

## ADVISORY OPINION 98-32

June 25, 1998

RE: May Labor Cabinet employee own private safety and health consulting business?

DECISION: Yes, within limitations.

This opinion is in response to your June 12, 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 as a safety compliance officer for the Labor Cabinet, Department of Workplace Standards. Your duties include inspecting workplaces for compliance with occupational safety and health regulations in general industry and construction, performing accident and fatality investigations, investigating employee complaints, and performing follow-up inspections. You also write and prepare reports for the possible issuance of citations and appear in contest cases as a witness for the Secretary of Labor.

In addition to your state job, you desire to incorporate a private business as a safety and health consultant and provide services for companies outside Kentucky. You state you will be President of your private business. You plan to provide services only for companies located outside the state of Kentucky and you will not solicit business or contracts with companies that regularly and routinely work in Kentucky.

You ask several questions. Will it present a conflict of interest for you to be president of your own company? Is it a conflict of interest for you to file articles of incorporation in Kentucky or do you need to file in Indiana? Is it a conflict of interest for you to own this business if the Labor Cabinet has jurisdiction over your company in the areas of wage and hour laws and safety compliance?

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.

In Advisory Opinion 96-18 (copy enclosed), the Commission stated that, "as long as the employee does not perform consulting work for coal companies with an interest in property in Kentucky which would be subject to assessment by the employee's division, the outside employment would not present a conflict of interest." Similarly, you are not prohibited from owning a safety and health consulting company and providing services for companies which do not manufacture products in Kentucky, and thus are not regulated by the Labor Cabinet. You should have no involvement, as part of your official duty for the Cabinet, with companies you seek as clients.

You are not prohibited from incorporating in Kentucky; however, you should take great care not to use your influence in a matter which could cause a conflict between your private interest and your duties in the public interest, and you should not use your official position to obtain financial gain or an advantage over the general public. It appears that your intention not to hire employees, but rather to pay independent contractors, will alleviate potential conflicts that exist in the areas of wage and hour laws. However, if your workplace is subject to safety compliance laws or you do have employees, and thus become subject to regulation by the Department for Workplace Standards, you should not represent your business before the Labor Cabinet. Also, neither you nor your co-workers should be involved in matters concerning your private business.

Additionally, as part of your official duty, you should not be involved in matters concerning businesses which may be in competition with your private business. See enclosed Advisory Opinion 95-39 for additional guidance in this area.

The Commission commends you for your efforts in establishing your own code of ethics for your private business. The Commission also advises that you may be subject to additional in-house restrictions established by the Department of Labor concerning your private business.

Enclosure: AO 95-39  
AO 96-18