

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 06-17**

June 16, 2006

RE: May non-merit employee engage in and receive compensation for outside political activity?

DECISION: Yes, provided a conflict does not exist between the political activity and the employee's official duty.

This opinion is issued in response to your May 31, 2006 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 16, 2006 meeting of the Commission and the following opinion is issued.

You are employed by the Governor's Office for Local Development ("GOLD") and have several questions regarding outside employment. You ask the following regarding part-time work outside of state employment:

- 1) *If a non-merit employee wishes to engage in outside work for a political campaign, in this case a nonpartisan judicial campaign, on her own time and without use of state resources of course, can she do that?*
- 2) *If yes, and she receives consulting fees or reimbursement for expenses does she need to get approval from the appointing authority to certify that there would be no conflict of interest? The contemplated work would not involve a salary or regular wages.*

KRS 11A.040 (10) provides:

(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.

Also, KRS 11A.020(1)(a) and (d) provide:

(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.

Approval for outside employment, in addition to one's state position, is only required by KRS Chapter 11A when an individual is an actual "employee" of the outside organization. A volunteer for a political campaign would not appear to be an employee of the campaign, and thus would not be required to get approval, unless the employee's agency had an internal policy requiring such.

Non-merit employees are not prohibited from engaging in political activity. (KRS Chapter 18A) However, the Commission cautions such employees not to use their state positions to give themselves or others an advantage, and not to use their influence in matters that involve a substantial conflict between their responsibilities in their state positions and their private political interests.

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Non-merit employees may accept reimbursement of expenses from a political campaign, provided such reimbursements are not prohibited under KRS 11A.045 (1), and do not pose a conflict with their official duties. Consulting fees also may be accepted, again, provided no conflict exists between the outside client of the employee and his duties in his state employment. For example, if an employee of the GOLD is responsible for awarding grants to cities, and wishes to work as a paid consultant for a mayor running for re-election who has applied for such a grant for his city, a conflict may exist.

In sum, generally volunteer and paid political activity by non-merit employees is not prohibited on an employee's own time and without the use of state resources, unless such activity will cause a conflict with an employee's official position.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: John A. Webb