

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 04-33

September 30, 2004

RE: May state employee allow the marketing of a book and personal protection packet that he has co-authored and assembled with a family member, when the subject matter relates to his state employment?

DECISION: Yes, within limitations.

This opinion is in response to your August 12, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 30, 2004 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Division of Education and Training within the Department of Labor, Environmental and Public Protection Cabinet (the "Cabinet").

You and your son-in-law have written a book and assembled a personal protection packet that your son-in-law plans to market commercially by means of an Internet site, book distributors, and retail stores. The book outlines the risks encountered by householders who use common chemicals. The book describes the proper avoidance, use, and storage of the chemicals it defines and describes within, and outlines the use of proper personal protective equipment ("PPE"). The book also describes the PPE packet you plan to market under the name of *ChemAssure*®, which is a collection of safety clothing and equipment that will protect householders. You indicate that you used no state time to work on the preparation of this book and packet, and that you will not directly solicit the book and packet to any clients or students with whom you come in contact in Kentucky. You further indicate that the "Cabinet" is not mentioned in the book other than in a brief excerpt in the author biography. You indicate that the packet must be commercially marketed by October 2004 in order to preserve the *ChemAssure*® trademark. You are asking for permission to proceed with this project.

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 04-33

September 30, 2004

Page Two

KRS 11A.020(1)(a), (c), and (d) provide:

(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;

...

(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.

Because your son-in-law is not an employee of the executive branch of state government, the Commission has no jurisdiction over his actions. Thus, he alone would not be prohibited from marketing the book and the *ChemAssure*® packet. See Advisory Opinion 99-35, enclosed. However, as a state employee you are subject to the Executive Branch Code of Ethics, and thus you are limited in what involvement you may have in promoting your own materials. While the Commission believes that you are not prohibited from including in the book's author biography what sort of experience you have in the field involved, you should not specifically identify that you are employed by the Department of Labor. You do not want to give the appearance that you are using your state position to benefit yourself or a member of your family financially. See Advisory Opinion 99-26, enclosed. Furthermore, Advisory Opinion 95-45 (a copy of which is enclosed) cautions state employees not to use their state jobs to benefit their private business, and specifically directs state employees not to identify their state positions on private business cards or advertisements. Were you to leave the employment of the Department of Labor, you then could include such information in your book.

In keeping with the opinion stated in Advisory Opinion 99-26, the Commission believes that general knowledge gained while performing your duties as a state employee does not prohibit you from co-authoring and marketing a book regarding related subject-matter, as long as you are not using your actual state position for the purpose of promoting the book.

Even if you do not specifically identify yourself as an employee of the Department of Labor in the book, you should take great care not to use your state job to benefit this private endeavor. You should not use state time, resources, or forums to conduct private business

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 04-33
September 30, 2004
Page Three

matters. Additionally, as you have stated, you should not solicit the book or packet to any clients or students you come in contact with while performing your job duties as an employee of the Department of Labor. You should try to avoid even the appearance of such a conflict in this regard.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR:

Enclosures: Advisory Opinion 99-35
 Advisory Opinion 99-26
 Advisory Opinion 95-45