

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 96-55
December 17, 1996
AMENDED February 4, 1997

- RE: 1) May employee provide survey services for city?
 2) May employee work for environmental engineering firm?
- DECISION: 1) Yes, within limitations.
 2) No.

This opinion is in response to your December 2, 1996, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 17, 1996, and February 4, 1997, meetings of the Commission, and the following amendment to the original opinion is issued.

You state the relevant facts as follows. You are employed by the Department of Surface Mining, Division of Permits (the "Division"), within the Natural Resources and Environmental Protection Cabinet (the "Cabinet") as an Environmental Engineer Assistant Chief. In addition, you own and operate on a part-time basis a small land surveying business. A city within the county where you operate your private business has asked you to perform surveying on their landfill. The city is not regulated by or seeking permits from the Division.

The data compiled from the information that you obtain will be forwarded to an environmental engineering firm which does work for the city. The environmental engineering firm has sought to obtain permits for coal companies from the Division in the past and possibly may seek to obtain permits for companies from the Division again. Additionally, the firm does landfill permitting work which must be approved by the Division of Waste Management within the Cabinet. You recently met with representatives of the firm, and they expressed an interest in your performing survey work for them. You ask whether it will present a conflict of interest for you to provide the service for the city on their landfill.

Secondly, you ask whether it would be a conflict of interest to perform survey work for the environmental engineering firm on other landfill projects.

As part of your official duty, you have reviewed applications for permits prepared by this environmental engineering firm to determine if they are technically acceptable; however the final decision as to whether to approve a permit for a coal company is made by the Director of the Division.

KRS 11A.020(1) and (2) 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;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

(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.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

Because you are involved in the review of applications for permits which are prepared by environmental engineering firms, the Commission believes you should not hold outside employment with the environmental engineering firm. Although it may be possible for you to abstain from reviewing the work of the firm for which you wish to work, reviews performed by you of firms which may be in competition with the entity for which you would be working would present a conflict of interest for you.

You are not prohibited from providing landfill surveying services for the city since the city does not seek permits from the Division for which you work. However, you should not represent your private business before the Division of Permits. Additionally, if you appear before the Division of Waste Management, you should avoid any conduct which may lead the general public to believe you are using your official position to further your private interest.

Further, you should not be involved as part of your official duty in the review of entities which might be in competition with your private business.

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BY: Ruth H. Baxter, Chair