

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 01-41

November 9, 2001

RE: May employee of the Division of Forestry perform contract work for The Nature Conservancy?

DECISION: Yes.

This opinion is in response to your October 12, 2001 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission").

You state the relevant facts as follows. An employee of the Division of Forestry ("Forestry") has been asked by The Nature Conservancy (the "Conservancy") to assist, through contract, in the removal of trees and brush for the promotion of native vegetation and ecosystems. The Conservancy, a non-profit organization, seeks to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. The Conservancy must comply with state forestry statutes and regulations relating to timber harvesting and open burning laws. Also, the Conservancy "partners" with Forestry on land acquisition projects.

The employee in question is a Forester II and prepares forest stewardship and forest management plans for private, non-industrial landowners. As part of his official duty, he has occasion to attend meetings and be involved in discussions with the Conservancy, but is neither involved in routine regulation of the Conservancy nor in the awarding of contracts to outside entities.

All work for the Conservancy will be done on the employee's own time and no cost-share money will be involved. The Conservancy will determine what vegetation is to be removed, and the employee of Forestry will have no involvement with that decision. Likewise, there will be no timber harvest for this work.

The employee has sought approval for this outside contract work from Forestry. You are seeking an opinion from the Commission as to whether the employee may perform such contract work for the Conservancy.

KRS 11A.020(1) (a) and (d) 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;

...

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Based on the facts as represented to the Commission and Advisory Opinion 99-31(a copy of which is enclosed), the Commission believes that the employee is not prohibited from contracting with the Conservancy, provided the employee has no direct involvement as part of his official duty with the Conservancy. If the employee, as you have stated, has no involvement in regulating the Conservancy, then he may provide the service.

This advice is based on the assumption that it is not part of the employee's official duty or the duty of Forestry to provide such a service for the Conservancy.

Enclosure: Advisory Opinion 99-31