

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 01-7**  
March 30, 2001

RE: May inspector accept employment with coal company to attend training in order to benefit his retirement?

DECISION: Yes, within limitations.

This opinion is in response to your February 15, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 30, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. A mine inspector employed by the Department of Mines and Minerals (the "Department") previously worked for a coal company until he was laid off in 1989. He remains on a United Mine Workers ("UMW") list of potential workers for the coal company called a panel. Those former coal company employees listed on the panel retain seniority rights for employment if the coal company needs workers. He recently has been made aware that if he attends a one-day update on underground training provided by the coal company he can significantly improve his retirement benefits pursuant to the UMWA contract with the coal company. In order to attend the underground retraining class, he must be called back to employment by the coal company. The coal company has agreed to call him back to work and allow him to work one day (attend the training) in order for him to improve his retirement benefits.

The inspector has requested a one-day leave of absence from the Department in order become an employee of the coal company and take the retraining course. You believe that the inspector will use annual leave and will not terminate his employment with the state. The employee does not plan to perform any mining activities for the coal company, but plans to terminate his employment with the coal company immediately upon the completion of the training.

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Mine inspectors periodically rotate the coal companies they inspect. Thus, although the inspector has inspected the coal company in the past, he is not currently involved in inspecting the coal company as part of his official duty. However, a fellow inspector will be involved in inspecting the coal company.

KRS 11A.040(10) provides, in part:

(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.

The inspector is subject to the provisions in KRS 11A.040(10) above because he seeks to be employee of the coal company for one day. Thus, the inspector should seek approval for such outside employment from the appointing authority of the Department. The appointing authority must review the provisions in administrative regulations 9 KAR 1:050 below in considering whether to approve such outside employment.

Section 2. The appointing authority shall review the request and consider, including but not limited to, the following factors:

(a) The degree of separation between the public servant's state duties and decisions concerning the outside employer. Example: whether the public servant is involved with the awarding of contracts to or regulation of the outside employer.

(b) The public servant's level of supervisory or administrative authority, if any. Example: whether the public servant has ultimate responsibility for a decision concerning the outside employer, although he is not involved in the decision-making process.

(c) Whether the outside employment will interfere or conflict with the public servant's state employment duties.

1. A conflict shall exist if a public servant cannot carry out an appropriate course of action for his agency because of responsibilities his outside employment would require.

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2. A conflict shall exist if the outside employment will materially interfere with the public servant's independent judgment in considering alternatives or courses of action that reasonably should be pursued in his state employment.

**(d) The duration of the outside employment;**

(e) Whether the outside employment would create an appearance of conflict of interest with state duties; and

**(f) Whether the public servant is an auditor, inspector or other regulatory personnel of a division which is currently auditing, inspecting or reviewing or has scheduled an audit, inspection or review of the outside entity for which the public servant requests approval to work.** (Emphasis added.)

In Advisory Opinion 00-38 (a copy of which is provided) the Commission stated the if an outside entity was scheduled to be monitored by an agency, that an inspector of that agency should not hold outside employment with the outside entity regardless of whether the employee was involved in the inspection. However, in this case, because the duration of the employment is limited to one day, the Commission believes that such employment will not create an appearance of a conflict provided the inspector is not involved in the inspection of the coal company for a reasonable period of time, and provided he does not discuss with his fellow inspectors any matters involving inspections of the coal company.

Furthermore, if the inspector will receive future retirement benefits from the coal company, he should have no further responsibility regarding the inspection of the coal company.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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

Enclosure      Advisory Opinion 00-38