

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 05-6

February 18, 2005

RECONSIDERATION OF ADVISORY OPINION 04-45

RE: Must employee seek approval from agency for work as a contract laborer?

DECISION: No, but he must ascertain with management that a conflict does not exist with his official position.

This opinion is issued in response to your February 1, 2005 request for a reconsideration of Advisory Opinion 04-45 issued by the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 18, 2005 meeting of the Commission and the following opinion is issued.

You state that you are the employee addressed in Advisory Opinion 04-45, and that the information presented to the Commission on which Advisory Opinion 04-45 was based is not factual. You provide relevant information to the Commission as follows.

You have not worked for Flight Fixins for as long as you have been employed by the Department of Military Affairs (the "Department"), but began work as a contract laborer, not an "employee," on July 1, 2002, rather than in 1995 when you began work for the Department. Your duties for Flight Fixins do not involve aircraft washing or detailing. You state that you have washed airplanes for customers, privately, but not for Flight Fixins.

You state that the airport is a public building where access is not restricted, and that the cash counter is the desk where customers pay for their fuel, oil, and other services. When you are not on duty as a flight line attendant, you do not use your personal keys, but ask someone who is working to allow you access to a building or gate.

Flight Fixins is not a contractor of the Capitol City Airport (the Airport”), or the Commonwealth, but does lease hangar space from the Airport.

You state that you have only called and requested other flight line attendants to move aircraft at Flight Fixins request because you do not make the decisions on which aircraft need to be moved. You have never moved an aircraft to Flight Fixins hangar on your own discretion, but only at the request of Flight Fixins. Damaged aircraft mentioned in the opinion occurred before you became a contract laborer of Flight Fixins.

Further, you have never switched aircraft for any customer so they could avoid paying money owed to the airport. Flight Fixins has an agreement with the Airport to allow the storage of airplanes.

Your duties as a flight line attendant and as a contract laborer are distinct from each other. You have no authority for decision making in either position. You are using the experience that you are obtaining in your work as a contract laborer for Flight Fixins to meet the FAA’s requirement for an aircraft mechanic’s license.

KRS 11A.11A.020(1)(a) 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;

...

(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.

Although Flight Fixins is not a “contractor” of the Airport, because it leases hangar space from the Airport, it is “doing business with” the Airport.

However, because you state that you are not an “employee” of Flight Fixins, but rather are a self-employed contract laborer, you are not required by KRS 11A.040(10) to obtain approval from your appointing authority for such work, unless your agency has a policy that requires

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approval for all outside work. You still must ascertain, though, that no conflict of interest exists between your outside work for Flight Fixins and your official duties for the state. The Commission believes that you should ascertain with management that no conflict of interest exists for you to continue to have Flight Fixins as a client.

You also should make a clear distinction between your private outside work and your duties for the Department. You should not use state time, resources, uniforms or equipment for your outside self-employment. If it is not possible to make a clear distinction between your official position and your private outside work, you may be in violation of using your official position to give yourself an advantage in violation of KRS 11A. 020(1)(d).

Furthermore, you should not be referring customers with whom you have contact during your official workday for the Department to yourself, privately, for aircraft washing. Such referrals may be viewed as using one's official position to secure an advantage. See Advisory Opinions 00-1 and 98-35, enclosed.

The Commission upholds its original opinion issued addressing this matter, but modifies it with this opinion.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: James S. Willhite