

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 01-6**  
March 30, 2001

RE: May employee sell an alliance building program to companies outside the Commonwealth of Kentucky?

DECISION: Yes, provided the companies to which the employee markets the program have no locations in Kentucky.

This opinion is in response to your February 6, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 30, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. An employee of the Economic Development Cabinet (the "Cabinet") has helped to establish a program, as a part of his state job, designed to help companies become more competitive in the global market by forming strategic alliances with other companies that may be their suppliers/customers/competitors. The employee spent quite a bit of effort and "intellectual capital" that he accumulated in his previous private job in establishing this lengthy alliance building program for his state agency. The state agency also used the services of a consultant from California to produce the initial version of this program. The consultant was hired through a partnership with the Kentucky Chamber of Commerce to produce a program he calls the Alliance Builder's Boot Camp. The consultant holds the copyright to the material excepting an exclusive license to the Commonwealth of Kentucky for use within the state as a part of the alliance building program.

The state's alliance building program has been updated periodically through the joint efforts of the employee and the consultant. The consultant has not been paid for his several hundred hours of upgrading efforts, but he is using the program in states other than Kentucky for profit. The Cabinet is aware of the use of the product in other states and has made provisions for such use in its contract with the consultant. The terms of the contract are met as long as the consultant doesn't use the program for profit in Kentucky.

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Recently, the consultant asked the employee to form a loose partnership with him and, on the employee's own time, assist the consultant in implementing the program for companies in states other than Kentucky. The companies would pay the employee for this assistance. The employee has received approval from his supervisor at the Cabinet, provided he does not use state time or resources for his outside employment. The employee's supervisor does not consider it a violation of the contract, or as unacceptable competition with the Cabinet, for the employee to attempt to sell this product outside of Kentucky.

You ask whether such an arrangement would violate the executive branch code of ethics.

KRS 11A.020 (1)(c) provides:

(1) No public servant, by himself or through others, shall knowingly:

...

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family;

The Commission believes that the efforts of the employee to market an alliance building program similar to the one the employee helped develop for Kentucky does not appear to present a conflict of interest for the employee. It appears from the information provided that this program was developed mainly through the outside consultant and the employee's knowledge from his previous non-state employment. The Commission also takes note that the employee's job does not afford him the opportunity of contact with those companies to which he will market the program.

Thus, the Commission believes the employee has not used and will not use his official position to obtain financial gain in his attempt to market the program. The Commission agrees that the employee is not prohibited from assisting the consultant in selling the program to companies in other states that have no locations in Kentucky.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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