

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-30

July 31, 2003

RE: Must employee use personal leave time for service on Board of Regents?

DECISION: Decision should be left to the discretion of management, provided it is within Personnel Cabinet policies.

This opinion is issued in response to your July 29, 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 employed as a branch manger for the Kentucky Revenue Cabinet (the "Cabinet"). On May 20, 2003, Governor Paul Patton appointed you to serve on the Kentucky State University Board of Regents (the "Board"). You were sworn in on July 24, 2003, and attended your first Board meeting and committee meeting on July 25, 2003.

You have questions regarding the use of leave time for attendance at such meetings. The Personnel Cabinet has advised you that an employee of the Department of Parks was advised that he did not have to use personal leave time for any time spent on matters for the Board. It is your understanding that such service is considered "authorized office time." You communicated this information to officials at your Cabinet who have requested that you obtain an opinion from the Commission on this matter.

In Advisory Opinion 94-60 (a copy of which is enclosed), the Commission stated that an executive branch employee serving on the Commission on Women should use annual or compensatory time for any normal work hours spent on Commission on Women business.

However, in Advisory Opinion 98-15 (a copy of which is enclosed), the Commission stated that it believed that the proper use of state time by employees is an agency management decision not under the jurisdiction of the Commission. Accordingly, the Commission attempts to clarify its opinion.

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The Commission believes that agency management should decide what is proper use of state time by an employee, including whether service on a state board or commission is a proper use. Thus, Cabinet management, not the Commission, should decide whether the employee's service on the Board is a proper use of the employee's state time, and thereby whether it should be considered part of the employee's official duty. If Cabinet management believes that time spent on Board matters is a proper use of state resources and consequently a part of the employee's official duty, the Executive Branch Code of Ethics would not prohibit the use of leave time for such service on the Board, if such use of leave time is within Personnel guidelines.

The Commission points out, however, that if your service for the Board is considered by management as part of your official duty, and therefore you do not use leave time for such activity, you are prohibited from accepting additional compensation (from the Board) for such service, pursuant to KRS 11A.040(5) provided below:

(5) A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

Additionally, the Commission still believes that you should use personal leave time for service on the Board if Cabinet management does not believe that such service is part of your official duty for the Cabinet.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 94-60
Advisory Opinion 98-15