

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 01-4
February 9, 2001

RE: May a Deputy State Fire Marshal serve as local fire chief?

DECISION: Yes, provided the positions are compatible pursuant to KRS 61.080.

This opinion is in response to your December 11, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 9, 2001, meeting of the Commission and the following opinion is issued.

The relevant facts provided by you and others are as follows. A fourth-class city of which you are the mayor has a vacancy for the position of its fire chief. You are considering a Deputy State Fire Marshal employed by the Department of Housing, Buildings and Construction (the "Department") for appointment to the position of fire chief. This appointment would be in addition to his state employment. As part of his official duty for the state, the Deputy State Fire Marshal is not involved in his agency's regulation of volunteer fire departments and does not make decisions regarding local volunteer fire departments.

The Commissioner of the Department, as well as the Director of the State Fire Marshal's Office, both have considered the Deputy State Fire Marshal's request and have stated that they do not believe his employment with the local volunteer fire department will create a real or perceived conflict of interest, and have approved his request for outside employment with the local fire department.

Conversely, a local attorney has provided advice to you that concludes that the employment of the Deputy State Fire Marshal as the city fire chief would be in violation of KRS 11A.61.080. You ask the Commission whether the Deputy State Fire Marshal's employment by the city in addition to his state employment would be legal or would create a conflict of interest.

KRS 11A.020(1) provides:

- (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;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (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.

Additionally, KRS 11A.040(10) provides:

- (10) Without the approval of his appointing authority, a public servant shall not 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.

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As noted above, the appointing authority, when considering whether to approve a request for outside employment by an employee, must review administrative regulations established under KRS Chapter 11A. The administrative regulations, in 9 KAR 1:050, state that the appointing authority must not approve the outside employment of an employee if the employee is involved in decision-making or recommendations concerning the person or business from which he seeks employment. Because the appointing authority has approved the Deputy State Fire Marshal's request for outside employment with the local fire department, the Commission believes, as you have stated, that that the Deputy State Fire Marshal is not involved as part of his official duty in matters involving the local fire department or city with which he wishes to hold outside employment. Thus, the Commission does not believe that a conflict of interest will exist if the Deputy State Fire Marshal is employed by the city as the fire chief of the local fire department.

The matter of whether the positions of Deputy State Fire Marshal and fire chief of a local volunteer fire department are officers, and thus may be incompatible pursuant to KRS 61.080, is not under the jurisdiction of the Executive Branch Ethics Commission, but should be referred to the Office of the Attorney General for resolution.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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