

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-44**

December 18, 2003

- RE:
- 1) May a forensic anthropologist employed by the Kentucky State Medical Examiner's Office accept an advance from a publisher for writing his memoirs?
  - 2) Is a forensic anthropologist in compliance with KRS Chapter 11A by taking compensatory or annual leave time for work on cases outside the scope of his job duties with the Commonwealth?

- DECISION:
- 1) Yes.
  - 2) Yes.

This opinion is in response to your October 1, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 18, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Kentucky State Forensic Anthropologist ("forensic anthropologist") with the Kentucky State Medical Examiner's Office (the "Office"), an employee under the authority of the Kentucky Justice Cabinet (the "Cabinet"), previously requested the Commission's guidance on preparation of an autobiography and use of state job title in marketing the book. The Commission issued Advisory Opinion 03-19 in response to the question presented.

In light of Advisory Opinion 03-19, you have other questions that require clarification. You correctly note that the Commission informed the employee in Advisory Opinion 03-19 that if the employee's share of profits from the autobiography went to non-profit groups, that are also charitable, such activity would be exempt from KRS Chapter 11A, pursuant to KRS 11A.055. You are unclear as to whether the employee could accept an advance from the publisher for the actual act of writing the book. You ask: "*Given that the book is a memoir in nature, has not been worked on during state time, and which, in some form, has long preceded [the forensic anthropologist's] employment with the state of Kentucky, can I conclude that the advance received by [the forensic anthropologist] does not run into a conflict with KRS 11A.020(1)(c) or any other provision of KRS Chapter 11A?*"

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You also note that the employee has been contacted for work on high-profile cases out of state, and that this is due to the employee's talents and national prominence in the field, not because of employment as the Kentucky State Forensic Anthropologist. You state that the forensic anthropologist takes compensatory and vacation time for such periods of work. You ask, "*Since this work is not part of [the forensic anthropologist's] 'official duties', am I correct in concluding that [the forensic anthropologist] is in full compliance with KRS Chapter 11A?*"

KRS 11A.020(1) states, in part:

(1) No public servant, by himself or through others, shall knowingly:

...

(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 advance from the publisher to the employee for the actual writing of the book does not appear to violate KRS 11A.020(1)(c), as there is nothing in KRS 11A that prohibits an employee from authoring a book based on one's life experiences, including work performed as a public servant (see Advisory Opinion 96-29). Thus, there appears to be no conflict of interest for the forensic anthropologist in accepting the advance from the publisher, provided the publisher does no business with the Office of the State Medical Examiner.

As to the second question, the Commission agrees that it is entirely appropriate for the forensic anthropologist to continue to use either compensatory or annual leave balances for work on cases that are not a part of the forensic anthropologist's official duties as no state time or resources should be used.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 96-29