

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-33**

October 16, 2003

RE: May a state employee perform pre-sentence investigative services?

DECISION: Yes, though he must ensure no conflict of interest exists with his official position.

This opinion is in response to your request of August 13, 2003, for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 16, 2003 meeting of the Commission and the following opinion is issued.

You are employed as a State Detention Systems Administrator by the Department of Juvenile Justice (the "Department"), which is an agency of the Justice Cabinet (the "Cabinet"). In your official position you are responsible for departmental compliance with federal requirements related to the Office of Juvenile Justice and Delinquency Prevention Act. This involves a wide range of taskings, none of which is related to adult correctional issues.

You have been approached by a local law firm with the request that you provide their adult clients with pre-sentence investigative services for pay. You would not be providing any services relative to juveniles. You request a written opinion by the Commission as to the appropriateness of your performing such services in addition to your current duties with the Department. It is your understanding that the Department has the final authority to approve or disapprove any outside employment request.

KRS 11A.040(10) governs outside employment requests. It provides, in part:

(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

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-33**

October 16, 2003

Page Two

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.

From what you have described, it appears you would be self-employed, an "independent contractor" providing services to the law firm and/or the clients of the law firm. The Commission has spoken to this issue in several advisory opinions, and believes that KRS 11A.040(10), cited above, does not require you to obtain approval from your appointing authority for self-employment. See Advisory Opinions 00-8 and 00-68, attached.

Even though approval from your appointing authority may not be required by the ethics code, you still must ensure that no conflict of interest exists or occurs in this self-employment. Specifically, you should have no involvement with either the law firm or the clients as a part of your official position with the Department. You have described your job duties, and it does not appear that your job duties involve matters involving the law firm or any clients of the firm. Thus, no conflict of interest is apparent if you perform such investigative services.

Furthermore, nothing in the Executive Branch Code of Ethics prohibits your state agency from implementing policies regarding outside or self employment that may be more restrictive than the Executive Branch Code of Ethics or that might require all employees with outside or self employment to obtain approval from their agencies for such employment.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

---

BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 00-8  
Advisory Opinion 00-68