

Office of the President
December 5, 2023

Members, Board of Trustees:

APPROVAL OF AN EXCEPTION TO KENTUCKY STATUTE
(UK Research and Education Center – Land Lease)

Recommendation: that the Board of Trustees approve an exception to Kentucky Revised Statutes (KRS) 164.131(7) and Governing Regulation XIV, *Ethical Principles and Code of Conduct*, pursuant to KRS 164.367, upon recommendation of President Eli Capilouto and as outlined in the attached opinion and recommendation of the University of Kentucky Ethics Committee, to permit the University to enter into a lease with employee Chris Rodgers under Request for Proposal # RE-0202-24 until December 31, 2024.

Background: Dr. William A. (“Andy”) Bailey, Ph.D., an Extension Professor in the Martin-Gatton College of Agriculture, Food and Environment, oversees the Dark Tobacco Extension Program, which focuses on the agronomic aspects of dark tobacco production, tobacco pesticide screening, crop management and tobacco curing (“Project”). This research takes place on approximately ten (10) acres at the University of Kentucky Research and Education Center in Princeton, Kentucky. Due to the intermittent nature of the work and a shortage of reliable farm labor contractors in the region, the Project has had great difficulty procuring labor to assist with the harvest of the tobacco plots. The University Procurement Services Office issued a Request for Proposals to lease the land to a bidder who would grow the specified crops and provide labor for all stages of the crop production in return for the marketable tobacco produced from the research trials. The only proposal submitted was from Chris Rodgers, a university employee who owns his own tobacco farm near Princeton but also works on the Project. He disclosed the conflict of interest in his proposal.

KRS 164.131(7) prohibits an employee from having an interest in a contract with the university, unless approved by the Board. KRS 164.367 allows the university to establish a procedure whereby the Board may approve an employee having an interest in a contract with the university. Governing Regulation, Part XIV.B.14, *Financial Advantage*, provides that procedure. Pursuant to the procedure, the Ethics Committee evaluated five (5) criteria and made the attached recommendation to the President. After evaluating the Ethics Committee’s recommendation, the President recommends that the Board approve the exception and permit the lease.

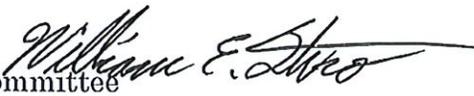
If approved, the lease will run from May 15, 2024, until December 31, 2024. A new RFP will be issued for lease or labor needed after 2024.

Action taken: Approved Disapproved Other _____



University of Kentucky
Office of Legal Counsel
301 Main Building
Lexington, KY 40506-0032
O: 859-257-2936
www.uky.edu

TO: Eli Capilouto
President

FROM: William E. Thro 
Chair, Ethics Committee

DATE: November 20, 2023

RE: Princeton Tobacco Conflict of Interest

Background

The College of Agriculture, Food, & Environment conducts tobacco research at the UK Research and Education Center (UKREC) in Princeton, Kentucky, in Caldwell County. For the past several years, UKREC has had difficulty finding labor to harvest the tobacco research plots (the "Project"). The principal investigator (PI), Dr. Andy Bailey, reached out to several resources that specialize in H2A labor to determine whether that might be an option, but H2A is not workable for various reasons (the intermittent nature of the need for the labor, lack of reputable farm labor contractors in Kentucky, etc.).

One of the University employees who works on the Project, Chris Rodgers, has had his own tobacco farm near Princeton for several years. In the past, either the study's sponsor paid Rodgers directly to provide the labor for the Project, or the UKREC had a cooperative agreement with the University of Tennessee. The University of Tennessee would pay Rodgers, which would avoid a conflict with the University of Kentucky. These arrangements are no longer available as of this year.

The H2A resources that the PI consulted recommended that UKREC use a lease agreement with a tobacco grower who could provide labor for the harvest in exchange for the tobacco. After speaking with Purchasing, the University issued a Request for Proposals (RFP) for the research farm labor.

Request for Proposals

Purchasing issued an RFP to lease ten acres to a bidder who would grow and harvest specific cultivars of tobacco, which would take approximately 2,500 person-

hours annually. The contract is for a limited time period from May 15, 2024, to December 31, 2024. The PI would collect research data and the winning bidder would then sell the tobacco (approximately 23K pounds' worth) and keep the revenue. According to parties involved, this is essentially a wash.

Rodgers was the only bidder. In his response, he disclosed that he was a University employee.

Conflicts of Interest Process & Analysis

Several sources prohibit the University from entering into contracts with employees of the University unless specifically approved by the Board of Trustees (BOT). *See* KRS 164.367; KRS 164.390; GR XIV, B.14, Ethical Principles and Code of Conduct; BPM B-2, III.B. Ground leases must also go to the Board of Trustees for approval.

GR XIV provides a process to consider conflicts of interest and make a recommendation to the President and, ultimately, to the Board of Trustees. Per the Governing Regulation:

[a]n employee seeking approval under this section shall first make an application to the University Ethics Committee by submitting in writing a full disclosure of all aspects of his or her relationship with the contracting company or business. The Ethics Committee shall make a recommendation to the President, who shall forward to the Board the Committee's recommendation together with his or her recommendation. In recommending approval of a contractual relationship, the Committee shall determine that:

- a. the contractual relationship is in the best interest of the University;
- b. the employee has taken whatever actions are necessary to avoid any conflict of interest or any appearance of a conflict of interest;
- c. if the conflict is subject to the provision of KRS Chapter 45A, the employee's contract shall be the lowest price bid or otherwise provides the best value to the University;
- d. the employee's interest in the contract does not present a conflict with the employee performing his or her job; and,
- e. the nature of the contract and the nature of the employee's interest in the contract or business shall be fully disclosed to the University community by as broad communications as feasibly possible.

The Ethics Committee discussed this matter via an email exchange considering the criteria outlined above.

The Ethics Committee first determines that the contract is in the best interest of the University. The PI has spent several years studying dark tobacco. There will be a negative impact to continuing research if the Project is unable to engage labor to assist with the crops. The contract with Rodgers provides a solution to permit the research to continue uninterrupted.

The second criterion neither favors nor counsels against approval of a waiver. In the current situation, **there does not appear to be a way to avoid a conflict or minimize the appearance of a conflict.** However, to manage this conflict, the Ethics Committee recommends that, per the RFP, the contract promptly ends December 31, 2024. The University will issue a new RFP for 2025.

With respect to the third criterion – whether Rodgers’ bid was the lowest or provides the best value to the University – the Committee has determined that both are true. Rodgers was the only bidder to respond to the RFP. Further, he has previously provided labor for the Project and so can provide the best value to the University due to his familiarity with the research.

Rodgers works on the Project as an Agricultural Research Specialist and, therefore, has first-hand knowledge of the work that needs to be done. The Project has used labor provided by Rodgers in prior years and has not had an issue with either the labor provided nor Rodgers’ work with the crops. Rodgers has demonstrated that the contract will not prevent him from doing his job at the University.

Finally, **Rodgers disclosed in his bid that he had a conflict because he was an employee of the University.** Both the employee and the PI have requested that the Committee and the BOT consider allowing the contract given the difficult labor situation and the potential negative impact on the University’s research if the contract with Rodgers is not permitted.

Based on the above, **the Committee recommends to the President that the Board of Trustees approve an exception from May 15, 2024 to December 31, 2024** to Kentucky Revised Statutes (KRS) 164.131(7) and Governing Regulation XIV, Ethical Principles and Code of Conduct, pursuant to KRS164.367, and permit the University to enter into a contract with Chris Rodgers under Request for Proposal # RE-0202-24.