen. Op. No. 97-528, attention should be given to the provisions of R.S. 14:140, Public Contract Fraud, which provides in part as follows:

A. Public contract fraud is committed:

(1) When any public office or public employee shall use his power or position as such officer or employee to secure any expenditure of public funds to himself, or to any partnership of which he is a member, or to any corporation of which he is an officer, director, or stockholder, or

(2) When any member of any public board, body or commission charged with the custody, control, or expenditure of any public funds votes for or uses his influence to secure any expenditure of such funds to himself, or to any partnership of which he is a member, or to any corporation of which he is an officer, director, or stockholder.

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The fact that an expenditure has been made to any party named in Paragraphs (1) and (2) of this Section, or to any partnership of which he is a member, or to any corporation of which he is an officer, stockholder, or director, shall be presumptive evidence that such person has used his power, position, or influence to secure such expenditure.

We hope this sufficiently answers your inquiry, but if we can be of further assistance do not hesitate to contact us.

Sincerely yours,

RICHARD P. IEYOUB
Attorney General

By: _____
BARBARA B. RUTLEDGE
Assistant Attorney General

RPI/bbr

cc: Ms. Mary McGinn

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A state legislative staff employee who also enters into a professional service contract is not considered to be a job compensated on a salary or a per diem basis, and does not constitute employment within the Louisiana Dual Officeholding Law.

Senator Lambert C. Boissiere, Jr.

LA State Senator, District 3

6305 Elysian Fields

New Orleans, LA 70122-4245

Date Received: Nov. 17, 2000

Date Released: February 2, 2001

BARBARA B. RUTLEDGE

Assistant Attorney General