

ADVISORY OPINION 94 - 52

September 13, 1994

RE: May employee serve as expert witness?

DECISION: Yes

This opinion is in response to your August 31, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 13, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are the Assistant State Fire Marshal within the Department of Housing, Buildings and Construction of the Public Protection and Regulation Cabinet. As such, you are involved in licensing and regulating the liquified petroleum gas industry in Kentucky.

A private attorney has asked you to serve as an expert witness, based on your experience in the liquified petroleum industry, in a case involving a death which occurred in Clarksville, Indiana. The case involves the alleged use of liquified petroleum gas in an appliance not equipped for that type of gas. Neither the plaintiff in the case nor the attorney requesting your testimony is regulated by or does business with your agency.

Your involvement as an expert witness in this case is not part of your official duty. You ask whether you may, on your own time, testify as an expert witness for this case and receive payment for your services.

KRS 11A.020(1)(c) provides:

- (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

KRS 11A.040(5) provides:

- (5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

The Commission believes you may, on your own time, serve as an expert witness in the case and receive payment for your services. Since involvement as an expert witness in this case is not part of your official duty, you are not required to obtain the Commission's approval before accepting compensation for your services.

It appears you have not been asked to participate in the case due to any relationship in your state employment with any of the parties involved in the case. Your use of general knowledge gained in regulating and licensing the gas industry does not prohibit you from participating as an expert witness in this matter.