



Do I Have a Conflict of Interest?

Dear Labby,
I have the sense that your column is for students and postdocs, i.e., career development stuff, so I never thought I would be writing, but have been encouraged to do so. I am a professor of cell biology at a state university medical school in the Midwest. I'll be brief. Two years ago I made an invention and started a company. My institution supported the patent filing and licensing to the start-up but did nothing else. Meanwhile, I scrambled around like a prairie dog on speed and got things going. My university has a consulting rule: one day a week. That was not going to work so I asked for, and got, permission to serve as the company's interim CEO at 50% effort.

A year later my Dean now says the part-time CEO position is over and I have to decide—company full-time or back to the university full-time. I say baloney. If I continue as interim CEO the chances that the company will make money for the university increase. What am I missing in this picture? I have talked to some business people and lawyers, but this whole thing seems to come down to my university's conflicts of interest policy. I am told I signed some invention agreement when I took this job.

Just the other day a graduate student down the hall, who heard me complaining, said, "Ask Labby." I am an ASCB member so I have seen your column. I told the student that Labby was not likely to know anything about my problem. But she did not relent, saying, "Just try her." So here I am with my case.

—Split

Dear Split,

Not knowing the conflicts of interest policy of your institution—or the details of the invention agreement you signed—Labby can only offer some general principles that are in play across the land. The invention agreement you mentioned is called an assignment of rights. It means for employment you assigned your intellectual property rights to the university. This is standard and you get something back—an allocation of patent-related income. The one-day-per-week consulting policy is intended to allow faculty to pursue advisory roles in keeping with the academic tradition (we are called professors because we have something to profess). If our knowledge as scholars can help people, improve the quality of life, save Earth from destruction, why not?

A general policy that has evolved is that a faculty member should not serve as an officer of a company indefinitely, and most institutions have put a time limit on this. One reason is that such a split allegiance inevitably shifts to the company's favor with time, catalyzed in part by financial incentives of founder's stock or stock options. A second factor is that a university has the legal right, as the employer, to require that a faculty member not be unduly distracted from fulfilling contractual terms of the job description. The one day/week consulting policy in wide use is intended to recognize the value of a degree of entrepreneurial effort by faculty members. But the fact that these policies are not more liberal (two days or more) is based on the notion that the primary duty of the faculty member is to the institution. This is a particularly enabling feature of such policies at state universities, such as yours, at which the taxpayers' perspective expects professors to primarily serve the university.

As regards your specific issue, there is among many universities a policy (often unwritten) that allowing a faculty member to sit 50:50 in both worlds is unhealthy. At Labby's institution we have a case such as yours; the faculty member and the university have reached the constructive agreement (in this case) that her first love is the company. So after a year of the same 50:50 effort you have been doing, she will join her company full-time.

A final point you may want to consider is that biotech companies that have started out with a scientist CEO have often done poorly. The critical need here is to get a business-based CEO lined up with whom your university can work. ■

—Labby

Direct your questions to labby@ascb.org. Authors of questions chosen for publication may indicate whether or not they wish to be identified. Submissions may be edited for space and style.

Got Questions?

Labby has answers. ASCB's popular columnist will select career-related questions for publication and thoughtful response in the *ASCB Newsletter*. Confidentiality guaranteed if requested. Write us at labby@ascb.org. ■