

KANSAS BOARD OF REGENTS POLICY ON SALES OF PRODUCTS AND SERVICES

It is the intent of this policy to establish guidelines for the conduct of sales of products and services for the Regents institutions in fulfilling their required missions and statutory obligations, and establish principles upon which fairness in the sale of products and services is to be judged. The complex needs of the Regents institutions require that a broad and flexible policy be established while at the same time making provision for the resolution of the legitimate grievances of the private sector which will occur from time to time. It is in the spirit of good faith and fair practice that this policy is established.

Any sale of products or services by a Regents institution, its auxiliary enterprises, or an affiliated corporation of a Regents institution (all hereinafter collectively referred to as "institution(s)") is deemed appropriate only if such sale is an integral part of or reasonably related to, an activity which is essential to the fulfillment of the institution's instructional, research or public service missions. Such activities must meet the following criteria:

a. Criteria for Sales of Products and Services to Students, Faculty, Staff, and University Guests

(1) Institutions may sell products and services to students, faculty, staff, and university guests; provided, that the products and services satisfy reasonable educationally related or convenience needs of the university community and provided that such products and services are not generally available to persons who are not students, faculty, staff or university guests. University guests are defined as persons who enter a campus for an educational, research, or public service activity, and not primarily to purchase or receive products and services. Sales to university guests shall be related to the guest's purpose or needs while on campus.

(2) Institutions may sell products and services to students, faculty, staff, and university guests if the product or service contributes to maintaining the quality of the educational, living, or work environment of the institution. Most crucial to maintenance of quality are efforts which impact positively on student, faculty and staff recruitment and retention, including, but not necessarily limited to: student activity association entertainment; movies; athletic and recreational events and facilities; institutional operation of student health facilities; counseling centers; musical, cultural and artistic activities; and auxiliary enterprise activities.

(3) The appropriateness of sales of products and services to students, faculty, staff and university guests should also be weighed by the availability or non-availability of the products or services in the community at the time sales were initiated. Availability may be defined in terms of convenience, quality or quantity of service.

(4) The sales of products and services to students, faculty, staff and university guests shall be advertised only in media which are aimed or specifically targeted to the university community or by other methods which are limited to the campus.

b. Criteria for Sales to the External Community

In order for a product or service to be sold to the external community, two criteria must be met: 1) the product or service must be appropriate for sale; and 2) sale of the product or service must adhere to the appropriate policy on pricing. Any advertising of products or services appropriate for sale to the external community shall be reasonably related in content and cost to the product or service being sold.

(1) Appropriate Sales: The following is an exclusive listing of sales to the public which are deemed to be appropriate:

(a) An institution may sell a product or service which is directly related to the achievement of its institutional mission statement.

(b) An institution may sell a product or service where the sale enhances the academic, cultural, recreational, or artistic environment of the university community. This shall include, but not be limited to: attendance at addresses by public speakers, musical events, athletic events, museum exhibits, and art showings.

(c) Products and services which are by-products of the institution's instruction, research, or public service activities may be sold to the public; however, production of products or services for commercial sale shall not be the primary use of any institutional facilities or resources.

(d) Agricultural and mineral products produced from either research activities or from land owned or leased by the institution may be sold to the public.

(e) An institution may sell food service, but such food service shall be limited to the institution's campus.

(f) An institution may sell clothing and other gift and souvenir items imprinted with the institutional or conference logo, seal, emblem, initials, nickname, mascot or name.

(g) An institution may sell gift or souvenir items related to the operation of university museums or similar facilities.

(h) An institution may sell a product or service if it has specific state or federal statutory authority or mandate to do so.

(i) An institution may provide a product or service pursuant to a grant or contract with a governmental entity to provide such product or service either to the entity or to the public.

(j) An institution may offer a product or service to the external community if such product or service is unavailable elsewhere in the community and is reasonably related to the institution's mission. Unavailability may be defined in terms of convenience, quality or quantity.

(2) Pricing Policies

(a) In establishing a price or fee for products or services, the price should generally reflect the direct and indirect costs of the products or services and should minimally reflect the price in the private marketplace. For the purpose of this policy, direct costs include, but are not limited to: all salaries, fringe benefits, supplies, and capital directly attributable to the sale of the product or service. An institution's negotiated federal indirect cost rate shall be used to determine indirect costs.

(b) If the activity is integral to the fulfillment of the institution's instructional, research or public service missions, prices may be established at less than full cost recovery upon approval by the institutional chief executive officer or the chief executive officer's designee.

(c) All contracts offering products or services to other state agencies shall be priced in accordance with Board policy on "Contracts with Other State Agencies, Indirect Cost Reimbursement" (Item 7.c., Page 6B).

(d) If a product is an agricultural or mineral product produced either as a by-product of teaching or research activities or as a product of land owned or leased by an institution, such product shall be sold for its market value.

c. Compliance.

(1) The chief executive officer of each Regents institution shall designate an officer at the Vice Chancellor or Vice President level who will approve the initiation of any new activity or program

which will produce sales of products or services, or a substantial change in the type or level of existing sales of products or services, and determine that such activity or program complies with this policy. Each Regents institution shall develop policies and procedures for administrative approval of activities which satisfy the criteria of this policy.

(2) The Director of Internal Audit or other designated official at each Regents institution shall review service and product sales on a regular basis and shall report and identify activities to the designated Vice Chancellor or Vice President which are not in compliance with this policy. The designated Vice Chancellor or Vice President shall review the identified activities. If the designated officer agrees that the activity is not in compliance with the policy on competition, that officer shall prescribe parameters for compliance or shall require that the activity be curtailed.

(3) This policy will be applicable to private entities or individuals who sell products or services directly to students, faculty or staff pursuant to a contract with a Regents institution.

d. Competition Grievance Procedure

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(1) The chief executive officer of each Regents institution shall designate an officer at the Vice Chancellor or Vice President level who will receive and evaluate complaints from private enterprises alleging inappropriate or unreasonable competition by the institution with private enterprise.

(2) Upon receipt of a written, formal and signed complaint, the designated official shall investigate the merits of the complaint and determine whether the activity is in compliance with the Board of Regents policy on sales of products and services. The designated official shall proceed to resolve the complaint through administrative channels if possible. If the designated official is unable to resolve the complaint within fifteen (15) working days of receipt, it will be presumed that the complaint cannot be resolved through administrative channels

(3) If it is impossible for the complaint to be resolved by the designated official through administrative channels, the complaint shall be given to the chief executive officer of the university for referral, within ten (10) working days, to the Institutional Competition Review Committee for review. An Institutional Competition Review Committee (hereinafter "Committee") shall be separately constituted and appointed by the chief executive officer for each complaint. Each Committee shall be made up of five (5) members as follows: three (3) members from the university community (one of whom shall serve as Chair of the Committee) and two (2) members representing the private sector.

(4) The Committee shall, within five (5) working days of its receipt of the complaint, and after consultation with the complainant, determine whether the complainant wishes to make an oral presentation to the Committee or whether the issue(s) shall be determined based on written submissions of the parties. If the complainant desires to personally make an oral presentation to the Committee, same shall be held within twenty (20) working days of the receipt of the complaint. The Committee shall listen to the complainant and a representative of the department or area offering the product or service. The Committee shall determine whether sales of the product or service are in compliance with the Board of Regents policy on sales of products and services. The Committee will prepare a written conclusion of its determination and recommendation of action within fifteen (15) working days of the conclusion of the oral presentation, or within fifteen (15) working days of receipt of the written submissions.

(5) The Committee shall forward its recommendation to the chief executive officer of the university for review. The chief executive officer shall accept, reject, or modify the recommendation of the Committee and shall inform the President and Chief Executive Officer of the Board and the other chief executive officers of the recommendation of the hearing committee along with a statement of the action taken thereon by the chief executive officer within fifteen (15) working days of receipt of the Committee recommendation.

(6) If the proposed action of the chief executive officer does not satisfactorily resolve the complaint or charge, the complainant may appeal the chief executive officer's decision to the Kansas Board of Regents within twenty (20) working days of receipt of the Committee's recommendations. Should review be granted, the Chair of the Board shall appoint, within twenty (20) working days of receipt of the appeal, a Regents Review Committee to review the complaint of the complainant. A Regents Review Committee shall be separately constituted for each complaint. Each Regents Review Committee shall be made up of three (3) members as follows: one member, who shall serve as Chair of the Regents Review Committee, shall be the Chair of the Board of Regents or the Chair's designee, one member shall be designated by the institutional chief executive officer where the complaint arose and one member shall be designated by the complainant. The Regents Review Committee will, within thirty (30) working days of its receipt of the complaints, make a complete review of the matter and provide its written Report and Decision to the President and Chief Executive Officer of the Board of Regents for implementation and reporting to the full Board of Regents.

(7) This procedure is intended to facilitate discussion and the resolution of issues and not as a formal or judicial process. Neither party may be represented by counsel. Time limits should not be used to adversely affect any complaints and unusual circumstances may justify a waiver of such time limits. It is further anticipated by the Board of Regents that a conscientious and good faith effort will be made by both parties to resolve the complaint at the earliest possible opportunity and that appeals to the Board of Regents will be the exception.

(8) This procedure shall not negate any other policy or afford additional rights relating to the processing of claims or charges of proscribed conduct which may be made by persons directly involved with or affected by the operation and management of a Regents institution. This procedure is applicable only to any individual without current access to an established institutional grievance procedure. (12-20-90)