

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 99-7**

February 18, 1999

RE: May employees use state equipment or state time for personal benefit?

DECISION: No.

This opinion is in response to your February 12, 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 ask the following questions as follows.

- 1) *If a state employee removes from state property a large quantity of new (unused) medical supplies – syringes with needles in package; unused gloves; unused alcohol prep pads, etc; and a large quantity of used medical supplies: Activan & Phenergan syringes, other used syringes, bottles which had contained patient medication; used scalpels; plastic catheter tweezers & urine specimen containers; a used air mattress off a patient bed; a steel doorknob, etc., and this property is found in the attic of this employee's garage, is this considered stealing from the state and is this grounds for dismissal? Are any fines applicable? To whom is this to be turned over for disposal? Is the removal of Activan syringes (a controlled substance) a felony?*
- 2) *If a state employee brings his personal trash from home at night and disposes of it in the state facility Dumpster, is this allowed by state policy? (No permission was given for his action.) What is the penalty for this?*
- 3) *If a state employee brings candy onto state property (bought at Dollar General & Sam's Wholesale) and sells them at below vending machine prices to fellow employees during regular working hours (not lunch and breaks) in violation of vending contracts, making profits of \$300-\$500 per week, for four to nine years, is this a violation of the state ethics code? What penalties are applicable? (The profit was pocketed by the state employee making the sale.)*

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The Commission has jurisdiction over the provisions in KRS Chapter 11A pertaining to conflicts of interest and the use of an employee's official position. The taking of items from a state agency by an employee would not be under the jurisdiction of the Commission. Thus, the Commission is not authorized to advise you concerning such matters, but refers you to seek guidance from the Office of the Attorney General or from the Kentucky State Police.

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.

As stated in Advisory Opinion 98-15, the Commission believes that the proper use of state equipment, such as a Dumpster, is a management decision. However, the Commission believes that management and employees should not misuse state equipment for their own personal benefit in violation of the provisions above.

Regarding your questions pertaining to a state employees selling candy on state property for profit, the Commission believes that if an employee is misusing his working hours to conduct such a business that he may be in violation of KRS Chapter 11A. The ethics code prohibits an employee from using his official position to obtain financial gain.

Penalties for violations of KRS Chapter 11A are provided by KRS11A.100 (3) below:

- (3) The commission, upon a finding pursuant to an administrative hearing that there has been clear and convincing proof of a violation of this chapter, may:
  - (a) Issue an order requiring the violator to cease and desist the violation;

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(b) Issue an order requiring the violator to file any report, statement, or other information as required by this chapter;

(c) In writing, publicly reprimand the violator for potential violations of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any;

(d) In writing, recommend to the violator's appointing authority that the violator be removed or suspended from office or employment, and include a recommendation for length of suspension, to be approved by the appointing authority, if any; or

(e) Issue an order requiring the violator to pay a civil penalty of not more than two thousand dollars (\$2,000) for each violation of this chapter.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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By Chair: Don A. Wimberly