

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 93 – 12**

April 2, 1993  
**(REISSUED MAY 10, 1993)**

RE: Agency asks whether its employee may market a computer program developed by its employee on free time

This letter is in response to your March 15, 1993, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 2, 1993, meeting of the Executive Branch Ethics Commission and the following opinion is issued.

Your request relates to the efforts of an agency employee to market a computer software product. The relevant facts are as follows: the employee in question works for your agency, and his duties include the calculation and payment of benefits to worker's compensation recipients as well as the calculation and payment of fees owed to their attorneys. The employee frequently has contact with worker's compensation attorneys with respect to the payment of awards and fees.

The Agency has its own computer software program to assist in the calculation of the compensation and the attorney fee in each case. The employee in question has developed a similar software program that he intends to market to private attorneys involved in worker's compensation litigation. You have requested specifically whether the current efforts of the employee to market the software package to private attorneys is permissible under KRS Chapter 11A. You have also asked whether any of KRS Chapter 11A's post-employment restrictions would relate to this situation. (We note that your March 15, 1993 letter to Mark Guilfoyle requesting the advisory opinion also contains a number of other legal questions outside the scope of KRS 11A. The Commission understands that Mr. Guilfoyle will be in contact with you directly about these other issues.)

We believe the efforts of the agency employee to market his software program to private attorneys presents a clear conflict of interest under KRS 11A.020(1)(c), which provides as follows:

(1) No public servant, by himself or through others, shall knowingly:

...

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

As the employee's job affords him the contact with the same private attorneys to whom he will attempt to market the program, the Commission believes that it is the employee's official position that affords him the opportunity for financial gain. In addition, we believe that KRS Chapter 11A.040(6) would operate to prohibit the agency employee from marketing the

program to private attorneys for six (6) months after he separates from employment at the agency. KRS 11A.040(6) provides as follows:

No present or former public servant shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with the state in matters in which he was directly involved during his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, provided that, for period of six (6) months, he personally refrains from working on any matter in which he was directly involved in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers.

As the employee is currently involved in processing the claims for attorney fees in the calculation of compensation due and attorney fees due in various cases, he is "directly involved" in such matters and, therefore, cannot derive economic gain for such matters during the six (6) month time frame. Please note there is an exception from the six (6) month prohibition which might apply in the event the employee is returning to the business, firm, occupation or profession in which he was involved prior to taking his state job.