

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-33
June 23, 2000

RE: May artisans sell crafts at park where they are employed?

DECISION: No.

This opinion is in response to your May 30, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 23, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department of Parks (the "Department") employs craftspeople seasonally as part of its living history exhibit at Fort Boonesborough State Park (the "Fort"). As the Director of Recreation Parks & Historic Sites, you have found that it is difficult to attract skilled artisans under the current restrictive personnel system. You believe that it is imperative that such artisans be fairly compensated. You propose that they be permitted to sell their crafts at the Fort and in the park gift shops. Receipts would be shared between the artisan and the Department. You believe that this compensation, in addition to his salary, would allow the artisan to make enough money to continue to work at the Fort.

As you understand the ethics laws, a state employee may not sell his or her goods and services while in the employ of state government. You ask the Commission to review this special, limited situation to determine whether this provision applies. If the law does apply, you ask for advice on how you might achieve your goal of fairly compensating the artisans while fully complying with the ethics laws.

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

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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:

- (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
- (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
- (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or
- (d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

Additionally, 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.

The Commission believes that 11A.040(4) prohibits an artisan from selling his crafts to the Department or an individual park for which he works; however, such an arrangement between the artisans and the Department as you have proposed does not appear to be a contract or agreement referred to in KRS 11A.040(4). Additionally, the Commission believes that the income derived by the artisans from the sale of such products is not income for performance of the artisans' official duty. Therefore, the Commission believes the provision in KRS 11A.040(5) above does not prohibit the artisans from accepting such income in addition to the compensation they receive for performance of their official duties.

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However, KRS 11A.020(1)(c) and (d), provided below, prohibits employees from using their official positions to obtain financial gain or advantages over the general public.

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

...

(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.

The Commission believes that, because of their official positions, employees will receive a financial gain and an advantage over other vendors if they are allowed to sell their wares at the park where they are employed. Thus, the Commission believes the artisans may not sell their crafts at the Fort.

An option that you might consider would be to hire such artisans through a personal service contract and include in the contract provisions the arrangement proposed that would allow the artisans to sell wares at the Fort.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Bertie Oldham Salyer, M.A., A.M.E.