COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH ETHICS COMMISSION

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EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 09-3

January 23, 2009

RE: May a Case Manager/Nurse Investigator for the Kentucky Board of Nursing seek and accept part-time employment with a Nursing School that is regulated by the Kentucky Board of Nursing.

DECISION: Yes, with limitations.

This opinion is issued in response to your December 12, 2008, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the January 23, 2009, meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows:

You are employed by the Kentucky Board of Nursing as a Case Manager/Nurse Investigator in the Investigation and Discipline Branch, Compliance Section. Specifically, your duties include monitoring chemically dependent nurses in the Kentucky Alternative Recovery Effort (KARE) Program and to monitor nurses on probation for violations of KRS Chapter 314 and regulations governing Registered and Practical Nurses.

You ask whether you may seek and accept part-time employment as an adjunct faculty member or lecturer for state or private, pre- and post-licensure schools of nursing some of which may be regulated by the Board of Nursing for whom you work. The Kentucky Board of Nursing regulates pre-licensure nursing programs within a college or university's school of nursing. A nursing school may also have a post-licensure program in nursing or a graduate program in nursing; however the Board does not directly regulate these programs. In your present position you do not currently have any relationship with or decision making responsibility for any nursing school.

KRS 11A.020(1)(a) 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;

Since your current duties involve monitoring individuals for compliance and have nothing to do with the Board's role in regulating pre-licensure nursing schools, it appears the chance for a conflict to arise between your duties in the public interest and your personal interest is unlikely. Thus the Commission believes it would be acceptable for you to seek and hold outside employment with pre-licensure schools of nursing as long as your job duties remain the same. If, however, a licensed nurse subject to the KARE Program or other disciplinary monitoring by you, enrolls in a post-licensure class taught by you a conflict would exist. In that situation it would not be permissible under KRS Chapter 11A.020(1)(a) for you to undertake the part-time employment since there would be a conflict between your personal interest and your duties in the public interest.

KRS 11A.120 provides, in part:

> Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict a public servant from accepting outside employment in a state institution of higher education as long as that outside employment does not interfere or conflict with the public servant's state employment duties.

Additionally, KRS 11A.040(10) provides in part:

> (10) Without the approval of his appointing authority, a public servant shall not 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.

Based upon the language of KRS 11A.120, the Commission previously held in Advisory Opinion 02-13 that outside employment with a state institution of higher education does not require the approval of the appointing authority as long as there is no conflict with the employee's public duties. However, if you secure part-time employment with a private institution, the provisions of KRS 11A.040(10) apply and your agency will have to approve your outside employment.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

Gwen R. Pinson

BY CHAIR: GWEN R. PINSON