

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 00-23

April 28, 2000

RE: May KET executive director accept compensation for service for Foundation?

DECISION: Yes, provided such service is in addition to her official time spent for her state service.

This opinion is in response to your March 7, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 28, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Kentucky Authority for Educational Television ("KET") is a state agency governed by a nine-member board of directors (the "Board"), pursuant to KRS Chapter 168. The Board, along with a representative of the Friends of KET, also governs the Kentucky Education Television Foundation (the "Foundation"), a 501(c)(3) corporation established in 1972 to support the activities and further the purpose of KET. KET is responsible for the distribution and transmission of the broadcast signal as well as statutory duties for Kentucky's schools.

KET and the Foundation occupy the same facility, are jointly audited, and are supervised by the same executive director. The Board believes that such supervision by one executive director is necessary to consistency in the mission of KET. However, the Board and the Foundation have separate functions and responsibilities and are distinct from each other in all aspects.

The KET Board is authorized to set the compensation of nonclassified employees not to exceed the maximum established by KRS 64.640(2). Because the Board has directed the executive director of KET to also serve as executive director for the Foundation, the Board desires to increase the salary of the executive director of KET in order to compensate her for responsibilities in both organizations. She spends many overtime hours working on Foundation

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matters for which she is not compensated by KET, and thus the Board believes that the executive director should be compensated by the Foundation, in addition to the compensation she currently receives from KET.

You believe since the executive director has responsibilities for both KET and the Foundation, that it is only right and proper that the executive director receive compensation for both jobs. The total amount of compensation will be less than or equal to the compensation of other executive directors of public television stations around the country. You have discussed this matter with an attorney from the Office of the Attorney General and with the General Counsel of the Personnel Cabinet, and both have approved the compensation that the Foundation wishes to provide. However, before the Foundation authorizes such compensation, you want to obtain an opinion from the Commission as to whether such compensation from the Foundation will violate the Executive Branch Code of Ethics.

KRS 11A.040(5) provides:

(5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

Because the duties the executive director performs for the Foundation are performed at the direction of the Board, the Commission believes that such duties for the Foundation are a part of the executive director's official duties for KET. However, the Commission believes that supervision of the Foundation by the executive director of the Board is necessary to achieve consistency between the Foundation and the mission of KET. Thus, if the executive director spends time over and above her normal hours performing work for the Foundation and is not paid or allowed compensatory time by KET, the Commission believes the Foundation may supplement the executive director's salary with a fair market value of her services.

The Commission recommends that the executive director document the amount of time spent on work for the Foundation, in addition to her normal workday spent on matters for KET.

Thus, the Commission gives its approval for the executive director of KET to receive compensation from the Foundation for performance of her official duty for KET, if such

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performance includes documented time over and above the executive director's normal workday. The executive director must disclose such additional compensation on her statement of financial disclosure filed annually with the Commission.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Bertie Oldham Salyer, M.A., A.M.E.

www.state.ky.us/agencies/ethics/ETHICS.HTM

May 1, 2000

John S. Domaschko, Chairman
Kentucky Authority for Educational Television
600 Cooper Drive
Lexington, Kentucky 40502-2296

Reference: 042800.8

Dear Mr. Domaschko:

At its April 28, 2000, meeting, the Executive Branch Ethics Commission took up your request, dated March 7, 2000, in which you ask whether the Kentucky Educational Television executive director may accept compensation for service for the Kentucky Educational Television Foundation.

The enclosed Advisory Opinion 00 –23 is issued in response to your inquiry.

Sincerely,

Jill LeMaster, Executive Director

Enclosure: Advisory Opinion 00 – 23

cc: Virginia G. Fox, KET Executive Director
Dr. Marlene M. Helm, Secretary, Education, Arts & Humanities Cabinet
Cheryl Lalonde-Mooney, Attorney General's Office