

Policy 1106

Title: Conflict of Interest

Date of Current Revision: April, 2008

Primary Responsible Office: Director, Human Resources

Secondary Responsible Office: Assistant Vice President for Finance

1. PURPOSE

The purpose of this policy is to maintain the public's highest trust in public officers and employees of the university and to provide procedures for employees to abide by state law.

2. AUTHORITY

Employees of the university are bound by the terms of the State and Local Government Conflict of Interests Act (Code of Virginia, Section 2.2-3100 et seq., hereafter "the Act").

3. DEFINITIONS

These definitions are taken from the Act. For more definitions see Code of Virginia, Section 2.2-3101.

Contract:

Any agreement to which JMU is a party, or any agreement on behalf of JMU that involves the payment of money appropriated by the General Assembly, whether or not such agreement is executed in the name of the Commonwealth of Virginia or JMU.

Immediate Family:

A spouse or any other person residing in the same household as the employee (or officer) who is a dependent of the employee (or officer), or of whom the employee (or officer) is dependent.

Employee:

All persons employed by JMU in any capacity.

Officer:

Any person appointed or elected to any governmental or advisory agency including local school boards, whether or not s/he receives compensation or other emolument of office.

Transaction:

Any matter considered by JMU on which official action is taken or contemplated.

Personal Interest:

Financial benefit or liability accruing to a university employee (or officer), or to a member of a university employee's (or officer's) immediate family; such interest shall exist by reason of the following:

- Ownership interest in a business if the ownership interest exceeds 3 percent of the total equity of the business;
- Annual income that exceeds or may reasonably be anticipated to exceed \$10,000 from ownership in a business, or real or personal property;

- Salary, compensation, fringe benefits or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually;
- Ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income or salary, other compensation, fringe benefits, or benefits from the use of property; or
- Personal liability incurred or assumed on behalf of a business if the liability exceeds 3 percent of the asset value of the business.

4. **APPLICABILITY**

This policy applies to all university employees and officers.

5. **POLICY**

A conflict of interest occurs when a university employee or officer, or a member of his or her immediate family has a personal interest, or benefits or suffers from his or her participation in a contract or transaction considered by JMU.

No JMU employee or officer shall have a personal interest in a contract with JMU, other than that employee or officer's own contract of employment.

5.1 Prohibited Conduct

- No JMU employee or officer shall accept money, solicit money or any other thing of value for services performed within the scope of that employee or officer's official duties, except the compensation, expenses or other remuneration paid by the university.
- No JMU employee or officer shall accept or offer any money or any other thing of value for or in consideration of obtaining an appointment, employment or promotion of any person within any governmental or advisory agency.
- No JMU employee or officer shall offer or accept any money or any other thing of value for or in consideration of the use of that employee or officer's public position to obtain a contract for any person or business with any governmental or advisory agency.
- No JMU employee or officer shall use, for his or her own economic benefit or that of another party, confidential information that she or he acquired by reason of his or her public position and which is not available to the public.
- No JMU employee or officer shall accept any business or professional opportunity, favor, gift, loan, money or service that reasonably tends to influence him or her in the performance of his or her official duties.
- No JMU employee or officer shall accept any business or professional opportunity when that employee or officer knows that there is a reasonable likelihood that the opportunity that is being afforded will influence him or her in the performance of his or her official duties.
- No JMU employee or officer shall accept a gift from a person who has interests that may be substantially affected by the performance of that employee or officer's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question that employee or officer's impartiality in the matter affecting the donor.
- No JMU employee or officer shall accept gifts from sources on a basis so frequent as to raise an appearance of the use of his or her public office for private gain.

6. **PROCEDURES**

Before any agreement or contract, other than an employment contract, is contemplated or

exists, an advisory opinion from the Attorney General of the Commonwealth of Virginia may be required by JMU to determine whether the Act will be violated by its formation.

6.1 Process of Reporting

1. Normally, during the month of August, the Secretary of the Commonwealth of Virginia will contact the JMU Office of the President to request a listing of all employees who are required to complete the annual Conflict of Interest filing. This listing consists of the following:
 - All voting members of the JMU Board of Visitors must complete a Financial Disclosure Statement (short form).
 - All eligible JMU employees must complete a Statement of Economic Interests (long form). Such employees include those in management and procurement— any and all employees who have an impact on decisions, particularly financial decisions.
 2. The JMU Office of the President will request the appropriate list from the director of the JMU Office of Human Resources and respond to the Secretary of the Commonwealth's requests.
 3. Based on the reporting, the Secretary of the Commonwealth will send the appropriate forms to the director of the JMU Office of Human Resources.
 4. The director of the JMU Office of Human Resources will notify all applicable employees, and distribute and collect the forms.
 5. The director of the JMU Office of Human Resources will send all completed forms to the Secretary of the Commonwealth along with a listing of employees who did not complete/submit the forms.
- 6.2 Semiannually, JMU offers to its employees who are required to file a statement under this policy, an orientation course on this policy, and on ethics in public contracting, if applicable to the employee.

7. **RESPONSIBILITY**

It is the responsibility of each JMU officer and employee to comply with the Act.

Any employee or officer who believes he or she may be in violation of the State and Local Government Conflict of Interests Act has the right and obligation to seek a written advisory opinion of the Attorney General of the Commonwealth of Virginia and thereby avoid prosecution and loss of office or employment.

If any JMU employee or officer has reason to believe a conflict of interest may exist, it is their duty to report it to JMU Audit Management Services.

It is the responsibility of the internal auditor to investigate any allegations of violation of this policy and to refer possible criminal violations to the JMU Office of Public Safety.

8. **SANCTIONS**

Any person who knowingly violates any of the provisions of the Act shall be guilty of a Class 1 misdemeanor and malfeasance in office and, in addition to any other fine or penalty provided

by law, may forfeit his or her office or employment.

Agreements and contracts made in violation of the Act may be declared void and may be rescinded by the JMU Board of Visitors within five years of the date of such contract. A civil penalty may also be imposed in an amount equal to the amount of money or thing of value forfeited to the commonwealth.

9. EXCEPTIONS

The Act does not apply to the following situations at JMU:

- An employee's personal interest in additional contracts of employment with JMU that accrue to him or her because of a member of his or her immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of his or her immediate family and the employee is not in a position to influence those activities;
- The personal interest of an employee or officer in additional contracts of employment with JMU that accrue to him because of a member of his or her immediate family, provided
 - the employee or officer and the immediate family member are engaged in teaching, research or administrative support positions at JMU,
 - the JMU Board of Visitors finds that it is in the best interests of the institution and the commonwealth for such dual employment to exist, and
 - after such finding, the board ensures that the employee or officer, or the immediate family member, does not have sole authority to supervise, evaluate or make personnel decisions regarding the other;
- An employee or officer's personal interest in a contract of employment with any other governmental agency of state government;
- Contracts for the sale, by a governmental agency, of services or goods at uniform prices available to the general public;
- An employee's personal interest in a contract between JMU and a publisher or wholesaler of textbooks or other educational materials for students that would accrue to him or her solely because he or she has authored or otherwise created such textbooks or materials;
- Subject to approval by the JMU Board of Visitors, an employee's personal interest in a contract for research and development or commercialization of intellectual property between JMU and a business in which the employee has a personal interest, if
 - the employee's personal interest has been disclosed to and approved by JMU prior to the time at which the contract is entered into;
 - the employee promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before Jan. 15;
 - JMU has established a formal policy regarding such contract that has been approved by the State Council of Higher Education; and
 - No later than Dec. 31 of each year, JMU will file an annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the JMU employee responsible for administering each contract, the details of JMU's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth.

10. INTERPRETATION

The authority to interpret this policy rests with the President, and is generally delegated to the Director of Human Resources.

Previous version: April 2004
Approved by the President: January, 2002

Index of Terms:

Conflicts
Conflict of Interests