

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-46
August 18, 2000

RE: May inspector have outside employment certifying plumbers?

DECISION: Yes, if employment is not with plumbers or a union representing the plumbers.

This opinion is in response to your August 2, 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. A plumbing inspector for the Department of Housing, Buildings and Construction wishes to have self-employment as a test proctor for the medical gas certification exam. The medical gas class is organized and taught by the local plumbing union. The class consists of apprentices and journeyman plumbers. The exam is contracted and provided by National I.T.C. Corporation. As a third party proctor, the inspector will assure confidentiality of the exam, assure identification of applicants, oversee the written exam, identify material for the practical exam, and observe the brazing process. Certification is required by plumbers in order to make installations. Medical gas installations also are required to be installed by a licensed plumber. The inspector inspects such installations in the Lexington area. You believe that a conflict exists, but ask whether it is the authority of the Commissioner (appointing authority) to approve such employment if he believes the need is great for this type of training.

KRS.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;

It appears to the Commission that the inspector's outside employment will be with the National I.T.C. Corporation and not with the local plumbers who are attempting to be certified or those plumbers whom he inspects. Thus, it does not appear to the Commission that a conflict will exist for the inspector to work as a proctor for the medical gas certification of plumbers. Although he may eventually inspect some of the same plumbers that he may certify through this program, the Commission does not believe that such action will present a conflict because the inspector is not in a position to have any influence in either case.

A conflict of interest would exist if he were employed by or received compensation from plumbers that he inspects or from a local union whose members are the same plumbers that he inspects. Even if the inspector were to have another inspector conduct the reviews of those

plumbers from whom he accepts compensation, a conflict may exist. See Advisory Opinion 00-38 (a copy of which is enclosed) for advice concerning such outside employment.

Regarding the approval of outside employment, KRS 11A.040(10) provides:

(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.

(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.

(c) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.

Although employees must receive approval from their appointing authorities for certain outside employment, the Commission is the ultimate source regarding questions of conflicts of interest with outside employment or "moonlighting". Consequently, the Commission may advise an employee to discontinue outside employment where a conflict of interest with his official duties exists, even if such employment has been approved by the employee's appointing authority.

Enclosures: Advisory Opinion 00-38