

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-51

November 22, 2002

RE: May a state employee represent an internet research company and make sales calls to state agencies?

DECISION: Yes, within limitations.

This opinion is in response to your October 2, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the November 22, 2002, meeting of the Commission and the following opinion is issued.

You ask the following: *May a non-supervisory state employee make sales calls, on annual or compensatory leave, to various state agencies for an internet research company as a commissioned salesman? If so, under what circumstances?*

You also state that the internet research company essentially would be a competitor of Westlaw.

In considering your request, the Commission reviewed the following provisions:

KRS 11A.020(1) and (2), which 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;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

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(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(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.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

KRS 11A.040(10) which 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.

The Commission assumes that the employee owns less than 5% of the internet research company that he seeks to represent. If so, the employee is not prohibited from acting as a representative for an internet research company, provided he does not represent the company before the state agency for which he works and provided the employee does not use or attempt to use his official position in violation of KRS 11A.020 above. Several issues are involved in

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determining whether a conflict will exist. First, the employee should not identify himself as an employee of state government in his attempts to represent the company. Secondly, if the general public in any way views his sales attempts as using his official position to help his private interest, then the Commission advises him not to participate in such activity. The employee's position with the agency also must be considered. Although the employee's position may not be supervisory, if the position is a high-level recognizable position, and the employee attempts to use that recognition to give himself an advantage, then it may be improper for the employee to make sales calls on other state agency officials. From the limited information provided, it is difficult to determine whether a conflict will exist for the employee.

Furthermore, if the employee's service as a commissioned salesman will involve "employment" with the internet research company, and the company does business with the employee's state agency, then the employee must also obtain approval from his appointing authority for such outside employment, pursuant to KRS 11A.040(10) above.

The Commission also cautions the employee not to use state time or equipment in the conduct of his private business, and not to attempt to sell products to individuals or entities that do business with, or are regulated by, the state agency for which the employee works. See Advisory Opinion 98-8, a copy of which is enclosed.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.

Enclosures: Advisory Opinion 98-8