

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-19**

May 29, 2003

RE:                                May a forensic anthropologist employed by the Kentucky State Medical Examiner's Office use the job title for identification purposes in the marketing of an autobiographical book?

DECISION:                      Yes.

This opinion is in response to your April 8, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 29, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed as the Kentucky State Forensic Anthropologist with the Kentucky State Medical Examiner's Office (the "Office"). Before your employment with the Office, you had many years of experience as a medical illustrator and forensic anthropologist, and you have consulted and worked on many famous mass casualty incidents. Previously you had asked the Commission whether there were any ethical issues regarding your plans to write an autobiography about your experiences. You were referred to Advisory Opinions 96-29 and 99-26, which address the issue of marketing one's life story and the use of official titles. You have since authored an autobiography that includes some cases on which you have worked while employed by the Office, as well as many other experiences outside your official duties for the Office, including your involvement in the Branch Davidian incident in Waco, Texas, the bombing of the Oklahoma City Federal Building, and victim identification at the World Trade Center in New York.

In Advisory Opinion 99-26, the Commission held that a state employee was allowed to state in the credits of a book he co-authored that he had 15 years of experience with the Medicaid program, but could not specifically identify that he was employed by the Department for Medicaid Services. The concern was that the employee would be seen as attempting to profit from his official position should he be identified in the book's credits by his official job title.

You state that you believe that Advisory Opinions 96-29 and 99-26 appear to contradict each other as to the use of one's title in a book's credits. Thus, you request clarification as to whether you may use your title (Kentucky State Forensic Anthropologist) for identification purposes when the publisher markets the book. You intend to donate any personal profits from individual book sales to non-profit organizations that have as their primary goal victim identification and support.

KRS 11A020(1), the Executive Branch Code of Ethics (the "Code"), states:

- (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.

The Commission believes a significant difference exists between the fact scenario depicted in AO 99-26 and your situation. In AO 99-26, the employee in question authored a book that explained the process by which an individual is determined to be eligible for Medicaid. The book primarily would be marketed to those individuals applying for Medicaid, and thus those individuals subject to possible regulation and decision making by the employee and/or the Department by which he was employed. In your situation, it does not appear that you will be marketing the book to individuals that are regulated by, doing business with, or seeking eligibility or approval from your Office. Thus, the Commission believes that use of your official title in the credits of the book will not give you an advantage, as it may have the employee in AO 99-26. However, a disclaimer from the Office should accompany your title identification, disclaiming any involvement in the preparation of the book and that no Office resources were used, etc.

Additionally, if your share of the profits from your autobiography go to non-profit groups, and you realize no profit from the sale, then such activity would be exempt from KRS Chapter 11A, if the organizations are charitable, pursuant to KRS 11A.055 (1) cited below:

(1) Any provision of KRS Chapter 11A to the contrary notwithstanding, a state agency or a public servant may raise funds, either individually or as a department or agency, for a charitable nonprofit organization granted a tax exemption by the Internal Revenue Service under Section 501c of the Internal Revenue Code without violating the provisions of this chapter. Raising of funds shall include but not be limited to holding events for the benefit of the charitable organization, contacting potential donors, providing prizes, and engaging in other forms of fundraising and providing the funds thus raised to the charitable organization.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.