

ADVISORY OPINION 98-29

June 25, 1998

RE: May Fish and Wildlife employee own private businesses?

DECISION: Yes.

This opinion is in response to your May 25, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 25, 1998, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Department of Fish and Wildlife Resources ("Fish and Wildlife") in the area of law enforcement. In addition, you own two private businesses, a firearms repair and refinishing business and a paintball game business. Fish and Wildlife does not have regulatory authority over either business, nor do you have procurement authority for Fish and Wildlife. You state that firearms sales and repairs are regulated by the U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, and also that paintball games are self-regulated by the American Paintball League and the National Paintball Players League. Additionally, you occasionally submit bids to various state agencies for the purchase of firearms, paintball equipment and repair services. You ask whether either of these businesses presents a conflict for you under the Executive Branch Code of Ethics or whether the submission of bids is a violation of the ethics code.

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;

(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.

Additionally, KRS 11A.040(4) provides:

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he

is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

- (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
- (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
- (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises.

The Commission believes that you are not prohibited from owning and operating your private businesses involving firearms repair and refinishing and paintball games, provided Fish and Wildlife does not regulate or do business with either of the businesses. Additionally, you are not prohibited from submitting bids to provide services for other state agencies provided you comply with the provisions stated above in KRS 11A.040(4), and the Model Procurement Code provisions in KRS 45A.340, and you do not use your official position at Fish and Wildlife to give yourself an advantage.