

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 01-40**

November 9, 2001

RE: May Deputy Commissioner be employed as on-line instructor?

DECISION: Yes.

This opinion is in response to your October 10, 2001, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 9, 2001, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Deputy Commissioner of the Department for Public Health, Health Services Cabinet (the "Cabinet") has requested approval of outside employment with the University of Phoenix ("University") as an instructor. His work for the University will involve on-line instruction to degree-seeking students. The Cabinet does not do business with or regulate the University. Additionally, the Deputy Commissioner states that he has no employees under his supervision. You ask whether such outside employment will present a conflict with his official duty in light of the fact that 101 KAR 2:034 Section 5, pertaining to Education Achievements Awards, does not preclude a Cabinet employee from taking on-line courses to fulfill requirements for the said award.

11A.020(1) (a) and (c) provide:

(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;

...

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

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The Commission takes note that the University of Phoenix, which will be employing the Deputy Commissioner, has no business or regulatory relationship with the Cabinet that would cause a conflict for the Deputy Commissioner were he to accept employment as an on-line instructor. Additionally, because the Deputy Commissioner has no employees under his direct supervision, it does not appear that a conflict will exist even if employees of the Cabinet take on-line courses provided by the University. If the Deputy Commissioner does at some point supervise or have authority over employees, the Commission then cautions the Deputy Commissioner not to use his position to influence individuals in the taking of classes from the University.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Cynthia Stone, Esquire