

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 06-8
AMENDS ADVISORY OPINION 02-11
April 10, 2006

RE: May Department of Corrections' employees have part-time outside employment with entities that contract with the Department?

DECISION: No, if such employment fulfills a part of the contract with the Department; an exception is allowed if employment is with a state institution of higher education.

This opinion is issued in response to your March 21, 2006 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 10, 2006 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. The Department of Corrections (the "Department") holds a contract with a food service vendor for the Department's correctional institutions. Several months ago you asked staff of the Commission if it would be a violation of the Executive Branch Code of Ethics for employees of the Department to work for the food service vendor on a part-time basis. Commission staff responded that it may not necessarily be a violation, provided the employees obtain approval from the Department's appointing authority pursuant to KRS 11A.040(10). Staff advised that if the employees have no involvement in matters involving the food service vendor as part of their official duties, and their service will not be fulfilling part of the contract the food service vendor has with the Department, it doesn't appear that a conflict will exist.

Thus, the Department has been letting its staff work on a part-time basis for the food service vendor, which has prompted several questions from field staff with regard to part-time employment with other companies that hold contracts with the Department. The questions are as follows:

1. *WKCC (Western Kentucky Correctional Complex) has a request from one of their employees to work at the inmate canteen. The employee's brother runs the canteen. We denied in 2005, but they are asking again since we have approved our employees to work with Aramark (food service vendor). They feel that the circumstances are not any different and would like for the employee to be permitted to work after hours at the inmate canteen.*
2. *KSP (Kentucky State Penitentiary) has a new employee who is employed with KCTCS (Kentucky Community and Technical College System), State Fire and Rescue Training. His information sheet indicates he teaches Fire Departments fire and rescue at night. I know employees of the Department who have requested to work part-time for KCTCS as instructors at Corrections institutions are prohibited from doing so since the Department has a contract with KCTCS to provide instructors for its institutions. However, this employee would not be working for the Department, but would be teaching fire training. Is this a conflict?*
3. *The Department currently has a contract with Correct Care to provide medical service to the institutions. We have a nurse who would like to work for both us and to work for Correct Care within the Department of Corrections on a part-time basis to provide medical attention to inmates. Would this be a conflict?*

Regarding your questions, KRS 11A.040(4) and (10) provide:

(4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:

(a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or

(b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or

(c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or

(d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.

(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.

The Commission reiterates, as previously stated by Commission staff, that if an employee who wishes to obtain outside employment with a vendor of his agency has no involvement in matters involving the vendor, as part of his official duties for the Department, **and his service will not be fulfilling part of the contract or agreement the vendor has with the Department**, it doesn't appear that a conflict will exist.

However, if the part-time employment that an employee will be providing to the vendor actually fulfills part of the vendor's contract with the Department, then such part-time employment would be prohibited by KRS 11A.040(4) above. For example, if the Department holds a contract with a food service vendor to prepare and serve meals at the Department's correctional institutions, and the vendor wishes to hire a Department employee to prepare or serve such meals, the part-time employment of the employee would be fulfilling part of a contract with the Department and thus the employee would be "enjoying" part of a contract with

his own state agency, which is prohibited by the Executive Branch Code of Ethics. The Department employee may only accept employment with a vendor of his agency if he is not fulfilling part of the contract with his agency (such as providing services for a non-Department institution), and he is not involved in matters regarding the vendor as part of his job.

Accordingly, in answer to your first question, the Commission wishes to point out that since the employee's brother has a contract with the Department, and employment for his brother at the inmate canteen would be fulfilling part of that contract, and thus he would be "enjoying" part of the contract with the Department, he is prohibited from such employment or compensation.

Regarding your second question, the Commission refers you to Advisory Opinion 02-11 (a copy of which is enclosed) that concluded that employees of the Department were prohibited by KRS 11A.040 (4) from working part-time during off-duty hours for KCTCS as instructors at Department institutions since the Department held a contract with KCTCS to provide instructors for the institutions. Employees hired by KCTCS to provide such instruction would be "enjoying" a part of the contract between the Department and KCTCS. However, in that opinion, the Commission failed to note that KRS 11A.120, provided below, allows an exception for outside employment with a state institution of higher education as long as that outside employment does not interfere or conflict with the public servant's state employment duties.

KRS 11A.120 provides:

Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict a public servant from accepting outside employment in a state institution of higher education as long as that outside employment does not interfere or conflict with the public servant's state employment duties. Nothing in this section shall prohibit or restrict a present or former public servant from accepting employment with a state institution of higher education immediately following termination of his office or employment in another state agency.

Consequently, the Commission believes that Department employees who wish to have outside employment with KCTCS, or any other state college or university, may do so, provided such employment does not interfere with their employment duties for the Department and provided they do not have any involvement in discussions, decisions, or recommendations concerning KCTCS, or the state college or university by which they wish to be employed. This interpretation amends Advisory Opinion 02-11.

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 06-8
April 10, 2006
Page Five

From the information you have provided to the Commission, it appears that the new KSP employee is employed by the Department as a correctional officer and also works part-time for KCTCS teaching state fire and rescue training at local fire departments. Since it does not appear that the new employee will be fulfilling a part of a contract or agreement with the Department, but will be fulfilling a contract or agreement with either local governments or possibly another state agency, he would not be prohibited from continuing such outside employment, provided he has no involvement in discussions, decisions or recommendations regarding KCTCS as part of his duties as a correctional officer.

Finally, KRS 11A.040(4) would prohibit a nurse employed by the Department from part-time employment with a medical care company that has a contract with the Department to provide medical service to the institutions since such part-time employment would be providing medical attention to the inmates, and thus would be fulfilling part of the contract between the medical care company and the Department. No exception would be allowed since the entity is not a state institution of higher education.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb

Enclosure Advisory Opinion 02-11