

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 04-5**

February 20, 2004

RE: May state employees, privately for compensation, offer continuing professional education to persons regulated by their state agency?

DECISION: No.

This opinion is in response to your January 27, 2004, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 20, 2004, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You supervise the Operator Certification Section (the "Section") within the Enforcement Branch of the Division of Water (the "Division"). The Division is an agency in the Environmental and Public Protection Cabinet (the "Cabinet"). You state the primary role of the Section is the certification of drinking water treatment, drinking water distribution, and wastewater treatment operators, but that the "Training of such operators has been considered a significant supporting role of the section's staff for many years." Management has decided the Section must reduce its offerings of training due to budget cuts and reduced staffing, which you state will limit your training offerings to those courses operators need to gain initial certification, and that the "numerous" continuing education classes taught by the Section staff will virtually cease. You observe that training for continuing education for operators is limited in the state now, and when the Section ceases continuing education offerings such training will become even more scarce, resulting in a significant gap of continuing education available to the operators

You ask if, in light of this imminent continuing education training gap, Section trainers (and probably other Division trainers) may provide such training on their own time, "...with no cost or liability to the Commonwealth, without it being considered a conflict of interest." You state that, in the past, "upper management" has decreed that such private training offerings by the staff would be a conflict of interest. Now, in light of the Division phasing out such continuing education training effective January 1, 2005, you wish this question revisited.

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 this case, though it appears that the continuing education training will cease to be part of the expected job duties of Division staff, it is clear that the persons seeking such training will continue to be regulated by the Division (issuance of certifications, and other enforcement responsibilities). Because of this, in spite of the coming need for more continuing education training, the conflict of interest created by Division employees privately accepting compensation for training from persons regulated by their agency is inescapable. It is the Commission's determination that in such a circumstance Division employees cannot privately, for compensation, provide continuing education training to persons regulated by the Division. Also, see Advisory Opinions 97-26 and 02-17, which may provide additional guidance.

Should there be persons seeking such continuing education training from Division employees, and these persons are not regulated by the Division, then the Division staff could provide such training.

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BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinions 97-26  
Advisory Opinion 02-17