

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 00-68

December 15, 2000

RE: Is employee required to obtain approval for self-employment?

DECISION: No, but must ascertain that a conflict does not exist.

This opinion is in response to your October 30, 2000 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 15, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The clinical director at Western State Hospital, Cabinet for Health Services, operates a small, private medical practice of providing psychological assessments for disability determinations in addition to his state position. These assessments are for the Department of Disability Determinations within the Cabinet for Families and Children, and are conducted on his own time and in his private office not located on the campus of Western State Hospital. He does not accept clients who are employed by Western State Hospital or who have been hospitalized at Western State Hospital, if he has directly participated in their treatment.

The Cabinet for Health Services has asked the clinical director to complete an Outside Employment Form and Statement. In response to that request, the Chief Executive Officer ("CEO") at Western State Hospital informed the Cabinet that the clinical director does not believe that the law requires him to seek approval for his outside employment and that he does not wish to complete the form and statement. The clinical director contends that he is not an employee of any agency other than Western State Hospital. He states that he is a sole proprietor and has no employees or contracts with any agencies, persons or businesses.

The CEO at Western State Hospital advised your office that he will be happy to order the clinical director to complete the forms if the Cabinet can provide him with the legal authority to do so; he does not see from the statute where he has any obligation to do more than advise the clinical director that there may be an issue.

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You ask for advice as to whether the clinical director is required to complete the Outside Employment Information Form and Statement. If he is required to complete the form, you ask for the authority supporting this conclusion.

KRS 11A.040(10) provides:

- (10) Without the approval of his appointing authority, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.
 - (a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.
 - (b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.
 - (c) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.

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.

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It appears from the information provided that the clinical director is not employed by either the Department of Disability Determinations or by any clients. Thus, he is not required by the provision above to obtain approval for his outside practice. However, he still must determine if his outside practice presents a conflict of interest with his official position. Specifically, he should ascertain, as he has stated, that none of his clients are individuals who have been treated by him at Western State Hospital. Additionally, the Commission believes because he is the clinical director for Western State Hospital, he should not have any clients who have been treated by any employee under his supervision at Western State Hospital. See Advisory Opinion 00-65, a copy of which is enclosed.

The Commission cautions the clinical director to make a clear distinction between his work for Western State Hospital and his consulting work. He should not use state time, personnel or property for his outside practice. Specifically, neither he, nor anyone under his supervision, should accept calls or work on matters regarding his private business while at Western State Hospital.

Furthermore, nothing in the Executive Branch Code of Ethics prohibits the Cabinet from implementing policies regarding outside or self employment that may be more restrictive than the Executive Branch Code of Ethics or that might require all employees with outside or self employment to obtain approval from their agencies for such employment.

The Commission also points out that if the clinical director has an agreement with the Department of Disability Determinations, a state agency, he is subject to the provision of the Model Procurement Code in KRS 45A.340(5) that provides:

(5) No officer or employee of an agency or appointee shall knowingly himself ...undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, sale, or purchase of the value of twenty-five (\$25) or more, made, entered into, awarded or granted by any agency, unless said contract, agreement, sale or purchase was made or let after public notice and competitive bidding.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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

Enclosure: A.O. 00-65