

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 96-10
March 19, 1996

RE: Does employee's private business present conflict of interest with official duty?

DECISION: No, as long as referrals to private business do not involve persons under the supervision of the Division for which the employee works.

This opinion is in response to your November 10, 1995, request for approval of your outside employment by the Executive Branch Ethics Commission (the "Commission"). Please be advised, because you have stated your outside business does not do business with and is not regulated by the state agency for which you work, you are not required to seek approval from the Commission for your outside employment. However, because your responsibilities in both your private business and your state position involve contacts with the courts systems, the Commission issues this advisory opinion. This matter was reviewed at the March 19, 1995, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are a probation and parole officer for the Department of Corrections within the Justice Cabinet. As such, you supervise probationers and parolees, and are responsible for reporting their compliance with court orders to the criminal divisions of various circuit and district courts. However, as part of your official duty, you have no contact with nor are you involved in decisions concerning the civil divisions of these courts.

You own and operate a private business which supervises visitation between non-custodial parents and their children in cases where monitoring is required by a neutral party. Cases are referred to your company through an order or an agreed order by the civil division of a circuit or district court. Your company will not supervise visitations where any member of the family involved is on probation or parole; thus your company will not receive referrals through the criminal division of any court.

KRS 11A.020(1) 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;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

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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; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Although the Commission does not see a clear distinction of parties between the civil and criminal divisions of a court, the Commission does not believe your contacts with the court in your official capacity give your private business an advantage in derogation of the public interest.

Therefore, as long as referrals to private business do not involve persons under the supervision of the Division for which you work, you may operate your private company. You are advised not to discuss or conduct your private business on state time. In addition, you should not use state property or resources for the operation of your business.

EXECUTIVE BRANCH ETHICS COMMISSION

BY: Lynda M. Thomas, Vice Chair