

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 01-43
November 9, 2001

RE: May KSP employee accept employment with trucking company?

DECISION: No, if involved in the regulation of the trucking company.

This opinion is in response to your October 30, 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. An employee of the Kentucky State Police ("KSP") who works as a commercial drivers license ("CDL") examiner has requested approval to engage in outside employment as a driver for a trucking company. The KSP is statutorily charged with the oversight and regulation of CDL schools, their curriculum, licensing of CDL instructors, and CDL licensure. The employee has advised you that this job will not require him to obtain a CDL license. However, the trucking company that would employ him does employ persons who have obtained their CDL licenses from the KSP and perhaps were tested by KSP license examiners for their CDL. You ask if it would violate KRS Chapter 11A if the employee were to accept such a position.

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.

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(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.

Based on the provisions above, if the employee is involved in matters involving the regulation of trucking company with which he seeks employment, the appointing authority for the KSP may not approve the employee's outside employment with the trucking company. The Commission believes that "regulation of" includes the employee's involvement in examining employees of the trucking company for CDL licensure.

However, if the employee has no involvement in the regulation of the trucking company with which he seeks employment, and does not examine employees of the trucking company for CDL licensure, then the Commission believes that the appointing authority for the KSP is not prohibited from approving the outside employment of the employee with the trucking company. However, the appointing authority for KSP should review the regulations in 9 KAR 1:050 when deciding whether to approve the outside employment of the employee. The factors to be considered include, but are not limited to, the following:

- (a) The degree of separation between the public servant's duties and decisions concerning the outside employer;
- (b) The public servant's level of supervisory or administrative authority, if any;
- (c) Whether the outside employment will interfere or conflict with the public servant's state employment duties;
- (d) The duration of the outside employment; and
- (e) Whether the outside employment would create an appearance of a conflict of interest with state duties.

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If the appointing authority for Kentucky State Police grants approval for the employee's requested outside employment, the employee should abstain from any examination involving employees of the trucking company.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia Stone, Esquire