

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-26**

July 31, 2003

RE: May Cabinet for Families and Children employee provide services for a regional mental health entity on a contractual basis?

DECISION: Yes, provided he has no involvement with the entity, as part of his official position.

This opinion is issued in response to your July 9, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 31, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are an Internal Policy Analyst III employed by the Cabinet for Families and Children, Department for Community Based Services ("Department"), Division of Protection and Permanency, stationed in Frankfort. Prior to this position, you served as a Quality Assurance Specialist in the Lincoln Trail Region (Hardin County) of the same Department. In your previous position, you were the Department's regional liaison to community partners. You have recently been approached by one of these community partners, Communicare Regional Mental Health ("Communicare"), and asked to assist them on a contractual basis in applying for and writing grants. You have previous work history as a professional grant writer.

The Department is a large consumer of mental health services from Communicare in the Lincoln Trail Region, but funding for these services is through the Cabinet for Health Services, not the Department. You state that you have no direct or indirect involvement in issues relating to mental health contracts or funding. From the information provided, however, the Commission is unsure whether you have any other involvement in matters relating to Communicare. You ask whether the Department's relationship with Communicare would preclude you from being a part-time/contractual grant writer for Communicare.

KRS 11A.040(10) provides:

(10) Without the approval of his appointing authority, a public servant shall not accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.

(a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.

(b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.

(c) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.

Additionally, KRS 11A.020(1)(a) 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;

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Because you do not seek to be an employee of Communicare, but rather to work on a contractual basis, you are not required by the Executive Branch Code of Ethics to obtain approval from your appointing authority for such outside work; however you still must determine whether such work will present a conflict of interest for you. Generally, if neither you nor anyone under your supervision has involvement with Communicare as a part of your official duties, then it would not appear that a conflict would exist for you to provide such services on a contractual basis. However, other factors that may pose a conflict or an appearance of a conflict, of which the Commission may not be aware, should also be considered.

The Commission cautions you not to use state time, equipment, or materials for any services you provide for Communicare.

Furthermore, your agency may have an in-house policy that requires you to obtain approval for any outside work, whether as an employee or on a contractual basis. Contact the ethics officer for the Cabinet for Families and Children to determine if such approval is required.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.