

## ADVISORY OPINION 98-42

December 17, 1998

RE: Are substitute teachers in the Department for Technical Education considered public servants under the ethics code?

DECISION: No.

This opinion is in response to your November 6, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 17, 1998, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department for Technical Education in the Workforce Development Cabinet hires substitute teachers on an occasional basis. These teachers are paid by means of the imprest cash authority and do not receive P-1's, the standard employment document issued by the Department of Personnel on all employees. However, the teachers do have taxes withheld from their paychecks and also receive a W-2. They are considered Non-P-1 employees. You ask whether a Non-P-1 type employee is considered a public servant subject to the Executive Branch Code of Ethics.

KRS 11A.010(9) provides:

(9) "Public servant" means:

...

(j) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

In Advisory Opinion 93-39, the Commission concluded that all employees in the executive branch, including temporary employees, are public servants under KRS Chapter 11A. However, the Commission believes that substitute teachers who are not appointed as employees, but work on an occasional basis as needed, are not public servants. Although, they may be employees of the Commonwealth for tax purposes, because they are paid through imprest cash as occasional labor and are not appointed through an employment document (P-1), the Commission does not believe that such individuals are subject to the Executive Branch Code of Ethics.

This opinion applies only to substitute teachers paid through imprest cash as occasional labor as there may be other employees who are not appointed through a P-1 document, but who are considered public servants and are subject to the Executive Branch Code of Ethics depending on the nature and duration of their positions.