

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 02-26

May 8, 2002

RE: May auditor hire computer expert to install computer equipment for personal computer if the computer expert works for a corporation that owns facilities the auditor is reviewing?

DECISION: Yes.

This opinion is in response to your March 27, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 8, 2002 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are an auditor with the Office of Inspector General, Health Services Cabinet (The Cabinet"). You have been assigned to review three primary care centers owned by a single corporation. Your review will be to determine if some of the costs included in the primary care cost reports submitted to Medicaid are correct.

The corporation that owns the three primary care centers also owns two pharmacies and a health clinic at a community college. The corporation employs a computer expert to maintain the computer systems at all of its facilities. In addition to his employment with the corporation, the computer expert has several private clients for whom he provides computer services at night and on weekends. He had these clients prior to his employment with the corporation.

The computer expert is not part of management for the corporation and does not understand Medicaid reimbursement or accounting. His salary and computer work are not being reviewed as part of the review you will do for the primary care centers. You ask if you may hire the computer expert, at the rate he charges other clientele, to install a motherboard, chip and fan in your personal computer without violating the Executive Branch Code of Ethics.

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KRS 11A.020(1) (a) and (d) provide:

- (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;
 - ...
 - (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.

The Commission believes that you are not prohibited from hiring the computer expert to perform computer services for you privately, provided you pay a fair wage for the services. However, you should not use your official position with the Cabinet to give yourself an advantage in any way. Additionally, you should not make contacts with the computer expert while working at a facility where the computer expert may be providing computer services also.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.