

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 95-33
August 24, 1995

RE: May general counsel accept stipend from another state agency?

DECISION: No.

This opinion is in response to your August 8, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 24, 1995, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are the General Counsel for the Kentucky Board of Medical Licensure. In order to maintain your pro bono service hours, you agreed to perform guardian ad litem ("GAL") work for the Commonwealth of Kentucky, Court of Justice. Although the GAL program is contained within the judicial, not executive, branch of state government, the funds which support the program are provided by the Finance Cabinet, an executive branch agency. You wish to know whether you may continue working for the GAL program, and whether your acceptance of the \$250.00 stipend allowed for each representation violates KRS 11A.040(4).

There is no provision in the Executive Branch Code of Ethics (the "Ethics Code") which specifically prohibits your work in the GAL program. Obviously, you should not perform GAL work on state time, nor should you utilize any state government equipment for GAL purposes. Furthermore, if you at any time perceive a conflict of interest between your state employment and your work for GAL, you must disclose the conflict in writing and abstain from making any decisions in your state employment which relate to the conflict. See KRS 11A.020(3) below:

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 95-33

August 24, 1995

Page Two

As to whether you may accept the \$250.00 stipend for each representation, KRS 11A.040(4) states:

(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.

As a public servant, you may not have any contract or agreement with a state agency. The Commission believes that acceptance of a stipend from the Finance Cabinet for representing individuals through the GAL program constitutes an agreement with a state agency which is prohibited by the Code. You are free to provide these legal services for no compensation.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Martin Huelsmann, Chairman