COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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Executive Branch Ethics Commission
ADVISORY OPINION 08-18
July 11, 2008

RE: Does employee's volunteer activity present a conflict of interest with his official duty?

DECISION: No, as long as the employee makes a clear distinction between his official duty and his volunteer activity.

This opinion is issued in response to your May 21, 2008 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 11, 2008 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. An employee of the Division of Family Support ("DFS") in the Cabinet for Health and Family Services ("CHFS") administers several types of entitlement programs as a family support employee. The employee also serves as a volunteer detective for the local Sheriff's Department. You state that the Cabinet believes that employees should not engage or be involved in any activity which has the potential to become a conflict of interest with their state employment. You seek an advisory opinion regarding whether the duties of the two positions are a violation of the Executive Branch Code of Ethics (the "Code").

You state the employee has been a volunteer with the Sheriff's Department since 1996 and has been promoted to Detective. As a volunteer his job duties include death investigations, sexual assaults, making arrests and administrative case reviews. The employee drives his own Crown Victoria vehicle equipped with law enforcement equipment in it including a cage separating the back seat from the front seat. He carries a pager and brings a laptop provided by the Sheriff's Department to his work at CHFS. The public is aware that the employee serves both as a deputy and a caseworker for the Department. In publicizing a recent arrest made by the employee, the local newspaper also reported that the employee was a CHFS caseworker. You further report that the employee has been the arresting officer in criminal cases in which the defendants were clients of the Cabinet and that, as the arresting officer, he is required to provide testimony in criminal cases.

Prior to seeking an advisory opinion you received the following information from the employee. He receives no compensation whatsoever from his volunteer activities with the Sheriff's Department. No conflict exists between his two positions and he has a letter agreeing

that if he takes any action with respect to a DFS client he is to notify his immediate supervisor so the application can be given to another employee to avoid any conflict. He states the county is so large that he does not volunteer in the part of the county where his clients are located. He further states that in the 12 years that he has volunteered his services to the Sheriff's Department he has never had a conflict regarding any of the DFS family support clients. While the Cabinet alleges that the employee was the arresting officer in a case involving a client of the Cabinet, there is no allegation that any conflict occurred with respect to a client of DFS.

KRS 11A.020 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;

The Commission believes that volunteer activities are not prohibited under the Code of Ethics provided the volunteer activity does not present a conflict with the employee's official duties. Thus, the employee is not prohibited from volunteering with the Sheriff's office provided he has no involvement with the Sheriff's Office in his position as a family support employee.

Although the employee's representation indicates that he received a letter many years ago wherein he has agreed to notify his immediate supervisor if he was required to take any action with respect to a DCBS client and to refer the client to another caseworker to avoid any conflict and "keep the two separate," the Cabinet does not acknowledge that approval of outside employment was given to this employee in the past.

KRS 11A.040(10) states that approval for outside employment is required in certain circumstances, for instance where the outside employment is with an entity that does business with or is regulated by the agency in which the employee works, or where the employee is involved in decision making or recommendations concerning the outside employer. Such is not the case here. The employee has no regulatory authority over the Sheriff's office in his state employment, nor is the Sheriff's Department doing business with DFS.

As provided by the Commission in many previously issued advisory opinions, employees who wish to hold outside employment should make a clear distinction between their official duties and any private activities or outside employment. The fact that the employee brings his Sheriff's Department issued pager and laptop to his full-time workstation indicates that such a clear separation does not exist.

The Commission has also frequently stated that care should be taken to ensure that employees do not use state time or resources for their outside employment. Although there is no allegation that such has occurred, the Commission cautions the employee that use of the Sheriff's Department pager and laptop at his DFS workstation on state time would be a violation of KRS Chapter 11A.

KRS 11A.040(1) provides that "[a] public servant, in order to further his own economic interests, or those of any other person, shall not knowingly disclose or use confidential information acquired in the course of his official duties." Although there is no allegation that the employee's actions have involved the use of confidential information acquired in the course of his employment, the Commission cautions the employee to ensure that any actions related to his volunteer activities such as serving warrants or providing information to other law enforcement agencies or employees, do not involve the use of confidential DFS information.

Additionally, the Cabinet is not precluded from implementing in-house policies that may be more restrictive than the Code in order to prevent conflicts of interest within the Cabinet.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: John A. Webb

Enclosures: Advisory Opinion 98-34
Advisory Opinion 04-45
Advisory Opinion 03-50