

ADVISORY OPINION 98-23

May 19, 1998

RE: May Welfare Fraud Supervisor accept part-time position as Executive Director of Kentucky Association of Chiefs of Police?

DECISION: Yes, but must refrain from certain solicitation.

This opinion is in response to your April 24, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 19, 1998, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Office of the Attorney General as an investigator supervisor in the Welfare Fraud Section of the Division of Special Investigations. Your job responsibilities include directing and conducting investigations of persons suspected of Medicaid fraud, welfare fraud, election fraud, public corruption, sex offenses, violent crime, environmental crime and other illegal activities. You serve as a liaison to various law enforcement officials within your geographic area of responsibility. Additionally, you may forward investigative reports to the Kentucky State Police, Intelligence Section. Prior to your employment with the Office of the Attorney General, you were employed as a city chief of police.

In addition to your state employment, you are interested in applying for a part-time position as Executive Director of the Kentucky Association of Chiefs of Police (the "Association"). This position will require approximately 40 hours per month and the compensation will be approximately \$1,000 per month. You plan to use accumulated leave time for this position. The Association is a non-profit entity that represents law enforcement administrators in Kentucky. Current members include police chiefs and assistants, state police commanders, state law enforcement administrators, railroad police, university and airport police commanders, special agents in charge of federal agencies in Kentucky and retired police administrators. The Association is aligned with the International Association of Chiefs of Police and is involved in law enforcement accreditation, training, scholarships, legislative issues and communication among police administrators.

Funding for the Association is provided by member dues, fees and a telemarketing program contracted with Community Safety, Inc. The Executive Director currently receives the funds for the telemarketing program. You propose to have these funds sent directly to the Association Treasurer from Community Safety, Inc. Additionally, as a part of this part-time position, you will not be involved in legislative lobbying. However, you may be required to testify before legislative subcommittees concerning law enforcement issues.

You have been an active member of the Association for the past 13 years and have served in every position on the Executive Board, including President. Currently, you represent the retired chiefs' section on the Executive Board. If you are selected as the Executive Director, you believe the staff of the Office of the Attorney General will have direct

communication with law enforcement executives in Kentucky. You ask for an advisory opinion as to whether you may apply for such a position.

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.

Additionally, KRS 11A.020(1)(a), (c), (d) 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;

(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.

From the information provided, it appears that the Office of the Attorney General does not do business with or regulate the Association or members of the Association. Therefore, the Commission believes that you may apply for and accept the part-time position as Executive Director provided you do not use any state time or equipment for such service. However, you should take great care in your work for the Association not to create a conflict of interest with your official position for the state.

Specifically, as provided in Advisory Opinion 93-39 (a copy of which is enclosed), you are prohibited from engaging in lobbying either as a legislative agent or as an executive agency lobbyist. The Commission believes that you may testify before legislative committees as a part of your part-time employment as long as the subject matter does not involve

issues concerning the Office of the Attorney General or pose a conflict with your official position.

Additionally, the Commission believes that you should not be involved in any solicitation or record keeping of donations from entities that may do business with, be regulated by or have decisions pending before the Office of the Attorney General. Knowledge of entities that have contributed to the Association may cause a conflict of interest for you if such entities have matters before the Office of the Attorney General. The Commission agrees that a third party may handle the solicitation of funds for the Association and that the Association's Treasurer may maintain records. However, you should not allow a letter to be sent from you that solicits entities which may do business with, are regulated by or have a matter pending before the Office of the Attorney General (See Advisory Opinion 98-13, attached.)

Enclosures: AO 93-39
AO 98-13