

EXECUTIVE BRANCH ETHICS COMMISSION  
ADVISORY OPINION 94-25

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May 17, 1994

RE: May state employee contract with company which holds a contract with employee's state agency?

DECISION: No

This opinion is in response to your March 17, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 19 and May 17, 1994, meetings of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are an employee in the Division of Accounts within the Department of Fiscal Management of the Transportation Cabinet. Your job duties include the preparation of quarterly and annual financial statements.

Additionally, you own and operate a lawn service. Through your private lawn service, you have bid on a job offered by a private, nonprofit agency which employs handicapped individuals. The private agency holds a contract with the Transportation Cabinet to perform janitorial and mowing services on state property. The job on which you have bid would be to provide mowing services. To your knowledge, the private agency is unaware of your employment with the Transportation Cabinet. You ask if acceptance of this job obtained through a sealed bid process presents a conflict of interest with your state employment.

KRS 11A.020(1)(a) 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;

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.

In considering this request, the Commission takes note that in your state employment you have no contractual or regulatory duties with respect to the private, nonprofit agency. In addition, the service you will provide to the private agency is not related to matters in which you are involved in your state position. However, the service you are to provide will involve state property and you will be a subcontractor "enjoying" part of a state contract.

The Commission concludes that you may not accept the job with the private, nonprofit agency because the job involves a contract with the state agency for which you work and is to be performed on state property. You may bid on a job with the private, non-profit agency if the work to be performed does not involve a contract with the state agency for which you work.