

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 01-34

September 28, 2001

RE: May drivers license examiner teach driver education class?

DECISION: Yes, within limitations.

This opinion is in response to your August 16, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 28, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. A drivers license examiner who is employed by the Kentucky State Police has requested approval to teach a driver education program for Johnson, Floyd, and Pike Counties at Prestonsburg Community College. Kentucky State Police has no involvement in the driver education program at Prestonsburg Community College, and the employee does not give driver license exams in the three mentioned counties. However, the employee will provide driver's training through this outside employment to students who will then take the written practical driving exam in order to obtain their operators' license. This employee will abstain from testing any students that attend the driver's training classes taught by the employee.

You request the Commission to review this request and provide guidance in the approval of this request.

KRS 11A.040(10)(a) 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.

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(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.

Additionally, KRS 11A.120 provides:

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.

Although it does not appear that the employee is required to get approval from his appointing authority for such outside employment due to the fact that Kentucky State Police does not regulate or do business with Prestonsburg Community College, the Commission believes that, pursuant to KRS 11A.120 above, the employee must determine whether a conflict of interest will exist if he accepts such a teaching position.

The Commission believes that, provided the employee will be compensated by Prestonsburg Community College, and the compensation is not based on the number of students taking the class, the employee may accept the position with Prestonsburg Community College to teach a driver education program. Additionally, in order to avoid even the appearance of impropriety, the Commission recommends, as you have suggested, that the employee abstain in his official position from testing students that attend the driver education class that he teaches privately.

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Furthermore, Kentucky State Police is not precluded from implementing more restrictive internal polices regarding this matter.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia Stone, J.D.