

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 93 – 40

August 23, 1993

RE: Propriety of allowing full-time state agency employees to work part-time for non-profit service agencies who have contracts with the employees' department

This letter is in response to your July 1, 1993 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 8, 1993, meeting and again at the August 23 meeting of the Commission, and the following opinion is issued.

The relevant facts presented to the Commission are as follows. Your agency has received numerous inquiries from employees who have or are contemplating part-time employment with agencies outside state government. You have provided three examples that are typical of the inquiries made. These examples all involve full-time agency employees who wish to work part-time for non-state service agencies. These service agencies hold contracts with the employees' departments. The employees have no responsibility for administering or negotiating the contracts for the service agencies nor do the employees have any regulatory authority over the service agencies. The part-time work of the employees does not interfere with their full-time state employment. The employees' full-time employment with the state involves direct services to clients.

You have noted two advisory opinions the Commission has issued relative to this matter -- 92-6 and 93-20. You wish to know if a full-time agency employee may work part-time for a service agency who has a contract with the employee's agency if the employee has no contractual or regulatory responsibilities with respect to the service agency.

KRS 11A.040(4) and 11A.020(1)(a) place restrictions on public servants as follows:

KRS 11A.040(4)

(4) 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.

11A.020(1)(a):

(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;

In considering this request, the Commission takes note of the advisory opinions you cite. In Advisory Opinion 92-6, the Commission concluded that a state social worker could not provide direct services to clients of a Cabinet and also work for an agency providing services through contract with that Cabinet. Advisory Opinion 93-20 allowed a state employee to provide therapy through contracts with private agencies but recognized that the private agencies receive only entitlement funds from the state. The Commission assumed the private agencies held no contracts with the state.

The Commission concludes that a state employee may not work on a part-time basis for an outside agency if the private agency has a direct contract with or receives funding from the state agency for which the employee works (other than entitlement programs such as Medicaid or Medicare). The Commission believes the statutory provisions cited above prohibit outside employment by the public servant when the outside employer holds a contract with or receives funding from the state agency for which the employee works. An employee afforded the opportunity to work for a private agency which contracts with the employee's state agency may well be in a position to have some influence over that private agency by nature of his state position. This would create a conflict of interest between the employee's private interest and his public duties.

The obligation to determine if the private agency holds a contract with the state agency rests with the employee. The employee should make a good faith effort to determine if the private agency, with whom employed or seeking employment from, holds a contract with or receives funding from the state agency. In making this effort, the employee should, at a minimum, ask the outside agency if any contracts exist and also check with the state agency where employed to see if any contracts exist with the private agency.