

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 02-59

December 13, 2002

RE: May greens superintendent be paid for preparation time for golf maintenance course taught at state park?

DECISION: Yes, but employee should be compensated by Park, if course instruction is considered a part of the employee's official duties.

This opinion is in response to your December 3, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 13, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. The President of Southeast Community College (the "College") has contacted the Department of Parks (the "Department") about the feasibility of the greens superintendent at Pine Mountain State Resort Park (the "Park") teaching a golf maintenance course to high school seniors. The class would be conducted daily at the Wasioto Winds golf course, which is on the grounds of the Park, between the hours of 9:00 a.m. and 1:00 p.m., during which time the greens superintendent is employed by the Commonwealth of Kentucky and is compensated by same. The College has indicated that it will compensate the greens superintendent for time spent in class preparation away from his work station, but would not compensate the greens superintendent for time during which he is compensated by the Department. You have indicated that it would be advantageous for the Department to have the greens superintendent conduct this class at the Park as the students would help maintain the course as part of their instruction.

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.

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Additionally, KRS 11A.040(5) provides:

(5) A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

It appears from the information you have provided that the greens superintendent is not involved in any matters involving the College as part of his official duty. Additionally, it appears that the Department will consider it a part of his official duties to conduct the class during the workday due to the benefit derived by the Park. The Commission agrees that such a decision is a management one. Thus, the employee may not receive compensation, in addition to his state salary, for performance of what management determines to be his official duties.

Furthermore, if the Department believes that the conduct of the greens maintenance course is a part of the greens superintendent's official duties, then any preparation time for the course would be included in his official duties for the Park. The Commission understands that the conduct of the course may require preparation time by the greens superintendent in addition to his work hours, and thus, believes that any preparation time spent by the employee over and above his daily work hours should be compensated by the Park, either by awarding of compensatory time or overtime pay, whichever is appropriate. The Commission believes that because the Park is allowing the College to conduct the class at the Park, the Park, rather than the employee, should be compensated by the College.

This also eliminates the possible conflict that the greens superintendent only has this opportunity for outside employment (i.e. the preparation on his own time) due to his employment with the Park.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Cynthia C. Stone, Esq.