

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 01-35

September 28, 2001

RE: May a polygraph examiner have outside employment conducting polygraph examinations?

DECISION: Yes, within limitations.

This opinion is in response to your August 20, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 28, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. A polygraph examiner employed by the Kentucky State Police ("KSP") has requested approval of his outside employment. He would like to conduct pre-employment polygraph testing for other law enforcement agencies when requested. The employee conducts this same type of pre-employment testing for the KSP Chapter 16 applicants. You are concerned that this outside employment may present a conflict of interest for the employee. You envision a situation where an applicant he has tested for employment at another law enforcement agency may later come before him for a test to become a KSP trooper. You wonder how the employee will handle the situation if the applicant has conflicting results on his two polygraph examinations, given that, pursuant KRS Chapter 15, the results of polygraph examinations are confidential. Additionally, you believe that a conflict could arise when an individual whom the employee has tested in his outside employment comes before him in his official position as the subject of a criminal investigation.

The KSP does not regulate any other law enforcement agencies, but the KSP does do business with other law enforcement agencies. Thus, you request an opinion as to whether the appointing authority of the KSP should approve the polygraph examiner's outside employment.

KRS 11A.020(1)(a) 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;

In Advisory Opinion 00-46 (a copy of which is enclosed), the Commission stated that a conflict would not exist for a plumbing inspector to have self-employment as a proctor for plumbing certification examinations, provided he received no compensation from plumbers that he inspected. Similarly, the Commission believes that the polygraph examiner may have outside employment with other law enforcement agencies, provided he has no involvement as part of his official duties in matters involving those law enforcement agencies that would employ him privately, and provided he does not receive compensation directly from individuals whom he is testing. Although, as part of his official duty, the polygraph examiner may eventually test some of the same individuals he tested in his private work, the Commission does not believe that such action will present a conflict because the employee is not being compensated by the individual tested.

However, the KSP is not precluded from adopting internal policies that may be more restrictive than this advice. The KSP may choose to require the employee to abstain from any polygraph testing involving individuals that he has tested privately.

Additionally, the Commission cautions the polygraph examiner not to use state time or equipment to conduct any examinations for other law enforcement agencies.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia Stone, J.D.

Enclosure: Advisory Opinion 00-46