

ADVISORY OPINION 94 - 62

December 15, 1994

RE: May Department of Personnel employee provide services to clients of Department of Vocational Rehabilitation?

DECISION: No

This opinion is in response to your November 3, 1994, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 15, 1994, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You currently are a full-time licensed psychologist within the Employee Assistance Branch (KEAP) of the Department of Personnel. As such, you provide assessment and referral services for state employees and their dependents. You also provide management consultations for state supervisory personnel, but provide no psychotherapeutic or psychodiagnostic services to state employees.

You wish to engage in a small, part-time private practice which would include conducting psychological evaluations and/or providing psychotherapeutic services to Department of Vocational Rehabilitation clients. Although there will be no written agreement between the Department and yourself, you are considered a vendor of the Department, and as such, will appear on a vendor list given to clients. You will be compensated for your services directly by the Department. You have no contact in your state position with clients you will be seeing in your private business. You request an opinion as to whether your private, part-time business will present a conflict of interest under the Executive Branch Code of Ethics.

KRS 11A.040(4) 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.

A public servant is prohibited from holding any agreement or executing any purchase or sale with any state agency. Although no formal written agreement will exist to provide psychological services for clients of the Department of Vocational Rehabilitation, you will have an informal agreement with the Department as a vendor. Thus, you are prohibited, as a state employee, from entering into an agreement with the Department of Vocational Rehabilitation to provide services to its clients. However, dual employment with two state agencies is not prohibited. If approved by the Department of Personnel, you are allowed to accept a part-time position with the Department of Vocational Rehabilitation if offered.