

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 00-72

December 15, 2000

RE: May pharmacy inspector hold outside employment with pharmacy?

DECISION: No

This opinion is in response to your November 29, 2000, request for a reconsideration of denial of outside employment from the Executive Branch Ethics Commission (the "Commission") regarding inspectors of the Kentucky Board of Pharmacy (the "Board"). This matter was reviewed at the December 15, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. In 1994, the Commission denied approval of outside employment for several inspectors of the Board. You suggest that a plan be implemented to ensure the impartiality of the inspectors and also allow the inspectors to obtain outside employment with certain pharmacies. This plan would limit inspectors to outside employment with pharmacies that only have one permit, thereby eliminating the potential for conflicts of interest with large employers. Furthermore, an inspector would not be permitted to inspect the pharmacy with which he holds outside employment.

KRS 11A.040(10) provides:

- (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.

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- (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.

Effective July of 1998, employees are no longer required to obtain approval for their outside employment from the Commission, but must obtain such approval from their appointing authorities. The appointing authority must review administrative regulations established by the Commission when deciding whether to approve the outside employment for the public servant. The appointing authority may not approve any outside employment if the employee is involved in decision-making or recommendations concerning the person or business from which he seeks outside employment. Pursuant to 9 KAR 1:050, the employee must submit a request for approval with required statements and the appointing authority must review the request and consider various listed factors before approval may be granted.

However, as provided in Advisory Opinion 00-46 (a copy of which is enclosed), the Commission is the ultimate source regarding questions of conflicts of interest with outside employment. 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.

In this instance, the Commission still believes that a conflict of interest would exist for an inspector of pharmacies to hold outside employment with a pharmacy, even if the employee is not involved in the inspection of the pharmacy. The fact that the Board only employs a handful of inspectors is a factor that the Commission considered in this opinion. It would be hard for an inspector to remain independent in his review of a pharmacy when he is aware that his fellow inspector is employed by the pharmacy.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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