

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-29

October 16, 2003

RE: May employee of Department for Fish and Wildlife Resources accept compensation, other than state salary, for official duties?

DECISION: Yes, provided compensation is for time spent in addition to normal working hours.

This opinion is issued in response to your July 24, 2003, and September 4, 2003, requests for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 31 and October 16, 2003, meetings of the Commission and the following opinion is issued.

You state the relevant facts as follows. The deputy commissioner of the Department for Fish and Wildlife Resources (the "Department") was heavily involved in a joint venture by the Department and the Kentucky Department of Education (the "KDE") to teach Olympic-style target archery in Kentucky middle schools in 2001. Within months of piloting the effort, it grew in scope and became known as the "National Archery in Schools Program." According to data provided by you, the program has been an unmitigated success. This expansion of the scale and scope of the program has moved it beyond the norm for the Department and KDE as to each agency's respective involvement in such a program. Several archery-related industries and organizations "stand ready" to provide financial support to the program, through the Kentucky Fish and Wildlife Foundation (the "Foundation"). You state that the Department mandates that equipment furnished to the schools from the industry must meet the following criteria:

- No specific brand is endorsed
- Equipment must be safe
- Equipment must be "one-size-fits-all"
- Equipment must be simple to teach and learn to use
- Equipment must be easy to maintain
- Equipment must be target-target oriented (no camouflage colors or animal targets, except after-school)

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-29

October 16, 2003

Page Two

The deputy commissioner now asks the Commission to grant approval, pursuant to KRS 11A.040(5), that he be allowed to accept compensation (in addition to that from the Department) from various sources, through the Foundation, for his work with the archery program. That statute provides:

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.

The duties for which the deputy commissioner would receive this additional compensation include his continuation as a coordinator, facilitator, spokesman and salesperson for the archery program, and his continuation in fine tuning the design and expansion of this program in and beyond Kentucky. To accomplish this, the supporters would:

- Donate funds to the Foundation equal to up to 100% of the deputy commissioner's salary if 50% of his duties are dedicated to the archery program.
- Provide the deputy commissioner with additional compensation beyond his state salary as recognition for his ability to move this program forward for all concerned.

The duties the deputy commissioner would undertake on behalf of the archery program would be in addition to the workload he already carries as deputy commissioner of the Department. Part of these additional duties would be to raise funds for the Foundation (which you say is charitable) and for non-profit foundations associated with the archery program. Further, you state that the method by which the deputy commissioner would be paid the additional monies for the additional work is allowed by KRS 150.061(5).

As justification for this request, you state that it is in the best interests of the Commonwealth, the archery program, the potential archery students and for the deputy commissioner. Further, you state that there is no conflict of interest either with a regulated entity or with an entity with which the Commonwealth transacts business. Finally, you state that the Deputy Commissioner would see his job title changed to "Principal Assistant" with no impact on his state salary. You say this will give the individual more flexibility to work with the archery program and to work even closer with the Foundation.

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-29

October 16, 2003

Page Three

The Commission has previously held that a state employee could accept additional compensation for performance of official duties if such performance of official duties was in addition to time spent by the employee for regular state service. See Advisory Opinion 00-23, a copy of which is enclosed. On the other hand, the Commission has also denied requests by state employees to engage in activities that amount to a violation of KRS 11A.040(5). See Advisory Opinions 00-33 and 02-17.

In this case, it appears, from the material provided and from discussions between Commission staff and the Department, that the deputy commissioner did initially engage in these activities as part of his official duties. Now that the archery program has apparently “hit its mark,” the deputy commissioner would be required to spend considerably more time dealing with archery program issues. This scenario closely resembles that described in Advisory Opinion 00-23, wherein the executive director of Kentucky Educational Television (KET) not only oversaw the KET functions but also oversaw the functions of the KET Foundation. In that instance, the Commission determined that since the executive director’s duties with regard to the KET Foundation were part of her official duties, and if she spent time above and beyond normal working hours for which she could not receive monetary compensation or compensatory time, then the executive director should be allowed to receive additional compensation from the KET Foundation.

This situation, while somewhat different, is alike in important regards. First, both the KET executive director and the Department’s deputy commissioner were/are performing duties required of them; thus, they are part of their “official duties.” Second, both did/will perform many of these duties beyond normal working hours for which no other compensation is or will be made available from their employers. Finally, there appears to be no conflict of interest for the deputy commissioner (clearly there was no conflict for the KET executive director).

Because of the unquestioned value of the program, and because the deputy commissioner’s request appears to satisfy the parameters previously set forth by the Commission for such requests, the Commission grants prior approval for the Department’s deputy commissioner to accept additional compensation for performance of work consistent with his official duties if the deputy commissioner spends time over and above his normal hours performing work for the archery program and is not paid or allowed compensatory time by the Department. The additional compensation should not exceed a fair market value for such service.

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-29

October 16, 2003

Page Four

The Commission recommends that the deputy commissioner document the amount of time spent on work for the archery program in addition to his normal workday spent on matters for the Department. The Commission cautions the Department and the deputy commissioner to ensure that no conflict of interest develops.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 00-23