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BOYCE A. CROCKER

**ADVISORY OPINION 01-14**

May 11, 2001

RE: Does employee's self-employment create a conflict in light of his official duties involving procurement?

DECISION: Yes.

This opinion is in response to your April 13, 2001, request for an advisory 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. A network technician employed by Western State Hospital in the Cabinet for Health Services' (the "Cabinet") Office of the Inspector General operates a small, private business repairing and selling computers to individuals and businesses in the western Kentucky area. You advise that the employee, in his private business, may have dealings with entities that compete for contracts with the state. His job duties for the Cabinet include making recommendations regarding hardware/software procurement, maintenance contracts and equipment procurement. You ask whether the employee's self-employment presents a conflict in light of the fact that his outside employment may involve dealings with entities that compete for contracts with the state.

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;

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(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.

Although the Commission's Advisory Opinions 98-14 and 00-68 (copies of which are enclosed) provide that approval is not required for self-employment, the opinions also provide that an employee who is also self-employed should ascertain that no conflict exists between the employee's official duties and his potential clients.

In this situation, it appears to the Commission that the employee may be involved in making recommendations, as a part of his official duty, regarding individuals and businesses that may also be his private customers. If so, the Commission believes that such a situation presents a conflict of interest for the employee in the conduct of his official duty. The employee should not make recommendations in his official position regarding individuals that are his private customers. The Commission directs you to notify the employee's supervisor of this potential conflict of interest.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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

Enclosures    Advisory Opinion 98-14  
                    Advisory Opinion 00-68