

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-38
August 18, 2000

RE: May employee provide training for local investment areas?

DECISION: No, unless the local area will not be monitored.

This opinion is in response to your June 23, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 18, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. An employee of the Cabinet for Workforce Development is employed in a local office that monitors workforce investment areas for compliance with the Workforce Investment Act. Some of these local areas want to hire the employee privately to conduct training seminars in their areas. As part of the employee's state duties, she monitors the local areas, but would arrange not to monitor those areas for which she would conduct training. The employee asks whether it would be permissible for her to accept such outside employment.

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

(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.

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(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.

The administrative regulations referred to above that must be reviewed are contained in Section 2 of 9 KAR 1:050, stated below:

Section 2. The appointing authority shall review the request and consider, including but not limited to, the following factors:

(a) The degree of separation between the public servant's state duties and decisions concerning the outside employer. Example: whether the public servant is involved with the awarding of contracts to or regulation of the outside employer.

(b) The public servant's level of supervisory or administrative authority, if any. Example: whether the public servant has ultimate responsibility for a decision concerning the outside employer, although he is not involved in the decision-making process.

(c) Whether the outside employment will interfere or conflict with the public servant's state employment duties.

1. A conflict shall exist if a public servant cannot carry out an appropriate course of action for his agency because of responsibilities his outside employment would require.

2. A conflict shall exist if the outside employment will materially interfere with the public servant's independent judgment in considering alternatives or courses of action that reasonably should be pursued in his state employment.

(d) The duration of the outside employment;

(e) Whether the outside employment would create an appearance of conflict of interest with state duties; and

(f) Whether the public servant is an auditor, inspector or other regulatory personnel of a division which is currently auditing, inspecting or reviewing or has scheduled an audit, inspection or review of the outside entity for which the public servant requests approval to work. (Emphasis added.)

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The Commission believes that if an outside entity is scheduled to be monitored by an agency, that an inspector of the agency should not hold outside employment with the entity, regardless of whether the employee will be involved in the inspection. Thus, if a local area is monitored by another inspector of the agency for which the employee works, the Commission believes that a conflict will exist if the employee is hired by the local area to present training. Consequently, the Commission believes the appointing authority should not approve the outside employment of the employee with the local areas if the local area is to be monitored during the fiscal year. If the local area is subject to monitoring by the employee's agency, but is not currently being monitored or scheduled to be monitored during the fiscal year, the Commission believes the appointing authority may consider the approval of such employment.

If it is important to the Cabinet to have such local areas trained on the Workforce Investment Act, the Cabinet may want to consider allowing the employee to provide such training for the local areas as part of the employee's official duty on state time and not as outside employment. Such an option would be a management decision.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Bertie Oldham Salyer, M.A., A.M.E.