

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 99-37**

August 31, 1999

RE:            May photographers, writers and artists for the Department of Fish & Wildlife Resources have outside employment?

DECISION:    Yes, with limitations.

This opinion is in response to your August 19, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 31, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. Many Kentucky Department of Fish and Wildlife Resources (the "Department") employees participate in wildlife-related activities or outside jobs in addition to their official positions with the Department. These outside employment opportunities allow the Department employees to utilize or rely upon information, knowledge, experiences and skills obtained as a part of their official duties. However, the information they use, as well as the opportunities they have to interact with wildlife, is generally available to the public. In addition, through outside employment, the employees act as public relations representatives for the Department encouraging involvement in hunting, fishing, and other wildlife-related recreational activities.

However, there are concerns about the propriety of outside employment by Department employees. Some outside employment involves regulated and licensed activities such as hunting guides, taxidermists, wildlife rehabilitators and nuisance wildlife control specialists. The Commission has previously opined, in Advisory Opinion 93-2, on these licensed and regulated activities. The Department and its employees will continue to abide by the advice given in that opinion. Questions have arisen, however, regarding unregulated and unlicensed outside activities of photographers, writers and artists employed by the Department. The Department asks whether it is permissible for an employee to profit privately from the experiences, opportunities and information gained while on state time if the information and opportunities are generally available to the public.

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You ask whether employees of the Department may have outside employment if such outside employment will use information and experiences of the employee obtained while a Department employee. You believe that because such information and experiences are readily available to the public such outside employment should be allowed provided the employee does not use privileged information. Additionally, you ask whether employees who wish to have such outside employment must first obtain approval from the Commission for such outside employment in compliance with KRS 11A.0404(10) provided below:

(10) Without the approval of his appointing authority, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.

(a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.

(b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.

(c) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.

As stated in the statute above, an employee is required to obtain approval from his appointing authority for outside employment only if a business or regulatory relationship exists between the state agency for which he works and his outside employer. If no relationship exists between an employee's outside employer and the Department, then the employee is not required by the ethics code to obtain approval for his outside employment, but he must still ascertain that no conflict of interest exists between his outside employment and his official position. Additionally, the Department is not prohibited from adopting in-house policies regarding outside employment by employees that will serve to avoid any real or perceived conflicts of interest and may require all employees to obtain approval from the appointing authority for their outside employment.

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.

Employees are not prohibited from using general knowledge gained in their state positions for compensation privately. However, the Commission disapproves of an employee being compensated privately for providing information or services to the public if it is a part of an employee's official duty to provide such information or services. Employees should not give the appearance that they are using their state positions to benefit themselves financially.

Additionally, state employees should not use any state time, materials or equipment for their private businesses.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: CYNTHIA C. STONE  
VICE CHAIR