

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-28**

July 31, 2003

RE            May Cabinet for Families and Children employee retain outside employment at an agency with which the Cabinet contracts?

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

This opinion is issued in response to your July 14, 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. The previous appointing authority for the Cabinet for Families and Children, ("Cabinet"), had approved an outside employment request for a Cabinet employee to work for an entity, Friends of Kentucky Families, Inc., with which the Cabinet has a personal service contract ("PSC") to provide intensive, in-home family preservation services to families with one or more children at imminent risk of removal from the home.

As part of his official duties, the employee, a social worker (the "social worker"), works with families in on-going adult and child protective services cases in Taylor County. The social worker does occasionally refer families for preservation services, but not to Friends of Kentucky Families. When a family preservation case arises, the social worker makes the referral for such services to an entity not affiliated with Friends of Kentucky Families. Likewise, in his outside employment with Friends of Kentucky Families, the social worker only works with families from outside Taylor County (the county of employment), and on evenings and weekends when he is not responsible for pager duty for the Cabinet.

In previous discussions with Commission staff, it was agreed that the potential for conflict of interest here was remote, but that to avoid even the perception of a conflict of interest, the social worker should recuse himself from all decision making or recommendations concerning referrals for family preservation counseling. However, the Cabinet is concerned the

possibility for conflict of interest still exists, and poses the following scenario for the Commission's consideration:

“[The social worker] has a case in which family preservation services would be appropriate. [The social worker] appropriately recuses himself and another qualified Cabinet employee, perhaps a supervisor, assumes the decision-making role regarding where to refer the client for family preservation services. The situation of the family would make a referral to Friends of Kentucky Families appropriate. However, out of an overabundance of caution, the supervisor refers the Client to an agency other than Friends of Kentucky Families solely because of [the social worker's] outside employment.”

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.

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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;

In the scenario you describe, the Commission does not believe any conflicts of interest are apparent. The social worker has appropriately recused himself from any involvement in family preservation referrals as part of his official duty. The social worker that takes this referral function from the conflicted employee then decides the appropriate agency for referral. Because of the nature of the safeguards in place, the social worker will not be referred any family preservation cases which might be seen in his outside employment, though the entity (Friends of Kentucky Families) may be referred family preservation cases.

Certainly the referring employee acting out of an “overabundance of caution” in not referring any family preservation cases to Friends of Kentucky Families because of reluctance due to the social worker’s outside employment with Friends of Kentucky Families does not create any ethical concerns. Likewise, the fact that the social worker will not work, for Friends of Kentucky Families, on any cases with which he has involvement as part of his official duty for the Cabinet, also avoids any potential conflicts.

Thus, the Commission does not think it a conflict of interest for the Cabinet to refer family preservation cases to Friends of Kentucky Families, so long as such referrals are not made by the social worker, and the social worker has no involvement with such cases upon referral to Friends of Kentucky Families.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.