

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-17

March 22, 2002

RE: May a state employee teach mine-safety classes for coal companies off-site and at times other than normal working hours?

DECISION: No, if part of official duty is to provide such training.

This opinion is in response to your February 27, 2002, request for an opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 22, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Department of Mines and Minerals (the "Department"), a state agency that is responsible for training surface and underground coal miners. As such, the Department employs full-time instructors to meet these requirements. One of these full-time instructors has requested approval to teach mine-safety classes for coal companies off-site, and at times other than normal working hours. The instructor would be paid directly by the persons or businesses using the services. You ask for advice as to whether the instructor may provide such a service. You also ask for advice concerning the instructor providing classes through a college or university.

KRS 11A.040(5) provides:

(5) A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

Additionally, KRS 11A.120 provides:

Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict a public servant from accepting outside employment in a state institution of higher education as long as that outside employment does not interfere or conflict with the public servant's state employment duties.

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It appears that, pursuant to KRS 351.106, a part of the responsibility of the Department, and thus a part of the mine safety instructor's official duty, is to provide needed training for underground and surface coal miners. Thus, the Commission believes that the instructor is prohibited from accepting compensation, from either universities or coal companies, for training that should be provided to coal miners as part of the instructor's official duty. (See enclosed Advisory Opinions 93-19 and 99-29). However, the instructor is not necessarily prohibited from providing services to coal companies which are not requirements of his official duty, provided such services do not present a conflict of interest for the instructor and provided approval is obtained, if required. Such potential conflicts are detailed below.

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;

It appears that the Department regulates the coal companies and personnel seeking the services of the mine safety instructor, as these are persons or businesses that are engaged in mining activities. Thus, if the mine safety instructor were to accept compensation from such persons or businesses a potential conflict of interest would exist. In order to avoid any actual conflicts of interest, the mine safety instructor must not be directly involved as part of his official duty in any matters affecting the persons or businesses for which he wishes to provide services.

If the mine safety instructor is not involved as part of his official duty in mine inspections, or decisions or recommendations affecting miners or coal companies who wish to use the services of the instructor (and will not be providing instruction that is part of his official duty), it does not appear that the employee would be prohibited from accepting compensation for such services.

Additionally, KRS 11A.040(10) requires state employees, prior to accepting outside employment with persons or businesses that are regulated by or do business with their state agency, to obtain approval from their appointing authorities. Thus, if the instructor will actually be employed by a coal company, versus compensated as an outside contractor, he must seek such

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approval. KRS 11A.040(10)(b) states that an appointing authority shall not approve such outside employment if the employee is involved in decision making or recommendations concerning the person or business from the potential outside employer. The Department must ensure that the instructor is not directly involved in decisions or recommendations affecting the outside employers for which he wishes to work. 9 KAR 1:050 provides further guidance to be considered in approving this request; this is enclosed for your review.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY VICE CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 93-19
Advisory Opinion 99-29
9 KAR 1:050