



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

May 30, 1989

Gaetha Pace
Idaho Commission on the Arts
STATEHOUSE MAIL

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Conflict of Interest

Dear Gaetha:

Thank you for your letter of March 29, 1989. Your letter asks for legal guidance concerning two areas. First, you ask if it is a conflict of interest if a commissioner or a staff person's spouse applies for and receives funding from the Commission. Second, you question whether it is a conflict of interest for commissioners to continue to sit on a board of art organizations funded by the Commission.

Conclusion: Idaho's nepotism statute prohibits a spouse or any of the spouse's associates from voting to furnish compensation from public funds to any person within a second degree relationship. The Commission, as the final decision maker, could not fund any project where a spouse of any commissioner would receive a benefit. The statute does not prohibit a staff member's spouse from applying for and receiving funding from the Commission. Second, Idaho law does not prohibit commissioners from sitting on the boards of arts organizations the Commission funds.

Analysis: To answer your first question, it is necessary to understand the method by which Commission funds are received by individual artists. The first method is through the apprenticeship-fellowship program where the work is reviewed by a panel of out-of-state artists who recommend funding allocations

Gaetha Pace
May 30, 1989
Page 2

to the Commission. You have administratively removed the staff person from any involvement with the out-of-state panel, and the actual funding decision is made by the Commission itself. Your second program is for performing artists who arrange for a "sponsor-presenter" to perform an artist's work. The presenter, such as the Sun Valley Center, contracts with the artist for a performance and the Commission underwrites a portion of the cost of the performance.

Idaho's nepotism statute, Idaho Code § 59-701, provides:

An executive, legislative, judicial, ministerial, or other officer of this state or of any district, county, city, or other municipal subdivision of the state, including road districts, who appoints or votes for the appointment of any person related to him or to any of his associates in office by affinity or consanguinity within the second degree, to any clerkship, office position, employment, or duty, when the salary, wages, pay or compensation is to be paid out of public funds or fees of office, and who is related by either blood or marriage within the second degree to any other executive, legislative, judicial, ministerial, or other public officer when such appointment is made on the agreement or promise of such other officer or any other public officer to appoint or furnish employment to anyone so related to the officer making or voting for such appointment, is guilty of a misdemeanor involving official misconduct and upon conviction thereof shall be punished by fine or not less than ten dollars (\$10.00) or more than \$1000, and such officer making such appointment shall forfeit his office and be ineligible for appointment to such office for one (1) year thereafter.

While not a paragon of clarity, the law in question has the effect of prohibiting "associates in office" from providing benefits to those individuals within prohibited relationships. Commissioners, therefore, could not fund any project where their spouses would receive public funds. This prohibition, however, would not extend to staff members who do not vote for funding a project. It would be our recommendation that you continue to prohibit any staff member from working on any project where the staff member's spouse seeks Commission funding. This policy avoids the appearance of impropriety.

Your second question concerned the dual role of commissioners simultaneously serving on the Commission and the board of an art organization funded by the Commission. Idaho Code § 59-201 states this statute is intended to prevent public officers from acting under the influence of their personal

Gaetha Pace
May 30, 1989
Page 3

interests rather than the interest of the public. See McRoberts v. Hoar, 28 Idaho 163, 174, 152 P.2d 1046 (1915). As it is clear that commissioners are public officers, the issue is whether there exists an "interest" in the award of a contract prohibited by the statute. In an informal guideline issued on January 16, 1986, this office outlined the concept of a "remote interest." We concluded that the director of the YWCA was not precluded from serving on the Council on Domestic Violence even though the YWCA had applied for and received funds from the Council.

Your situation is similar, but less troublesome. Unlike the position of YWCA director, service on the Board of Directors of the art organization is honorary and involves no wages or salary. Thus, there is no possible personal financial benefit to the commissioner involved. Like the YWCA director, moreover, the arts organization is a non-profit corporation which has, through case and statutory law in surrounding states, been construed to constitute a "remote interest." In short, there is not present here the type of self dealing possibilities that Idaho Code § 59-201 aims to prevent.

In summary, it is permissible for spouses of staff personnel to apply to the Commission for funding and to accept the same. It is not permissible for the Commission to fund projects sponsored by spouses of commissioners. Finally, it is permissible for commissioners to continue to serve on the boards of arts organizations funded by the Commission. I hope this is helpful. Please advise if I can be of further assistance.

Very truly yours,

PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division