

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 94 - 42

July 21, 1994

RE: May Transportation engineer provide services to engineering companies, development companies, other states, and counties and cities?

DECISION: Yes, as long as the entity does no business with and is not regulated by the agency for which the employee works.

This opinion is in response to your July 12, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 21, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are employed as the manager of the Traffic Section, Division of Planning within the Department of Highways of the Transportation Cabinet. You are responsible for the state's traffic counting operation of state maintained roadways.

In addition you own a private business which performs traffic counts and does traffic impact studies for businesses, engineering companies, and other states. These counts supplement the state traffic counting programs by providing current and more site-specific counts than what is provided by the state. You use your own equipment, supplies, vehicles, and time in your private business. You have received approval from your supervisors in the Division of Planning for every job your private business has performed in order to avoid any potential conflict of interest.

You ask if you may, in your private business, perform work for the following entities:

- Engineering Companies
- Development Companies
- Other States
- Counties and Cities

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(6) provides:

- (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.

The Commission believes you are free to perform services, in your private business, for entities which are not doing or seeking to do business with, and are not regulated by, the state agency for which you work. Thus, you may work for other states and engineering companies which are not doing or seeking to do business with the Transportation Cabinet.

You may not accept a job with an entity which is regulated by or does business with your state agency. Without knowing more specifics, the Commission believes a potential conflict may exist if you provide services to development companies which may be seeking permits from the Transportation Cabinet. Likewise, cities and counties which have financial dealings with the Cabinet may be considered to be doing business with the Cabinet, and thus, a conflict may arise.

In cases of possible conflict, you may seek the Commission's approval of outside employment provided you and your appointing authority state in writing that you are not in a position to influence any Transportation Cabinet decision relating to the prospective outside employer. This provision of law went into effect July 15.