

Outside Employment
Guidance on Section 3.4.5 of the Bylaws
of the Board of Regents of the University of Nebraska
Office of the General Counsel

Background.

Section 3.4.5 of the Bylaws of the Board of Regents of the University of Nebraska states that full-time professional staff members are to be encouraged to engage in outside professional employment provided that such activities do not interfere with regular staff duties at the University or represent a conflict of interest. Outside employment for professional services on a "temporary or occasional" basis may be accepted when recommended by academic administrators and approved by the Chancellor or the President, or their designees.

There are two situations where approval of the Board of Regents is necessary before professional employment may be accepted:

- 1) those for a time period lasting more than two years, and
- 2) those requiring more than an average of two days per month during the period of a professional staff member's "full-time University employment." § 3.4.5 (b).

Notes: 1) The administration and enforcement of outside employment and related matters for employees covered by the Medical Service Plan and Dental Service Plan are provided for under the Board of Regents approval of those plans and the related agreements as approved by the Board of Regents. 2) Medical and dental residents are not covered by either plan however, and are professional employees subject to the disclosure and approval rules if they are employed on a full-time basis. Please contact the General Counsel's Office for details or related questions in these situations.

Disclosure required for outside employment regardless of duration.

Although approval requirements may vary under § 3.4.5 based on the amount of time involved— for "a time period lasting more than two years" under § 3.4.5 (a) and the "more than average of two days per month" of § 3.4.5 (b)— disclosure is still required in all instances to allow review for conflicts of interest under § 3.2.8.

The University of Nebraska has consistently interpreted both § 3.4.5 and 3.8 of the Bylaws of the Board of Regents to require employees to disclose any activity that may conflict with University duties or responsibilities, regardless of the duration of the outside activity, or when the activity occurs. For example, previous opinions of this office have held that faculty on academic year appointments may be required to disclose outside employment during the summer or at other times when the University is not in session to monitor potential conflicts of interest.

Department chairpersons, department heads, deans and directors [or other equivalent heads of academic or administrative units] are reminded that they have primary responsibility to review the specific nature of each proposed outside professional activity within their respective areas of administrative responsibility and to deny approval to any such activity which would interfere with the normal University duties of the staff member involved or which would represent a conflict of interest.

1976 Clarification – during the assigned work week.

The Board of Regents adopted a "Clarification on University Policy on Outside Employment" to interpret § 3.4.5 (b) of the Bylaws in 1976.

*Under certain circumstances such outside employment must also be approved by the Board of Regents. In particular, section 3.4.5 (b) of the Regents Bylaws requires Board approval before a staff member accepts professional employment (including consulting and professional practice) outside the University requiring more than two days per month during the period of the staff member's full-time University employment. A question has arisen as to the precise meaning of the words "two days per month." In order to clarify this section, **the words "two days per month" appearing in section 3.4.5 (b) of the Regents Bylaws shall henceforth be interpreted as meaning "two days per month during the assigned work week."** Thus, under this policy, a Chancellor may on his own authority approve outside employment (including consulting and professional practice) on the part of a staff member requiring more than an average of two days per month, provided no more than two days per month of such outside employment will occur, on the average, during the staff member's regularly assigned work week, and provided the Chancellor feels such outside employment is in the best interests of the University. However, a Chancellor must still obtain the approval of the Board before authorizing outside employment (including consulting and professional practice) requiring more than an average of two days per month during a staff member's regularly assigned work week.*

40 BRUN, Minutes, 29 (December 11, 1976). (Emphasis supplied).

Totaling more than an average of two days per month.

The history of § 3.4.5 (b) shows that the "average of two days per month" language of this provision of the Bylaws has remained intact from 1973 forward.

Subject to the critical review and administrative approval for interfering with normal University duties and conflict of interest, persons who hold an academic year appointment may utilize "an average of two days per month" during the academic year under § 3.4.5. Because the two days per month during the assigned work week may be averaged, the job could involve four days in

the first, third and sixth months and zero days in the second, fourth and fifth months and not require Board approval under § 3.4.5 (b). Such an arrangement could be given administrative approval if the other tests of § 3.4.5 are satisfied. Likewise, an otherwise appropriate six month consulting job should not take up more than twelve work days of an all-year employee's schedule unless authorized by Board approval under § 3.4.5 (b).

The President is granted authority under § 3.4.5 to promulgate rules necessary for the administration and enforcement of § 3.4.5, including regulations covering the conduct of outside professional employment using University resources. The related form was last revised December 19, 2005, <http://www.nebraska.edu/docs/hr/OutsideActivity121905.pdf>. [Note: this form is planned for revision] The form allows that in lieu of obtaining approval from the Board, the appropriate chairperson, department head, dean or director could either reduce the FTE associated with the staff member's appointment to reflect the reduction in time available for performance of University duties or have the outside employer reimburse the University for the staff member's University salary and fringe benefits associated with the reduction in the staff member's time to perform regular University duties.

September 15, 2010 – GC Guidance 3.4.5 (b) Outside Employment