

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-66
November 3, 2000

RE: May hearing officer complete cases for Kentucky Retirement Systems upon employment with the Kentucky State Police?

DECISION: Yes.

This opinion is in response to your October 17, 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. The Kentucky Retirement Systems contracts with private attorneys to act as hearing officers in administrative hearings held before the agency. A hearing officer, with whom the Kentucky Retirement Systems contracts, has recently accepted employment with the Kentucky State Police. She will begin work on November 1, 2000, and will be a participating member of the Kentucky Employees Retirement System ("KERS"). Kentucky Retirement Systems administers KERS.

The hearing officer has several cases assigned to her that will not be completed by November 1. Several cases are in the early stages and will be assigned to other hearing officers. However, in two cases, the hearing officer has conducted the administrative hearings and performed substantial work, but does expect to file recommended orders on the cases until January of 2001. You believe that judicial economy and the disability applicant's due process rights require that the hearing officer be allowed to complete the work on these two cases. You ask whether the Executive Branch Code of Ethics prohibits the hearing officer from completing the two mentioned cases. You have enclosed a letter from the Office of the Attorney General stating that an attorney does not have a conflict of interest and is not disqualified from serving as a hearing officer for the Kentucky Retirement Systems simply by virtue of the fact that the person is a participating member of the Kentucky Employees Retirement System.

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In the position as attorney for the Kentucky State Police, the hearing officer is subject to the Executive Branch Code of Ethics. As such, the hearing officer is subject to KRS 11A.020(1)(a) and (2) that 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;

...

(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.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

The Commission agrees with the opinion of the Attorney General in that the hearing officer's participation in KERS does not pose a conflict for the hearing officer to serve in such a capacity for a limited amount of time, provided the subject matter of the cases does not affect the hearing officer's personal participation in KERS and provided the cases do not involve employees of the Kentucky State Police.

The hearing officer also is subject to the Model Procurement Code in KRS 45A.340, which prohibits an employee from contracting with a state agency unless the contract is less than \$25 or it is competitively bid. Consequently, the Commission believes that, at the completion of the aforementioned cases, the hearing officer should not contract with the Kentucky Retirement Systems to perform any additional work.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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