

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 00-58

November 3, 2000

RE: May employee serve as a consultant for a subsidiary of a company that is an agent for companies regulated by the division for which the employee works?

DECISION: Yes, provided the employee has no involvement with the parent company as part of his official duties.

This opinion is in response to your September 25, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 3, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are an aquatic biologist for the Natural Resources and Environmental Protection Cabinet, Division of Water, Water Quality Branch, Ecological Support Section. You wish to serve as a consultant in your field of expertise in order to gain additional income. You will perform all consulting work on your personal time and with your personal equipment. A company in Georgia, ECOTECH SOUTH, Inc., has asked you to collect and identify biological samples (macroinvertebrate communities) in Georgia for permits required by the state of Georgia. ECOTECH SOUTH, Inc. is a subsidiary of ECOTECH, Inc., a company that serves as an agent for companies in Kentucky that are regulated by the Division of Water. You are not personally involved, as part of your official duties, in the review of permit related material associated with ECOTECH, Inc. Additionally, you do not review permits submitted by consultants who may be in competition with you privately. However, within the Water Quality Branch, the Water Quality Certification Section (not the section for which you work) does review, comment, and certify plans for stream and wetland mitigation prepared by ECOTECH, Inc. for various Kentucky companies. You ask whether a conflict of interest will exist if you contract with ECOTECH SOUTH, Inc. to provide such a service.

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

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

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION-00-58

November 3, 2000

Page Two

(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;

...

(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.

Please find enclosed several advisory opinions issued by the Commission that will provide you with guidance in this matter. The Commission believes, as long as you are not involved in the regulation of companies that are represented by ECOTECH, Inc. before your division, that you may perform such consulting services for ECOTECH SOUTH, Inc. The Commission cautions you not to discuss the regulation of such companies with individuals in the Water Quality Certification Section who are responsible for the review of permits and certification of plans prepared by ECOTECH, Inc. for the companies.

Additionally, as you have stated, in your official position you should not review permits of, or have any regulatory involvement with, companies with which you may be competing privately.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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

Enclosures: Advisory Opinion 96-4
Advisory Opinion 96-18
Advisory Opinion 97-4
Advisory Opinion 98-32