

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 04-17**

May 27, 2004

RE: May employees accept remuneration in the form of money or compensatory time for providing interpretive services for the deaf?

DECISION: Yes, within limitations.

This opinion is issued in response to your April 26, 2004, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). The matter was reviewed at the May 27, 2004 meeting of the Commission and the following opinion is issued.

You state the following relevant facts. The Kentucky School for the Deaf ("KSD") employs interpreters. These employees often have opportunities to serve as interpreters during the year after school hours, and during the summer months when school is not in session. KSD is under and is part of the Kentucky Department of Education (the "Department"), supervised by the Kentucky Board of Education.

You ask: "[W]hether employees may accept remuneration (cash or compensatory time) for interpretive services during those times that school is not in session when employed by:

1. The Kentucky School for the Deaf (e.g., much like extra services for a school district).
2. The Kentucky Department of Education (e.g., much like extra services for a school district).
3. Another state agency (assuming it's not one regulated by KDE.)
4. An entity outside of state government, education related.
5. An entity outside of state government, not related to education."

You state that these employees are not in policy making positions, and have no responsibility to regulate anyone they might assist. You also note that the "going rate" for interpreters outside of state government employment is "substantially higher."

KRS 11A.040(4) provides:

(4) A public servant shall not 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

(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.

Based on the provisions above, an employee may not have or enjoy an agreement with his own state agency to provide interpretive services for compensation. However, the Commission believes that an agency (KSD or the Department) is not prohibited from allowing an employee to work for the agency in addition to his normal working hours and earn compensatory time.

An employee of KSD may have or enjoy an agreement to provide interpretive services for a state agency, other than the Department, so long as the agreement with the other state agency complies with the Model Procurement Code at KRS 45A.340, the provisions of which prohibit employees from having a contract or agreement with any state agency unless the value is less than \$25 or the services are the result of a competitive bid process. See Advisory Opinion 02-6, enclosed.

The Commission assumes that the interpreters would not be hired as "employees" of the other agency. If the interpreters are to be hired as part-time employees of an agency, they would need to comply with the dual employment provisions found at 101 KAR 2:095 Section 4, reprinted below:

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Section 4. Dual Employment.

(1) An employee holding a full-time position with the Commonwealth shall not hold another state position except upon recommendation of the appointing authority and the written approval of the secretary.

(2) A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the secretary.

An employee is not prohibited from providing interpretive services to entities outside of state government so long as the employee does not use his official position to give himself an advantage in disregard of the public interest, or otherwise have a conflict of interest with the entity in question. Specifically, the employee should not have involvement or contact in his state position for KSD with the entities for which he is providing interpretive services privately. See Advisory Opinion 98-12. KRS 11A.020(1) pertains, reprinted below.

KRS 11A.020(1):

(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.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 02-6  
Advisory Opinion 98-12