

ADVISORY OPINION 97-3

February 4, 1997

- RE: 1) May employee privately represent clients against the Labor Cabinet?
- 2) May employee privately represent clients in workers compensation cases against industries which are regulated by the state agency for which the employee works?
- DECISION: 1) No.
- 2) No.

This opinion is in response to your December 3, 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 opinion is issued.

You state the relevant facts as follows: You received a letter from the president of a company which is regulated by the Labor Cabinet asking the following question: Is it appropriate for attorneys who work full-time for various state agencies to engage in private legal practice which includes the presentation of workers compensation claims to the Department of Workers' Claims and involves the Special Fund within the Labor Cabinet as a defendant and payor of benefits. Additionally, you believe that under the existing ethical rules it is improper for attorneys employed by state agencies to engage in private legal work targeting industries that are regulated by the state agencies for which they work in their full-time positions. You ask for the Commission's opinion on these matters.

KRS 11A.020(2) provides:

- (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.

Additionally, KRS 11A.020(1)(b) provides:

- (1) No public servant, by himself or through others, shall knowingly:
- ...
- (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

In Advisory Opinion 96-37 (a copy of which is enclosed), issued on September 6, 1996, the Commission concluded that a General Counsel for a state agency should not represent a client privately against another state agency. The Commission stated that such representation might give the appearance of a conflict of interest even if the representation involved matters

unrelated to the General Counsel's official duties. Similarly, the Commission believes that, if attorneys who are employed by state agencies represent clients privately against the special Fund, the appearance of a conflict of interest may result for the attorneys. In addition, such representation would be considered an attempt to influence a public agency in derogation of the state at large.

In response to your second question, KRS 11A.020(1)(a) 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;

The Commission believes that an attorney who works for a state agency which regulates outside industries should not be involved privately in bringing litigation against companies which are regulated by the agency for which the attorney works. Such private, outside employment would present a conflict of interest for the attorney between his responsibility as an employee of a state regulatory agency and his private interests.

Additionally, the Commission recommends that you seek advice from the Kentucky Bar Association concerning these matters.

Enclosure: AO 96-37