

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 98-12
April 8, 1998

RE: May employee use skills as interpreter for the hearing impaired as outside employment opportunity?

DECISION: Yes, within limitations.

This opinion is in response to your January 22, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 26, and April 8, 1998, meetings of the Commission, and the following opinion is issued.

You state the relevant facts as follows. An Employment Services Specialist Principal (the "employee") within the Department for Employment Services, Workforce Development Cabinet ("DES"), has recently acquired certification as an interpreter for the hearing impaired. The employee interprets for DES clients as part of his official duty in the Danville DES office. He would like also to use his interpreting skills as an outside employment opportunity. You ask the following:

- *When and where can he use his skill for profit?*
- *Would it be a conflict of interest for the employee to interpret for an individual going through an unemployment insurance hearing, if he took annual leave or did it after hours? (Unemployment Insurance is a division within DES.)*
- *Would it be a problem for him to interpret under contract from a factory during job interviews, and would it make a difference if DES referred the individual?*
- *Is he allowed to interpret for an individual if the person is seeking legal aid which might involve litigation against an employer that DES does services for?*
- *Would it be a conflict if a temporary job placement agency contracted the employee to interpret for their testing, job referral or personnel function? What if they are sending people to cross picket lines?*

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.

The Commission believes that the employee may use his interpreting skills privately as long as such activity does not conflict with his official position and he does not use his official position to give himself an advantage. Because interpreting for individuals involved in unemployment insurance hearings or involved in litigation against an employer for which DES provides services could lead the public to conclude that he is using his official position to further his private interest, the Commission advises the employee to refrain from such activity.

The Commission believes whether or not the employee may interpret for a factory during job interviews is dependent on whether a relationship exists between the factory and DES. If DES provides no services or referrals to the factory, then it does not appear that a conflict will exist between the employee's official position and his interpreting for the factory. However, if DES refers clients to the factory, then the fact that the employee is receiving compensation from that company may be a conflict of interest in appearance, if not in fact.

Similarly, the employee is not prohibited from interpreting and accepting compensation from a temporary job placement agency provided DES has no relationship with the job placement agency. The employee should take great care, however, not to use his official position in any way to benefit his private business. In addition, in order to avoid the appearance of a conflict, the Commission believes the employee should refrain from interpreting for placement agencies which cross picket lines.

Additionally, if the employee seeks employment with any entity that does business with or is regulated by the Workforce Development Cabinet, he should seek approval for that outside employment as required by KRS 11A.040(9):

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.