

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 99-5

February 18, 1999

RE: May four employees of the Labor Cabinet open consulting business?

DECISION: Yes, within limitations.

This opinion is in response to your February 4, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 18, 1999, meeting of the Commission and the following opinion is issued.

You request an opinion from the Commission on the following questions:

(A) *Is it a conflict of interest or does the Commission believe that a problem would exist if four (4) merit state employees with the Labor Cabinet, Department of Workers Claims, opened a computer consulting and installation business together? One of the four employees supervises the other three employees at their jobs with the Department of Workers Claims. The employees would be equal partners in the business.*

(B) *Is it a conflict of interest or does the Commission believe that a problem would exist if the computer consulting business opened by the employees conducted business with any state government agencies other than the Labor Cabinet? The four employees understand a conflict would exist if the business was conducted with the Labor Cabinet.*

The Commission reviewed your request in light of KRS 11A.020(1)(a), (c) and (d), which 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;

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- (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.

The Commission believes that the four merit system employees of the Labor Cabinet are not prohibited from opening a computer consulting and installation business; however, in doing so the employees must take care not to involve the business in situations that would pose a conflict of interest for the employees. Specifically, the one employee who supervises the other three employees should not use his position as their supervisor to give him an advantage or privilege in the business.

Additionally, the four employees should have no involvement, as part of their official duties for the Cabinet, with persons or businesses they seek as customers. Furthermore, the employees should not be involved, as part of their official duties, in regulatory matters concerning entities with which their consulting business competes.

Several advisory opinions are enclosed which will provide you with additional guidance on this matter.

Concerning your second question, 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, bid on, negotiate, 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

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(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; or

(d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

Although the consulting business that you plan to open is not prohibited from doing business with state agencies other than the Labor Cabinet, such contracts or agreements between entities owned by state employees and state agencies must be in compliance with the Model Procurement Code, KRS 45A.340, which requires such agreements to be competitively bid if they involve funds of \$25 or more.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Don A. Wimberly

Enclosures

April 10, 2008

Mr. John B. Barton
130 Clearwater Lane
Frankfort, Kentucky 40601

Reference: 041399.1

Dear Mr. Barton:

At its February 18, 1999, meeting, the Executive Branch Ethics Commission took up your request, dated February 4, 1999, in which you ask whether four employees of the Labor Cabinet may open a consulting business.

The enclosed Advisory Opinion 99-5 is issued in response to your inquiry.

Sincerely,

Jill LeMaster, Executive Director

Enclosure: Advisory Opinion 99-5