

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 04-18

May 27, 2004

RE: May a state employee contract with, and receive compensation from, another state agency for goods and/or services totally unrelated to the employee's employment with state government?

DECISION: Yes, so long as the employee abides by the requirements of KRS 45A.340.

This opinion is issued in response to your May 3, 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. You are employed in a full-time merit position as an Environmental Technologist III with the Department for Environmental Protection, Division of Waste Management (the "Division"). You are in a non-regulatory position, but do development and administer contracts in conjunction with the Finance and Revenue Cabinet for the Waste Tire Amnesty Program.

You state also that you are self-employed as a professional photographer, selling images to publishers and retail prints to a variety of customers, and conducting photography workshops, entirely on your own time and with your own equipment.

The Department of Parks ("Parks") holds weekend photography events/contests at several of its parks around the state. These events involve contracting with photographers/speakers to conduct educational programs on various aspects of photography and to judge contest entries. You have been asked by a state park, in your capacity as a professional photographer, about contracting with Parks to conduct a photography workshop and judge photography contest entries. Compensation for this service would include several meals, lodging and a payment of less than \$500.00.

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You ask if you may enter into such a contract with Parks, and, similarly, may you market goods, such as photo prints, post cards and similar goods to the Parks' gift shops.

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.

You are not prohibited from contracting with a state agency other than the Department for Environmental Protection, pursuant to the provisions of KRS 11A.040(4) above, so long as the contract or agreement with the other state agency complies with the provisions of the Model Procurement Code at KRS 45A.340 (a copy of which is enclosed). These provisions prohibit an employee 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.

Thus, any contract or agreement you have with the Department of Parks must be awarded through competitive bidding. See Advisory Opinion 02-6, enclosed. This rule would also extend to your marketing of goods such as photo prints to the Parks gift shops.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosures: KRS 45A.340
Advisory Opinion 02-6