

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-11

March 22, 2002

RE: May Department of Corrections' employees work part-time for KCTCS as instructors at institutions?

DECISION: No.

This opinion is in response to your January 24, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 22, 2002 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The Department of Corrections (the "Department") contracts with the Kentucky Community and Technical College System ("KCTCS") to provide teachers for prison institutions. The Department currently has a KCTCS instructor, assigned to the Eastern Kentucky Correctional Complex, who wishes to work part-time in another program the Department conducts, called the "Pathfinders' Program." The Department has contracted with an outside organization to manage and administer the Pathfinders' Program. The outside organization will hire staff for the Pathfinders' Program without interference or input from the Department. You ask whether the KCTCS instructor may accept such part-time employment in addition to his work through KCTCS for the Department.

Additionally, several employees of the Department have requested approval of outside employment with KCTCS. This outside employment would involve teaching for KCTCS at the Department's institutions during the employees' off-duty hours. You ask whether such a situation would violate the Executive Branch Code of Ethics, if approved.

KRS 11A.010(9) defines "public servant" as:

- (a) The Governor;
- (b) The Lieutenant Governor;
- (c) The Secretary of State;

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- (d) The Attorney General;
- (e) The Treasurer;
- (f) The Commissioner of Agriculture;
- (g) The Auditor of Public Accounts; and
- (h) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;

Employees of the KCTCS are not considered public servants in the executive branch, and thus are not subject to the executive branch code of ethics. Although the Department has a contract with KCTCS to provide instructors for its prisons, such instructors are not employees of the Department, but are employees of KCTCS, and are not subject to the executive branch code of ethics. Thus, such instructors are not prohibited by the executive branch code of ethics from working part-time for an outside organization that manages the Pathfinders' Program.

Regarding your second question, the Commission takes note of the following statutory provisions in KRS 11A.040:

(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 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.

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(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.

(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.

The Commission believes that employees of the Department who have requested to work part-time during off-duty hours for KCTCS as instructors at Corrections' institutions are prohibited by 11A.040(4) from doing so. The Department has a contract with KCTCS to provide instructors for its institutions. Employees hired by KCTCS to provide such instruction would be "enjoying" a part of the contract between the Department and KCTCS. Furthermore, if Department employees have any involvement in decisions or recommendations concerning KCTCS, the appointing authority for the Department would be prohibited by KRS 11A.040(10) from approving such outside employment.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY VICE CHAIR: Joseph B. Helm, Jr.