

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 04-46**

December 17, 2004

RE: May probation and parole officer accept outside employment with substance abuse center?

DECISION: Yes, within limitations.

This opinion is issued in response to your October 27, 2004 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the December 17, 2004 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. A probation and parole officer employed by the Department of Corrections (the "Department"), Division of Probation and Parole (the "Division"), seeks approval from the Department for outside employment at a substance abuse center (the Center") that provides both outpatient and in-patient long-term care for individuals with substance abuse problems. The officer's official duties for the Division include monitoring and supervising individuals who are on parole or probation. The officer's job responsibilities for the Center will be on weekends and will include monitoring clients/residents of the Center for observance of rules, as well as taking the residents of the Center to Alcoholic Anonymous/ Narcotics Anonymous meetings.

The Division occasionally uses the Center as a resource for individuals on probation or parole who are under the supervision of the Division. Currently, the Division has no individuals under its supervision who are enrolled in the long-term treatment phase at the Center. However, the Division does have two individuals under its supervision who are on the waiting list to be admitted to the Center.

You ponder whether a conflict will exist if individuals under the Division's supervision are also enrolled in long-term treatment at the Center. Even though the probation and parole officer will not be directly involved in treatment of residents at the Center, he may observe behavior that could result in a client's dismissal from the Center, which, if the client is on

probation or parole, might result in the revoking of the individual's probation or parole status. Thus, you ask for the Commission's opinion as to whether such outside employment will present a conflict for the officer if approved.

KRS 11A.010(10) provides the following:

(10) Without the approval of his appointing authority, a public servant shall not accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.

(a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.

(b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.

(c) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.

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

(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;

EXECUTIVE BRANCH ETHICS COMMISSION  
ADVISORY OPINION 04-46  
December 17, 2004  
Page Three

As provided above, the appointing authority for Corrections may not approve the employee's outside employment if the employee is involved in any decisions or recommendations regarding the Center as part of his official duty for he state. If the employee is not involved in decisions or recommendations concerning the Center, then the Commission believes that the appointing authority may conditionally approve such outside employment.

Specifically, the Commission believes that such approval should include a requirement that the probation and parole officer not be involved in supervising individuals, as part of his official duty for the Division, who are enrolled in any type of treatment program at the Center. If any individual who is under the current supervision of the probation and parole officer is subsequently admitted to the Center, the officer should immediately remove himself from supervision of the individual, and the Division should assign a different probation and parole officer to supervise that individual. See Advisory Opinions 93-20 and 99-27.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: James S. Willhite

Enclosures: Advisory Opinion 93-20  
Advisory Opinion 99-27