

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-23

March 22, 2002

RE: May a state employee provide typing services for a sex offender evaluation provider who is approved by the state board for which the employee serves as secretary?

DECISION: No.

This opinion is in response to your March 15, 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 as a secretary by the Department of Corrections (the "Department") in the Sex Offender Risk Assessment Unit (the "SORA") at the Kentucky State Reformatory. As part of your state duties, you also serve as secretary to the Sex Offender Risk Assessment Advisory Board (the "SORAAB"). The SORAAB approves providers across Kentucky to perform sex-offender evaluations as ordered by Kentucky courts. You ask the following: *In your capacity as secretary to SORA and SORAAB, is it unethical for you to type sex offender evaluations for a provider who has been approved through the SORAAB but does not work for the Department?*

It appears from the information provided that you will not be employed by the provider, but will be providing a service as self-employment. Thus, you do not need approval from your appointing authority, but you must determine if the self-employment would present a conflict of interest with your official state duties. KRS 11A.020(1)(a), (c) and (d) state:

(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;

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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 you state that the provider that seeks your services does not provide sex offender evaluations for the Department, the Commission still believes that if you provide services for compensation for the provider, a conflict of interest would exist for you. See Advisory Opinion 99-31. The fact that you would be performing work for a provider who has been approved by the SORAAB and part of your official duties includes being the secretary to the SORAAB causes the Commission concern. The Commission believes that it would be impossible for you to abstain from matters involving the provider who seeks your services as well as other providers who may compete with the provider who would employ you.

Additionally, if you were approached by the provider because of contacts through your official position for the board, it could appear that you have used your official position to obtain financial gain or an advantage over other typists. Such cozy appearances of impropriety and potential for conflicts lead the Commission to advise you not to accept work from this provider.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY VICE CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 99-31