

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 00-8

February 25, 2000

RE: May an offender rehabilitation specialist with the Department of Corrections, Division of Mental Health, be self-employed as a sex offender counselor for juvenile and adult offenders?

DECISION: Yes, within limitations.

This opinion is in response to your December 28, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 25, 2000, meeting of the Commission, and the following opinion is issued.

You ask whether an offender rehabilitation specialist of the Department of Corrections (the "Department"), Division of Mental Health may be self-employed as a sex offender counselor for juvenile and adult offenders. As an offender rehabilitation specialist, the employee supervises a sex offender program that assesses, treats, and counsels clients referred by probation & parole officers. The employee states that, in his self-employment, his clients will be juvenile and adult offenders who are not on probation or parole. The Commission assumes the employee's private clients are not juvenile and adult offenders currently housed in Department institutions.

KRS 11A.040 (10) provides:

(10) Without the approval of his appointing authority, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds. when deciding whether to approve outside employment for a public servant.

(a) The appointing authority shall review administrative regulations established under KRS Chapter 11A.

(b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.

....

The provision above only requires an employee to obtain approval for his outside employment when such employment is with a person or business that does business with or is regulated by the state agency for which the employee works. An employee does not need to receive approval from his agency for self-employment; however, the employee should ensure

that no conflict of interest exists between the employee's official duties and potential clients. Thus, the employee is not prohibited from self-employment as a juvenile and adult sex offender counselor as long as his clients are not clients that he or anyone under his supervision would assess or treat as an offender rehabilitation specialist.

If any private client or former private client should come under his supervision with the Department, then the employee should abstain, as part of his official duty, from any involvement regarding the clients, and disclose that fact in writing to his supervisor. See KRS 11A.020(3).