

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 02-56**

November 22, 2002

RE: May craftsperson who is also an employee of the Department of Parks at Fort Boonesborough sell wares at the Park or refer customers to his private business?

DECISION: No.

This opinion is in response to your October 24, 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 state the relevant facts as follows. You and your spouse are both employed by Fort Boonesborough State Park (the "Park") as part-time, seasonal craftspersons. At the park, you demonstrate, for tourists, flintlock rifle building, safe handling of the rifle, and rifle shooting techniques. In your demonstration, you also tell of the history of the Kentucky rifle, and of frontier warfare, hunting, trade, and living conditions in Kentucky at the time of the settlement of Boonesborough. You use your own tools, materials, and supplies. Your spouse presents a similar presentation involving hand-made clothing presented of authentic styles and materials of the frontier. She also provides her own materials for any 18<sup>th</sup> century clothing she makes. Her demonstration includes a discussion of the history of the women on the frontier, their lives and work.

As a result of your demonstrations, you and your spouse produce products at the Park. You do not sell the products on site, but do take orders for any of your products. You do not display sale signs at the Park or accept any money on site, but accept payment by mail or at locations other than the Park, as required by the Park's management.

You state that in order to pay for the materials in the products you demonstrate, you must be able to sell the finished products. Currently, you are prohibited from selling your products through the Park gift shop. You ask whether your current conduct of selling the items you produce on the Park site presents a conflict for you.

KRS 11A.020(1)(c) and (d) provides:

(1) No public servant, by himself or through others, shall knowingly:

...

(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.

Additionally, 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 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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According to the Director of Recreational Parks and Historic Sites, the Department of Parks (the "Department") provides materials and supplies used by craftspersons employed by the Department. Thus, any products produced during a demonstration should become the property of the Department for it to sell at the Park gift shop. However, in your situation, the Department does not wish to sell the guns you produce in the Park gift shop. Thus, you have an agreement with the Park for you to provide the materials and supplies for the demonstration of your craft, and for you to retain ownership of the guns you produce. Your spouse has a similar agreement for any 18th century clothing she produces.

According to previously issued advisory opinions, you should not sell at the Park any products you produce (Advisory Opinion 00-33), and you should not refer customers to your private business (of selling the guns) during the conduct of your trade at the Park (Advisory Opinions 98-35 and 00-01). Such actions may give you an advantage over other craftspersons. Additionally, the Commission believes that as a craftsperson you are not prohibited from producing similar products on your own time, and with your own supplies and equipment, which you may sell to the general public on your own time, and at a site other than the Park.

Furthermore, KRS 11A.040(4) prohibits you, as an employee of the Park, from selling your private wares to the Park gift shop. Craftspersons who volunteer or who hold personal service contracts with the Department to provide a service, rather than craftspersons who are seasonal employees of the Department, must provide their own materials and equipment for their crafts. Thus, such individuals are not employees of the Department subject to the Executive Branch Code of Ethics, and are not prohibited from selling their wares to the Department.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Cynthia C. Stone, Esq.

Enclosures: Advisory Opinions 00-33, 98-35, and 00-01