

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 02-6**

January 25, 2002

RE: May state employees contract with or sell products to the Appalachian Kentucky Gateway Artisan Center Authority?

DECISION: Yes, provided they are not employed by the Authority and provided they comply with the Model Procurement Code.

This opinion is in response to your January 7, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the January 25, 2002 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Appalachian Kentucky Gateway Artisan Center Authority (the "Authority") is a state authority attached to the Tourism Development Cabinet for administrative purposes. Thirteen (13) members serve on the Authority's board of directors, including the Cabinet Secretaries of Tourism, Transportation, Finance and Administration, and Education, Arts & Humanities. The Authority will buy and sell Kentucky-made crafts, food, videos, music, books, etc., and it will contract with individuals to perform demonstrations and conduct educational sessions. You ask whether state employees, specifically employees of the cabinets represented on the board, may sell to, or contract for personal services with, the Authority.

KRS 11A 040(4) provides:

(4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by

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the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

- (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
- (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
- (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or
- (d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

Additionally, "agency" is defined in KRS 11A.010(10) as follows:

(10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;

The provisions above prohibit a public servant from contracting or having an agreement with the state agency for which he works, but do not prohibit a public servant from contracting with state agencies other than the one by which he is employed. However, a public servant also must comply with the provisions of the Model Procurement Code in KRS 45A.340 which prohibit employees from having a contract or an agreement with any state agency unless the value is less than \$25 or the contract or agreement is competitively bid.

Based on the fact that the Authority is attached to the Tourism Cabinet for administrative purposes only, the Commission believes that the Authority is a separate state agency for

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purposes of the ethics code. Thus, employees of the Tourism Cabinet and other cabinets represented on the board may contract or have an agreement with the Authority, provided they comply with the Model Procurement Code. The Commission does believe, however, that those persons serving on the board who are also public servants should not contract with or have any agreement to sell products to the Authority.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Cynthia C. Stone, Esq.