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BOYCE A. CROCKER

ADVISORY OPINION 01-12

May 11, 2001

RE: Will a conflict of interest exist if employee accepts outside employment at a local detention center?

DECISION: No.

This opinion is in response to your March 29, 2001 request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 11, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department of Corrections (the "Department") has an employee who is currently employed as a Correctional Officer at the Western Kentucky Correctional Complex (the "WKCC"). Correctional Officer is a position within the classified (merit) system, and is a non-management, non-procurement position. This employee has requested permission for outside employment as a deputy jailer with the Marshall County Detention Center (the "Detention Center"). He would work at the Detention Center on his days off from the WKCC. In his job duties as a Correctional Officer at the WKCC, the employee has no involvement with Department matters regarding the Detention Center. You ask whether a conflict would exist if the employee accepts such outside employment with the Detention Center.

In addition to the facts you provided which are outlined above, the following are issues to consider. The Detention Center does house state prisoners, for which it receives a fee per state prisoner housed from the Department. Also, the Department, through its Division of Local Facilities, does regulate the operation of jails and detention centers that house state prisoners. However, the employee in question here, as a Correctional Officer at the WKCC, is not involved in any Department decisions that impact the Detention Center's housing of state prisoners, or the payments the Detention Center receives for such state prisoners, and he is not involved in any Department decisions regarding regulation of the Detention Center.

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The Commission believes a conflict of interest will not exist if the employee accepts outside employment as a deputy jailer with the Detention Center based on the facts as described above. As the employee is not involved in the Department's management or procurement decisions with respect to the Detention Center, no appearance of impropriety is created (see Advisory Opinion 96-4, a copy of which is enclosed). However, the employee must obtain approval from his appointing authority for such employment pursuant to KRS 11A.040(10) and 9 KAR 1:050 (a copy of which is enclosed).

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.

Furthermore, the employee should not use state time and equipment for his outside employment.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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

Enclosure Advisory Opinion 96-4