

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 04-12
April 8, 2004

RE: May an employee of Kentucky Educational Television (“KET”) submit a bid to complete rewiring for a school district to which KET provides services?

DECISION: No.

This opinion is issued in response to your March 30, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the “Commission”). The matter was reviewed at the April 8, 2004 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. Kentucky Educational Television (“KET”) is responsible for purchasing, installing, and repairing KET transmitters and other related equipment (“systems”) in local schools. A field tech employee of KET, who is under your supervision, is responsible for duties that include maintenance of these systems at the local schools. However, such maintenance responsibilities by KET do not include routine maintenance of cables and wiring inside the schools, although if a field tech is at a school repairing a system, a field tech may help with non-KET maintenance, if requested. You state that this is done as a courtesy in providing customer service.

The field tech employee has informed you that a local school board hired a contractor to rewire one of its schools, but it appears that the contractor may default and not finish the job. Because the employee graduated from this high school, he has a special interest in this school and, on his own time, has evaluated the work that still needs to be completed. He found that the work includes running 2,500 feet of coaxial cable to 45 classrooms and offices, installing 180 connectors, 45 drop taps and 2 line extending amplifiers, as well as reprogramming all televisions and VCRs to work with the new wiring. You ask, if the contractor defaults on the contract, whether it would be an ethics issue for the employee to submit a bid to the school system to complete the rewiring and other associated tasks.

Although the field tech employee is an independent, self-employed contractor and does not need approval for such self-employment, the employee stills need to ascertain no conflict of interest exists between his outside work and his state employment. That statute, at KRS 11A.020(1), states:

- (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;

- (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;
- (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.

From the information provided, it appears that KET provides certain services for the local school systems. Although there doesn't appear to be a business or regulatory relationship between KET and the local schools, it does appear that KET is making discretionary decisions to provide certain services to the schools. And specifically, it appears that field tech employees make discretionary decisions in providing additional customer service to the local schools.

The Commission also takes note that the field tech employee had access to the school through his official position, which gives him an advantage over the general public in the evaluation of the work that needs to be done, even though this work was performed on his own time.

Thus, the Commission believes that if the field tech employee seeks the local school as a client given the fact that KET, and specifically the field tech employee, make discretionary decisions regarding the school, it would cause a conflict of interest for the employee between his private interest and his duties in the public interest.

Furthermore, were the employee to submit the bid and perform the wiring for the school, as an independent contractor, and then later was asked about a problem that KET would typically only repair as a courtesy, the employee would possibly be placed in the position of repairing, as a KET field tech, work he had performed as an independent contractor. While perhaps not technically a conflict of interest, it certainly may give the appearance of a conflict of interest.

Consequently, based on the various reasons above, the Commission believes that the field tech employee is prohibited from submitting a bid to the local school district to complete the rewiring of the systems.

BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 95-39
Advisory Opinion 00-38