Executive Branch Ethics Commission
ADVISORY OPINION 07-41
December 14, 2007

RE: Does contract employee's potential position present conflict of interest?

DECISION: A contract employee is not under the jurisdiction of the Executive
Branch Code of Ethics.

This opinion is issued in response to your November 12, 2007 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 14, 2007 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. For the past four years, you have been employed by L-3 Communications, a systems development services contractor which does business with the Commonwealth of Kentucky. You work under a task order between your employer and the Cabinet for Health and Family Services, Office of Information Technology, and provide executive support to the Telehealth Board and the Kentucky e-Health Network Board, on a part-time basis of 32 hours per week.

You have been offered an additional position by L-3 Communications to serve on an "as needed" basis as the Frankfort liaison for the approximately 60 L-3 Communications' employees who work under task order with various agencies of the Commonwealth of Kentucky, including the Commonwealth Office of Technology, the Cabinet for Environmental and Public Protection, the Cabinet for Health and Family Services, the Education Cabinet, and the Transportation Cabinet.

As liaison, you would perform the following tasks:

- Serve as the L-3 Communications representative for all employees in Frankfort under task order with the Commonwealth of Kentucky;
- Meet with state hiring managers when employees have been moved off of task orders or when the task orders are not renewed; conduct an exit interview with the employee to obtain all security access badges, computers, cell phones, etc., and return those items to the state hiring manager; obtain all personal items from the individual's office;
- Conduct quarterly visits to employee work areas; and

- Meet with state hiring managers and directors to review employees' task orders and performance status.

You state that you would have no involvement in the Request for Proposal process for systems development services contracts, and thus believe a financial conflict would not exist. You request an advisory opinion as to whether any potential ethical conflicts under KRS Chapter 11A, the Executive Branch Code of Ethics, would exist if you were to accept this additional position.

The Executive Branch Code of Ethics provides guidance for pubic servants of the Commonwealth of Kentucky. "Public servant" is defined in KRS 11A.010(9) below:

(9)   *"Public servant"* means:
    (a)   The Governor;
    (b)   The Lieutenant Governor;
    (c)   The Secretary of State;
    (d)   The Attorney General;
    (e)   The Treasurer;
    (f)   The Commissioner of Agriculture;
    (g)   The Auditor of Public Accounts; and
    (h)   All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

An "officer" is defined in KRS 11A.010(7) below:

"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, executive directors, 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 Kentucky Occupational Safety and Health Review Commission, the Kentucky Board of 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;

The Commission believes that because you are not an employee of the Commonwealth of Kentucky, but rather provide service to the Commonwealth through a task order between your employer and the Commonwealth, and you also are not performing on a full-time basis the function of an "officer", you are not under the jurisdiction of the Executive Branch Code of Ethics.

On the other hand, the Commission would like to point out it does believe that, although not legally subject to the Executive Branch Code of Ethics, individuals who serve under task orders providing a function of any executive branch position for a time period of at least six months are in substance employees and should be subject to the Executive Branch Code of Ethics. Thus, the Commission has proposed legislative language to include such persons as public servants that it is attempting to enact during the upcoming legislative session. The language is detailed below:

(9)   *"Public servant" means:*
    (a)   The Governor;
    (b)   The Lieutenant Governor;
    (c)   The Secretary of State;
    (d)   The Attorney General;
    (e)   The Treasurer;
    (f)   The Commissioner of Agriculture;
    (g)   The Auditor of Public Accounts; and
    (h)   All employees in the executive branch including officers as defined in subsection (7) of this section, *any person who holds a personal service contract, or any other employment arrangement, to perform on a full-time basis for a period of time not less than six (6) months a function of any executive branch position,* and merit employees;

Until such legislation is passed, however, the Commission refrains from providing any official guidance, but does offer that your abstention in involvement pertaining to the Request for Proposal process does serve to avoid potential conflicts in that area.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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By Vice Chair: E. Patrick Moores