

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-57

December 13, 2002

RE: May employee employed through a contract with a comprehensive care program also serve as Deputy Commissioner for the Department for Medicaid Services?

DECISION: Yes, within limitations.

This opinion is in response to your November 19, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 13, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department for Medicaid Services (the "Department"), within the Cabinet for Health Services, employs through a contract with Bluegrass Comprehensive Care, an individual with an extensive background in services to those with mental health and mental retardation issues as its Director of Medicaid Services for Mental Health/Mental Retardation.

In addition, the Department wishes to employ the same individual in a dual role as the Deputy Commissioner for the Department. The employee's depth of knowledge of service delivery and program operations and grasp of complex rules and regulations governing the administration of the Medicaid program qualify this individual for the position. You ask whether this individual may be employed as the Deputy Commissioner for Medicaid Services so long as the individual takes no part in decisions specifically impacting the Bluegrass Comprehensive Care program. The Deputy Commissioner would serve under the supervision of the Commissioner of the Department, would have no final decision-making authority, and would be assigned the responsibility to oversee special projects. The Department plans to implement procedures to shield the Deputy Commissioner from any involvement in work regarding Bluegrass Comprehensive Care.

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KRS 11A.020(1) through (3) 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;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

(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.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

In reaching its decision, the Commission assumes that the Department is involved in matters impacting the Bluegrass Comprehensive Care program. The Commission also assumes that the employee has no ownership interest in the Bluegrass Comprehensive Care program.

Additionally, in Advisory Opinion 98-19, the Commission stated that a university employee could assume the position of the Commissioner of the Department, provided the

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university employee removes himself from all matters involving potential conflicts for him, including matters of the university employing him. Similarly, the Commission believes that the employee of Bluegrass Comprehensive Care program may also serve as the Deputy Commissioner of the Department, provided the employee has no involvement in matters relating to Bluegrass Comprehensive Care Center.

Furthermore, the employee should disclose in writing, pursuant to KRS 11A.020(3) stated above, his intention to refrain from involvement in matters related to Bluegrass Comprehensive Care program, and all decisions, actions and recommendations regarding Bluegrass Comprehensive Care program should be made by someone not under the authority of the Deputy Commissioner.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.

Enclosures: Advisory Opinion 98-19