

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93 – 20

May 10, 1993

RE: Employee asks whether a state employee may on own time provide therapy in the community through limited services contracts with private agencies.

This letter is in response to your May 5, 1993 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 10, 1993, meeting of the Commission and the following opinion is issued.

Your request asks for a clarification on the following situation. A current executive branch employee wishes to provide services on own time to private agencies through limited services contracts. You wish to know if this situation is allowed under the Executive Branch Ethics Code.

The Executive Branch Code of Ethics in KRS Chapter 11A places these restrictions on present public servants:

KRS 11A.040(4) provides

No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by any state agency. This provision shall not apply to a contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain or to agreements which may directly or indirectly involve public funds disbursed through entitlement programs.

From the information provided to the Commission, it appears that the private agencies do receive public funds but these are disbursed through entitlement programs such as Medicaid and Medicare. It is possible but would be very unusual for the same patient treated by the therapist during state work to later be assigned to the therapist by the private agency after the patient was released from a state facility.

The Commission concludes that the state-employed therapist may provide after-hours services to patients through limited services contracts with private agencies. However, without further information, it does not approve of the therapist privately treating the same patient whom the therapist has treated on state time.

In approving such off-duty work, the Commission assumes the therapist's state duties do not include regulatory or contractual dealings with the private agencies which would

be employing the therapist after hours.