

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 96-4

February 6, 1996

RE: Does employee's outside employment present a conflict under the code of ethics?

DECISION: No, if employment is within limitations and approval is obtained from the Commission.

This opinion is in response to your December 18, 1995 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 6, 1996, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are employed as an Environmental Inspector III with the Division of Abandoned Lands, Department for Surface Mining, Reclamation & Enforcement within the Cabinet for Natural Resources and Environmental Protection. In addition, you are certified as a Class II sewage plant operator, which qualifies you to perform laboratory analyses for sewage treatment plants.

Your father has set up a business through which he tests soil, rock, and water which are regulated by the Division of Water, Department for Environmental Protection, Cabinet for Natural Resources and Environmental Protection, for coal companies, engineering firms, and individuals. Your father is the only shareholder in the business, and has purchased from you some equipment, but you have no ownership interest in the business.

KRS 11A.020(1)(a) and (c) provide:

(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;

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(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family.

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KRS 11A.040(3) states:

(3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.

Additionally, KRS 11A.040(9) provides:

(9) Without the approval of the commission, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds. The commission shall promulgate administrative regulations to establish a procedure for the approval of outside employment of a public servant, including a requirement that the public servant and his appointing authority state in writing that the public servant is not in a position to influence any agency decision relating to the outside employer.

You ask if you may perform sewage plant discharge analyses for businesses which are regulated by the Division of Water, either on your own or as a consultant to your father's business. Additionally, you ask if you may perform stream impact studies for businesses which are regulated by the Division of Water. These analyses and studies will be submitted to the Division of Water. You state that, in your employment with the Abandoned Mine Lands program, you are not involved in any decisions with regard to the Division of Water. The Commission believes that, as long as, as part of your official duties, you are not involved in any agency decisions or discussions with respect to your outside employer, you may accept such employment, after receiving approval from the Commission. You should submit an application for outside employment to the Commission, pursuant to 9 KAR 1:050, a copy of which is enclosed.

Additionally, you ask if you may perform consulting work for your father's business, where this work would involve state-required groundwater studies for engineering firms which are under contract with the Abandoned Mine Lands program to perform this work. You state that you are not in a position to influence the award of any contracts or subcontracts for this work. The Commission believes if you are not in a position to influence any agency

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decisions with respect to the award of a contract as subcontractor to perform these groundwater studies, and the studies are not submitted to your division for review, you may perform this consulting work. However, should a situation arise in which your division would be in a position to review such studies, you should discontinue your outside employment in this area.

In addition, in order to avoid the appearance of a conflict of interest, you should not review or be involved in decisions concerning businesses which may be in competition with your father's business or the engineering firm for which your father's business performs the studies.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Lynda Thomas, Vice Chair

Enclosure: 9 KAR 1:050