

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-43**

December 18, 2003

RE: May a state employee engage in outside self-employment for compensation, to provide speaking services on Medicaid eligibility?

DECISION: Yes, provided he does not provide services for persons or entities that are Medicaid recipients, who are seeking Medicaid eligibility, or who are under investigation by OIG.

This opinion is issued in response to your October 16, 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. An employee of the Cabinet for Health Services' (the "Cabinet") Office of Inspector General (the "OIG") has submitted a request for approval of outside employment (self-employment). This outside self-employment would involve the employee explaining Medicaid eligibility at seminars, family groups, and others referred to him. The Cabinet requires employees to obtain approval from the agency appointing authority for any outside employment, including self-employment and consulting.

You ask, as the employee is now an OIG employee (Program Investigative Officer) whose job duties include investigating matters involving Medicaid eligibility, whether such outside self-employment is appropriate.

KRS 11A.020(1)(a) provides:

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

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(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;

From the information provided, it appears the employee would be working for himself, an "independent contractor" providing his services to groups or individuals regarding Medicaid eligibility. See Advisory Opinion 00-68. The employee must ensure there is no conflict of interest created by this self-employment situation.

You state that the employee's job duties for the OIG include investigation of matters involving Medicaid eligibility. With that in mind, the Commission believes that Advisory Opinion 99-26 (a copy of which is provided) answers your questions regarding the appropriateness of the employee's self-employment. The Commission believes that a conflict of interest will not necessarily be created for the employee by his speaking at seminars or family groups regarding Medicaid eligibility, provided he is not receiving compensation for such engagements from persons or businesses who are Medicaid recipients or who are seeking eligibility as a Medicaid recipients, because such Medicaid recipients may ultimately come under his review or the review of others he supervises.

Additionally, the employee should not provide speaking services for compensation for persons or businesses if the OIG is involved in reviewing or investigating the person or business. Such acceptance of compensation would present a conflict for the employee.

Furthermore, if the employee accepts compensation for speaking services from a person or business that ultimately is reviewed by the OIG, then neither he, nor anyone under his supervision, should be involved in the review of the specific person or business by which he was compensated.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 99-26