

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-10
February 25, 2000

RE: May employee of Oakwood house former residents?

DECISION:: Yes, within limitations.

This opinion is in response to your December 8, 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 state the relevant facts as follows. You are the Director of Social Work Services for Oakwood, a residential and training facility for the mentally retarded, within the Department for Mental Health and Mental Retardation Services, Cabinet for Health Services ("Health Services"). A full-time employee of Oakwood would like to allow Oakwood residents to stay in his private home while such residents are on leave from Oakwood or after they are fully discharged from Oakwood. The employee, who works as a patient aide/direct care staff, would be compensated for this service through the Medicaid program in Health Services, but not directly by Oakwood. You ask for an opinion regarding this situation.

KRS 11A.040(4) provides:

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

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(b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

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Additionally, KRS 11A.020(1)(a), (c) and (d) provide:

(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

••••

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Although the employee would be compensated by Health Services, it appears that such compensation involves public funds disbursed through an entitlement program, and thus the provisions in KRS 11A.040(4), above, would not prohibit the acceptance of such compensation by the employee. However, in order to avoid any conflicts of interest, the employee should not allow former residents to live in his home if he has any official involvement with the residents as a part of his official duty for Oakwood.

Furthermore, in order to avoid a conflict of interest, neither the employee, nor anyone under his supervision should refer residents of Oakwood to the employee's residence for living arrangements. Such referrals may appear to the public that the employee is using his official position to obtain financial gain or advantages for himself privately. The employee should maintain a clear distinction between his official duties and his private activities.

For additional guidance on this matter, we have included Advisory Opinions 93-20 and 98-35. The Department is not precluded from implementing internal policies regarding this matter that may be more restrictive than this advice.

Enclosures: Advisory Opinion 93-20
Advisory Opinion 98-35