

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 06-9

June 16, 2006

RE: May a member of the Parole Board work as a jail consultant on a contractual basis for the purpose of advising county jails of jail standards and other matters?

DECISION: Yes, as long as he abstains from decisions involving inmates, of whom he is aware are housed by jails by which he is employed as a private consultant.

This opinion is issued in response to your April 3, 2006, request for an Advisory Opinion from the Executive Branch Ethics Commission ("Commission"). This matter was reviewed at the June 16, 2006 meeting of the Commission and the following opinion is issued.

You are considering seeking an appointment to the Kentucky Parole Board. You ask whether as a member of the Parole Board you may work as a jail consultant for local county jails on a contractual basis. As a consultant, you would advise the county jails of jail standards and other matters for compliance with state and federal laws.

KRS 11A.010 (7) provides:

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on

Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection; (Emphasis added.)

As a member of the Parole Board, you would be considered an officer as defined in KRS 11A.010(7) above and would be subject to the Executive Branch Code of Ethics in KRS Chapter 11A. Although you would not be an “employee” of the local jails, and thus would not be required to obtain approval from the Parole Board’s appointing authority for your work as a contractor (unless the Parole board has an in-house policy requiring such approval), you would be required to ensure that no conflict of interest exists between your official duties for the Parole Board and the county jails that hire your services.

KRS 11A.020(1) 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;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
 - (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.

While as a member of the Parole Board you may work as a jail consultant on a contract basis advising county jails of jail standards and other matters, the Commission believes that the potential for conflict will exist if, as a member of the Parole Board, you knowingly are involved in reviewing parole matters of an inmate of a county jail for which you work as a consultant.

Therefore, the Commission advises that, in order to avoid any conflicts of interest, you should abstain from involvement, as part of your official duty for the Parole Board, in matters that could affect the parole decisions of inmates, of whom you are aware are housed by county

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jails, that are clients that you have in your private consultant business. Further, you should document such abstention in writing as required by KRS 11A.020(3) stated below:

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

The Commission cautions you to make a clear distinction between any private work and your duties for the Parole Board. Please find enclosed several advisory opinions for your guidance.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb

Enclosures: Advisory Opinion 00-8
Advisory Opinion 99-11
Advisory Opinion 01-12