

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-41

December 18, 2003

RE: May a state employee use data from his employing agency in writing a research paper for college classes?

DECISION: Yes.

This opinion is issued in response to your October 24, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 18, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are an employee of the Division of Water (the "Division") within the Natural Resources and Environmental Protection Cabinet (the "Cabinet"). You are taking two classes at Kentucky State University ("KSU"), both of which require a research paper, but you can satisfy the requirement for both classes with one paper. The topic you propose to write on is one that would involve your gathering information from your Division which you believe is available to the general public, but to which you would have easier access as a function of your employment there. The Division is paying all of the costs for one of the classes you are taking at KSU, and a portion of the costs for the other class.

Your concern is whether you may use state resources in working on this research paper. Specifically, you are concerned that your access to information possessed by the Division, although available to the general public, may appear as if you are using your official position to give yourself an advantage.

You have requested permission from your supervisor to gather information for your paper from the Division, and he has responded that your proposed use of state resources and data is acceptable and a benefit to the Division. He has specifically stated that you may do the analysis portion of your project on state time, so long as he is provided with a copy of the results, but that you would need to write the actual report for your classes on your own time.

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KRS 11A.020(1)(a) and (d) state:

(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;

...

(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.

The Commission has previously answered a question regarding employee use of state resources otherwise available to the general public. In Advisory Opinion 98-11, the Commission advised a Property Valuation Administrator (PVA) employee who wished to work as a real estate sales associate that he could do so as long as the information he obtained from the PVA office was freely available to the general public. In this case you believe all of the information you need from the Division for your research paper is available to the general public, though you, as an employee, would have an easier time accessing such information than the general public.

Furthermore, your supervisor has determined that the analysis of the data for your research paper would be beneficial to the Division, and has given you permission not only to access and use such information, but also to do the analysis on state time. Thus, unlike the scenario described in Advisory Opinion 98-11 where the information was to be used solely for personal gain, you have been given permission, as part of your official duties, to use the information maintained by the Division. Thus, as your employer believes the analysis of the information to be part of your official duties, it is clearly allowable for you to access the Division's data to complete your research paper. Your employer realizes the benefit of your research and analysis; thus, there is no real or perceived conflict of interest in the scenario you describe, even if you realize the personal benefit of completing the analysis for your research paper.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.