

Executive Branch Ethics Commission  
**ADVISORY OPINION 07-23**  
June 29, 2007

**RE:** May employee work as temporary employee for another state agency?

**DECISION:** No, unless agreement with temp agency is competitively bid.

This opinion is issued in response to your June 6, 2007 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 29, 2007 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows. In 2006, the Kentucky Department for Libraries and Archives ("KDLA") entered into a records management pilot project with the Division of Occupations and Professions, Finance and Administration Cabinet, whereby Occupations and Professions purchased a document scanning/imaging software and signed the software server license over to KDLA. In exchange, KDLA provides the server space for the software, and KDLA assisted with the installation, design and training for the software. Once the software system was implemented, KDLA became fully responsible for the administration of the system.

This arrangement allows KDLA to pilot the imaging software. If it works well with Occupations and Professions, KDLA will then be able to use it to assist other small agencies with their imaging needs without having to incur the cost of acquiring the software again. KDLA is "crediting" the usual cost of the server storage space against the cost of the software for Occupations and Professions.

A KDLA employee, who serves as the system administrator, also assisted with the installation of the software, troubleshoots problems with software, creates accounts in the system, designs queries, and provides training on the use of the system for Occupations and Professions employees who scan the documents.

Occupations and Professions has a backlog of documents that need to be scanned into the system, and thus they hired through a temp agency a temporary worker to perform this work. Unfortunately, the temporary worker was not familiar with the system and was not highly efficient in the use of the system. Consequently, the system administrator has requested permission for outside employment to work through the temporary agency for Occupations and Professions scanning the documents. Since he is familiar with the system, he will be able to complete the task (which is time limited by its nature as well as by the amount of money that

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Occupations and Professions has to spend on the task) much more quickly, efficiently and accurately than another temporary worker.

While the system administrator knew of this opportunity through his ongoing work with the pilot project, he does not have the ability to exercise any “authority” or “influence” over the project or KDLA’s involvement with the project. The system administrator would be cautioned that the only job he is permitted to perform while working through the temporary agency would be the manual task of scanning Occupations and Professions documents and he would be cautioned against performing any “administrator” duties while on the temp agency’s payroll.

In light of these facts, you ask whether the Commission sees a violation of the Executive Branch Code of Ethics by this outside employment.

KRS 11A.040(4) provides:

(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. Employees designated as craftspersons under KRS 148.257...

Further KRS 11A.020(1)(c) and (d) provide:

- (1) No public servant, by himself or through others, shall knowingly:
  - ...
  - (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 other in derogation of the public interest at large.

Although an agreement exists between KDLA and Occupations and Professions, it does not appear that the system administrator’s work as a temporary employee would be enjoying part of that agreement with Occupations and Professions. His proposed outside employment with Occupations and Profession through the temp agency does not fulfill part of the agreement that KDLA has with Occupations and Professions which is to purchase the software in exchange for services provided by KDLA.

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However, it does appear that his proposed employment would be fulfilling part of an agreement that Occupations and Professions (or the Commonwealth) has with the temp agency. KRS 45A.340 prohibits an employee from enjoying a part of a contract with any state agency unless it is less than \$25 or it is competitively bid. Thus, his proposed employment, although not directly prohibited by KRS 11A.040(4), may be prohibited by KRS 45A.340 with which he must comply pursuant to KRS 11A.040(4), unless the agreement between Occupations and Professions (or the Commonwealth) and the temp agency was competitively bid. If the contract awarded to the temp agency (by the Commonwealth) to provide temporary staffing service to state government agencies, including Occupation and Professions, was competitively bid after public notice, then his proposed employment would not be prohibited by KRS 11A.040(4) or KRS 45A.340.

However, the question stills exists as to whether the system administrator's use of his official position has given him an advantage in obtaining such outside employment. Although employees are not prohibited from using general knowledge gained from their state positions for private outside ventures, the system administrator should refrain from giving any appearance that he is using his official capacity to benefit himself privately.

As an alternative to his proposed outside employment, the Commission notes that dual employment may be an option for the system administrator provided he has not used his official position to give himself an advantage, and pursuant to Personnel Cabinet administrative regulation 101 KAR 2:095, Section 4 which requires an additional approval as provided below:

**Section 4. Dual Employment**

- (1) An employee holding a full-time position with the Commonwealth shall not hold another state position except upon recommendation of the appointing authority and the written approval of the secretary.
- (2) A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the secretary.

The KDLA also may loan him to Occupations and Profession and allow him to perform this task on state time as part of his official duty and interaccount Occupations and Profession for his services.

Sincerely,

**EXECUTIVE BRANCH ETHICS COMMISSION**

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By Chair: John A. Webb