

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 02-13**

March 22, 2002

RE: May education consultant accept outside employment with college or university for which he provides recommendations?

DECISION: No.

This opinion is in response to your January 31, 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 Kentucky Board of Nursing (the "Board") regulates pre-licensure programs of nursing within a college or university's school of nursing. A school of nursing also may have a post-licensure program in nursing or a graduate program in nursing; however the Board does not directly regulate these programs, but in some cases may review such programs to determine if required standards are met. For example, applicants who graduate from an Advanced Registered Nurse Practitioners ("ARNP") post-licensure program of nursing must demonstrate that the ARNP program of nursing meets the standards of the Board. A Board employee reviews applications for licensure as an ARNP to determine if the post-licensure program of nursing the applicant completed meets such standards.

The Board employs an education consultant to survey all pre-licensure programs of nursing regulated by the Board and to make recommendations to the Board on whether a program meets requirements. The education consultant also may recommend actions that need to be taken by the program to comply with the regulations. His recommendations ultimately are acted upon by the Board, which is authorized to close a program of nursing that does not meet required standards. The education consultant is not involved in the Board's review of post-licensure programs, graduate programs, or programs to educate nurses to become Advanced Registered Nurse Practitioners.

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You ask whether the Board's education consultant may be employed by a college or university's school of nursing to teach in its post-licensure or graduate program. The Board requests guidance as to whether KRS 11A.040(1)(b) would prohibit the Board from approving such outside employment.

KRS 11A.120 provides, in part:

Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict a public servant from accepting outside employment in a state institution of higher education as long as that outside employment does not interfere or conflict with the public servant's state employment duties.

Additionally, 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.

(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.

KRS 11A.120 allows an employee to have outside employment with a state college or university if such employment does not conflict with the employee's state employment duties. This exception allowed in KRS 11A.120 does not apply to outside employment with a private

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college or university. In this situation, however, whether the employment would be with a public school of higher education or a private one is not germane. The Commission believes that if the education consultant is involved in the regulation of a college or university's nursing program, he should not be employed by that college or university. It appears to the Commission that such employment would pose a conflict for the education consultant in the carrying out of his official duties of regulating the nursing program. Even though the education consultant may not have any regulatory responsibilities over the particular program for which he wishes to teach, the fact that he would be hired and compensated by the college or university he is regulating creates the conflict for him.

Additionally, outside employment with a private college or university would be subject to the provisions in KRS 11A.040(10) above. The Commission believes that subsection (b) would prohibit the appointing authority from approving the outside employment of the education consultant with a private college or university if the education consultant is involved in recommendations affecting the private college or university.

Although outside employment with a public college or university does not technically require approval by the appointing authority, the Commission believes as stated above that such outside employment would be a violation of KRS 11A.120, and the education consultant's involvement in reviews of the college or university while employed by it would present a conflict for him in violation of KRS 11A.020(1)(a) which provides:

(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.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY VICE CHAIR: Joseph B. Helm, Jr.